

THE STATE OF SOUTH CAROLINA

In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY  
In The Court of Common Pleas

Robin B. Stillwell, Circuit Court Judge

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Case No. 2012-CP-42-2879

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Andrea Waylisha White, #328460..... Petitioner,

v.

State of South Carolina, ..... Respondent.

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**Notice of Appeal**

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The Petitioner appeals the Honorable Robin B. Stillwell's March 6, 2014 order denying post-conviction relief to the Petitioner. Undersigned counsel received notice of entry of the order on March 10, 2014. A copy of the order on appeal is attached to this notice.



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Brandt Rucker  
522 North Church Street  
Greenville, S.C. 29601  
Attorney for the Appellant

April 2, 2014

Other Counsel of Record:  
Suzanne White  
S.C. Attorney General's Office  
P.O. Box 11549  
Columbia, S.C. 29211

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM GREENVILLE COUNTY  
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S.C. SUPREME COURT

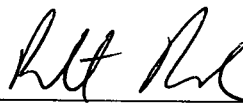
Andrea Waylisha White, #328460..... Petitioner,

v.

State of South Carolina, ..... Respondent.

**Proof of Service**

I, Brandt Rucker, certify that I have today served the within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to its attorney of record, Suzanne White, P.O. Box 11549, Columbia, S.C. 29211. I further certify that all parties required by Rule to be served have been served this 2d day of April, 2014.



Brandt Rucker  
522 North Church Street  
Greenville, S.C. 29601  
Attorney for the Appellant

April 2, 2014

Other Counsel of Record:  
Suzanne White  
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STATE OF SOUTH CAROLINA )

COUNTY OF SPARTANBURG )

Andrea Waylisha White, #328460, )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

2012-CP-42-2879

**ORDER OF DISMISSAL**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 6, 2012. The Respondent made its Return on or about July 25, 2013. An evidentiary hearing into the matter was convened on November 14, 2013, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by J. Brandt Rucker, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on her own behalf. Richard Whelchel, Esquire, also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the July 2010 term of the Spartanburg County Grand Jury for armed robbery (2010-GS-42-4315). The Applicant was represented by Richard Whelchel, Esquire. On August 22,

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2011, the Applicant pled guilty as indicted. The Applicant was sentenced by the Honorable J. Derham Cole to confinement for twenty (20) years for armed robbery.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals dismissed Applicant's appeal by Written Order filed October 22, 2011. The Remittitur was sent down on November 16, 2011.

### ALLEGATIONS

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

1. Ineffective assistance of counsel.
  - a. "My attorney was not prepared for my court appearance. We spoke only twice out of 15 months while in county jail."

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

#### Ineffective Assistance of Counsel

The Applicant alleges she received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial

process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Applicant testified that she is currently serving twenty years for armed robbery and asks this Court to reduce her sentence or order a new trial. Applicant testified that Counsel never reviewed the discovery materials with Applicant. Applicant also testified that she believed there was an issue with the identification since she was shown to the victims in handcuffs. Based upon what Counsel told her and the fact that this was her first violent crime, Applicant believed that she would receive a sentence of ten years. However, Applicant acknowledged that Counsel never promised a sentence of ten years, but indicated because of no prior record of violent crime,

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he hoped she would receive ten years. Applicant testified she is not sure if Counsel appealed the guilty plea.

Counsel testified that he is unsure of how many times he met with the Applicant, but he knows that he reviewed the discovery materials with the Applicant. Counsel testified that there were potentially issues with the show-up identification, but the victims' property was found on the ground where Applicant and her co-defendant were arrested. Counsel testified that there was no gunshot residue found on either of the defendant's hands. If Applicant had proceeded to trial, Counsel testified that he would have requested a Neil v. Biggers hearing. Although Counsel testified that he did not think they would have won. Counsel testified that the State originally offered the plea that Applicant pled to, but he had countered with a plea to common law robbery, which the State turned down. Counsel testified that he never promised a sentence of ten years, but did discuss the range of sentencing, particularly because she had no real record.

This Court finds the testimony of Counsel to be more credible than the testimony of the Applicant. Following testimony and review of the transcript, it is clear that Counsel had reviewed the facts and evidence, as well as the options that Applicant faced with her. The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). The Applicant failed to point to any specific matters Counsel failed to discover, or any

defenses that could have been pursued had Counsel been more fully prepared or spent more time preparing. Furthermore, the Applicant failed to show any prejudice that may have resulted from Counsel's alleged inadequate preparation. This Court reviewed the record and it is clear that the court reviewed the ten to thirty year sentencing range with Applicant, along with the fact that she would be giving up the right to contest the evidence. The plea colloquy was complete and this Court finds no evidence that the plea was involuntary or unknowing. (Tr. p. 13, lines 8-22).

In Hill v. Lockhart, 474 U.S. 52 (1985), the United States Supreme Court held that the two-part standard adopted in Strickland v. Washington, *supra*, for evaluating claims of ineffective assistance of counsel applies, as well, to guilty plea challenges based on ineffective assistance of counsel. To meet the Court's "prejudice" requirement, a criminal defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. Hill at 59. Not only did the Applicant fail to establish that Counsel offered incorrect advice, but the Applicant has failed to establish that she would have proceeded to trial, but for, these alleged deficiencies of Counsel. Therefore, this claim is denied and dismissed.

#### *Summary*

This Court finds in regards to the allegation of ineffective assistance of counsel, the Applicant's testimony is not credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing

professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that she was prejudiced by Counsel’s performance. This Court concludes the Applicant has not met her burden of proving Counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

### CONCLUSION

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

This Court cautions Applicant that she must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel’s assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant’s behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

LB?

**IT IS THEREFORE ORDERED:**

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

**AND IT IS SO ORDERED** this 5 day of MARCH, 2014.



Robin B. Stilwell  
Presiding Judge

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SPARTANBURG COUNTY  
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M. HOPE BLACKLEY

Brandt Rucker  
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April 10, 2014

S.C. SUPREME COURT

The Hon. Daniel Shearouse  
Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

Mr. Shearouse:

Please find enclosed the Notice of Appeal and Proof of Service for filing of Andrea White v. State of South Carolina. I have also included a copy of the Order below as required by the South Carolina Appellate Court Rules.

Please contact me at the contact information above if there are questions.

Sincerely,



Brandt Rucker  
Attorney for Andrea White

Enclosure

*[The text in this block is extremely faint and illegible due to the high contrast of the scan. It appears to be a multi-paragraph document.]*