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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Beaufort County

Perry M. Buckner, Circuit Court Judge

NATICIA LAURENT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001313

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ASHLEIGH R WILSON
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT 2009-GS-07-2249

STATE OF SOUTH CAROLINA)
) TRANSCRIPT OF RECORD
) -vs-
NATICIA LAURENT,) September 22, 2011
) Beaufort, South Carolina
) Defendant.)

B E F O R E:

The Honorable Roger M. Young, Sr., Judge.

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

1 (September 22, 2011.)

2 THE ASSISTANT SOLICITOR: May it please the
3 Court: Standing before you is Ms. Naticia Laurent. She
4 is charged with indictment No. 2009-07-02249 with
5 homicide by child abuse, Your Honor. She is represented
6 by Helen Dovell of the public defender's office.

7 This is a negotiated plea, Your Honor. Ms.
8 Dovell and I spoke with you about that on Monday. I
9 believe the terms of the negotiation are a 20 year
10 mandatory minimum sentence on Ms. Laurent. We also had
11 -- also, Ms. Dovell had asked for a delayed report date
12 if Your Honor accepts the plea and sentences accordingly,
13 a delayed report date I believe until October 24th, the
14 next General Sessions term, next month, and we did
15 discuss the corporal who is in charge of the Beaufort
16 County Detention Center about having Ms. Laurent report
17 on a weekly basis until she actually checks in to be
18 processed at SCDC, Your Honor.

19 THE COURT: Okay. Y'all get that worked out
20 as to who and where?

21 ASSISTANT SOLICITOR: Yes, Your Honor.

22 THE COURT: All right.

23 ASSISTANT SOLICITOR: Ms. Laurent will report
24 by 5 a.m. on Friday afternoon to the lobby of the
25 Beaufort County Detention Center with identification

1 showing who she is, and the detention center will send a
2 report to my office if she fails to show up on one of
3 those dates, Your Honor, at which point the solicitor's
4 office will seek a bench warrant for her.

5 THE COURT: Okay. All right. Are you
6 Naticia Laurent?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: You're here today, you got
9 indicted for homicide by child abuse. I'm told that you
10 want to give up your right to a jury trial and plead
11 guilty; is that right?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. You have the right to
14 a jury trial. If you want a trial, all you have to do is
15 let me know. We'll arrange that for you. The state then
16 has to present enough evidence to convince 12 jurors that
17 you're guilty beyond a reasonable doubt. All 12 jurors
18 must agree you're guilty in order to convict you, and if
19 convicted, you have the right to appeal.

20 You can challenge the state's evidence, put
21 up evidence of your own, testify if you want, and if you
22 don't want to testify, the judge will instruct the jury
23 they're not to hold that against you while they're
24 deliberating.

25 Do you understand those rights?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And you want to give up those
3 rights and plead guilty?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Are you pleading guilty to this
6 charge because you're guilty of it?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand this is a
9 strike offense?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And by strike offense, you
12 understand that if you get another strike offense
13 conviction during the rest of your life, you'll go to
14 jail for the rest of your life without the possibility of
15 parole?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You still want to plead guilty?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. Are you under the
20 influence of drugs or alcohol today?

21 THE DEFENDANT: No, sir.

22 THE COURT: Do you need more time with your
23 lawyer?

24 THE DEFENDANT: No, sir.

25 THE COURT: Are you satisfied with her

1 representation?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Have you discussed putting up a
4 defense and going to trial?

5 THE DEFENDANT: Say that again?

6 THE COURT: You talked with her about going
7 to trial; is that correct?

8 THE DEFENDANT: Yes.

9 THE COURT: Y'all discussed it?

10 THE DEFENDANT: Yes.

11 THE COURT: All right. And you decided you
12 don't want to do that?

13 THE DEFENDANT: Yes, sir, I decided.

14 THE COURT: You don't want to tell the jury
15 your side of the story?

16 THE DEFENDANT: No, sir.

17 THE COURT: You don't want to call witnesses
18 on your behalf?

19 THE DEFENDANT: No, sir.

20 THE COURT: You want to go ahead and plead
21 guilty?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Knowing that the sentence is
24 going to be 20 years.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. Now, this is a
2 negotiated plea for a sentence of 20 years. Other than
3 that, has anybody promised you anything or threatened you
4 in any way in order to get you to plead guilty?

5 THE DEFENDANT: No, sir.

6 THE COURT: How old are you?

7 THE DEFENDANT: Twenty-six.

8 THE COURT: How far did you get in school?

9 THE DEFENDANT: I went to college.

10 THE COURT: Do you work?

11 THE DEFENDANT: I worked during college but
12 not since.

13 THE COURT: Are you married?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you have children?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: How many?

18 THE DEFENDANT: One son.

19 THE COURT: All right. Does she understand
20 what she's doing?

21 MS. DOVELL: She does, Your Honor.

22 THE COURT: All right. I find that her plea
23 is freely, voluntarily, and intelligently made. What
24 would the state like to tell me?

25 ASSISTANT SOLICITOR: Thank you, Your Honor.

1 These are a little complicated and tragic facts.
2 Basically, Ms. Laurent called 911 on the morning of
3 October 8, 2009, just before noon. She actually called
4 411 first in her upset state. They connected her with
5 911. She reported that her four-year-old stepdaughter,
6 **MINOR** was not breathing. She also made some
7 comments to emergency services operator about having hit
8 the child prior to the child being injured and stopped
9 breathing.

10 When emergency services paramedics arrived on
11 the scene, **MINOR** was in the bathroom. Her
12 father, John Laurent, was with her. I think he was
13 cleaning her with a washcloth. They reported that
14 Ms. Laurent admitted she had hit the child with a belt
15 prior to the child being injured. At the time Ms.
16 Laurent stated that she had sent the child back to her
17 room and found her naked and unconscious outside her
18 bedroom.

19 The medical examiners found this inconsistent
20 with the injuries that Ms. Laurent -- or that **MINOR**
21 Laurent received. Eventually Ms. Laurent, the defendant,
22 acknowledged that she had -- she had pushed the child in
23 the bathroom, that she had found the child playing in
24 water in the bathroom, that she was upset and pushed the
25 child and that she had hit her head on, I believe, the

1 tub in the bathroom.

2 **MINOR** was kept on life support for
3 approximately three days. On October 11th, doctors at
4 the Medical University of South Carolina in Charleston
5 did declare her brain dead and she was declared deceased,
6 Your Honor, and Ms. Laurent had originally been charged
7 with unlawful neglect of a child. When **MINOR**
8 passed away, she was charged with the homicide by child
9 abuse, Your Honor.

10 The cause of death was hemorrhaging of the
11 brain. There was massive bleeding in the brain.
12 Basically all tests upon the girl's arrival at MUSC were
13 not conclusive as to whether she had brain function at
14 that time I believe, Your Honor, but they were unable to
15 fix the bleeding, Your Honor. It was also noted she had
16 bruising on her legs and abdomen that would be consistent
17 with the use of a belt having been used on her on that
18 day, Your Honor.

19 Ms. Laurent has no prior record. Again,
20 considerations that went into the plea negotiations were
21 her lack of a record, her obvious remorse about the
22 incident, Your Honor, and while she did make some
23 inconsistent statements, we believe that ultimately she
24 was forthright about what happened and she has shown up
25 for all her court dates since 2009, Your Honor.

1 THE COURT: All right. What would y'all like
2 to tell me?

3 MS. DOVELL: Thank you, Your Honor. May it
4 please the Court: Since this is a negotiated plea, I
5 will try to keep my statements brief, but just to correct
6 one small thing, MINOR was not naked when
7 Naticia found her in the hallway. It was later on when
8 Gene arrived at the home and saw that she had lost
9 control of her bodily functions he took her into the
10 bathroom to towel her off, and that is when EMS found her
11 when they arrived.

12 Your Honor, Naticia and I have talked about
13 the possibilities about whether this was a case she
14 wanted to try. I have spoken with the forensic
15 pathologist in this case. I've gone over all of the
16 evidence, even consulted another expert, another medical
17 examiner about this case, and we have gone over, you
18 know, what my role would be at trial and that Naticia
19 could testify and, in fact, probably should testify if we
20 were to try this case.

