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SEP 14 2015

S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

Alison Renee Lee, Circuit Court Judge

JOHN T. ROBINSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000413

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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FORM 5

STATE OF SOUTH CAROLINA)

County of York)

John Thomas Robinson - 72390A)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2013 CP46-3954

APPLICATION FOR
POST-CONVICTION RELIEF

DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

2013 DEC 27 PM 4:37
2014 JAN 24 PM 12:52

FILED-RECEIVED CERTIFIED TRUE COPY

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention York County Detention Center, 1675-3A York Hwy York, SC 29745
2. Name and location of Court which imposed sentence M. J. Williams Court for the Sixth Circuit, 1675- York Hwy, York, SC 29745
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) C-# #: N230391 - Criminal Domestic Violence -

- (b) (CDV) First offense.
- (c) _____

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

- (a) 7, 3, 2013 - Nolo Contendere - Time Served.
- (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 Yes - Nolo Contendere

7. Did you appeal from the judgment of conviction or the imposition of sentence?

N/A - N/A

8. If you answered Ayes@ to (7), list:

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

- i. _____
- ii. N/A N/A N/A
- iii. _____

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

- i. _____
- ii. N/A N/A N/A
- iii. _____

(c) the date of each such result:

- i. _____
- ii. N/A N/A N/A
- iii. _____

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

- i. _____
- ii. N/A N/A N/A
- iii. _____

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

- (a) Ineffective Assistance of Counsel

- (b) _____
- (c) _____

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

- (a) Ineffective Assistance of Counsel.
- (b) _____
- (c) _____

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

- (a) Was attorney ineffective when failed to
- (b) advise defendant of all the provisions of law?
- (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? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A N/A N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

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

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

iv. N/A N/A N/A

(c) the disposition thereof:

i. _____

ii. _____

iii. N/A N/A N/A

iv. _____

(d) the date of each such disposition:

i. _____

ii. N/A N/A N/A

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. N/A N/A N/A

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?

N/A N/A N/A N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. N/A N/A N/A

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. N/A N/A N/A

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) Was attorney ineffective when failed to advise
- (b) defendant of all the provisions of law?
- (c) Ineffective Assistance of Counsel.

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

- (a) your arraignment and plea? Toni Lynn Harp
- (b) your trial, if any? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Toni Johnson

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

- (a) the name and address of each attorney who represented you:
 - i. Ms. Toni Johnson
P.O. Box 649, York, SC 29745
 - ii. Ms. Toni Lynn Harp
 - iii. 1041 Marion St., 12-J, Columbia, SC 29201
- (b) the proceedings at which each such attorney represented you:
 - i. Toni Johnson - (c) above
Toni Harp - (a) above
 - ii. _____
 - iii. _____

19. State clearly the relief you seek in filing this application:
The Conviction vacated and any other redress this Court
seems just and necessary.

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

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of York)

VERIFICATION

I, John Thomas Robinson, 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.

J. T. Robinson

SWORN to and subscribed before me this 20th day of December 2013.

[Signature] (L.S.)
Notary Public

My Commission Expires: May 15, 2023

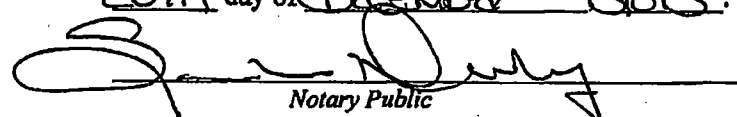
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, John Thomas Robinson, 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
20th day of December 2013.


Notary Public

My Commission Expires: May 15, 2023

- a. "was attorney ineffective when failed to advise defendant of all the provisions of the law?"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRC(a).

III.

Respondent construes these allegations as ineffective assistance of plea counsel. Respondent submits plea counsel rendered effective assistance of 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, 466 U.S. 668. 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 plea 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.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

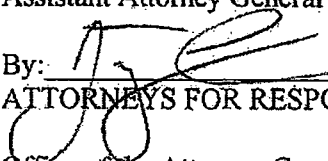
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

May 21, 2014.

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

2013-CP-46-3954

JOHN T. ROBINSON,)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

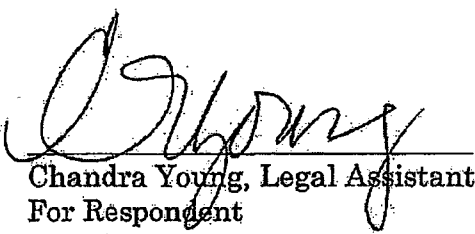
STATE OF SOUTH CAROLINA,)

Respondent.)

