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RECEIVED

June 26, 2015

JUN 29 2015

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

S.C. SUPREME COURT

Re: Kesha Grant, #352697 v. State of South Carolina, Case No.: 2013-CP-21-1342

Dear Mr. Shearouse:

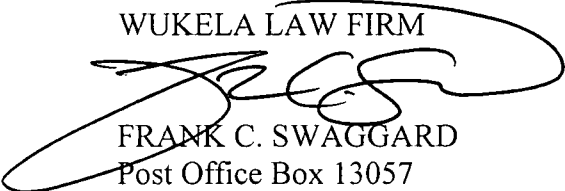
Enclosed for filing is a Notice of Appeal in the above case. Also enclosed are the following:

1. Proof of service of the notice of appeal on the respondent.
2. A copy of the order which is to be challenged on appeal.
3. A filing fee of \$100.00.

With kind regards, I am

Yours truly,

WUKELA LAW FIRM



FRANK C. SWAGGARD

Post Office Box 13057
Florence, South Carolina 29504
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Attorney for Petitioner

cc: J. Croom Hunter
Assistant Attorney General
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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Case No. 2013-CP-21-1342

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JUN 29 2015

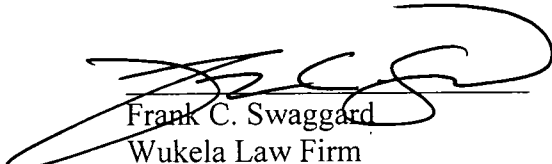
S.C. SUPREME COURT

Kesha Grant, #352697.....Petitioner,
v.
State of South Carolina,.....Respondent.

NOTICE OF APPEAL

Kesha Grant, #352697 appeals the Order of Dismissal denying her Application for Post-Conviction Relief filed June 11, 2015, and received by counsel on June 15, 2015, issued by the Honorable D. Craig Brown, presiding judge.

June 26, 2015


Frank C. Swaggard
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Attorney for Petitioner

Other Counsel of Record:

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

RECEIVED

D. Craig Brown, Circuit Court Judge

JUN 29 2015

Case No. 2013-CP-21-1342

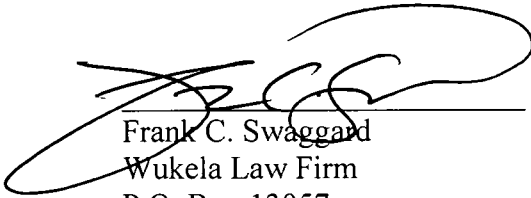
S.C. SUPREME COURT

Kesha Grant, #352697,.....Appellant,
v.
State of South Carolina,.....Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid on June 26, 2015, addressed to the Assistant Attorney General, J. Croom Hunter, Post Office Box 11549, Columbia, South Carolina 29211.

June 26, 2015



Frank C. Swaggard
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P.O. Box 13057
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(843) 669-5634
Attorney for Petitioner

FILED

STATE OF SOUTH CAROLINA
COUNTY OF Florence

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS 2015 JUN 11 PM 1:44 Case No. 2013 CP-21-1342

CONNIE REEL-SHEARIN

Keasha Grant #352697
PLAINTIFF(S)

CCCP & GS
FLORENCE COUNTY, S.C.
State of South Carolina
DEFENDANT(S)

Attorney for: Plaintiff Defendant
or
 Self-Represented Litigant

Submitted by:

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

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

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: _____

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

2015 JUN 11 PM 1:44
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, S.C.

FILED

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.
CARRIED A TRUE COPY
of the Judgment
of the Court
of the Court

STATE OF SOUTH CAROLINA)
 COUNTY OF FLORENCE)
)
 Kesha Grant, #352697,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 TWELFTH JUDICIAL CIRCUIT

Case No. 2013-CP-21-1342

ORDER OF DISMISSAL

2015 JUN 11 PM 2:07
 FILED
 CONNIE REEL-SHEARER
 CLERK OF COURT
 FLORENCE COUNTY, S.C.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 16, 2013. Respondent made a Return on or about December 18, 2013. The Court convened an evidentiary hearing into the matter on April 15, 2015, at the Florence County Courthouse. Applicant was present at the hearing and represented by Frank C. Swaggard, Esquire. J. Croom Hunter, Esquire, of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on her own behalf at the evidentiary hearing. Applicant’s plea counsel, Scott Floyd, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Florence County Clerk of Court regarding the subject convictions, Applicant’s records from the South Carolina Department of Corrections, and the pleadings in this matter. The Court finds as follows:

I. PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court’s orders of commitment. The Applicant was indicted at the July 2012 term of the Florence County Grand Jury for homicide by child abuse

CERTIFIED: A TRUE COPY
 Connie Reel-Shearer
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

(2012-GS-21-0886). Scott P. Floyd, Esquire, represented the Applicant.

On October 18, 2012, the Applicant pled guilty as indicted. The Honorable Michael G. Nettles sentenced the Applicant to twenty-seven (27) years imprisonment. The Applicant did not appeal her plea or sentence.

II. ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. Failure to thoroughly prepare for and challenge the State's case.
2. Applicant claimed she was improperly charged under the statute.

III. 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. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court finds Counsel's testimony credible and Applicant's testimony not credible. 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).

