

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

RECEIVED

DEC 15 2014

S.C. Supreme Court

TAMMY TWITTY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001040

APPENDIX

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STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE)	
The State,)	
)	TRANSCRIPT OF RECORD
-vs-)	2010-GS-23-10288, 2011-GS-23-2187
)	
Tamatha Donnette Twitty,)	
)	June 21, 2012
Defendant.)	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:

JEFF WESTON, ESQUIRE
Attorney for the State

FLETCHER N. SMITH, JR., ESQUIRE
Attorney for the Defendant

Margaret A. Woods
Circuit Court Reporter

ORIGINAL

1 THE COURT: Alright.

2 THE CLERK: Your Honor, this is Case No. 2010-GS-23-10288
3 Tamatha Donnette Twitty indictment for shoplifting third or
4 above, pleading to the same, it is a true bill and
5 2011-GS-23-2187 indictment for shoplifting third or above,
6 pleading to the same, it also is a true bill.

7 Would you raise your right hand, please.

8 Tamatha Donnette Twitty, having
9 been first duly sworn, testified as follows:

10 THE COURT: Number of jail days on this one?

11 MR. WESTON: No no da -- jail days, Your Honor.

12 THE COURT: Alright, Ms. Twitty, in the last twenty-four
13 hours, you had any drugs, alcohol or medication?

14 THE DEFENDANT: No, sir.

15 THE COURT: Ever been treated for the abuse of alcohol or
16 drugs or for mental illness or emotional problems?

17 THE DEFENDANT: No, sir.

18 THE COURT: You're up here on two indictments, first one
19 is 2011-2187 alleges you did Greenville County October 9, 2010
20 with two prior property offense convictions you shoplifted
21 miscellaneous children's clothing from the Cha -- Children's
22 Place here in Greenville County, that carries up to 10 years,
23 you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You're also up here on 2010-10288, it alleges

1 you did Greenville County October 9, 2010 with two prior
2 property offense convictions shoplifted several items of
3 clothing, a box a diapers from Babies "R" Us, that's another
4 10 years, you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Understanding the nature of the charges
7 against you and the maximum possible punishment, how do you
8 wanna plead?

9 THE DEFENDANT: I'm I'm guilty of the, um, the charges.

10 THE COURT: Okay, you wanna -- whatever your conduct is,
11 you you can go to trial or you can enter a guilty plea; how do
12 you wanna plead?

13 THE DEFENDANT: Guilty.

14 THE COURT: Guilty? Alright. Anybody forced you in any
15 way or coerced you, threatened you or promised ya anything to
16 get you to enter that plea?

17 THE DEFENDANT: Well I was told that I helped the, um,
18 narcotic ---

19 MR. SMITH: No, no ---

20 THE DEFENDANT: --- agent ---

21 MR. SMITH: --- asked you did anybody threaten you or
22 promise you, no.

23 THE DEFENDANT: No.

24 THE COURT: What were you told?

25 THE DEFENDANT: From the narcotic that I I did some work

1 in Spartanburg County with two drug charges and they got
2 con -- the people that I set up they got conviction on it.
3 The man in Spartanburg said that he would help me with this
4 charge to make sure that, ---

5 THE COURT: Well, ---

6 THE DEFENDANT: --- um, ---

7 THE COURT: --- ma'am, I don't know if there's been
8 anything like that but you, uh, is that the reason you're
9 pleadin' guilty? Are you pleading guilty because you are
10 guilty?

11 THE DEFENDANT: I'm I'm pleadin' guilty because I am
12 guilty of it.

13 THE COURT: Alright, and is this your free and voluntary
14 act?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: It's your decision to do this?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. Alright, and I don't -- some police
19 officer in Spartanburg, unless the solicitor and your lawyer
20 tell me different, he doesn't have any impact on what happens
21 in this case, you understand that?

22 THE DEFENDANT: What did you ---

23 MR. SMITH: Tell him yes.

24 THE DEFENDANT: Yes.

25 THE COURT: Well you tell me what you understand.

1 THE DEFENDANT: I understand.

2 THE COURT: You understand?

3 THE DEFENDANT: Yes, I do, Your Your Honor. I
4 understand ---

5 THE COURT: Okay.

6 THE DEFENDANT: --- it.

7 THE COURT: Okay, alright. So and you wanna plead
8 guilty, is that right?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Alright. You understand you have an absolute
11 right to a trial by a jury where you'd be presumed innocent
12 unless and until the State could prove you guilty beyond any
13 reasonable doubt of each and every element of each offense
14 that you are charged with, you'd have a right to confront and
15 cross-examine the witnesses and the evidence put up against
16 you by the State, you'd have a right to compel in court all
17 relevant and competent evidence in your own defense or you
18 could remain silent, your silence could not be held against
19 and you can never be compelled to incriminate yourself. You
20 understand all those rights?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And do you wanna give 'em all up to enter
23 this plea?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Are you guilty?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Are you totally satisfied with your lawyer?

3 THE DEFENDANT: I don't know what what's gonna happen
4 today so I don't, I don't know.

5 THE COURT: Well no, you don't know what's gonna happen
6 today but do you think your lawyer has done everything
7 reasonably necessary to adequately prepare your defense?

8 THE DEFENDANT: No, sir.

9 THE COURT: Well what hasn't he done?

10 THE DEFENDANT: I mean, from -- I thought attorneys and
11 what that can tell me what's gonna happen to me today. Like
12 the work that I did he spoke with the, um, it was another
13 solicitor that was over my case, she corresponded with the man
14 narcotic from Spartanburg.

15 MR. SMITH: Your Honor, I talked to the officer today.
16 He said he talked to Ms. Salisbury briefly and that he didn't
17 promise Ms. Twitty anything and I talked to him on the phone
18 this mornin' confirm it.

19 THE DEFENDANT: That's not true.

20 MR. SMITH: Well Ms. ---

21 THE COURT: What's ---

22 MR. SMITH: --- Ms. Salisbury ---

23 THE COURT: --- well what's the truth?

24 MR. SMITH: --- maybe that she can confirm it.

25 THE DEFENDANT: That I I I wore a wire in Spartanburg

1 County to make help them with a conviction and he said that he
2 would speak with the people from Greenville over this case
3 right here. They got two conviction off a drug charge in
4 Spartanburg. I'm tryin' to get in touch with his supervisor
5 because maybe the supervisor can forward the information
6 because he's sayin' one thing and I -- this this -- the person
7 that I helped them get helped ---

8 THE COURT: Well let let me just ask you this 'cause
9 we're not really at that point, I just wanna find out if
10 you're satisfied with the work your lawyer's done for you.

