

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2012CP2306443

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2013 NOV 26 PM 3:32

Monica Yazid vs. South Carolina State Of

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.
- ACTION DISMISSED (CHECK REASON):**
 - SCRPC (Vol. Nonsuit); Rule 12(b), SCRPC; Rule 41(a),
 - Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
 - Rule 40(j) SCRPC; Bankruptcy;
- 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; Statement of Judgment by the Court:
Dated at Greenville, South Carolina, this 26th day of November, 2013.

Court Reporter:

PRESIDING JUDGE - Edward W Miller

This judgment was entered on the 26th day of November, 2013, and a copy mailed first class this 26th day of November, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

R. Mills Ariail Jr. 11 North Irvine St., Ste., 11
Greenville, SC 29601

Karen Christine Ratigan PO Box 11549 Columbia,
SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

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DEC 09 2013

SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Monica Lasondra Yazid,)
 S.C.D.C. No. 352121,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2012-CP-23-6443

ORDER OF DISMISSAL

FILED - CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL A. WATSON, CLERK
 2013 NOV 25 PM 2 32

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed October 9, 2012. The Respondent made its return on March 26, 2013. An evidentiary hearing into the matter was convened on October 24, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Dorothy A. Manigault, Esquire. The Court had before it the transcript of the guilty plea hearing, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the May 2012 term of the Greenville County Grand Jury for shoplifting, third or greater

offense (2012-G S-23-2437). Dorothy A. Manigault, Esquire, represented the Applicant.

On August 16, 2012, the Applicant pled guilty. The Honorable C. Victor Pyle, Jr. sentenced the Applicant to ten (10) years imprisonment. The Applicant did not appeal.

ALLEGATIONS

In his application, the Applicant alleges she is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. Unfair sentence.

At the PCR hearing, the Applicant proceeded solely upon the issue of ineffective assistance of counsel.

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. 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 conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges she received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under

prevailing professional norms, and (2) that he was prejudiced by his 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). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The Applicant stated she had a shoplifting charge in February 2012. The Applicant stated she hired an attorney (Spencer Langley) in March 2012 to represent her on two counts of child neglect. The Applicant stated Langley conveyed a three-year plea offer from the State, but that it included pleading guilty to the child neglect charges, which she did not want to do. The Applicant stated she hired plea counsel on July 24, 2012 to represent her on the shoplifting and child neglect charges. The Applicant stated she had three telephone discussions and one in-person meeting with plea counsel. The Applicant stated she and plea counsel reviewed the videotape and evidence while she was in jail. The Applicant stated plea counsel did not have time to investigate or prepare her case.

Plea counsel testified she met with the Applicant about her charges in July 2012 and they reviewed some of the discovery materials at that time. Plea counsel testified the Applicant retained her on August 13, 2012, that she received discovery materials from the State, and that she filed a supplemental discovery motion. Plea counsel testified she reviewed the discovery and videotape with the Applicant at the jail. Plea counsel testified the Applicant told her there was a prior plea offer in this case (and that she had rejected it), but counsel stated there were no

pending plea offers when she was retained because the case was on the trial docket. Plea counsel testified she filed a motion for continuance and— at that hearing – Langley told the trial judge he only represented the Applicant on the child neglect charges. Plea counsel testified Langley denied most of the Applicant’s allegations. Plea counsel testified she contacted the State, who did not want to renew the plea offer. Plea counsel testified she explained this to the Applicant and that the plea would be without a recommendation. Plea counsel testified they had two meetings and various conversations before the plea hearing and there was nothing else to do to prepare the case, as the videotape and fingerprint evidence was clear (and the Applicant never denied her involvement).

Regarding the Applicant’s claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet her burden of proof. This Court finds plea counsel’s testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in her representation.

The Applicant admitted to the plea judge that the facts recited by the solicitor were true. (Plea transcript, p.10). The Applicant also told the plea judge that she understood the trial rights he was waiving in pleading guilty and was satisfied with counsel. (Plea transcript, pp.4-6).

This Court finds the Applicant failed to meet her burden of proving plea counsel did not properly prepare or investigate her case. This Court notes plea counsel’s testimony that she had several telephone and in-person meetings with the Applicant and that they reviewed the discovery in the case. This Court finds plea counsel’s testimony is credible. While plea counsel was retained a few days before the plea hearing, plea counsel testified there was nothing else she could have done to prepare the case. “The brevity of time spent in consultation with a defendant

alone is not indicative of inadequate trial preparation.” Smith v. State, 404 S.C. 493, 745 S.E.2d 378, 382 (Ct. App. 2012) (citation omitted). This Court finds the Applicant has failed to articulate what more plea counsel could or should have done to investigate her case. See Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (finding the failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result). This Court also finds the Applicant failed to demonstrate prejudice, as the State presented overwhelming evidence of her guilt. (App.pp.6-10). See Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in her representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that she was prejudiced by plea counsel’s performance.

This Court concludes the Applicant has not met her burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

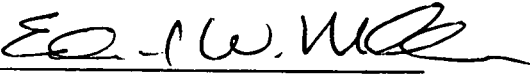
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during her guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that she must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if she wants to secure appropriate appellate review. Her attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

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.

AND IT IS SO ORDERED this 19 day of Nov., 2013.



Edward W. Miller
Presiding Judge
Thirteenth Judicial Circuit

 , South Carolina.