THE STATE OF SOUTH CAROLINA
In The Supreme Court

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Apr 29 2022
S.C. SUPREME COURT

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Robert J. Bonds, Circuit Court Judge

Case No. 2019-CP-02-02013

Ashley Prior, #378681, Appellant,

v.

State of South Carolina, Respondent,

NOTICE OF APPEAL

Ashley Prior appeals the Order of the Honorable Robert J. Bonds dated April 11, 2022, a copy of which is attached. Appellant received written notice of entry of this Order on April 22, 2022.

April 29, 2022

Nancy C. Fennell
SC Bar No. 69729
Post Office Box 2176
Irmo, South Carolina 29063
(803) 553-1772
Attorney for Appellant

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| STATE OF SOUTH CAROLINA<br>COUNTY OF AIKEN | IN THE COURT OF COMMON PLEAS<br>FOR THE SECOND JUDICIAL CIRCUIT |
| Ashley Prior, SCDC # 378681<br><br>Applicant,<br><br>v.<br><br>State of South Carolina,<br><br>Respondent. | Case No.: 2019-CP-02-02013<br><br>**ORDER OF DISMISSAL** |

This matter comes before this Court by way of an application for post-conviction relief filed by Applicant Ashley Prior on August 8, 2019, asserting various claims of ineffective assistance of counsel and involuntary guilty plea. In response, Respondent the State of South Carolina filed a return and requested an evidentiary hearing to resolve the claims set forth in the application. Thereafter, Applicant, though counsel Nancy C. Fennell, served an amended application on Respondent with specific claims of ineffective assistance of counsel and involuntary guilty plea.

An evidentiary hearing on this action was convened February 4, 2022, before this Court utilizing the virtual courtroom on the Cisco WebEx platform. Applicant appeared virtually along with his counsel. Respondent was represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson of the South Carolina Attorney General's Office. Applicant proceeded forward on the claims raised in his amended application. This Court heard testimony from Applicant, his aunt, and plea counsel, Barry L. Thompson, II.

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any



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C.C.P. & G.S.
Charla Griffin Rouse
Deputy Clerk

constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismissed this action with prejudice. Specific findings of fact and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 are set forth below:

## PROCEDURAL HISTORY

The records before this Court establish Applicant is presently incarcerated within the South Carolina Department of Corrections (SCDC) following his guilty plea and sentence in Aiken County. On February 28, 2015, Applicant and a co-defendant broke into a home in Aiken County and stole firearms, money, and other items of personal property. Applicant was not immediately identified as a suspect in this burglary. He later committed another, unrelated burglary, and as a result, pled guilty and was sentenced to SCDC for that unrelated burglary. While in SCDC, Applicant was identified as a suspect in this underlying burglary based on a DNA match from blood recovered at the scene of the burglary. Applicant gave a statement admitting to his involvement in the burglary and his co-defendant also implicated him. Applicant has five prior burglar convictions.

Applicant originally indicted by the Aiken County Grand Jury in March 2018 for first-degree burglary(2018-GS-02-0531) and grand larceny (2018-GS-02-0530). In August of 2018, the Aiken County Grand Jury issued an amended indictment for first-degree burglary (2018-GS-02-1898) based on his prior burglary convictions.[1]

By order of the court, Applicant was evaluated for competency and criminal responsibility and found to be both competent and criminally responsible.

Assistant Public Defender Barry L. Thompson, II, of the Second Circuit Public Defender's

[1] The original burglary indictment from the March 2018 term was nolle prossed after Applicant's plea.

Office represented Applicant. Assistant Solicitor Heather DeLoach of the Second Circuit Solicitor's Office prosecuted the case.

On August 20, 2018, Applicant appeared before the Honorable William P. Keesley, circuit court judge and pled guilty as indicted to first-degree burglary and grand larceny without any negotiations or recommendations. Following a thorough plea colloquy with Applicant, Judge Keesely determined Applicant's pleas were knowing, voluntary, and intelligently entered, accepted his pleas, and sentenced him to twenty years of imprisonment for first-degree burglary and five years of imprisonment for grand larceny, with both sentences to be served currently.