11 THE DEFENDANT: No, no, sir, I'm not.

12 THE COURT: And you're dissatisfied beca -- because why?

13 THE DEFENDANT: Because I don't have a recommendation, I
14 don't know what I'm I'm facin' and like I told I ha ---

15 THE COURT: You're facin' 20 years.

16 THE DEFENDANT: I know that I'm facin' 20 years with
17 the -- I was thinkin' that the the work that I did from
18 Spartanburg County was that they was gonna help me with these
19 charges.

20 THE COURT: Well what does that have to do with your
21 satisfaction with your attorney? What is it that you think he
22 should have done that he has not done?

23 THE DEFENDANT: I I don't have a recommendation on the
24 table.

25 THE COURT: Well recommendation doesn't come from your

1 lawyer. I'm sure he's gonna recommend something to me. A
2 recommendation from the State I'm not legally obligated to
3 follow. I can give you anything up to 20 years.

4 THE DEFENDANT: I understand that. I think I ---

5 THE COURT: So other ---

6 THE DEFENDANT: --- need ---

7 THE COURT: --- than, other than his -- the failure of
8 your attorney to get a recommendation from the State, what
9 else is it that he should have done that he has not done to
10 prepare your case?

11 THE DEFENDANT: I think I need more time to correspond
12 with the people from Spartanburg.

13 THE COURT: Ma'am, the first indictment talks about
14 conduct from October of 2010, the second indictment talks
15 about conduct from October of 2010, okay?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: That is a year, over a year and a half ago so
18 you -- what is it -- I'm just tryin' to find out why you're
19 dissatisfied with your lawyer.

20 THE DEFENDANT: Because he's really not telling me
21 anything.

22 THE COURT: What is it that you want him to tell you that
23 he has not told you?

24 THE DEFENDANT: What is, what is the offer on the table,
25 is it probation ---

1 THE COURT: There is no offer, ma'am. You're on the
2 trial docket. All offers are gone if there ever was an
3 offer.

4 THE DEFENDANT: It never was.

5 THE COURT: Okay. You're not, no one is entitled to
6 receive an offer, that is, that is the result of negotiations
7 between your attorney and the State but no one's entitled to
8 it, it's not a right, the rights are what I have described to
9 you, your right at trial, okay, all those rights, you
10 understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And this is not your first trip, your first
13 go-round.

14 THE DEFENDANT: No, sir.

15 THE COURT: What's what's pro -- her prior criminal
16 history?

17 MR. WESTON: Your Honor, there are 15 prior shoplifting
18 convictions alone, let alone there are a number of other
19 resisting arrests, malicious damage, criminal domestic
20 violence and just possession of stolen goods, criminal
21 domestic violence high and aggravated nature, drivin' under
22 the influence, um, ---

23 THE COURT: Okay. Ma'am, you are what I would term a
24 "highly experienced criminal defendant".

25 THE DEFENDANT: I know.

1 THE COURT: So I -- you -- this is not your first time to
2 the rodeo. You tell me what it is that Mr. Smith did not do
3 that he should have done to adequately prepare your defense.

4 THE DEFENDANT: I mean, I I'll take it to trial 'cause
5 I'm not prepared today, uh, like I said, I was under
6 impression ---

7 THE COURT: Uh, don't say anything else.

8 MR. SMITH: Your Honor, I would like to move to be
9 relieved as counsel, it's obvious this ---

10 THE COURT: We're goin' to trial, Mr. Smith.

11 MR. SMITH: Oh, okay.

12 THE COURT: She wants a trial. You got your witnesses?

13 MR. WESTON: Yes, sir, Your Honor, they are on standby,
14 we can have 'em here and by the time we get jury selection.

15 THE COURT: Take her into custody, we're goin' off the
16 bond.

17 THE DEFENDANT: Can I just go ahead -- I'll go ahead and
18 just I'll plead guilty. I'm sorry, Your Honor, but I have my
19 my kids and my grandkids and I do understand that I do ---

20 THE COURT: Ma'am, ---

21 THE DEFENDANT: --- have a ---

22 THE COURT: --- I have not gotten to the point yet where
23 I've accepted a plea.

24 THE DEFENDANT: Okay.

25 THE COURT: I need to know ---

1 THE DEFENDANT: I'm a take -- I'm plea, I plea.

2 THE COURT: Well you tell me why you're so unhappy with
3 Mr. Smith, is it just because you don't know what's gonna
4 happen?

5 THE DEFENDANT: No -- yes, sir, that's one one reason
6 yes, sir.

7 THE COURT: Have you met with him as often and for as
8 long as you think is necessary?

9 THE DEFENDANT: I have, yes, sir.

10 THE COURT: And have you understood your talks with
11 him?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have you been through the discovery? You
14 know what the evidence is that the ---

15 THE DEFENDANT: Yes, sir, ---

16 THE COURT: --- State has, ---

17 THE DEFENDANT: --- I do know.

18 THE COURT: --- you've been through it with your lawyer?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do ya have any other complaints you'd like to
21 make about the way you've been treated in this case?

22 THE DEFENDANT: Not with, not with them, just with the
23 the Spartanburg, no, no, sir.

24 THE COURT: Okay. I I'm gonna accept the plea as being
25 freely, voluntarily and intelligently made with the advice of

1 a very competent attorney with whom she states she is not
2 satisfied but I don't think that she has a reasonable basis
3 for her claim to be unsatisfied. She has met with him as long
4 and as often as she thinks is necessary for him to prepare a
5 defense, she's understood her talks, she's been through the
6 evidence with him and so I'm I'm gonna find that the
7 disfatiss -- dissatisfaction that's been expressed by
8 Ms. Twitty relates solely to her the potential negative
9 outcome this -- of these proceedings.

