

September 9, 2016

Clerk of Court
S.C. Supreme Court
P.O. Box 11330
Columbia, SC 29211

RECEIVED

SEP 12 2016

S.C. SUPREME COURT

Re: Geraldine Brockington v. State of S.C.

Dear Sir/Madam:

Enclosed please find the Plaintiff's Notice of Intent of Appeal for filing in the above-referenced matter. Please return a filed copy of this Notice to me at the address below.

Sincerely,

Geraldine Brockington

Geraldine Brockington, 352726

Leath Correctional Institution, L2-101

2809 Airport Rd.

Greenwood, SC 29649

State of South Carolina) In the Supreme Court
)

County of Florence) Case #2013-CP-261340

Geraldine Brockington,)
)

Appellate,) Notice of Intent to Appeal
)

v.)
)

State of South Carolina)

The Appellate, Gerald Brockington, hereby notifies the Court and counsel, of her intent to appeal the Court's decision to deny and dismiss her application for post-conviction relief.

Geraldine Brockington

Geraldine Brockington, 352726

Health Correctional Institution, L2-101

2809 Airport Rd.

Greenwood, SC 29649

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS)
TWELFTH JUDICIAL CIRCUIT)

Geraldine Brockington, #352726,)

Case No. 2013-CP-21-1340)

Applicant,)

v.)

ORDER OF DISMISSAL)

State of South Carolina,)

Respondent.)

2016 JUL 22 PM 3:04
CONNIE REEL-SHEARIN
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

FILED

This matter comes before this Court by way of a post-conviction relief (PCR) application filed on May 16, 2013. Respondent made its return on December 13, 2013. An evidentiary hearing into the matter was convened on June 2, 2016, at the Florence County Courthouse. Applicant was present at the hearing and was represented by Holly Huggins Wall, Esquire. Respondent was represented by Assistant Attorney General J. Croom Hunter of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. The Applicant was indicted at the July 2012 term of the Florence County Grand Jury for homicide by child abuse (2012-GS-21-0886). Steven G. Mikell, Esquire, represented the Applicant. On October 12, 2012, the Applicant pled guilty, and the Honorable Michael G. Nettles sentenced the Applicant to twenty-three (23) years imprisonment. The Applicant did not appeal her plea or sentence.

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

ALLEGATIONS

At the post-conviction relief hearing, Applicant argued her confinement is unlawful based upon the following grounds:

1. Ineffective assistance of counsel.
 - a. Plea counsel did not spend an adequate amount of time reviewing discovery materials with Applicant.
2. Involuntary guilty plea.

At the evidentiary hearing, Applicant testified on her own behalf. This Court also heard testimony from plea counsel, Steven Mikell, Esquire. This Court also had before it a copy of the plea transcript, the Florence County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his 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).

This Court finds that Applicant failed to demonstrate that Counsel's performance was deficient in any way. This Court further finds that Applicant presented no evidence to show any prejudice resulting from Counsel's representation. Additionally, this Court finds Counsel's testimony credible and Applicant's testimony is not credible.

1. Failure to Prepare

Applicant alleges Counsel did not spend enough time reviewing the evidence with her and discussing her options. The Court finds this allegation is without merit.

At the PCR hearing, Counsel testified he has been practicing law for thirty-two years. Counsel testified he filed the appropriate Rule 5 and Brady motions, received discovery materials from the State, and went over the evidence with Applicant. Counsel testified he went over the elements of the charges Applicant was facing with the Applicant as well as the possible penalties she was facing. Additionally, Counsel testified he went over the constitutional rights Applicant was waiving prior to her guilty plea. Counsel testified that it was Applicant's decision to plead guilty. Although Counsel could not recall with specificity how many times he met with



Applicant, he testified that he met with Applicant on multiple occasions. Counsel testified the facts of the case were bad, considering the Applicant was responsible for the death of a baby due to her neglect. Counsel testified Applicant initially considered proceeding to trial, but after a thorough review of the evidence, she weighed her options and decided to plead guilty rather than face life in prison, which was a very real possibility.

This Court finds Counsel's performance was within the range required under Strickland and its progeny. Counsel's testimony indicated he was well informed regarding the facts of Applicant's case and extremely knowledgeable with respect to the relevant legal issues. Because this Court finds Counsel thoroughly investigated and prepared Applicant's case, it finds Applicant has failed to meet her obligations under Strickland, and the allegation is without merit.

