

LAW OFFICE OF



TARA DAWN SHURLING, PA

Attorney and Counselor at Law

3614 Landmark Drive

Suite A

Columbia, South Carolina 29204

(803) 738-8622

(Fax) (803) 738-1600

E-Mail: tdslaw@shurlinglaw.com

September 4, 2013

VIA HAND-DELIVERY

RECEIVED

SEP - 5 2013

S.C. Supreme Court

The Honorable Daniel E. Shearouse
South Carolina Supreme Court Clerk
Post Office Box 11330
Columbia, South Carolina 29211-1330

Re: Susan Tappeiner, #338050 v. State of South Carolina; 2010-CP-07-2396.

Dear Mr. Shearouse:

Attached please find for filing a Notice of Appeal on behalf of the above-captioned Post-Conviction Relief client. An Order of Dismissal denying this client's Post-Conviction Relief was filed on June 18, 2013. I subsequently filed my first Motion to Alter or Amend pursuant to Rule 59(e) on July 8, 2013. An Order denying my first 59(e) Motion was filed with the Beaufort County Clerk of Court on August 2, 2013. When the Amended Order still did not include findings of fact and rulings of law on all of the issues preserved in this PCR case, I filed a second 59(e) Motion to Alter or Amend on August 16, 2013. On September 3, 2013 I received the Order denying the second 59(e) Motion to Alter or Amend. I have sent the original Order to the Beaufort County Clerk of Court to be filed. I attached clocked copies of the first two orders, and a signed copy of the last order. I will provide the Court a clocked copy of that order just as soon as I receive it back from the Clerk's Office. In an abundance of caution, I am filing my Notice of Appeal within thirty days of my receipt of the Order denying my first 59(e). I have been *retained* by the family to handle this appeal. I have already received the transcript of the PCR hearing held in this matter and request that the time limits for this appeal be set from the date this Notice of Appeal is filed. I have courtesy copied the Appellate Division of the South Carolina Commission on Indigent Defense on this correspondence so they will make note that I am retained in this case, and won't need to send me an inquiry concerning this appeal. With my thanks for your assistance in this matter, as always, I remain,

Sincerely yours,

A handwritten signature in black ink that reads "Tara Dawn Shurling". The signature is fluid and cursive, with a large initial "T" and "S".

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg

Attachments

cc: Ashleigh Wilson, Assistant Attorney General (by U. S. Mail)
Sharon Graham, South Carolina Commission on Indigent Defense, Office of Appellate Defense (by U. S. Mail)

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TARA DAWN SHURLING, PA

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E-Mail: tDSLAW@shurlinglaw.com

September 4, 2013

RECEIVED

SEP - 5 2013

Ashleigh Wilson, Assistant Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-

S.C. Supreme Court

Re: Susan Tappeiner, #338050 v. State of South Carolina; 2010-CP-07-2396.

Dear Ms. Wilson:

Enclosed please find for your records a copy of the Notice of Appeal that was filed in the above-captioned matter. I was retained in this Post-Conviction Relief case and have also been retained for the PCR appeal. If you have any questions please do not hesitate to call. Since I already have the PCR hearing transcript, I have asked that my filing deadline for the Petition for Writ of Certiorari be set from the date of this Notice of Appeal. I remain,

Sincerely yours,

A handwritten signature in cursive script that reads "Tara Dawn Shurling".

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg

Enclosure

cc: The Honorable Daniel E. Shearouse, Clerk, Supreme Court of South Carolina

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

SEP - 5 2013

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Perry M. Buckner, Presiding Judge

S.C. Supreme Court

2010-CP-07-2396

SUSAN TAPPEINER, #338050,

Applicant,

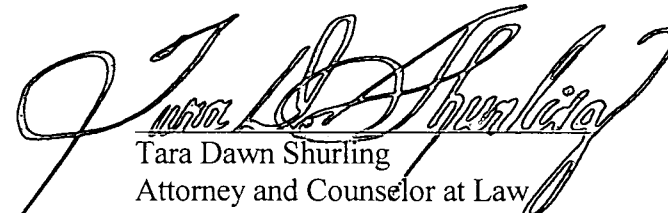
v.