On August 23, 2018, Applicant, though counsel Thompson, filed a motion to reconsider his sentence, seeking for his sentences to run concurrently with his active sentences for the unrelated burglary for which he was in SCDC at the time of his plea and to give him credit for the time he had been in SCDC on the unrelated burglary. On January 10, 2019, Applicant, though counsel Thompson, filed a memorandum in support of his motion to reconsider his sentence. The State consented to this relief, and on February 13, ,2019, Judge Keesley entered an order granting Applicant credit for the entire time he was in SCDC for the unrelated burglary.

Thereafter, Applicant filed a timely notice of appeal, which was subsequently dismissed for failing to provide a sufficient explanation of a preserved issue for appellate review from his guilty plea pursuant to Rule 203(d)(1)(B)(iv), SCACR. The remittitur was issued on May 28, 2019.

Applicant then initiated this action with the filing of his pro se application for post-conviction relief on August 8, 2019.

**CURRENT PROCEEDING**

In his *pro se* application for post-conviction relief, Applicant asserted the following

grounds for relief:

1. -involuntary guilty plea based on a lack of competency and an insufficient indictment for failing to state the crime was committed at night

2. -ineffective assistance of counsel for failing to object to the indictment based on insufficiency of the indictment for failing to adequately put him on notice of the time of the crime

As relief sought, Applicant stated he was seeking, " a vacation of conviction and sentence of the same sentence that [his] co-defendant got."

Nancy C. Fennell, Esquire, was thereafter appointed by the Aiken County Clerk of Court to represent Applicant.

In response to the application, Respondent filed a return and requested an evidentiary hearing to resolve these claims. Attached to this return and before this Court are the records from the Aiken County Clerk of Court regarding Applicant's underlying general sessions matter, the transcript from Applicant's guilty plea proceeding, the records from Applicant's direct appeal, Applicant's inmate records from the South Carolina Department of Corrections, and the records from this current action.

On January 24, 2022, Applicant, through counsel Fennell, filed an amended application, setting forth the following additional claims of ineffective assistance of counsel:

1. Failing to move to quash the indictment for first-degree burglary for failing to inform Applicant of the time element or being based on prior convictions

2. Failing to move to quash both the burglary and grand larceny indictments for discrepancies in the dates on the indictments

3. Advising Applicant he would receive a ten-year sentence, which also rendered his plea involuntary

4. Involuntary guilty plea based on the numerous medications he was on at the time of his plea, which he asserts rendered him incompetent

A hearing on was convened February 4, 2022, before this Court. At the hearing, Applicant proceeded forward on the claims set forth in his amended application. At the start of the hearing, Respondent admitted five exhibits into evidence with the consent of the Applicant:

1. Administrative Order from February 4, 2011, signed by then-Chief Justice Toal, outlining the duties and responsibilities of Chief Administrative Judges in Circuit Court

2. Administrative Order from then-Chief Administrative Judge Early dated October 31, 2017, setting the dates for the Aiken County Grand Jury for the first 6 months of 2018

3. Administrative Order from then-Chief Administrative Judge Keesely dated April 23, 2018, setting the dates for the Aiken County Grand Jury for the last 6 months of 2018

4. Second Circuit Terms for March 2018 from the Judicial Department Website

5. Second Circuit Terms for August 2018 from the Judicial Department Website

At the start of the hearing, Respondent asked this Court to take judicial notice of the following undisputed facts based on these five exhibits:

-By order of the Supreme Court through the Chief Justice, the Chief Administrative Judge for the 2nd Circuit was responsible for setting the dates the grand jury would convene;

-By order of the Chief Administrative Judge, the Aiken Grand Jury convened on March 8, 2018;

-By order of the Chief Administrative Judge, the Aiken Grand Jury convened on August 2, 2018;

-Court Administration set a General Sessions term for Aiken County for the week of March 12, 2018; and

-Court Administration set a General Sessions term for Aiken County for the week of August 6, 2018.

In response, this Court declined to formally take judicial notice but indicated that the documents are clear and the contents of the documents are not in dispute.

Respondent then moved to dismiss the allegations pertaining to Applicant's indictments for failing to state a claim upon which relief can be granted as a matter of fact or law. Respondent argued that it was clear from the face of the indictments that the indictments are proper notice documents as required by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). Respondent further argued that because the indictments are facially valid, any pre-trial motion to quash based on would have been improper, as set forth in State v. Massey, 430 SC 349, 844 S.E.2d 667 (2020).

