LAW OFFICE OF
JEREMY A. THOMPSON
LLC

June 23, 2017

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211-1330

RE: Ladorrean C. Collington, #334220 v. State of South Carolina; 2014-CP-26-563

Dear Mr. Shearouse:

Enclosed please find the original and two copies of my Notice of Appeal in the above-captioned action. I would appreciate your filing the original, clocking the copies, and returning the two clocked copies to me in the envelope provided. I would note that Judge Nettles issued a written Order of Dismissal in this case which was filed with the Horry County Clerk of Court's Office on May 17, 2017. A copy of that Order is also enclosed. Although I was retained to represent Ms. Collington on her PCR action, she is seeking court-appointed counsel for this appeal. In accordance with Rule 608, SCACR, I will be providing Appellate Defense with my client's completed affidavit of indigency so that Appellate Defense can determine whether or not that office will represent her on this appeal. With my thanks for your assistance in this matter and my best regards, I am,

Yours sincerely,

Jeremy A. Thompson
Attorney and Counselor at Law

JAT/
Enclosures
cc: Johnny James, Assistant Attorney General (w/ notice of appeal)
Sharon Graham, South Carolina Office of Appellate Defense (w/ notice of appeal)
Ladorrean Collington, #334220 (w/ notice of appeal)
Carolyn Rhue (w/ notice of appeal)

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STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Michael G. Nettles, Presiding Judge

RECEIVED

JUN 26 2017

S.C. SUPREME COURT

2014-CP-26-563

LADORREAN C. COLLINGTON, #334220,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Ladorrean C. Collington, #334220, appeals the Order of Dismissal denying her Application for Post-Conviction Relief filed May 17, 2017, and received by counsel on May 26, 2017, issued by the Honorable Michael G. Nettles, presiding judge.

Jeremy A. Thompson
Attorney and Counselor at Law

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ATTORNEY FOR PETITIONER

This 23rd day of June, 2017.

Other Counsel of Record:
Johnny James, Assistant Attorney General
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Columbia, SC 29211
Attorney for Respondent
(803) 734-3737

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Michael G. Nettles, Presiding Judge

2014-CP-26-563

LADORREAN C. COLLINGTON, #334220,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Petitioner's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Johnny James, Assistant Attorney General, P.O. Box 11549, Columbia, SC 29211, by mailing in an envelope properly addressed with postage prepaid on this 23rd day of June, 2017.

/s/
Jeremy A. Thompson
Attorney and Counselor at Law

SWORN TO BEFORE me this 23rd day of June, 2017.

_____ (L.S.)
Notary Public for South Carolina
My Commission Expires: 2/22/18

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT
LaDorrean C. Collington, #334220, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2014-CP-26-563 **ORDER OF DISMISSAL WITH PREJUDICE**

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by LaDorrean Chukell Collington (Applicant) on January 27, 2014. The State (Respondent) made its return on or about June 9, 2014, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on February 7, 2017 at the Horry County Courthouse. Applicant was present and represented by Jeremy Thompson, Esquire. Valerie Garcia Giovanoli, Esquire, of the Office of the Attorney General represented Respondent.

At the hearing, Applicant testified on her own behalf. M. Greg McCollum, Esquire (Counsel), testified for the State. This Court had before it a copy of the Horry County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, the PCR application, Respondent's return, the trial transcript, and Applicant's direct appeal records.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In March 2010 and March 2011, the

Horry County Grand Jury indicted Applicant for four counts of accessory before the fact of a felony (2010-GS-26-1225, -1626, -1627, and 2011-GS-26-1276) for her role in an kidnapping, first degree burglary, armed robbery, and murder. M. Greg McCollum, Esquire, represented Applicant. On June 6, 2011, Applicant proceeded to trial before the Honorable Steven H. John and a jury on only the accessory charges related to the first degree burglary and armed robbery (2010-GS-26-1626 and -1627). Applicant was tried jointly with Quentin Gause, who was charged with murder, armed robbery, and first degree burglary. Ronald Hazzard, Esquire, represented Gause. On June10, 2011, the jury found Applicant guilty as indicted. Judge John sentenced Applicant to twenty-two (22) years' imprisonment, concurrent for each charge.

