

NOTICE OF APPEAL FROM COMMON PLEAS REGARDING A
POST CONVICTION RELIEF

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Case No. 2020-CP-46-00338

The State,.....Respondent,

Travis Semaj Hutchinson,.....Appellant,

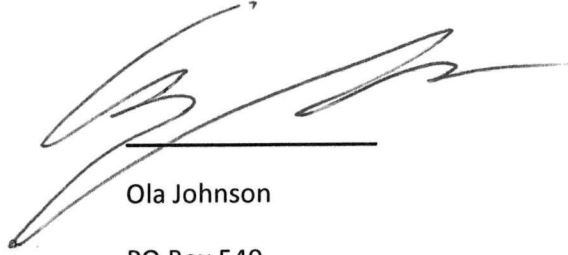
Notice of Appeal

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S.C. SUPREME COURT

Travis Semaj Hutchinson appeals the order of the Honorable R. Scott Sprouse, dated May 24, 2022, which denied his application for Post-Conviction Relief with prejudice. Appellant received written notice of the order on May 25, 2022.



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JUN 02 2022

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK)	
)	
Travis Hutchinson,)	Case No.: 2020-CP-46-00338
S.C.D.C. No. 245544,)	
)	
Applicant,)	
)	ORDER OF DISMISSAL
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
)	

This matter comes before the Court by way of an application for post-conviction relief filed by Travis Hutchinson (“Applicant”) on January 29, 2020. Respondent made its return on or about February 2, 2021. The Court convened an evidentiary hearing into the matter on April 13, 2022, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Ola A. Johnson. Michael J. Neubauer, of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant’s plea counsel, Devon R. Nielson (“Counsel”), also testified. The Court had before it Applicant’s records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the York County Clerk of Court regarding the subject convictions, and the pleadings. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denied and dismissed this application with prejudice. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the January 2018 term of the York County Grand Jury for possession with intent to distribute heroin, possession of cocaine, and escape (2018-GS-46-00204, 2018-GS-46-00205, and 2018-GS-46-00213). Assistant Public Defender Devon R. Nielson represented Applicant, and Assistant Solicitor Marina Hamilton, of the Sixteenth Circuit Solicitor's Office, prosecuted the case.

On February 13, 2018, Applicant appeared before the Honorable Roger E. Henderson and entered a "straight-up" guilty plea. Judge Henderson sentenced Applicant to imprisonment for concurrent terms of fourteen years on the heroin charge and five years on the cocaine charge¹ and a consecutive term of one year on the charge of escape. Applicant filed a notice of appeal on February 20, 2018, which was dismissed on June 5, 2019, after review pursuant to Anders v. California, 386 U.S. 738 (1967).

Factual History

The following summary of the underlying facts is taken from the State's remarks at Applicant's guilty plea hearing:

On September 15, 2017, Applicant was pulled over and arrested by Rock Hill PD officers in York County for driving under suspension. During a search incident to arrest, conducted with Applicant's consent, officers found in Applicant's pants pocket seventeen separate bags of heroin laced with fentanyl, all measured to approximately the same weight and weighing a total of .6 grams, as well as .37 grams of cocaine and \$91.35. He was charged with possession with intent to distribute based on the weight and packaging of the drugs. (Plea Tr. p.20, lines 5–25).

¹ At the plea hearing, the State moved to amend the indictments for each of the two drug charges from a second offense to a third based on Applicant's prior drug offenses. Judge Henderson granted the motion over Counsel's objection. (Plea Tr. p.7, line 15–p.9, line 9).

On September 17, 2017, as Applicant was being transported from his holding cell to the Moss Justice Center in York County, he jumped out of the back of the transport van and fled into the woods. Applicant was found hiding in a barn approximately three-quarters of a mile down the road. He was charged with escape. (Plea Tr. p.21, line 8–p.22, line7).