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(s) by depositing same in the United States mail, postage prepaid:

W. Michael Hemlepp, Esquire
 3027 S. Paraham Rd.
 York, SC 29745

DATED this 21ST day of May, 2014.


 Chandra Young, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA

2 -----x

3 JOHN THOMAS ROBINSON,

4 Appellate,

5 Case No.

6 -against-

2013-CP-46-3954

7 STATE,

8 Respondent.

9 -----x

10 November 17, 2014

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE ALISON RENEE LEE, Judge.

15

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

17 J. RUTLEDGE JOHNSON, Esquire

18 Attorney for the State

19

20 W. MICHAEL HEMLEPP, Esquire

21 Attorney for the Appellate

22

23

24 Aileen Butler

25 Official Court Reporter

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EXHIBITS

| <u>NO.</u> | <u>DESCRIPTION</u> | <u>I.D.</u> | <u>EVD.</u> |
|----------------|--------------------|-------------|-------------|
| Respondent's 1 | Plea agreement | | 17 |

I N D E X

| | | | | |
|----|------------------|---------------|--------------|--------------------------------|
| 1 | | | | |
| 2 | <u>WITNESS</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> <u>RECROSS</u> |
| 3 | John T. Robinson | | | |
| 4 | Mr. Hemlepp | 5 | | |
| 5 | Mr. Johnson | | | |
| 6 | Toni Johnson | | | |
| 7 | Mr. Johnson | 13 | | 19 |
| 8 | Mr. Hemlepp | | 17 | |
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1 MR. JOHNSON: May it please the Court, Your
2 Honor. This is the case of John Thomas Robinson
3 versus State of South Carolina. Case number
4 2013-CP-46-3954.

5 Mr. Robinson was charge with criminal domestic
6 violation, first offense, and he is represented by
7 Toni Johnson.

8 On July the 3rd, 2013 he plead no contest before
9 the Honorable Herman Howell and was sentenced to time
10 served. He did not appeal his convictions or
11 sentences. Thereafter he filed a PCR on December
12 27th, 2013. The State filed its return on May 21st,
13 2014.

14 He is represented here today by Mr. Mike Hemlepp.

15 THE COURT: And I don't have any transcript.

16 MR. JOHNSON: No, Your Honor. It is Magistrate
17 level offense.

18 THE COURT: Yes, sir, Mr. Hemlepp.

19 MR. HEMLEPP: Thank you, Your Honor. I call my
20 client, Mr. John Robinson, to the stand.

21 JOHN THOMAS ROBINSON, called as a witness, having
22 been duly sworn by the clerk, was examined and
23 testified as follows:

24 DIRECT EXAMINATION

25 BY MR. HEMLEPP:

1 Q May it please the Court. Mr. Robinson, where do you
2 currently reside?

3 A I currently reside at Rock Hill, South Carolina. It's
4 the city of. Probably I think if my direction is correct about
5 13 to 15 miles east of here.

6 Q Okay. And how long have you lived in Rock Hill?

7 A Principally all my life. I moved elsewhere but I
8 always return. Pretty much I resided in Rock Hill all my life.

9 Q And are you currently married, single or divorced?

10 A I'm married, but we are sort of separated. We are
11 trying to fix things and if it works out it does and we'll cross
12 that bridge when we get there. I am married legally, but we are
13 living separately.

14 Q Could you please tell us your wife's name?

15 A Her name is Marilyn Denise Robinson.

16 Q And when did you two separate?

17 A Probably we have been separated now maybe 14, 16
18 months.

19 Q And would it be safe to say that prior to that your
20 marriage had some difficulties?

21 A Absolutely.

22 Q Do you know Miss Johnson who is seated here in the
23 courtroom?

24 A Yes, I know her. I am familiar with her, yes.

25 Q How do you know her?

1 A I know her because she represented me on this matter.

2 Q When you referred to this matter, tell us what that
3 was?

4 A Criminal domestic violence.

5 Q And that was a charge that arose against you?

6 A Yes.

7 Q What was charging agency?

8 A Beg your pardon?

9 Q Which agency charged you? Was it the sheriff's
10 department? Rock Hill City Police?

11 A I think it was the sheriff's department. I would like
12 to say it was the sheriff's. I'm not certain but I believe it
13 was the sheriff's department that arrested my for the criminal
14 domestic violence.

15 Q Okay. And who did the sheriff's department in
16 arresting you alleged -- who did they alleged was the victim?

17 A My wife, Marilyn Robinson.

18 Q And when you got arrested did you go to jail?

19 A Did I go --

20 Q To jail?

21 A I certainly did.

22 Q How long were you in jail?

23 A If I recall correctly I should have been in jail
24 shortly on this. I probably bonded out of jail the next day, if
25 I recall correctly, yes.