Applicant filed a timely notice of appeal. Susan B. Hackett, Esquire, of the Office of Appellate Defense perfected the appeal. On appeal, Applicant argued that the The South Carolina Court of Appeals affirmed Applicant's conviction on May 22, 2013. State v. Collington, Op. No. 2011-UP-225 (S.C. Ct. App. filed May 22, 2013). The remittitur was returned to the circuit court on June 14, 2013.

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

1. "Ineffective Assistance of Counsel"
    a. "Counsel failed to object to trial court error. He also failed to call expert witnesses."
2. "Conflict of Interest"
    a. "Conflict of interest becomes a factor due to the prior bad blood between the prosecuting attorney and defendant, back in 2006."
3. "Prosecutorial Misconduct"
    a. "There was a personal vendetta steaming from 2006. This same prosecutor tried defendant's brother on a murder

charge in August 2006. Messages had been related back and forth thru a mutual acquaintance."

b. "Prosecutor made it a point to have my charge information corrected with SCDC but allowed my codefendant Tiffany James to leave on 65%."

4. "New Evidence"
   a. "Letters from co-defendant stating facts."

At the evidentiary hearing, Applicant proceeded on her claims of ineffective assistance of counsel, in that Counsel failed to relay a plea offer of twelve years and failed to preserve an issue for appeal, and prosecutorial misconduct, in that Assistant Solicitor von Herrmann, had a personal vendetta or conflict of interest because she had prosecuted Applicant's brother in an unrelated case.

SUMMARY OF TESTIMONY

I. Applicant testified to the following:

Applicant was arrested in April of 2008. Counsel was appointed to represent her approximately two years before trial. Applicant was in jail about three years from the date of her arrest until she received bond in 2011. Applicant met with Counsel multiple times. Applicant also wrote letters back and forth with Counsel or his paralegal. Applicant was originally charged with murder, but only went to trial on accessory before the fact charges.

The Assistant Solicitor who prosecuted Applicant's case was Heather von Herrmann (von Herrmann). Von Herrmann prosecuted Applicant's brother in 2006. Von Herrmann's fiancé had also prosecuted Applicant's brother. Applicant believes von Herrmann had a vendetta against her. Applicant never received a plea offer. All of Applicant's co-defendant's were receiving plea offers, but not Applicant, because von Herrmann was out to get her.

Applicant introduced a composite exhibit of letters from Counsel's file into evidence as Applicant's Exhibit 1. Among the letters was one dated February 3, 2011 from Assistant Solicitor Herrmann to Counsel extending Applicant a plea offer of twelve (12) years. The offer had a deadline of February 15, 2011 and a reminder that the offer would not be made again if not accepted by that date. Applicant testified that she had never seen this document until PCR counsel provided it to her in prison. Applicant did not know of the existence of the offer and the offer was never discussed with Counsel. Also among the letters in Applicant's Exhibit 1, was a letter to Assistant Solicitor von Herrmann from Counsel, informing her that Applicant did not wish to accept the State's offer and instead wished to proceed to trial and a letter to the Honorable Steven H. John from Counsel, in which he informed Judge John that the State had extended an offer February 3, 2011, Counsel met with Applicant February 4, 2011 at J. Reuben Long to explain the plea offer, and that Applicant rejected the plea offer and would be ready for trial as scheduled. Although courtesy copied on these letters, Applicant claimed she never received the letters or enclosures. The address for Applicant on the letter was an address in Conway. Applicant admitted she was living with her mother in Conway when she was released on bond. Because Applicant knew she was facing fifteen to life for burglary and thirty to life for murder, had she known of the plea offer, she would have accepted it.

The victim was the father of one of Applicant's children. There was evidence of prior difficulties between Applicant and the victim that Counsel argued should be kept out. However, on direct appeal, the Court of Appeals could not review the issue because a contemporaneous objection had not been made at the time the evidence was actually introduced.

