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S.C. SUPREME COURT

State of South Carolina
in the Supreme Court

Susan Diane Hendricks	
S.C.D.C 355210	C.A. NO 2014-CP-39-0459
vs Petitioner	Pro-Se Petition to Appeal
	and Obtain Indigent Defense
State of South Carolina	to Appeal PCR.
Respondent	

I, Petitioner, Susan Diane Hendricks, ask this Court to have an Indigent Attorney assigned to the case because the last PCR Attorney did not contact or failed to file an appeal for the Petitioner. The Argument that Petitioner asks to be explored, is issues that Petitioner believes would have rendered a different verdict in the P.C.R. outcome. Petitioner believes that Plea Counsel and P.C.R Attorney's representation failed to meet the requirements of meaningful adversarial testing in thiscase.

As can be seen from Petitioners testimony, plea counsel failed to properly investigate her case. IN NANCE v. Ozmint 367 S.C. 547, 626 S.E. 2d 878 (2006) the court observed how prejudice may be presumed in the context of ineffective assistance of Counsel.

X Susan Diane Hendricks
DATE: 5-24-2017

Susan Diane Hendricks 355210
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Graham C.I BRD-4
4450 BROADRIVER RD
Columbia, S.C
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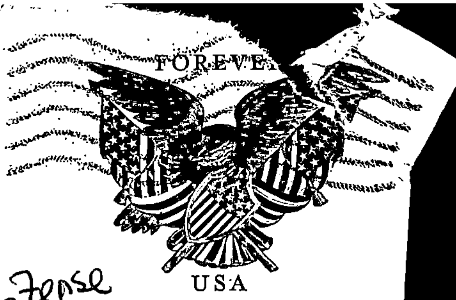
COLUMBIA SC 290

Legal MAIL



Attn: for Indigent Defense

The Supreme Court
of S.C.
P.O. BOX 11330
Columbia, S.C.
29211

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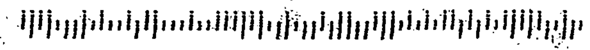

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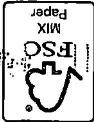

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The Department of Corrections has not censored this item. Therefore the Department does not assume responsibility for its contents. Graham CI, SCDC

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS	) THIRTEENTH JUDICIAL CIRCUIT
Susan Diane Hendricks, S.C.D.C. No. 355210	) **C.A. No. 2014-CP-39-0459**
Applicant,	)
v.	) **ORDER OF DISMISSAL** **(with prejudice)**
State of South Carolina,	)
Respondent.	)

2016 AUG 8 AM 11 25
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on April 16, 2014. Respondent filed its Return on October 10, 2014. An evidentiary hearing into the matter was convened on April 21, 2016,[1] at the Pickens County Courthouse. Applicant was present at the hearing and was represented by Jeremy Thompson, Esquire. Respondent was represented by Patrick Schmeckpeper, Esquire, of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Pickens County Clerk of Court's orders of commitment. The Pickens County Grand Jury indicted the Applicant at the February 2012 term of General Sessions for four counts of murder (2012-GS-39-0521, count 1; 2012-GS-39-0522, count 1; 2012-GS-39-0523, count 1; 2012-GS-39-0524, count 1) and four counts of possession of a weapon during commission of a violent crime (2012-GS-39-0521, count 2; 2012-GS-39-0522, count 2; 2012-GS-39-0523, count 2;

[1] Applicant's evidentiary hearing was initially scheduled to proceed on April 18, 2016, at the Pickens County Courthouse. Applicant communicated to her PCR counsel her intent to withdraw. The morning of the hearing, Applicant decided instead to go forward with her application, prompting her PCR counsel to request a continuance. This Court continued the case over the State's objection to April 21, 2016.

2012-GS-39-0524, count 2). John I. Mauldin, Esquire and Teal Johnson, Esquire represented the Applicant. On April 26, 2013, the Applicant pled guilty but mentally ill to four counts of murder. The Honorable Letitia H. Verdin sentenced the Applicant to four concurrent life sentences.

The Applicant filed a *pro se* notice of appeal on April 10, 2014. By order dated April 28, 2014, the South Carolina Supreme Court dismissed the matter because the notice of appeal was not timely filed. The remittitur was sent on May 14, 2014.

Allegations

In her application for post-conviction relief, Applicant alleged she was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
   a. "My attorney did not give me the help which I needed."
2. After-Discovered evidence.
   a. "I did not receive a mental evaluation at a facility other than County Jail."
3. Voluntary intoxicant.

At the evidentiary hearing, Applicant proceeded only the allegation that counsel was ineffective for advising Applicant to plead guilty but mentally ill, rather than not guilty by reason of insanity.