10 Okay, Mr. Weston, tell us ---

11 MR. WESTON: May it please the Court, Your Honor. With
12 regard to the facts ---

13 THE COURT: Well, yeah, I guess I can't accept the plea
14 till I hear the facts but go ahead.

15 MR. WESTON: With regard to the facts of the case, Your
16 Honor, these events occurred as you indicated on October 9th
17 of 2010 approximately 2:30 p.m. here at the -- on Haywood Road
18 here in Greenville in Greenville County. An officer with the
19 Greenville police depa -- with the Greenville Sheriff's Office
20 responded to a reported theft at Haywood Mall at the
21 Children's Place. Officer Hinkle who was working an off duty
22 job at the time came to the -- well, well, excuse me, was
23 called with regard to a reported shoplifting. He got in his
24 car and followed the defendant and a co-defendant as they left
25 the mall in their car. He received a description of the car

1 and the car's license tag from the -- from Ms. Parker the
2 loss -- the security officer at the mall. He stopped the
3 defendant and to backtrack, Your Honor, what he found was that
4 the defendant had shoplifted at Children's Place. He spoke
5 with the manager of Children's Place who came and identified
6 their merchandise in the trunk of car, they also discovered
7 that the defendant had shoplifted at Babie's "R" Us across the
8 street from the mall, right, excuse me, right down the street
9 from the mall earlier in the day and that they -- there was --
10 there were a number of items from Babies "R" Us also in the
11 trunk of her car. A Babies "R" Us representative Ms. Brewer
12 was contacted, she came to the scene, identified the defendant
13 as having taken a what she cons -- what she called a ba -- a
14 cart load of items and a box a -- and a package of Huggies out
15 of Babies "R" Us before she went to the mall at Children's
16 Place. She identified their items as well as identifying the
17 defendant at the -- right right across from the mall, Your
18 Honor.

19 Before I get -- if you wanna hear more of her prior
20 record, I'll do that, Your Honor, but with regard to the issue
21 of contact from Spartanburg's narcotics officers, the officer
22 indicated to Ms. Salisbury I'm advised that he told this
23 defendant if she worked for them he would advise them --
24 advise us of hi -- of her cooperation which he did and
25 Ms. Salisbury took that into consideration and we moved

1 forward with the case based primarily on her prior record,
2 Your Honor. There was no offer made to her with regard to any
3 substantial assistance because of her prior record but the
4 officer in Spartanburg did exactly what he said he told her he
5 would do which is to let her know, let us know that she had
6 cooperated. Mr. Smith indicates that that was all that he
7 thought that the officer could possibly do, he could not
8 obviously impact our our decisions as to how we were gonna
9 prosecute the case but he did advise us that she cooperated
10 and we did factor that in but we decided not to offer anything
11 more.

12 THE COURT: Alright, is that a true and correct statement
13 of the facts?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Alright, I would like to hear her record.

16 MR. WESTON: Alright, 1988 assault and battery; 1989
17 assault and battery; 1990 shoplifting ---

18 THE COURT: Alright, just give me the years for the
19 shopliftings.

20 MR. WESTON: Shoplifting 1990; '91; '93 times two,
21 receiving stolen goods in '93; '94 shoplifting times six; '98
22 shoplifting times three -- excuse me, I'm sorry, Your Honor,
23 times four, four counts of shoplifting in '98 ---

24 THE COURT: Okay.

25 MR. WESTON: --- and 2003 in Georgia theft by

1 shoplifting.

2 THE COURT: Okay.

3 MR. WESTON: In addition as I indicated previously, Your
4 Honor, there's a another assault and battery, malicious damage
5 to property ---

6 THE COURT: What -- give me the years on those.

7 MR. WESTON: The assault and battery was in '95;
8 malicious damage in 1996 and the DUI in 1996; 1997 criminal
9 domestic violence; 1998 false information to police; 2000
10 resisting arrest and in addition to the 2003 shoplifting in
11 Georgia that I mentioned previously there's an assault and
12 battery high and aggravated nature in Georgia in 2003.

13 THE COURT: Okay. Alright, is all that correct?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Alright, well I am gonna accept the plea now.
16 There is a substantial factual basis and it's been freely and
17 voluntary entered.

18 MR. SMITH: Thank, Your Honor, may it please the Court.
19 Ms. Twitty has been gainfully employed with a temporary agency
20 and she helped the Anderson County officials break up a
21 counterfeiting ring over there and she provided substantial
22 assistance to them and then over in Spartanburg she provided
23 substantial assistance in helping them break up a drug ring so
24 she has been acting on behalf of law enforcement in trying to
25 help them ferret out crime here in the Upstate so those are

1 some positive things with regard to her conduct there. Also,
2 she is a grandmother and she's taking care of some her
3 grandchildren because she has a child who's in prison who
4 can't and she's been that child -- those children's sole
5 support. I think, you know, she does have a bad record, a lot
6 of it happened in the nineties, over ten years ago, 2003 being
7 the most recent which which is ---

8 THE COURT: How much time she do for that? How much
9 time ---

10 MR. SMITH: You went ---

11 THE COURT: --- ya do?

12 MR. SMITH: --- jail for how many ---

13 THE DEFENDANT: I did, um, two years.

14 THE COURT: Two?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Alright.

17 MR. SMITH: So, Your Honor, based on Ms. Twitty's
18 comments to the Court and my professional responsibility, I
19 ask Court place her on probation is my recommendation.

20 THE COURT: Alright. What do you wanna tell me?

21 THE DEFENDANT: Durin' my earliest part a my years I, you
22 know, started off I had abusive boyfriend that I stayed with,
23 that's where mosta assault and battery and malicious damage to
24 property come from. When I got involved with him, I also got
25 on drugs. Within these last ten years I have ge -- got myself

1 together because I have grandkids. The shopliftin' was tryin'
2 to help my kids with their kids but now that I realize I'm
3 more of a help to them on the street than I am bein' locked up
4 and after that right there's been -- I been o -- one job I
5 stayed on my job for like seven years and I just got laid off
6 but I'm from temporary services join now ---

7 THE COURT: Well explain to me how you're so familiar
8 with law enforcement that they know to come to you to break
9 break up a drug ring, break up a counterfeiting ring, explain
10 that to me.

11 THE DEFENDANT: Because I I was involved in drugs at one
12 time, I wasn't a drug dealer but I was a drug user. The guy
13 the people that from Spartanburg was supplyin' everybody with
14 the drugs and for helpin' with my case he said if I help him
15 get that, you know, the person that that's how I know them, I
16 I don't, I never sold drugs or did anything, I just ---

17 THE COURT: And ---

18 THE DEFENDANT: --- used.

19 THE COURT: --- who -- what happened to the co-defendant?
20 they plead?

21 MR. WESTON: Yes, sir, Your Honor. She -- this was
22 shoplifting less than third offense and so she pled in
23 magistrate's court to the same offenses.

24 THE COURT: Well, anything else?

25 THE DEFENDANT: No, sir.

1 THE COURT: Seven years.

2 MR. SMITH: Thank Your Honor.

3 THE COURT: Alright.

4 MR. WESTON: Thank Your Honor.

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CERTIFICATE OF REPORTER

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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 June 21, 2012 at the time and place heretofore set forth; and that the foregoing pages numbered from 2 through 18, 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.