John Robinson - Direct by Mr. Hemlepp

7.

1 Q While you were in jail were you screened for the public
2 defender? How did it come about that you had Miss Johnson as
3 your lawyer?

4 A Miss Johnson was appointed to represent me in a similar
5 court matter with CDV and so that's how we became affiliated
6 under the circumstances.

7 Q How long a period of time was she your lawyer?

8 A She was my lawyer for probably over a year because some
9 other things occurred that made -- I was arrested for the CDV.
10 She was appointed to represent me and prior of going to court
11 for the CDV a felony occurred that I was involved with. Then
12 when we went to court for the CDV that court determined that we
13 just wait until you solve the felony before the CDV gets
14 disposed of. So that may it linger on well over a year.

15 Q Okay, but you eventually did go to court?

16 A Yes.

17 Q And prior to going to Court -- well, do you remember
18 the date when you went to court?

19 A I don't remember the exact date that I went to Court.
20 Right off I don't. The first time I don't have that with me
21 right now, but that court ordered that they would save that
22 procedure until the criminal matter was disposed of and they
23 ordered that the victim and I stay separately until this matter,
24 the CDV, was disposed of.

25 Q What happened to that? Was that eventually disposed

1 of?

2 A Yes, the criminal matter -- the criminal matter was
3 disposed of.

4 Q No, sir. The CDV that we are talking about today was
5 that disposed of?

6 A Yes.

7 Q When was that disposed of?

8 A It was disposed of -- okay. We have here that -- I
9 didn't go to Court. Here is what happened. It was disposed of
10 July the 3rd of 2013. Now, I didn't go to court for that
11 disposition. After having the criminal matter disposed of now
12 it's time to try to get the CDV out of the way, so that my wife
13 and I could legally be together because we had an order to stay
14 away separately until this matter was disposed of, the CDV.

15 So then I went to see Miss Johnson. I called her on a
16 number of occasions and she was busy with court. We just
17 couldn't make arrangements to immediately get together, but I
18 stayed at it diligently until we got together. And I came to
19 her office in the public defender's office and explained to her
20 my circumstances and how we would like to get this disposed of
21 because she and I - my wife, could get back together legally
22 without it being a violation of the law in any kind of way. And
23 that's how it was disposed of. She drew up a document there in
24 her office then and whenever that document went to Court I don't
25 know, but we signed off everything right there that date and I

John Robinson - Direct by Mr. Hemlepp

9

1 am sure that was prior to July the 3rd, 2013, the deposition
2 date. So whenever it went to the Court on the disposition date
3 I wasn't there and she had explained to me that if she needed to
4 contact me afterward that she would. If things went according
5 to her plan then everything would be fine and etc., etc., and so
6 I never heard anything about it and it was disposed of as she
7 had hoped it would and so that's how that was disposed of.

8 Q During this period of representation -- well, let me
9 back up. You were convicted of the criminal domestic violence
10 as a result?

11 A Yes, because the documents she drew up we plead guilty
12 for time served.

13 Q Yes.

14 A Okay, and whenever the document went to Court -- like I
15 said I wasn't there when it actually went to Court, but our
16 agreement was that we plead guilty to time served for the
17 disposition. And so we did. But I talked with Miss Johnson
18 then in her office that day and I explained to her that my wife
19 did this out of anger and there was never a criminal domestic
20 violence occurred and that she probably would not even come to
21 court and testify to that on me. Miss Johnson explained to me
22 that wife didn't necessarily have to be there. That the
23 documents, the petition and other paper work, would be enough to
24 go to court with and that she felt it would be best for me to
25 plead guilty in this matter and I wanted to get the matter

1 behind us, disposed of, so that my wife and I can get together
2 and I said, well, okay let's do it then. Let's get it disposed
3 of and under her advisement I did.

4 Q Do you agree with that decision now?

5 A No. I latter discovered that there was ineffective
6 assistance of counsel.

7 Q Tell the Court what that was?

8 A That made it ineffective?

9 Q Yes.

10 A Why do I believe it was ineffective?

11 Q Yes.

12 A The way she had me sign that document for a guilty
13 plea. She could have advised me properly that my wife could
14 have voluntarily had the matter disposed of by going -- simply
15 going to victim's adequate (sic) office and disposing of that
16 matter and lawfully that would have been the proper recourse to
17 take. There would not have been a conviction and that would
18 have been effective representation.