Present Application

In his post-conviction relief application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Counsel failed to explain the details of Applicant's guilty plea and sentencing and the elements of each offense;
 - b. Counsel failed to provide a copy of the State's evidence to Applicant;
 - c. Counsel failed to discuss defense strategy or to properly review the evidence with Applicant;
 - d. Counsel failed to meet with Applicant a sufficient number of times to review the evidence;
 - e. Counsel failed to move to withdraw the guilty plea when the solicitor enhanced the drug charges from second offenses to third;
 - f. Counsel failed to request a continuance when Applicant stated to the court that he was just "coming down off of heroin" and Applicant was unable to voluntarily waive his rights and enter a guilty plea;
 - g. Counsel failed to object or to move to withdraw the guilty plea when the solicitor recommended a sentence after informing the defense and the court that there was no negotiation or recommendation as reflected in the sentencing sheets; and
 - h. Counsel failed to notify the solicitor that Applicant had accepted the State's offer of two years' incarceration at a meeting witnessed by Applicant's wife, Latisha Williams, and failed to contact Applicant regarding a deadline for the offer.

As his requested relief, Applicant seeks to have the State's initial two-year plea offer reinstated or, barring that, to have his plea vacated.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C.

Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application by a preponderance of the evidence. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985); Rule 71.1(e), SCRPC. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel's performance was deficient. Strickland, 466 U.S. at 687; 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, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons

counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” Yarborough, 540 U.S. at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 694). “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between Strickland’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” Harrington, 562 U.S. at 111-12 (quoting Strickland, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” Id. at 112.

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly ‘incredible.’”). Statements made during a guilty plea should be considered conclusive, unless an Applicant

presents valid reasons why he should be allowed to depart from the truth of his statements. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Id. at 696-97.

1. Failure to Explain Guilty Plea, Sentencing, and Elements of Offense

This Court finds that Counsel was not ineffective for failing to explain the details of Applicant's guilty plea and sentencing or the elements of the offenses. At the evidentiary hearing, Applicant testified that Counsel neither explained the elements of possession with intent to distribute heroin nor informed him that the State's evidence could support an inference of intent. However, Applicant admits he cut short Counsel's attempts to communicate with him about the case because Applicant believed the evidence was against him and intended to plead guilty. In addition, Counsel testified that he explained the elements of the charge and how it differed from simple possession to Applicant. This Court finds that Counsel made a reasonable attempt to discuss the elements of the charged offenses with Applicant and that, to the extent Applicant failed to understand them, his failure was due to his own rejection of Counsel's attempts to further discuss the case. Therefore, the Court finds that Applicant has failed to establish Counsel's deficient performance as to this allegation. See Strickland, 466 U.S. at 687.

Even if Counsel's performance had been deficient, this Court finds that Applicant was not prejudiced because the charges, possible sentences, and consequences of pleading guilty were all

explained at the plea proceeding. Before a court can accept a guilty plea, the defendant must be advised 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 the court and the defendant, between the court and defendant's counsel, or both." State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993).

The transcript of the plea hearing reflects that the judge explained the charges and the potential sentences to Applicant, and Applicant affirmed he understood what the offenses were. (Plea Tr. p.10, line 16–p.11, line 22). The judge described the rights Applicant would be giving up by pleading guilty and asked if Applicant was freely and voluntarily giving them up; Applicant responded, "Yes, sir." (Plea Tr. p.14, line 18–p.16, line 6). The solicitor then recited the factual basis for the charges, and Applicant admitted the solicitor's statement of the facts was correct. (Plea Tr. p.20, line 5–p.24, line 21). The judge explained that Applicant was preparing to enter a "straight-up" plea, leaving his sentence to the court's discretion, and Applicant indicated he understood. (Plea Tr. p.24, line 22–p.25, line 6). This Court finds the detailed explanation of the charges, sentences, and effects of pleading guilty presented at Applicant's plea hearing was sufficient to cure any purported deficiency in Counsel's own explanation of those concepts. See Terry v. State, 383 S.C. 361, 372–73, 680 S.E.2d 277, 283–84 (2009) (holding plea counsel's deficient performance was cured by the court's reading of the indictments, the solicitor's recitation of the facts, and the defendant's indication he understood the charges and admitted guilt), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018); Wolfe v. State, 326 S.C. 158, 164–65, 485 S.E.2d 367, 370 (1997) (holding, where a defendant alleged his