January 21, 2013

Margaret A. Woods

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

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Tammy Twitty, 174524)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2012-CP-23-

FILED
CLERK OF COURT
GREENVILLE, SOUTH CAROLINA
JUN 19 2012
9:43 AM

06477

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Greenville
2. Name and location of Court which imposed sentence Greenville, South Carolina
3. Name(s) of co-defendant(s) (if any) Tammy Robinson
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 11-LS-2302187
 - (b) 10-LS-2310288
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 6-21-12
 - (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 "yes" to (7), list:
- (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 "no" to (7), state your reasons for not so appealing:
- (a) *Hechler Smith wanted my daughter to give him more money!*
- (b) *Did not receive the paper in the amount of time.*
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) _____
- (b) _____
- (c) _____

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

- (a) *Ineffective Counsel!*
- (b) *Don't receive credit for a drug bust!*
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - 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?

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) _____

(b) _____

(c) _____

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? no
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? no
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? no

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

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

- i. _____
- ii. _____
- iii. _____

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

- i. Fletcher Smith (son) 232-6541
- ii. _____
- iii. _____

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

Rightfully Counsel, also to receive credit for helping the State.

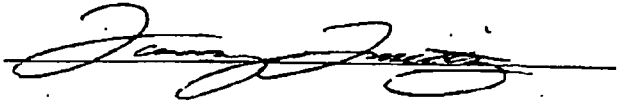
20. Are you now under sentence from any other court that you have not challenged?

no

STATE OF SOUTH CAROLINA)
)
County of)

VERIFICATION

I, , 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.



SWORN to and subscribed before me this 26th
day of September, 2012.

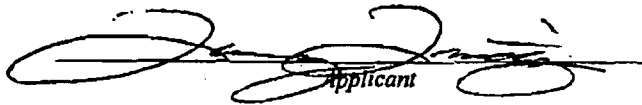
Offoria Cook-Jones (L.S.)
Notary Public

My Commission Expires: 10-01-2018

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

I, _____, 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.



 Applicant

SWORN or affirmed to and subscribed before me this
26th day of September, 2018.




 Notary Public

My Commission Expires: 10-01-2018

Attachment

A) Ineffective Counsel, Never received a plea agreement
I also gave Mr Smith the phone and refer to the
investigator that which I did the work for to help me
in court. Also the investigator had spoken to the prosecutor
Ms. Seelaby. Ms Seelaby stated that she would take it as
concession. But she never spoke up! I feel like Mr Smith
could have fought harder. He didnt keep his word. And he
was upset. Because I told the judge that I was not
happy with him (Mr Smith)


9.24.12

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Tammy Donnette Twitty,)
 S.C.D.C. No. 174524,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2012-CP-23-6447

RETURN

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 December 2011 term of the Greenville County Grand Jury for two (2) counts of shoplifting, third offense or greater (2010-GS-23-10288, 2011-GS-23-2187). Fletcher N. Smith, Jr., Esquire, represented the Applicant.

On June 21, 2012, the Applicant pled guilty. The Honorable Edward W. Miller sentenced the Applicant to concurrent terms of seven years on each count of shoplifting, third offense or greater. 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:

1. Ineffective assistance of counsel.
 - a. Failed to procure a plea bargain.
 - b. "Didn't receive credit for a drug bust."

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

May 2, 2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
)
)
 TAMMY DONNETTE TWITTY, 174524)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

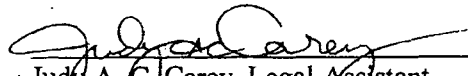
2012-CP-23-6447

AFFIDAVIT OF SERVICE BY MAIL

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

Tammy Donnette Twitty, 174524
Goodman Correctional Institution
4456 Broad River Road
Columbia SC 29210

DATED this 2nd day of May, 2013.


 Judy A. C. Carey, Legal Assistant
 For Respondent

1

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Tammy Twitty -vs- State of South Carolina (2012-CP-23-06447)
Exhibit List

3

PLAINTIFF'S EXHIBITS

NO	DESCRIPTION	ID	EV
	(NONE)		

DEFENDANT'S EXHIBITS

	(NONE)		

COURT'S EXHIBITS

	(NONE)		

1 THE WITNESS: Yes, ma'am.

2 THE CLERK: Thank you. You may be seated.

3 Please state your full name for the record.

4 THE WITNESS: Tabitha Danette Twitty.

5 THE CLERK: Thank you. You may be seated.

6 **TABITHA DANETTE TWITTY,**

7 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

8 **DIRECT EXAMINATION**

9 **BY MS. HORLBECK:**

10 Q. Ms. Twitty, who represented you on this case?

11 A. Mr. Smith, Fletcher Smith.

12 Q. Did you plead guilty to a shoplifting charge?

13 A. Yes, ma'am.

14 Q. What sentence did you receive?

15 A. Seven years.

16 Q. And as a result of that guilty plea, did you file

17 a post conviction relief petition?

18 A. Yes, ma'am.

19 Q. All right. Okay. And in this shoplifting that

20 you pled to, were the items that were taken, were all

21 of those returned?

22 A. Yes, ma'am.

23 Q. Were you ordered to pay any restitution?

24 A. No, ma'am.

25 Q. Okay. And Mr. Smith, was he retained or

1 appointed?

2 A. Retained.

3 Q. All right. And what did you want Mr. Smith --

4 how did you want him to help you in this case?

5 A. We had spoke about past arrests, anything besides
6 prison time.

7 Q. Okay.

8 A. And after I met with him he told me that the
9 prosecutors wanted to send me to prison. And I told
10 him that I knew because of my criminal record.

11 Q. Okay.

12 A. And I was asking him about a recommendation and
13 he said there's no recommendation. And he asked me how
14 much money did I have on me that day? And I told him
15 that I had five hundred. And he said, well, if you
16 give me that, I'll go see if I can get you a
17 recommendation. So I gave him the five hundred
18 dollars. And after that I also contacted an agent in
19 Spartanburg so I -- because I was trying to see if I
20 could get lesser time.

21 Q. Okay. Tell us a little bit about the agent in
22 Spartanburg situation. Why were you trying to contact
23 one of the officers in Spartanburg?

24 A. He said that if I ---

25 Q. When you say he, who is that?

Tammy Twitty -vs- State of South Carolina (2012-CP-23-06447)
Tammy Twitty - Direct Examination by Ms. Horlbeck

7

1 A. His name was Investigator Mack.

2 Q. All right. And that was the investigator with
3 Spartanburg?

4 A. Yes, ma'am.

5 Q. Okay.

6 A. That if I helped him with a drug bust that he
7 would reassure me that I wouldn't get no prison time.

8 Q. Okay. And did you help the agent from
9 Spartanburg make some drug buys?

10 A. Yes, ma'am.

11 Q. What specifically did you do to help the agent in
12 Spartanburg?

13 A. I wore a wire and I went and purchased a quantity
14 of drugs from this guy.

15 Q. How many times did you wear the wire?

16 A. Once.

17 Q. Okay. All right. And in exchange for doing that
18 work for the Spartanburg, I guess, Sheriff's Office,
19 what did they agree to do? What did the sheriff's
20 office agree to do?