INVOLUNTARY GUILTY PLEA

The voluntariness of a guilty plea is determined in light of the entire record before the court. Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012) (citing Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000)). "To knowingly and voluntarily enter a plea of guilty, all that is required is that a defendant have a full understanding of the consequences of his plea and of the charges against him." Simpson v. State, 317 S.C. 506, 508, 455 S.E.2d 175, 176 (1995) (citing Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991)). Furthermore, a defendant must only be informed of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Roddy, 339 S.C. at 33, 528 S.E.2d at 421 (citing Boykin v. Alabama, 395 U.S. 238 (1969)). "When attempting to determine the voluntary and intelligent nature of a plea, the plea colloquy ordinarily serves as confirmation that a criminal defendant is waiving the right to raise certain constitutional claims by pleading guilty." Hyman, 397 S.C. at 44, 723 S.E.2d at 379 (citing Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97, 98 (1975)). However,



the plea judge need not provide an "enumeration of specific rights waived ... where the record otherwise reveals affirmative awareness of the consequences of a guilty plea." State v. Lambert, 266 S.C. 574, 579, 225 S.E.2d 340, 342 (1976) (citing Stinson v. Turner, 473 F.2d 913 (10th Cir. 1973)). Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). Pleading guilty to avoid a possibly greater sentence, without more, does not render a guilty plea involuntary. Brady v. United States, 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed. 2d 747 (1970); Wicker v. State, 310 S.C. 8, 12, 425 S.E.2d 25, 27 (1992).

The record before this Court clearly shows that Applicant was fully informed of the consequences of entering her guilty plea. The record shows Applicant's plea was not coerced, and it was Applicant's decision to plead guilty. Applicant was advised that by pleading guilty she gave up her right to challenge the evidence the State had against her, as well as her right to put up any affirmative defenses. Additionally, Applicant testified at the PCR hearing that she pled guilty because she did not want to face the possibility of life in prison. Notably, Applicant never denied her guilt at the PCR hearing and acknowledged the victim "died because of me." Applicant has failed to present any compelling reasons why she should be allowed to depart from her valid plea of guilty. Accordingly, this Court finds Applicant's plea was knowingly, intelligently, and voluntarily entered.

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 sufficient evidence regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

CONCLUSION

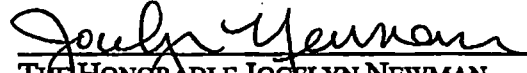
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant her application. Plea counsel rendered effective assistance in regard to the claims raised by Applicant. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

AND IT IS SO ORDERED this 18th day of July, 2016

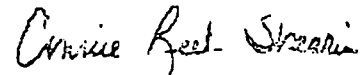

THE HONORABLE JOCELYN NEWMAN
Presiding Judge
Twelfth Judicial Circuit

Columbia, South Carolina

2016 JUL 22 PM 3:04
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

FILED

CERTIFIED: A TRUE COPY



CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2013CP2101340

FILED

Geraldine E Brockington South Carolina State Of
 2016 JUL 25 PM 3: 56

PLAINTIFF(S) **DEFENDANT(S)**
 Submitted by: CORNIE REEL SHEARN Attorney for: Plaintiff Defendant
CCCP & GS Self-Represented Litigant
FLORENCE COUNTY, SC

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

7/25/2016

This judgment was entered on July 25, 2016, and a copy mailed first class or placed in the appropriate attorney's box on July 26, 2016, to attorneys of record or to parties (when appearing pro se) as follows:

CERTIFIED: A TRUE COPY
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.
 7/26/2016
 Cornie Reel Shearn

Holly Huggins Wall PO Box 823 Johnsonville, SC 29555

John Croom Colvin Hunter PO Box 607 Lancaster, SC 29721

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Connie Reel-Shearin

Court Reporter

Connie Reel-Shearin - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Geraldine Brockington
Leath Correctional Inst.
2809 Airport RD.
Greenwood, SC. 29649
352726 L2-101

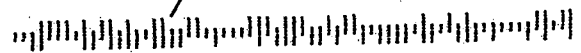
GREENVILLE SC 296

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Clerk of Court
SC Supreme Court
P.O. Box 11330
Columbia, SC 29211

29211-133030



LEGAL MAIL