THE STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

NOW COMES the Applicant in the above-captioned Post-Conviction Relief matter, acting by and through her undersigned counsel, giving notice of her appeal from the Order of Dismissal denying her Post-Conviction Relief filed June 18, 2013, and the Order Denying the Applicant's First Motion to Alter or Amend pursuant to Rule 59(e) SCRCP which was filed with the Beaufort County Clerk of Court on August 2, 2013. An Order Denying the Applicant's Second Motion to Alter or Amend pursuant to Rule 59(e) SCRCP was signed by the Honorable Perry Buckner on August 29, 2013, received by Counsel on September 3, 2013 and has been sent to the Beaufort County Clerk of Court for filing.



Tara Dawn Shurling
Attorney and Counselor at Law

3614 Landmark Drive, Suite A
Columbia, South Carolina 29204
(803)738-3622
(803)738-1600 FAX

ATTORNEY FOR APPLICANT

This 4th day of September, 2013.

Other Counsel of Record:
Ashleigh R. Wilson, Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211
Attorney for Respondent
(803) 734-4037

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Perry M. Buckner, Presiding Judge

2010-CP-07-2396

RECEIVED

SEP - 5 2013

S.C. Supreme Court

SUSAN TAPPEINER, #338050,

Applicant,

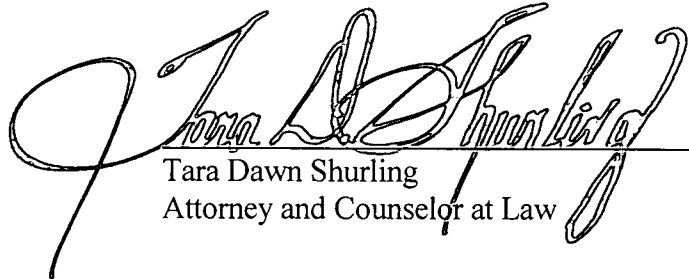
v.

THE STATE OF SOUTH CAROLINA,

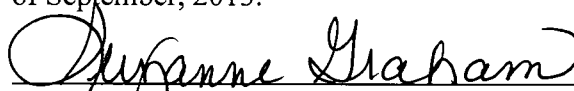
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Applicant's Notice of Appeal in the above-entitled cause has been served upon opposing counsel, Ashleigh R. Wilson, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 4th day of September, 2013.


Tara Dawn Shurling
Attorney and Counselor at Law

SWORN TO BEFORE me this 4th day
of September, 2013.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: 2/28/2023

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2010CP0702396

Susan Tappeiner	State Of South Carolina
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (**CHECK REASON**): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (**CHECK REASON**): Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order. (formal order to follow) Statement of Judgment by the Court:

Order of Dismissal

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

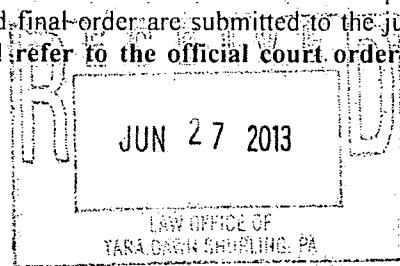
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**



s/ P. M. Buckner
Circuit Court Judge

2122
Judge Code

6/11/2013
Date

For Clerk of Court Office Use Only

This judgment was entered on **June 18, 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **June 25, 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

Tara Dawn Shurling 3614 Landmark Drive Suite A
Columbia, SC 29204

Ashleigh R. Wilson Po Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Melissa Kilby

Court Reporter

Jerri Ann Roseneau - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
Susan Tappeiner, #338050,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
2010-CP-07-2396

