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February 27, 2017

RECEIVED
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S.C. SUPREME COURT

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

Re: Kristie Martin Bishop vs. The State of South Carolina
Case No: 2010-CP-42-3912

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal and an affidavit of service for the same. Also, I have enclosed a copy of the Order from which the appeal is taken. Please file the copies and return them to me. I have enclosed a self-addressed stamped envelope.

Thank you for your help and if you should have any questions please feel free to call me.

RICHEY AND RICHEY, P.A.

Yours truly,

Rodney Richey

RWR/tlg
enclosures
cc: Alicia Olive, Esquire

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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MAR - 2 2017

S.C. SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

HONORABLE FRANK R. ADDY, JR.

2015-CP-42-3912

KRISTIE MARTIN BISHOP, 332220,

APPELLANT,

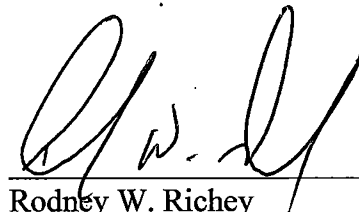
against

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

Kristie Martin Bishop appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable Frank R. Addy, Jr., Circuit Judge on November 9, 2016 and Order issued on February 13, 2016 and filed on February 22, 2016. The hearing was held on November 9, 2016. The Appellant received notice of the judgment on February 22. 2017.



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Other Counsel of Record:
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THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

HONORABLE FRANK R. ADDY, JR.

2015-CP-42-3912

KRISTIE MARTIN BISHOP, 332220,

APPELLANT,

against

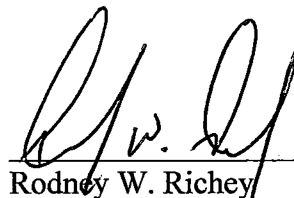
STATE OF SOUTH CAROLINA,

RESPONDENT.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on February 27, 2017 addressed to their attorney of record, Alicia Olive, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Dated: February 27, 2017



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STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT
Case No. 2015-CP-42-3912

Kristie Martin Bishop, #332220,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
)

ORDER OF DISMISSAL

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THIS MATTER COMES BEFORE THE COURT by way of an Application for Post-Conviction Relief filed September 18, 2015. Respondent made a Return on July 1, 2016. Applicant amended her Application on October 14, 2016. The Court convened an evidentiary hearing into the matter on November 9, 2016, at the Spartanburg County Courthouse. Applicant was present at the hearing and represented by Rodney W. Richey, Esquire. Alicia A. Olive, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on her own behalf at the evidentiary hearing. Applicant's plea counsel, E. Joshua Schultz, Esquire, and A. Julia Tat, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the September 2014 term of the Spartanburg County Grand Jury for armed robbery and possession of a firearm during the commission of a violent crime (2014-GS-42-4552, counts 1

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and 2), two (2) counts of financial transaction card fraud (2014-GS-42-4553 and -4566), financial transaction card theft (2014-GS-42-4567), grand larceny (2014-GS-42-4556), and two (2) counts of petit larceny (2014-GS-42-4554 and -4555). Applicant was subsequently indicted at the December 2014 term of the Spartanburg County Grand Jury for petit larceny (2014-GS-42-5722), obtaining money by false pretenses (2014-GS-42-5723) and two (2) counts of financial transaction card fraud (2014-GS-42-5724 and -5725). E. Joshua Schultz, Esquire, and A. Julia Tat, Esquire, represented Applicant. On May 14, 2015, Applicant pleaded guilty pursuant to North Carolina v. Alford,[1] before the Honorable R. Keith Kelly to all charges as indicted.[2] Judge Kelly sentenced Applicant to concurrent terms of imprisonment for twenty (20) years for armed robbery and ten (10) years for each additional charge. Applicant did not appeal her conviction or sentence.

