State of South Carolina — In The Court of Common Pleas
County of Oconee

Jacqueline Tedder #318474
v.
State of South Carolina

Case No: 2009-CP-37-501

Proof of Service

Notice of Appeal

Please take notice that the defendant hereby appeals from the order/judgment of this court opinion of the writ of certiorari and affirming from each and every part.

Jacqueline Tedder #318474
Leath Correctional Institution
Alexander-Quad 2-208A
2809 Airport Road
Greenwood, S.C. 29649

RECEIVED
MAY 27 2016
S.C. SUPREME COURT

Certificate of Service

I, Jacqueline Tedder, certify that I have served a copy of this notice of Appeal on The S.C. Supreme Court, by depositing it in Leath's mailroom postage paid [illegible] addressed to: The S.C. Supreme Court P.O. Box 11330, Columbia, S.C. 29211.

5-25-16 — Jacqueline Tedder
Dated — Signed

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP-37-501

Jacqueline Tedder, #318474,

PLAINTIFF(S)

State of South Carolina

DEFENDANT(S)

COPY

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2012 JAN 10 PM 1 33

Submitted by: Kaelon E. May

Attorney for: ☐ Plaintiff ☒ Defendant
or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge

213
Judge Code

01/04/2012
Date

A TRUE COPY
JAN 10 2012
CLERK OF COURT - OCONEE COUNTY

SCRCP Form 4C (10/2011)

For Clerk of Court Office Use Only

This judgment was entered on the 10th day of Jan, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 10th day of Jan, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Samuel Weldon, Esquire
204 Lavinia Avenue
Greenville, SC 29601
ATTORNEY(S) FOR THE PLAINTIFF(S)

Kaelon E. May
Attorney General's Office
PO Box 11549 Columbia, SC 29211
ATTORNEY(S) FOR THE DEFENDANT(S)

Beverly H. Whitfield
CLERK OF COURT

Court Reporter:

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2012 JAN 10 PM 1 33

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF OCONEE) Case No.: 2009-CP-37-501

Jacqueline Tedder, # 318474,
Applicant,

v.

State of South Carolina,
Respondent.

ORDER OF DISMISSAL

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2012 JAN 10 PM 1 33

COPY

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed April 21, 2009. Respondent made its Return and Motion to Dismiss on July 7, 2009. An evidentiary hearing into the matter was convened on October 3, 2011 at the Oconee County Courthouse. The Applicant was present at the hearing and was represented by Samuel Weldon, Esquire. The Respondent was represented by Kaelon E. May of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on her own behalf. The State offered the testimony of William Long, Jr., Esquire (Mr. Long) Applicant's plea counsel and Bradley Norton, Esquire (Mr. Norton) Applicant's counsel for first PCR application. This Court also had before it the records of the Oconee County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Oconee County Clerk of Court. Applicant was indicted at the January 2006 term of the Oconee County Grand Jury for trafficking in cocaine > 400 grams (06-GS-37-167). William Long, Esquire, represented her. On October 31, 2006,

Applicant pled guilty to trafficking cocaine- 28-100 grams, 1st offense. She was sentenced by the Honorable John C. Few to confinement for twelve (12) years. Applicant did not appeal her conviction or sentence.

On April 10, 2007, Applicant filed her first Application for Post-Conviction Relief (2007-CP-37-328). An evidentiary hearing into the matter was convened on August 13, 2007, at the Oconee County Courthouse. Applicant was present at the hearing and was represented by Bradley Norton, Esquire. By Order of Dismissal filed September 11, 2007, the Honorable Alexander Macaulay denied and dismissed the application. Applicant did not appeal the denial of her PCR application.

