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April 12, 2016

The Honorable Daniel E. Shearouse
Clerk of South Carolina Supreme Court
Supreme Court Building
1231 Gervais Street
Columbia, South Carolina 29201

Re: *Shanita Cunningham, #348485 v. State of South Carolina*
Case No.: 2013-CP-10-0107

Dear Mr. Shearouse:

Enclosed for filing, please find an original and two copies of Appellant's Notice of Appeal of the denial of her application for Post-Conviction Relief. If you find everything in order, please file the original and return the clocked in copies in the enclosed self-addressed envelope.

Please note I was appointed and copy the Office of Appellate Defense who will handle the appeal. Please call if you have any questions.

With kindest regards, I am

Sincerely,



Christopher L. Murphy

CLM:jh
Enclosures

cc (w/ encls.): Ms. Shanita Cunningham
Robert M. Dudek, Esq.
PO Box 11433
Columbia, SC 29211-1433
Rutledge Johnson, Esquire, SC Asst. AG
The Honorable Perry H. Gravely
The Honorable Julie J. Armstrong

RECEIVED

APR 14 2016

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case Nos.: 2013-CP-10-0107

Shanita Cunningham.....
Appellant

v.

State of South Carolina.....
Respondent

NOTICE OF APPEAL

Appellant appeals the Court's denial of her application for post-conviction relief. Attached is the order from the Court dated March 14, 2016 and received April 8, 2016.

April 12, 2016



CHRISTOPHER L. MURPHY
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Other Counsel of Record

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South Carolina Office of the Attorney General
1000 Assembly Street
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(803) 734-3737
rjohnson@scag.gov

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v.

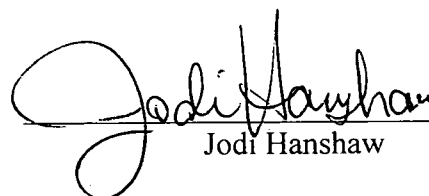
State of South Carolina.....
Respondent

PROOF OF SERVICE

I CERTIFY that I have served PROOF OF SERVICE on counsel of record for Respondent by delivering a copy via U.S. Mail First-Class postage prepaid on the 12th day of April, 2016, addressed as follows:

Rutledge Johnson, Esquire Assistant Attorney General South Carolina Office of the Attorney General 1000 Assembly Street Columbia, SC 29201 (803) 734-3737 rjohnson@scag.gov	

Attorney for Respondent


Jodi Hanshaw

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AG
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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
)
)
Shanita Cunningham, #348485,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2013-CP-10-0107

ORDER OF DISMISSAL

BY: _____
2016 MAR 30 PM 4: 02
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed January 8, 2013. Respondent made its Return on October 17, 2013. An evidentiary hearing into the matter was convened on January 19, 2016, at the Charleston County Courthouse. Christopher L. Murphy, Esquire, represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on her own behalf. Also testifying was Applicant's plea counsel, Cassandra Woosley, Esquire. This Court had before it a copy of the records of the Charleston County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return, and the guilty plea transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Charleston County Clerk of Court. The Applicant was indicted at the June 2010 term of the Charleston County Grand Jury for Homicide by Child Abuse

(2010-GS-10-4127). Cassandra Woosley, Esquire, represented the Applicant.

On August 25, 2011, the Applicant pled guilty before the Honorable Roger M. Young, Sr. On November 3, 2011, the Honorable Deidra L. Jefferson sentenced the Applicant to confinement for life.

The Applicant filed a timely Notice of Appeal. The Applicant was represented by Robert Dudek, Esquire, of the South Carolina Office of Appellate Defense. By Order dated June 11, 2013, the Applicant's appeal was dismissed for failure to file a Rule 203(d)(1)(B)(iv) response. The Remittitur was issued June 27, 2013.

In this application for post-conviction relief, the Applicant alleges that she is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Lack of time spent, ill advisement, not qualified for type of case."
2. "Was arrested for one thing but sentenced under another."
 - a. "Arrested for aiding and abetting but was sentenced as a principle."

At the hearing, the Applicant proceeded on her claim of ineffective assistance of plea counsel and that she alleges she was not sworn prior to entering into the guilty plea before Judge Roger Young.

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 each witness presented at the hearing, closely pass upon their credibility and weigh their testimony



accordingly. Set forth below are the relevant findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges she received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). 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) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).



A.

Applicant stated that she did not discuss with plea counsel the two possible sentence ranges for the statute under which she pled guilty until after sentencing. Applicant stated she had no conversations with plea counsel concerning the different aspects of these sentences until after sentencing. Applicant states that prior to her guilty plea, she had agreed to cooperate with the Solicitor's Office and to give a proffer. Applicant states that she believes that she signed a Proffer Agreement, but never completed the proffer because her co-defendant pled guilty prior to trial. Applicant states that she wanted to go to trial in this case, but was told by her plea counsel that a lengthy trial would be insensitive to the victim's mother. Applicant states she did not want to subject the victim's mother to this. Applicant also states that she was worried about the effect a trial would have on her daughter who was eight years old at the time. Applicant states that it was her understanding that she was arrested under the "aiding and abetting" subsection of the Homicide by Child Abuse statute. Applicant states she was never shown the indictment where she was charged under the "actor or primary aggressor" part of the statute. Applicant states that she thought she was pleading guilty under the aiding and abetting subsection of the statute when she pled guilty in front of Judge Young. Applicant states she thought that she could get no more than twenty years and was shocked when she was sentenced to life by Judge Jefferson because she thought she was only facing twenty years.