ORDER OF DISMISSAL

13 JUN 18 PM 12:45
BEAUFORT COUNTY COURT
CLERK OF COURT
S. CAROLINA

PROCEDURAL HISTORY

#1
PmS

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 17, 2010. The Respondent made its Return on August 25, 2010. An evidentiary hearing on the matter was convened on April 4, 2013 at the Beaufort County Courthouse. The Applicant was present at the hearing and was represented by Tara Dawn Shurling, Esquire. Ashleigh R. Wilson, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

Testifying at the hearing was Charles Macloskie, Esquire ("Defense Counsel"), Desa Ballard, Esquire, the Applicant, Mike Tappeiner, Elizabeth Sanders, Todd Oomens, Dave Sanders, Jim Perkins, and Dr. Tom Martin. The Court had before it the trial transcript, the Beaufort County Clerk of Court records, the Applicant's records from the South Carolina Department of Corrections, the Applicant's application and amendments, the Applicant's exhibits presented during the hearing, the Respondent's Return, and the appellate records.

DISCUSSION

#2
PMB

The Applicant alleges she received ineffective assistance of counsel. In a PCR action, “the burden of proof is on the applicant to prove his allegation by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002). For the Applicant to be granted PCR as a result of ineffective assistance of counsel, she must show both: (1) that her counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that she was prejudiced by her counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove trial counsel was ineffective, the applicant for PCR must show counsel’s performance was deficient and the deficient performance prejudiced the defense. Humphries v. State, 351 S.C. 362, 570 S.E.2d 160, *rehearing denied* (2002). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. 668 (1984)).

At trial, Judge Mullen ruled that Applicant’s statement to the police was inadmissible, explaining that “[Applicant’s] will was overborne. I [Judge Mullen] don’t think she has [*sic*] a clue what she was doing....I do not believe that her statement was voluntary. It certainly wasn’t intelligent. And I don’t think it was knowingly made.”¹ (Trial Transcript, p. 132:16 – 134:12).

¹ The “statement” that Judge Mullen excluded was relayed to the court by Sergeant Gonzales of the Bluffton Police Department. Gonzales testified at the *Jackson v. Denno* hearing as follows: “...she [Applicant] told me that she did

Despite this ruling, the prosecutor made references to the fact that Applicant was not charged until after her two hour interview with the police. (*Id.* at 280:14 – 281:2; 282:17 – 283:10). Defense Counsel did not object. Defense Counsel’s performance was deficient in that respect. However, that deficiency did not prejudice the defense in that this Court does not conclude from reviewing the evidence that by a preponderance of the evidence the result of the trial would have been different.

#3
P.B.

Applicant asserts that Defense Counsel was “ineffective for failing to fully discuss potential risks and benefits of testifying at trial.” After reviewing the trial transcript and the testimony of Defense Counsel, I find that it was part of Defense Counsel’s trial strategy to not have Applicant testify during trial. The trial record reflects that Judge Mullen advised Applicant she had the right to testify and Applicant had discussed that right with Defense Counsel. Further, the record indicates that Defense Counsel believed having Applicant testify would be harmful to her case. (PCR Transcript, p. 70:21 – 71:9). Applicant’s argument is without merit.

Applicant next argues that Defense Counsel was “ineffective for failing to object to repeated references to hearsay statements from the victim which went beyond a report of the time and place of the alleged assault.” It is well established in South Carolina that in criminal sexual conduct cases, when the victim testifies, evidence from other witnesses that she complained of the sexual assault is admissible in corroboration—but only when it is limited to the time and place of the assault and excludes details or particulars. *Simpkins v. State*, 303 S.C. 364, 367, 401 S.E.2d 142, 143 (1991). In more than one instance, testimony from witnesses exceeded a report of the incident limited to the time and place of the assault. *See* Trial Transcript. p. 258: 2 – 5; 275: 6 – 24. Defense Counsel’s failure to object to these references

have sexual intercourse with [victim], and that she was kind of flattered by a kid, and that Josh performed oral sex on her and that Josh did not ejaculate inside her, and that – that she – she made a mistake, that she should know better than to have sex with a 13 year old.” (Trial Transcript, p. 48: 12-17).

constitutes a deficiency. Based on a preponderance of the evidence, I find that but for counsel's deficiency, there is insufficient evidence to find that the result of the trial would have been different.