attorney incorrectly advised him his guilty plea would result in a reduced sentence, any error was cured when the judge explained he was not bound by sentencing recommendations during the guilty plea colloquy). Therefore, this allegation is denied and dismissed with prejudice.

2, 3, and 4. Failure to Provide or Review Evidence and Discuss Strategy

Applicant alleges Counsel was ineffective for failing to provide a copy of the State's evidence to Applicant, failing to review the available evidence with Applicant, and failing to discuss defense strategy with him. This Court finds these allegations to be without merit.

At the hearing, Applicant testified that Counsel reviewed the State's video evidence with him, after which Applicant decided to plead guilty and declined to have any more meetings discussing the evidence with Counsel. Counsel testified he offered to provide Applicant with a complete copy of the evidence, but Applicant turned him down. Counsel also testified he discussed with Applicant the possibility of arguing simple possession, rather than possession with intent to distribute, to the jury; however, Applicant insisted on foregoing a jury trial and pleading guilty. This Court finds that Counsel made a reasonable attempt to present a complete copy of the State's evidence to Applicant, to set up additional meetings to discuss the evidence, and to pursue a valid defense strategy as an alternative to pleading guilty. Therefore, the Court finds Applicant has not proven his allegations that Counsel's performance in preparing for trial was deficient.

In addition, the Court finds Applicant has not met his burden of establishing prejudice from any of Counsel's alleged failures. To establish prejudice, Applicant must show that, but for Counsel's alleged errors, he likely would not have pleaded guilty and would have insisted on going to trial. Hill, 474 U.S. at 59. However, Applicant admits he insisted on *not* going to trial and instructed Counsel that he wanted to plead guilty because he believed the State's video evidence was enough to guarantee a conviction.

Furthermore, Applicant has not explained how receiving or reviewing any additional evidence or discussing any additional defense strategy would have changed his mind about pleading guilty. An applicant who alleges his or her defense attorney was ineffective in failing to spend more time preparing or to provide a copy of the discovery materials must demonstrate prejudice by showing what evidence could have been discovered or what other defenses could have been pursued. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls, 422 S.C. 174, 810 S.E.2d 836. Furthermore, an applicant must also show how the new evidence or defenses would have resulted in a different outcome. Id. (citing David v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)). Because Applicant has not established a reasonable probability that, but for Counsel's allegedly deficient performance, he would not have pleaded guilty, this Court finds Applicant has failed to establish prejudice as to these allegations. Hill, 474 U.S. at 59; Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. Accordingly, these three allegations are denied and dismissed with prejudice.

5. Failure to Withdraw Plea when Solicitor Enhanced Charges to Third Offense

Applicant alleges Counsel was ineffective for failing to withdraw the guilty plea when the court granted the solicitor's motion to amend the drug charges from second offenses to third offenses. This Court finds this allegation without merit. As both Applicant and Counsel testified, Applicant was anxious to avoid going to trial and insisted on entering a guilty plea. Withdrawing the guilty plea would have been contrary to Applicant's express wishes. Before Applicant pled

guilty, the judge informed him that his drug charges were both third offenses and explained the potential sentences to him. (Plea Tr. p.10, line 18–p.11, line 5). Counsel also testified that he had informed Applicant of the State’s intention to amend the charges prior to the plea proceeding, and both he and Applicant admitted that Applicant’s prior criminal record supported the amendment. Nevertheless, Counsel objected to the State’s motion, and Applicant raised the issue in his direct appeal. This Court finds that, because Applicant was already aware that the State intended to amend the drug charges prior to entering his guilty plea, Counsel’s refusal to withdraw the guilty plea after the solicitor’s motion did not constitute deficient performance. Furthermore, Applicant has not even asserted—much less proved—that he would have insisted on going to trial but for Counsel’s alleged error. Therefore, Applicant has failed to demonstrate any prejudice. Hill, 474 U.S. at 59; Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. Accordingly, this allegation is denied and dismissed with prejudice.