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

1. Ineffective assistance of counsel.
    a. "Defense counsel never properly questioned the propriety of using the sniffer dog."
    b. Defense counsel never conducted a suppression hearing.
    c. Trial counsel failed to undertake a competent analysis of the case.
2. Involuntary guilty plea.
    a. "[Defense counsel] advised the defendant to plead guilty and consequently the defendant made, on the advise of counsel, and unknowing, illogical and irrational plea."
3. Ineffective assistance of PCR counsel
    a. Failure to file appeal

II. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR EVIDENTIARY HEARING

Applicant's Testimony

At the PCR hearing Applicant testified that she retained William Long to represent her. Applicant testified that she was pulled over in 2005 because the police officer could not read the license plate due to the trailer hitch blocking the license plate. Applicant testified that the Officer

informed Applicant he pulled her over because the vehicle displayed an incorrect tag number. Applicant testified that the Officer asked for her permission to search the vehicle and that Applicant declined to give her consent to the search. Applicant testified that the Officer ended up searching the vehicle. Applicant testified that in October 2006 she discussed a plea offer in the courtroom for six (6) years and that on October 30, 2006 Applicant discussed the stop of her vehicle with the plea judge, and that the plea judge asked Applicant if she still wanted to challenge to the stop. Applicant testified that she and counsel discussed whether the Officer had the right or probable cause to stop the vehicle and that Applicant and counsel discussed that it was not a fair a stop. Applicant testified that counsel filed a motion to suppress, that the plea judge explained the law and asked questions concerning the facts of the stop.

Applicant testified that the plea judge gave Applicant the opportunity to think about her decision overnight and that Applicant discussed the facts of the case with counsel. Applicant testified that she viewed the video of the stop and dog sniff prior to the plea proceeding but that counsel failed to discuss the dog sniff with Applicant. Applicant testified that counsel did not investigate the dog sniff and that Applicant wanted counsel to investigate the dog sniff. Applicant testified that counsel told her how to answer the questions asked by the plea judge at Applicant's guilty plea hearing so that Applicant could plead guilty and the plea judge would accept Applicant's guilty plea.

Applicant testified that she requested her previous PCR counsel, who represented her in her first PCR application, to file an appeal from the denial of her first PCR application. Applicant testified that her PCR counsel did not file an appeal.

Mr. Long's Testimony

At the PCR hearing counsel testified that he has been practicing law for forty-nine years, that Applicant retained his services, and that counsel met with Applicant on numerous occasions. Counsel testified that Applicant's case had been called for trial multiple times prior to the plea hearing. Counsel testified that he explained the elements of the charges to Applicant and that counsel and Applicant discussed her version of the facts. Counsel testified that he filed a discovery motion and received the discovery materials from the state which included a copy of the video tape of the traffic stop. Counsel testified that he met with the Officer who executed the traffic stop, viewed the vehicle with the trailer hitch still attached. Counsel testified that he filed a suppression motion concerning the dog sniff and the stop of the vehicle. Counsel testified that Applicant had a history of post-traumatic stress syndrome likely due to her service in the military.

Counsel testified that he discussed with Applicant the benefits and drawbacks of pleading guilty versus proceeding to trial. Counsel testified that the state offered a seven-year plea deal to Applicant but that Applicant decided not to take the plea offer. Counsel testified that at some point Applicant informed counsel that someone encouraged Applicant not to plead guilty and proceed to trial, and that this was the reason Applicant declined the seven-year plea offer. Counsel testified that the solicitor wanted Applicant to serve the mandatory minimum, but that counsel reached a plea offer of seven to fifteen years.

Counsel testified that if Applicant pursued the suppression hearing, the state was going to take the plea offer off the table and push for the maximum. Counsel testified that during the overnight break in Applicant's plea hearing, counsel, Applicant, and the state negotiated and agreed upon Applicant entering a plea to the offer on the table. Counsel testified that he likely

met with Applicant during that night break. Counsel testified that he did not pressure the Applicant into entering a plea of guilty and that had Applicant indicated she wanted to proceed to trial, counsel was prepared to go to trial.

