

STATE OF SOUTH CAROLINA)
 COUNTY OF HORRY)
 Crystal Turner, #342796)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2013-CP-26-04528

RECEIVED

JAN 16 2015

ORDER

SC Court of Appeals
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 JAN 19 2015
 Horry County
 Clerk of Court

THIS MATTER COMES BEFORE THE COURT by way of an Application for Post-Conviction Relief filed June 26, 2013. Respondent made a timely Return on or about February 27, 2014. The Court convened an evidentiary hearing into the matter on August 28, 2014, at the Georgetown County Courthouse. Applicant was present at the hearing and represented by T. Kirk Truslow, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on her own behalf at the evidentiary hearing. Applicant also called Paige Furness as a witness. Applicant's trial counsel, R. Scott Joye, Esquire, also testified. The Court had before it a copy of the trial transcript, the records of the Horry County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the records from Applicant's direct appeal, the application for post-conviction relief, and the return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. In May 2009, the Horry County Grand Jury indicted Applicant for two counts of accessory before the fact to a felony.

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The predicate felony on one count was armed robbery (2009-GS-26-2174) and the predicate felony on the other count was murder (2009-GS-26-2173). R. Scott Joye, Esquire (“trial counsel”), represented Applicant. On September 13, 2010, Applicant proceeded to a jury trial before the Honorable Thomas W. Cooper, Jr.. On September 16, 2010, the jury found Applicant guilty of accessory before the fact to an armed robbery and not guilty of accessory before the fact to a murder. Judge Cooper sentenced Applicant to sixteen years imprisonment.

Applicant filed a timely notice of appeal, and Breen Richard Stevens, Esquire, of the Office of Appellate Defense, represented Applicant. The South Carolina Court of Appeals affirmed Applicant’s conviction on October 24, 2012. *State v. Turner*, Op. No. 2012-UP-562 (S.C. Ct. App. filed October 24, 2012). The remittitur was returned to the circuit court on November 19, 2012.

ALLEGATIONS

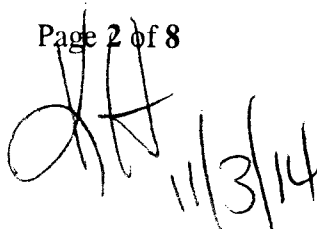
In her application, Applicant alleged she is being held in custody unlawfully for the following reasons:

1. “Ineffective assistance of trial counsel”
 - a. “Trial Counsel failed to properly investigate witnesses”
 - b. “Trial Counsel failed to call vital witnesses on behalf of Defendant’s case”
 - c. “Trial Counsel failed to object to the Court’s refusal to allow the jury’s request to re-hear testimony”

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing, and the 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).

Applicant testified she retained trial counsel after being charged along with five other co-

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defendants. She testified all but one co-defendant, Charles Skipper, pled guilty prior to her trial. However, Skipper pled guilty the day trial began and testified against her. Applicant testified she met with trial counsel for the first time the day after her arrest, but did not discuss the facts of the case. She further testified they never discussed the evidence or any defenses at their second meeting. Applicant recalled meeting with trial counsel in the Georgetown County jail after her bond was revoked. She testified the only evidence trial counsel discussed with her were the co-defendants' statements. She recalled listening to the recorded statement of one co-defendant and reading letters written by others. Applicant testified trial counsel never discussed her defense, never discussed whether she would testify, and never discussed the details of a trial.

Applicant testified to her version of events the night the victim was murdered, and agreed she explained that same version of events to trial counsel. She also agreed her version of events was presented to the jury through her statements to the investigating officers. Applicant testified she did not discuss an investigation with trial counsel, and was not sure which witnesses he interviewed. She testified she would have wanted Paige Furness to testify as to the relationship between all of the co-defendants. Applicant also testified trial counsel should have called her mother and grandmother to testify based on their comments at the sentencing hearing.