6. Failure to Request Continuance

Applicant alleges that his guilty plea was not voluntarily made because he used heroin prior to the plea proceeding and was still “coming down” when he entered his guilty plea; Applicant also alleges Counsel was ineffective for failing to request a continuance when he learned of Applicant’s recent heroin use. This Court finds Applicant was not incapacitated such that he could not voluntarily enter a guilty plea and further finds Counsel was not ineffective for failing to request a continuance.

In order to plead guilty, a defendant must be competent, and his decision to plead guilty must be a knowing and voluntary one. Garren v. State, 423 S.C. 1, 14, 813 S.E.2d 704, 711 (2018). If a post-conviction relief applicant claims his guilty plea was involuntary due to the influence of drugs, he must show that his mental faculties were so impaired by the drugs when he pleaded that

he was incapable of fully understanding and appreciating the charges against him, of comprehending his constitutional rights, and of realizing the consequences of his plea. Id. at 15, 813 S.E.2d at 712.

In Garren, a post-conviction relief applicant alleged he was incompetent to plead guilty due to an unidentified medication he had received prior to entering the plea. Id. at 7-8, 813 S.E.2d at 708. At his post-conviction relief hearing, the applicant testified he could not understand or even remember the plea proceeding because of the medication. Id. at 9-11, 813 S.E.2d at 709. The South Carolina Supreme Court reversed the post-conviction relief court's grant of relief, holding the applicant had failed to establish his incompetence by a preponderance of the evidence. Id. at 16, 813 S.E.2d at 712. The Court noted that, at the plea hearing, the applicant had denied being impaired by any drugs or medication, that his attorney testified he seemed normal and appeared to understand the proceedings, and that there was no evidence the applicant had taken the medication on the day he pled guilty. Id. at 16-17, 813 S.E.2d at 712-13.

The facts in this case are similar to those in Garren. At his plea hearing, Applicant claimed he had used heroin approximately 24 hours prior. (Plea Tr. p.12, line 14-p.13, line 12). The judge asked Applicant whether he was still under the effects of heroin and whether he was able to understand the proceedings. (Plea Tr. p.13, line 22-p.14, line 16). Applicant answered that he was "coming down" from his heroin use and that he had understood everything that happened at the plea hearing so far. (Plea Tr. p.12, line 16-p.14, line 17). At the post-conviction relief hearing, Counsel testified Applicant acted no differently than usual during the plea proceeding. This Court finds Applicant's current claim that he was incompetent due to heroin use is contradicted by Counsel's testimony and by his own solemn statements at the plea hearing. See Dalton, 376 S.C. at 137-38, 654 S.E.2d at 874 (holding statements made during a guilty plea should ordinarily be

considered conclusive). Therefore, this Court finds Applicant has failed to establish his incompetence by a preponderance of the evidence. Garren, 423 S.C. at 16–17, 813 S.E.2d at 712–13. Furthermore, since Applicant repeatedly stated he was able to understand the proceedings during the plea hearing, the Court finds Counsel was not ineffective for failing to seek a continuance. Therefore, this allegation is denied and dismissed with prejudice.

7. Failure to Withdraw Plea when Solicitor Recommended Sentence

At the plea hearing, the solicitor remarked that “the State would be asking for over the minimum,” although she declined to give a specific number. (Plea Tr. p. 22, lines 9–11). Applicant alleges Counsel was ineffective for failing to move to withdraw the guilty plea after the solicitor asked the judge to impose a sentence “over the minimum.” Applicant argues the solicitor’s request constituted a “recommendation,” which was not proper because the sentencing sheet reflected his plea was made without negotiations or recommendation.