19 Q And as a result of your conviction did anything adverse
20 happen to you?

21 A Absolutely. I lost my job and I had a lot of
22 controversy with my landlord, my living area.

23 Q And this was as a result of the domestic violation
24 conviction?

25 A Conviction, yes. The conviction itself to domestic

John Robinson - Direct by Mr. Hemlepp

11

1 violation conviction. And so -- which was at the time that's
2 what happened. That was the results of that. But I felt just
3 easy as we sign off a document for a guilty plea we could have
4 sign off for a deposition for dismissal of the complaint.

5 Q And this was as a result of the advise that you were
6 given by Miss Johnson?

7 A Yes. Miss Johnson never told me about the dismissal.
8 That my wife could voluntarily dismiss that complaint. She
9 never told me that. I was blind to that fact. To -- to -- uh,
10 subsequently to the disposed of this. Okay.

11 Q Okay. Is there anything else Judge Lee needs to make a
12 decision in this case, and you are the moving party so this is
13 your time in court.

14 Is there anything else that you think that Judge Lee
15 needs to consider in making a decision in this matter?

16 A Yes. I think that the judge should know that I don't
17 know about anything else in addition to that. I don't make the
18 law, but we're just trying to show what the law would have been
19 more in my favor then me having to plead guilty to something
20 that never actually occurred. Had we gone to trial on this
21 there wouldn't have been a conviction and but rather then just
22 going on and on --

23 MR. JOHNSON: Objection to speculation.

24 A Well, that's speculation, yes, but it's not speculation
25 that she denied me -- advise me of that my wife could have

1 voluntarily dismissed this matter. That is not speculation at
2 all. That's the law.

3 Q Okay. Thank you, Mr. Robinson. Please answer any
4 questions that the Attorney General or the Court may have.

5 A Certainly.

6 MR. JOHNSON: No questions for this witness, Your
7 Honor.

8 THE WITNESS: No.

9 THE COURT: I don't have any questions. You may
10 step down.

11 (Witness excused.)

12 THE COURT: Any additional witnesses Mr. Hemlepp.

13 MR. HEMLEPP: No. Thank you, Your Honor.

14 THE COURT: Any witnesses from the State?

15 MR. JOHNSON: Before the State calls witnesses
16 Your Honor, I move for either a directed verdict or
17 summary judgement.

18 While Mr. Robinson has testified that Miss
19 Johnson's advice could have lead to a disposal of the
20 matter his only prejudice that he alleges the lost of
21 job and controversy with a landlord. Those are
22 collateral consequences both of which counsel has no
23 duty to advise and do not fall under the post
24 conviction relief statute. Therefore the State asks
25 for a directed verdict and/or in alternative a summary

Toni Johnson - Direct by Mr. Johnson

13

1 judgement.

2 THE COURT: Any response Mr. Hemlepp?

3 MR. HEMLEPP: I don't think it's part of the case
4 that her representation required that she advise him
5 of that. That is evidence of -- that his evidence of
6 him being prejudiced by the fact that he was convicted
7 of it. I think the two arguments that Mr. Robinson is
8 making is one, for ineffective advice and had she not
9 been ineffective in that advice he would have not
10 plead guilty. He would have went to trial and that he
11 believes he would not have been convicted of. I think
12 that is a more succinct version of Mr. Robinson's
13 argument before the Court.

14 THE COURT: I will deny the the motion at this
15 particular time.

16 MR. JOHNSON: The State calls Toni Johnson to the
17 stand, Your Honor.

18 TONI LYNN JOHNSON, called as a witness, having been
19 duly sworn by The Clerk, was examined and testified as
20 follows:

21 DIRECT EXAMINATION

22 BY MR. JOHNSON:

23 Q Good afternoon Miss Johnson.

24 A Good afternoon.

25 Q Please tell the Court how you became involved in this

1 case?

2 A Yes. I was assigned to represent Mr. Robinson.

3 Q Appointed or retained?

4 A I was appointed.

5 Q And when was the first time you met with Mr. Robinson?

6 A And I'm not really sure exactly when the first time I
7 met with him on this case was.

8 Q About approximately how many times did you met with him
9 about this case?

10 A That I don't recall either.

11 Q Did you meet numerous times or just one?

12 A I don't think it was numerous times. It might have
13 been one or two times in reference to this case.

14 Q And who was the prosecuting agency in this trial?

15 A That was the the solicitor's office. This case was
16 part of the criminal domestic violence court.

17 Q And this was a first offence?

18 A That is correct.

19 Q And did you work on Mr. Robinson's behalf to obtain a
20 plea offer?

21 A At that particular point in looking at the folder that
22 I have there initially was no court date on this. They were
23 holding that date for general sessions charges.

