

STATE OF SOUTH CAROLINA)
 COUNTY OF UNION)
)
 Yolanda D. Thompson, #333520,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2012-CP-44-0232

ORDER

WILLIAM F. GAULT
 CLERK OF COURT
 UNION, SC

FILED FOR RECORD
 2013 MAY 23 PM 2 14

This case came before the undersigned in open court on May 15, 2013. Applicant was represented by Elizabeth Wiygul, Esq., the State by J. Rutledge Johnson, Esq.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Union County clerk of Court. The Applicant was indicted at the March 2009 term of the Union County Grand Jury for Criminal Conspiracy (2009-GS-44-0311), Possession of a Knife During the Commission of a Violent Crime (2009-GS-44-0310), Armed Robbery (2009-GS-44-0308), and Murder (2009-GS-44-0198). Harry Dest, Esquire, represented her. On November 6, 2009, the Applicant pled guilty before the Honorable Lee S. Alford and was sentenced to thirty (30) years imprisonment for Armed Robbery, five (5) years for Possession of a Knife During the Commission of a Violent Crime, five (5) years for Criminal Conspiracy, and life without parole for Murder.

A Notice of Appeal was filed and an appeal perfected pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed the Applicant's appeal. State v. Thompson, Op. No. 11-UP-306 (S.C. Ct. App. Filed June 17, 2011). The Remittitur was issued on July 6, 2011.

In her current Application, the Applicant alleges that she is being held in custody unlawfully for the following reasons.

1. "Ineffective assistance of counsel"
2. "Breach of bargain [sic]"
3. "Prosecutorial misconduct"

At her hearing, Applicant only presented evidence relating to her claim of ineffective assistance of counsel.

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, *citing Strickland*. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding

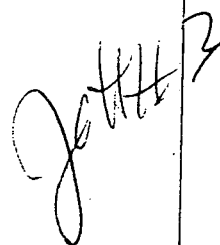
would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366, 88 LEd.2d 203 (1985).

Applicant testified that she understood under her plea bargain she could receive a sentence of a minimum of thirty years imprisonment to life imprisonment. She did not testify that trial counsel, or anyone, else promised her she would receive a sentence of thirty years. She testified that trial counsel, Harry Dest, Esq., and his investigator, Barton O’Kelly, “led her to believe” she would receive a thirty year sentence.

Applicant testified she understood she could receive a life sentence and that if she went to trial she could be facing the death penalty. She testified she would have gone to trial if she knew she could, in her plea, get life, but the totality of her testimony and the record indicates otherwise. Applicant testified she did enter her plea of guilt freely and voluntarily with no promise of a thirty year sentence. She testified she was led to believe she would get thirty years by trial counsel.

Applicant acknowledged she signed a plea agreement which reflects a possible sentence range of thirty years to life.

Trial counsel, Harry Dest, testified there the evidence of Applicant’s guilty of commission of the crimes to which she pled was overwhelming. He testified that his objective was to save Applicant from a possible sentence of death and that the only way to accomplish this was by way of a deal for Applicant to cooperate with the State in the prosecution of her co-defendant and her entering her plea.



Trial counsel testified he never promised Applicant she would receive a thirty year sentence and that if Applicant went to trial the presence of many aggravating circumstances would result at best in a sentence of life. Trial counsel testified he felt Applicant's plea was her best approach.

Trial counsel testified that Applicant was one of the brightest and smartest clients he has had and that she had the capacity to understand and seemed to understand the concepts inherent in the judicial system.

Applicant has failed to carry her burden of proof and has not established ineffective assistance of trial counsel. Trial counsel's conduct did not undermine the proper functioning of the adversarial process. Trial counsel provided representation well within the range of competence required in criminal cases and exercised reasonable professional judgment in his representation of Applicant. This being the case, the prejudice prong of Cherry, supra is not implicated.

Applicant's application for Post-Conviction Relief is denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rule 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

IT IS SO ORDERED.

John C. Hayes, II

John C. Hayes, II
Presiding Judge

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May *16th*, 2013
York, South Carolina