Paige Furness testified her initial statements to law enforcement indicated Applicant was involved in planning the armed robbery of the victim. She averred her testimony at trial would have been different from her statements to police. Furness testified Applicant merely told the co-defendants the victim would have money and pay for drinks, but had no involvement in planning the robbery. Furness testified she told her attorney this second version of events, but admitted she never told her attorney to share it with trial counsel. She also admitted she never contacted Applicant or trial counsel

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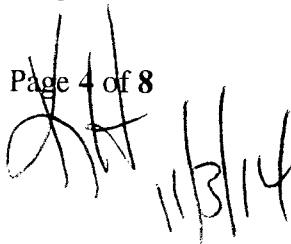
to tell them she would recant her statement to police.

Trial counsel testified he initially met with Applicant after her arrest. He further testified he had more than four meetings with Applicant, and that she was a good client who was actively involved in her case. Trial counsel testified he explained to Applicant the only evidence the State had against her was the statements of the co-defendants. He also discussed with Applicant her own statement, which he recalled was not an admission, but indicated she had some discussion about robbing the victim. Trial counsel recalled discussing with Applicant whether she would testify at trial.

Trial counsel testified he was most concerned with the statement of Furness. He recalled there was an issue with an unpaid power bill of Applicant's. Trial counsel recalled reviewing the power bill and having concerns the solicitor would use it to show a motive for Applicant to want to rob the victim. Trial counsel testified Furness could corroborate the problem with the power bill, as could Applicant's mother and grandmother. He testified he did not call these witnesses to avoid opening the door for the solicitor to present the unpaid bill. Trial counsel also testified he did not call the mother or grandmother because juries tend to place little weight in the testimony of close relatives. Trial counsel testified he explained the issue of the power bill to Applicant.

Trial counsel further testified Furness was represented by counsel, as were the other co-defendants. Trial counsel recalled regular discussions with Furness' counsel about the case. However, her counsel never indicated Furness would change her story at trial. Accordingly, trial counsel was concerned Furness' trial testimony would further implicate Applicant.

Trial counsel recalled the testimony of the detectives indicated they may not have believed Applicant has any intent to rob the victim. He recalled cross-examining all of the co-defendants on their involvement. He further recalled cross-examining the co-defendants on their plea deals. Trial counsel

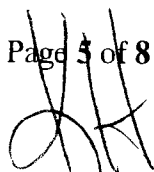
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also called Applicant's boyfriend as a witness, and he testified he did not overhear Applicant planning a robbery that evening. Trial counsel testified the jury asked for a transcript of the testimony of several witnesses. He testified he did not object to the trial judge instructing the jury to narrow its request because the judge left open the possibility of re-hearing whatever testimony the jury wanted.

In a post-conviction relief action, the applicant bears the burden of proving the allegations in the application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing *Griffin v. Martin*, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "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." *Id.* at 442, 334 S.E.2d at 814 (citing *Strickland v. Washington*, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Id.* (citing *Strickland*, 466 U.S. at 687; *Turner v. Bass*, 753 F.2d 342 (4th Cir. 1985); *Marzullo v. Maryland*, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Id.* (citing *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

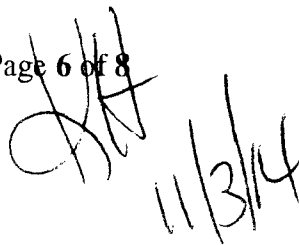
Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. *Id.* at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. *Id.* Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." *Id.* (citing *Strickland*, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's


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unprofessional errors, the result of the proceeding would have been different." *Id.* at 117-18, 386 S.E.2d at 625.

The Court finds Applicant failed to meet her burden of proving trial counsel was ineffective for failing to investigate. Failure to conduct an independent investigation is not *per se* ineffective assistance of counsel, especially where an investigation would not have uncovered any helpful information. *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). Here, trial counsel reviewed all the evidence in the case, which consisted almost entirely of witness statements. He read these statements, reviewed the discovery, and was not surprised by the testimony at trial. Such an investigation was reasonable under the circumstances. *Edwards v. State*, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011) (citing *Daniels v. State*, 676 S.E.2d 13 (Ga. 2009)). He also reviewed the State's evidence with Applicant prior to trial. The testimony of the witnesses at trial was consistent with their prior statements. To the extent there were inconsistencies, trial counsel brought those out on cross-examination. The Court finds especially credible trial counsel's testimony he discussed the case with all of the co-defendant's attorneys and was not informed any witness would change their testimony. See *Jackson v. State*, 329 S.C. 345, 350, 495 S.E.2d 768, 770 (1998) (attorney not defective in part because "counsel for the co-defendants [told attorney] any testimony given by them would be the same as their statements given to the police"). Accordingly, the Court finds trial counsel conducted a proper investigation, adequately conferred with Applicant, and was thoroughly competent in his representation.

