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JUN 06 2017

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEE COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Case No. 2015-CP-31-231

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JUN 02 2017

SC Court of Appeals

Yanisha C. Barr, #361645,

Appellant,

v.

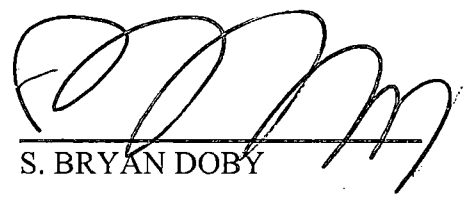
State of South Carolina,

Respondent.

NOTICE OF APPEAL

Yanisha C. Barr, Inmate Number: 361645, requests to appeal the Order of the Honorable D. Craig Brown dated May 2, 2017. Appellant received written notice of entry of this order on May 16, 2017.

May 31, 2017


S. BRYAN DOBY

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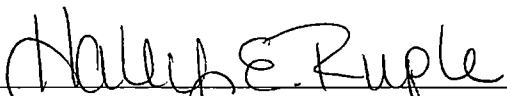
Respondent.

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that she is a secretary with the law firm of Jennings & Jennings, P. A.; that a copy of the **NOTICE OF APPEAL** was served in the foregoing action by depositing the same in the United States mail with sufficient postage affixed thereto and return address clearly visible on the 1st day of June, 2017, addressed to the following:

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ATTORNEY FOR THE RESPONDENT

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May 31, 2017

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Yanisha Barr, #361645 v. State of South Carolina
Case No.: 2015-CP-31-00231
J&J File No.: 15-6496

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SC Court of Appeals

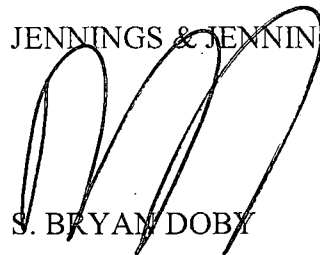
Dear Madam Clerk:

Enclosed, please find the original and two (2) copies of our **Notice of Appeal, Proof of Service and Order of Dismissal**, in connection with the above referenced case. Please keep the originals with the other documents filed in this case and return the time-stamped copies to our office in the self addressed envelope provided.

Thank you as always and if you require anything additional, please do not hesitate to contact me.

Yours very truly,

JENNINGS & JENNINGS, P. A.



S. BRYAN DOBY

SBD/her

Enclosures (as stated)

cc: Julie A. Coleman, Assistant Attorney General (w/enclosures)
South Carolina Commission on Indigent Defense, Appellate Defense (w/enclosures)
Office of the Clerk of Court for Lee County (w/enclosures)
Yanisha Barr (w/enclosures)

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JUN 06 2017

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
COUNTY OF LEE)
)
Yanisha C. Barr, #361645,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

2015-CP-31-231

RECEIVED
JUN 06 2017

ORDER OF DISMISSAL SUPREME COURT

RECEIVED
JUN 02 2017
SC Court of Appeals

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on October 8, 2015. Respondent made its Return on December 18, 2015. An evidentiary hearing was convened on March 28, 2017, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by S. Bryan Doby, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

Applicant testified on her own behalf at the evidentiary hearing. Applicant's plea counsel, Scott Robinson, Esquire ("Plea Counsel") also testified. The Court had before it a copy of the guilty plea transcript, the records of the Lee County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lee County Clerk of Court. Applicant was true bill indicted at the June 2014 term of the Lee County Grand Jury for murder (2014-GS-31-0066). Scott Robinson, Esquire represented Applicant. On October 9,

*PCR
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2014, Applicant pled guilty to the lesser included offense of voluntary manslaughter before the Honorable Clifton Newman. Judge Newman sentenced Applicant to a thirty year term of imprisonment for voluntary manslaughter. Applicant did not appeal her guilty plea or sentence.

II. ALLEGATIONS

In her current application, Applicant alleges that she is being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of counsel
 - a. "failure to bring forth severe abuse."
2. Involuntary guilty plea
 - a. "lawyer failed to explain plea and its consequences of plea."

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, (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. Applicant must overcome this presumption in order 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. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness

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under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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. With respect to guilty pleas, 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 (1985).

V. SUMMARY OF RELEVANT TESTIMONY

Applicant testified that she met with Plea Counsel one time at the Clarendon County Courthouse and they talked for an hour. She stated that she was evaluated for mental competency, and she discussed her mental health with Plea Counsel, including her hospital visits and the medications she was taking. She stated that she had been to the hospital more than twenty times before the crime occurred, but she does not recall telling Plea Counsel exactly how many times she had been to the hospital. She testified that she did not recall reviewing discovery with Plea Counsel.