As to the first claim regarding the first-degree burglary indictment, Respondent argued the first-degree burglary indictment to which Applicant pled guilty (the August 2018 indictment), clearly states the correct statute under which he was indicted (SC Code Ann. § 16-11-0311) and clearly indicates the enhancement is based on Applicant's two or more prior burglary convictions. Respondent argued that while it was not the indictment to which he pled guilty and was sentenced, the March 2018 first-degree burglary indictment that was dismissed is still legally sufficient because it properly gives Applicant notice of the crime for which he was charged and any challenge based on the time of day would be a factual challenge not appropriate for a pre-trial motion to quash a facially valid indictment pursuant to Massey. Accordingly, Respondent argued the first-degree burglary indictment was proper as a matter of law and this claim should be dismissed.

As to the second claim regarding purported date discrepancies in both the first-degree burglary and grand larceny indictments, Respondent argued both indictments were properly issued by the Grand Jury on the date which the Aiken County Grand Jury convened pursuant to Administrative Orders issued by the Chief Administrative Judge for the 2nd Circuit, who had the

express authority and responsibility to set the dates for the Grand Jury as determined by the Chief Justice. Respondent argued that pursuant to Section 14-7-1140, Applicant cannot establish prejudice because he was not injured by any purported irregularity.

This Court denied Respondent's motion for summary dismissal of the first two claims. Testimony was taken from Applicant, his aunt Jackie Bartley, and plea counsel.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged various claims of ineffective assistance of plea counsel and asserts that as a result of counsel's purported errors, he is entitled to have his guilty plea undone and proceed back to the court of general sessions for a new disposition of his case.

This Court has thoroughly reviewed the record in its entirety, including the plea transcript, the appellate records, and the records for this current action. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented at the evidentiary hearing, which allowed the Court to scrutinize the credibility of all witnesses presented. Based on this comprehensive review, this Court finds Applicant has failed to meet his burden of proof as to any of his allegations and finds this action must be denied and dismissed with prejudice. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

### Ineffective Assistance of Plea Counsel

Applicant's first three claims for relief as set forth in his amended application pertain to ineffective assistance of counsel. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745

S.E.2d 97, 101 (2013). Ordinarily, post-conviction relief 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 post-conviction relief 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 to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). 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.

Strickland, however, "does not guarantee perfect representation[—]only a 'reasonably

competent attorney.'" Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." Harrington, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). 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 judge. Thus, 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. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong

presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed at the time of counsel's conduct." Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." Id. The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." Id.

The Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. Harrington, 562 U.S. at 105. 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 judge. Thus, 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. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify

reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the 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. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial." Id. at 687 (emphasis added).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel." Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel's performance was deficient; and second, evidence that counsel's deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

The analysis of counsel's performance under the first prong of Strickland remains unchanged—the applicant must show counsel's representation fell below the 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 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, "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).

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. 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 plea and the evidence presented at the PCR hearing. Harres, 282 S.C. at 134, 318 S.E.2d at 361.

The performance and prejudice standards, however, "do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Id. at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Id. at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

This Court finds Applicant cannot meet his burden as to any of his claims of ineffective assistance of counsel. Each specific claim is addressed below:

***Ineffective assistance of counsel for failure to move to quash the burglary indictment***

As his first claim for relief, Applicant asserts plea counsel was ineffective for failing to move to quash his first-degree burglary indictment. In support of this allegation, Applicant asserts that the first indictment for first-degree burglary, issued in March 2018, was improper because it did not properly state why the charge was enhanced to first-degree burglary. Applicant stated he first heard that it was based on the theft of weapons, and then he later heard it was based on the time of day (nighttime), and then he was eventually told it was based on his prior record. He testified he did not discuss his prior burglary convictions or his prior record with counsel, despite

acknowledging that he was presently incarcerated in SCDC for burglary convictions when counsel came to visit him at his SCDC institution. He testified he and counsel never discussed how his prior burglary convictions would impact his pending charges. He testified he never discussed any issues with the indictments with counsel and did not ask counsel to move to quash or otherwise challenge the indictments because he did not know there were problems with the indictments until his aunt sent him the March 2018 indictment while he was in SCDC. He testified his poor eyesight prevented him from ever reading the indictments prior to his plea. He testified he did not know that he was charged with first-degree burglary based on his prior record until his current PCR counsel explained this to him.

On cross-examination, Applicant acknowledge he does have more than two prior burglary convictions, was incarcerated in SCDC for a burglary conviction at the time of this plea, and counsel was aware of his prior record. He testified he is not sure of the facts and circumstances of the burglary because he was so drunk that he "blacked out" and cannot remember the crime.