24 Q And did he pick up those general session charge
25 subsequent to your representation?

Toni Johnson - Direct by Mr. Johnson

15

1 A I think those might have been after this CDV charge,
2 yes.

3 Q And did you represent him on those general session
4 charges?

5 A I did not.

6 Q And who represented him on those charges?

7 A I believe that he might have been represented by Miss
8 Anderson. I am not a hundred percent sure.

9 Q And this was at the magistrate level?

10 A That's correct. I am sorry, the CDV Court?

11 Q The CDV court, yes.

12 A That's correct.

13 Q And he eludes to a meeting where you both signed an
14 agreement. Can you please tell the Court about the agreement
15 that he would have signed?

16 A Yes, sir. This is a plea affidavit that we have and
17 prior to having Mr. Robinson come by my office to sign that, I
18 did check with the solicitor and the judge to make sure it was
19 okay that we entered it via a plea affidavit instead of in front
20 of the judge. And so on the plea affidavit I fill in the
21 information with his name, the warrant number involved in this
22 case, and then what the plea was and the plea that we entered
23 was a no contest plea for criminal domestic violence for a
24 sentence of time served. In addition to that I did put some
25 information in there about the court costs which are \$55. I did

1 ask the Court to waive those costs for Mr. Robinson because he
2 could not afford to pay those charges at that time. I did also
3 include that I understood that decision of whether or not to
4 waive court costs would be up to Judge Howl and also put in that
5 he would not be able to possess or own a firearm.

6 Q Do you have another copy of that or may I make a copy?

7 A Oh, sure. Absolutely. And when we have these signed
8 we always provide a copy for the defendant involved in the case.
9 So we do one for the defendant, one for the Court. I always
10 copy that and put it in the file.

11 Q Okay. So the solicitor and judge were in agreement
12 that you could enter that instead of having him appear?

13 A Yes, sir.

14 Q And like he said he received a time served sentence?

15 A That is correct.

16 Q He eludes to that you did not advise him that his wife
17 could come down and sign in the victim's advocate office, sign a
18 piece of paper and dismiss the charge?

19 A And I would not do that because the burden -- he does
20 not make -- she does not make the determination. The case is
21 brought by the State and the State makes the determination. The
22 State could have subpoenaed his wife to come to Court. Whether
23 or not she would have testified, that I don't know, but the
24 burden is not on her to make that determination. She can advise
25 him what she would like to see happen, but the solicitor does

Toni Johnson - Cross by Mr. Hemlepp

17

1 not have to agree to that and the solicitor could agree to move
2 forward with their case if they choose to do so?

3 MR. JOHNSON: That is all the questions I have
4 Your Honor. At this time I would like to introduce
5 the plea affidavit.

6 THE COURT: Any objection?

7 MR. HEMLEPP: No.

8 THE COURT: Let me see it. (Handed) Without
9 objection it is admitted.

10 (Respondent's Exhibit 1, Plea affidavit, received
11 in evidence as of this date.)

12 MR. JOHNSON: Judge, I have no further questions.

13 THE COURT: Any cross?

14 MR. HEMLEPP: If it please the Court.

15 THE COURT: Yes, sir.

16 CROSS EXAMINATION

17 BY MR. HEMLEPP:

18 Q Miss Johnson, how long have you been involved -- how
19 long have you been work for the public defender's office?

20 A A little over nine years.

21 Q And you handled domestic violation cases before?

22 A Yes, sir.

23 Q And you would I assume agree with me that they can some
24 times be complicated family dynamics?

25 A Yes, sir.

1 Q Would you agree that is what was going on here?

2 A Yes, sir.

3 Q The relationship between your client and his wife was
4 tumultuous at the time?

5 A That's correct.

6 Q How many criminal violation cases have you handled?

7 A I couldn't given you an exact number.

8 Q To many to count.

9 A It's a good bit.

10 Q If a victim -- and they have all been in York County?

11 A Yes.

12 Q If a victim were to sign a statement with the victim
13 advocate declaring she did not want to go forward and she was
14 unwilling to testify, have you had the experience that
15 solicitor's office would they take that into consideration in
16 dismissing the charges?

17 A Well, they take that into consideration a lot of the
18 times in determining what they are going to offer.

19 Q What about whether as far as they are going to go
20 forward?

21 A Then they take that into consideration, but again they
22 look at the other witnesses that they have and any other
23 evidence to determine whether they are going to dismiss or if
24 they are going to offer something else like an assault and
25 battery third versus CDV or public disorder conduct versus a

1 CDV.

2 Q Do you recall whether they had other evidence in this
3 case?

4 A And I apologize, I got a copy of the incident report in
5 reference to this. I know that EMS did come out to the scene in
6 reference to this case and they indicated that photographs were
7 taken of the injuries in this case.

