

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County
Edward W. Miller, Circuit Court Judge

RECEIVED

JUL 17 2014

S.C. Supreme Court

MONICA LASONDRA YAZID,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002634

APPENDIX

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Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEYS FOR RESPONDENT

INDEX

INDEXi

TRIAL TRANSCRIPT1

INDICTMENT23

SENTENCING SHEET25

APPLICATION FOR POST-CONVICTION RELIEF26

RETURN40

POST-CONVICTION RELIEF HEARING TRANSCRIPT45

ORDER OF DISMISSAL74

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 MONICA L. YAZID,)
)
 DEFENDANT.)
 _____)

2012-GS-23-02437

TRANSCRIPT OF RECORD

AUGUST 16, 2012
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE C. VICTOR PYLE, JR.

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

JENNIFER TESSITORE, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

DOROTHY MANIGAULT, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

INDEX

WITNESS

PAGE NO.

CERTIFICATE OF REPORTER

22

EXHIBITS

NO DESCRIPTION ID EVIDENCE

(No exhibits were presented during this hearing)

1 MADAME CLERK: Your Honor, this is case number 2012-GS-
 2 23-2437, Monica Lasondra Yazid, indictment for shoplifting,
 3 pleading to shoplifting, third or subsequent offense, value
 4 of more than a thousand, but less than five. It is a true
 5 bill. And there is an order of restitution.

6 Please raise your right hand. Do you swear or affirm
 7 to tell the truth, the whole truth and nothing but the truth
 8 so help you God?

9 MS. YAZID: Yes, I do.

10 THE COURT: You are Monica Yazid?

11 MS. YAZID: Yes, sir.

12 THE COURT: And how old are you?

13 MS. YAZID: Twenty-three.

14 THE COURT: How much education do you have?

15 MS. YAZID: I graduated.

16 THE COURT: So you know how to read and write?

17 MS. YAZID: Yes.

18 THE COURT: And have you ever worked?

19 MS. YAZID: Yes.

20 THE COURT: Doing what?

21 MS. YAZID: CNA, scanning medical records.

22 THE COURT: Now, Ms. Manigault is your lawyer?

23 MS. YAZID: (Affirmative nod).

24 THE COURT: Have you talked with her as often and for
 25 as long as you feel necessary for her to properly represent

1 you?

2 MS. YAZID: Yes.

3 THE COURT: When you've talked with her have you
4 understood your talks with her?

5 MS. YAZID: Yes, sir.

6 THE COURT: Has she done everything for you that you
7 have asked her to do?

8 MS. YAZID: Yes, sir.

9 THE COURT: Has she done anything at all that you don't
10 like?

11 MS. YAZID: No, sir.

12 THE COURT: Are you fully and completely satisfied with
13 her services?

14 MS. YAZID: Yes.

15 THE COURT: Do you have any complaint to make against
16 your lawyer?

17 MS. YAZID: No.

18 THE COURT: You understand the maximum sentence is up
19 to ten years?

20 MS. YAZID: Yes, sir.

21 THE COURT: You still want to plead guilty?

22 MS. YAZID: Yes, sir.

23 THE COURT: You don't have to. You've got a perfect
24 right to stand trial by a jury. Do you know that?

25 MS. YAZID: Yes, sir.

1 **THE COURT:** If you stood trial by a jury your lawyer
2 could cross examine all the witnesses who testified against
3 you. You wouldn't have to take the stand and testify or
4 present evidence because that's your Constitutional right.
5 The burden would be upon the State to prove you guilty
6 beyond a reasonable doubt. Do you understand those ---

7 **MS. YAZID:** Yes, sir.

8 **THE COURT:** --- rights? You give up all those rights
9 when you plead guilty. Is that what you want to do?

10 **MS. YAZID:** Yes, sir.

11 **THE COURT:** Are you under the influence of any alcohol,
12 drug or any other substance right at this moment?

13 **MS. YAZID:** No, sir.

14 **THE COURT:** You're sober?

15 **MS. YAZID:** Yes.

16 **THE COURT:** You know what you're doing?

17 **MS. YAZID:** Yes, sir.

18 **THE COURT:** And you want to plead guilty?

19 **MS. YAZID:** Yes, sir.

20 **THE COURT:** All right, Solicitor.

21 **MS. TESSITORE:** May it please the Court. Your Honor,
22 on January 27th of 2012 this Defendant along with an
23 unidentified male accomplice entered the Wal-Mart on Pelham
24 Road in Greenville County at approximately six in the
25 morning.

1 She and the unidentified male then took a buggy and
2 walked around the store. They got a set of eighteen inch
3 Stanley bolt cutters. They got a large duffle bag from the
4 baggage department. They picked up a pair of tennis shoes
5 and a Hello Kitty wall clock and carried these items around
6 the store.

7 It was -- the store had just opened at six in the
8 morning and employees had just been dismissed from the
9 night-shift. So there weren't a lot of employees on the
10 floor and certainly weren't a lot of customers because it
11 had just opened.

12 They went around the store. And she was seen on video
13 going by the garden center doors that go out to the garden
14 center, which are locked at that point in the morning. And
15 the evidence would show that at the point at which she
16 disappears off the camera view that she would have had to
17 unlock the door and switch the -- basically unlock the door
18 so that they could just exit quickly out that door and then
19 through the garden center fire exit.

20 She then went over to the electronics department. The
21 man acted as a look-out. When they were in the store and
22 walking around for about ten minutes they were both wearing
23 hoodies trying to conceal their identity from the cameras.

24 And then went over to the electronics department at
25 which time the male gave her the go-ahead. And she then

1 went down the aisle where the iPads and the other electronic
2 tablets, computers are. And she placed a few pair of tennis
3 shoes down. She took the clock and placed it on a shelf
4 kind of behind some items there. And then she took the bolt
5 cutters -- she had removed the plastic packaging from those
6 bolt cutters and then took the bolt cutters and began to
7 smash through two cases and glass flying everywhere.

8 She struck the -- those cases more than ten times with
9 the bolt cutters while the male then grabbed approximately
10 six to eight of the iPads and she was still smashing as he
11 was grabbing them. He put -- they put them in the duffle
12 bag. He took off with the duffle bag.

13 She continued to smash and grab while the Assistant
14 Manager heard what was -- these loud noises and went over to
15 that area and said, what are you doing? And at that point
16 she didn't respond to the Assistant Manager. She was
17 grabbing the items.

18 And the Assistant Manager didn't want to go near her
19 because of the bolt cutters and she was swinging them. So
20 then this Defendant grabbed as many as she could, which was
21 approximately six because a total of twelve were taken, and
22 then she took the same path out that her accomplice did.
23 They went out the emergency exit. And the Assistant Manager
24 saw her jump in a car, and they took off.

25 Your Honor, that -- the value of the items was

1 approximately seven thousand, two hundred and twenty, excuse
2 me, seven thousand, two hundred and seventy dollars. And
3 obviously causing damage, over five hundred dollars.

4 The police responded, called forensics. They responded
5 immediately. And the forensics officer was able to view the
6 video and see that she had placed the clock on the shelf and
7 also seen where she had touched as she was committing the
8 crime.

9 She then was able to lift fingerprints off of the
10 interior of the tag that was on the bolt cutters, which
11 would have been from her trying to pull that off the bolt
12 cutters. And also lifted prints off of the Hello Kitty
13 clock that you can see on the video clearly she was placing
14 on that shelf. And those fingerprints did come back to
15 identify this Defendant.

16 An arrest warrant was secured by Investigator Phillips
17 with the Sheriff's Office. And when they went to serve the
18 warrant a month later the officers that went out to the home
19 knew that she could have been in the home. They tried to
20 contact her. They did contact her and told her that they
21 had an arrest warrant for her.

22 And I won't get into the details as to that, but the
23 Court should know that she clearly did not come out. They
24 had to get a search warrant. They had to bring dogs out.

25 And when they did finally get her into custody, they.

1 also found five thousand, five hundred dollars in cash in
2 her belongings. Now that was, at that time, seized. And
3 she was arrested and brought to the LEC.

4 When she was released on bond they gave the money back
5 because they couldn't link it with the theft of the iPads.
6 So, obviously, one could infer that that was potentially the
7 amount that was received by her for wherever she disposed of
8 the seven thousand dollars in iPads.

9 Your Honor, she does have three prior shoplifting ---

10 **THE COURT:** Wait just a minute.