21 A. He said that he would forward my -- the work to
22 Greenville.

23 Q. Who said that they would forward that
24 information?

25 A. Mack. And for me to keep in touch. So I kept in

1 touch with him the whole time.

2 Q. Okay.

3 A. I even told Fletcher Smith, you know, what I had
4 did. And I gave him the number.

5 Q. What number did you give Mr. Smith?

6 A. To the, to the investigator Mack.

7 Q. Okay. Did Mr. Smith call the investigator?

8 A. I don't know. I spoke with him again and he said
9 that he talked with ---

10 Q. You spoke with who?

11 A. With Mack. He said he spoke with Katrina
12 Salisbury. I think she's a prosecutor. And something
13 will be worked out. I also spoke with her and she said
14 that she would take the information in consideration.
15 But when we came to court she didn't say anything. And
16 me, I called Investigator Mack before I went in the
17 courtroom. And he told me and Mr. Smith that he
18 forward the information to Anderson County, but
19 Anderson County never received anything from him.

20 Q. Okay. Did you and Mr. Smith ever review any
21 copies of information forwarded from the Spartanburg
22 Sheriff's Office to either Mr. Smith or the Greenville
23 Solicitor's Office?

24 A. No, ma'am. No, ma'am.

25 Q. Was anything written from Investigator Mack or

1 written by Investigator Mack; was that ever shown to
2 the judge?

3 A. No, ma'am.

4 Q. Or passed up to the judge in mitigation of your
5 sentence?

6 A. No, ma'am.

7 Q. Okay. All right. Do you know if Mr. Smith ever
8 got anything in writing from the investigators in
9 Spartanburg?

10 A. He never said anything.

11 Q. And you didn't -- did you review anything with
12 Mr. Smith?

13 A. No, ma'am.

14 Q. All right. Ultimately when you pled guilty, was
15 there a recommendation?

16 A. No, ma'am.

17 Q. All right. What was your understanding of
18 whether or not the solicitor's office had made a
19 recommendation in your case?

20 A. Well, Mr. Smith said there was no recommendation.

21 Q. All right. Mr. Smith said there was no
22 recommendation?

23 A. Uh-huh (affirmative).

24 Q. And were you pleading off the trial docket or was
25 it just a regular plea day that you pled guilty?

1 A. I think it was a regular plea. I didn't even --
2 really didn't quite understand and I was rushed into
3 everything.

4 Q. Do you recall that your case was scheduled for
5 trial that day?

6 A. I had received several court dates and every time
7 I come I will always either have to sit and be sent
8 away. But this particular day I thought it was going
9 to be the same day, so I don't know which -- what it
10 was.

11 Q. All right. Before you showed up -- or before you
12 went to court to plead guilty on this particular day,
13 did you ever get to meet with Mr. Smith?

14 A. I met with him a couple of times within that
15 year.

16 Q. I'm talking about in the couple of weeks before
17 you went to court to plead guilty, did you meet with
18 Mr. Smith?

19 A. No.

20 Q. Okay. All right. Did you know that you were
21 scheduled for trial?

22 A. No, ma'am.

23 Q. But you knew to show up for court that day?

24 A. Yes. Yes.

25 Q. Okay. Did you have witnesses that were going to

1 testify for you?

2 A. No, ma'am. I thought everything was already
3 worked out with Investigator Mack and everything, I
4 thought.

5 Q. Okay. All right. But you did know there was no
6 recommendation; is that correct?

7 A. Yes, ma'am.

8 Q. Okay. All right. And ultimately, knowing there
9 was no recommendation, you pled guilty?

10 A. Yes, ma'am.

11 Q. All right. And what did -- what do you -- what
12 are you alleging today that Mr. Smith should have done
13 differently to give you effective assistance?

14 A. I feel like he could have prepared me more. I
15 didn't know that I was going to court that day. Also,
16 with the information and the work that I did with him
17 being my attorney, I think everything should have
18 worked out before I went to court because I have seen a
19 case like this before and normally I wouldn't have to
20 get up in the courtroom and expose of what I did.

21 Q. Okay. When you received your notice to appear in
22 court, did you contact Mr. Smith's office and try to
23 schedule an appointment with him?

24 A. No, ma'am.

25 Q. Okay. All right. How do you think -- how do you

1 -- well, explain to the court how your attorney's
2 failure to give you effective assistance, how that
3 prejudiced your case?

4 A. With the information, the numbers and everything,
5 he didn't contact the witness or get no kind of written
6 thing from Agent Smith (verbatim) letting him know, you
7 know, what have I did, nor with the recommendation. I
8 feel like he could have had me some kind of
9 recommendation.

10 Q. All right. So are you saying that you might have
11 been able to have a recommendation and your sentence
12 might have been lower ---

13 A. Yes, ma'am.

14 Q. --- had these mistakes not been made?

15 A. Yes, ma'am.

16 Q. All right. Any other allegations today?

17 A. No, ma'am.

18 Q. Okay. Please answer any questions that the
19 assistant attorney general may have for you.

20 **CROSS EXAMINATION**

21 **BY MS. RATIGAN:**

22 Q. So you had told Mr. Smith that you had worked for
23 Investigator Mack?

24 A. Yes, ma'am.

25 Q. And you went ahead and -- you even gave him the

1 phone number?

2 A. Yes, ma'am.

3 Q. And I believe you testified that Mr. Smith did
4 not contact a witness for you? Who is that witness?

5 A. Mack was one of the witness.

6 Q. Okay. But you just testified a second ago that
7 he should have gotten you prepared for court. You
8 know, you didn't even know you were going to court that
9 day. He didn't even contact the witness. The witness
10 you're talking about is Investigator Mack?

11 A. Yes, ma'am.

12 Q. Okay. But didn't the state say at the plea
13 hearing that the Spartanburg officers had already
14 advised them that you had assisted them?

15 A. Yes, ma'am.

16 Q. Okay. So what more did you want Mr. Smith to do
17 since the plea judge already knew that you had assisted
18 Spartanburg?

19 A. He -- when we called before the court date, he --
20 the Mack guy said that he forward the information to
21 Anderson, but Anderson -- it was a different case.

