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January 5, 2015

JAN 08 2015

Daniel E. Shearouse
Clerk of Court – SC Supreme Court
Supreme Court
P.O. Box 11330
Columbia, SC 29211

S.C. SUPREME COURT

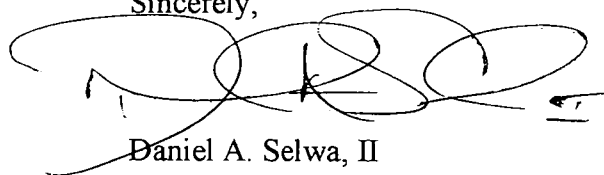
Re: Tyrone Beaty v. State of South Carolina, Case No.: 2013-CP-26-5929; John Elvis Bostic vs. State of South Carolina, Case No.: 2012-CP-26-7917; Keion Griffin vs. State of South Carolina, Case No.: 2011-CP-26-10757; Lorenzo Cross vs. State of South Carolina, Case No.: 2013-CP-26-3958; Nelson H. Castro vs. State of South Carolina, Case No.: 2013-CP-26-1591; Jeffrey Riebe vs. State of South Carolina, Case No.: 2013-CP-26-5292; Shannon T. Parker vs. State of South Carolina, Case No.: 2013-CP-26-2547; and Nearim Blackwell-Selim vs. State of South Carolina, Case No.: 2013-CP-26-6066.

Dear Mr. Shearouse:

Enclosed please find the original Notice of Appeal in each of the above-entitled actions and two copies for each. Please file and return one copy to me in the self addressed stamped envelope enclosed.

If you should have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Daniel A. Selwa, II

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable John C. Hayes, III, Circuit Court Judge

Case No.: 2013-CP-26-6066

Nearim Blackwell-Selim #320359, Petitioner,

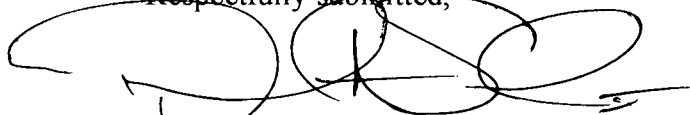
v.

State of South Carolina, Respondent.

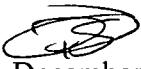
NOTICE OF APPEAL

The Petitioner appeals the Honorable John C. Hayes', III, November 17, 2014, order, denying the Applicant's Petition for post-conviction relief. Undersigned counsel received notice of entry of the order on December 9, 2014. A copy of the order on appeal is attached to this notice.

Respectfully submitted,



Daniel A. Selwa, II
1053 London Street, Suite A
Myrtle Beach, SC 29577
Attorney for the PCR Applicant


~~December~~ 5, 2015
January

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JAN 08 2015

S.C. SUPREME COURT

Other counsel of record:

Alan Wilson, Attorney General

Joshua L. Thomas, Assistant Attorney General

Post Office Box 11549

Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Honorable John C. Hayes, III, Circuit Court Judge

Case No.: 2013-CP-26-6066

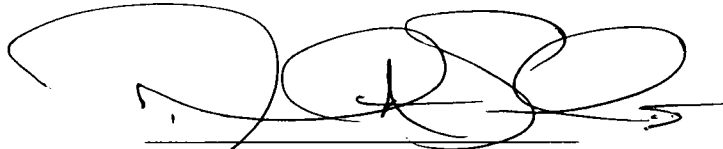
Nearim Blackwell-Selim #320359, Petitioner,

v.

State of South Carolina, Respondent.

PROOF OF SERVICE

I, Daniel A. Selwa, II, certify that I have served the within Notice of Appeal on the Respondent, the State of South Carolina, by depositing a copy of the same in the United States Mail, postage prepaid, addressed to his attorney of record, Alan Wilson, Attorney General, Post Office Box 11549, Columbia, SC 29211-1549. I further certify that all parties required by Rule to be served have been served this 5th day of January 2015.



Daniel A. Selwa, II
1053 London Street, Suite A
Myrtle Beach, SC 29577
Attorney for the PCR Applicant

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
)
 Nearim Blackwell-Selim,)
)
) Applicant,)
)
) v.)
)
 State of South Carolina,)
)
) Respondent.)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT

C.A. No.: 2013-CP-26-6066

ORDER

This is a Post-Conviction Relief Proceeding

HORRY COUNTY
 14 NOV 17 PM 12:59
 MELBA E. JENNINGS-WARD
 CLERK OF COURT

Application filed Application for post-conviction relief (PCR) on September 5, 2013.