11 **MS. TESSITORE:** I'm sorry.

12 **THE COURT:** You've heard the facts related to me. Is
13 that what happened?

14 **MS. YAZID:** Yes.

15 **THE COURT:** I will accept the plea as being voluntarily
16 made and as having a substantial factual basis. All right.
17 What is her record?

18 **MS. TESSITORE:** Yes, Your Honor. She does have the
19 three prior shoplifting convictions as well as the bank
20 fraud conviction. And I have a certified conviction I'll
21 pass up to the Court.

22 She also has -- I'm sorry. One of those is a 2008,
23 Georgia conviction. The other two are in South Carolina,
24 2010. And then she was just put on probation in November of
25 2011 for bank fraud, which involved the value which is on

1 the sentencing sheet there. I think it was about three or
2 four thousand dollars. So that would be her record, Your
3 Honor.

4 AGENT MONDAY: And, Your Honor, she is currently on
5 probation for the bank fraud. I'm not sure -- is this a
6 violation of ---

7 MS. TESSITORE: (Affirmative nod).

8 AGENT MONDAY: Okay. The violation has to be handled
9 at a later time due to victim notification.

10 THE COURT: All right. Okay. Ms. Manigault.

11 MS. MANIGAULT: Please the Court, Your Honor. Some
12 difference of information given to the Court. My client
13 agrees with everything that the State has relayed regarding
14 the shoplifting incident.

15 As far as when she -- when the officers came to her
16 home a month later to serve the arrest warrants, when they
17 notified her that they were at the door, she was naked, just
18 getting out of the shower. She peeked out the window and
19 said that -- give me a chance to get dressed.

20 She eventually came out of the house. The dogs and the
21 search warrant was gotten after she was in the police car to
22 go look in the house for other reasons.

23 Your Honor, the -- there is some information that I
24 need to put on the record because -- in case something comes
25 up later. Ms. Yazid contacted me on July 24th of this year

1 regarding this case and other cases. She told me she had an
2 attorney. So I told her that she had to release that
3 attorney before I could talk to her.

4 On August the 13th I filed the motion for continuance.
5 And I also filed a Rule 5 and Brady motions on August the
6 13th. Your Honor heard my motion for continuance on August
7 14th. The Solicitor asked us to come early. I gave my
8 client about forty minutes' notice to be in court. She was
9 here. The Court denied my motion for continuance, revoked
10 my client's bond and put her in jail.

11 Effectively, we had only two days to prepare for trial.
12 On the 14th the Solicitor gave me the video clips from Wal-
13 Mart, police report and all the information they had
14 including a plea offer that was dated June the 5th, 2012
15 addressed to Spencer Langley on behalf of Monica Yazid.

16 On June the 14th I could not see my client. She was
17 not booked in and processed until 7:30 that night, which was
18 Tuesday night. So I could only see her yesterday. I went
19 the three times that the professional visits were allowed,
20 which was nine to 10:30, 12:30 to 2:30 and again last night
21 at 6:00.

22 We went over -- yesterday morning we went over all of
23 the written material that the Solicitor had given us,
24 reviewed the plea offer with Monica. That plea offer
25 expired on June the 30th. It was dated June the 5th, but it

1 expired June the 30th. She had no recollection of ever
2 receiving a copy. That's neither here nor there.

3 The offer at that point was ten years provided upon the
4 service of three years and three years probation with full
5 restitution. So I went over that with her.

6 Went back at 12:30 because my laptop wouldn't work with
7 the video that was given. Went back at 12:30, reviewed the
8 video snips from Wal-Mart with Monica. There were thirteen
9 different snips from different cameras. We reviewed all of
10 them. She had a chance to see them very clearly and saw
11 that she was on the video, saw the box -- the Hello Kitty
12 box that was fingerprinted later that came back with her
13 prints on the box.

14 And, Your Honor, as the Court has heard, my client is
15 twenty-three years old. She has family here. Her mother is
16 here, who is Katrina Yazid. Her brother-in-law is here.
17 Her twin sister is here. Friends of the family are here.
18 She has one child that is three years old that will be in
19 the custody of her mother, Katrina Yazid.

20 She is a graduate of high school. She worked as a CNA
21 at Laurel Bay for approximately a year and a half. She
22 worked for the Greenville Hospital System in medical records
23 scanning for approximately one year.

24 Your Honor, the -- she agrees with the two prior
25 shopliftings. One of the shopliftings according to the rap

1 sheet is to a Monica Yazid, excuse me, Monique Yazid, which
2 is her twin sister and it's not her. But it is on her rap
3 sheet. But she agrees that she has one prior shoplifting in
4 Georgia and one in Greenville County from Judge Garrett in
5 2000, I believe, 10.

6 Your Honor, we're asking the Court -- she'd asked me to
7 ask the Solicitor to try to get that recommendation back. I
8 -- when I was retained I asked the Solicitor that yesterday
9 or the day before. She says, no, that she fully explained
10 to Ms. Yazid that that offer expired at her last appearance
11 in court. I don't know whether that was June or July.

12 So she is fully aware that that offer is not on the
13 table and she is pleading guilty to a zero to ten year and
14 facing that. She is on probation for the bank fraud
15 situation and was reporting.

16 Your Honor, in her -- on her behalf, she did appear in
17 court every time she was summoned. Even with the forty
18 minutes' notice that I gave her on Tuesday morning, she came
19 straight up. So we'd ask the Court for leniency in this
20 case.

21 MS. TESSITORE: Your Honor, may I respond with ---

22 THE COURT: Sure.

23 MS. TESSITORE: --- respect to just the ---

24 THE COURT: Certainly.

25 MS. TESSITORE: --- what Ms. Manigault has put on the

1 record with regard to the representation issue? The first
2 being that, you know, obviously, Ms. Manigault knew that it
3 was on the trial docket when she was hired on Monday.

4 That -- what she didn't know was that Ms. Yazid had
5 already given us a written discovery request on July 5th
6 pertaining specifically to the shoplifting charge. The --
7 Mr. Langley had sent his notice of representation back on, I
8 believe, March 29th.

9 And when I received that I sent him an email indicating
10 that I got the letter, but that it did not include the
11 shoplifting, third, or above charge. I gave him the warrant
12 number and asked him if he would be handling that as well.
13 He sent me an email back on the 30th saying that Ms. Yazid
14 has only hired me for the child neglect charges thus far. I
15 think she plans to hire me for the shoplifting charge, but
16 I'm not going to send a letter until she signs paperwork.
17 Thanks, Spencer. So he had sent that email to me.

18 And then she had opportunities in -- the attorney order
19 was on May 15th of 2012 as to the shoplifting charge only
20 giving her thirty days to get an attorney, and the failure
21 to do so would not serve as a basis for a continuance. The
22 offer was sent at the beginning of June. She was bond
23 carded on June 19th. She still indicated that she did not
24 have a lawyer hired on the shoplifting. And she was told
25 that it would be on the trial docket.

1 On June 19th is the same day she requested her
2 discovery with respect to the shoplifting purporting to
3 represent herself. And I can make that a part of the record
4 if Your Honor wishes to as far as her written request for
5 the information.

6 We also responded and provided her that discovery, met
7 with her, myself, Renee Kelly, my investigator, on July 5th
8 at which time she was given the discovery pertaining to the
9 shoplifting. We played the video for her, went through each
10 clip and showed her the relevant evidence that we would
11 present and urged her at that time to get an attorney. And
12 I explained that, you know, the issue of being -- having an
13 identical twin, if there was a fingerprint, would not be a
14 defense, and explained and urged her again to get an
15 attorney hired on the charge because it's going to be on the
16 trial docket.

17 Brought her in on July 19th. She was bond carded. Her
18 -- the firm that she hired, Langley and the Associates,
19 which I'll let Mr. Langley deal with that after, but they
20 were present for that court date. She did not appear til
21 later that morning.

22 She -- when she did come in, she spoke with them again.
23 She opted not to accept the offer or to even plead guilty
24 just to the shoplifting charge. And at that point I told
25 her when it would be on the trial docket. And then that's

1 when she hired Ms. Manigault, just this past Monday.