#4
RB

Applicant also argues that Defense Counsel failed to object to improper statements made by the State in closing arguments where said remarks (1) personally vouched for the credibility of Victim's testimony; (2) personally staked the jury in the outcome of the trial; and (3) were calculated to imply the Applicant had confessed where her statements had been ruled inadmissible.² As noted above, the trial court excluded Applicant's statement to the police from evidence, but Defense Counsel failed to object to questions designed to imply that Applicant had given an incriminating statement that resulted in her arrest. *See* Trial Transcript, p. 280:14 – 281:2; 282:17 – 283:10; 341:25 – 342:16). This Court found that this failure constituted a deficiency. Likewise, the State's attempt to repeat its behavior during closing arguments to the jury was improper, and Defense Counsel's failure to object is again a deficiency. That being said, this Court does not believe from the evidence presented there exists a reasonable probability that, but for counsel's unprofessional error, the result of the proceeding would have been different.

As to all other allegations raised in the application and at the hearing that are not specifically addressed in this Order, the Court finds that Defense Counsel was not deficient.

CONCLUSION

The Court finds that Applicant has not established any constitutional violations or deprivations before or during her trial and sentencing proceedings. Applicant was not prejudiced

² Applicant is referring to Trial Transcript, p. 341:25 – 342:16

by Defense Counsel's representation. Accordingly, this PCR application is DENIED and dismissed with prejudice.

It is therefore ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

June 11, 2013

Walterboro, SC

A handwritten signature in black ink, appearing to read "Perry M. Buckner", is written over a horizontal line.

The Honorable Perry M. Buckner

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
Susan Tappeiner, #338050,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS

2010-CP-07-2396

AMENDED ORDER OF DISMISSAL

13 AUG - 2 11 3:04
BEAUFORT COUNTY CLERK OF COURT S.C.

PROCEDURAL HISTORY

This matter comes before the Court by way of Applicant's Rule 59(e), SCRPC, Motion to Alter or Amend the undersigned's June 11, 2013 Order of Dismissal.

The Applicant filed for post-conviction relief (PCR) May 17, 2010. The Respondent made its Return on August 25, 2010. An evidentiary hearing on the matter was convened on April 4, 2013 at the Beaufort County Courthouse. The Applicant was present at the hearing and was represented by Tara Dawn Shurling, Esquire. Ashleigh R. Wilson, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

Testifying at the hearing was Charles Macloskie, Esquire ("Defense Counsel"), Desa Ballard, Esquire, the Applicant, Mike Tappeiner, Elizabeth Sanders, Todd Oomens, Dave Sanders, Jim Perkins, and Dr. Tom Martin. The Court had before it the trial transcript, the Beaufort County Clerk of Court records, the Applicant's records from the South Carolina Department of Corrections, the Applicant's application and amendments, the Applicant's exhibits presented during the hearing, the Respondent's Return, and the appellate records.

F1
MB

DISCUSSION

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The Applicant alleges she received ineffective assistance of counsel. In a PCR action, “the burden of proof is on the applicant to prove his allegation by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002). For the Applicant to be granted PCR as a result of ineffective assistance of counsel, she must show both: (1) that her counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that she was prejudiced by her counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove trial counsel was ineffective, the applicant for PCR must show counsel’s performance was deficient and the deficient performance prejudiced the defense. Humphries v. State, 351 S.C. 362, 570 S.E.2d 160, *rehearing denied* (2002). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. 668 (1984)).

