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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

The Honorable J. Derham Cole, Jr., Circuit Court Judge

Case No. 2022-CP-30-00325

Pamela Michelle Tackett, #380899, ... Petitioner,

v.

State of South Carolina, ... Respondent.

NOTICE OF APPEAL

Applicant, Pamela Michelle Tackett, appeals the order of the Honorable J. Derham Cole, Jr., filed on or about June 10, 2025, and received by the undersigned on June 25, 2025.

June 26, 2025

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LAURENS	)	FOR THE EIGHTH JUDICIAL CIRCUIT
Pamela Michelle TACKETT, #380899,	)	
Applicant,	)	
v.	)	**ORDER OF DISMISSAL**
The STATE of South Carolina,	)	Civil Action No. **2022-CP-30-00325**
Respondent.	)	

This matter comes before the Court on application for post-conviction relief ("PCR") filed by Pamela Michelle Tackett ("Applicant") on April 18, 2022, and amended on August 13, 2024. An evidentiary hearing was held on August 19, 2024 at the Laurens County Courthouse. Applicant was present and represented by Ashley A. McMahan, Esq. Assistant Attorney General Zachary W. Jones represented Respondent.

After a consideration of the evidence presented and a full review of the record before the Court, this Court finds Applicant has not met her burden of proof in this matter. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections. At the July 2018 term, the Laurens County Grand Jury returned an indictments against Applicant for Felony Driving Under the Influence - Great Bodily Injury (2018-GS-30-1109), Child Endangerment (2018-GS-30-1110), and Felony Driving Under the Influence – Death (2018-GS-30-1111). Applicant was represented by David F. Stoddard, Esq. The State was represented by Eighth Circuit Assistant Solicitors O. Warren Mowry and R. Knox McMahon.

On July 15, 2019, Applicant proceeded to trial before Circuit Judge Roger L. Couch and a jury. Applicant was gound guilty and sentenced to concurrent terms of imprisonment for seven years for Child Endangerment, seven years and a fine of $5,000 for Felony Driving Under the Influence - Great Bodily Injury, and fifteen years and s a fine of $10,000 for Felony Driving Under the Influence - Death.

Applicant appealed her convictions and sentences. On October 21, 2020, Appellate Defender Adam S. Ruffin filed a brief of appellant pursuant to *Anders v. California*, 386 U.S. 738 (1967). On March 2, 2022, the South Carolina Court of Appeals dismissed Applicant's appeal in an unpublished opinion. *State v. Tackett*, Op. No. 2022-UP-084 (S.C. Ct. App. filed March 2, 2022). Applicant did not seek further review, and the remittitur was sent on March 28, 2022.

Factual Summary

On March 28, 2018, Applicant was driving on I-385, with her niece in a rear child's seat, when she swerved into the median and struck two SCDOT highway workers, fatally wounding one and seriously injuring the other. Michael Gabriele, a Highway Patrol trooper, responded to the scene. He decided to conduct field sobriety tests on Applicant after he observed her moving slowly and slurring her speech. When the field sobriety tests indicated impairment, Gabriele arrested Applicant for driving under the influence. Applicant was then transported to Greenville Memorial Hospital.

At the hospital, Applicant consented to provide a blood sample to law enforcement. She also told officers that she was taking Wellbutrin, Klonopin, Claritin, Effexor, Geodon, and Tramadol, and that she smoked marijuana every night before going to bed.

At the trial, the State qualified Kelly Budgen, of SLED, as an expert in toxicology. Budgen testified that Applicant's blood contained therapeutic quantities of Clonazepam (Klonopin) and Gabapentin (Effexor), as well as THC. Budgen also testified that Clonazepam and Gabapentin, like alcohol, are central nervous system depressants and, taken together, could impair one's ability to drive. She testified that THC could also impair one's ability to drive because it slows down a person's reaction time. However, because the efficacy of drugs differs from individual to individual, Budgen could not determine from the blood sample whether Applicant was impaired at the time of the accident.

The State also qualified Dr. Demetra Garvin as an expert in pharmacology and toxicology. She testified that the drugs in Applicant's blood sample each had the potential to impair an individual's driving ability. She also reviewed the body camera footage of Applicant taken after the crash and opined that Applicant's behavior and performance on the field sobriety tests indicated impairment.

Present Application

In her post-conviction relief application, Applicant alleges she is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
    a. Failure to advise Applicant regarding the maximum sentence she was facing and the plea deal.
    b. Failure to offer an alternative theory of causation.
    c. Failure to call expert witnesses to offer alternative theories of causation.
    d. Failure to request a jury charge or directed verdict of reckless vehicular homicide pursuant to S.C. Code 56-5-2910.
    e. Failure "to call expert knowledgeable of psych."
    f. Failure to object to the State's officials testifying beyond the scope of their expertise and offering opinions not based on scientific evidence.
    g. Failure to object and seek a ruling excluding reference to drugs aside from marijuana and clonazepam and precluding the State from arguing synergistic effect.
    h. Failure to object to leading questions and redirect beyond the scope of cross-examination.
    i. Failure to properly prepare for trial or obtain complete medical records including mental health and neurological history.
2. Due process
    a. Applicant's conviction and sentence were obtained on violation of the due process clause of the Fourteenth Amendment of the United States Constitution and corresponding provisions of the South Carolina Constitution.