21 Given the nature of the facts, she has
22 decided to accept this plea. She is 26 years old, a
23 native of Jasper County, South Carolina. She graduated
24 from Jasper County High School, and I think about the
25 time of this incident she was about to continue with

1 classes at South University in Savannah. She's the
2 youngest of eight children, the mother of an almost
3 three-and-a-half-year-old son named Jaden. Her husband,
4 Gene Laurent, is here in the courtroom today, Your Honor.

5 This is certainly not a decision that has
6 come easily or been made lightly, especially since I
7 would say Naticia's family and her husband Gene stand in
8 full support of her. She is a woman of faith. We have
9 her pastor, Pastor Ronald Anderson, and his wife,
10 Shirley, here present with us today, Your Honor.

11 We have talked about this charge being a
12 violent, most serious, 85 percent offense, Your Honor.
13 You know, this is something that a young woman would
14 never dream of, and I don't think even in her worst
15 nightmare she could imagine standing here today. I've
16 been impressed by her remorse and that she has matured
17 since we met two years ago.

18 She served over 167 days in the Beaufort
19 County Detention Center, Your Honor. Ever since I have
20 met her, her husband Gene has been in her corner. The
21 only reason why I'm not asking this -- I'm asking you to
22 suspend the mandatory minimum 20 years is because of the
23 South Carolina Supreme Court ruling back in July, State
24 vs. Abel Jacobs. Even though Mr. Jacobs' case was about
25 burglary first, the Supreme Court ruled that we find

1 section 24-21-410 of the South Carolina code does not
2 give Courts the authority to suspend sentences for crimes
3 punishable by death or life imprisonment and this
4 includes crimes that include lesser sentences than death
5 or life imprisonment. I would imagine homicide by child
6 abuse falls within that category.

7 Even though Mrs. Laurent and her family, I
8 think, would have really appreciated the state's reducing
9 this to a lesser charge to get out of the realm of the
10 mandatory minimum and the potential of life in prison, we
11 are grateful that they have made the offer for a
12 negotiated 20 years.

13 We're saddened that the Court has -- Supreme
14 Court has made a ruling that takes away the discretion
15 for Circuit Court judges to consider the individual who
16 stands before the Court since Circuit Court judges would
17 be in the best position to evaluate the merits of the
18 person who is pleading guilty before them.

19 We certainly don't trivialize the loss of
20 **MINOR** but Naticia has a lot to offer her
21 family and her community, and by accepting this offer, we
22 assure that she will at one point be back in her
23 community to serve as a loving family member and member
24 of the community.

25 Naticia's mother, Jarlani Ford is here.

1 Also, her father is present in the courtroom, Your Honor.
2 I wanted to let you know, too, she had a bond reduction
3 hearing in May 2010. At that point we had all eight -- I
4 guess all seven brothers and sisters, nieces, nephews
5 uncles, aunts, members of the community, I think we took
6 up the entire half of this courtroom, Your Honor, who
7 stood in support of her. Because a negotiations in this
8 case were finalized within the past week, we have not --
9 her family members were not able to make arrangements to
10 be here today, plus being a negotiated plea, we felt
11 comfortable in having the few people here in the
12 courtroom.

13 As the solicitor said, we have made
14 arrangements with the Beaufort County Detention Center
15 for Ms. Laurent to report to the lobby every Friday until
16 October the 24th at 5 p.m. she will sign in, and if she
17 dot not appear that day or sign in with her photo ID,
18 then the solicitor's office will be made aware of that.

19 Your Honor, one thing that we did want to
20 ask, just to clarify on the record, is whether or not
21 bond stays in place, the conditions of bond stay in
22 place.

23 THE COURT: It does.

24 MS. DOVELL: Okay. So she understands what
25 her conditions of bond are, what they have been. I would

1 ask Your Honor just one modification, and that is Naticia
2 has a lot of her furniture and belongings at her mother's
3 home in Yemassee. If at all possible, if she could
4 actually help her husband physically move things to his
5 house in Bluffton, it would be less of a burden for him.
6 I would ask Your Honor to allow her to do that.

7 THE COURT: That's fine.

8 MS. DOVELL: Okay. Thank you very much, Your
9 Honor. I don't believe that anybody wishes to speak. It
10 is a negotiated plea. I think that that everybody is
11 satisfied, but just to make sure, is there anything
12 anybody wants to say?

13 THE COURT: Do you want to say anything,
14 Ms. Laurent?

15 THE DEFENDANT: No, sir.

16 THE COURT: All right. Well, I will accept
17 the negotiated plea.

18 The sentence of the Court is 20 years in the
19 department of corrections. You'll get credit for the 167
20 days that you've served. Allow you to report to SCDC no
21 later than October 24th of this year. You got to report
22 weekly to the Beaufort County Detention Center by 5:00 on
23 Fridays, and the bond remains in place until you report
24 to SCDC.

25 MS. DOVELL: Thank you, Your Honor. She'll

1 report to the Beaufort County Detention Center.

2 THE COURT: I'm sorry. That's fine.

3 MS. DOVELL: Okay. On October the 24th.

4 Thank you very much, Your Honor.

5 - - -

6 (Whereupon, the proceedings were concluded.)

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I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Beaufort County, South Carolina, on the 22nd of September 2011.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 27, 2012



Circuit Court Reporter

WITNESSES

Gruel - BPD

DOCKET NO. 2009GS0702249

The State of South Carolina

County of Beaufort

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

November Term 2009

Hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

J357051

THE STATE

VS.

Naticia Laurent

ACTING OF GRAND JURY
True Bill

Joan McQuerry

Foreperson of Grand Jury NOV 19 2009

VERDICT

Indictment for

Homicide by child abuse

SC Code: 16-03-0085(A)(1)(B)(1)
CDR Code: 2356

Defendant

Witness:

C.C.C. PLS. and G.S.

Foreperson of Petit Jury

Date:

INDICT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)

INDICTMENT
 2009GS0702249

At a Court of General Sessions, convened on November 19, 2009, the Grand Jurors of Beaufort County present upon their oath:

Homicide by child abuse

That in Beaufort County, South Carolina, on or about October 8, 2009, the Defendant, Naticia Laurent, did cause the death of MINOR a child who was under the age of eleven years at the time of her death, and that the defendant did cause the death of said child while committing child abuse or neglect, and the death of said child occurred under circumstances manifesting an extreme indifference to human life; in violation of Section 16-3-85, South Carolina Code of Laws (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

True Bill

[Signature]
 Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Beaufort
STATE VS.

Naticia Laurent

AKA:

Race: Sex: Age: 26

DOB: SS#

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / Homicide by child abuse (20Y to Life)

IN THE COURT OF GENERAL SESSIONS

20 years - Life

INDICTMENT/CASE#: 2009GS0702249

A/W#: J357051

Date of Offense: 10/8/2009

S.C. Code §: 16-03-0085(A)(1)(B)(1)

CDR Code #: 2356

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0085(A)(1)(B)(1) of the S.C. Code of Laws, bearing CDR Code # 2356

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

STEPHEN J. JEFFREY

72418 SC Bar#

Naticia Laurent Defendant

Heather Howell Attorney for Defendant

72094 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation formonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 167 Day☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling Jerr Ann Roseaneau - Clerk of Court

Random Drug/Alcohol testing Beaufort County, SC - LaSandra Young

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender Fund

Other: may report to SCDC NO later than 11/24/14
she must report weekly to Beaufort County
Detention Center, by 5 pm on Fridays;
Bond remains in place until she reports
to SCDC / Beaufort Co Det Center☐ Appointed PD or appointed other counsel,§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2134

Sentence Date: 9/22/14

FORM 5

STATE OF SOUTH CAROLINA)

County of Richland)Naticia Laurent # 348468)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

2012-CP-07-2351
IN THE COURT OF COMMON PLEASAPPLICATION FOR
POST-CONVICTION RELIEF12 JUN 25 PM 4:11
CLERK OF COURT
BEAUFORT COUNTY, S.C.INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Camille Graham Corr. Inst. - 4450 Broad River Rd. - Columbia, SC 29210
2. Name and location of Court which imposed sentence Beaufort County General Sessions - 102 Ribaut Rd. - Beaufort, SC 29902
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009 GS0702249 Homicide By Child Abuse
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) September 22, 2011 - 20 years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty yes
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. N/A
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. N/A
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. N/A
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) My attorney did not appeal on my behalf
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) My crime was an accident and my attorney did not
- ~~(b)~~ push the issue to the best of her ability.
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. N/A
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. N/A
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. N/A
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. N/A
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. N/A
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. N/A
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. N/A
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) NOT PROPER FORUM

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes

(b) your trial, if any? _____

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Helen R. Dovell - P.O. Box 525 - Beaufort, SC 29901

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. arraignment, plea, sentencing

ii. _____

iii. _____

19. State clearly the relief you seek in filing this application:

Reduce sentencing

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

I, Naticia Laurent, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Naticia Laurent

SWORN to and subscribed before me this 21st
day of June, 2012.