Counsel testified that he reviewed the indictments with Applicant as well as discussed the elements of first-degree burglary. Counsel testified he specifically discussed the ways in which a burglary charge can be enhanced to first-degree burglary, including the involvement of weapons, the commission at nighttime, or a prior record of two or more burglary convictions. He testified he explained to Applicant that he fit two of these criteria: the theft of weapons from the home and a prior record. He explained to Applicant that he was properly indicted for first-degree burglary based on these two things. He testified he does not believe there were any challenges to the first-degree burglary indictment and that the indictment was facially valid with proper notice of the crime and elements.

After review of the record and the testimony presented, this Court agrees with Respondent that this claim must fail as a matter of law. A review of the first-degree burglary indictments reveal that they are facially valid indictments that put Applicant on notice of the charged offense and comport with Gentry. This Court notes that Applicant pled guilty to the August 2018 first-degree burglary indictment that clearly states, "the defendant has a prior record of two or more convictions for burglary or housebreaking or a combination of both, all in violation of § 16-11-311, Code of Laws of South Carolina (1967), as amended." This indictment is facially valid and counsel had no legal basis to move to quash this indictment. See Massey, 430 SC 349, 844 S.E.2d 667 (discussing that a trial court has no authority to grant a pre-trial motion to quash a facially valid indictment based on the sufficiency of evidence). This allegation fails as a matter of law.

***Ineffective assistance of counsel for failure to move to quash both indictments based on dates***

As his second claim for relief, Applicant asserts plea counsel was ineffective for failing to move to quash his both his first-degree burglary indictments and his grand larceny indictment based on purported date discrepancies. Specifically, Applicant argues that the face of the indictments list action by the grand jury on one date (March 8, 2018 and August 2, 2018) and the inside of the indictment states a different date for the term of general sessions the following week (March 12, 2018 and August 6, 2018). Applicant asserts this inconsistency of dates renders the indictments invalid and counsel should have moved to suppress the indictments on this ground.

Respondent presented five exhibits in response to this allegation, without objection from Applicant, that directly refute this allegation. Respondent's Ex. No. 1 is clear that the Chief Administrative Judge for a circuit is responsible for setting the terms the grand jury will convened and advises judges to maximum court time by setting these grand jury dates outside the terms of

general sessions. Acting with this directive, the Chief Administrative Judges for the 2nd Circuit properly issued orders setting the dates to grand jury would convene, as set forth in Respondent's Ex. No. 2 and No. 3, including March 8, 2018, and August 2, 2028. Moreover, Respondent's Ex. No. 4 and No. 5 clearly establish that terms for general sessions court were the following weeks, starting on March 12, 2018, and August 6, 2018, as stated in Applicant's indictments.

After a thorough review of the record, including the evidence presented at the hearing, this Court agrees with Respondent that these are facially valid indictments, and this claim must fail as a matter of law.

***Ineffective assistance of counsel for advising Applicant he would receive a ten-year sentence***

As his third claim for relief, Applicant asserts plea counsel was ineffective for advising him he would receive a ten-year sentence in exchange for his guilty plea. At the hearing, Applicant testified inconsistently as to what type of sentence he would receive, ranging from a "lesser sentence like [his] co-defendant" to an assertion that he would get a fifteen-year sentence to a non-violent crime. He also testified at certain points that he been informed he would receive a six-year sentence if he pled guilty. On cross-examination, he acknowledged he knew the mandatory minimum sentence he faced for first-degree burglary, as he told the plea court during his plea.

Applicant also presented his aunt, who testified that based on her conversations with counsel, she believed Applicant would receive a ten-year sentence if he pled guilty. She clarified that counsel stated he would ask for a ten-year sentence but never gave assurances that Applicant would receive a ten-year sentence.

Counsel testified adamantly that he never advised Applicant, his aunt, or anyone else that he would receive a ten-year sentence in exchange for his guilty plea. He testified he explained to

Applicant that he was facing a mandatory minimum sentence of fifteen years of imprisonment if he pled guilty and that he would receive at least a fifteen-year sentence. He testified he had previously attempted to negotiate a plea offer to a lesser-included offense that would lessen Applicant's sentencing exposure but that the solicitor's office refused to offer Applicant any less than first-degree burglary based on the facts of the case, the overwhelming evidence of his guilt, and his significant prior record including numerous other burglaries. He testified that he advised Applicant he would argue Applicant should receive the mandatory minimum sentence of fifteen years but he could not guarantee even a fifteen-year sentence. He testified he presented mitigation on Applicant's behalf in support of a mandatory minimum sentence, including significant physical and mental health concerns and Applicant's troubled childhood.

