

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Case No. 2014-000180
Civil Action Number: 2013-CP-46-02211

ARKELLA RENA BROWN,

Petitioner,

v.

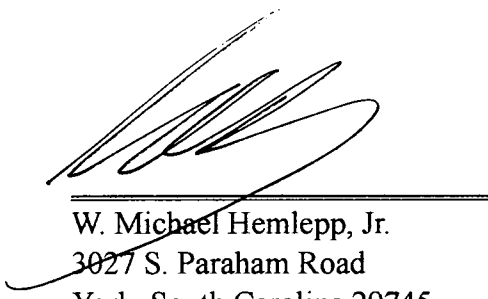
STATE OF SOUTH
CAROLINA,

Respondent.

NOTICE OF APPEAL

Arkella Rena Brown appeals the order of the Honorable John C. Hayes, III dated December 11, 2013 denying her application for Post-Conviction Relief.

March 17, 2014



W. Michael Hemlepp, Jr.
3027 S. Paraham Road
York, South Carolina 29745
803-718-0956
legal@p-3-solutions.com
Attorney for Appellant

Other Counsel of Record:

Rutledge Johnson

OFFICE OF THE ATTORNEY GENERAL

1000 Assembly Street, Suite 518

Columbia, South Carolina 29201

803-734-1867

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State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal in the above captioned case on the following individuals by depositing a copy of it in the United States Mail, postage prepaid, on March 18, 2014, addressed to:

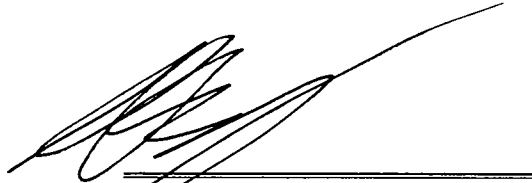
David Hamilton, Clerk of Court
York County Court of Common Pleas
Post Office Box 649
York, South Carolina 29745

Rutledge Johnson, Esq.
Office of the Attorney General
1000 Assembly Street, Suite 518

Columbia, South Carolina 29201

Arkella Rena Brown #310705
Graham Correctional Inst.
4450 Broad River Road
Columbia, South Carolina 29210

March 19, 2014



W. Michael Hemlepp, Jr.
3027 S. Paraham Road
York, South Carolina 29745
803-718-0956
legal@p-3-solutions.com
Attorney for Appellant

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2013CP4602211

Arkella Rena Brown	South Carolina State Of
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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

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 INFORMATION

This order ends -does not end the case.
 Additional Information for the Clerk: **ORDER**

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/ John C. Hayes, III.
 Circuit Court Judge

2049
 Judge Code

12/10/2013
 Date

For Clerk of Court Office Use Only

This judgment was entered on **December 11, 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **December 11, 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

William Michael Hemlepp Jr. 3027 S. Paraham Road York,
SC 29745

James Rutledge Johnson PO Box 11549 Columbia, SC
29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - 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 YORK)
)
)
 Arkella Rena Brown, #310705,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2013-CP-46-2211

ORDER

FILED-RECEIVED
 2013 DEC 11 PM 3:25
 RUTLEDGE JOHNSON
 C.C.P. & GS
 YORK COUNTY, SC

This is a post-conviction relief application filed July 23, 2013. The case was heard December 9, 2013. Applicant was represented by W. Michael Hemlepp, Esq., the State by J. Rutledge Johnson, Esq.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The applicant was indicted by the February 2013 term of the York County Grand Jury for Forgery value less than \$10,000 (2013-GS-46-0810), Criminal Conspiracy (2013-GS-46-0811), and three counts of Forgery, 3rd or subsequent offense (2013-GS-46-0813, -0815, -0816). The Applicant was represented by Dan Hall, Esquire. On May 9, 2013, the Applicant pled guilty to all charges as indicted. The Honorable Paul M. Burch sentenced the Applicant to confinement for seven (7) years for Forgery, value less than \$10,000, three (3) years, concurrent, for Criminal Conspiracy, seven (7) years, concurrent, for two of the Forgery, 3rd or subsequent charges and three (3) years, concurrent for the remaining forgery charge. The Applicant did not appeal her convictions or sentences.