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, 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 the legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2015), this Court makes the following findings of fact and conclusions of law based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. Because Applicant pled guilty, she must show there is a

reasonable probability that, but for counsel's alleged errors, she would not have pled guilty and would have instead insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Deficient Performance

Applicant has failed to show counsel was deficient in advising her to plead guilty rather than not guilty by reason of insanity. This Court finds, given the facts and circumstances of this case, that counsel's advice was objectively reasonable – particularly in light of the substantial benefit Applicant received as a result of the plea negotiations.

First, counsel was reasonable in relying on Dr. Price's expert opinion in determining an insanity defense was not viable.[2] See Forsyth v. Ault, 537 F.3d 887, 892 (8th Cir. 2008) (counsel not ineffective for relying on expert opinion in structuring a defense of client). Counsel's testimony at the evidentiary hearing that he had no reason to doubt the accuracy of Dr. Price's opinion and evaluation of Applicant struck this Court as both logical and credible. Dr. Price, a licensed psychologist, spent over 40 "face-to-face" hours with Applicant, and testified that while he believed she was unable to conform her conduct to the requirements of the law the night of the murders, Tr., p. 10, l. 3-4, Applicant was still able to distinguish between right and wrong. Tr., p. 22, l. 1-11; compare State v. Davenport, 301 S.C. 39, 389 S.E.2d 649 (1990) (counsel ineffective for advising client to plead guilty where State's *own* expert diagnosed client as legally insane at time of crime).[3]

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[2] This Court would note that while Applicant presented expert testimony from Dr. Schwartz-Maddox at the evidentiary hearing, her testimony is not probative to the question of whether counsel was deficient in relying on Dr. Price's opinion and evaluation. Applicant has not presented this Court with any case or law imposing on counsel a duty to double check a hired expert's work. See, e.g., McClain v. Hall, 552 F.3d 1245, 1253 (11th Cir. 2008) (a later expert opinion does not show incompetence of counsel for relying on the first expert counsel consulted with). Requiring counsel to further investigate their experts' opinions would defeat the entire purpose of consulting with experts. See Stokley v. Ryan, 659 F.3d 802, 814 (9th Cir. 2011). In any event, Dr. Schwartz-Maddox's testimony and findings were substantially similar to that of Dr. Price, and would not have supported an insanity defense at trial.

[3] Also unlike Davenport, counsel credibly testified that he discussed with Applicant the need to get evaluated, as well as he suspected the potential outcomes and consequences of evaluation results, while attempting to avoid building up a false sense of hope due to Applicant's fragile mental state. Id.

Accordingly, Applicant has not presented any evidence that Dr. Price's work was suspect, or that should have reasonably put counsel on notice that he needed to consult with a different expert. Judging by the record and testimony from the evidentiary hearing, this Court finds none exists.

Applicant also derived substantial benefits from her negotiated plea. Applicant was facing a potential death sentence. Due to the circumstances of Applicant's crime – she murdered four people in roughly the same place at roughly the same time – she clearly met the statutory requirements for receiving the death penalty. S.C. Code § § 16-3-20(9) (2010) (listing the murder of "[t]wo or more persons . . . by one act or pursuant to one scheme or course of conduct" as a statutory aggravating circumstance for the purposes of imposing the death penalty). Additionally, the sentencing sheets – signed by Applicant and her counsel – state that the maximum penalty for each murder was death. By negotiating a life sentence, Applicant avoided the possibility of being executed.

Finally, by pleading guilty but mentally ill, Applicant was eligible for immediate treatment prior to being housed with general population of the Department of Corrections. S.C. Code § 17-24-70(A) (2015); see also State v. Curry, 410 S.C. 46, 54-55, 762 S.E.2d 721, 725-26 (Ct. App. 2014) (reversing lower court's decision not to charge guilty but mentally ill to the jury, even when judge included a recommendation for mental health treatment when it issued defendant's sentence). The testimony presented throughout the course of Applicant's evidentiary hearing and guilty plea transcript each indicate Applicant suffers from severe mental health problems. In fact, counsel testified that he requested and received state funding to retain a mental health professional solely for the purpose of treating Applicant prior to her eventual guilty plea or trial. This Court finds ensuring Applicant continued to receive mental health

treatment – without a break in service - was an objectively reasonable goal in negotiations, and ultimately provide Applicant with a substantial benefit.

In light of the above findings, Applicant has failed to meet her burden to prove deficiency. Even assuming Applicant could have presented evidence – in the form of lay testimony – that would have supported a defense of insanity,[4] this Court finds such a defense was completely and utterly unviable in light of the contrary expert testimony, and pursuing such a tenuous defense would have been objectively unreasonable given the serious nature of the charges and potential sentence.

Prejudice

Applicant has also failed to meet her burden to prove prejudice resulted from counsel's alleged deficiencies. To show prejudice for failing to pursue a defense of insanity, Applicant must produce some evidence of insanity or a showing that with the exercise of due diligence, an insanity defense could have been developed. Jeter v. State, 308 S.C. 230, 233-34, 417 S.E.2d 594, 596 (1992). Further, in order to show prejudice in the context of a guilty plea, Applicant must show a reasonable probability that, but for counsel's allegedly erroneous advice, she would have insisted on going to trial. Hill v. Lockhart, supra. Applicant has failed to make such showings.