II. Counsel testified to the following:

Counsel has been practicing law since 1988. 98% of his practice has been criminal law. He was appointed to represent Applicant. Counsel recalled meeting with Applicant numerous times, but did not remember exactly how many. Counsel met Applicant at J. Rueben Long Detention Center and discussed Applicant's constitutional rights. Counsel received, reviewed, and discussed all the discovery with Applicant. He also provided Applicant with her own copy. Counsel recalled that Applicant lived close to the victim and the State alleged that the perpetrators of the home invasion and murder met at her house to prepare. The victim was alleged to have forty thousand dollars in his house that Applicant and the perpetrators were planning to steal. The perpetrators, without Applicant, invaded the victim's home and the victim was shot and killed. Thereafter, the perpetrators fled to Applicant's house. Counsel discussed Applicant's version of the facts. Applicant had no motive to rob or kill the victim.

Because Applicant was not present during the home invasion and murder, Counsel's primary focus of his investigation was on the co-defendants and establishing the fact that Applicant was not present and did not participate in the home invasion. At trial, the State only proceeded on the accessory before the fact charges. Counsel made various pre-trial motions including a motion to exclude prior bad acts and a motion to sever the trial from co-defendant, Gause. The court reserved ruling on the motion to exclude, but denied Counsel's motion to sever. Counsel did not make contemporaneous objections to every bad act that came in, but he did make many objections and renewed his objection to the bad acts at the end of trial. Counsel believed the State's case would have been much weaker without the prior bad acts evidence.

Counsel did not write or sign the letters in Applicant's Exhibit 1, but would find it reasonable to conclude that someone in his office did. Counsel agreed with the content of the letters and recalled that Applicant did not want to hear about offers because she was not interested in pleading guilty. Applicant believed she would be acquitted. Counsel did relay the offer to Applicant, but did not press her to accept it because she was adamant about going to trial. Counsel testified that it is not unusual for a client not to sign the formal offer letter and it is not required. Sometimes, the offer is relayed by phone and the client is not present to sign. Although he could not remember specifically, Counsel imagined he authorized the drafting and signing of the letters and that he would have instructed the letters to be mailed. Counsel did not believe his legal assistant would not have mailed them. Counsel does not recall the letter to Applicant being returned to him. Counsel did not put the offer on the record and testified that the only purpose of doing so is for post-conviction relief. Counsel also testified that sometimes he and his office make mistakes, but failing to relay plea offers from the State is not one of those mistakes.

Counsel did not notice anything out of the ordinary with regard to any alleged animosity between the Assistant Solicitor and Applicant. It was simply the Assistant Solicitor's job to prosecute defendants and Applicant's brother had been a defendant. Counsel believed the offer extended by the Assistant Solicitor was a pretty good offer and was surprised by it.

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 had the opportunity to observe the witnesses presented at the hearing, and has weighed their testimony and credibility accordingly.

Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

As a matter of general impression, this Court finds the testimony of Counsel McCollum to be credible. This Court further finds that the testimony by Applicant is not credible.

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). 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, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 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, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

I. Failure to relay plea offer

Applicant alleges she never received a plea offer and had she received the twelve year offer made by the State, she would have pled guilty instead of going to trial. This Court finds Applicant has failed to meet her burden to establish that she was not informed of the State's offer in this case. This Court finds Applicant's testimony that she did not receive the letters included in Applicant's Exhibit 1 is not credible. In this case, Counsel did not recall drafting or signing the letters from his file, but it is common practice for an attorney to delegate the drafting and signing of standard letters to office personnel. Counsel testified that his legal assistant would have prepared the letters and mailed them. Furthermore, Counsel did recall the offer presented by the State, discussing it with Applicant, and Applicant's rejection and adamant insistence on a jury trial. Counsel's testimony on this issue is credible.