On August 13, 2024, Applicant submitted an amended application requesting to conform her allegations to the evidence presented at the PCR hearing. The Court has reviewed the evidence presented at the PCR hearing and determined that Applicant presented testimony on the following allegations of ineffective assistance of counsel raised in her initial application: a, b, c, and i. Applicant did not raise any new issues at the PCR hearing. Accordingly, the Court will address those allegations below. All other allegations are deemed abandoned for lack of proof.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony and evidence presented, observed the witnesses who testified at the hearing, and weighed the testimony. Before the Court are Applicant's records from the South Carolina Department of Corrections, the transcript of Applicant's trial, the records of the Laurens County Clerk of Court regarding the subject convictions, Applicant's appellate records, and the records of the present PCR action. This Court has considered the evidence presented and the record submitted to it by the parties, the legal argument of counsel. 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, Generally

In a PCR action, Applicant bears the burden of proving the allegations in her application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove her factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. 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 686; *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 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, Applicant must prove that Counsel's deficient performance prejudiced her 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. "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. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." *United States v. Basham*, 789 F.3d 358, 371–72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

A. Advice concerning sentencing and plea deal

In her PCR application, Applicant alleged Counsel was ineffective for failing to adequately advise her concerning the maximum sentence she was facing and for failing to explain the plea deal to her. Applicant alleged she received a higher sentence at trial than she would have received under the terms of the plea deal.

However, at the PCR hearing, Applicant testified that Counsel *did* advise her to plead guilty, although she also claimed he did not know what the plea would be. Applicant further testified she had no knowledge of any plea offer. Applicant then claimed she never discussed the differences between a negotiated plea, a straight-up plea, and trial.

Counsel testified that he initially advised Applicant *not* to plead guilty because there was no plea offer made prior to trial, Applicant could not tell him what actually happened on the day of the incident, and he believed he had a viable jury argument based on the fact that the toxicologist found only therapeutic levels of prescription drugs in Applicant's system. After trial began, however, Counsel became more pessimistic about Applicant's chances due to the strength of the State's first witnesses. Counsel testified he had a conference in chambers with Judge Couch, and the prosecutor offered a recommended sentence of 18 years if Applicant would plead guilty. Counsel testified he explained the offer to Applicant and

discussed the possibility that she could get more time if she continued with trial but that she might get less than the State's recommended sentence if she pled guilty. However, Counsel testified it was a close case because he thought the State's plea offer of an 18-year recommendation was not much better than a straight-up plea; in fact, 18 years turned out to be more than Applicant received after trial. Ultimately, Counsel testified Applicant did not want to plead guilty because she did not want to do that much time.

The Court finds Applicant's statements in her PCR application and her testimony at the PCR hearing are somewhat equivocal and inconsistent. Applicant claims in her application that she would have received a lower sentence under the plea offer, but she testified at the hearing that no offer was ever made, to her knowledge. She also implied in her application that Counsel's advice prevented her from taking the plea deal, but she testified at the hearing that Counsel told her she needed to accept the plea offer. These inconsistencies reflect poorly on Applicant's credibility. Therefore, to the extent any conflict exists between Applicant's testimony and Counsel's testimony, the Court finds Counsel's testimony is more credible. Accordingly, the Court finds Counsel did explain the plea offer to Applicant and the appropriate considerations between accepting the offer and proceeding with the trial. The Court further finds Applicant knowingly chose to turn down the plea offer. The Court also notes that Applicant received an aggregate sentence of 15 years at trial, which was less than the 18 years the State agreed to recommend as part of the plea deal.

Applicant has failed to establish deficient performance on the part of counsel under prevailing professional norms and/or any prejudice resulting from counsel's performance in this particular, as there is no reasonable probability that but for counsel's performance the result of the proceeding would have been different. *Strickland v. Washington*, 466 US 668 (1984) and *Cherry v. State*, 300 SC 115 (1989).

B. and C. Alternative theories of causation

Applicant claims Counsel failed to propose an alternative theory of causation to explain what caused her to lose control and drive onto the median. She also claims Counsel should have called expert witnesses in support of an alternative theory, such as witnesses who could testify to the differences and interactions between different medications. However, she did not provide any alternative theory at the PCR

hearing, nor did she present any expert testimony. Therefore, the Court finds she has failed to prove this allegation. *See, e.g., Martin v. State*, 427 S.C. 450, 455, 832 S.E.2d 277, 279–80 (2019) (holding a PCR applicant who claims trial counsel was ineffective for failing to call certain witnesses must produce those witnesses or their testimony at the PCR hearing); *Taylor v. State*, 258 S.C. 369, 378, 188 S.E.2d 850, 854 (1972) (holding a PCR applicant's allegation that his trial counsel failed to adequately investigate his case was unsupported where the applicant failed to point out any beneficial evidence which could have been discovered by further investigation).