Kathleen R. Barnes
Notary Public

(L.S.)

My Commission Expires: My Commission Expires August 12, 2015

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Naticia Laurent, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Naticia Laurent
Applicant

SWORN or affirmed to and subscribed before me this
21st day of June, 2012.

Kathy R. Barner
Notary Public

My Commission Expires: My Commission Expires August 12, 2015

June 21, 2012

12 JUN 25 PM 4:17
J. J. ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Clerk of Court, Terri Ann Roseneau
P.O. Drawer 1128, Rm 208
Beaufort, SC 29901

Dear Ms. Roseneau,

Enclosed is my application for Post-Conviction
Relief. Please send me confirmation on date of
filing. Thanking you in advance.

Respectfully,
Naticia Laurent

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

2012-CP-07-2351

Naticia Laurent, #348468,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

RETURN

13 FEB 22 PM 3:12
 BEAUFORT COUNTY, S.C.
 CLERK OF COURT

The Respondent, making its Return to the application for post-conviction relief (PCR) filed June 25, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. The Applicant was indicted at the November 2009 term of the Beaufort County Grand Jury for homicide by child abuse (2009-GS-07-2249). Applicant was represented by Helen Roper Dovell, Esquire.

On September 22, 2011, the Applicant pled guilty as indicted. Applicant was sentenced by the Honorable Roger M. Young, Sr. to confinement for a period of 20 years. The Applicant did not appeal her conviction or sentence.

Attached herewith and incorporated herein are the records of the Beaufort County Clerk of Court regarding the subject conviction and the Applicant's records from the South Carolina Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.

- a. "My crime was an accident and my attorney did not push the issue to the best of her ability."

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their 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

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, 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 Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

[Signature on the following page.]

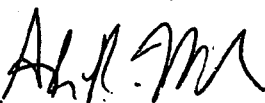
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

February 26, 20 13.

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

NATICIA LAURENT, #348468)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2012-CP-07-2351

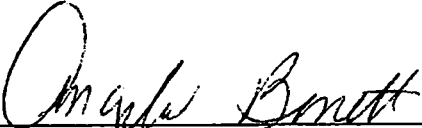
AFFIDAVIT OF SERVICE BY

13 FEB 22 PM 3:12
CLERK OF COURT
BEAUFORT COUNTY, S.C.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Robert E. Stevens, Esquire
P.O. Box 7788
Hilton Head Island, South Carolina 29938

DATED this 20th day of February, 2013


 Angela Bennett, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF COMMON PLEAS
CASE NO. 2012-CP-07-02351

NATACIA LAURENT

APPLICANT

VERSUS

APRIL 4, 2013

TRANSCRIPT OF POST-CONVICTION

RELIEF HEARING

BEAUFORT, SOUTH CAROLINA

STATE OF SOUTH CAROLINA

RESPONDENT

B E F O R E:

HON. PERRY M. BUCKNER, JUDGE

A P P E A R A N C E S:

ON BEHALF OF THE STATE:

HON. ASHLEIGH R. WILSON

ON BEHALF OF APPLICANT:

HON. LARRY W. WEIDNER II

ORIGINAL

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

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Keyword Index

EXHIBITS

No exhibits were admitted.

1 BEGINNING 9:12 A.M.

2 BY THE COURT:

3 THE COURT: Good morning. Please be seated. Good
4 morning, Counsel. Take a seat. Bring your client.

5 All right. Wanda, you ready?

6 COURT REPORTER: Yes, sir.

7 THE COURT: Atta girl. This is 2012 at 2351, in
8 Beaufort. This is Natacia Laurent versus the State of
9 South Carolina. Present before me is Larry Weidner,
10 representing the applicant. Also present is Natacia
11 Laurent. Present for the State of South Carolina is
12 Ashleigh Wilson.

13 I have read the application and the return. Mr.
14 Weidner, you may call your first witness.

15 MR. WEIDNER: Yes, sir. Prior to doing that, I
16 would respectfully request that we continue the matter
17 until the next hearings on PCRs.

18 THE COURT: On what grounds, Mr. Weidner?

19 MR. WEIDNER: Sir, I have not had sufficient time
20 to completely educate and discuss the matters with my
21 client. And if you'd like me to lay that out, I'll be
22 glad to.

23 THE COURT: When were you appointed?

24 MR. WEIDNER: September 11th.

25 THE COURT: And have you communicated with your

1 client prior to today, Mr. Weidner?

2 MR. WEIDNER: I have.

3 THE COURT: And why have you not had sufficient
4 time, in your opinion, to educate your client?

5 MR. WEIDNER: Sir, I was appointed on September
6 11th.

7 THE COURT: Of 2012?

8 MR. WEIDNER: Yes, sir.

9 THE COURT: On September the 19th 2012, I requested
10 the standard packet from SCDC and everyone else.

11 THE COURT: Which you have.

12 MR. WEIDNER: And I have it. I received it on or
13 -- it would have had -- I don't have a date stamped for
14 whatever reason, but I know I would have -- I received
15 it somewhere probably within the first ten days of March
16 of this year.

17 THE COURT: I see.

18 MR. WEIDNER: Because on March the 11th, I sent it
19 to my client, along with a package of information.

20 THE COURT: Hold on one second. Ms. Wilson, when
21 did you forward the packet to Mr. Weidner, since he
22 can't give me a date? He just tells me when he sent it
23 to his client.

24 MS. WILSON: Yes, Your Honor. As far as I know, we
25 sent it when we filed our return, which was on February

1 20, 2013.

2 THE COURT: All right.

3 MR. WEIDNER: So, that's within the -- like I said,
4 when I get these in, it's my practice to review the
5 material, to review the transcript of trial, prepare a
6 package of information to send to my client, so that I
7 can educate my client and have meaningful discussions
8 with my client, which I did. I sent that letter on
9 March 11th.

10 My client had been moved from the correctional
11 facility that she was located at, to another one up in
12 Greenwood. So, there was a delay in getting -- in her
13 getting the materials. And then, I had -- I was hopeful
14 -- I made a series of phone calls. We tried to
15 communicate, but of course, the line, we're only limited
16 to --

17 THE COURT: I'm very aware of the telephone
18 situation. I'm aware your client came through
19 Greenwood. I'm also aware that this matter's been
20 pending for some time. Anything else you want to tell
21 me on the grounds for a continuance, other than that you
22 don't feel you've had sufficient time to educate your
23 client?

24 MR. WEIDNER: And my client does not object to the
25 continuance. And there would be --

1 THE COURT: Your client is making the motion for a
2 continuance. It's not a question of whether she objects
3 to it or not. I would expect you to espouse the views
4 of your client, Mr. Weidner.