Applicant has failed to meet her burden of proving Counsel was ineffective for failing to relay a plea offer and therefore, the allegation is denied and dismissed with prejudice.

II. Failure to preserve issue for appeal

Applicant alleges that Counsel was ineffective for failing to make a contemporaneous objection to evidence of prior bad acts, thus leaving the issue unpreserved for appeal. This Court finds Applicant's allegation meritless.

During a pretrial hearing held on May 13, 2011, Applicant, through counsel, moved to exclude evidence of prior threats or difficulties between Applicant and the alleged victim, which included the breaking of the victim's window, a threatening note left at the scene of the window breaking, a

threatening text message, a verbal and physical altercation between the victim and Applicant, and the confrontation between Applicant and the victim's girlfriend. However, the prosecution was not prepared to argue the motions during the pretrial hearing. During a subsequent pretrial hearing on June 2, 2011, Applicant again moved to exclude evidence of prior difficulties between Applicant and the victim and to exclude evidence of threats allegedly made through Graham. The State asserted the evidence was admissible as part of the res gestae of the crime and because it met several exceptions delineated in Rule 404(b), SCRE, and State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923) (evidence of other crimes may be admissible when it tends to establish (1) motive; (2) intent; (3) the absence of mistake or accident; (4) a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the proof of the other; or (5) the identity of the person charged with the present crime). The trial court reserved ruling until the testimony was presented.

Anthony Graham, the victim's friend who was also living with the victim at the time of the burglary and murder, testified that the victim lived with his girlfriend, but that Applicant believed the victim should be with her. Graham testified the victim and Applicant got into a verbal altercation which turned into a physical one when Applicant ripped the chain off of the victim's neck. Trial Tr. 412-413. Graham testified Applicant threatened to go get her gun and so Graham and the victim headed back to the victim's home watching over their shoulder for Applicant. Trial Tr. 413-415.

Graham then testified after they arrived back at the victim's home, they heard a window break. Graham testified he saw Applicant leaving the scene. Trial Tr. 417-418. Graham testified the individual who made the report of the broken window was joking with the victim about the fact

Applicant had previously broken his window. Trial Tr. 419. Graham testified he and the victim received calls and messages on their phones from an upset Applicant. He also testified the victim's girlfriend called the victim to tell him she was in a confrontation with Applicant. Trial Tr. 424. Graham then testified the victim showed him a text message the victim received from Applicant which read "something about you and your mama could get it." Trial Tr. 426.

After detailing the events of the break-in and murder, including the fact he believed Applicant sent the men to the house to commit the crimes (Trial Tr. 434), Graham then testified about a voicemail left on his phone by Applicant. Trial Tr. 426-440. The voicemail made it clear Applicant was upset with the victim. The voicemail detailed the confrontation between Applicant and the victim's girlfriend, and then included threats to the victim indicating he better watch his back because he made her mad and that he was going to get it. At this point, Counsel noted his objection for the record and requested that objection be ongoing. Trial Tr. 441. The court overruled the objection and the voicemail was played for the jury (State's Exhibit 72). Trial Tr. 442.

Frankie Davis, the victim's live-in girlfriend, testified without objection about Applicant breaking her windows on two occasions. Davis then testified to a confrontation between herself and Applicant, to which Counsel objected. Trial Tr. 536. The court overruled the objection and Davis testified she confronted Applicant about the broken windows and Applicant was "crazy" and calling her names. Counsel again objected. Trial Tr. 538. Davis continued to testify that she was aware of the voicemail left on the victim's phone, at which point Counsel objected again. Trial Tr. 538. Again, the court overruled Counsel's objection.

Officer Cradic testified he responded to the victim's home after the report of a broken window. Trial Tr. I067-1068. He testified a note was found at the scene, he read the note, and copied the note's contents. Trial Tr. 1069-1071. When Cradic could not recall the contents of the note, Counsel objected. Trial Tr. 1070. Despite Counsel's objection, Cradic was allowed to read the note into the record. The note read, "b***h, I will be back, n****r, f**k you. F.Y. b***h a**, AIDS infected b***h. Yeah, we all got it. D-baby." Trial Tr. 1071.