On cross examination, Applicant admits that she told Judge Young that she was pleading guilty because she was guilty. Applicant also admits that she acknowledged that she was waiving her right to trial. Further, Applicant admits that she never stopped Judge Young or told him she



did not understand the charge she was pleading to.

Plea counsel testified that she was shocked that Applicant received a life sentence. Plea counsel testified that the solicitor had agreed to ask the judge for some leniency for the Applicant since she had agreed to testify against the co-defendant. However, Applicant's testimony was not needed since the co-defendant pled guilty prior to trial. Plea counsel testified that she reviewed the possible sentences for both the aiding and abetting and principal sections of the statute. Plea counsel also testified that she reviewed the elements and what the State would have to prove under both sections of the statute. Plea counsel testified that a trial would have been under the principal subsection of the statute and that she was prepared to go to trial. Plea counsel stated that Applicant admitted her culpability in the case. Plea counsel testified that she discussed trial, the likely outcome, and likely sentence after trial. Plea counsel stated that she did not believe the sentence would be the same after a plea.

On cross examination, plea counsel stated that she explained the portion of the statute that carried twenty years to life to Applicant and that Applicant seemed to understand. Plea counsel also stated that Judge Jefferson also noted that the charge carried twenty years to life prior to issuing her sentence.

Initially, this Court notes Applicant admitted to the plea judge that she was guilty. Applicant also told the plea judge that she understood the trial rights she was waiving in pleading guilty and was satisfied with counsel. The plea judge also reviewed the charge and sentencing range for which Applicant was pleading guilty to at the beginning of the plea. This Court finds there is no evidence in the guilty plea transcript to support Applicant's assertion that she was unaware of the charge she was



pleading guilty to and the possible sentence range; therefore the transcript has refuted this allegation. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007); see also Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him). This Court finds the Applicant entered a knowing and voluntary guilty plea. See Boykin v. Alabama, 395 U.S. at 243-44, 89 S. Ct. at 1712.

This Court finds Applicant failed to meet her burden of proving plea counsel either misadvised her about the charge she was pleading to or the sentence she would receive. Plea counsel testified she explained the charge and possible sentence to Applicant. This Court finds plea counsel's testimony is credible. Further, the plea transcript refutes much of the Applicant's argument. If the Applicant believed she was pleading guilty to a charge that only carried ten to twenty years, she should have told the plea judge when he stated the sentence range was twenty years to life – but she did not do so.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in her representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that she was prejudiced by plea counsel's performance.

B.



Applicant states that she does not remember if she was sworn in at the beginning of her guilty plea before Judge Roger Young.

Plea counsel testified that she does not recall if Applicant was sworn in prior to the start of the guilty plea. Plea counsel also stated that during the many times that she was before Judge Young with a defendant to enter a guilty plea, it was the practice in Judge Young's courtroom that the defendant be sworn prior to entering a guilty plea.

This Court finds that Applicant has failed to meet her burden in proving that her plea was unconstitutionally accepted. This Court notes that the plea transcript does not start when Applicant approaches the bar, but when counsel asked to approach. Applicant and plea counsel both testified they could not recall if Applicant was sworn prior to entering her guilty plea. However, plea counsel testified it was Judge Young's normal practice to swear defendants before their guilty pleas. Additionally, "[i]n the absence of evidence to the contrary, the regularity of the proceedings of a court of general jurisdiction will be assumed." Pringle v. State, 287 S.C. 409, 410-11, 339 S.E.2d 127, 128 (1986). While the guilty plea transcript apparently does not have a notation in it concerning this issue, Applicant provided no credible evidence that her guilty plea was unconstitutionally accepted. Applicant admitted that she, at no time, stopped the plea judge to state she did not understand the proceedings. Further, this Court finds Applicant's guilty plea to be in compliance with Boykin v. Alabama, 395 U.S. 238 (1969).

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional



norms. Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in her representation of Applicant.

This Court also finds Applicant has failed to prove the second prong of Strickland – that she was prejudiced by Counsel’s performance. This Court concludes Applicant has not met her burden of proving plea counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that 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.

This Court advises Applicant that she must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if she wants to secure appropriate appellate review. Her attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

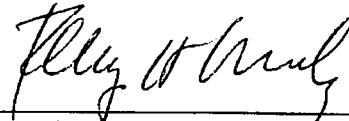
1. That the Application for Post-Conviction Relief must be denied and



dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!



Perry H. Gravely
Presiding Circuit Court Judge
Ninth Judicial Circuit

March 14, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

SHANITA CUNNINGHAM, #348485,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

**Christopher L. Murphy, Esquire
Murphy Law Offices, LLC
PO Box 2008
Mt. Pleasant, SC 29465**

This 4th day of April, 2016.



J. RUTLEDGE JOHNSON
ATTORNEY FOR RESPONDENT

SWORN to before me this 4th day of April, 2016.



Notary Public for South Carolina.
My Commission Expires: 12/16/2024

Christopher L. Murphy
PO Box 2008
Mt. Pleasant, SC 29465

The Honorable Daniel E. Shearouse
Clerk of South Carolina Supreme Court
Supreme Court Building
1231 Gervais Street
Columbia, South Carolina 29201



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