Applicant testified that, at the time she pled guilty, she thought^{PCB} it was in her best interest because Plea Counsel told her she probably would not get a thirty year sentence. She stated that if she had been convicted at trial, she would have gotten a life sentence, and she understood this a little bit. Applicant testified that she told Plea Counsel about the history of abuse between her and the victim, including three occasions before the murder when he put his hands on her and hit her. She stated that on the night of the crime, she went over to his house for no particular reason; he did not ask her to come over, but she was his neighbor and she often visited him. She stated that he would sometimes pay her money to dance for him, and the night of the murder, he asked

her to do something that she did not want to do. She stated that he called her names and told her that he would kill her, but she was not afraid of him when he told her he would kill her. She stated that she was afraid of him when he stood up at one point, but he did not hit her and he did not have any weapons. She stated that she did not discuss a self-defense strategy for trial with Plea Counsel, but she wanted him to bring up her medical history to the judge at the plea.

Plea Counsel testified that he met with Applicant five or six times before the guilty plea. Regarding the facts of the case, he stated that Applicant and the victim were eating dinner, he asked her to dance for him, she refused and he got belligerent, and Applicant then stabbed the victim 96 times with a steak knife and a meat fork. Plea Counsel testified that Applicant later wrote a letter to her parents to explain what happened, because she wanted to tell her story. He stated that Applicant had an abusive background and mental health problems. He stated that he had Applicant evaluated for mental competency twice, once by the State and once by an independent evaluator, and both evaluations found her mentally competent. He stated that the second evaluator never generated a written report at his instruction because it was not helpful and the State could use it against her at trial.

Plea Counsel testified that a self-defense strategy would be difficult to argue at trial, even based on the testimony she presented at the evidentiary hearing. He stated that there was quite a bit of damaging evidence against her, including the victim's blood that was found on her porch and door, his dried blood in her ear, his keys under her bed, and her DNA on a cigarette butt at his house. Plea Counsel testified that Applicant never told him that the victim threatened to kill her on the night of the murder, but if she had he would have investigated it. Plea Counsel testified that he explained all of Applicant's constitutional rights prior to the guilty plea a few times, and she understood everything. He stated that Applicant did not indicate that she wanted

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to go to trial, but she was insistent on apologizing to the victim's family and explaining what happened.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief 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 facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant has asserted an allegation of ineffective assistance of counsel. This Court finds this claim to be meritless and it should be denied and dismissed with prejudice. This Court finds that Plea Counsel's representation did not fall below the standards of professional norms in any manner. He met with Applicant at least five times, communicated properly with her and reviewed all discovery materials with her. Based on this testimony and the record before the court, this Court finds that Plea Counsel's representation was not ineffective in any regard.

Plea Counsel credibly testified that Applicant never told him that the victim threatened to kill her on the night of the murder. He clearly offered Applicant's abusive history to the plea judge as mitigation, and he credibly testified that a self-defense argument likely would not have been successful at trial. He testified that Applicant understood what was happening at all times, and it was Applicant's decision to plead guilty. Plea Counsel explained Applicant's constitutional rights and the possible outcomes of sentencing. It is clear that Plea Counsel was well within the professional standards of representation in this case. Plea Counsel was not

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deficient in any regard, and there was no prejudice to Applicant from any of Plea Counsel's actions or inactions. Therefore, this allegation is denied and dismissed with prejudice.

INVOLUNTARY GUILTY PLEA

Applicant argues her plea was not given freely and voluntarily. This Court finds otherwise and concludes that Applicant's plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (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)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing 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. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

This Court finds that the record reflects that Applicant was fully advised of the rights she was giving up by pleading guilty. Applicant presented no credible evidence as to why she should be able to depart from her statements at the plea hearing. This Court finds very credible Plea Counsel's testimony that he advised Applicant of all facts and risks of pleading guilty.

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The record reflects Applicant fully admitted her guilt to the plea court. "A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Notably the South Carolina Supreme Court has held "[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process." Id. (citations omitted). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Id. (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486). Therefore, this Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made. Accordingly, this allegation must be denied and dismissed with 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, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

VII. CONCLUSION

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

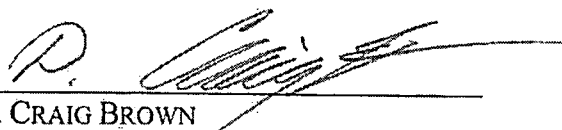
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This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the 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 is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 2 day of May, 2017.


D. CRAIG BROWN
Presiding Judge
Third Judicial Circuit

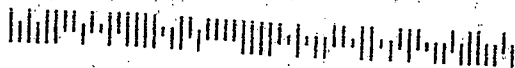
Florence, South Carolina

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