

THE

GIESE

LAW FIRM, LLC

RECEIVED

FEB 06 2017

February 2, 2017

S.C. SUPREME COURT

Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211


Re: Jessica Rudd vs. State of South Carolina
C/A No: 2015-CP-38-1172

Dear Mr. Shearouse:

Please find enclosed one (1) original and one (1) copy each of Applicant's Notice of Appeal and Certificate of Service in the above referenced case. I would appreciate you filing the original and returning the clocked copies in the enclosed envelope.

I was appointed to represent Ms. Rudd in this matter and am also enclosing a copy of the Order of Dismissal. If you have any questions, please do not hesitate to ask. My telephone number is 803-708-6767.

Sincerely,



Jonathan D. Waller

Cc: Ruston R. Neely, South Carolina Office of Attorney General

Enclosures

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Diane Goodstein, Circuit Court Judge

RECEIVED

FEB 06 2017

2015-CP-38-1172

S.C. SUPREME COURT

Jessica Rudd, #350144,

Appellant,

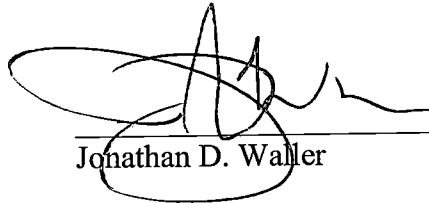
v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Jessica Rudd, #350144, appeals the Order of Dismissal denying her Application for Post-Conviction Relief filed January 13, 2017 issued by the Honorable Diane Goodstein, Presiding Judge, First Judicial Circuit.



Jonathan D. Waller

Giese Law Firm
SC Bar No.: 76290
1315 Blanding Street
Columbia, SC 29201
803-708-6767 (phone)
803-708-6769 (fax)
jonathanwallerlaw@gmail.com
ATTORNEY FOR PETITIONER

This 2 day of February, 2017.

Other Counsel of Record:

Ruston W. Neely, Assistant Attorney General

Post Office Box 11549

Columbia, SC 29211

(803) 734-3319

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Diane Goodstein, Circuit Court Judge

2015-CP-38-1172

RECEIVED

FEB 06 2017

S.C. SUPREME COURT

Jessica Rudd, #350144,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Ruston W. Neely, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 2nd day of February 2017, to his office located at P.O. Box 11549, Columbia, SC 29211.


Kelly Giese

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Jessica Rudd, #350144)

2015-CP-38-1172

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

FILED
2017
OCT 25

This Court convened an evidentiary hearing into the matter on October 25, 2016, at the Dorchester County Courthouse. Applicant was present at the hearing and represented by Jonathan D. Waller, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant's plea counsel, Douglas Mellard, Esquire (hereinafter "plea counsel") was present and testified. This Court had the opportunity to listen to the testimony of Applicant and plea counsel. This Court had before it a copy of the plea transcript, the records of the Orangeburg County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter. This Court finds as follows:

ATTEST: TRUE COPY
Winnifred B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. Applicant was indicted at the May 2014 term of the Court of General Sessions for Orangeburg County for armed robbery (2014-GS-38-0717). On December 10, 2014, Applicant pled guilty to a lesser included offense of attempted armed robbery. The Honorable Edgar W. Dickson sentenced Applicant to eight (8) years' imprisonment. Applicant did not appeal her plea or sentence.

II. ALLEGATIONS

Applicant alleged the following grounds in her application:

1. Lack of Subject Matter Jurisdiction
 - a. Defect in indictment and held without bail for 120 [days] before indictment
2. 4th Amendment Violation
 - a. Illegally held as a hostage in order to give a statement about the crime
3. Miranda Rights Violation (5th Amendment)
 - a. Forced to confess in the absence of an attorney

At the evidentiary hearing, Applicant presented no testimony or evidence concerning the allegations in her application. In light of the testimony presented, this Court will construe the allegations as being that Applicant's plea was not knowing and voluntarily and that plea counsel was ineffective.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety, listened to the testimony given, and heard the arguments presented at the evidentiary hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, Applicant must prove plea counsel's "conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The Court uses a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this first prong, the proper measure of performance is whether counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 688.

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 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). A defendant

who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

As an initial matter, this Court finds the record fully supports the knowing and voluntary nature of Applicant's guilty plea. See Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (holding defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both."). In addition, Applicant has presented no evidence or valid reasons why she should be allowed to depart from the truth of her statements made at the plea. See Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) ("[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." (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975))). Therefore, this Court dismisses Applicant's application for the reasons set out below:

A. Ineffective Assistance of Counsel

At the evidentiary hearing, Applicant claimed she was not mirandized before she gave her statement to law enforcement. Applicant admitted she was not sure if she told plea counsel. Plea counsel testified he went over Applicant's statement thoroughly and told her he would challenge its admissibility at trial. Plea counsel also testified Applicant never told him she was not mirandized before the statement. Applicant testified she and plea counsel discussed her charges, elements, her statement, and the State's evidence against her. This Court finds plea

counsel's testimony credible.

This Court finds Applicant was adequately informed by plea counsel of all her rights and the nature of the proceeding. This Court finds that Applicant has failed to satisfy her burden of proving the alleged deficiency. Accordingly, Applicant has failed to satisfy her burden of proving ineffective assistance of counsel with regard to this allegation and it is therefore denied and dismissed.

B. Guilty Plea Was Not Voluntarily or Intelligently Made

Applicant claimed plea counsel told her the offense to which she was pleading was parole eligible. Applicant was on parole when she pled guilty to the attempted armed robbery charge. Plea counsel testified he was hired to get a better deal than the public defender. Plea counsel testified it was always Applicant's intention to plead guilty and she never wanted a trial. Plea counsel testified he never told Applicant the charge she was pleading to was parole eligible. This Court finds plea counsel's testimony credible.

This Court finds that Applicant's guilty plea was knowingly, voluntarily, and intelligently made. This Court finds that Applicant has failed to satisfy her burden of proving the alleged deficiency. Applicant also failed to prove the alleged deficiency of plea counsel caused her guilty plea to be unknowing or involuntary. Applicant admitted she wanted to plead guilty. Accordingly, Applicant has failed to satisfy his burden of proving ineffective assistance of counsel with regard to this allegation and it is therefore denied and dismissed.

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

IV. CONCLUSION

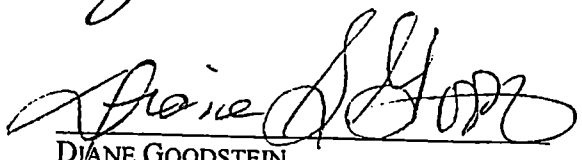
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant her application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from 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, her post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of her sentence.

AND IT IS SO ORDERED this 9th day of January, ~~2016.~~ ²⁰¹⁷ 15



DIANE GOODSTEIN
Presiding Judge
1st Judicial Circuit

St George, South Carolina

THE

GIESE

LAW FIRM, LLC

1315 Blanding Street
Columbia, SC 29201

Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

B86703.04

\$0.880

US POSTAGE
FIRST-CLASS

062S0009473977
29201



slmnc.com sbcnc.com