A. Summary of Testimony

Applicant testified at the PCR hearing that she was represented by Scott Floyd, Esquire, at her plea. Applicant testified she and Counsel met approximately ten to fifteen times prior to the plea. Applicant testified 622 days elapsed between her arrest and her plea. Applicant testified she and Counsel had many long conversations, but they never discussed any possible defenses she could raise. She testified Counsel did not thoroughly explain the charges she was facing, and

she thought she was inappropriately charged. Applicant testified she asked Counsel to review the autopsy report with her because she wanted to know the official cause of death, but he never did. Applicant claimed her mental competency should have been evaluated.

On cross-examination, Applicant acknowledged she recalled the plea judge going over the constitutional rights she was waiving by pleading guilty. Furthermore, she acknowledged that she told the plea judge she was satisfied with Counsel's performance and had no complaints. Applicant acknowledged she admitted her guilt to the plea judge, agreeing with the facts recited by the solicitor, and she told the judge she wanted to plead guilty. Applicant also confirmed that she pled guilty because she knew she would be found guilty at trial, and she wanted to avoid a life sentence. Finally, Applicant testified she spoke to Solicitor Clements the day of the plea without Counsel present.

Counsel testified he has been practicing since 1988 with a substantial portion of his career devoted to criminal defense. Counsel testified he represented Applicant in his capacity as the Twelfth Circuit Public Defender. Counsel testified he filed Rule 5 and Brady motions, and he received discovery from the State. Counsel testified he reviewed the discovery materials with Applicant and discussed her version of events with her. Counsel testified Applicant did not have any viable defenses to raise at trial because of the overwhelming nature of the evidence. Counsel testified Applicant's estimation that he met with her 10-15 times was correct. Counsel testified he goes to the jail and visits his clients on a monthly basis. Counsel testified he reviewed the rights Applicant would waive by pleading guilty, and he never had trouble communicating with Applicant. Counsel testified Applicant never indicated she did not understand their conversations, and Counsel had no reason to believe Applicant was not competent. Counsel

testified he thought the charges brought by the State were appropriate. Counsel testified he could not specifically recall whether he went over the autopsy report with Applicant, but he did review discovery with her. Finally, Counsel testified he did not believe Solicitor Clements would have spoken to Applicant outside of his presence the day of the plea.

B. Ineffective Assistance of Counsel

In this post-conviction relief action, Applicant bears the burden of proving the allegations in her 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 trial counsel as a ground for relief, Applicant must prove trial 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. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether trial counsel 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)). The Court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). 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).

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove trial counsel's performance was deficient. Id. Under this prong, the Court measures trial counsel's

performance by its “reasonableness under prevailing professional norms.” *Id.* (citing Strickland, 466 U.S. at 688). Second, trial counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 117-18, 386 S.E.2d at 625.

This Court finds Applicant has failed to show Counsel’s performance fell below an objective standard of reasonableness. Counsel’s testimony indicated he was extremely familiar with the facts of Applicant’s case. This Court finds Counsel met with Applicant an adequate number of times and was familiar with the discovery materials. Counsel testified that he felt the charges brought by the State were appropriate, and he had no basis for challenging them. This Court further finds that based upon the solicitor’s recitation of the facts at the plea colloquy, combined with Counsel’s testimony at the PCR hearing, the evidence against Applicant was such that it was in Applicant’s best interest to go forward with the plea. As such, Applicant has failed to show ineffectiveness of counsel, and the allegation is without merit.

C. Involuntary Guilty Plea

Although not specifically alleged, this Court finds Applicant’s allegations could be construed as alleging her plea was involuntary. This Court finds the allegation to be without merit.

In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability

that but for counsel's errors, the Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging her guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of her plea and the charges against her. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights they are waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief

hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

This Court has had the opportunity to review the testimony from the PCR hearing, as well as the guilty plea transcript and finds Applicant knowingly, intelligently, and voluntarily entered her guilty plea. Applicant has presented no credible evidence to the contrary. Applicant's testimony that she pled guilty to avoid the possibility of a conviction and harsher sentence clearly shows Applicant was well aware of her actions and proceeded forward with her plea after weighing the pros and cons of such a decision. As such, this Court finds the allegation is without merit.

D. 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, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. 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.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, her post-conviction relief attorney

must serve and file a notice of appeal on Applicant's behalf. Applicant and her attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 11th day of June, 2015.

D. Craig Brown

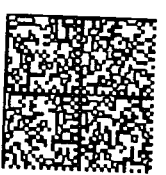
D. CRAIG BROWN
Presiding Judge
Twelfth Judicial Circuit

Florence, South Carolina

FILED
2015 JUN 11 PM 12:07
JOHNNIE REEL-SHEARIN
COCOP & GS
FLORENCE COUNTY, SC

CERTIFIED A TRUE COPY
Johnnie Reel Shearin
CLERK OF COURT, C.P. & G.S.
FLORENCE COUNTY, S.C.

FIRST CLASS



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WUKELA LAW FIRM
403 SECOND LOOP ROAD
P.O. BOX 13057
FLORENCE, SC 29504

To:

The Honorable **Daniel E. Shearouse**
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

FIRST CLASS