First, Applicant's lay testimony does not support an insanity defense.[5] Lay testimony may be used to support a defense of insanity. State v. Lewis, 328 S.C. 273, 278, 494 S.E.2d 115, 117 (1997).[6] It may also be used to establish sanity. Id. As in Lewis, Applicant did not testify or present any evidence that she was unable to distinguish between right and wrong, or unable to

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[4] As discussed below, this Court finds Applicant's lay testimony would not have supported a defense of insanity.

[5] In addition to bearing the burden of proving each of her allegations in post-conviction relief, Applicant is also up against the presumption in criminal cases that the defendant is, in fact, sane. Lewis at 277, 494 S.E.2d at 117.

[6] This Court notes, however, that the Supreme Court held that Lewis's testimony was insufficient to support an insanity defense. Lewis at 278, 494 S.E.2d at 117.

recognize her actions as wrong at the time of the offense. Instead, she testified at the evidentiary hearing that she was unable to remember any of the murders, and simply did not know whether she had the ability to distinguish between right and wrong when she committed them. There are also credibility problems with Applicant's testimony that she alternatively did not remember giving what Dr. Schwartz-Maddox described as "self-protective" statements to law enforcement – that one of the victims had committed suicide – and that she gave them because "that's what I thought happened." This Court, in its fact finding capacity, agrees with Dr. Schwartz-Maddox's characterization, as she had the opportunity to make a full and thorough evaluation. Applicant's actions immediately following the murders speak louder than her testimony at the evidentiary hearing – accordingly, the latter is not credible.

This Court also finds there is not a reasonable probability that Applicant was actually insane at the time of the murders. Jeter, supra. As discussed above, Applicant has been evaluated by two qualified experts, both of whom determined that she was able to distinguish between right and wrong at the time of the murders based on her self-protecting actions and statements afterwards. As a result, this Court finds an insanity defense – even assuming Applicant was eligible – would have been unviable and an unreasonable risk given the circumstances of this case.

Applicant has also failed to meet the fundamental test for Strickland prejudice in the context of a guilty plea – that but for counsel's purported unprofessional errors, she would have refused to plead guilty and instead insisted on going to trial. The mere existence of some evidence of insanity does not definitively answer the question of whether Strickland prejudice occurred. See Jackson v. State, 355 S.C. 568, 586 S.E.2d 562 (2003) (finding counsel's failure

to request self-defense charge, even where Applicant was entitled to one, not prejudicial where it did not affect the outcome of the trial).

This Court finds Applicant's testimony that she would have proceeded to trial had she been aware that she could have proven insanity by lay testimony is not credible. First, her testimony was thoroughly refuted by the credible testimony of counsel and the plea hearing transcript. Counsel testified that there was never any intention of going into a courtroom to contest the charges, and that she had enormous, almost crushing remorse about what happened. This is consistent with his statements at the guilty plea hearing. Plea Tr., p. 25, l. 2-7. This Court also takes into account the substantial benefits Applicant gained in pleading guilty, outlined above, in finding her testimony at the evidentiary hearing not credible. Accordingly, Applicant has failed to meet her burden to show prejudice.

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.

[Signature follows]

CONCLUSION

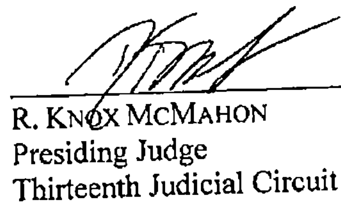
Based on the foregoing, this Court finds that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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.

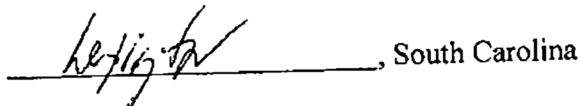
IT IS THEREFORE ORDERED

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 the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 29 day of July, 2016.



R. KNOX MCMAHON
Presiding Judge
Thirteenth Judicial Circuit



Lexington, South Carolina

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[illegible] COURT
[illegible] COUNTY
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ALAN WILSON
ATTORNEY GENERAL

July 26, 2016

The Honorable Harold P. Welborn, Jr.
Clerk of Court, Pickens County
Post Office Box 215
Pickens SC 29671-0215

Re: **Susan Diane Hendricks v. State of South Carolina**
2014-CP-39-0459

Dear Mr. Welborn:

Enclosed please find the original **Order of Dismissal** signed by the Honorable R. Knox McMahon in the above-captioned case. Upon filing, please serve a copy of the order on the applicant and return a clocked copy to me for our files.

Sincerely,

Patrick Schmeckpeper
Assistant Attorney General

PLS/ah
Enclosure(s)

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