

Lowcountry Law Office

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E-Mail: Rodney.Davis@LowcountryLawOffice.com
RECEIVED

May 19, 2016

MAY 24 2016

The Honorable Daniel E. Shearhouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

S.C. SUPREME COURT

RE: Octavia D. Bell v. State of South Carolina; Case No.: 2013-CP-10-5806

Dear Mr. Shearhouse:

Enclosed for filing is the Notice of Appeal (original and clocked copy) in the above Post Conviction Relief (PCR) case. Also enclosed are the following:

- (1) Proof of service of the Notice of Appeal on the respondent;
- (2) The Order of Dismissal &
- (3) A Request for Representation on Appeal.

The Applicant-Appellant was represented by me as an indigent pursuant to my contract with the South Carolina Commission on Indigent Defense (SCCID) to handle PCR cases. By copy of this letter, I am forwarding a duplicate set of documents to the SCCID.

The Request for Representation on Appeal and the Affidavit in Support thereof are signed by me as attorney for Applicant-Appellant. If you need anything further, do not hesitate to contact me. Thank you for your time and attention to this matter.

Sincerely,

Rodney D. Davis
South Carolina Bar #: 12396
4000 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 323-4353
Davis@LowcountryLawOffice.com

Enclosure(s). As stated above.
RDD/mmt

cc: J. Rutledge Johnson, Assistant Attorney General
Kimberly McCall, Appellate Division, SCCID

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Case No.: 2013-CP-10-5806

Octavia D. Bell,

Appellant,

v.

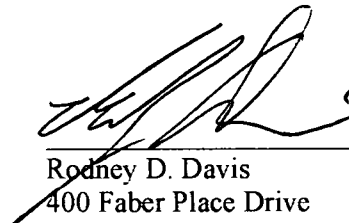
State of South Carolina,

Respondent.

NOTICE OF APPEAL

Octavia D. Bell appeals the denial of her Post Conviction Relief (PCR) application in this case. The application for relief was denied, following an evidentiary hearing before the Honorable Deadra L. Jefferson on December 14, 2015.

May 10, 2016.



Rodney D. Davis
400 Faber Place Drive
Suite 300
Charleston, SC 29405
Attorney for Appellant

Other Counsel of Record:
J. Rutledge Johnson, Assistant Attorney General
Office of the Attorney General, State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY
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MAY 24 2016

Deadra L. Jefferson, Circuit Court Judge

S.C. SUPREME COURT

Case No.: 2013-CP-10-5806

Octavia D. Bell,

Appellant,

v.

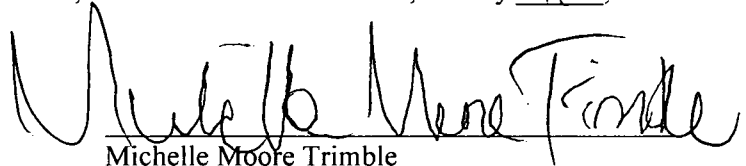
State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State by mailing a copy of it to the address of record, J. Rutledge Johnson, P.O. Box 11549, Columbia, South Carolina 29211-1549, on May 16, 2016.

May 16, 2016



Michelle Moore Trimble
Paralegal to Rodney D. Davis
Lowcountry Law Office
400 Faber Place Drive, Suite 300
Charleston, SC 29405

Other Counsel of Record:
J. Rutledge Johnson, Assistant Attorney General
Office of the Attorney General, State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
))
Octavia Denise Bell, #356384,)
))
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2013-CP-10-5806

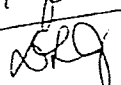
ORDER OF DISMISSAL

FILED
2016 APR 13 AM 11:13
JULIE J. ARMSTRONG
CLERK OF COURT

Presiding Judge:	Hon. Deadra L. Jefferson
Applicant's Attorney:	Rodney D. Davis, Esquire.
Respondent's Attorney:	J. Rutledge Johnson, Esquire
Trial Counsel:	Beattie Butler, Esquire
Date of Hearing:	December 14, 2015
Court Reporter:	Denise Lauder

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 1, 2013. Respondent made its Return on February 10, 2015. An evidentiary hearing into the matter was convened on December 14, 2015 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Rodney D. Davis, Esquire, and J. Rutledge Johnson, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

At the hearing, Applicant testified on her own behalf. Assistant Solicitor Stephanie Linder, Esquire, and Beattie Butler, Esquire, also testified. 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 Applicant's PCR application, the State's Return and the guilty plea transcript.