2 So just so that the record is clear that Ms. Yazid
3 clearly knew that she was only hiring Mr. Langley on the
4 child neglect charges and not on the shoplifting and then
5 even went so far as to file with us her request and
6 indicated to us that she did not want to plead guilty, she
7 did not want to provide information as to the identity of
8 her accomplice. She did not want to take early acceptance
9 of responsibility. And that has been her pattern, Your
10 Honor.

11 With respect to the bank fraud charge ---

12 **MS. MANIGAULT:** Your Honor, I'm going to object to
13 anything she has to say about a previous conviction.

14 **MS. TESSITORE:** Well, simply the fact -- simply the
15 fact that she was on probation, put on probation in November
16 and then two months later is in Wal-Mart smashing into
17 pieces two glass cases, stealing seven thousand, two hundred
18 dollars of equipment from the Wal-Mart and thinking that the
19 rules don't apply to her. I think that there's a clear
20 pattern of that.

21 So the State is simply asking that Your Honor impose a
22 sentence that takes -- that provides consequence for her to
23 understand that the rules do apply. She had a lot of cash
24 in her possession. And that was not used to apply to any
25 restitution. It wasn't applied to hire a lawyer. And she

1 chose to create this situation for herself.

2 And so we would ask the Court to impose a sentence that
3 accounts for all of that, the lack of early acceptance of
4 responsibility and the effort to try to delay this even as
5 to the, you know, eleventh hour before trial.

6 **MS. MANIGAULT:** Your Honor, may I respond to something?

7 **THE COURT:** Are you, Solicitor, telling me that the
8 record shows now that Mr. Langley represented her only on
9 the -- not on this charge?

10 **MS. TESSITORE:** Your Honor, and I didn't -- I was going
11 to get into that, but I can if you want me to now that Mr.
12 Langley is present in the courtroom. And after Your Honor's
13 order on Tuesday, I went back and tried to look through to
14 make sure that I could at least explain what I knew as far
15 as being an officer of the court that my records indicated
16 that I clearly asked Mr. Langley and he clearly stated that
17 he did not represent her and also that he had appeared in
18 court, and if he hadn't appeared he had sent his associates
19 that were on the same agreement.

20 He's provided to me a copy of the agreement. I think
21 he has one for the Court. And we can address that if you
22 wish now or after the sentencing.

23 And there are other things ---

24 **THE COURT:** Now, you told me yesterday, under oath,
25 that Mr. Langley was your lawyer.

1 MS. YAZID: Uh-huh (affirmative).

2 MS. MANIGAULT: Yes, sir.

3 MS. YAZID: Yes, sir.

4 THE COURT: On this charge. And that he didn't come to
5 court when he was supposed to be here.

6 MS. YAZID: He was ---

7 THE COURT: That's what Ms. Manigault told me.

8 MS. YAZID: He was out of the Country. And when I
9 called his cell phone he told me to call his friend. And I
10 called his friend. But to be honest, I ain't never spoke to
11 his friend. But I know every time that he came he was with
12 his friend.

13 MR. LANGLEY: Your Honor, we have a signed
14 representation agreement right here by my firm in
15 association with Brumback and Nix. This is ---

16 MS. MANIGAULT: Your Honor, ---

17 MR. LANGLEY: --- Ms. Nix right here. And she was in
18 the room negotiating this plea or this agreement ---

19 THE COURT: All right.

20 MR. LANGLEY: --- with us.

21 THE COURT: Ms. Manigault.

22 MS. MANIGAULT: Your Honor, I'm objecting to that ---

23 THE COURT: I understand.

24 MS. MANIGAULT: --- statement -- to this statement.

25 We're here to enter a plea on a shoplifting charge.

1 **THE COURT:** I understand that.

2 **MS. MANIGAULT:** As regards to my client exercising her
3 right, the Solicitor's Office themselves have a six months
4 policy where defendants and attorneys can negotiate on a
5 plea. This plea offer is dated June the 5th. It expired
6 June the 30th. My client, she did hire an attorney. I did
7 appear with no expectation ---

8 **THE COURT:** Ms. Manigault, ---

9 **MS. MANIGAULT:** --- the Court would give me a
10 continuance.

11 **THE COURT:** --- you haven't done anything at all wrong
12 as far as I can see. I mean, you're totally out of the
13 picture. The question I had concerning Mr. Langley was
14 whether he had not done what he was supposed to do.

15 **MS. MANIGAULT:** And, Your Honor, ---

16 **THE COURT:** Mr. Langley, as a result of that, I had
17 ordered that a copy of this transcript be sent to the
18 Disciplinary Board. From what I'm hearing now, that is
19 something that should not be done.

20 **MS. TESSITORE:** I would agree, Your Honor.

21 **THE COURT:** All right. All right. The sentence of the
22 Court is you be committed to the Department of Corrections
23 for a period of ten years. As a condition of parole you are
24 to make restitution in this matter.

25 **MS. MANIGAULT:** Your Honor, we'd ask the Court to

1

Certificate of Reporter

2 I, the undersigned, Susan W. Hudgins, Official Court
3 Reporter for the Thirteenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all the
6 proceedings had and evidence introduced in the trial/hearing
7 of the captioned case, relative to appeal, in the Circuit
8 Court for Greenville County, South Carolina, on the 16th day
9 of August 2012.

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

12

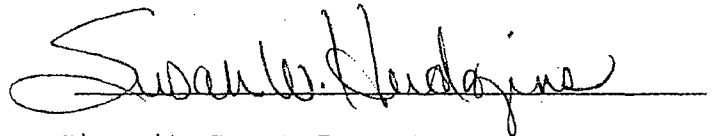
October 19, 2012

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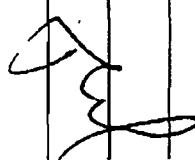
Circuit Court Reporter

WITNESSES

Thomas Phillips

Greenville County Sheriffs Office

2/27/2012



DOCKET NO. 2012-GS-23-002437

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May TERM 2012

THE STATE

vs.

MONICA LASONDRA YAZID

ARREST WARRANT NUMBER
1509572

ACTION OF GRAND JURY
TRIE BILL


FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

✓ Indictment for
3214

SHOPLIFTING PURSUANT TO § 16-1-0057

VIOLATION § 16-13-0110 and § 16-1-0057

Foreperson of Petit Jury
Date:

RECEIVED

MAR 30 2012

Clerk of Court
Greenville County

08/16/12 09:30AM COURTRON 8644678574
STATE OF SOUTH CAROLINA

P.O. IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.
Monica Lasondra Yazid
AKA:
Race: Sex: F Age: 23
DOB: SS#
Address:
City, State, Zip: Greenville, SC 296092962
DL#: SID#:

INDICTMENT/CASE#: 2012GS2302437
A/W#: 1509572
Date of Offense: 1/27/2012
S.C. Code § : 16-13-0110(B)(3)
CDR Code #: 2878

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Shoplifting / Enhancement for 3rd or sub. offense. Value more than \$1000 to \$5000 (see 16-01-0057)

in violation of § 16-13-0110(B)(3) of the S.C. Code of Laws, bearing CDR Code # 2878
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The 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: *Jennifer* 7486 / Municipal *Scott* 3615
Treasurer/Jennifer SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 10 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 for

months/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.
 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
Total: \$ plus 20% fee: \$
Payment Terms: *see or b*
 Set by SCDPPPS

PTUP _____
_____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning _____
\$ paid to Public Defender Fund
Other: _____

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)	\$130	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$
TOTAL		\$

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk *Paul B Wickens*
Court Reporter: *Hudgens*
SCCA217 (03/2011)

Presiding Judge *C. Vito*
Judge Code: 2070
Sentence Date: 8-16-2012

FORM 5

STATE OF SOUTH CAROLINA)
County of Greenville)

IN THE COURT OF COMMON PLEAS

Monica Yazid, #352121)
Full name and prison number (if any) of Applicant)

2012-CP-23- 06443

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

ENTERED COMPUTER

INSTRUCTIONS B 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 Dodman Correctional, 4556 Broad River Rd.,
Columbia, SC 29210
2. Name and location of Court which imposed sentence Greenville County Circuit
Court, 305 E. North St., Greenville, SC 29601
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) I- 509572

(b) _____

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) August 16, 2012 - 10 year sentence

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(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 Ayes@ to (7), list: N/A

(a) the name of each Court to which you appealed:

i. _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) I was informed by counsel that I could not file an appeal initially. Her was told I only had 10 days, but that was after

- (b) the 10 days had passed finally, my attorney said I didn't
- (c) retain her for an appeal, only a plea.