II. ALLEGATIONS

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

1. Ineffective assistance of counsel, in that Counsel:
    a. Failed to introduce material facts,
    b. Didn't object to perjury by prosecutor, investigator and victims,
    c. "Didn't file proper motions,"
    d. "Plea not adequately counseled;"
2. Constitutional rights violated;
    a. Amendments 4, 6, 8, and 14 violated.
3. "Material facts not introduced";
    a. Many facts of the case were not introduced prior to the time of or at plea hearing;
4. Sentence exceeds state law;
5. "Vindictiveness and prejudice by prosecutor and lead investigator;"
6. Mitigating circumstance of mental status at time of said

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[1] North Carolina v. Alford, 400 U.S. 25 (1970).
[2] The State *nolle prossed* the possession of a weapon during the commission of a violent crime charge.

crimes

a."Evaluation of psychological testing, diagnosis, nor mental health records were introduced;"

7. "New evidence of fraudulently obtained property by co-defendant;"

a."Records from SCDC to show where co-defendant donated all electronics purchased with stolen credit cards and stolen property."

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In her amended Application, Applicant also asserted 31 additional claims of ineffective assistance of counsel. At the evidentiary hearing, Applicant proceeded on allegations of ineffective assistance of plea counsel for (1) failure to properly present facts in mitigation; (2) failure to make a motion to reconsider the sentence or to appeal the guilty plea, and (3) failure to adequately advise Applicant resulting in an involuntary guilty plea.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. As a matter of general impression, this Court finds Counsels' testimony to be credible and Applicant's testimony to be neither credible nor legally relevant. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80.

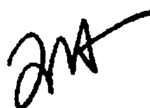
A. Summary of Testimony

Applicant testified she had a co-defendant who also pleaded guilty and that her co-defendant was more culpable than she. Applicant stated that she was simply in the car with her co-defendant when Applicant committed the crimes. She testified that she "begged" her attorneys to file a motion to reconsider. She testified that she did not understand the concept of an Alford plea and that no one explained it to her. Applicant testified that she felt she should have had a

trial, but that her plea counsel threatened that if she did not plead guilty before Judge Kelly, she would have to plead in front of Judge Cole who would "crucify" her. Applicant also asserted at the evidentiary hearing that the State dropped the armed robbery charge.

Plea counsel Schultz testified that Applicant's case was on the trial docket the week that she pleaded guilty. He testified he argued to the judge that she was less culpable than her co-defendant. He testified he explained to her what an Alford plea was. Schultz testified he did not file a motion to reconsider, but he did not recall any issues that would need to be addressed in a motion to reconsider. He also testified that if he had made a motion to reconsider, the judge could have sentenced her to *more* time. He also testified that he had no additional or different information to present in a motion to reconsider. Schultz testified that there were videos contained in discovery that showed Applicant participated in the crimes with her co-defendant. Schultz testified Applicant received a beneficial result by pleading guilty, though he did feel the sentence was harsh. Schultz testified that he did speak on Applicant's behalf in mitigation and, even though he may not have used particular language in doing so, the judge understood that he was making an argument in mitigation. Schultz testified Applicant underwent a mental health evaluation, but no issues were found. He testified that he met with Applicant several times prior to the plea; in these meetings Applicant and he reviewed the State's evidence, discussed her constitutional rights, discussed any possible defenses, and explained the meaning of an Alford plea. Schultz testified he felt she understood those discussions and further testified that it was her decision to enter the plea.

Plea counsel Tat denied telling Applicant the evidence against her was lacking. She testified Applicant had made statements to police and also appeared in the video recordings from the crime scenes. Tat testified she felt there was sufficient evidence against Applicant for her to



be convicted. Tat also argued in mitigation that Applicant's co-defendant was more culpable. Tat further testified that even though she did not directly ask the judge for leniency, she stated she did not need to specifically ask for leniency because the whole purpose of providing the information to the Court is for mitigation.

B. Ineffective Assistance of Plea Counsel

In this post-conviction relief action, Applicant bears the burden of proving the allegations in her 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 counsel as a ground for relief, the applicant must prove 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." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

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 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).

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 prong, the Court measures counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688).

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. With respect to guilty plea counsel, Applicant must show there is a reasonable probability that, but for counsel's alleged errors, Applicant would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Failure to Adequately Argue in Mitigation

Applicant asserts that plea counsels' performance was deficient for failure to ask the plea judge for leniency in sentencing and for referring to Applicant as a "career criminal." Applicant has failed to show deficiency with respect to this allegation.

