

THE SOUTH CAROLINA SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

R. Lawton McIntosh, Judge

Case No.
(12-CP-42-0675)

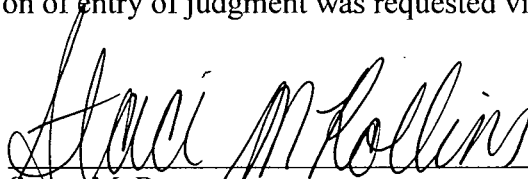
Yesenia Ramirez Appellant

v.

State of South Carolina, Respondent.

NOTICE OF INTENT TO APPEAL

Appellant appeals the decision of the Honorable Judge signed September 25, 2013, denying post-conviction relief, which was sent to appellant's counsel's via electronic mail on December 16, 2013 when a verification of entry of judgment was requested via telephone on December 16, 2013.



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THE ROLLINS LAW FIRM, LLC
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864-370-0882- PHONE
864-370-9535- FAX
APPOINTED ATTORNEY FOR PCR PETITIONER

Other Counsel of record:
Suzanne White, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

RECEIVED

JAN 09 2014

S.C. Supreme Court

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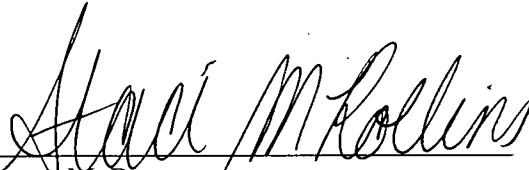
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v.

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PROOF OF SERVICE

I certify that the foregoing was served on the persons listed below by placing same in the U.S. Mail postage prepaid this day, Tuesday, January 7, 2013.



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Staci Rollins

From: Miller, Alexandra <amiller@spartanburgcounty.org>
Sent: Monday, December 16, 2013 1:59 PM
To: stacimrollins@gmail.com
Attachments: 2012CP4200675_ORDER_236249.pdf

Alexzandra Miller
Spartanburg County Clerk of Court
Common Pleas
180 Magnolia Street
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4W

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Yesenia Cortez Ramirez, #347890,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
)
 _____)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2012-CP-42-0675

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 3, 2012. The Respondent made its Return on or about October 10, 2012. An evidentiary hearing into the matter was convened on June 28, 2013, at the Spartanburg County Courthouse. The Applicant was present and represented by Staci M. Rollins, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on her own behalf with the assistance of a court certified interpreter. N. Douglas Brannon, Esquire, also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the May 2010 term of the Spartanburg County Grand Jury for two counts of accessory before the fact to murder and accessory before the fact to burglary - 1st degree (10-GS-42-3161,

count 1, count 2, & count 3, respectively). Applicant was represented by N. Douglas Brannon, Esquire and Chris Kennedy, Esquire. On September 16, 2011, the Applicant pled guilty as indicted to the charge of accessory before the fact to burglary – 1st degree, but waived presentment of and pled to two counts of accessory after the fact to murder. Applicant was sentenced by the Honorable J. Mark Hayes II for a period of fifty years for accessory before the fact to burglary – 1st degree, and fifteen years for each count of accessory after the fact to murder to be served concurrently. The Applicant did not appeal her conviction or sentence.

ALLEGATIONS

In the current application, the Applicant alleged she was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that:
 - a. Counsel failed to inform her of her right to appeal,
2. Actual innocence
 - a. “[She] was not present when [the] crimes were committed. [She] was set up.”

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).

PCR Hearing Motions

On the record, Applicant requested to relieve her appointed attorney and requested a continuance. This Court found that Applicant failed to offer good cause that would necessitate granting of the motions; therefore, this Court denied both motions and ordered Applicant to

proceed with her application after an additional meeting with her appointed counsel.

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) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged 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.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 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. "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).

Applicant testified that she had approximately four visits with Counsel and an interpreter. However, Applicant testified that they did not discuss the case in any of the meetings. Applicant testified that Counsel only wanted to discuss her prior jobs, her prior involvement with witchcraft and the death of Counsel's sister. Applicant testified that Counsel only mentioned the time Applicant was facing and the fact that if she proceeded to trial, the other co-defendants would testify against her. In fact, Applicant testified that Counsel told her that she would receive a life sentence if she went to trial or pled guilty. Applicant testified that she did not understand what was happening at the plea and did not know how to answer the questions. However, Applicant testified that she proceeded with the guilty plea because Counsel said he would explain. Applicant testified that she would ask interpreter, who then asked Counsel, how to answer the judge's questions.

