

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas
HONORABLE G.D. MORGAN
2020-CP-11-0662

CHRISTOPHER A. WYLIE, SCDC# 367575

APPELLANT,

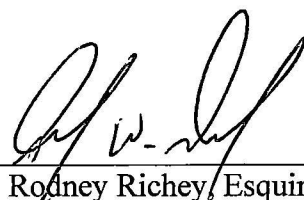
vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

Christopher A. Wylie appeals the denial of his Post-Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable G. D. Morgan, Circuit Judge on April 19, 2022 order issued on May 5, 2022 and filed on May 12, 2022 The Appellant received notice of the judgment on May 23, 2022.



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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Christopher A. Wylie, #367575,)
Applicant,)

Case No.: 2020-CP-11-0662

v.)

ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

FILED IN THE OFFICE
CLERK OF COURT
2022 MAY 12 A 11:29
BRANDY W. HICKEY
CHEROKEE COUNTY, S.C.

This matter comes before this Court by way of Applicant's post-conviction relief application filed September 8, 2020. Respondent made its return on May 18, 2021, requesting an evidentiary hearing be convened. An evidentiary hearing was held on April 19, 2022, at Spartanburg County Courthouse. Rodney W. Richey, Esquire, represented Applicant. Assistant Attorney General Chelsey F. Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel Ricky Harris also testified. 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 denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Cherokee County Clerk of Court. During its June 2018 term, the Cherokee County Grand Jury indicted Applicant for pointing or presenting a firearm at a person (2018-GS-11-00818), possession with intent to distribute alprazolam (2018-GS-11-00819), possession of a firearm or ammunition by persons convicted of a violent felony (2018-GS-11-00820), possession with intent to distribute marijuana (2018-GS-11-00821), unlawful

carrying of a firearm (2018-GS-11-00822), failure to stop motor vehicle when signaled by officer, (2018-GS-11-00823), and trafficking in methamphetamine (count one) and possession of a firearm during commission of a violent crime (count two) (2018-GS-11-00824). Applicant was represented by Ricky Harris, Esquire. Assistant Solicitor Kimberly Leskanic of the Seventh Circuit Solicitor's Office prosecuted the case. On November 5, 2019, Applicant appeared before the Honorable Grace Gilchrist Knie, circuit court judge, and pled guilty to a negotiated fifteen years' imprisonment for the -824 count one, ten years' imprisonment sentence on -821, five years' imprisonment on the -819, -820, -824 count two charges, three years' on the -823 charge, one year for -822. The -818 charge was dismissed. Judge Knie sentenced Applicant in accordance with plea negotiations, sentences running concurrently. Applicant did not pursue a direct appeal.

Summary of Relevant Facts

On April 14, 2018, Deputy Hutchins was on a routine patrol when he noticed a vehicle around midnight weaving back and forth and not maintaining its lane of travel, so he turned on his lights and initiated a stop. (Tr. 13). Applicant sped up, continued driving, ran several stop signs, and made several turns before losing control of the vehicle and wrecked into two parked cars in front of a residence. (Tr. 13-14). Officers immediately nabbed him. (Tr. 14). During the search incident to arrest, they found a bag of marijuana and two bags of methamphetamine, a large amount of cash, and a pill bottle of Alprazolam pills without a prescription. (Tr. 14). A 38 revolver was found in his sock. (Tr. 14). When asked if he had anything else, he stated he had more drugs in the car. (Tr. 14). In the car they found a 40 caliber Ruger pistol and several other bags of marijuana. (Tr. 14).

Current Action Before this Court

In his current PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. "Ineffective assistance of counsel."
 - a. "failure to obtain a mitigating investigator or otherwise adequately prepare and present powerful mitigating evidence.

At the PCR hearing, Applicant proceeded forward on the following allegations:

1. Ineffective assistance of counsel:
 - a. For failure to investigate and present stronger mitigation evidence in securing a more favorable plea offer; and
 - b. For failure to review discovery.

All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

Summary of the Testimony

Applicant Testimony

Applicant testified he was arrested and charged for trafficking methamphetamine. He stated he did not think Counsel properly represented him. He stated he pled to a negotiated fifteen-year sentence. He stated he only saw Counsel one time, and they never talked about discovery. He stated he never wanted to go to trial. He testified that Counsel did not do anything for him. Applicant stated that he wanted Counsel to bring up mitigation evidence as a part of plea negotiations to obtain a more favorable plea offer. He testified that Counsel should have investigated his background more. He stated he told Counsel he never wanted to go to trial. Applicant testified that the basis of the charges was that he was on a high-speed chase, and he had drugs and guns on his person. Applicant testified he was nineteen or twenty years old at the time of the incident and that he wanted Counsel to bring this up in plea negotiations with the State.