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PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the April, 2012 term of the Charleston County Grand Jury for kidnapping¹ (2012-GS-10-2333). The Applicant was represented by Beattie Butler, Esquire.

On June 26, 2013, the Applicant pled guilty as indicted before the Honorable R. Markley Dennis. On July 30, 2013, the Applicant was sentenced by the Honorable R. Markley Dennis to confinement for a period of eleven (11) years. The Applicant did not appeal her conviction or sentence.

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

1. Ineffective assistance of counsel.
 - a. Was misled and was not adequately assisted.
 - b. Was not able to present evidence in my own defense.
 - c. Had no contact until it was time for court.
 - d. Trial counsel told me if I went to trial I was going to get 22-25 years.
 - e. Misled to think kidnapping charge could not be dropped.

At the hearing, the Applicant proceeded on her claim of ineffective assistance of plea counsel.

¹ Kidnapping is a violent, most serious felony punishable by thirty (30) years' imprisonment. See S.C. CODE ANN. § 16-3-910 (2012); S.C. CODE ANN. § 16-1-60 (2012); S.C. CODE ANN. § 17-25-45 (2012).

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SUMMARY OF TESTIMONY

At the evidentiary hearing, Assistant Solicitor Stephanie Linder testified she had contact with Applicant in 2013 because Applicant was a potential witness in a murder case. Ms. Linder testified she decided not to call Applicant as a witness because Applicant was dishonest with law enforcement in her statements; saying she observed the shooting and later changing her story. Ms. Linder also stated she had no involvement in the Applicant's prosecution. Ms. Linder testified that during the murder case, Applicant was represented by Beattie Butler, Esq., who said he did not mind Ms. Linder speaking with Applicant but just wanted to be present. Ms. Linder then explained she was contacted by the murder suspect's attorney and investigator around April 2013. Ms. Linder also confirmed that her emails to Mr. Butler were around August 2012 and December 2012. These emails concerned her wanting to speak with Applicant about the murder case. On cross-examination, Ms. Linder testified she did not have any interaction with Applicant's case. There were no promises made. Ms. Linder finally stated she only spoke with Applicant after Applicant was incarcerated and had pled guilty in this case.

Beattie Butler, Esq., plea counsel, testified he was with the Charleston Public Defender's office during Applicant's representation. He stated there was no plea offer in this case as, and while there was an arguable defense to one charge, Applicant had no defense to the kidnapping charge. He stated this created a "dilemma" for the Applicant as there was a potential defense to the armed robbery charge but no defense on the kidnapping charge. He stated her codefendant entered a plea prior to Applicant, in that Applicant's plea came on the eve of trial. He testified the arguable defense in this case was that the stun gun used was not a deadly weapon. He stated that the State offered to dismiss an armed robbery charge if she pled guilty to kidnapping.

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[Signature]

He testified that Applicant's name was involved in the other case (murder) and that the Applicant was not interested in testifying in that case. He stated he did not recall Ms. Linder contacting him, and he did not provide access by the Solicitor to Applicant. He stated he encouraged the Applicant to assist the State, but she could not and would not be of any assistance.

He stated he and the Applicant had lengthy discussions about potentially testifying. As to the kidnapping charge, Applicant was struggling with the concept; however, Counsel explained that this was thoroughly based on Applicant's statements. Counsel testified his advice was to plead to the kidnapping and get the armed robbery charge dismissed. Counsel testified he conveyed this to Applicant. He further testified that his strategy or goal for disposition of the case was a plea to kidnapping and dismissal of the armed robbery and any other charges which he accomplished.

He testified he did not recall telling Applicant she would get 25 years if she pursued a trial, because Counsel does not predict what a judge will do. He testified that he may have cautioned the Applicant regarding a "worst case" scenario if convicted at trial. He denies the recording of any of his conversations with the Applicant on his cell phone. He further testified he did not recall reviewing the Solomon Chisolm crime scene. He also did not recall suggesting the Applicant speak with Daniel Prenner, Esq.

He testified that at the time of his representation of Applicant, he was the chief litigator in the Public Defender's office, trying the most serious cases. From January 2013 to July 2013, he only tried one double homicide and had to try the case three times: the Ricky Williams case.