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Despite this ruling, the prosecutor made references to the fact that Applicant was not charged until after her two hour interview with the police. (*Id.* at 280:14 – 281:2; 282:17 – 283:10). Defense Counsel did not object. Defense Counsel's performance was deficient in that respect. However, that deficiency did not prejudice the defense in that this Court does not conclude from reviewing the evidence that by a preponderance of the evidence the result of the trial would have been different.

#3
PMB
Applicant asserts that Defense Counsel was "ineffective for failing to fully discuss potential risks and benefits of testifying at trial." After reviewing the trial transcript and the testimony of Defense Counsel, I find that it was part of Defense Counsel's trial strategy to not have Applicant testify during trial. The trial record reflects that Judge Mullen advised Applicant she had the right to testify and Applicant had discussed that right with Defense Counsel. Further, the record indicates that Defense Counsel believed having Applicant testify would be harmful to her case. (PCR Transcript, p. 70:21 – 71:9). Applicant's argument is without merit.

Applicant next argues that Defense Counsel was "ineffective for failing to object to repeated references to hearsay statements from the victim which went beyond a report of the time and place of the alleged assault." It is well established in South Carolina that in criminal sexual conduct cases, when the victim testifies, evidence from other witnesses that she complained of the sexual assault is admissible in corroboration—but only when it is limited to the time and place of the assault and excludes details or particulars. *Simpkins v. State*, 303 S.C. 364, 367, 401 S.E.2d 142, 143 (1991). In more than one instance, testimony from witnesses exceeded a report of the incident limited to the time and place of the assault. See Trial Transcript, p. 258: 2 – 5; 275: 6 – 24. Defense Counsel's failure to object to these references

on her and that Josh did not ejaculate inside her, and that – that she – she made a mistake, that she should know better than to have sex with a 13 year old." (Trial Transcript, p. 48: 12-17).

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Applicant raises numerous other allegations in her proposed Order (Applicant's Proposed Order, 2-5). I will refer to these allegations by the numbers used by Applicant in her proposed Order and Rule 59(e) Motion to Alter or Amend.

1. Trial Counsel was ineffective in failing to develop and employ a clear theory of defense.

Applicant fails to carry her burden in proving (1) that her counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that she was prejudiced by her counsel's ineffective performance. Further, even if this Court were to find a deficiency in Defense Counsel's representation, any such deficiency did not prejudice the defense in that this

² Applicant is referring to Trial Transcript, p. 341:25 – 342:16

Court does not conclude from reviewing the evidence that by a preponderance of the evidence the result of the trial would have been different.

2. Trial Counsel was ineffective for failure to present evidence concerning what prescription medications the Applicant was taking during time of incident.

Applicant fails to carry her burden in proving (1) that her counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that she was prejudiced by her counsel's ineffective performance, as this Court does not conclude from reviewing the evidence that by a preponderance of the evidence the result of the trial would have been different.

3. Trial Counsel was ineffective for failing to introduce testimony from Dr. Nolan in case for defense.

Applicant fails to carry her burden in proving (1) that her counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that she was prejudiced by her counsel's ineffective performance, as this Court does not conclude from reviewing the evidence that by a preponderance of the evidence the result of the trial would have been different.

4. Trial Counsel was ineffective for failure to hire Dr. Martin, or an expert of equal credentials, to testify during the case in chief.

Applicant fails to carry her burden in proving (1) that her counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that she was prejudiced by her counsel's ineffective performance, as this Court does not conclude from reviewing the evidence that by a preponderance of the evidence the result of the trial would have been different.

5. Trial Counsel was ineffective for failing to adequately prepare Dr. Tom Martin for his role in the sentencing phase of the Applicant's trial.

Applicant fails to carry her burden in proving (1) that her counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that she was prejudiced by her counsel's ineffective performance, as this Court does not conclude from reviewing the evidence that by a preponderance of the evidence the result of the trial would have been different.

6. Trial Counsel was ineffective for failing to introduce evidence concerning the medications the Applicant was taking during the operative time period, and the effect of those medications when combined with alcohol.