Counsel testified that he investigated the dog sniff by speaking with the Officer who handled the dog sniff in Applicant's case and that counsel obtained the paperwork that showed the dog was certified. Counsel testified that in his opinion when he viewed the video tape, the dog did not do anything that suggested a signal until the trunk was opened, but that the Officer had probable cause to stop Applicant because of the incorrect tag on the vehicle. Counsel testified that the Officer handling the dog informed counsel how the dog signals when drugs are detected. Counsel testified that he did not discuss with the Officer whether the dog was trained, but that counsel did obtain the certification paperwork for the dog. Counsel testified that there was not a discussion of the dog sniff in the plea transcript.

Mr. Norton's Testimony

At the PCR hearing Mr. Norton testified that he was appointed to represent Applicant in her first PCR application. Mr. Norton testified that Applicant never requested that he file an appeal from the denial of Applicant's first PCR application. Mr. Norton testified that if Applicant had requested that he file an appeal, then he would have filed the appeal for Applicant.

III. APPLICABLE LAW

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 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, 88 L.Ed.2d 203 (1985).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings,

and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

1. Ineffective Assistance of Counsel

a. Failure to properly question the propriety of using the dog sniff and undertake a competent analysis of the case

The Applicant asserts that plea counsel was ineffective for failing to properly question the propriety of using a dog sniff and for failing to undertake a competent analysis of the case. This Court finds that the Applicant has failed to meet her burden of proof. At the PCR hearing plea counsel testified that he met with Applicant on numerous occasions, explained the elements of the charges to Applicant, and discussed Applicant's version of the facts. Plea counsel further testified that he received the discovery materials from the state, met with the arresting Officer, and visited the vehicle at issue in Applicant's case. Plea counsel testified that he was able to review the video tape of the traffic stop and interviewed the Officer who handled the dog and executed the dog sniff. Additionally, plea counsel testified that he investigated whether the dog was certified for drug detection and found that the dog was properly certified.

To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998). "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). Here, the Applicant could not point to any specific matters counsel failed to discover which would have caused her to proceed with a jury trial instead of pleading guilty. While Applicant argues plea counsel's investigation of the dog sniff itself was

inadequate, this Court does not find this to be the case. Plea counsel interviewed the Officer in charge of the dog, viewed the video tape of the traffic stop and search, and obtained the proper documentation showing the dog was certified. This Court finds that the Applicant offered no evidence at the PCR hearing that plea counsel could have found that would have been likely to have any outcome more favorable to the Applicant. This Court finds that plea counsel was prepared to try to the Applicant's case if Applicant decided to proceed to trial. The Applicant did not produce any witnesses or offer any other evidence from which this Court could conclude that the outcome of the case would likely have been different, had that evidence been developed. This Court finds that Applicant failed to show plea counsel's performance was deficient and any resulting prejudice; therefore, these allegations are denied and dismissed.

b. Failure to conduct a suppression hearing

The Applicant asserts that plea counsel was ineffective for failing to conduct a suppression hearing. This Court finds that this allegation is without merit. This Court has already found that plea counsel was not ineffective in his preparation and investigation of Applicant's case. Plea counsel testified and Applicant admitted that plea counsel filed a suppression motion. Plea counsel testified that he was prepared to go forward with the suppression hearing. The record reflects that plea counsel informed the plea judge that counsel explained the possible arguments that Applicant could pursue in challenging the stop and in challenging the search. (Tr. p.14, lines13-20). The plea judge informed Applicant at the plea hearing that by pleading guilty Applicant gives up the right to make those challenges, and Applicant indicated that she understood. (Tr. p.15, line9 – p.16, line8). The record reflects the plea judge engaged in an extensive colloquy with plea counsel and Applicant regarding a suppression hearing, and essentially held its own suppression hearing making a finding that the traffic stop was lawful.