5 MR. WEIDNER: Yes, sir.

6 THE COURT: Take a seat.

7 MR. WEIDNER: Yes, sir.

8 THE COURT: What's the State's position on the
9 motion for continuance?

10 MS. WILSON: Your Honor, the State would object to
11 this motion for a continuance. As we -- as I stated
12 earlier, the information was provided to Mr. Weidner on
13 February 20th, after the filing of my return. Your
14 Honor, it's a guilty plea. It's not an extensive record
15 that needs to be reviewed for this hearing. So, we
16 would just request that we proceed today.

17 THE COURT: Mr. Weidner, I understand that you want
18 time, because I, of course, have been appointed, I don't
19 even know how many times. I started my career, Mr.
20 Weidner, and got banished for about three months into
21 the Post-conviction Relief section of the Attorney
22 General's office. So, I'd love to know -- my law clerk
23 doesn't like for me to talk about my age, and my son's
24 say I'm past the speed limit, but I've done it for
25 awhile, and I certainly believe in having time to

1 prepare; but you haven't shown me any sufficient legal
2 prejudice that would require us to delay this hearing,
3 in light of what I hear from the State. Your motion is
4 respectfully denied. Call your first witness.

5 MR. WEIDNER: Sir, may I just visit with my client
6 just for ten minutes.

7 THE COURT: I gave you ten minutes to visit with
8 your client, and started this hearing 15 minutes late to
9 allow you to do so.

10 MR. WEIDNER: Yes, sir.

11 THE COURT: I'll give you one more minute, Mr.
12 Weidner, but it's time to fish or cut bait.

13 MR. WEIDNER: I see.

14 THE COURT: Let's proceed.

15 MR. WEIDNER: Yes, sir.

16 THE COURT: There are other people waiting behind
17 you.

18 MR. WEIDNER: Yes, sir.

19 MR. WEIDNER CONFERRING WITH DEFENDANT.

20 MR. WEIDNER: Sir, my client --

21 MR. WEIDNER CONFERRING WITH DEFENDANT.

22 MR. WEIDNER: Sir, my client would respectfully
23 request to withdraw her post-conviction relief.

24 THE COURT: Have you advised your client that, if
25 she withdraws this request, that anything she raised or

1 could have raised in this application, that she would be
2 barred from a successive application if she decides to
3 withdraw?

4 MR. WEIDNER: I have, sir.

5 THE COURT: She understands that, in your opinion?

6 MR. WEIDNER: If I could have just one more
7 minute, sir.

8 MR. WEIDNER CONFERRING WITH DEFENDANT.

9 MR. WEIDNER: Sir, I call my client to the witness
10 stand.

11 THE COURT: Are you withdrawing your application
12 or not?

13 MR. WEIDNER CONFERRING WITH DEFENDANT.

14 THE COURT: We're either going forward with the
15 hearing or it's withdrawn, one of the two, Mr. Weidner.
16 No, you need to talk to me now.

17 MR. WEIDNER: Yes, sir.

18 THE COURT: I've given you three requests now for
19 additional time to talk to your client. What is your
20 position? Are we going forward with the hearing?

21 MR. WEIDNER: Yes, sir.

22 THE COURT: Or does she wish to withdraw?

23 MR. WEIDNER: We'll go forward, sir.

24 THE COURT: Very well. Call your first witness.
25 I'm more than willing to hear you, sir. Please come

1 forward and be sworn by the clerk of court.

2 MADAM CLERK: Please place your left hand on the
3 Bible. Raise your right hand. Do you solemnly swear or
4 affirm that the testimony you give to the Court in this
5 trial should be the truth, so help you God?

6 DEFENDANT LAURENT: Yes.

7 THE COURT: Watch your step. He's going to help
8 you. There's a stair right there. I want you to have a
9 seat. He's going to make sure you don't -- it's a
10 little tricky and close. Have a seat. He's going to
11 pull the chair up. I want you to speak into that
12 microphone.

13 DEFENDANT LAURENT: You can hear me, can't you?

14 DEFENDANT LAURENT: Yes, sir.

15 THE COURT: And I want to be able to hear you,
16 because I want to listen to you, and that microphone's
17 going to amplify your voice. I want you to speak up, so
18 everybody in my courtroom can hear you. Please begin by
19 stating your full name and spelling your last name for
20 the court reporter.

21 DEFENDANT LAURENT: Natacia Laurent. My last name
22 is spelled L/a/u/r/e/n/t.

23 THE COURT: Very good. Your witness, Counsel.
24 Direct Examination

25 MR. WEIDNER: Thank you, sir.

1 DEFENDANT NATICIA LAURENT

2 DIRECT EXAMINATION BY MR. WEIDNER:

3 Q. Ms. Laurent, you were -- you were charged with a
4 homicide by child abuse, correct?

5 A. Yes.

6 Q. And did you ultimately plead guilty to that charge?

7 A. Yes.

8 Q. And that was in September of 2011.

9 A. Yes.

10 Q. Now, let's talk about the events leading up to your
11 plea. Okay. Had you been discussing the facts of your
12 case with your counsel?

13 A. Yes.

14 Q. And what discussions had you had about the
15 ramifications of a guilty plea?

16 A. That if I took the guilty plea based on my charge,
17 I would be doing 85 percent of that time. And that's
18 all I can remember right now.

19 Q. Okay. Well, let me help you. Tell the Court why
20 your discussions were about a suspended sentence.

21 A. I don't remember. I'm sorry. I'm really nervous
22 right now. I can't remember.

23 Q. It's okay. Take a breath and try and calm down.

24 Do you recall having discussions with your counsel
25 involving whether or not you could ask for a suspended

1 sentence?

2 A. I did.

3 Q. And did you believe that by pleading guilty, you
4 would ask for a suspended sentence?

5 A. At first, yes.

6 Q. Now, you say at *first*. Did that belief, at some
7 point, change?

8 A. It did.

9 Q. When was that?

10 A. It was during the summer of 2011. Something
11 happened to where -- and with the Supreme Court, you
12 couldn't get a suspended sentence on anything that
13 carries 20 years to life. That's all I remember.

14 Q. Well, let me ask you this. When you all were
15 discussing the negotiations for your sentence, were you
16 under the impression that, somehow, you would be able to
17 argue for a suspended sentence?

18 A. Yes, sir, at first.

19 Q. And was that something that you considered in
20 entering into your guilty plea?

21 A. I did.

22 Q. All right. And but for your belief that your
23 counsel could ask for the suspended sentence, whether by
24 reduction of the charge or otherwise, would you have
25 pled guilty?

1 A. If I believed I could have got it reduced, I
2 wouldn't have pled guilty.

3 Q. And did you feel that you had sufficient time to
4 communicate with your lawyer to get a clear
5 understanding of the ram -- of all the circumstances
6 surrounding your guilty plea?

7 A. Yes.

8 MR. WEIDNER: I have no further questions.

9 THE COURT: Very well. Cross-examination.

10 MS. WILSON: Thank you, your Honor.

11 DEFENDANT NATICIA LAURENT

12 CROSS-EXAMINATION BY MS. WILSON:

13 Q. Ms. Laurent, do you know how many times you met
14 with your attorney before you pled guilty?

15 A. I can't count. No, ma'am, I don't.

16 Q. Did you meet with her frequently?

17 A. Yes.

18 Q. And do you recall her revealing what evidence the
19 State had against you, with you?

20 A. Yes.

21 Q. And do you recall her discussing maybe some
22 possible defenses that you all could present if you went
23 to trial?

24 A. Say that again.

25 Q. Did she talk to you about what type of defenses she

1 could present for you if you went to trial?

2 A. She did, but I can't remember.

3 Q. And did you give her any witnesses or anything to
4 investigate?

5 A. Not that I remember.

6 Q. And did she discuss with you the plea offers that
7 were received from the State?

8 A. Yes.

9 Q. Was it your decision to plead guilty that day?

10 A. It -- it was.

11 Q. Do you recall telling the plea judge that you were
12 guilty?

13 A. When I was asked the question, yes.

14 Q. Do you recall waiving your constitutional rights
15 when you were pleading guilty? That would include your
16 right to a jury trial, right to remain silent. Do you
17 recall that?