The Court further finds Applicant failed to meet her burden of proving trial counsel ineffective for failing to call witnesses on her behalf. The Court finds credible trial counsel's testimony regarding his reasoning for not calling Furness as a witness. Trial counsel discussed Furness's testimony with her attorney. Neither Furness nor her attorney informed trial counsel she would provide a testimony at trial

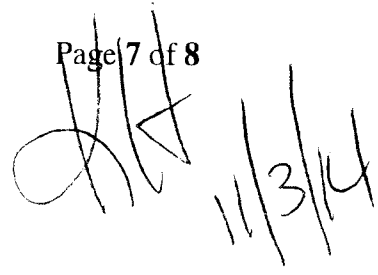
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that differed from her statement to police. *See id.* Furthermore, trial counsel feared Furness would open the door to the introduction of the power bill, which would strengthen the State's case. Accordingly, the Court finds trial counsel articulated a valid strategy for not calling Furness as a witness. *See Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992))).

Similarly, the mother and grandmother would have also opened the door to evidence of the power bill. The Court also finds persuasive trial counsel's explanation that the jury would have given less weight to these witnesses' testimony. Therefore, the Court finds trial counsel articulated a valid strategy for not calling Applicant's mother and grandmother to testify. *Id.*

The Court also finds Applicant has not demonstrated she was prejudiced by the failure to call Furness. Trial counsel presented the testimony of Applicant's boyfriend to show she was not involved in planning the robbery the night of the incident. The jury was also able to hear Applicant's version of her involvement that night through the testimony of the investigating officers, including one called as a witness by trial counsel. Thus, Applicant failed to show how Furness's testimony, even if it were inconsistent with her statement to police, would have assisted in her defense. *Jackson*, 329 S.C. at 351, 495 S.E.2d at 771. Similarly, the testimony of the mother and grandmother would not have added anything beneficial to the defense. *See Stokes*, 308 S.C. at 548, 419 S.E.2d at 779.

Finally, the Court find Applicant failed to meet her burden of proof on the allegation trial counsel was ineffective in failing to object to the trial judge's response to a jury question. The trial judge did not refuse to allow the jury to re-hear testimony, he simply asked the jury to focus on particular areas of testimony it desired replayed. (Trial Tr. p. 702, lines 11-13). However, he also gave

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them the option to hear the entirety of the testimony if they desired. (Trial Tr. p. 702, line 23-p.703, line 4). This request of the jury to focus its inquiry was properly within the scope of the trial judge's discretion. See *State v. Plyler*, 275 S.C. 291, 298, 270 S.E.2d 126, 129 (1980) ("The extent of such review is within the discretion of the trial judge to be exercised in the light of the jury's request."). Because there was no grounds to object to the trial judge's request, trial counsel was not ineffective for failing to object.

CONCLUSION

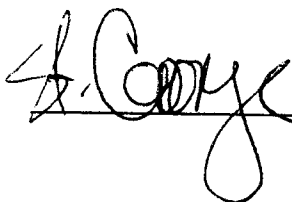
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant her application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

IT IS THEREFORE ORDERED THAT the Application for Post-Conviction Relief is denied and dismissed with prejudice; and

IT IS FURTHER ORDERED THAT the Applicant be remanded to the custody of the Department of Corrections to complete service of her sentence.

AND IT IS SO ORDERED this 3rd day of November, 2014.


THE HONORABLE KRISTI LEA HARRINGTON
Presiding Judge

, South Carolina