22 Q. Right.

23 A. And it should have been forward here. So the
24 paperwork should have been here.

25 Q. Okay. But what I'm asking is, since the state

1 told the judge at your plea hearing that they had
2 spoken to Spartanburg and Spartanburg had told them
3 that you had helped them, what else did you want Mr.
4 Smith to do? Since the state knew you helped
5 Spartanburg and the judge knew you helped Spartanburg,
6 what else did you want Mr. Smith to do?

7 A. Make sure that I got the credit or a
8 recommendation.

9 Q. And you're displeased with Mr. Smith because he
10 was never able to get you a recommendation?

11 A. Yes, ma'am.

12 Q. Did he ever promise you you would get a
13 recommendation or just that he would try?

14 A. Well, he said when I gave him the five hundred
15 dollars that he was going to go get me a recommendation
16 because I didn't have none at that time. He said just
17 give me -- pay me the five hundred dollars and I'm
18 going to go in and get you a recommendation.

19 Q. Well, why didn't you tell the plea judge that day
20 that Mr. Smith had told you you were going to get a
21 recommendation?

22 A. When -- I was rushed, I was nervous when they was
23 asking me was I satisfied with him and I told him that
24 I wasn't. And I think I kind of made the judge upset
25 because I was confused with everything was going on.

1 Court was stopped because they said that we was going
2 to go to trial, we was going to have a jury trial. And
3 he said that he wanted off this case. And the judge
4 told him, well, we're having a trial so you can't get
5 off the case. And then they was going to take me into
6 custody. And after two years with this case, I just
7 said, okay, I just want to go ahead and plead and get
8 it over with.

9 Q. So instead of telling the judge that you were
10 promised a recommendation for that five hundred
11 dollars, you just decided to let it go?

12 A. Well, from my understanding the promise is not to
13 be kept I'm thinking with the investigator or the
14 attorney.

15 Q. That's not what I'm asking you. So you -- even
16 though in your mind you gave Mr. Smith that five
17 hundred and he was going to get you a recommendation,
18 you decided not to mention that at all to the plea
19 judge because you were nervous?

20 A. It was mentioned about the -- because the judge
21 say, even if he did have a recommendation he didn't
22 have to go on the recommendation.

23 Q. Okay. But that's not what I'm asking you. I'm
24 asking you ---

25 A. Yes, ma'am. Yeah.

1 Q. So you felt nervous that day ---

2 A. Yeah.

3 Q. --- and you felt rushed, so you just wanted to
4 get it over with?

5 A. Yes, ma'am.

6 Q. But you had been to court before; hadn't you?

7 A. Yes, ma'am.

8 Q. But this time you just felt like you were being
9 pushed along?

10 A. Yes, ma'am.

11 Q. Well, why didn't you tell the judge that you felt
12 like this was going too fast and you felt like you were
13 being pushed into this? Why didn't you tell the judge
14 that?

15 A. I did. I told him I wasn't comfortable and
16 everything. And he asked me was I satisfied with my
17 attorney, and I told him no.

18 Q. But you did ultimately go ahead with the plea,
19 just ---

20 A. I did. Yes, ma'am.

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

22 MS. HORLBECK: Judge, that's all I have.

23 THE COURT: All right. Thank you, ma'am, you
24 may step down.

25 You may call your next witness.

Tammy Twitty -vs- State of South Carolina (2012-CP-23-06447)
Fletcher N. Smith, Jr. - Direct Examination by Ms. Ratigan

17

1 MS. HORLBECK: Judge, that's all I have.

2 THE COURT: Anything from the state?

3 MS. RATIGAN: Yes, Your Honor, we would call
4 Mr. Smith.

5 THE CLERK: Mr. Smith, please place your left
6 hand on the bible. Raise your right hand.

7 You do solemnly swear or affirm that the testimony
8 you're about to give in this case will be the truth,
9 the whole truth and nothing but the truth, so help you
10 God?

11 THE WITNESS: I do.

12 THE CLERK: Thank you. You may be seated.
13 Please state your full name for the record.

14 THE WITNESS: Fletcher Nathaniel Smith, Jr.

15 **FLETCHER NATHANIEL SMITH, JR.,**

16 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

17 **DIRECT EXAMINATION**

18 **BY MS. RATIGAN:**

19 Q. Mr. Smith, do you recall representing Ms. Twitty
20 on these charges?

21 A. I do.

22 Q. And were you retained or appointed?

23 A. I was retained.

24 Q. Did you file the usual *Brady* and Rule 5 motions?

25 A. Yes, ma'am.

1 Q. Did you receive those items from the state?

2 A. I did.

3 Q. Did you review them with Ms. Twitty?

4 A. Yes, ma'am.

5 Q. And did you receive the NCIC report on your
6 client?

7 A. Yes, ma'am.

8 Q. And did it reflect that the current charges were,
9 in fact, third or greater shopliftings?

10 A. Yes, ma'am. She had a very extensive record.

11 Q. And did you review that with Ms. Twitty?

12 A. I did. And on March 11, 2012, we went over the
13 items and I told her she was going to get time.

14 Q. Did the state ever make any kind of plea offer in
15 this case?

16 A. No offers at all. And even when we contacted
17 Spartanburg about the -- her assistance, they were
18 never forthcoming with anything that she did anything
19 significant. So Ms. Katrina Salisbury never did
20 anything to help the client and told me she wasn't
21 going to give her anything since she was going to plead
22 off the trial docket, because Ms. Twitty didn't want to
23 plead earlier, and there was no recommendation earlier.
24 So no recommendation prior to the trial docket, no
25 recommendation during the trial docket, so we had to

1 either go to trial that day or plead guilty. And I
2 might add that my client, I understand she's here
3 today, but she must have misunderstood the process,
4 because when they send you bond cards, they tell you on
5 the bond card, trial.

6 Q. Okay.

7 A. She received those -- she received correspondence
8 from me indicating there would be a trial. The
9 solicitor's office sent her a bond card telling her
10 there would be a trial. And we told her there would be
11 a trial. And when she talks about the five hundred
12 dollars, she paid me five hundred dollars on August the
13 22nd, 2011. This trial came up in 2012. And she paid
14 me a hundred and forty-five dollars on 12/1/2010
15 (verbatim), which means that she still had an
16 outstanding balance with me of seventeen hundred and
17 fifty dollars. We wrote her several letters indicating
18 that she needed to bring her balance current and she
19 never brought her balance current. And I never made
20 any promises to her that we were going to get any
21 recommendations. That's not how we operate.