18 A. Yes.

19 Q. Do you recall telling the judge that you didn't
20 need any additional time to speak to your attorney
21 before you pled guilty?

22 A. I really don't remember that.

23 Q. Did your attorney tell you about the potential
24 sentence for your charge? Did she tell you what -- how
25 much time you were facing?

1 A. Yes.

2 Q. And you said that, initially, you discussed
3 requesting the suspended sentence. That's correct?

4 A. Yes.

5 Q. But then, she told you there was a change in the
6 case law, so that she wouldn't be able to request that.

7 A. Yes.

8 Q. And you discussed this before you pled guilty. Is
9 that correct?

10 A. Yes.

11 MS. WILSON: Nothing further from the State.

12 THE COURT: Redirect.

13 DEFENDANT NATICIA LAURENT

14 RE-DIRECT EXAMINATION BY MR. WEIDNER:

15 Q. Mrs. Laurent, do you recall whether or not the
16 judge discussed with you the mandatory minimum sentence
17 that you could receive?

18 A. Say that again.

19 Q. Do you recall whether or not the judge, when he was
20 going through all the questions he asked you, did he
21 discuss -- he discussed the maximum you could receive,
22 right?

23 A. Yes.

24 Q. Do you recall whether or not he discussed with you
25 the minimum sentence that you could receive?

1 A. I don't recall that. I don't remember.

2 MR. WEIDNER: No further questions.

3 THE COURT: Re-cross, limited to redirect.

4 MS. WILSON: Nothing further, your Honor.

5 THE COURT: Very well. Help her please. Step
6 down, if you would, please, ma'am. Watch your step when
7 you're stepping down from the witness stand.

8 Call your next witness, Mr. Weidner.

9 MR. WEIDNER: Yes, sir. Call Ms. Dovell.

10 THE COURT: Good morning.

11 HON. HELEN ROSE ROPER DOVELL: Good morning, your
12 Honor.

13 THE COURT: Would you come around to be sworn by
14 the clerk, please.

15 MADAM CLERK: Put your hand on the Bible. Raise
16 your right hand. Do you solemnly swear or affirm that
17 the testimony you give to the Court in this trial shall
18 be the truth, so help you God?

19 MS. DOVELL: I do.

20 THE COURT: Watch your step for me.

21 Ms. DOVELL: Yes, sir.

22 THE COURT: Be real careful.

23 MS. DOVELL: I think I got it.

24 THE COURT: State your full name for me, and spell
25 your last name for the court reporter.

1 MS. DOVELL: My name is Helen Rose Roper Dovell.
2 And my last name is spelled D/o/v/e/l/l.

3 THE COURT: Your witness, Mr. Weidner.
4 Direct examination.

5 HON. HELEN ROSE ROPER DOVELL

6 DIRECT EXAMINATION BY MR. WEIDNER:

7 Q. Ms. Dovell, you were the counsel for the Natacia
8 Laurent?

9 A. Yes.

10 Q. And in the preparation for the trial of the case,
11 did you have a series of discussions with her about
12 possible plea agreements?

13 A. Yes.

14 Q. And can you tell the Court briefly what those
15 discussions encompassed.

16 A. Yes, I can. Initially, the State offered a
17 negotiated 20-year sentence. And that, I believe, was
18 back maybe April 2010, I believe. At that point in
19 time, I talked to Natacia about arguing for a suspended
20 sentence, because I believed that I could at that point
21 in time. I believed the solicitor's office believed
22 that I could at that point in time, argue for a
23 suspended sentence. And we arrived in court, and that
24 was what we were going to do, even though the State had
25 offered a negotiated 20 years, I had let Ms. Tanner know

1 that I would prefer just to argue straight up, so that I
2 could argue for a suspended sentence. I believed, and I
3 still believe to this day, that there -- it was
4 substantial mitigation in Naticia Laurent's case. I
5 think if anybody were to receive a suspended sentence,
6 it would be and it should be her.

7 We were prepare to go forward with the plea, but
8 unfortunately, at that point, Mrs. Laurent believed that
9 it was in her best interests not to -- to plead guilty.
10 And so, we went on the record and asked for a trial.
11 Probably about a year or so -- over a year passed. We
12 got to August, September 2011, and the solicitor's
13 office contacted me about how -- how we're going to
14 resolve Ms. Laurent's case. They said, well, you know,
15 we'll go ahead and we will -- we'll recommend 20 years;
16 you argue for a suspended sentence. And at this point,
17 I believe I became ineffective, and this ineffectiveness
18 prejudiced my client.

19 There is a case called *State v. Able Jacobs* that
20 came out that summer. And it was about a burglary first
21 charge. The burglary first carries 15 to life, and the
22 Court held, well, when it comes to charges that carry a
23 possibility of life imprisonment, whether or not there
24 is a -- a mandatory minimum and a life in prison,
25 whether or not there's a lesser part to it, being the

1 mandatory minimum, there -- the State cannot -- a judge
2 cannot suspend a sentence.

3 I think I -- I just stated that pretty
4 unarticulately [sic], but that's the gist of it, is
5 that, when there is a charge that has a mandatory
6 minimum and the potential of life imprisonment or death,
7 then, you cannot suspend the sentence.

8 So, at that point in time, I -- I told the
9 solicitor, well, I would love to argue for a suspended
10 sentence, but I don't believe I can. I take my oath of
11 candor to my colleagues and to the Court very seriously.
12 And I informed the solicitor's office of this case.

13 They came back and said, okay, well maybe -- this
14 is a deputy solicitor I spoke with -- he said, Well,
15 maybe I can get the charge reduced to a voluntary
16 manslaughter. And I said, That would be wonderful. And
17 he said, Well, maybe we could negotiated something, 16
18 to 18 years. I said, you know, I will take it to my
19 client; any sort of reduction in charge would be
20 wonderful.

21 I believe that the deputy solicitor -- at least he
22 told me he went to the elected solicitor and he
23 forthrightly said, Absolutely not; we're not going to
24 reduce this charge; best we'll do is negotiate a 20, and
25 that's it.

1 And so, I was a bit crestfallen. I don't believe
2 the solicitor's office dealt with me in as good a faith
3 as I had dealt with them, but who knows? The
4 solicitor's office doesn't ever have to offer a plea
5 offer or anything.

6 So, in any event, I went to my client and said,
7 *Unfortunately, they're only offering a negotiated 20*
8 *years; I believe, at this point in time, 20 years is the*
9 *best that we could do, whether we go forward with a*
10 *plea, whether we go to trial.*

11 Obviously, at trial, we could hope to be found --
12 we should be found not guilty, but as far as sentencing
13 goes, 20 would be -- would be it.

14 Q. Now, so, at least for the time leading up to the
15 first court appearance, Ms. Laurent was under the
16 impression, in your opinion, that you could argue for a
17 suspended sentence.

18 A. That's right.

19 Q. And then, she would have been under that impression
20 for the intervening year, again, leading up to the
21 guilty plea.

22 A. I believe -- and I can't recall. I can't remember
23 if I called her when that case came out, or if I
24 contacted her again when the solicitor's office
25 contacted me. But as soon -- she was informed prior to

1 the guilty plea that I did not believe I could argue for
2 the suspended sentence.

3 Q. And you reached that belief based upon assessment
4 that you made of a case that had come down from the
5 Supreme Court?

6 A. That's right.

7 Q. All right. So, that was a judgment call that you
8 made that you could not argue for a suspended sentence.

9 A. That's right.

10 Q. And based upon that, you did not argue for a
11 suspended sentence.

12 A. I did not.

13 Q. Now, had you heard -- or have you heard of other
14 incidences of cases similar to this one subsequent to
15 Ms. Laurent's plea where defense counsel were successful
16 in arguing for suspended sentences?

17 A. I know at least one instance, and this is the only
18 one I know of. I remember reading in a newspaper, in
19 *The Post and Courier*, that, out of Charleston County,
20 there was a homicide-by-child-abuse case where defense
21 counsel successfully argued for a suspended sentence on
22 a homicide-by-child abuse case, and the judge granted a
23 suspended sentence. And I want to say that it was a
24 substantial suspension, in that, I think -- I believe
25 the defendant received nine years. Suspended to 20 and

1 received nine, or something along those lines.