This Court finds this allegation without merit. The South Carolina Court of Appeals has held that the sentencing sheet option “without negotiations or recommendation” means that the State and the defendant have not agreed on sentencing; consequently, each party is free to request a favorable sentence. State v. Rikard, 371 S.C. 295, 302, 638 S.E.2d 72, 76 (Ct. App. 2006). Therefore, the solicitor’s request for an “over the minimum” sentence was appropriate and was not a “recommendation.” Furthermore, the judge later explained that Applicant was preparing to enter a “straight-up” plea and that any sentence would be in the discretion of the court. (Plea Tr. p.24, line 22–p.25, line 2). Nor did the solicitor’s request dissuade Counsel from asking for a minimum sentence. (Plea Tr. p. 28, lines 8–25). For these reasons, this Court concludes the solicitor’s request did not warrant attempting to withdraw Applicant’s guilty plea, and Counsel was not ineffective for failing to do so. Therefore, this allegation is denied and dismissed with prejudice.

8. Failure to Notify Solicitor Regarding Applicant's Acceptance of Plea Offer

Finally, Applicant alleges Counsel was ineffective for failing to inform the solicitor that Applicant had accepted the State's initial two-year plea offer. Applicant claims Counsel knew he intended to accept the offer but failed to contact either the solicitor or Applicant until the deadline to accept the offer had expired. Applicant asks for the State's two-year offer to be reinstated as a remedy pursuant to Lafler v. Cooper, 566 U.S. 156, 171 (2012) (holding that, if a defendant shows he likely would have accepted a plea offer but for counsel's errors, a court may exercise its discretion to resentence the defendant to the term of imprisonment offered in the plea).

This Court finds Counsel was not responsible for Applicant's failure to accept the State's two-year plea offer in a timely fashion. According to Counsel's testimony, when Applicant first notified him of his intention to accept the State's offer, Counsel informed Applicant that he would have to wait until the January 22, 2018, plea term in order to accept the plea deal because it was late in the afternoon and the court was about to close. When the day arrived, however, Applicant did not show up. Counsel called Applicant's phone but was not able to reach Applicant or leave a message. Counsel then arranged with the solicitor to extend the plea deal deadline to January 25; however, he was not able to reach Applicant on that date either.

Applicant testified that Counsel never informed him of the January 22 deadline and never called to tell him when to come to court. He also testified Counsel did not give him any written notice of the plea deal. Applicant's wife testified that Counsel never called her or sent her any letters in an effort to contact Applicant.

This Court finds Applicant has failed to establish by a preponderance of the evidence that he was never informed of the January 22 deadline. Counsel's testimony about communicating the deadline to Applicant was definite and detailed, down to the time of day at which the conversation

took place. In addition, Applicant displayed a pattern of missing court dates despite advance notice; he admitted knowingly letting another plea deal lapse because he did not want to drive his car to the courthouse that day.

This Court finds that Counsel's performance was not deficient because he informed Applicant in advance of the need to appear at the January 22 plea term. The Court further finds that Counsel's subsequent failure to reach Applicant by phone or through Applicant's wife is not relevant. While it may be best practice to give a client multiple reminders of upcoming court dates, failure to do so is not an error "so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Strickland, 466 U.S. at 687. For these reasons, the Court finds Counsel was not ineffective, and this allegation is denied and dismissed with prejudice.

[Conclusion and signature on following page]

III. CONCLUSION

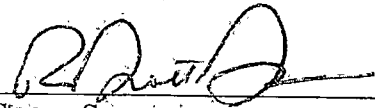
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. The Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 24 day of May, 2022.



R. SCOTT SPROUSE
Presiding Judge
Sixteenth Judicial Circuit

Wabbe, South Carolina

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S.C. SUPREME COURT