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) My sentence was extremely harsh, unfair and egregious
- (b) considering this was my very first offense of shoplifting. My
- (c) attorneys failed to provide me adequate representation, never properly investigated my case and did nothing to protect my rights.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Originally, I had hired an attorney to represent me who left the country
- (b) prior to my hearing. I was forced to hire other counsel prior to my next
- (c) court date. At my next hearing, counsel implied to me she would get the hearing rescheduled, but without adequate time to prepare my case, took me before the court without negotiations and I was sentenced to 10 years. A Motion to Reconsider was never filed on my behalf.

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 Ayes@ to any part of (12), list with respect to each petition, motion or application: N/A

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____

- iv. _____
- (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (d) the date of each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____
 - ii. _____
 - 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. _____
 - iii. _____
- (b) the proceedings in which each ground was raised:
 - i. _____
 - ii. _____
 - 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) I did not have competent legal counsel who should
- (b) have insured my legal rights were protected; therefore no
- (c) grounds have been presented up to this point.

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 Ayes@ to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. i) Dorothy Manigault ii) Spencer Langley
 - 522 N. Church St., P.O. Box 392 530 Howell Rd. Suite 105
 - Greenville, SC 29615 Greenville, SC 29615
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. The final guilty plea (Dorothy Manigault)
 - ii. During some plea negotiations but when it was time to go to court, Mr. Langley had left the country (Spencer Langley)
 - iii. _____

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

An immediate reconsideration of my sentence resulting in "time served" and my release from CDC based on the unethical and egregious sentence I received in my case.

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

No.

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of Richland)

VERIFICATION

I, Monica Yazid, 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.

Monica Yazid

SWORN to and subscribed before me this 28th day of September, 2012.

Gloria Cook-Jones (L.S.)
Notary Public

My Commission Expires: 10-01-2018

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

I, Monica Yazid, 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.

Monica Yazid
Applicant

SWORN or affirmed to and subscribed before me this
28th day of September, 2012.

Floria Cook-Jones
Notary Public

My Commission Expires: 10-01-2018

To Whom it may Concern;

2012
September 27

On February 27th 2012, Police officers came to my house located at 24 Buff Street in Greenville South Carolina. I had a Warrant for my arrest for shoplifting. It took me a while to come out because I was inside asleep. I awoke to someone banging on the back door and throwing sticks and dirt at my window, so I look out of it. That's when I realized that it was the police. An officer told me to get dressed and come outside. So I did just that and locked the door behind me. My boyfriend, son and my niece were all still inside when I locked the door. Before I came outside, I called my brother Maraka Yazid who

lives right next door with my mother Katrina Yazid at 26 Buff St. Greenville South Carolina. I told him that my boyfriend has my son and his daughter and to come get his daughter. I was placed under arrest and my brother's ex-girlfriend, who is the mother of his child came out of my mother's house and said "My baby is in there" so my brother went into my house from the back door to pick up his daughter. After my brother came out of my house, the officer said he smelled Marijuana. So he goes into my house from the back door and opens the front for other officers. They asked could they search the house and I replied "No". The other officer responded and said they were going to get a search warrant.

They arrived with two search warrants, one for my house and one for my mother's house. On the Assumption

That because my brother went into my house he could have taken out drugs with him and taken them to my mother's house. The officers found \$5,500. inside my purse inside my house. The officer informed me that if they were to find drugs in my home that I could not have my money.

I went to jail and was charged with shoplifting and two counts of child neglect. My brother and his girlfriend went to jail as well because the officer said that they let their baby stay the night with me and said I was smoking marijuana. We all went to jail. My sister bonded me out of jail and I called the officer (Wyatt) who had my money and he said "we didn't find any drugs" and returned my money. As I was leaving he said "that would be dumb if you go get your brother out of jail." I kept walking to get in my car. This day was February 28, 2012. On that same day I went to take a drug which came back negative for anything. On March 6th 2012 I went to meet an attorney "Spencer Langley." So he could represent me on the child neglect charges x2. I met with Mr. Langley and 2 others who worked with or for Brumback and Rig LLC. I explained what happened the day I got arrested. I showed him my drug test and DSS closed the case after coming

to my house. We talked she took a look around my house I took another drug test and the DSS Worker closed the case on grounds there was no evidence of child neglect. The two attorneys who worked with Spencer Langley said they would take the DSS case. Mr. Langley informed me he would handle my criminal case. I paid the attorneys.

On my first court date I was presented with a plea bargain which was as follows, guilty to shoplifting and one count of child neglect. I refused because of the child neglect charge. I felt I did not neglect my child nor anyone else. If I pled guilty to it, it meant I was guilty of neglect which I was not. The plea was 3 years in prison, 3 years probation, pay restitution to Wal-Mart, parenting classes, and drug classes. I was not going to plea to something I didn't do. My attorney said that if the solicitor dismissed both child neglect charges, will you take the plea? I agreed to do so, without parenting classes and drug classes. The time was still 3 years 3 CDC and 3 years probation. There really wasn't a difference so again I rejected the plea.

On July 19 2012 I was going to take the plea and get it over with, but on July 18 2012 I called my attorney Mr. Spencer, he didn't answer. His machine stated he was out of the country and would return in a week, it had given a number to call so I did just that. The attorney who works with family court answered.

I had asked him did I have to go to Court and he in turn replied he would call me in the morning and let me know because I was no longer taking the plea because Spencer was not there. From my understanding the "family Court" attorney, said Friend/Co-Worker of Mr. Spencer Langley was only hired for the family Court/DSS case.

Mr. Langley's Associate called me that morning and informed me he would let me know if I needed to come up there. He never returned my call so therefore I took it upon myself and went to the Courthouse anyway. The attorney asked if I was taking the plea, I said No. So I went home and a few days later I kept ~~calling~~ calling Mr. Langley (my attorney) and again, No answer. So again I called "The Associate" back and asked him had Mr. Langley come back into his office yet. He replied, No. He asked me if I was going to retain Spencer Langley. I said yes but I needed to speak with him first. I never did. So I was searching for a new attorney I met with Dorothy Maingault. I explained to her about the plea and what was going on. She said "That's a little too much time." So I explained I was guilty of shoplifting but definitely not any kind of Child Neglect. I retained her with a fee and left. July 24 2012 was this date. I called her a week

later and told her I had gotten a trial date for August 16, 2012. She explained she was going to try and get the court date rescheduled. On Tuesday August 14th 2012 at 8:20 a.m. she called and asked me to come to the courthouse by 9am. So I did and she said we needed to talk. We went into the hall and she said she was going to ask the judge for more time (an extension) because I thought I had hired Mr. Langley for the shoplifting charge and child neglect. I told her I only hired him for child neglect. She said that's what she'd tell the judge. So I could get an extension. So we appear before the judge and she stated "My client thought she had hired Mr. Langley for all of her charges. I was asked if this were true. I replied "I hired him for..." And that's all I could say, the judge would only let me answer with a "yes" or "no" so Dorothy said "Say yes" and I did. The judge said he was not going to reschedule the court date and I was again incarcerated and do not know why.

On August 14th and 15th Dorothy came to see me while incarcerated and viewed the evidence with me. Which was a video and my motion of discovery. Prior to these 2 days we had talked about what had happened. I told her I was shoplifting and didn't know anything about the child neglect charges. I felt I didn't do anything wrong.

On August 16 2012 (My Court date) I appeared in front of the Judge and plead guilty and was sentenced to 10 years. My Attorney Dorothy Maniquet asked the Judge to Reconsider and he said "No." I was sent to the South Carolina Department of Corrections on that following Thursday. I do not feel that I recieved proper Presentation. I wasn't given but only a few Minutes with my Attorney and feel I deserve "Proper Presentation"

Sept. 28, 2012

Clerk of Court
Greenville County Court of
General Sessions
305 E. North Street
Greenville, SC 29601

Re: Monica Yazid v. State of South Carolina

Dear Sir/Madam:

Enclosed please find the original and one copy of my Application for Post-Conviction Relief for filing relative to the above-referenced matter. Please return to me a filed copy at your earliest convenience and have appointed counsel contact me as soon as possible. I appreciate your assistance and look forward to your response.