2 Needless to say, my heart just fell out of my
3 chest, because I -- I still believe that Natacia Laurent
4 does not deserve 20 years.

5 Q. Now, if you could go back, would you change the
6 course of your representation and argue for a suspended
7 sentence?

8 A. I would. Despite the case, in hindsight, I would
9 have argued for a suspended sentence at this point.

10 Q. And based upon the evidence that you have testified
11 that you had in litigation, you think that there may
12 have been -- there would be a change in the outcome.

13 THE COURT: Counsel, this is direct examination,
14 now. Let's not testify. Ask direct questions of the
15 witness.

16 MR. WEIDNER: Thank you, sir.

17 BY MR. WEIDNER:

18 Q. What, if any, change, in the outcome of the trial
19 or the sentence do you think would happen, if you had
20 been allowed to argue for -- or if you had made the
21 decision to argue for the suspended sentence?

22 A. As I said, there's substantial mitigation in Ms.
23 Laurent's case. The State of South Carolina is, I
24 believe, the only party that was involved in this case
25 that wanted her to do substantial prison time. Her

1 husband certainly did not want her to do substantial
2 prison time, if any at all, and he is the biological
3 father of the deceased.

4 She has substantial contacts to the community. She
5 has, I believe, seven brothers and sisters. I see her
6 mom in the courtroom today. She was involved in her
7 church community. She is a high school graduate. She
8 was getting ready to attend her sophomore year of
9 college. Just all-around a bright, intelligent young
10 lady, who is really, I'm sure that the people at the
11 Department of Corrections find her lovely, but I think
12 that the State is not served by having her locked away
13 for 20 years. Neither is she, and neither is her now
14 almost five-year-old son.

15 I believe that this mitigation could have perhaps
16 persuaded a judge to give her a suspended sentence.

17 MR. WEIDNER: Thank you. No further questions.

18 THE COURT: Cross-examination.

19 MS. WILSON: Thank you, your Honor.

20 HON. HELEN ROSE ROPER DOVELL

21 CROSS-EXAMINATION BY MS. WILSON:

22 Q. Ms. Dovell, how long have you been practicing law?

23 A. At this point, I believe it's been -- let's see,
24 2004. Eight-and-a-half years.

25 Q. And have you spent a lot of your career doing

1 criminal law?

2 A. I've been practicing criminal law for about five-
3 and-a-half years.

4 Q. And you were appointed to represent Ms. Laurent.

5 A. That's right. The Public Defender's Office was
6 appointed, and I was assigned to represent her.

7 Q. And how many times do you think you met with her
8 before trial -- I mean, before she pled guilty?

9 A. Oh, goodness. I have notes, and I didn't count,
10 but I met with her several times while she was
11 incarcerated at the detention center. And then, I met
12 with her several times while she was out on bond. And
13 we've spoken over the telephone, as well.

14 Q. And did you file *Brady* or *Rule 5* motions on her
15 behalf?

16 A. I did.

17 Q. And did you ever review this discovery that you had
18 received with her?

19 A. I did.

20 Q. Did you discuss the elements of the charges against
21 her and what the State was required to prove?

22 A. I did.

23 Q. Did you discuss her version of the facts?

24 A. Yes.

25 Q. Did you discuss any possible defenses with her?

1 A. Yes.

2 Q. And can you briefly characterize the evidence of
3 the State against her.

4 A. I can. She was charged with homicide by -- or,
5 excuse me. She was charged with -- oh, goodness. She
6 -- it was homicide-by-child abuse was the ultimate
7 charge, but initially, with the -- the more aggravated
8 child neglect -- or child abuse statute. I'm sorry. I
9 can't remember the exact title of it.

10 Essentially, she was at home with MINOR who is
11 her four-year-old stepdaughter, and she was teaching her
12 her lessons. MINOR is from Haiti and spoke French,
13 and she was learning to -- learning English. So, Ms.
14 Laurent was helping her with her lessons and helping her
15 learn English.

16 At some point in the morning, I think that Ms.
17 Laurent might have asked her to go to her room or put
18 her in time out because she wasn't doing -- performing
19 her lessons properly. She was getting things wrong.
20 And I guess, at some point, told her to go to her room.
21 And I believe at one point the child was in the
22 bathroom, kind of splashing around in water, and got
23 water on her clothes.

24 Ultimately, I believe my client gave a statement
25 that said that she pushed MINOR down. Although, what

1 sort of degree of strength she used was questionable.

2 But **MINOR** fell and hit her head in the bathroom on the
3 tub. And then, **MINOR** got up, and I believe she pushed
4 her again at that point. And then, I think she sent her
5 to her room. And it was -- she didn't go to her room.

6 And at some point, she had punished her with a
7 belt. I think that was after the bathroom incident.
8 And it was a few minutes after that that Mrs. Laurent
9 found her in the hallway, unresponsive, that she had
10 lost control of her bodily functions. And I believe at
11 that point she called her husband. And she called 911
12 immediately after that. And so, she was the one who
13 actually called for -- for help.

14 I think that -- she gave multiple statements to law
15 enforcement. She had said -- she made spontaneous
16 remarks to EMS personnel, or not necessarily to them,
17 but just I think she was in such a state of shock, she
18 was, *I shouldn't have beat her; I shouldn't have hit*
19 *her; I shouldn't have taken her out of punishment.* Just
20 lots of spontaneous statements that were recorded.

21 The 911 call was recorded. There were multiple
22 witnesses who could have testified to the things that
23 she had said. I think at one point she said that
24 **MINOR** may have fallen over a deflated basketball in
25 the hallway.

1 So, there were -- there are a myriad of different
2 statements, but I think, ultimately, the one that she
3 stuck with was that she was pushed a couple of times in
4 the bathroom and hit her head.

5 Q. Okay. Do you recall if Ms. Laurent gave you any
6 potential witnesses or anybody to investigate?

7 A. No one to investigate, but I did speak with her
8 husband. I spoke with the forensic pathologist in the
9 case. I spoke with the lead investigator for City of
10 Beaufort.

11 Q. And you entered plea negotiations on her behalf.
12 That's correct?

13 A. That's correct.

14 Q. And can you -- can you review again what the State
15 initially offered.

16 A. Initially, they offered negotiated 20. And I said,
17 well, thank you very much for that, but we are going to
18 argue straight up -- or plead straight up and argue for
19 a suspended sentence.

20 Q. Okay. And once you got to that plea proceeding,
21 you testified that Ms. Laurent didn't want to plead
22 guilty?

23 A. At that point, she had decided not to.

24 Q. Not to plead guilty?

25 A. Not to plead guilty. I'm sorry.

1 Q. Okay. Sorry. And you communicated all these
2 offers to Ms. Laurent?

3 A. That's right.

4 Q. Okay. And did you inform her of the consequences
5 of her plea?

6 A. I did.

7 Q. Did you inform her of her constitutional rights?

8 A. I did.

9 Q. Did she ever indicate she didn't understand a part
10 of the proceeding or what was going on before?

11 A. No. She was always real good about telling me.
12 Like, if she didn't understand something or needed some
13 clarification, we'd go back over it.

14 Q. And was it your advice to Ms. Laurent to take the
15 guilty plea?

16 A. My advice to her was to plead guilty. That's
17 correct.

18 Q. And did you think it was her decision to plead
19 guilty that day?

20 A. I do.

21 Q. And you testified that it was your understanding of
22 the case law at that time that you couldn't request a
23 suspended sentence?

24 A. That's right. After *Jacobs*, *State v. Jacobs*, came
25 out, I did not believe, because of the last paragraph in

1 that -- in that -- in that opinion, I believe that the
2 Court, the Supreme Court, applied their finding to all
3 cases, not just the burglary first, all charges which
4 carry a mandatory minimum and the potential of life
5 imprisonment.