Plea counsel argued in mitigation that Applicant's co-defendant was more culpable. Schultz argued that Applicant was raised in a home with an alcoholic father who was abusive to her mother, that Applicant dropped out of high school but later obtained her GED, and that all she remembered of childhood was constant heartache. Tr. p. 34. Schultz stated that he "hate[d] to use this word, a career criminal . . . but there are reasons why people are career criminals." Tr. pp. 36-37. He went on to state that Applicant's reason was the tragic death of her child, who had passed several years before, and the grief from loss caused Applicant to become addicted to drugs. Tr. p. 37. He argued that her lengthy criminal history was the result of her drug addiction. Tr. p. 38. Schultz stated to Judge Kelly that he felt the evidence against Applicant was overwhelming and he thought it would be "very difficult . . . to sustain a not guilty verdict on all of the charges." Tr. p. 38.

Tat argued to Judge Kelly that Applicant and her co-defendant, Krystal Lynch, met in prison and stayed in touch after. Tat stated that Lynch had "provided some care" for Applicant in

prison when Applicant's daughter passed away. Tr. p. 39. Tat argued that Applicant did not plot with Lynch, and although she was present for many of the instances giving rise to the charges, she was either unaware they would take place, or she was not the primary actor. Tr. p. 42. Tat also argued the videos depicted Lynch as the primary actor. Tr. p. 43, lines 20-23. Tat also argued Applicant had been cooperative and that the evidence would show that Lynch had lied to police and tried to blame Applicant for everything. Tr. p. 45. Plea counsel also presented Applicant's husband, mother, and brother, to speak on her behalf. Tr. pp. 48-56.

This Court finds that plea counsel's statements in mitigation were very appropriate, and it was not necessary that plea counsel specifically use the word "leniency," or specifically request the "minimum" sentence, especially since the record is clear that plea counsel were asking for leniency from Judge Kelly. From a review of the plea transcript, plea counsel presented very compelling mitigation for Applicant, correctly pointed to evidence that minimized her role in the crimes, and had members of Applicant's family speak eloquently and favorably on her behalf. Furthermore, plea counsel's reference to Applicant as a "career criminal" was not deficient. Rather, Applicant had an extensive criminal history, which Counsel had to deal with forthrightly, and there is no evidence that Applicant was prejudiced by these remarks.

This Court further finds Applicant has failed to establish she was prejudiced by any alleged deficiency of Counsel. First, there is no evidence that Applicant was prejudiced by plea counsel's remarks referring to Applicant as a "career criminal." Regardless, Applicant has not shown that, but for the alleged deficient performance of plea counsel during mitigation, she would not have pleaded guilty but would have insisted on going to trial.

The Solicitor stated at the start of the plea that the plea was "straight up" and the plea judge inquired of Applicant whether she understood that the armed robbery charge carried ten

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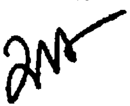

(10) to thirty (30) years. Tr. p. 11. He also questioned her as to whether she understood that each of the remaining property crimes carried up to ten (10) years. Tr. pp. 11-19. In addition, two of the victims and one of the victims' husbands gave statements at the plea. Tr. pp. 58-61. Just prior to announcing his sentence, Judge Kelly stated that "[there are] two classes of vulnerable people in our civilized society, and this Court deals pretty strictly with both—with people who harm either class. Number one is a child, and number two is our elderly society." Tr. p. 62. Accordingly, based on the record and the testimony at the evidentiary hearing, Applicant was fully aware that she was pleading guilty without negotiation or recommendation, that she could have received a sentence in the range of ten (10) to thirty (30) years, and she did in fact receive a sentence within that range. In light of these facts and the statements given by the victims and Applicant's prior criminal history, this Court finds Applicant has failed to demonstrate that but for the alleged error of counsel, she would not have pleaded guilty but would have insisted on going to trial. Accordingly, Applicant has failed to meet her burden of proving ineffective assistance of counsel, and this allegation is denied and dismissed with prejudice.