Sincerely,

Monica Yazid
Monica Yazid, 352121
Goodman Ct, B3
4556 Broad River Rd.
Columbia, SC 29210

PCR

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

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

RETURN

ENTERED COMPUTER

2013 APR - 3 10 2 19
 CLERK OF COURT
 GREENVILLE CO. SC
 PAUL B. WICKENSHER

JW

In response to the post-conviction relief application filed October 9, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Applicant was indicted at the May 2012 term of the Greenville County Grand Jury for shoplifting, third or greater offense (2012-GS-23-2437). Dorothy A. Manigault, Esquire, represented the Applicant.

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

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the plea transcript.

II.

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

SCANNED

Copy mailed to
Applicant
Yazid
on 4 / 3 / 13

Asst. Atty 4/3/13 JW

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

III.

The Respondent asserts the Applicant's allegation that her attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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 v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

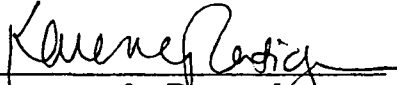
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: 
Attorneys for Respondent

March 26, 2013

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STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	
Monica Lasondra Yazid,)	
)	TRANSCRIPT OF RECORD
Applicant,)	2012-CP-23-6443
-vs-)	
)	
The State,)	
)	October 24, 2013
Respondent.)	Greenville, South Carolina

B E F O R E :

HONORABLE EDWARD W. MILLER, JUDGE

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

R. MILLS ARIAIL, JR., ESQUIRE
Attorney for the Applicant

KAREN C. RATIGAN, ESQUIRE
Attorney for the Respondent

Margaret A. Woods
Circuit Court Reporter

ORIGINAL

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INDEX

WITNESSES

PAGE

MONICA YAZID

Direct examination by Mr. Ariail 3

Cross-examination by Ms. Ratigan 10

DOROTHY MANIGAULT

Direct examination by Mr. Ariail 14

Cross-examination by Ms. Ratigan 23

Certificate of reporter 29

MONICA YAZID - DIRECT EXAMINATION BY MR. ARIAIL

1 THE COURT: Alright.

2 MS. RATIGAN: May it please the Court, Your Honor. This
3 is the case of Monica Yazid vs. the State of South Carolina,
4 Docket Number is 2012-CP-23-6443. Ms. Yazid was indicted for
5 shoplifting third or greater offense, she was represented on
6 that trial by Ms. Manigault. On August 16th of 2012, she pled
7 guilty before Judge Pyle, received a 10-year sentence and did
8 not file an appeal, application was timely filed so the
9 State's ready to proceed.

10 THE COURT: Okay, call your first witness.

11 MR. ARIAIL: Yes, Your Honor, I call Ms. Yazid to the
12 stand.

13 (Whereupon, the applicant came forward.)

14 THE CLERK: Ms. Yazid, please place your left hand on the
15 Bible and raise your right hand best you can. You got your
16 right hand, okay.

17 MONICA YAZID, having been
18 first duly sworn, testified as follows:

19 THE CLERK: Thank you. Will, uh, pl -- you may be
20 seated. Please state your full name for the record.

21 THE APPLICANT: Monica Yazid.

22 DIRECT EXAMINATION BY MR. ARIAIL:

23 Q. Ms. Yazid, uh, let me just go through a little bit 'bout
24 this was a guilty plea, correct?

25 A. Yes, sir.

1 Q. Uh, and you pled in front of I think it was Judge Pyle,
2 is that correct?

3 A. Yes, sir.

4 Q. Now there was some confusion this case, correct, or ---

5 A. Yes.

6 Q. --- were you or I guess represented on one charge for
7 child neglect by Spencer Langley, correct, ---

8 A. Yes, sir.

9 Q. --- and Ms. Manigault picked up I guess your, uh, charge
10 you pled to here, uh, 'bout two days before trial, is that
11 correct?

12 A. Uh, no. When I went, uh, retained Spencer Langley was
13 only for two child neglects, I had to pending child neglects
14 and when I went to go retain Dorothy Manigault it was for the
15 two child neglects and a shoplifting.

16 Q. Okay. Now Spencer Langley came to your guilty plea,
17 correct, ---

18 A. No.

19 Q. --- at court?

20 A. Yeah, he was there to testify against me to say ---

21 Q. Okay.

22 A. --- that only, uh, retain him for two child neglects.

23 Q. He said he was not your attorney of record in regard to
24 the shoplifting charge, right?

25 A. No, he was not.

MONICA YAZID - DIRECT EXAMINATION BY MR. ARIAIL

1 Q. He was not your attorney.

2 A. No.

3 Q. Okay, so Ms. Manigault represented you on that charge.

4 A. Yes, sir.

5 Q. At some point in time, you got a plea offer from I guess
6 you were unrepresented so you got a plea offer from the State,
7 correct, in Greenville County?

8 A. At that time I was represented by Spencer Langley.

9 Q. On the shoplifting charge?

10 A. He -- on all of 'em, he came and plead with all of 'em.

11 Q. Okay, so what and I'm tryin' to understand this because
12 he came to your guilty plea, he said he never never
13 represented you on on ---

14 A. Yep.

15 Q. --- the shopliftin' charge.

16 A. Yes, sir, he say he never represented me but when he came
17 to me he offered me a plea of 3 years -- no, the plea was
18 plead guilty to shopliftin', one child neglect and that he
19 would give me 3 years in SCDC and 3 years on probation.

20 Q. Okay, did you ever sign representation agreement or enter
21 any type agreement with him regarding the shoplifting
22 charge?

23 A. No, sir.

24 Q. Okay, so did he ever file for a motion a discovery for
25 you on the shopliftin' charge?

1 A. He took me into her office and showed me how to file
2 it.

3 Q. Okay, so I guess what I'm gettin' back to is he he never
4 has signed a letter, I mean, or sent a representation letter
5 on the shopliftin' charge, ---

6 A. No, sir.

7 Q. --- so he never represented you, correct?

8 A. No, ---

9 Q. Okay.

10 A. --- for neither one of 'em.

11 Q. Neither one, okay, so then Ms. Manigault was the one that
12 dealt with that, correct?

13 A. Yes.

14 Q. Okay, so you at one point in time had a plea offer that I
15 guess you let expire, is that correct?

16 A. Well when I first got the plea offer, I just had came
17 from talkin' to Jennifer Tusco [sic] and that was my solicitor
18 and sh -- we reviewed the cameras and she was tellin' me that
19 when I plead guilty, no matter when I plead guilty that she
20 was givin' me 3 years and I said okay and when she, uh, I said
21 what about the child neglects? Now the the plea included the
22 child neglects and I'm not guilty of no child neglect so I
23 felt like I shouldn't took that plea because I was not found
24 guilty ch -- 'cause I didn't commit child neglect.

25 Q. Okay. Okay, but you pled guilty, ---

MONICA YAZID - DIRECT EXAMINATION BY MR. ARIAIL

1 A. Yes, sir.

2 Q. --- she took ya in there and ya got 10 years, correct?

3 A. Yes, sir.

4 Q. Okay, now what are you sayin' Ms. Manigault has done that
5 is ineffective?

6 A. I don't think we had enough time for her to properly
7 represent me. The day that I seen her I, uh, retained her and
8 the next time I seen her was on August 13th when we tried to
9 get a reconsider, I mean, a continuance for a a motion a
10 continuance.

11 Q. Alright, how many times did you talk with Ms. Manigault?

12 A. The phone?

13 Q. Huh?

14 A. On the phone?

15 Q. Well I mean just in person, on the phone.

16 A. Three times.

17 Q. Three times? Did you meet with her in person?

18 A. One time when I paid her.

19 Q. Okay, did you ta -- go over your discovery?

20 A. No, sir.

21 Q. Did you watch the videotapes in this?

22 A. Uh, after I I came in from pleading guil -- I mean, after
23 I came in for the motion of of continuance and I was put under
24 arrest she did come to the Greenville County Detention Center
25 and showed me that after that.

1 Q. Okay, so you saw all that evidence before you pled
2 guilty, ---

3 A. Yes, sir.

4 Q. --- so you discuss that with her, ---

5 A. Yes, sir.

6 Q. --- did you and I'm tryin' to get back, you had a plea
7 offer one time, ---

8 A. Um-hum.

9 Q. --- you're you're not sayin' that the expiration a that
10 plea offer was a result of somethin' Ms. Manigault did, right?