The record further reflects Applicant was provided additional time to decide whether to proceed with the plea or go to trial. The parties reconvened the next day, at which time Applicant informed the court she wanted to proceed with her guilty plea. (Tr. p.38). This Court finds that the record demonstrates that Applicant was fully advised of her rights regarding the suppression hearing and indicated that she did not want a suppression hearing and made the decision to enter a guilty plea. This Court finds plea counsel was prepared to go forward with the suppression motion if Applicant chose to do so and Applicant made the informed decision not to have a suppression hearing. This Court finds that Applicant has failed to show that plea counsel's performance was deficient and certainly no resulting prejudice; therefore, this allegation is denied and dismissed.

2. Involuntary Guilty Plea

The Applicant asserts that plea counsel advised Applicant to plead guilty and that consequently Applicant made, on the advice of counsel, an unknowing, illogical, and irrational plea. This Court finds that Applicant has failed to meet her burden of proof in showing that her guilty plea was unintelligent, unknowing, and involuntary. At the plea hearing counsel indicated that he explained to the Applicant the crucial elements that the state would have to prove, the potential sentence Applicant faced, and all of her constitutional rights. (Tr. p.5, line23 – p.6, line5). The plea judge asked Applicant if she understood and was aware of her right to a jury trial, and Applicant indicated that she understood and wished to give up her right to a jury trial. (Tr. p.8, line12 – p.9, line3). The plea judge meticulously advised Applicant about her right to have a suppression hearing and the possible challenges she could make, and Applicant indicated that she did not have any further questions and that she understood her right to a suppression hearing. (Tr. p.15-38). Applicant indicated that she understood by pleading guilty she gives up

her right to challenge the traffic stop and search. (Tr. p.39, lines10-14). Additionally, Applicant informed the plea judge that she was satisfied with counsel's representation and that counsel had done everything he could do to help Applicant. (Tr. p.42, line22 – p.43, line9). The plea record reflects that Applicant indicated that her answers were her own answers and that no one told Applicant what her answers should be. (Tr. p.43, lines10-21). The Applicant informed the plea judge that the allegations against her were true. (Tr. p.40, lines7-24). This Court finds the overwhelming evidence in the record and presented through the testimony of the witnesses at the hearing reflects that the plea was knowingly and voluntarily entered. Boykin v. Alabama, 395 U.S. 238 (1969); Vickery v. State, 258 S.C. 33, 186 S.E.2d 827 (1972). Therefore, this Court finds that this allegation is denied and dismissed.

3. Ineffective Assistance of PCR Counsel

The Applicant asserts that her PCR counsel was ineffective because he failed to file an appeal of the denial of Applicant's first PCR application. The Applicant's contention that she received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under § 17-27-90." Aice, 305 S.C. at 451, 409 S.E.2d at 394. The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin recognizes a general exception to this rule where prior post-conviction relief

counsel fails to appeal the denial of the application. Id. Austin "is limited to its particular factual situation . . . ." Aice, 305 S.C. at 452, 409 S.E.2d at 394. This Court finds Mr. Norton's testimony on this point to be credible. This Court does not find Applicant's testimony credible. Mr. Norton testified that Applicant never requested that he file an appeal after the denial of Applicant's prior PCR application. Mr. Norton testified that if Applicant had requested that he file an appeal, then Mr. Norton would have filed an appeal. This Court finds that because no appeal was filed, Applicant did not ask Mr. Norton to file an appeal. Therefore, this allegation is denied and dismissed.

V. CONCLUSION

Based on all the forgoing, 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 for post conviction relief. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. *See* Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

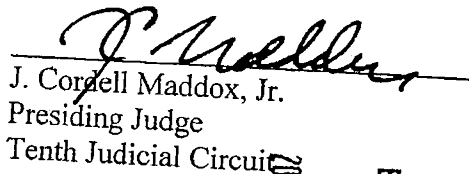
1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

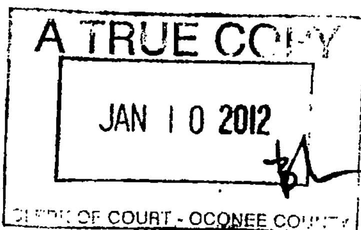
2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this 04 day of January, ~~2011~~ 2012.