The undersigned heard this case on October 29, 2014. Daniel Selwa, II, Esquire, represented the Applicant. The State was represented by Josh Thomas, Esquire.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In July 2005, the Horry County Grand Jury indicted Applicant for murder (2005-GS-26-2615). Barbara Blain-Olds, Esquire, represented Applicant. On January 4, 2007, Applicant appeared before the Honorable Steven H. John and pled guilty to voluntary manslaughter. Judge John deferred sentencing to February 27, 2007, at which time she was sentenced to twenty (20) years and denied parole eligibility pursuant to S.C. Code Ann. §16-25-90.¹

¹ "Notwithstanding any provision of Chapters 12 and 21 of Title 24, and notwithstanding any other provision of law, an inmate who was convicted of, or plead guilty or nolo contendere to, an offense against a household member is eligible for parole after serving one-fourth of his prison term when the inmate at the time he pled guilty to, nolo contendere to, or was convicted of an offense against the household member, or in post-conviction proceedings pertaining to the plea or conviction, presented credible evidence of a history of criminal domestic violence, as provided in Section 16-25-20, suffered at the hands of the household member. This section shall not affect the provisions of Section 17-27-45."

Applicant filed a timely notice of appeal challenging Judge John's finding regarding parole eligibility, and M. Celia Robinson, Esquire, of the Office of Appellate Defense, perfected the appeal. The South Carolina Court of Appeals upheld Judge John's ruling on September 15, 2009. *State v. Blackwell-Selim*, 385 S.C. 394, 648 S.E.2d 208 (Ct. App. 2009). The Court of Appeals denied Applicant's petition for rehearing on October 22, 2009, but the South Carolina Supreme Court granted Applicant's petition for writ of certiorari. The Supreme Court reversed the Court of Appeals on March 15, 2011, remanding to the circuit court to make specific findings of fact with regard to the parole eligibility ruling. *State v. Blackwell-Selim*, 392 S.C. 1, 4, 707 S.E.2d 426, 428 (2011).

Applicant appeared before Judge John again on May 11, 2011. Ronald W. Hazzard represented Applicant at that hearing. Judge John again found Applicant was not entitled to parole eligibility under the statute. Applicant filed a timely notice of appeal from that ruling, and Robert M. Pachak, Esquire, of the Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed Judge John's ruling on October 24, 2012. (2012 WL 10862830).

In her appeal, the Court of Appeals observed that Applicant "does not challenge the evidence originally presented at the first sentencing hearing" or "the merits of the ruling based on the original evidence." *See* 2012 WL 10862830.

The undersigned finds that the opinion of the Court of Appeals closes the door on her current complaint. At her first opportunity to challenge the evidence from her first sentencing hearing by the sentencing judge, she did not raise any issue of concern as to the evidence or lack of evidence considered by the Court. Even in light of this, the undersigned has addressed Applicant's current application.

A handwritten signature in black ink, appearing to be 'J. H. H.', is located at the bottom right of the page.

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

1. "Ineffective Counsel"
 - a. "I should have been tried under 16-25-90"

Applicant states the relief she seeks is "Parole eligibility, reduced sentence or time served."

By her testimony, as discussed herein below her complaint as to trial counsel's representation is that while certain records were handed to the trial judge at her sentencing hearing these were not introduced as exhibits.

Applicant also claims trial counsel had a conflict of interest at the time she represented Applicant as trial counsel had, prior to the date of Applicant's plea, accepted a job with the City of Conway. Trial counsel substantiates this fact. Applicant's case was prosecuted by the Myrtle Beach Police department, not the Conway Police Department. The job taken by trial counsel was an administrative job with the City of Conway and not a job connected to the Conway Police Department or the Conway City prosecutorial authority. At her hearing, Applicant presented absolutely no evidence that she was prejudiced by trial counsel's alleged conflict. Additionally as touched on further below, trial counsel provided effective assistance of counsel.

Finally as to the conflict issue, it is time barred as Applicant testified she discovered the alleged conflict "about a week" after her plea (January 4, 2007). There is no merit to Applicant's claim of a conflict of interest of trial counsel.


In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Strickland*, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C.115, 386 S.E.2d 624 (1989). The reviewing court applies a two pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625, *citing Strickland*. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.E. at 117-18, 386 S.E.2d at 625. With respect to guilty plea trial counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, she would not have pled guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

As stated below, Applicant challenges the trial court's ruling relative to her parole eligibility pursuant to S.C. Code All. § 16-25-90. This issue has already been visited and decided on direct appeal. *See* WL 10867830.