6 Q. And you told this to Ms. Laurent before she pled
7 guilty?

8 A. I did.

9 Q. And she still decided to plead after you told her
10 that.

11 A. She did.

12 Q. And you also gave some testimony about some
13 mitigation evidence in Ms. Laurent's case. Is that
14 correct?

15 A. That's right.

16 Q. And you presented that to the Court during her
17 guilty plea; did you not?

18 A. I did.

19 Q. And you also, on the record, advised your --
20 advised the Court of your understanding of the case law
21 after *State v. Able*. Is that -- or *State v. Jacobs*. Is
22 that correct?

23 A. That's right.

24 MS. WILSON: Nothing from the State, your Honor.

25 THE COURT: Re-direct.

1 MR. WEIDNER: No, sir.

2 HON. HELEN ROSE ROPER DOVELL

3 EXAMINATION BY THE COURT:

4 THE COURT: Mrs. -- well, some say Roper, but it's
5 Ms. Dovell.

6 A. Dovell.

7 THE COURT: Dovell. Ms. Dovell, you are familiar
8 with *Code Section 24-21-410* of the code. Are you not?

9 A. I am.

10 THE COURT: You're aware that that code section,
11 which says after conviction or plea for any offense,
12 except for a crime punishable by death or life
13 imprisonment, the judge of a court with criminal
14 jurisdiction, at the time of the sentence, may suspend
15 the imposition of the sentence and impose probation.

16 You're aware that that provision, even though it
17 was amended in 2010, prior to the *Jacobs* case, has been
18 the law of the State of South Carolina since 1942,
19 thereabout?

20 A. I was not aware that it was 1942, your Honor, but I
21 believe the statute was the same.

22 THE COURT: It was in the 1942 code, Ms. Dovell.
23 Would you like to look at it?

24 A. No, sir, your Honor. I was well aware of that
25 section beforehand. If I may, it was just my

1 understanding that the court had not interpreted that
2 section to preclude a suspended sentence for a homicide
3 by child abuse.

4 THE COURT: But it set -- the language in the
5 original section says for any offense. Now, you're
6 correct that the *Jacobs* case, which you have referred
7 to, dealt with a burglary first, which caused a great
8 deal of comment among the Bar. But the statute dealt
9 with any criminal offense punishable by death or life in
10 prison. Would you not agree?

11 A: Yes, sir.

12 THE COURT: Very well. Any additional questions,
13 in light of the Court's questions, from counsel for the
14 applicant?

15 HON. HELEN ROSE ROPER DOVELL

16 RE-DIRECT EXAMINATION BY MR. WEIDNER:

17 Q. So, would that cause you to believe that you could
18 have argued for a suspended sentence?

19 A. It was my understanding that previous attorneys had
20 argued successfully for suspended sentences, and I
21 believe the State, at that time, believed that I could
22 have argued for a suspended sentence, as well, prior to
23 *Able Jacobs*.

24 Q. So, that would -- so, that would have affected the
25 advice that you gave your counsel regarding her guilt --

1 or gave your client regarding her plea of guilty.

2 A. I have always advised my client that I could never
3 promise her as to outcome; that the statute does say
4 what it says; that -- that she could receive life
5 imprisonment; she could receive a mandatory minimum of
6 20 years; but there was also perhaps a possibility that
7 we could argue for a suspended sentence. That was all
8 my understanding prior to -- to *Jacobs*.

9 Q. And that was the understanding that she would have
10 had for the two years leading up to the trial.

11 A. That -- well, to her plea.

12 THE COURT: Counsel, you said trial. This was a
13 negotiated plea.

14 MR. WEIDNER: Plea. Right, sir.

15 THE COURT: You mean that -- are you referring to
16 the plea?

17 MR. WEIDNER: Plea, yes, sir.

18 BY MR. WEIDNER:

19 A. My under -- I -- I was very candid with my client.
20 Whatever my understanding of the law was, I informed her
21 of that.

22 MR. WEIDNER: Thank you. No further questions.

23 THE COURT: Any additional questions from counsel
24 for the State of South Carolina?

25 MS. WILSON: One question, your Honor.

1 HON. HELEN ROSE ROPER DOVELL

2 RE-CROSS-EXAMINATION BY MS. WILSON:

3 Q. So, Ms. Dovell, at the -- at Ms. Laurent's guilty
4 plea, she understood that you couldn't request a
5 suspended sentence. That's correct? Or it was your
6 understanding.

7 A. From my understanding.

8 MS. WILSON: Okay. Thank you, your Honor.

9 BY THE COURT:

10 THE COURT: Thank you very much. You may step down
11 from the witness stand.

12 A. Thanks, Judge.

13 THE COURT: Be careful on that step. Call your
14 next witness, Mr. Weidner.

15 MR. WEIDNER: The applicant rests, sir.

16 THE COURT: All right. Ms. Wilson, on behalf of
17 the State of South Carolina, you may call your first
18 witness.

19 MS. WILSON: Nothing from the State, your Honor.

20 THE COURT: Very well. Both of you ought to know,
21 or are aware, I think I understand the issue pretty
22 clearly in Ms. Dovell's testimony, as well as testimony
23 of Ms. Laurent.

24 I assume that you both are aware of 24-21-410 of
25 the Code of Laws of South Carolina. It was amended, and

1 it was amended in 2010. However, the sentence which
2 begins that section, which is the subject matter of the
3 issue before the Court today, has remained there for
4 some time. It was originally in the 1942 code, and the
5 '52 code, and the '62 code, and the '76 code.

6 There's always a lot of interpretive disparity in
7 the law. That is, different lawyers have different
8 opinions. And Mr. Weidner, I know it'd be a shock to
9 you, different judges have different opinions. However,
10 the definitive precedent in our state obviously comes
11 from the South Carolina Supreme Court when we're talking
12 about the interpretation of a statute.

13 Given that, Im going to ask you both to do as
14 follows. Take our your pen. Please submit proposed
15 orders to me. Please submit them to me at P.O. Drawer
16 470, Walterboro, 29488. That's P.O. Drawer 470,
17 Walterboro, 29488.

18 Please copy opposing counsel on any transmittal to
19 the Court. Please include a working copy for my law
20 clerk. His name is Camden Hodge, same address, Drawer
21 470, so that he has a working copy of your proposed
22 order, and the Court does, also.

23 Please include a self-addressed, stamped envelop,
24 with sufficient postage affixed thereto, for the return
25 of the proposed order. Do not send me, Mr. Weidner, Ms.

1 Wilson, a 50-page order, and send me an envelop with one
2 stamp on it, and then tell me your secretary did it or
3 your paralegal did it. You're responsible to put
4 sufficient postage on there, since the judges have to
5 pay their own postage. So, make sure you mail me the
6 envelop with sufficient postage, if you decide to be
7 verbose, as some members of the Bar like to do.

8 If you would like to comply with the time deadline
9 of ten days, you may email me your order at
10 pbucknerj@sccourts.org. I would also ask that you email
11 my law clerk, Camden Hodge, a copy at
12 pbucknerlc@sccourts.org.

13 If you email me, you must copy opposing counsel.
14 You will still need to snail mail me an envelop with
15 sufficient postage affixed thereto, but you can use
16 email to comply with the ten-day requirement of your
17 proposed order.

18 Obviously, any communication to the Court, whether
19 it be by email or United States mail, opposing counsel
20 has to be copied on any communication, regardless of the
21 vehicle you use.

22 I have with me, in my packet, which I will take
23 back to my chambers, the application of Ms. Laurent for
24 post-conviction relief; the return. I have the sentence
25 sheet and the transcript, which I understand, Mr,

1 Weidner, you've had since February. I recognize that
2 your client moved, and she now has it, or you will see
3 that she has it, before you leave here today.

4 I look forward to getting your proposed order. Is
5 there any questions about the proposed order procedure
6 from counsel for the applicant?

7 MR. WEIDNER: No, sir.

8 THE COURT: Any questions about the proposed order
9 procedure from counsel for the State of South Carolina?

10 MS. WILSON: No, your Honor.

11 THE COURT: Very well. This concludes the hearing
12 in connection with this matter. I'll look forward to
13 receiving your orders within ten days.