The only testimony Applicant provided on this point at the PCR hearing was that the bottle for her Klonopin prescription had a warning not to use it while driving until she learned how her body reacted to it. This testimony does not constitute an "alternative theory of causation"; if anything, it corroborates the State's theory that Applicant's hazardous driving resulted from her use of prescription drugs, including Klonopin.

In addition, Counsel testified he *did* consider presenting an alternative theory of causation—namely, that some medical event, like a stroke, unrelated to Applicant's drug use had caused her to lose control while driving. He testified that he tried to find a doctor who would support that theory, and that he interviewed Applicant's family doctor and neurologist, without success. He also sent video recordings from the incident to a consultant, a former highway patrol officer, who prepared a report, but Counsel thought the report would be inconsistent with Applicant's story. However, he was able to present a defense at trial based on the theory that Applicant was taking her prescriptions within therapeutic limits and that her strange behavior following the crash was caused by the stress of the incident, not by her drug use.

Applicant has failed to establish deficient performance on the part of counsel under prevailing professional norms and/or any prejudice resulting from counsel's performance in this particular, as there is no reasonable probability that but for counsel's performance the result of the proceeding would have been different. Strickland v. Washington, 466 US 668 (1984) and Cherry v. State, 300 SC 115 (1989).

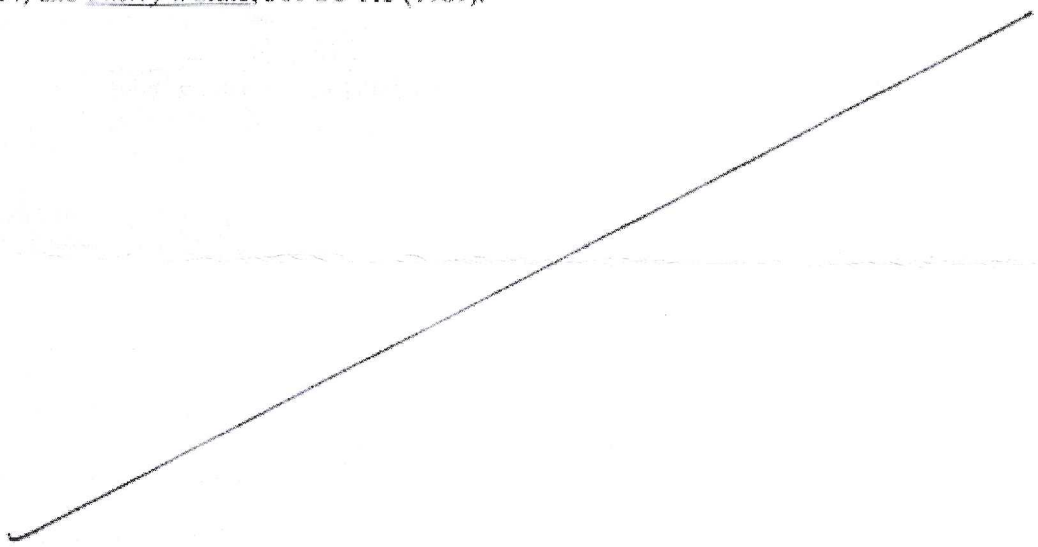
1. Mental health and neurological history records

Applicant claims Counsel was unprepared for trial because he had not obtained her complete

medical history, including her mental health and neurological history records. However, Applicant did not substantiate this allegation by presenting her mental health records at the PCR hearing. *See Taylor*, 258 S.C. at 378, 188 S.E.2d at 854. Moreover, as already discussed, Counsel testified that he *did* consult Applicant's family physician and neurologist.

At the PCR hearing, Applicant testified she was prescribed the various drugs she was taking in order to treat her mental health issues, which include depression, anxiety, and PTSD. That fact was not unknown to Counsel; it accords with the toxicologist's finding that the levels of those drugs in Applicant's blood sample were consistent with therapeutic use, and Counsel testified he argued to the jury based on the toxicologist's report that Applicant was using the drugs as prescribed.

Applicant has failed to present any new defenses or probative evidence that Counsel could have used had he more thoroughly investigated her medical history. Applicant has failed to establish deficient performance on the part of counsel under prevailing professional norms and/or any prejudice resulting from counsel's performance in this particular, as there is no reasonable probability that but for counsel's performance the result of the proceeding would have been different. Strickland v. Washington, 466 US 668 (1984) and *Cherry v. State*, 300 SC 115 (1989).



III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violation or deprivation that would entitle her to post-conviction relief. The **APPLICATION** for post-conviction relief should be and **IS** therefore **DENIED** and **DISMISSED** with prejudice and Applicant remanded to custody for completion of the sentence imposed.

This Court notifies the Applicant that she 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), Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

AND IT IS SO ORDERED this 4th day of June, 2025.

J. WILLIAM COLE, Presiding Judge
The Eighth Judicial Circuit Court