Post-conviction relief "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction." S.C. Code Ann. § 17-27-20(b); *see also Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("It is



uniformly held that an application for post-conviction relief is not a substitute for an appeal."). As stated above, Applicant's allegations regarding her parole eligibility were raised and ruled upon in her direct appeal.

Applicant's chief complaint is that the trial judge should have found that she is eligible for parole pursuant to Section 16-25-90, S.C. Code of Laws, 1976, as amended. Applicant argues that trial counsel was ineffective in not submitting certain records into evidence as exhibits even though these records were handed to the trial judge who acknowledged at least partial review of same (February 27, 2007 Transcript p. 14 LL 20-22 and May 11, 2011 Transcript p. 15 LL 14-23).

The records at issue were placed into evidence at the post-conviction relief hearing. They are a packet of police reports and attachments from Middletown Police Department, Middletown, Connecticut.

The Middletown record consists of reports, at least eight, of instances of police involvement with Applicant and the victim between February 9, 2002 (one report of the incident had 2001 as the year) through June of 2004 and four affidavits, the affidavits of her cousin, Donald Blackwell, a Sandra Leclair, Pam Wilson, and Francis Blackwell.²

The affidavits state Applicant's relationship with the victim was an abusive relationship. The police reports support the averment of the affidavits. Judge John, the trial judge, had these in his possession at the sentencing hearing of February 22, 2007 and the hearing on remand May 11, 2011. The trial judge stated on the record at the May 11, 2011 hearing that he had "read the records" and took them into consideration in his ruling of February 27, 2007 and stated the

² The packet also contained two articles from the middletownpress.com.

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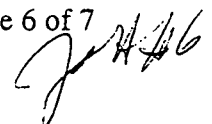
Middletown packet was "part of the record." (May 11, 2011, Transcript p. 15 L 7 through p. 16 L 1).

Based on the above, Applicant has failed to carry her burden of proof on her claim of ineffective assistance of counsel for failure to produce for the court the Middletown records and affidavits. Whether there were marked as exhibits or not they were reviewed and relied on by the trial judge. (May 11, 2011 Transcript p. 15 L 7 through p. 16 L 1).

Even if the court were to find trial counsel ineffective for not making the records and affidavits exhibits at the February 27, 2007 hearing; which it does not, Applicant was not prejudiced thereby. The trial judge held the records and reviewed them. Review of the transcript of the sentencing hearing of February 27, 2007 reveals that most, if not all of the incidents from the Middletown record were orally presented to the trial judge by trial counsel. Trial counsel also referenced the affidavits and their averments (February 27, 2007 Transcript p. 16 L 3 through p. 17 L 5).

In addition to other records and affidavits trial counsel called as a witness at the February 27, 2007 hearing Applicant's cousin, Jerri Marie Sanders. Ms. Sanders testified that she knew Applicant to be a battered woman. Ms. Sanders also testified Applicant was remorseful.

Trial counsel also called, on Applicant's behalf, Dr. Marty Loring, a forensic consultant, an expert witness, and a mitigation specialist (February 27, 2007 Transcript p. 17 LL 14-22). Dr. Loring testified as to her research and preparation for testifying on behalf Applicant. Dr. Loring testified extensively as to Applicant's traumatic and abusive upbringing in a dysfunctional family. Dr. Loring opined that Applicant suffers from post-traumatic stress disorder (February 27, 2007 Transcript p. 29 LL 4-6). Dr. Loring testified that Applicant's recall at to the event in which the victim was murdered she has limited recall, but does "remember feeling panic, feeling




that this would be the time that she dies" (February 27, 2007 Transcript p. 28 L 17 through p. 29 L 3).

Applicant has failed to prove the allegations of ineffective assistance of counsel and also failed to prove any prejudice resulting from trial counsel's failure to have the Middletown records and affidavits marked as trial exhibits. Additionally, the issue Applicant now presents to the court has been ruled on, adversely to her, by the Court of Appeals. (2012 WL 10862830).

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

Applicant is hereby placed on notice that any petition for certiorari to the South Carolina Supreme Court must be filed within thirty (30) days. See Appellate Court Rules 203, 206, and 227(b).

IT IS SO ORDERED.



John C. Hayes, III
Presiding Judge *47*

November *16th*, 2014
Conway, South Carolina



DANIEL A. SELWA, II
ATTORNEY AT LAW, L.L.C.

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The Honorable Daniel E. Shearouse
Clerk of Court, South Carolina Supreme Court
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