14 END 9:50 A.M.

CERTIFICATE OF REPORTER
APRIL 4, 2013 TRANSCRIPT OF
POST-CONVICTION RELIEF HEARING

STATE OF SOUTH CAROLINA

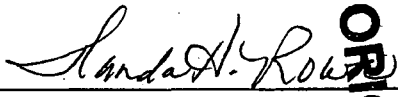
COUNTY OF BEAUFORT

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing April 4, 2013 Transcript of Post-Conviction Relief Hearing is a true, accurate, and complete record of the proceedings had on said in the case of Naticia Laurent versus State of South Carolina, Beaufort County, Court of Common Pleas, Case Number 2012-CP-07-02351; that no exhibits were admitted.

I further certify that I am of neither kin, counsel, or interest to any party hereto.

The original of this transcript, nor any copy of same, is not certified, nor authorized for use by me, to be true, accurate, and complete without my original signature and stamp affixed hereto.

Witness my signature October 7, 2013.


Wanda H. Rowe, CVR-M
Official Court Reporter

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Naticia Laurent, #348468,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2012-CP-07-2351

ORDER OF DISMISSAL

13 MAY -2 PM 3:44
 BEAUFORT COUNTY CLERK OF COURT
 BEAUFORT COUNTY, SOUTH CAROLINA

#1
 PAB

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 25, 2012. The Respondent made its Return on February 20, 2013. An evidentiary hearing into the matter was convened on April 4, 2013 at the Beaufort County Courthouse. The Applicant was present at the hearing and represented by Larry W. Weidner, II, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on her own behalf at the PCR hearing. Applicant's plea counsel, Helen Roper Dovell, Esquire, also testified at the hearing. This Court had before it the guilty plea transcript, the records of the Beaufort County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and Respondent's Return thereto.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Beaufort County. The Applicant was indicted at the November 2009 term of the Beaufort County Grand Jury for homicide by child

abuse (2009-GS-10-2249). Helen Roper Dovell, Esquire, represented the Applicant. The Applicant pled guilty as indicted. The Honorable Roger M. Young sentenced the Applicant to confinement for 20 years. Applicant did not appeal the plea or sentence.

ALLEGATIONS

The Applicant alleges she is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. "My crime was an accident and my attorney did not push the issue to the test of her ability."

At the hearing, Applicant waived all grounds for relief except ineffective assistance of counsel. The Applicant alleged during the hearing that counsel was ineffective for failing to request a suspended sentence during her guilty plea proceeding.

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 his or her 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).

Summary of the Testimony

The Applicant testified she met with counsel frequently before pleading guilty. She testified she recalls reviewing discovery with her attorney and discussing possible defenses. She testified she discussed all plea offers made by the State with her attorney and that it was her decision to plead guilty. The Applicant testified further she discussed the facts of the case with

her attorney. She testified she discussed requesting a suspended sentence with counsel prior to her plea. She testified that at first she thought her attorney could request a suspended sentence, but was then told the law had changed and a suspended sentence could not be requested. The Applicant testified she was advised by counsel of the potential sentence for homicide by child abuse and was aware of the case law about requesting a suspended sentence. Lastly, the Applicant testified that before pleading guilty she knew counsel would not be requesting a suspended sentence.

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Plea counsel testified she was appointed to represent the Applicant and has spent over five years practicing criminal law. She testified that she met with the Applicant several times prior to her guilty plea and filed Brady and Rule 5 motions on the Applicant's behalf. She testified she reviewed the discovery material she received with the Applicant and discussed with her the elements of the charge against her and what the State was required to prove. Counsel testified they discussed the Applicant's version of the facts and possible defenses. Counsel testified she investigated the case by speaking with the Applicant's husband and the forensic pathologist.

Counsel testified she entered into plea negotiations on the Applicant's behalf and the State offered a negotiated sentence of 20 years. Counsel testified she communicated the offer with the Applicant, informed her of the consequences of the plea, and informed her of her constitutional rights. Counsel testified that initially the Applicant wanted to proceed to trial.

Counsel testified further she initially she believed she could present substantial mitigation evidence to the Court and request a suspended sentence. However, counsel testified that after

State v. Jacobs¹ was decided she did not believe she could request a suspended sentence. She testified that she spoke with the solicitor and tried to get them to reduce the charge to voluntary manslaughter, but they refused. Counsel testified she spoke with the Applicant about the inability to request a suspended sentence and advised her to plead guilty because the 20 year minimum sentence was the best they could do.

Counsel testified she made a judgment call to not to request a suspended sentence, but now thinks she was ineffective for not requesting a suspended sentence for the Applicant.

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Counsel testified she knows of at least one instance in a homicide by child abuse case where the defendant successfully argued for a suspended sentence after State v. Jacobs. She testified further that in hindsight she should have argued for a suspended sentence.

Ineffective Assistance of Counsel

The Applicant alleges that she received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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 (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

¹ 393 S.C. 584, 713 S.E.2d 621 (2011).

presumption in order to receive relief. Cherry, 386 S.E.2d 624.

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. at 625 (citing Strickland, 466 U.S. 668). 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." Id. at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). 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).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

This Court finds that plea counsel gave credible testimony during the evidentiary hearing. This Court finds counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof. The record reflects Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. Applicant acknowledged that she was guilty of these offenses. Applicant told the plea court that she was satisfied with her attorney and that no one had threatened or promised her anything to plead guilty. This Court finds that Applicant understood the terms of the negotiated sentence.

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Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in her representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds plea counsel was not ineffective for failing to request a suspended sentence for the Applicant's homicide by child abuse charge. This Court finds counsel's testimony that in hindsight she would have requested a suspended sentence for the Applicant is

not dispositive. As this Court is well aware, counsel's decisions must be assessed "in light of the information known at the time of the decisions, not in hindsight." Strickland v. Washington, 466 U.S. 668, 680, 104 S. Ct. 2052, 2060-61 (1984).

7
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Counsel testified that her understanding of the law at the time of the Applicant's plea was that she could not request a suspended sentence. This Court finds that counsel's understanding of the law at the time was accurate. Section 24-21-410 of the South Carolina Code gives a judge the ability to impose a suspended sentence after a conviction or plea when the crime is not punishable by death or life imprisonment.² State v. Jacobs affirmed this established statutory principle by holding the trial court lacked the authority to suspend a sentence for burglary-first degree where the maximum penalty was a life sentence. In this case, homicide by child abuse has a penalty that ranges from 20 years to a life sentence.³ Because the Applicant pled to a crime that was punishable by life imprisonment, 24-21-410 does not give the plea judge the ability to suspend the sentence. This Court finds counsel's decision to not request a suspended sentence for homicide by child abuse in light of State v. Jacobs was proper.

This Court also finds that counsel's inability to request a suspended sentence had no bearing on the voluntariness of the Applicant's plea. Counsel and the Applicant both testified that they discussed the inability to request a suspended sentence prior to the plea. The Applicant was also present during the plea proceeding when counsel articulated her understanding of State v. Jacobs and expressed to the Court her inability to request a suspended sentence. This Court finds the Applicant's guilty plea was entered freely and voluntarily. This Court finds that this

² "After conviction or plea for any offense, except a crime punishable by death or life imprisonment, the judge of a court of record with criminal jurisdiction at the time of sentence may suspend the imposition or the execution of a sentence and place the defendant on probation or may impose a fine and also place the defendant on probation." S.C. Code Ann. § 24-21-410 (1976).

³ S.C. Code Ann. §16-3-85(C)(1) (1976).

allegation is without merit and the Applicant has failed to carry her burden of proving trial counsel was ineffective for failing to request a suspended sentence for the Applicant' homicide by child abuse conviction.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically 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 her representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. Therefore, this Court need not address prejudice. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

8
PMB
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 evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

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, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR 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 written notice of entry of this Order 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 served and 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 16 day of April, 2013


 Perry M. Buckner
 Presiding Judge
 14th Judicial Circuit

Walkers, South Carolina.