11 A. No, when I went in there and I -- actually, when I went
12 in there and I told her that was the first time I went in
13 there I showed her my child neglect papers and told her that I
14 was charged with shopliftin' and I said they offered me a plea
15 for 3 years and she said she think that's too much time for
16 shopliftin'.

17 Q. Okay. Okay, but at that point in time the plea offer had
18 already expired, correct?

19 A. No, no, sir.

20 Q. Okay, so are you saying she was ineffective for not
21 getting you that plea offer or not getting you the 3 years?

22 A. No, I can't say that.

23 Q. Okay, so I guess what I'm tryin' to do is summarize your
24 issue for the judge in regards to what you're sayin'

25 Ms. Manigault did, what did she do that was ineffective or

MONICA YAZID - DIRECT EXAMINATION BY MR. ARIAIL

1 prejudice you?

2 A. Well when I went in, I I had still time to take the plea
3 and when she told me 3 years wa -- I mean, was too much for a
4 shopliftin', I I I went with her and said I guess it was too
5 much, I mean, 3 years is little too much for shopliftin' and
6 see, at that time when they came to me, they came to me with
7 the child neglect so if you got a shopliftin' and two child
8 neglects together and that's 3 years, I thought when they came
9 to me with another plea was gonna be different without the
10 child neglects and it wasn't ---

11 Q. Okay.

12 A. --- and I know a lotta people might be sayin' that sh --
13 girl took a plea for 3 years, instead she got 10 which is true
14 but I, my only mistake was I didn't wanna plead guilty to
15 child neglect 'cause I didn't do it.

16 Q. Okay, but she didn't rec -- represent you on the child
17 neglect charge.

18 A. N -- yes.

19 Q. Okay, she did too ---

20 A. Yeah.

21 Q. --- but that was dismissed, correct?

22 A. Yes, yes, sir.

23 Q. Okay, you plead for the shoplift, that's all we're here
24 for, ---

25 A. Um-hum, ---

MONICA YAZID - CROSS-EXAMINATION BY MS. RATIGAN

1 Q. --- okay.

2 A. --- yes, sir.

3 Q. What did she do in regards to the shoplifting charge
4 you're saying is ineffective?

5 A. I mean, when I told her they offer me 3 years, if I knew
6 I was gonna get 10 with that I woulda pled guilty to the
7 3 years without the child neglect.

8 Q. Okay, but then I'm goin' back, how was she supposed to
9 get you the 3 years? She came in the plea offer, she told you
10 on the record here had expired, she tried to get it back for
11 ya, what did she do that was ineffective a ---

12 A. To me I don't think we had enough time to go over my
13 case.

14 Q. Okay.

15 A. The only time I ever seen and went over my motion a
16 discovery with her was while I was incarcerated ---

17 A. Okay.

18 Q. --- after my bond was revoked.

19 MR. ARIAIL: Have no further questions, Your Honor.

20 THE COURT: Alright, cross.

21 CROSS-EXAMINATION BY MS. RATIGAN:

22 Q. When did you hire Spencer Langley?

23 A. March 6th ---

24 Q. Of ---

25 A. --- 2012.

MONICA YAZID - CROSS-EXAMINATION BY MS. RATIGAN

1 Q. Okay. And for what purpose when you hired him did you
2 hire him, was it just the child neglect?

3 A. Just child neglect, ---

4 Q. Okay.

5 A. --- two counts a child negligent.

6 Q. And you hired, uh, Ms. Manigault just a few days before
7 the plea, is that correct?

8 A. No, uh, I hired her July 24.

9 Q. Okay, July 24th 2012?

10 A. Yes, ma'am.

11 Q. And for what purpose?

12 A. For child neglect and, I mean, for child neglect and
13 shopliftin'.

14 Q. Okay, were these the same child neglect charges?

15 A. Yes, ma'am.

16 Q. Okay. Now when did you get that shoplifting charge?

17 A. February, think February 28th.

18 Q. So again of 2012?

19 A. Yes, ma'am.

20 Q. Okay, so when you hired Mr. Langley you already had the
21 shoplifting charge but you didn't hire him before that charge,
22 that be fair to say?

23 A. Yes.

24 Q. Okay.

25 A. Yes.

MONICA YAZID - CROSS-EXAMINATION BY MS. RATIGAN

1 Q. But then when you hired Ms. Manigault it was for the
2 shoplifting charge and those two, uh, that ---

3 A. Child ---

4 Q. --- Mr. Langley had represented you on.

5 A. Um-hum.

6 Q. Okay. Now when did the State make you a plea offer for
7 the shoplifting?

8 A. Well I never saw that. Uh, when I call my solicitor
9 Jennifer Tessitore and I aksed her, I said, uh, do you know
10 what's goin' on with my case and she told me she's not -- I'm
11 not supposed to be talkin' to her, I supposed to been talkin'
12 to Spencer Langley and I said well I haven't heard from him
13 and she said, Well I'm offerin' you 3 years in SCDC and
14 3 years on probation, I said, What is that for, and she said,
15 For shopliftin' and child, and one count a child neglect and
16 she was gonna dismiss the other and I feel like if I was
17 guilty a one I was guilty a both or if I'm not guilty of one,
18 I'm not guilty of that two.

19 Q. Okay, so you got that offer directly from Ms. Tessitore.
20 She just called and said if you plead guilty to all ---

21 A. Um-hum.

22 Q. --- three a these charges I'll give you 3 years and 3
23 years probation.

24 A. Um-hum, and that was the first time I ever heard a that
25 plea.

MONICA YAZID - CROSS-EXAMINATION BY MS. RATIGAN

1 Q. Okay.

2 A. And then my first appearance when I came in Spencer was
3 here, he came and he offered me that offer again and I told
4 him that's a lot, that's a lot, a lotta time and he said, Well
5 that's all she give me, I said, Okay, I said, I gotta, uh,
6 move outta my house and move my stuff in storage and then I'll
7 be a -- and then I'll take that plea.

8 Q. Okay.

9 A. July 19, I -- when my next court date was came to take
10 that plea, Spencer didn't show up.

11 Q. Okay, so it was prior to that July 19th date that
12 Ms. Tessitore made you that offer, sometime before then?

13 A. Um-hum, that was before then.

14 Q. Okay. And basically your main complaint with
15 Ms. Manigault is you feel like she didn't have enough time to
16 investigate the case and prepare it?

17 A. Yes.

18 Q. Okay.

19 MS. RATIGAN: That's all I have, Your Honor.

20 MR. ARIAIL: Nothin' further, Your Honor.

21 THE COURT: Alright, thank you, you step down.

22 (Whereupon, the applicant left the stand.)

23 MR. ARIAIL: I call Ms. Manigault to the stand.

24 THE COURT: Okay.

25 (Whereupon, the witness came forward.)

DOROTHY MANIGAULT - DIRECT EXAMINATION BY MR. ARIAIL

1 THE CLERK: Ms. Manigault.

2 DOROTHY MANIGAULT, having been
3 first duly sworn, testified as follows:

4 THE CLERK: Thank you, you may be seated. Please state
5 your full name for the record.

6 THE WITNESS: Dorothy Manigault.

7 DIRECT EXAMINATION BY MR. ARIAIL:

8 Q. Ms. Manigault, how are you today?

9 A. I'm fine, how are you?

10 Q. Good. Uh, wanted to ask you a few questions in regard to
11 this. Wh -- Ms. Yazid says you were hired on July 24th 2012,
12 is that your best a your recollection when you were hired on
13 this?

14 A. Uh, my file says it was open on August 13th.

15 Q. August 13th.

16 A. Um-hum.

17 Q. Okay, so you got and the plea was August 16th, ---

18 A. Correct.

19 Q. --- do you remember, can you tell me when you got the
20 discovery, uh, ---

21 A. Uh, I got discovery from Jennifer Tessitore, let's
22 see, ---

23 Q. Clearly after August 13th I guess, you didn't get it
24 before then, that right?

25 A. Yeah, 'cause my motion for supplemental was August, filed

DOROTHY MANIGAULT - DIRECT EXAMINATION BY MR. ARIAIL

1 August 13th, ---

2 Q. Okay.

3 A. --- supplemental discovery. Uh, Ms. Yazid brought in
4 with her, uh, some of the discovery material that she had.

5 Q. So you met with her first time you're sayin' is August
6 13th and you got ---

7 A. No, she came in in July, she did ---

8 Q. Okay.

9 A. --- come in July.

10 Q. She came in July but you officially weren't retained on
11 it until August 13th.

12 A. That's correct.

13 Q. Okay, so then you got discovery at that point in time but
14 she she was incarcerated too it's durin' this time, is that
15 correct?