Applicant fails to carry her burden in proving (1) that her counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that she was prejudiced by her counsel's ineffective performance, as this Court does not conclude from reviewing the evidence that by a preponderance of the evidence the result of the trial would have been different.

8. Trial Counsel was ineffective for failing to seek introduction of evidence that the victim had previously reported being raped at age 8 where that evidence was material to the

defense.

Applicant fails to carry her burden in proving (1) that her counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that she was prejudiced by her counsel's ineffective performance, as this Court does not conclude from reviewing the evidence that by a preponderance of the evidence the result of the trial would have been different.

9. Trial Counsel was ineffective for failing to discuss use of character witnesses with the Applicant and failed to produce such witnesses at trial.

Applicant fails to carry her burden in proving (1) that her counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that she was prejudiced by her counsel's ineffective performance, as this Court does not conclude from reviewing the evidence that by a preponderance of the evidence the result of the trial would have been different.

11. Trial Counsel was ineffective for failing to request a jury view of the scene, or in the alternative, to introduce evidence demonstrating the size and layout of the Applicant's home.

#6
PMB
Applicant fails to carry her burden in proving (1) that her counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that she was prejudiced by her counsel's ineffective performance, as this Court does not conclude from reviewing the evidence that by a preponderance of the evidence the result of the trial would have been different.

13. Trial Counsel failed to object to repeated references to the victim as 13 years old at the time of the alleged assault where the victim was two months away from his 14th birthday at the time of the alleged assault.

Applicant fails to carry her burden in proving (1) that her counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that she was prejudiced by her counsel's ineffective performance, as this Court does not conclude from reviewing the evidence that by a preponderance of the evidence the result of the trial would have been different.

14. Trial Counsel failed to establish his client's height and weight at trial.

Applicant fails to carry her burden in proving (1) that her counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that she was prejudiced by her counsel's ineffective performance, as this Court does not conclude from reviewing the evidence that by a preponderance of the evidence the result of the trial would have been different.

15. Trial Counsel failed to provide the Applicant effective assistance of counsel when he called the Applicant's husband as a witness, and questioned him concerning an incident when the victim had asked the Applicant to help him get a camera battery, without ascertaining whether the husband had an accurate recollection of the timing of that request.

Applicant fails to carry her burden in proving (1) that her counsel failed to render reasonably

effective assistance under prevailing professional norms, and (2) that she was prejudiced by her counsel's ineffective performance, as this Court does not conclude from reviewing the evidence that by a preponderance of the evidence the result of the trial would have been different.

16. Trial Counsel failed to provide the Applicant effective assistance of counsel when he failed to question the Applicant's husband, when he testified at trial, concerning the victim's pattern of visitation in their home during the time period prior to the accusations by the victim.

Applicant fails to carry her burden in proving (1) that her counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that she was prejudiced by her counsel's ineffective performance, as this Court does not conclude from reviewing the evidence that by a preponderance of the evidence the result of the trial would have been different.

17. Trial Counsel was ineffective when he failed to adequately question the Applicant's husband on the witness stand concerning his observations concerning the Applicant's coordination and general physical condition when she mixed alcohol with her prescription medications.

Applicant fails to carry her burden in proving (1) that her counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that she was prejudiced by her counsel's ineffective performance, as this Court does not conclude from reviewing the evidence that by a preponderance of the evidence the result of the trial would have been different.

18. Trial counsel was ineffective for failing to fully discuss with the Applicant the fact that she would retain the right for him to make the final argument to the jury if the defense presented no evidence at trial.

Applicant fails to carry her burden in proving (1) that her counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that she was prejudiced by her counsel's ineffective performance, as this Court does not conclude from reviewing the evidence that by a preponderance of the evidence the result of the trial would have been different.

19. Trial Counsel failed to object to a jury charge concerning expert opinion testimony where the sole expert witness proffered by the State was not asked to provide an expert opinion at trial.