Counsel stated while at the Public Defender's office, he would notate visits by writing on the inside of the jacket file and does not recall how many meetings he had with Applicant. On the jacket file it indicated two meetings with Applicant with no notes concerning phone calls.

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On cross-examination counsel testified that based on Applicant's version of the facts, she was guilty of kidnapping. He denies he made any threats or promises to get the Applicant to plead guilty. Lastly, he stated it was Applicant's decision to plead guilty. On redirect examination, He clarified that Applicant could not and would not get involved in the other case because she denied any knowledge about the murder. He then stated if she actually knew something, she could have gotten a benefit for her cooperation. He further testified that the Applicant had no interest in testifying and refused to give any information to help her situation.

Applicant testified that Counsel represented her throughout the entire case after her arrest on December 5, 2011. Applicant testified she met with counsel three times and discussed potential defenses to her pending charges including the kidnapping and armed robbery charges; however, she denies any discussion of the weapons charge. Applicant stated they discussed lesser included offenses, and attempting to get the kidnapping charge reduced to assault and battery. However, Counsel informed her that he could get the armed robbery and gun possession charges dropped, but the kidnapping would stick. Applicant then stated she did not think Counsel was prepared for trial, as they did not discuss her testimony in preparation for a trial. Applicant stated she and Counsel spoke mostly about a plea, and it was Counsel's advice to plead guilty to the kidnapping charge. Applicant claimed there was an offer of a 10 year sentence to plead all three charges. Applicant also claims she and Counsel did not talk about most serious offenses or about strikes and enhancements.

Applicant claimed Counsel told her if she were to proceed to trial, the judge could give her 22 to 25 years in prison. Applicant then stated she became aware of Counsel working on other cases, namely the Solomon Chisolm case, in which she claims Counsel showed her pictures and tried to get her to talk about the incident. Applicant stated she had information about the Chisolm homicide, but

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that Counsel stated the Assistant Solicitor did not need her testimony. Applicant then stated Counsel would not allow her to speak with the Solicitor's office. Upon this Court's questioning to clarify the Applicant's testimony, Applicant stated that the Solicitor said there was no plea offer because she was lying to the police. Applicant further testified she spoke with Ms. Linder in 2013, but only after her conviction while incarcerated at Camille Graham Correctional Institution.

On cross-examination, Applicant admitted that in her plea colloquy, she had no complaints with her counsel and knew this was a straight up plea. Applicant admitted she gave up her rights to trial and that there were no threats or promises to get her to plea. She also admitted that she agreed with the facts as articulated by the State, and agreed that she committed the crime of kidnapping. Applicant admitted that she answered the plea colloquy questions truthfully. She lastly admitted that she had convictions for giving false information to police and breach of trust.

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 witness presented at the hearing, closely pass upon her credibility and weigh her 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

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) (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, she 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 the Applicant's testimony regarding Counsel's ineffectiveness is not credible while finding Assistant Solicitor Linder's and Counsel's testimony credible.

This Court also finds Counsel provided effective assistance of counsel in this case. Counsel and the plea court advised Applicant of the charges and the range of penalty the charges carried (Tr.

2: 7-25; 3:1-23; 17: 1-22). Counsel negotiated with the State in Applicant's best interest (Tr. 4: 2-25; 5:1-25; 6: 1). The Applicant was advised of the bifurcation of accepting the plea and sentencing would occur at a later date. (Tr. 3: 3-14; 6: 19-25, 7: 1). This Court finds Applicant made the decision to plead guilty on her own accord with the help of counsel (Tr. 3: 20-23; 5: 9-25; 6:1-11). The Applicant was satisfied with her attorney and had no complaints. (Tr. 3: 24-25; 4: 1-4). The Applicant hesitated slightly when stating she had no complaints about her attorney because she had hoped for a better arrangement but understood her attorney could not control that. (Tr. 4: 5-25; 6: 1-11). Additionally, this Court finds Applicant made the decision to plead guilty freely and voluntarily without any threats or promises from anyone else (Tr. 8: 17-22). The Applicant understood she would not have a trial and was giving up those constitutional rights. (Tr. 6: 12-17; 7: 1-25; 8: 1-16). Furthermore, this Court finds the Applicant was not threatened or promised anything to enter into the plea. (Tr. 5: 9-25; 6:1-11). The elements of kidnapping were established by the Solicitor and the applicant gave a full allocution of the facts and her actions at the plea hearing. (Tr. 8: 23-25; 9-17; 18: 1-16). This Court finds the Applicant provided truthful answers in her plea colloquy, and her decision to plea was knowing and voluntary. (Tr. 18: 14-16; 19: 11-13). The Applicant was not promised any charges would be dismissed as a result of this plea. (Tr. 20: 1-23).