22 Q. Did Ms. Twitty ever give you the phone number or
23 information about this Investigator Mack from
24 Spartanburg?

25 A. I think so.

1 Q. And you did contact him?

2 A. I did. And I contacted the solicitor's office
3 over in Spartanburg, too. And I think, as Judge Miller
4 indicated, this wasn't Ms. Twitty's first rodeo. And
5 Ms. Twitty understood how this process operated. She
6 knew we were going to go to trial that day. We had
7 been over her discovery extensively. And the fact is,
8 she knew she was going to go to trial that day, so she
9 said okay. We probably -- you know, I recommended she
10 plead guilty because I thought there was a substantial
11 likelihood that she was going to be convicted of these
12 charges. And I think she understood that, too. I
13 mean, she admitted that she had done these
14 shopliftings. So I don't know what defense she would
15 have had other than I did the offense.

16 Q. Right.

17 A. So she took responsibility, pled guilty, but then
18 she started fudging around with the judge, and I think
19 the Judge told her in the transcript, and I was present
20 there, like, look, if you don't want to plead guilty we
21 can go ahead and have this trial today. And so she
22 said, let me go ahead and plead guilty. That's what
23 she said.

24 Q. And so she decided the day of the trial that she
25 was going to go ahead and plead?

1 A. Yes, ma'am.

2 Q. If the case had proceeded to trial, would you
3 have been prepared to try the case that day?

4 A. Yes. Because the judge was not going to allow me
5 to relieved as counsel. And there was not going to be
6 any continuances.

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

8 MS. HORLBECK: Just briefly. When you're
9 ready. I just wanted to make sure that ---

10 THE COURT: Yes, ma'am. Go right ahead.

11 MS. HORLBECK: Thank you, Judge.

12 **CROSS EXAMINATION**

13 **BY MS. HORLBECK:**

14 Q. All right. Mr. Smith, just briefly. So the sum
15 total of what Ms. Twitty paid on her balance was about
16 six hundred forty-five dollars?

17 A. On a seventeen hundred and fifty dollars.

18 Q. Okay. And at the time her trial was scheduled,
19 she still had an outstanding balance?

20 A. Yes, ma'am.

21 Q. Okay. And your advice to her was that she needed
22 to plead guilty?

23 A. Right.

24 Q. All right. And you testified that you did
25 contact Investigator Mack?

1 A. Yeah. I believe I did. I know I talked to
2 somebody over in that solicitor's office about it.

3 Q. Okay.

4 A. Because I was trying to give her every
5 opportunity to get a recommendation. And I think she's
6 correct when she says that the man sent the information
7 -- if he sent any information to Anderson. Because
8 when we contact Anderson, they didn't know anything
9 about it.

10 Q. Okay.

11 A. So the key is, you know, as I told her, under the
12 U.S. Supreme Court precedent, police officers don't
13 have to be truthful to you.

14 Q. Uh-huh (affirmative). Okay. But the information
15 that Investigator Mack had for you, was it necessarily
16 helpful?

17 A. No. Because Ms. Salisbury had a hard line
18 against Ms. Twitty having a extensive criminal record
19 that Ms. Twitty couldn't get beyond. Ms. Twitty has a
20 history of shoplifting. So, you know, she wouldn't
21 reduce any of the charges. And so, you know, that
22 would have been a way to help her. And I said, look, I
23 said, different judges have sentencing patterns. Some
24 judges sentence harder on shoplifting than other
25 judges. And I thought, well, maybe since we have Judge

1 Miller, you might consider pleading in front of Judge
2 Miller. But if you go to trial, now, showing no
3 remorse and things of that nature, then it's going to
4 be much harder on you.

5 Q. Okay. And did Ms. Twitty give you the names of
6 any witnesses to contact?

7 A. No. I mean, she was the only witness in this
8 case.

9 Q. Okay. I wondered -- the transcript, I think,
10 makes a reference to y'all getting your witnesses
11 together. I didn't know if there were any witnesses.

12 A. I don't recall her telling me any witnesses. I
13 got statements, you know, in the discovery, but it
14 didn't indicate anybody in those statements would be
15 helpful to her.

16 Q. Okay. All right. At any rate, at the time of
17 the plea, you had not received anything in writing from
18 any investigator that Ms. Twitty had done some work
19 for?

20 A. Nothing whatsoever.

21 Q. Okay. All right. And you had nothing in writing
22 to present to the judge; correct?

23 A. Correct.

24 Q. Okay. All right. That's all I have. Thank you.

25 THE COURT: Any redirect?

1 MS. RATIGAN: No redirect, Your Honor, and
2 the state would rest.

3 THE COURT: Thank you, sir. You may step
4 down, Mr. Smith.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: Anything in reply?

7 MS. HORLBECK: No, sir.

8 THE COURT: To follow up on that last comment
9 about having witnesses ready, it appears from my
10 reading of the transcript that even though Mr. Smith
11 was talking, that question was addressed to Mr. Weston
12 with the state.

13 MS. HORLBECK: Oh, I apologize, Judge.

14 THE COURT: Well, he answered the question
15 rather than Mr. Smith. So that's why I presume the
16 judge looked at him and he said he would have them
17 there by the time the jury was picked.

18 I've read the transcript and I've certainly heard
19 the testimony. I think this is a case that under the
20 *Strickland* standard has not been met, not only the
21 deficient performance but nor any prejudice from
22 evidence I've heard and from reviewing the transcript
23 and application and other matters in the file.
24 Certainly in light of a plea and the considerations I
25 can make there under the *Leek* case and others, I

Tammy Twitty -vs- State of South Carolina (2012-CP-23-06447)
Fletcher N. Smith, Jr. - Cross Examination by Ms. Horlbeck

25

1 believe that petitioner has failed to meet the burden
2 of proof. I deny the petition.

3 If you would prepare me an order under the
4 guidelines of *Marler v. State*, I'd appreciate it.

5 MS. RATIGAN: Thank you, Your Honor.

6

7 [END OF REQUESTED TRANSCRIPT OF RECORD]

1 CERTIFICATE OF REPORTER

2 I, the undersigned Danette P. Hanks, Official
3 Court Reporter for the Thirteenth Judicial Circuit of
4 the State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate, and complete transcript
6 of record of all the proceedings had and evidence
7 introduced in the trial/hearing of the captioned case,
8 relative to appeal, in the Court of Common Pleas for
9 Greenville County, South Carolina, on the 18th day of
10 February, 2014.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

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

15 August 9, 2014

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17

18

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Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Tammy Donnette Twitty,)
 S.C.D.C. No. 174524,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2012-CP-23-6447

ORDER OF DISMISSAL

FILED CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSMEIER
 2014 APR -9 P 3:02

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 May 2, 2013. An evidentiary hearing into the matter was convened on February 18, 2014 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on her own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Fletcher N. Smith, 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 December 2011 term of the Greenville County Grand Jury for two (2) counts of shoplifting, third offense or greater (2010-GS-23-10288, 2011-GS-23-2187). She was

[Handwritten signature]

represented by Fletcher N. Smith, Esquire.