8 Q Okay. Is there a reason why you -- I withdraw that
9 question. I will rephrase it.

10 Actually I am done. Thank you.

11 MR. HEMLEPP: No further questions.

12 THE WITNESS: Thank you.

13 THE COURT: Any redirect?

14 MR. JOHNSON: Just follow up question.

15 REDIRECT EXMAINATION

16 BY MR. JOHNSON:

17 Q Miss Johnson, so you did explain the plea affidavit to
18 Mr. Robinson?

19 A Yes, sir.

20 Q And he was on board with the decision?

21 A Yes, sir.

22 Q And whose decision was it to actually plead guilty to
23 this?

24 A It was Mr. Robinson.

25 MR. JOHNSON: That is all the questions I have

1 Your Honor.

2 THE COURT: I don't have any questions. You may
3 step down. Thank you.

4 MR. JOHNSON: The State has no further witnesses
5 and renew our motion for summary judgement and/or
6 directed verdict.

7 THE COURT: Any rebuttal at this time?

8 MR. HEMLEPP: Beg the Court's indulgence.

9 Your Honor, my client would ask me has asked me to
10 -- has asked me to on his behalf has asked me to
11 express to the Court that he wishes the Court rule in
12 his favor and the Court would take into account the
13 law and the evidence in this case to make the most
14 adequate decision.

15 Thank you, Your Honor.

16 THE COURT: And from the State is there anything
17 further?

18 MR. JOHNSON: No, Your Honor. We ask you to deny
19 this application.

20 He has failed to meet his burden of proof that he
21 was prejudiced by any alleged ineffectiveness
22 assistance of counsel. She advised him that it is the
23 solicitor's decision whether or not to proceed to
24 prosecute this case and that her advice would not have
25 been that even if his wife comes down and signs the

1 dismissal of the charges actually it's the solicitor's
2 decision to do so. Therefore, we ask that you either
3 deny the application or grant our motion for summary
4 judgement.

5 THE DEFENDANT: Through my attorney I object to
6 that, Your Honor. We met our burden ever proof.

7 THE COURT: Mr. Robinson, you are represented by
8 an attorney. So he has to speak on your behalf at
9 this particular time.

10 Anything further?

11 MR. HEMLEPP: No, Your Honor.

12 MR. JOHNSON: Nothing from the State.

13 THE COURT: I have heard the testimony of Mr.
14 Robinson as well as Miss Johnson and counsel. Mr.
15 Robinson signed document in which he plead no contest
16 to criminal domestic violation, first offense,
17 with the time served sentence and I believe he said he
18 spent just a few days in jail. That is a crime that
19 carries up to thirty days in jail and as well as court
20 costs. It appears from the record that Mr. Robinson
21 is asserting that his attorney failed to advise him
22 that the charges would have been dismissed or could
23 have been dismissed by the victim coming to the
24 victim's advocate office and sign documentation to
25 withdraw or to indicate that she did not wish to

1 proceed further with the matter.

2 Based upon the law as understand it once the charge
3 has been brought it is up to the State to decide
4 whether or not they wish to prosecute the matter.
5 That in several, many CDV cases there are
6 circumstances in which the victim may decide that they
7 no longer wish to prosecute the claim and will not
8 testify against the defendant in this cases and it is
9 up to the solicitor's office to determine based upon
10 the evidence that they had at the time whether or not
11 to pursue the claim or pursue the matter.

12 I find that the advice that she gave was reasonable
13 under the circumstances. It met the standard of care
14 of attorney's practicing in the area of that
15 particular time. That even if she failed to advise
16 him that his wife, the victim, could sign papers
17 willing to drop charges that did not necessarily mean
18 that the charges would be dropped. She did not advise
19 him that that would occur and there was apparently no
20 discussion from what I can tell from the testimony,
21 there wasn't any discussion about at that time by
22 the wife not wishing to go forward at that particular
23 time. Even if she had indicated to Mr. Robinson that
24 she that did not wish to go forward and prosecute the
25 matter it still would have been at the discretion of

1 the State to decide whether to prosecute. So I don't
2 find that she fail to provide information to him or
3 failed to advise him related to the consequences of a
4 request not to prosecute. And that certainly even if
5 she failed to do that there was no prejudice to the
6 defendant as it relates to going forward with a trial
7 in this particular matter. While he asserts it would
8 have been likely that he would have been found not
9 guilty, there apparently was evidence from the State,
10 which they could have called witnesses from EMS to
11 present photographs. While this Court does not have
12 photographs that were taken of those injuries that
13 certainly would have been a matter that would have
14 been up to the jury at the time based upon the
15 evidence to determine whether the State would have met
16 the burden of proving beyond a reasonable doubt that
17 Mr. Robinson was guilty of the criminal domestic
18 violation.