J. Cordell Maddox, Jr.
Presiding Judge
Tenth Judicial Circuit

Anderson, South Carolina





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

JACQUELINE TEDDER, #318474,

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:

Samuel Weldon, Esquire
204 Lavinia Ave.
Greenville, SC 29601

This 18th Day of January, 2012.

Lena Pelishenko
Lena Pelishenko
Legal Assistant for Respondent

SWORN to before me this 18th Day of January, 2012.

Lauren Meara
Notary Public for South Carolina.
My Commission Expires: 9/25/2019

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2009 AUG 11 P 1: 40

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)

IN THE COURT OF COMMON PLEAS
Case No.: 2009-CP-37-501

Jacqueline Tedder, # 318474,

Applicant,

v.

State of South Carolina,

Respondent.

CONDITIONAL ORDER OF DISMISSAL

COPY

This matter comes before this Court by way of an application for post conviction relief (PCR) filed April 21, 2009. The Respondent made its Return and Motion to Dismiss on or about July 7, 2009.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Oconee County Clerk of Court. Applicant was indicted at the January 2006 term of the Oconee County Grand Jury for trafficking in cocaine > 400 grams (06-GS-37-167). William Long, Esquire, represented her. On October 31, 2006, Applicant pled guilty to trafficking cocaine- 28-100 grams, 1st offense. She was sentenced by the Honorable John C. Few to confinement for twelve (12) years. Applicant did not appeal her conviction or sentence.

First PCR Application (2007-CP-37-328)

On April 10, 2007, Applicant filed her first Application for Post-Conviction Relief. An evidentiary hearing into the matter was convened on August 13, 2007, at the Oconee County Courthouse. Applicant was present at the hearing and was represented by Bradley Norton, Esquire. By Order of Dismissal filed September 11, 2007, the Honorable Alexander Macaulay denied and

dismissed the application. Applicant did not appeal the denial of her PCR application.

Current PCR Application

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

1. Ineffective assistance of counsel.
   a. "Defense counsel never properly questioned the propriety of using the sniffer dog."
   b. Defense counsel never conducted a suppression hearing.
   c. Trial counsel failed to undertake a competent analysis of the case.
2. Involuntary guilty plea.
3. "[Defense counsel] advised the defendant to plead guilty and consequently the defendant made, on the advise of counsel, and unknowing, illogical and irrational plea."

Before this Court are the records of the Oconee County Clerk of Court regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; Applicant's prior PCR records, Applicant's current PCR application and Respondent's Return and Motion to Dismiss.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Successiveness

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

> All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code §17-27-90. Applicant has failed to establish sufficient reason why she could not have raised her current allegations in her previous application for post-conviction relief; therefore, she has failed to meet the burden imposed upon her. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

Statute of Limitations

This Court finds, further, that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to –160 (2003). S.C. Code Ann. §17-27-45(a) reads as follows:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on October 31, 2006.

This Application was filed on April 21, 2009, which was well after the statutory filing period had expired.

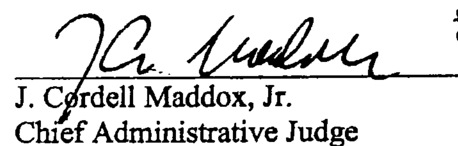
A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. §17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and for being successive.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon her to show why this Order should not become final. The Applicant shall file any reasons he may have with the Oconee County Clerk of Court and shall serve opposing counsel at the following address:

A. West Lee, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2009 AUG 11 P 1:40

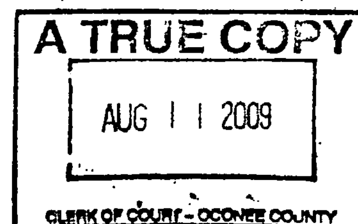
AND IT IS SO ORDERED!