Failure to File a Motion to Reconsider or Appeal

Applicant alleged she wanted her attorneys to appeal and that she begged them to file a motion to reconsider. This Court finds Applicant has failed to carry her burden of proof with respect to these allegations. "Counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000). "[A]lthough not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because

a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings." Id. Absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea." Jones v. State, 382 S.C. 589, 596, 677 S.E.2d 20, 23-24 (2009) (citing Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008)). "One extraordinary circumstance which would require counsel to advise a defendant of the right to appeal from a guilty plea would arise when the defendant inquires about an appeal." Id. (quoting Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)). To show prejudice in these circumstances, a defendant must demonstrate that there is a reasonable probability that, but for counsel's deficient failure to consult with him about an appeal, he would have timely appealed. Flores-Ortega, 528 U.S. at 484.

This Court finds Applicant did not ask counsel to file a direct appeal. Further, this Court can discern no non-frivolous basis upon which counsel could have filed an appeal from Applicant's plea. Therefore, plea counsel had no duty to consult with Applicant concerning an appeal. Regardless, concerning any appeal, this Court finds such an appeal would have been fruitless in that no error was committed by Judge Kelly which would warrant reversal of the guilty plea. In addition, the plea judge specifically advised Applicant of her right to appeal from the guilty plea, the time in which to do so, and yet she did not file an appeal. Tr. pp. 25-26. Therefore, Applicant has also failed to show that, but for plea counsel's failure to consult with her, she would have timely appealed. Accordingly, Applicant has shown no deficiency or prejudice with respect to this allegation and has, therefore, failed to meet her burden of proving ineffective assistance of counsel.

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Likewise, this Court also finds that Applicant did not ask plea counsel to file a motion for reconsideration of her sentence. This Court finds counsel's testimony that there was no basis to file a motion to reconsider to be credible. Applicant has failed to demonstrate that Counsel had a duty file a motion to reconsider and has, therefore, failed to show any deficiency of counsel. See Palacio v. State, 333 S.C. 506, 514, 511 S.E.2d 62, 67 (1999) (no deficiency where "it would have been futile for Attorney to have made such arguments").

Furthermore, Applicant has shown no prejudice because of Counsel's alleged failure to file a motion to reconsider. Applicant pleaded without negotiation or recommendation, so she had a total exposure of one hundred and thirty (130) years. Applicant was only sentenced to twenty (20) years, and the Court finds that this sentence was likely imposed due to the statements made by the victims and also due to Applicant's prior criminal history. See Tr. pp. 32-35; pp. 58-61. In fact, as counsel testified, reconsideration could have subjected her to even greater time, and in light of Applicant's prior history and the statements made in aggravation and mitigation during the sentencing hearing, Judge Kelly would have been unlikely to reduce Applicant's original sentence had such a motion been filed. Applicant has failed to show she was prejudiced by this alleged deficiency. Accordingly, Applicant has failed to meet her burden of proving ineffective assistance of counsel, and this allegation is denied and dismissed with prejudice.

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Involuntary Guilty Plea

Applicant asserts that her guilty plea made pursuant to Alford was entered involuntarily as the result of ineffective assistance of counsel. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983);

Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging their guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Dalton v. State, 376 S.C. 130, 138-39, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

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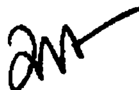
The record must establish the defendant had a full understanding of the consequences of the plea and the charges against the defendant. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). Defendant's knowing and voluntary waiver of statutory or constitutional rights 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." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "'[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.'" Dalton, 376 S.C. at 138, 654 S.E.2d at 874 (quoting Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)).



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)).

Having reviewed the pleadings, considered the applicable law, and reflected upon the plea transcript and testimony provided at the evidentiary hearing, the Court denies Applicant's request for post-conviction relief. From a review of the entire record, this Court finds plea counsel were effective in their representation of Applicant; therefore, Applicant has failed to meet her burden of proving ineffective assistance of counsel. Counsel informed the plea judge that Applicant was pleading pursuant to Alford, and the plea judge advised her that it would treat her plea under Alford the same as if she had admitted she had done it. Tr. p. 21, lines 7-11. Applicant agreed that if she went to trial, she believed she would be convicted of the offenses based on the State's evidence. Tr. pp. 21-22. Applicant denied that anyone had threatened, coerced, or promised her anything to plead to the charges. Tr. p. 24. She acknowledged she had enough time with her attorneys. Tr. p. 24. She also specifically denied that either of her attorneys forced her to plead guilty. Tr. p. 25.