19 So I will deny the application on that basis and I
20 would ask the State to prepare an Order to that
21 effect.

22 MR. JOHNSON: Yes, Your Honor.

23 THE COURT: And of course share it with Mr.
24 Hemlepp before it is submitted to me. Submit it
25 electronically please in word format not a PDF. And

1 the respondent's exhibit I believe you need to make
2 copies of it.

3 MR. JOHNSON: Yes ma'am.

4 THE COURT: I have reviewed it. It does indicate
5 -- it goes through all the rights that Mr. Robinson
6 understood that he had and waived and it goes into
7 detail. That he understood he had the right to remain
8 silent. He had the right to a jury trial. That he
9 had right to confront the witnesses. That his
10 attorney advised him of the nature and elements of the
11 penalties and consequences of the plea. He understood
12 he was forfeiting his defense and giving the right to
13 challenge or to contest the admissibility of the
14 statement that may have been made and that he was in
15 fact pleading no contest to the charge.

16 And so with that matter that concludes that
17 particular matter.

18 (END OF TRANSCRIPT)

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C E R T I F I C A T E

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I, the undersigned Aileen Butler, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 17th day of November, 2014.

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

April 9, 2014

Aileen Butler

STATE OF SOUTH CAROLINA
COUNTY OF YORK

John Thomas Robinson,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

DOCKET NO.: 2013-CP-46-3954

ORDER OF DISMISSAL

FILED-RECEIVED
2015 FEB -4 PM 4:06
DAVID D. DANFORTH
C.C.C.P. & GS
YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed December 27, 2013. The Respondent made its Return on May 21, 2014. An evidentiary hearing into the matter was convened on November 17, 2014, at the Moss Justice Center in York, SC. W. Michael Hemlepp, Jr., Esquire represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Toni Johnson, Esquire also testified. This Court had before it a copy of the records of the application, the disposition sheet and a plea affidavit. There was no transcript of the proceedings before the trial court.

PROCEDURAL HISTORY

The Applicant is presently not confined. The Applicant was charged with Criminal Domestic Violence, 1st offense. The Applicant was represented by Toni Johnson, Esquire. On July 3, 2013, the Applicant pled no contest before the Honorable Herman Howell and was sentenced to time served. Applicant did not appeal his conviction or sentence.

In his current Application, the Applicant alleges that he received Ineffective Assistance of Counsel, specifically "was attorney ineffective when failed to advise defendant of all the provisions of the law?" At the hearing, the Applicant proceeded on his claim of ineffective assistance of plea counsel.

SUMMARY OF TESTIMONY

Applicant testified he was represented by Counsel on a charge of Criminal Domestic Violence, 1st offense, which was initiated by the York County Sheriff's Office. The alleged victim in the case is the Applicant's wife. Applicant was confined in jail for only one day, but was represented

Handwritten initials

by Counsel for over one year. He was also arrested on a felony charge. After that charge was handled, Applicant moved forward with the CDV charge. There was an order requiring Applicant to stay away from his wife. Applicant testified this matter was disposed of on July 3, 2013, but he did not appear in CDV court for this proceeding. He pled guilty for a sentence of time-served by agreement, but that he does not agree with that disposition at the current time.

Applicant claims Counsel was ineffective because she could have advised him that if his wife were to sign an agreement with the Victim's Advocate's Office, the charges could be dismissed. He lost his job because of this charge and subsequently had issues with his landlord. According to Applicant, Counsel did not explain to him about the potential dismissal of this charge.

Counsel testified she has been a public defender for 9 years and has handled numerous CDV cases. She was appointed to Applicant's case and met with him once or twice before the disposition of his charge. She obtained a signed plea affidavit from Applicant that was approved by the Honorable Herman Howell and the Solicitor. Applicant pled no contest to CDV, 1st offense for a sentence of time-served. It was his decision to plead to the charge and he was not threatened or coerced.

Counsel did not advise Applicant that his wife could sign an affidavit and have the charge dismissed because it was the Solicitor's decision whether to prosecute the case or not. Although the Applicant's wife, as the victim, can advise the Solicitor's office as to her desire about the charge, it was ultimately the Solicitor's decision to prosecute. The Solicitor can take the Victim's opinion into account when deciding whether to proceed with the charge.