16 A. Yes, we, um, I was gonna file a motion for continuance,
17 the trial was scheduled, uh, that same week, uh, so we came
18 two days before trial, you don't have that transcript, uh, the
19 trial was scheduled for August 16th, ---

20 Q. Okay.

21 A. --- uh, so we came two days before on a motion for a
22 continuance, uh, ---

23 Q. Yeah.

24 A. --- at the request of the solicitor's office to file,
25 come in early ---

1 Q. Okay.

2 A. --- so we came in early, uh, for the motion of
3 continuance before Judge Pyle, uh, and he revoked her bond.

4 Q. Was the re -- why'd he revoke bond that time?

5 A. We don't know.

6 Q. Okay.

7 A. No notice, there was no, there was no indication that she
8 not come to court before, she'd appeared every time for
9 court ---

10 Q. Okay.

11 A. --- with her, um, other attorneys.

12 Q. I guess you were retained then came in for the
13 continuance hearing, the bond was revoked, you got discovery,
14 how many ti -- I mean, did you meet her at the LEC or how did
15 you have discussions in regards to the discovery?

16 A. Yeah, uh, when she came in in July and brought her
17 discovery information with her, uh, we went over that
18 information she had ---

19 Q. Um-hum.

20 A. --- that point.

21 Q. Okay.

22 A. Uh, when it was revoked, I immediately took the discovery
23 down to her. We had a video from Walmart, uh, showing her and
24 a black male, uh, in the store shoplifting and breaking the
25 glass, uh, where the iPods were, ---

DOROTHY MANIGAULT - DIRECT EXAMINATION BY MR. ARIAIL

1 Q. Right.

2 A. --- so I took, uh, my laptop down, make -- showed her the
3 video, ---

4 Q. Um-hum.

5 A. --- went over the discovery again, it was very simple and
6 straightforward.

7 Q. Right, she was on video, there was fingerprint evidence,
8 is that correct?

9 A. Yes, fingerprints on the little Kitty clock with ---

10 Q. Okay.

11 A. --- which you see her picking it up and puttin' it
12 back.

13 Q. Right. At the time you got involved, I mean, August
14 13th, there was a plea offer for I think it was 10 suspended
15 on 3, was that correct?

16 A. Uh, there was no plea offer. She was on the trial
17 docket, all plea offers had expired and were withdrawn.

18 Q. Okay. Okay, there was a question that she had I think
19 durin' the transcript that said she had gotten a plea offer
20 and there was some issue about the 6-month policy with the
21 solicitor's office givin' her time to be able to review that
22 and it had been withdrawn, do you remember any conversation
23 with her about that or ---

24 A. Okay, the plea offer was with Mr. Langley, ---

25 Q. Okay.

- 1 A. --- I never received a plea offer or got, even got a copy
2 of it, this is the information from her and the information
3 that I received, uh, through from Ms. Tessitore, but when I
4 became involved the plea offer had expired ---
- 5 Q. Okay, ---
- 6 A. --- or or had been withdrawn, either way.
- 7 Q. --- I guess my, that's what I'm tryin' to figure out
8 but ---
- 9 A. Yeah.
- 10 Q. --- Spencer Langley at some point in time, I mean, I
11 guess there was an issue durin' the plea, Judge Pyle had asked
12 whether or not Spencer Langley represented her on that charge
13 and he presented a representation agreement sayin' he only had
14 the child neglect charge, is that ---
- 15 A. Yeah, ---
- 16 Q. --- right?
- 17 A. --- that's that was at the motion for a continuance.
- 18 Q. Okay, the motion for continuance.
- 19 A. Right.
- 20 Q. So her, the confusion I'm havin' with her is is did did
21 he get a plea offer for the I guess the shoplifting charge
22 that he did not relay or ---
- 23 A. To Ms. ---
- 24 Q. --- did not provide her.
- 25 A. Okay, now according to Ms. Yazid, Mr. Langley did relay

DOROTHY MANIGAULT - DIRECT EXAMINATION BY MR. ARIAIL

1 that information to her.

2 Q. Okay.

3 A. Uh, she was here, uh, he -- they -- she had an offer for
4 the two child neglect and one shoplifting, it was 3 years, uh,
5 active time with 3 years probation, ---

6 Q. Okay.

7 A. --- a suspended sentence and, uh, she didn't want
8 that so he went and talked with Ms. Tessitore, uh, according
9 to Ms. Yazid, uh, they withdrew the two child neglect and she
10 could plead to the shoplifting.

11 Q. Okay.

12 A. Uh, she didn't want that because it's still 3 years ---

13 Q. Okay.

14 A. --- that she was gonna get.

15 Q. So your understanding of it is she just rejected the plea
16 offer 'cause it was 3 years, she didn't wanna serve that time.

17 A. Correct.

18 Q. Okay, so when it was withdrawn, she came and hired you,
19 you, did you try to get back that plea offer, I think there
20 was some testimony in the transcript that you said you tried
21 to go back to see if they put 3 years back ---

22 A. Yes, I called Ms. Tessitore several times, uh, came over
23 just talk with her, ---

24 Q. Okay.

25 A. --- she did not want to give that offer back, she said it

1 was too late, uh, ---

2 Q. Okay.

3 A. --- she had been back and forth with Ms. Yazid and her
4 other attorney and she was not giving anything, ---

5 Q. Okay, ---

6 A. --- if it ---

7 Q. --- so you ---

8 A. --- was a ---

9 Q. --- woulda had ---

10 A. --- plea, it was a plea straight up.

11 Q. Straight up 0 to 10 based on ---

12 A. Correct.

13 Q. Okay, and did you relay that to Ms. Yazid before she
14 pled?

15 A. Yes.

16 Q. Okay. There's a question it regarding the discovery, now
17 I understand you you had the discovery since July 24th, is
18 that, I mean, I guess you had discussed that with her at the
19 first meeting you had with her.

20 A. Yeah, when she came int -- if that's the correct date, if
21 that's what she said, ---

22 Q. Okay.

23 A. --- that's fine.

24 Q. Okay, and then at that time you o -- you -- how many
25 meetings do you think you had with her regarding ---

DOROTHY MANIGAULT - DIRECT EXAMINATION BY MR. ARIAIL

1 A. Uh, she came in maybe twice ---

2 Q. Okay.

3 A. --- before she hired me and then, uh, we talked on the
4 phone 'cause I was tryin' to get her to get some information
5 from her other attorney, uh, to get a release but she couldn't
6 produce that, ---

7 Q. Okay.

8 A. --- uh, she said she left several messages on his phone
9 with no response ---

10 Q. Okay.

11 A. --- which was normal for that attorney she said, uh, so
12 then when we came in for the motion for continuance ---

13 Q. Yeah.

14 A. --- we talked briefly in the hallway, I explained what we
15 were doing but we had already talked about me filing a motion
16 for a continuance ---

17 Q. Okay.

18 A. --- which was actually filed and after that then I went
19 to see her the two days that she was in jail.

20 Q. Right. Did she, uh, I mean, did she understand -- you
21 showed her the video, ---

22 A. Yes.

23 Q. --- you went over the fingerprint evidence, ---

24 A. Yes.

25 Q. --- okay, did she understand the the evidence, the facts

1 that were against her, all that, when during your
2 discussions?