This Court finds incredible Applicant's testimony that the State dismissed the armed robbery charge. Although the Solicitor misspoke when he stated on page 31 of the plea transcript that the State was dismissing the armed robbery charge, viewing the record as a whole, the Court finds that Applicant was clearly entering a plea to armed robbery, and such was the understanding of Applicant and her plea counsel.

At the beginning of the plea, the Solicitor stated:

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Then 14-GS-42-4552, Your Honor she's pleading to count one of that indictment which is armed robbery. . . .Count Two is possession of a weapon during a violent crime will be dismissed once this case----

. . . .

Again, . . . this is indictment 14-GS-42-4552, . . . which is armed robbery. She's pleading to Count One of the indictment, Your Honor. Count two is a possession of a weapon during a violent crime, Your Honor. That case will be dismissed.

. . .

Your Honor, Count Two, possession of a weapon during a violent crime on Indictment 14-GS-42-4552, Your Honor, will be dismissed once the guilty plea is taken, Your Honor.

Tr. pp. 4-5.

At the plea, the State also introduced as Exhibit 1 a "cheat sheet" that listed the indictments to which Applicant was pleading. Tr. p. 5. The State introduced a total of fourteen (14) exhibits into evidence at the plea, including Applicant's video-recorded statement to police. Tr. pp. 5-8. Furthermore, the plea judge read count one of indictment 2014-GS-42-4552 aloud on the record and specifically stated "count two is being dismissed by the Solicitor's Office." Tr. pp. 10-11. Additionally, the plea judge directly asked Applicant if she was pleading guilty to "the armed robbery" and she stated "I plead guilty."[3] Tr. p. 20. The solicitor gave a factual basis for the plea and gave the details of the armed robbery in doing so. Tr. pp. 26-30. Based on the facts and circumstances of the plea, it is clear that the Solicitor's statement, "we are dismissing like I said the possession of a weapon during a violent crime and armed robbery," Tr. p. 31, lines 17-19, was a misstatement and was not the understanding of Applicant or her counsel. The record reflects that Applicant's plea was knowing and voluntary. Accordingly, Applicant has made no showing that counsel was deficient in advising Applicant concerning the guilty plea.

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[3] Counsel and the Court then clarified that Applicant was entering the plea under Alford.

Additionally, Applicant has made no showing that she was prejudiced by any deficiency of counsel. Schultz clearly indicated his belief that the evidence against Applicant was overwhelming and that she would likely not succeed in obtaining a not guilty verdict at trial. Moreover, Applicant was facing a total of one hundred, thirty (130) years imprisonment on these charges. Considering her sentencing exposure, and given that the State introduced fourteen (14) exhibits at Applicant's plea, which included several video recordings of several of the crimes as well as Applicant's statement to police, this Court finds Applicant has failed to show that there is a reasonable probability that, but for the alleged error of counsel, she would not have pleaded guilty and would have insisted on going to trial. Rather, Applicant has simply expressed her dismay over the length of her sentence, which is insufficient to prove ineffective assistance. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997) ("Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made."). Therefore, this Court finds Applicant has failed to satisfy her burden of proving deficiency or prejudice, and therefore, has failed to show that her plea was not knowingly, voluntarily, and intelligently made. Accordingly, Applicant has failed to meet her burden of proving ineffective assistance of counsel, and this allegation is denied and dismissed with prejudice.

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, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations

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IV. CONCLUSION

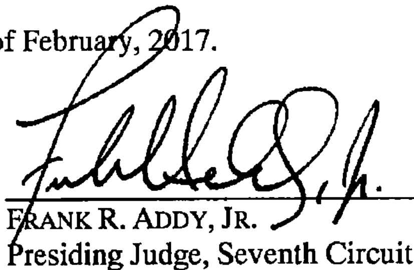
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations requiring this Court to grant her application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The 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), SCRCP, 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 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.

IT IS SO ORDERED this 13th day of February, 2017.



FRANK R. ADDY, JR.
Presiding Judge, Seventh Circuit

Greenwood, South Carolina

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