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

JCH #1

1. "5th Amend U.S.C.A. Violation"
 - i. "I did not appear for Grand Jury arraignment, I didn't waive my rights to be present."
2. "14th Amendment – U.S.C.A."
 - i. "Defect/Delayed Indictment"
3. "6th Amendment – U.S.C.A."
 - i. "They suppressed evidence of discovery evidence falsely represent me conspired with the State."

At her hearing Applicant's counsel stated the only issue for the Court's consideration was ineffective assistance of counsel.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his 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.Ed.2d 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

JCHKZ

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, she 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).

Applicant testified that she is a licensed beautician and a single mother with four children. She recalls her plea and being represented by Dan Hall, Esq., by appointment. She testified that she bonded out of jail after her arrest. Thereafter, she was appointed counsel. The time between her release on bond and her plea was five months during which time she talked with Mr. Hall about 5 times at his office for 20 to 30 minutes each time.

Applicant testified that Dan Hall discussed her charges and the effect of her prior offenses. She testified that prior to her hearing, Dan Hall told her that her record was not as bad as it seemed and that she should expect a sentence of 90 days or probation. This was the day before her plea.

Applicant testified that Mr. Hall told her the State would not talk against her at the plea. Applicant testified she entered her plea of guilty based on her prior record which she alleged is inaccurate and shows that some offenses repeated as multiple offenses.

Applicant testified that at her plea Solicitor Keven Brackett, Esq. talked against her and she testified that she did not expect this. Mr. Brackett’s comments were very adverse to her and she felt they were damaging to her. Prior to the plea, Mr. Hall told her that Solicitor Brackett was going to speak against her. She testified that she did not ask to delay her plea even with this knowledge, but had she known the State was going to speak against her, she would not have pled that day. Applicant testified that Mr. Hall did not talk with her or her family after the plea.

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On cross, she testified that she expected to receive 90 days or probation, and did not expect what happened at her plea nor to receive what sentence she received. Applicant testified that she pled guilty because "they played her daughter against her." She did not elaborate on this comment.

She testified that she was guilty of the charges to which she pled. Applicant said it was not her intention to plead guilty but did plead guilty on her own accord, and took a plea as a way to protect her daughter who was also charged.

Dan Hall, an Assistant Public Defender, testified that he has handled forgery cases prior to Applicant's case. He testified that he met with Applicant five times, discussed charges and potential jail time. He advised her she was facing thirty-five (35) years. He testified that he did not tell her she would get 90 days or any probationary sentence.

As to Mr. Brackett making a statement, Mr. Hall testified that he did not know this was going to occur. Only right before the plea was Mr. Hall aware of Mr. Brackett's involvement in the plea. Mr. Hall testified that the appearance by Solicitor Brackett did affect the sentence Judge Burch imposed.

Mr. Hall testified that based on her prior record, he would be surprised if she got a probation sentence. Mr. Hall testified that Applicant told him that rather than plea straight up she would proceed to trial.

On cross Mr. Hall testified that he had handled thousands of pleas over his 25 year career. He testified that it was unusual for the Solicitor to appear at a forgery case plea as these were usually left to the assistant solicitor handling the case.

Mr. Hall testified that the State never would negotiate for a particular sentence, but did drop some charges in exchange for her plea. Mr. Hall testified that he never told Applicant the

State would not speak against her at the plea. Mr. Hall still felt it was in her best interest to proceed with her plea even though he is now aware of exactly what the Solicitor would say to the Court.

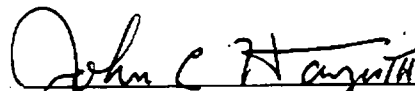
Mr. Hall testified that he could not compare the sentence Applicant received with other sentences for like offenses with like records. Mr. Hall did testify that he was surprised the Applicant was given a seven year sentence.

Based on the record and the testimony at the Post-Conviction Relief hearing, I find Applicant has failed to carry her burden of proof and failed to prove that, when the appropriate standards set forth hereinabove are applied, trial counsel's representation of her was ineffective to any degree.

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

This Court hereby advises Applicant that she 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, III
Presiding Judge #5

December 10th, 2013
York, South Carolina