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 her

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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 her application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice. This Court also finds as to all other allegations that Applicant failed to present evidence of such claims and thus, this Court deems them abandoned.

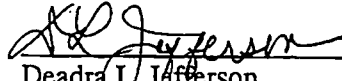
This Court notifies the Applicant that she must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant 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. Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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.


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JPY

AND IT IS SO ORDERED!



Deadra L. Jefferson
Presiding Circuit Court Judge
Ninth Judicial Circuit

April 12, 2016
Charleston, South Carolina

10-01-10


STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
OCTAVIA D. BELL,)
)
)
Applicant.)
-versus-)
)
STATE OF SOUTH CAROLINA,)
)
Respondent.)

IN THE SUPREME COURT OF SOUTH CAROLINA

RECEIVED

CASE NO.: 2013-CP-10-5806

MAY 24 2016

S.C. SUPREME COURT

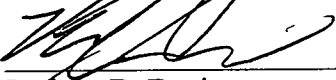
REQUEST FOR REPRESENTATION ON APPEAL

On behalf of the request of the above-named Applicant, to be represented by the South Carolina Commission of Indigent Defense, Appellate Division (SCCID), the undersigned attorney would show unto this Honorable Court that:

1. He is the attorney for the Applicant-Appellant in the above captioned case. The Applicant-Appellant was in custody during and taken into custody immediately following the Post Conviction Relief (PCR) hearing and was not available to personally sign this request;
2. The Applicant-Appellant was represented by the undersigned attorney as an indigent, pursuant to a contract with the SCCID;
3. The Applicant-Appellant has been informed that she may request assistance from the SCCID Appellate Division in perfecting his appeal;
4. A timely Notice of Intent to Appeal has been filed on the Applicant-Appellant's behalf;
5. The Applicant-Appellant has been informed that nothing requires SCCID Appellate Division to pursue this appeal unless that office's Chief Attorney is satisfied that there is arguable merit to this appeal and that she cannot afford to hire an attorney.

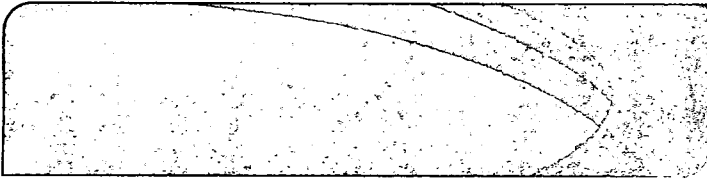
At this time, the Applicant-Appellant requests the aid of the SCCID Appellate Division in perfecting his appeal to the South Carolina Court of Appeals.

Respectfully Submitted,



Rodney D. Davis
South Carolina Bar #: 12396

Charleston, South Carolina
5/16, 2016.



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May 19, 2016

Kimberly McCall
South Carolina Commission on Indigent Defense
P.O. Box 11433
Columbia, SC 29211-1433

RE: Octavia D. Bell v. State of South Carolina; Case No.: 2013-CP-10-5806

Dear Ms. McCall:

Enclosed is a duplicate set of Appeal documents that I have forwarded to the Clerk of the Supreme Court of South Carolina concerning the above-listed Post Conviction Relief (PCR) case. I was appointed to this PCR pursuant to a contract that I have with your office. I have requested that your office assume the appeal of this case.

Should you need anything further, do not hesitate to contact me. Thank you for your time and attention to this matter.

Sincerely,

Rodney D. Davis
South Carolina Bar #: 12396
4000 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 323-4353
Davis@LowcountryLawOffice.com

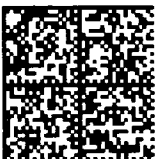
Enclosure(s). As stated above.
RDD/mmt

cc: J. Rutledge Johnson, Assistant Attorney General
Octavia D. Bell



Rodney D. Davis
4000 Faber Place Drive, Suite 300
Charleston, SC 29405

The Honorable Daniel E. Shearhouse
Clerk, Supreme Court of South Carolina
PO Box 11330
Columbia, SC 29211



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