On cross-examination, Applicant stated he wanted mitigation evidence brought up during plea negotiations, not at the plea hearing itself. He stated that the Plea Judge informed him that she was bound to the plea negotiations and could not give him a more lenient sentence. Applicant agreed he would likely be found guilty at trial and, accordingly, stated he did not want to go to trial, but wanted a more favorable plea offer.

Counsel Testimony

Counsel testified that he used whatever mitigation evidence he had knowledge of when securing the negotiated plea offer. Counsel stated he spoke with Applicant multiple times concerning several sets of charges. He stated that the trafficking charge was the most serious. Counsel testified that they discussed the status of the case, the prosecutor handling the case, and the facts of the case. He stated that Applicant had probation violations when he became involved in the case. Counsel testified that he discussed that the judge was bound to the negotiated sentence if the plea was accepted. Counsel stated that he told Applicant he did not agree with the State's position on the case and attempted to get a sentence less than fifteen years' imprisonment, but the State refused.

On cross-examination, Counsel stated that he informed the prosecutor during plea negotiations that Applicant was very young, that he was convinced he was an addict, and questioned whether he was involved in a drug trade. He stated that Applicant was lucky because the State was threatening to serve him with a notice of intent to seek life without parole if he did not plead. Counsel testified that, to the best of his knowledge, Applicant knew what he was doing by entering the plea.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "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. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRCP ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.").

Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters “only in the rarest case” because “[t]he likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

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.

Failure to Investigate

Applicant claims Counsel was ineffective for failing to investigate and present Applicant's background for mitigation evidence. Counsel may be found deficient for failing to sufficiently investigate and present mitigating evidence. *See Council v. State*, 380 S.C. 159, 172, 670 S.E.2d 356, 363 (2008) (finding it unreasonable for counsel not to further investigate the defendant's background and present even minimal mitigating evidence obtained); *Wiggins v. Smith*, 539 U.S. 510, 521 (2003) (finding it unreasonable when Counsel failed to investigate mitigating evidence beyond a couple retained records, including the presentence investigation report and social service records); *Williams v. Taylor*, 529 U.S. 362, 398 (2000) (finding that Counsel was unreasonable for failing to evaluate the totality of available mitigation evidence). An applicant is prejudiced by this deficiency if there is a reasonable probability that a different sentence would have been imposed but for Counsel's failure to investigate and present mitigating evidence. *Council v. State*, 380 S.C. 159, 171, 670 S.E.2d 356, 362 (2008).

This Court finds this allegation is without merit. Counsel credibly testified that during plea negotiations he addressed the fact that Applicant was young and an addict in securing the fifteen years' imprisonment negotiated plea offer. Additionally, beyond stating that he wished Counsel brought up his age in plea negotiations, Applicant failed to show any mitigating evidence that Counsel did not investigate and that could have led to him procuring a more favorable plea offer or sentence. Thus, this Court finds that Counsel was not deficient, and no prejudice can be found flowing therefrom. Accordingly, this Court declines to grant relief in this matter.

Failure to Review Discovery

Applicant's allegation that Counsel was ineffective for failure to review discovery with him is without merit. For a plea to be valid, the applicant must have been aware of the nature and crucial elements of the offense, the maximum and minimum penalties, the charges against him, the consequences of taking a plea, and the rights he is waiving by accepting the plea. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 29 (2000). A plea is not knowing or voluntary if a defendant "lacks knowledge of material evidence in the prosecution's possession." *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999).

Counsel credibly testified that they reviewed the facts and status of the case with Applicant, and Applicant seemingly understood what he was pleading to when he decided to plead. Counsel also stated he had an opportunity to review the evidence with Applicant at the plea hearing. (Tr. 17). Further, no prejudice is found because Applicant repetitively stated at the plea hearing that he did not want to proceed forward at trial, but instead wanted a more favorable plea. Thus, this Court finds this claim without merit and denies relief as a result.

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 PCR application must be denied and dismissed with prejudice.

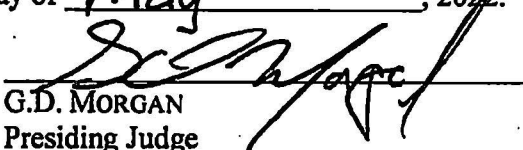
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate

review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 5th day of may, 2022.



G.D. MORGAN
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina.

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S.C. SUPREME COURT