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 at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

The Applicant alleges he 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) (citing Rule 71.1(e), SCRCP). 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 upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 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.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

This Court finds Counsel was competent and diligent in her representation of the Applicant in this case. Counsel sufficiently advised the Applicant of the charges against him, the potential penalties if convicted at trial, and the evidence the State would produce at trial. Counsel also engaged in plea negotiations which were beneficial to the Applicant. This Court also finds the Applicant was well informed by Counsel in this case. The Applicant expressed through his plea affidavit that he was satisfied with Counsel, had sufficient time with Counsel, and Counsel did all that the Applicant requested. The Applicant pled guilty without any threat or coercion. The Applicant also waived his Constitutional rights afforded to him. This Court finds the Applicant pled knowingly, voluntarily, and on his own free will.

Applicant argues Counsel failed to advise him that because his wife was willing to sign an affidavit to dismiss the charge, the charge would have been dismissed. This argument is erroneous. In South Carolina, "[t]he criminal justice system gives prosecutors, as opposed to victims, broad discretion in deciding which cases to try because prosecutors are less likely to be prejudiced by personal and emotional motives." Ex parte Littlefield, 343 S.C. 212, 218, 540 S.E.2d 81, 84 (2000).

Additionally, "[p]rosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety." State v. Thrift, 312 S.C. 282, 292, 440 S.E.2d 341, 346-47 (1994). Counsel testified she correctly advised Applicant that it is the Solicitor's decision whether to prosecute a charge or to dismiss it, not the Victim's. This Court finds Counsel's testimony credible and finds Counsel provided effective assistance of counsel in this case.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test - that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that 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 he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

CONCLUSION

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

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel 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 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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

AND IT IS SO ORDERED.



ALISON RENEE LEE
Presiding Circuit Court Judge
Sixteenth Judicial Circuit

January 29, 2015
Columbia, South Carolina



3

WITNESSES

RHPD/Price

rgt

ARREST WARRANT NUMBER

2013A4620303072

ACTION OF GRAND JURY

TRUE BILL

David C. Tucker

Foreperson of Grand Jury

Date: 12-12-13

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-46-04291

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

December 12, Term 2013

THE STATE

vs.

JOHN THOMAS ROBINSON

Indictment for

CRIMINAL DOMESTIC VIOLENCE

SC Code: 16-25-20

CDR Code: 2672

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

John T. Robinson

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Assault & Battery (3rd Degree)

John T. Robinson

Defendant

Witness:

Anthony H. Nick Assen

C.C.C. PLS. AND G.S.

Deputy Clerk

STATE OF SOUTH CAROLINA) CERTIFIED TRUE COPY INDICTMENT
)
 COUNTY OF YORK) 2014 APR 16 AM 8:40

At a Court of General Sessions convened on December 12, 2013, the Grand Jurors of York County present upon their oath:
 DAVID HAMILTON
 CLERK OF COURT
 YORK COUNTY, SC

CRIMINAL DOMESTIC VIOLENCE

The defendant, John Thomas Robinson, did in York County, South Carolina, on or about August 9, 2013, commit the crime of Criminal Domestic Violence, in that the defendant did cause physical harm or offer or attempt to cause physical harm to Marilyn Robinson, a household member, with apparent present ability under circumstances reasonably creating fear of imminent peril. Said defendant having being convicted of Criminal Domestic Violence on one prior occasion within the prior ten (10) years. All in violation of Section 16-25-20, Code of Laws of South Carolina, (1976, as amended).

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

ASSISTANT SOLICITOR

Wanda H. Carter

From: Angela S. Jackson
Sent: Wednesday, June 03, 2015 10:09 AM
To: Wanda H. Carter
Cc: Sean Flynn
Subject: FW: Exhibit Request
Attachments: Exhibit Request to Clerk (6-2-15).pdf

Wanda,

Please see the clerk's note below regarding the request for exhibit.

Angela Jackson
Administrative Specialist
South Carolina Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
P.O. Box 11589
Columbia, SC 29211-1589
Main phone: (803) 734-1330
Fax: (803) 734-1397
Email: ajackson@sccid.sc.gov

From: Strait, Lynn [<mailto:Lynn.Strait@yorkcountygov.com>]
Sent: Wednesday, June 03, 2015 10:05 AM
To: Angela S. Jackson
Subject: Exhibit Request

Angela,

I have checked and I do not see that the clerk's office received an exhibit from the PCR hearing on November 17, 2014. It may be possible that this was passed up for the judge to keep in her packet.

Let me know if you need further assistance.

Lynn Strait
Court Coordinator
York County Court of Common Pleas
PO Box 649
York, SC 29745
(803) 684-8506
lynn.strait@yorkcountygov.com

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