This Court finds Applicant has failed to meet his burden of proof as to this allegation Initially, this Court finds that Applicant provided inconsistent, non-credible testimony, ranging from promises that he would receive a six-year sentence up to a fifteen-year sentence. This Court finds that Counsel provided credible testimony that he properly advised Applicant as to the sentencing exposure of a mandatory minimum sentence of at least fifteen years of imprisonment for first-degree burglary. The record supports counsel's credible testimony, as Applicant told the plea court that he understood he would receive a sentence of "not less than 15 years and up to life in prison." (Plea Tr. p. 16). This Court finds that Counsel provided correct, competent advice as to the particular sentence Applicant may receive, and that Applicant entered a knowing, voluntary, and intelligent plea based on this advice. This allegation is denied and dismissed with prejudice.

***Involuntary Plea Based on Numerous Medications***

As his final claim for relief, Applicant asserts his plea was rendered incompetently based

on numerous medications that prevented him from understanding what he was doing. The record and evidence presented do not support such a claim.

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A 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 the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing

State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, at 137–38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, 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." Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). "In considering 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." Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

In this case, the record refutes any allegation Applicant did not knowingly, voluntarily, and intelligently enter his guilty plea. At the start of Applicants plea proceeding, Judge Keesley conducted a thorough colloquy with Applicant, including a Blair hearing to evaluate Applicant's competency. (Plea Tr. 3-6). During this colloquy, Judge Keesely specifically asked Applicant if he was taking any medications, and when Applicant responded affirmatively, Judge Keesely conducted a further inquiry to determine what medications Applicant was taking and the effect of those medications. (Plea Tr. 4-5). Applicant informed the court that his medications "help[ed]" him and that he could not remember what happens when he did not take his medicine. (Plea Tr. 5) Judge Keesley found Applicant was competent to "make rational choices" regarding his charges. (Plea Tr. 6). Throughout the rest of the plea colloquy, Applicant responded appropriately to the court's questions, affirmed that he understood the elements of the offenses, the potential sentences,

and affirmed numerous times that he wanted to proceed forward with his plea. The record strongly supports a conclusion that Applicant entered a knowing, voluntary, and intelligent plea.

The testimony from the evidentiary hearing also supports that Applicant understood his plea and was competent to enter his plea. Applicant testified he told counsel he was on numerous medications, much like what Applicant told the plea court. Applicant recalled his guilty plea proceeding and his conversations with the court regarding mental health and competency. Counsel testified he investigated Applicant's prior mental health history, and, as a result of this investigation, determined Applicant would be able to present this evidence in mitigation but that it was not a valid defense to the crimes. He testified that Applicant was evaluated for competency and criminal responsibility and found both competent and criminally responsible. He testified he made the plea court aware of the mental health concerns during the plea and used this information in sentence mitigation. This testimony supports a conclusion that Applicant entered a knowing, intelligent, and voluntary plea.

This Court finds Applicant has failed to meet his burden of establishing any constitutional ineffectiveness regarding this allegation, Additionally, this Court finds Applicant's guilty plea was entered knowingly, intelligently, freely, and voluntarily. This allegation is denied and dismissed with prejudice.

## CONCLUSION

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

This Court notes that if Applicant wishes to appeal this order, Applicant, though his counsel of record, must file and serve a notice of appeal within thirty days from the receipt of this Order. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. This application for post-conviction relief is denied and dismissed with prejudice; and

2. Applicant Ashley Prior shall remain remanded to the custody of the State of South Carolina.

**AND IT IS SO ORDERED** this 11 day of April, 2022.

ROBERT J. BONDS
Presiding Judge
Second Judicial Circuit

Union, South Carolina

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

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ASHLEY PRIOR, #378681 Applicant,

v.

STATE OF SOUTH CAROLINA, Respondent.

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**CERTIFICATE OF SERVICE**

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

Ms. Nancy Carol Fennell, Esquire
Post Office Box 2176
Irmo, South Carolina 29063

This 20th day of April, 2022.

Joshua Osborne
Legal Assistant for Respondent