Applicant fails to carry her burden in proving (1) that her counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that she was prejudiced by her counsel's ineffective performance, as this Court does not conclude from reviewing the evidence that by a preponderance of the evidence the result of the trial would have been different.

20. Trial Counsel failed to request a jury charge relating to consent and competence as those concepts applied to the Applicant as opposed to the victim.

Applicant fails to carry her burden in proving (1) that her counsel failed to render reasonably

effective assistance under prevailing professional norms, and (2) that she was prejudiced by her counsel's ineffective performance, as this Court does not conclude from reviewing the evidence that by a preponderance of the evidence the result of the trial would have been different.

21. Trial Counsel failed to object to numerous highly improper and inflammatory statements made by the State in closing arguments where said remarks;

- A. personally vouched for credibility of Victim's testimony;
- B. personally staked the jury in the outcome of this trial;

Applicant fails to carry her burden in proving (1) that her counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that she was prejudiced by her counsel's ineffective performance, as this Court does not conclude from reviewing the evidence that by a preponderance of the evidence the result of the trial would have been different.

22. Trial Counsel failed to adequately cross-examine the Victim concerning inconsistencies between his statements pre-trial and his testimony at trial.

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Applicant fails to carry her burden in proving (1) that her counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that she was prejudiced by her counsel's ineffective performance, as this Court does not conclude from reviewing the evidence that by a preponderance of the evidence the result of the trial would have been different.

23. Trial Counsel failed to produce testimony relevant to the Victim's frequent presence in the Applicant's home when neither she nor her husband was home.

Applicant fails to carry her burden in proving (1) that her counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that she was prejudiced by her counsel's ineffective performance, as this Court does not conclude from reviewing the evidence that by a preponderance of the evidence the result of the trial would have been different.

24. Trial Counsel failed to introduce from neutral witnesses evidence concerning the reaction of the Applicant's dogs to any activity in her home.

Applicant fails to carry her burden in proving (1) that her counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that she was prejudiced by her counsel's ineffective performance, as this Court does not conclude from reviewing the evidence that by a preponderance of the evidence the result of the trial would have been different.

25. Trial Counsel failed to argue in closing that it would not be Criminal Sexual Conduct by the Applicant if the complaining witness in fact assaulted her while she was incompetent to consent.

Applicant fails to carry her burden in proving (1) that her counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that she was prejudiced by her counsel's ineffective performance, as this Court does not conclude from reviewing the evidence

that by a preponderance of the evidence the result of the trial would have been different.

26. Trial Counsel failed to request jury charge on the fact that South Carolina law allows minors under the age of 14 to be charged with Criminal Sexual Conduct.

Applicant fails to carry her burden in proving (1) that her counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that she was prejudiced by her counsel's ineffective performance, as this Court does not conclude from reviewing the evidence that by a preponderance of the evidence the result of the trial would have been different.

27. Trial Counsel failed to adequately cross-examine the State's expert witness concerning the known reasons for delayed reporting of sexual assaults.

Applicant fails to carry her burden in proving (1) that her counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that she was prejudiced by her counsel's ineffective performance, as this Court does not conclude from reviewing the evidence that by a preponderance of the evidence the result of the trial would have been different.

CONCLUSION

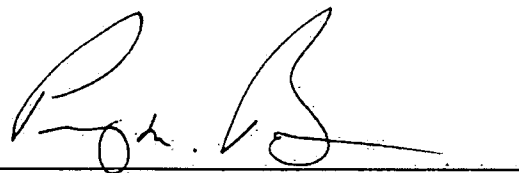
The Court finds that Applicant has not established any constitutional violations or deprivations before or during her trial and sentencing proceedings. Applicant was not prejudiced by Defense Counsel's representation. Accordingly, this PCR application is DENIED and dismissed with prejudice.

It is therefore ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

July 31, 2013
2013

Walterboro, SC.



The Honorable Perry M. Buckner