Applicant testified that at the time she was not taking her medication for depression, so she was not feeling well and had to sit down several times during the plea. Applicant also testified that she cried when she saw the victims' family members because she knew she did not do the crime. Applicant testified that she feels bad for not calling the police, but she was being threatened with a gun and her family was being threatened. Applicant testified that none of her family was present at the plea either because Counsel told them it was only a conference meeting, not a court date. Applicant testified that although Counsel was court appointed, he asked her brother for \$5,000 and she felt bad that she had no money to pay him.

Applicant testified that although she signed the paperwork for the plea, no one ever explained the charges or the paperwork to her in Spanish. Applicant testified that the first time she was aware of her charges was once she was in SCDC custody and someone helped her write a letter asking Counsel to appeal.

Counsel testified that he met with Applicant seven times with an interpreter each time. Counsel testified that they discussed the case every meeting and discussed the details of the night and events leading up to and after the night. In fact, Counsel testified that the first time he met with the Applicant, she was under the impression that she was charged with murder because she knew that two people had been brutally murdered. Counsel testified that the Applicant informed him that she had helped "Carlos" by divining the names of two people that were supposedly the people stealing from him. Applicant also informed him that she was paid a fee, which included a Chevrolet Avalanche truck, to pick up and drop off several men involved in the murder. Counsel testified that Applicant also informed him that she knew at least one of the men she brought up to the Spartanburg area from Atlanta was in a gang. Counsel testified that the State intended to introduce testimony and statements by several co-defendants and pictures of the victims, which he had reviewed with the Applicant.

Counsel testified that he never met with the Applicant without an interpreter. Counsel testified that he felt confident that Applicant would have indicated to him that she did not understand him because she had asked him to speak slower before. Counsel testified that he never discussed a guilty plea with Applicant until she told him that she had to plead guilty because multiple generations of her family would be cursed because she was involved with someone's death. Counsel testified that he reviewed the questions that the court would ask her at the plea with the Applicant and an interpreter and had a lengthy talk of the possible time she may serve in prison. Counsel testified that the sentencing sheets were read to her in Spanish and reviewed with her. Counsel testified that although they thought she might receive sentences of twenty to thirty years, Applicant knew the possible time she faced and the decision to plead guilty was her decision. Counsel also testified that he was aware that the Applicant was not

feeling well at the plea, but she never mentioned any issues with illness or medication other than gastrointestinal issues.

Counsel testified that his standard practice is to go over the right to appeal with his clients and he has no reason to think that he did not do the same in this matter. Counsel testified that he did receive a letter requesting him to file a notice of appeal, but it was approximately three and a half months after the time allowed for an appeal.

As to the Applicant's claim of actual innocence, this Court finds this claim lacks merit and it is denied and dismissed. This Court notes that the Applicant admitted guilt during her plea colloquy with Judge Hayes. (Tr. p. 7; p. 15-16). Applicant also indicated that she agreed with the facts as stated by the Solicitor, which included references to numerous videos and statements which would support Applicant's guilt. (Tr. p. 13).

In regards to the Applicant's claim that she lacked understanding of the charges and plea, this Court finds that not only did her testimony lack credibility, but that she failed to meet her burden of proof. This Court notes that the Applicant, during the PCR hearing, has been able to respond with assistance of an interpreter and her responses were consistent with being able to understand the questions. Contrary to her testimony at the hearing, the record reflects that the Applicant responded to the court's questions appropriately and indicated a full understanding of the plea process and of the charges that she was pleading guilty to. (Tr. p. 14-16). Further, the court provided the Applicant with an opportunity to speak with Counsel at any time in private during the plea if she had questions. (Tr. p. 4). Additionally, when asked by the court, Applicant indicated that she had not consumed any substance that could negatively affect her understanding during the plea. (Tr. p. 5).

This Court finds that the Applicant has failed to meet her burden of proof as to this claim. 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 L.Ed. 2d 203 (1985). The record and Counsel's credible testimony both reflect that the Applicant fully understood the charges and sentences that she faced, along with the plea process, and freely and voluntarily chose to plead guilty. There was no indication that the Applicant ever wished to proceed to trial on these charges. Therefore, this claim is denied and dismissed.