3 A. Yeah, she understand all of that. She she never denied
4 that the person in the video was not, was not her, she ---

5 Q. Okay.

6 A. --- she admitted that that was her, uh, she wouldn't not
7 identify the black male who was lookout, ---

8 Q. Right.

9 A. --- uh, for the solicitor or for me, uh, ---

10 Q. Okay.

11 A. --- so but she never denied, uh, being in the video, that
12 was her, ---

13 Q. Okay.

14 A. --- so she understood that and she understood the 0 to
15 10. We were just hoping and praying that she would get, uh,
16 3, less than 3 years, I mean, ---

17 Q. Okay.

18 A. --- 10 years was just egregious.

19 Q. And you were stuck where you were with having it in
20 fronta Judge Pyle, is that correct?

21 A. That's correct, she was on trial docket for the 16th,
22 there was no, there was no wiggle room out.

23 Q. Okay.

24 MR. ARIAIL: Your Honor, I have no further questions.

25 CROSS-EXAMINATION BY MS. RATIGAN:

DOROTHY MANIGAULT - CROSS-EXAMINATION BY MS. RATIGAN

1 Q. Just a few quick questions. So ya'll had a hearing on
2 the motion continuance the Friday before trial or the plea?

3 A. Uh, two days, whatever that was.

4 Q. Okay, and Mr. Langley was he at that hearing?

5 A. Yes.

6 Q. Can you kinda relay what hi -- what he told judge that
7 day in terms of his involvement.

8 A. Oh, it was just, it was just awful. Uh, he said that he
9 represented her on charges of child nego -- child neglect I
10 believe and he had, uh, perhaps got gotten a offer on all
11 three charges and worked with Ms. Tessitore and Ms. Yazids,
12 uh, did not want to accept the offer. She had said something
13 that he was out of the country one of her court dates when she
14 had made up her mind to accept the offer but her attorney was
15 not available, uh, so he essentially denied most of what she
16 said.

17 Q. So obviously by the time you were retained you knew the
18 case was on the trial docket.

19 A. Yes, I -- when she came in, she told me she had notice
20 for trial in August ---

21 Q. Okay.

22 A. --- so when she came to my office she was, she was
23 already aware of that.

24 Q. Okay. Now obviously it was kind of a, it's kind of a
25 quick turn around between, uh, her coming to see you in July,

DOROTHY MANIGAULT - CROSS-EXAMINATION BY MS. RATIGAN

1 you being retained the 13th and then her pleading on the 16th,
2 is there anything else you think you could have done with
3 additional time to prepare for the plea?

4 A. Uh, no, uh, actually I was preparing for trial. Although
5 the video showed her very clearly and her and the accomplice,
6 uh, I was still preparing for trial because you you never know
7 what your client will want to do so there was nothing else
8 that I could do for her, the evidence was right there in our
9 face, the video and the fingerprints, so going over the video
10 over and over again would not change anything about the video
11 or the fingerprint.

12 Q. Okay. And your, uh, testimony on direct was pretty much
13 the State had just, they had no desire to have any kind of
14 plea negotiations with her?

15 A. No no further plea negotiations. Ms. Tessitore, uh, made
16 it plain that she was not willing, uh, to go back to the
17 3 years, that that had expired, uh, with her previous
18 attorney, they had been workin' on the case for a while so she
19 had no desire to do that.

20 Q. Okay.

21 MS. RATIGAN: That's all I have, Your Honor.

22 THE COURT: Who's this guy Langley?

23 MS. MANIGAULT: Some attorney in Greenville. I think he
24 does a lotta family court stuff, I don't know.

25 THE COURT: How 'bout this Nix?

MOTIONS AND MATTERS

1 MS. MANIGAULT: You work with him.

2 THE COURT: Oh, that's a she.

3 MS. MANIGAULT: That's in the office?

4 THE COURT: Ms. Nix -- well Page 19, Line 13 Langley
5 says, "We have a signed representation agreement right here by
6 my firm in association with Brumback and Nix, ---

7 MS. MANIGAULT: Yeah.

8 THE COURT: --- Ms. Nix right here and she was in the
9 room negotiating this plea or this agreement with us." So you
10 don't know who -- anything about 'em?

11 MS. MANIGAULT: Not a thing.

12 THE COURT: Okay. And apparently Judge Pyle was very
13 upset because he had, because Langley didn't appear before,
14 did you -- do you remember any a that?

15 MS. MANIGAULT: Yeah, sh -- Ms. Yazid had said that when
16 she kept calling, uh, Mr. Langley his answering machine said
17 he was outta the country and she was supposed to be appearing
18 in court, general sessions court, and, uh, and at that time
19 she had said that she was going to accept the plea offer for
20 3 years but she could not get in touch with her lawyer and,
21 uh, it's and Judge Pyle was upset but I think when Ms., at
22 some point, uh, in one a these hearings Mr. Langley denied a
23 lot of what Ms. Yazid said, uh, but, uh, clearly, you know,
24 even in talking to her mother when they called, uh, at some
25 point the, uh, recording did say that he was outta the country

MOTIONS AND MATTERS

1 and so she had a difficult time getting in touch with him.

2 THE COURT: Okay, she was on probation for shoplifting at
3 the time she did this, is that right?

4 MS. MANIGAULT: Uh, I think she was on probation for bank
5 fraud?

6 THE COURT: Bank fraud?

7 MS. MANIGAULT: Bank fraud.

8 THE COURT: Which she got in November and then this
9 occurred in January. Do you know what happened with the with
10 that? You didn't handle it that same time violation ---

11 MS. MANIGAULT: No, sir.

12 THE COURT: --- of probation?

13 MS. MANIGAULT: No, sir.

14 THE COURT: Okay.

15 MS. MANIGAULT: No, sir.

16 THE COURT: Ya'll have any other questions?

17 MR. ARIAIL: No, Your Honor.

18 MS. RATIGAN: No, Your Honor.

19 THE COURT: Okay, thank you.

20 MS. MANIGAULT: Yes, sir.

21 (Whereupon, the witness left the stand.)

22 THE COURT: Alright, call your next witness.

23 MR. ARIAIL: That's it, Your Honor, that's our case.

24 THE COURT: Alright, State?

25 MS. RATIGAN: Uh, State would just rest on the record.

MOTIONS AND MATTERS

1 THE COURT: Alright. Well, uh, it's the burden on the
2 moving party to show that what the trial attorney did fell
3 below an objective standard of reasonableness and that you
4 were prejudiced by that, I don't find anything, uh,
5 Ms. Manigault did fell below an objective standard of
6 reasonableness, uh, and so I'm gonna deny your application.
7 Thank you.

8 MS. RATIGAN: Thank Your Honor.

9 THE APPLICANT: Only way that I feel that Dorothy
10 Manigault didn't do her job was that when she took me in there
11 she asked when for the reconsider -- I mean, for the motion a
12 reconsideration when I as -- when we she took me in the
13 hallway, she told me this is what we was gonna tell the judge
14 and I told her that wasn't true. She told me to tell Spencer
15 Lang -- say that Spencer Langley hire hire, I hired him for
16 shoplift and child neglect which I knew I only hired him for
17 child neglect but she said that was the way that she was gonna
18 get the motion and then when I got in fronta him and he said,
19 Ma'am, is this correct, and I said some of it is and some if
20 it aint, he said, Say yes or no, she told me to say yeah.
21 When I say yeah, my bond was revoked and I was sent to jail.
22 When I came back, the only reason Spencer Langley was here was
23 to say that I, that he only represented me on child neglect so
24 I felt the judge was upset with me because we sat in there and
25 told a lie and then Spencer came in and clarify.

MOTIONS AND MATTERS

1 THE COURT: Yes, clearly not a, ---

2 THE APPLICANT: Huh?

3 THE COURT: --- clearly not a, uh, a well-orchestrated,
4 uh, event but Ms. Manigault wasn't responsible for that so and
5 that's all I can look at under the law, okay. Thank you.

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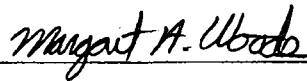
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CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on October 24, 2013 at the time and place heretofore set forth; and that the foregoing pages numbered from 2 through 28, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

February 17, 2014



Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

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

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

ORDER OF DISMISSAL

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL R. HAYES, CLERK
 2013 NOV 28 PM 2 32

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

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

PROCEDURAL HISTORY

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

1
 [Handwritten signature]

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

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

ALLEGATIONS

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

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

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

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

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

prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

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

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

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

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

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

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

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

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

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

All Other Allegations

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

CONCLUSION

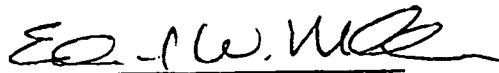
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during her guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation.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

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

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

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


Edward W. Miller
Presiding Judge
Thirteenth Judicial Circuit

Col, South Carolina.

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2012CP2306443

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

Monica Yazid vs. South Carolina State Of

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC (Vol. Nonsuit);
 - Rule 43(k), SCRPC (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRPC;
 - Bankruptcy:
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this 26th day of November, 2013.

Court Reporter:

PRESIDING JUDGE - Edward W Miller

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

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

Karen Christine Ratigan PO Box 11549 Columbia,
SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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

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SC Court of Appeals