This Court finds Counsel was not deficient when he did not object to evidence properly admitted. The evidence of prior bad acts, as testified to by Graham and Cradic, was properly admitted based on Rule 404(b), SCRE and the *res gestae* theory. While this Court is aware of rule requiring contemporaneous objections in order to preserve an issue for appeal, the rule does not require objections be made to properly admitted evidence. Because the issue would have been upheld on appeal, Counsel was not deficient in withholding his objection. This Court finds Applicant has failed to prove Counsel's omission was deficient.

Assuming *arguendo* Counsel's omission was deficient, Applicant cannot prove prejudice. On appeal, Applicant argued that the trial court improperly allowed evidence of bad acts to be admitted. Although the Court of Appeals found the issue of Graham and Cradic concerning Applicant's prior difficulties with the victim was not properly preserved, they found the testimony from Davis concerning the confrontation with Applicant days before the home invasion was properly admitted under Rule 404(b), SCRE and the *res gestae* theory. The Court of Appeals also found the contents of the threatening voicemail left on Graham's phone was properly admitted under Rule 404(b), SCRE and the *res gestae* theory. Similar to those prior bad acts, the testimony of prior bad acts not

preserved for review was also properly admitted under Rule 404(b), SCRE and the *res gestae* theory. Had the issue been preserved for review, the Court of Appeals would not have found any differently.

Because Applicant has failed to prove Counsel was ineffective for failing to preserve an issue for appeal, this allegation is denied and dismissed with prejudice.

Prosecutorial Misconduct

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issues that is procedurally barred by S.C. Code Ann. § 17-27-20(b). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised the issue of prosecutorial misconduct on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794 (1989).

At the evidentiary hearing, Applicant claimed that Assistant Solicitor von Herrmann had a personal vendetta against Applicant. Applicant claimed the Assistant Solicitor also had a conflict of interest in prosecuting Applicant, because the Assistant Solicitor had prosecuted Applicant's brother in the past. This Court finds Applicant failed to meet her burden of proving either claim.

Applicant's assertion that von Herrmann had a personal vendetta against Applicant is merely speculative. Applicant has offered no evidence other than her own testimony that von Herrmann was "out to get her." This Court does not find Applicant's testimony on this issue credible. Furthermore,

Counsel testified that he was not aware of any animosity between von Herrmann and Applicant. In fact, Counsel was surprised at the twelve year offer extended by von Herrmann to Applicant.

Applicant's allegation of a conflict of interest is equally not compelling. "An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendants." State v. Gregory, 364 S.C. 150, 152, 612 S.E.2d 449, 450 (2005) (citing Fuller v. State, 347 S.C. 630, 557 S.E.2d 664 (2001)). Prior interactions between Applicant and the Assistant Solicitor in the prosecution of her or her brother do not rise to the level of a conflict of interest. Applicant fails to provide any evidence other than her less than credible testimony of an actual conflict of interest or other form of prosecutorial misconduct. Therefore, the allegations are denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any violations 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 also finds that Applicant failed to present evidence as to the other allegations, and thus, this Court deems the other allegations abandoned.

This Court notifies Applicant that she must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal

on the Applicant's behalf. See Rule 71.1 (g), SCRCP. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;

2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of her sentence.

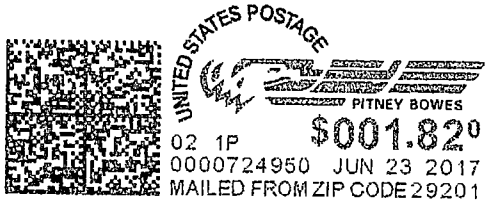
AND IT IS SO ORDERED this 15 day of May, 2017.

MICHAEL G. NETTLES
Presiding Judge
Fifteenth Judicial Circuit

Florence, South Carolina

'emy A. Thompson

'211



The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
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Columbia, SC 29211-1330