J. Cordell Maddox, Jr.
Chief Administrative Judge

Anderson, South Carolina

7/31, 2009



STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

JUDGMENT IN A CIVIL CASE

FILED OCONEE, SC
SALLIE C. SMITH
CLERK OF COURT
2007 AUG 13 P 4: 15

IN THE COURT OF COMMON PLEAS

CASE NO. 2007-CP-37-328

Jacqueline Tedder,
PLAINTIFF,

v.

State of South Carolina,
DEFENDANT.

CHECK ONE

[ ] **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

[X] **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

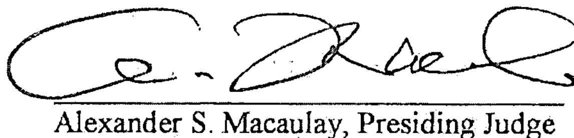
[ ] **ACTION DISMISSED (CHECK REASON):** [ ]Rule 12(b), SCRCP; [ ]Rule 41(a), SCRCP (Vol. Nonsuit); [ ]Rule 43(k), SCRCP (Settled); [ ]Other

[ ] **ACTION STRICKEN (CHECK REASON):** [ ] Rule 40(j), SCRCP; [ ] Bankruptcy; [ ] Binding arbitration, subject to right to restore, to confirm, vacate or modify arbitration award; [ ]Other ______________.

IT IS ORDERED AND ADJUDGED: [ ] See attached Verdict; [X] Statement of Judgment by the Court:

Dismissed with prejudice. Mr. Grigg is to prepare a form order.

Dated at Walhalla, South Carolina, this 13th day of August, 2007.



Robin S. Hild
Court Reporter

Alexander S. Macaulay, Presiding Judge

This order was entered on the 13th day of August, 2007, and a copy mailed first class this 13th day of August, 2007, to attorneys of record or to parties (when appearing pro se) as follows:

Bradley Norton, Esq.
ATTORNEY FOR THE PLAINTIFF

Daniel E. Grigg, Esq.
ATTORNEY FOR THE RESPONDENT

Sallie C. Smith
CLERK OF COURT

(Rev. 5/00)

SCRCP FORM 4

ATTORNEY GENERAL'S OFFICE

RECEIVED 08/17/2007

ADMINISTRATIVE INSTRUCTIONS

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_____ ORDER: _____ TRANSCRIPT

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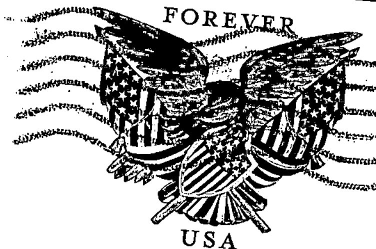
____ OTHER: _____

Jacqueline [illegible]
Leath Correctional Institution
Alexander - A2-203X
2809 Airport Road
Greenwood, S.C. 29649

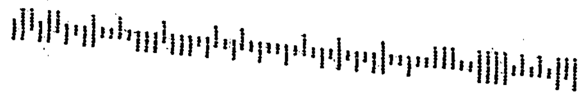
GREENVILLE SC 296
25 MAY 2016 PM 2 L



Legal Mail

The Supreme Court of South Carolina
P.O. Box 11330
Columbia, S.C. 29211
Attn: Clerk of the Court
Mr. Daniel E. Shearouse

29211-133030



HE DEPARTMENT OF CORRECTIONS HAS
NEITHER CENSORED NOR INSPECTED THIS
ITEM THEREFORE THE DEPARTMENT DOES NOT
ASSUME RESPONSIBILITY FOR ITS CONTENTS

ANGELIA RAWSKI, WARDEN
LEATH CORRECTIONAL INSTITUTION
SC DEPARTMENT OF CORRECTIONS

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MAY 2 5 2016

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