Regarding the Applicant's claim that Counsel failed to file an appeal on her behalf when asked, this Court finds Counsel's testimony to be credible and finds that the Applicant has failed to meet her burden of proof as to the claim. Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000). In this case, as testified to, the Applicant did not request that Counsel file an appeal until months past the deadline although Counsel informed the Applicant of the right to appeal prior to the plea. Therefore, this Court finds that this claim is denied and dismissed.

Summary

This Court finds that Counsel is an experienced attorney who was prepared for and effectively represented Applicant at her plea. This Court finds counsel adequately conferred with the Applicant, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that she was prejudiced by Counsel's performance. There is no evidence that the outcome of the proceedings would have changed based upon any of the allegations of deficiency. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

CONCLUSION

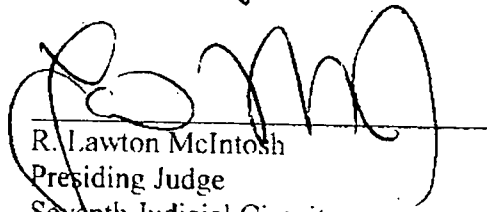
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant her application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions 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 (1991), an 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 the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 25 day of Sept, 2013.



R. Lawton McIntosh
Presiding Judge
Seventh Judicial Circuit

CLERK
SYSTEM
2013 OCT -2 PM 2:13

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Yesenia Cortez Ramirez)

Plaintiff)

v.)

State of South Carolina)

Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.
2012-CP-42-0675

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Staci M. Rollins, Bar No. Address: 606 Pettigru Street Greenville, South Carolina 29601 phone: fax: e-mail: other:	Defendant's Attorney: Suzanne H. White Bar No. Address: P.O. Box 11549 Columbia, SC 29211-11549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: other:
--	--

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

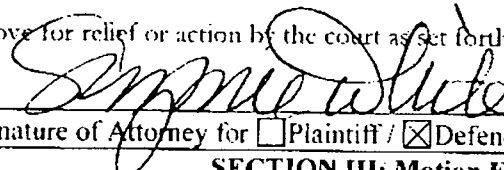
SECTION I: Hearing Information

Nature of Motion: _____
 Estimated Time Needed: _____ Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed Order.



 Signature of Attorney for Plaintiff / Defendant

September 23, 2013
Date submitted

SECTION III: Motion Fee

PAID - AMOUNT:
 EXEMPT: Rule to Show Cause in Child or Spousal Support
 (check reason) Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRPC)
 Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter:
 Other:

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.
 Other:

JUDGE

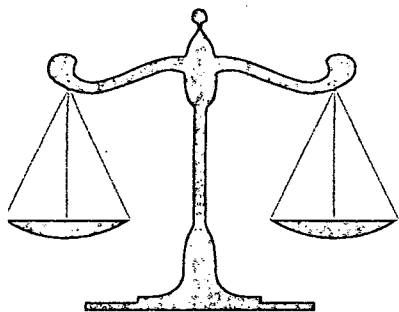
CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

MOTION FEE COLLECTED: _____
 CONTESTED - AMOUNT DUE: _____



Staci M. Rollins
Rollins Law Firm, LLC

606 Pettigru St., Greenville, SC 29601 * Phone (864) 370-0882 * Fax (864) 370-9535

January 07, 2014

SC Supreme Court
P.O. Box 11330
Columbia, SC 29211

Re: Notice of Intent to Appeal from Yesenia Cortez Ramirez, #347890, v. State of South Carolina;
Case Number: 12-CP-42-0675

Dear Sir or Madam:

I WAS COURT APPOINTED, AND I EXPECT APPELLATE DEFENSE WILL PROBABLY HANDLE THE APPEAL. Enclosed for filing please find the Notice of Appeal, proof of service on the Attorney General, and the Order of Dismissal. By copy of this letter, I am also serving Counsel for the state.

Thank you for your assistance.

Sincerely:

A handwritten signature in cursive script that reads "Staci M. Rollins".

Staci M. Rollins

Enclosures-as indicated

CC:

Suzanne White, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

South Carolina Appellate Defense
P.O. Box 11589
Columbia, SC 29211

RECEIVED

JAN 09 2014

S.C. Supreme Court

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