On June 21, 2012, the Applicant pled guilty. The Honorable Edward W. Miller sentenced the Applicant to concurrent terms of seven years on each count of shoplifting, third offense or greater. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. Failed to procure a plea bargain.
 - b. "Didn't receive credit for a drug bust."

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.

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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 retained plea counsel and asked him about the possibility of house arrest but that counsel said the State wanted prison time. The Applicant stated she worked for Investigator Mack in Spartanburg and he had promised to make sure she did not receive prison time. The Applicant stated she gave Mack's information to plea counsel. The Applicant stated Mack spoke with the assistant solicitor but nothing was said about this at the plea hearing. The Applicant stated plea counsel should have obtained a plea recommendation. The Applicant stated plea counsel said he would get a recommendation if she paid him \$500 but admitted she did not tell the plea judge about this.

Plea counsel testified he was retained and filed discovery motions. Plea counsel testified he received the discovery materials and reviewed them with the Applicant. Plea counsel testified they also reviewed her extensive criminal record. Plea counsel testified they had a meeting on March 11, 2012 in which they reviewed the discovery materials and he advised the Applicant she would receive some prison time for the charges. Plea counsel testified the Applicant told him about Investigator Mack and that he contacted the Spartanburg solicitor's office. Plea counsel testified Mack's input did not help their case because the assistant solicitor took a hard line on these charges. Plea counsel testified the State never made any plea offers in this case. Plea counsel testified the Applicant pled guilty once the case was on the trial docket and there were

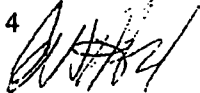


no promises of any recommendation. Plea counsel testified he was prepared for trial that day, as he had been advised there would be no continuances and the judge would not relieve him from representation.

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 the Applicant's testimony is not credible, while also finding 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 his representation.

The Applicant admitted to the plea judge both that she was guilty and that the facts recited by the solicitor were true. (Plea transcript, p.3; p.4; p.6; p.14). The Applicant also told the plea judge that she understood the trial rights she was waiving in pleading guilty and had not been coerced in any way. (Plea transcript, p.3; p.5).

This Court finds the Applicant failed to meet her burden of proving plea counsel should have followed up with the work she did in Spartanburg County. Plea counsel testified he was aware the Applicant had worked for Investigator Mack in Spartanburg. Plea counsel testified he spoke to the solicitors' offices in both Spartanburg and Greenville about this but that the prosecuting attorney chose not to make any plea offers in this case. This Court finds plea counsel's testimony is credible. This Court notes the State told the judge at the plea hearing that they had been advised of the Applicant's assistance in Spartanburg and that, while it was considered, there were no plea offers made. (Plea transcript, pp.13-14). Plea counsel also noted her assistance in Spartanburg during the guilty plea hearing. (Plea transcript, p.15). This Court finds the Applicant has not met her burden of proving plea counsel improperly handled this issue. Further, this Court cannot speculate as to what Investigator Mack may have said to the

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assistant solicitor because he did not testify at the PCR hearing. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court “has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness’ failure to testify at trial.”) (emphasis in original).

This Court finds the Applicant failed to meet her burden of proving plea counsel was deficient in not obtaining a plea offer. Plea counsel testified the assistant solicitor in this case was unwilling to make any plea offers in this case because of the Applicant’s extensive prior criminal record. This Court notes both that plea counsel cannot make the State engage in plea negotiations and that there is no constitutional right to plea bargain. See State v. Chisolm, 312 S.C. 235, 237, 439 S.E.2d 850, 852 (1994). The Applicant has failed to meet her burden of proving plea counsel was deficient in this regard.

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 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 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

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present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

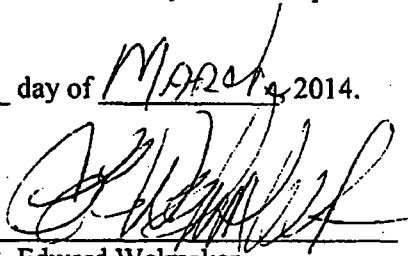
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during her guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. 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 31 day of March, 2014.



 G. Edward Welmaker
 Presiding Judge
 Thirteenth Judicial Circuit


 _____, South Carolina.

WITNESSES

Ken Hinkle

Greenville County Sheriffs Office

11/3/2010

ARREST WARRANT NUMBER
1408209

ACTION OF GRAND JURY

TRUE BILL

Bobby Dawson

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011-GS-23-
KBS

002187

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

December

TERM 2011

THE STATE

vs.

TAMATHA DONNETTE TWITTY

Indictment for

2877

SHOPLIFTING 3RD or ABOVE

VIOLATION § 16-13-0110 and § 16-01-0057

RECEIVED

NOV 15 2011

Clerk of Court
Greenville County

WITNESSES

M. P. Yearout

GSW

Greenville Police Department

10/9/2010

ARREST WARRANT NUMBER

M384454

ACTION OF GRAND JURY

TRUE BILL

Bobby Daum

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-23-

010288

KBS

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

December

TERM 2010

2011

THE STATE

vs.

TAMATHA DONNETTE TWITTY

Indictment for

2877

SHOPLIFTING THIRD OR ABOVE

VIOLATION § 16-13-0110 and § 16-01-0057

RECEIVED

DEC 29 2010

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
SHOPLIFTING THIRD OR ABOVE

At a Court of General Sessions, convened on DEC 20 2011 the Grand Jurors of Greenville County present upon their oath:

That TAMATHA DONNETTE TWITTY did in Greenville County, on or about the 9th day of October 2010, having previously been convicted of at least two (2) offenses for which the term of imprisonment is contingent upon the value of the property involved, willfully and unlawfully take possession of, carry away, transfer to another person or from one area of a store to another area; alter, transfer, or remove the label or price tag or any other marking which aids in determining value affixed to any merchandise; transfer from its container to another container; and or willfully conceal certain merchandise to wit: several items of clothing, and a box of diapers valued at less than Two Thousand Dollars displayed, held, stored, or offered for sale by BABIES R US, with the intent of depriving said merchant of the possession, use, or benefit of such merchandise without paying the full retail value. This is in violation of §16-13-0110 and §16-1-0057 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR