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September 25, 2017

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

RECEIVED

SEP 27 2017

S.C. SUPREME COURT

The Honorable Mary Brown
Clerk of Court
300 California Drive
Moncks Corner, SC 29461

**RE: Brittany Swanger, #363443, v. State of South Carolina
2016-CP-08-190**

Dear Mr. Shearouse and Ms. Brown:

Enclosed for filing is a Notice of Appeal in the above-referenced case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal;
- (2) A copy of the Order which is to be challenged on appeal; and
- (3) Prior Order of Appointment of Counsel.

As I was appointed to represent Ms. Swanger in her PCR proceeding, I anticipate that the Office of Appellate Defense will represent Ms. Swanger in this appeal.

Yours very truly,



Lance S. Boozer

Enclosures

cc: Alicia Olive, AAG
Loriene French, OAD
Brittany Swanger, #363443

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

SEP 27 2017

S.C. SUPREME COURT

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Brooks P. Goldsmith, Circuit Court Judge

Case No. 2016-CP-08-190

Brittany Swanger, #363443,.....Petitioner,

v.

State of South Carolina,.....Respondent.

NOTICE OF APPEAL

The Petitioner appeals the Honorable Brooks P. Goldsmith's Order dated September 11, 2017, denying post-conviction relief to the Petitioner. Undersigned counsel received notice of entry of the Order on September 25, 2017. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,



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September 25, 2017

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Brooks P. Goldsmith, Circuit Court Judge

Case No. 2016-CP-08-190

RECEIVED
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S.C. SUPREME COURT


Brittany Swanger, #363443,.....Petitioner,

v.

State of South Carolina,.....Respondent.

PROOF OF SERVICE

I, Lance S. Boozer, appointed attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Alicia Olive, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 25th day of September, 2017.



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STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
))
Brittany Lyn Swanger, SCDC No. 363443,)
))
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2016-CP-08-0190

ORDER OF DISMISSAL

CLERK OF COURT
STATE OF SOUTH CAROLINA
BERKELEY COUNTY, S.C.

17 SEP 20 PM 4: 09

FILED

This matter comes before the Court by way of an application for post-conviction relief filed January 26, 2016, by Brittany Lyn Swanger (Applicant). Respondent made its Return on June 13, 2016, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened April 17, 2017, at the Berkeley County Courthouse. Applicant was present at the hearing and represented by Lance S. Boozer, Esquire. Assistant Attorney General Alicia Olive from the South Carolina Attorney General's Office appeared on behalf of the State. At the conclusion of the hearing, this Court denied the application from the bench. This order follows.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. During its September 2012 term of court, the Berkeley County Grand Jury indicted Applicant for murder (2012-GS-08-1693). Grover Seaton, III, Esquire, represented her. Assistant Solicitor Anne Williams prosecuted the case on behalf of the State. By plea agreement signed by Applicant, her counsel, and the prosecuting Assistant Solicitor and filed on March 20, 2013, Applicant agreed to assist the State in the prosecution of her co-defendants in exchange for

a guilty plea for a negotiated term of thirty years imprisonment. Thereafter, the State and Applicant reached a new plea agreement in which Applicant agreed to plead guilty to the lesser-included offense of fifteen years imprisonment in exchange for a negotiated term of fifteen years imprisonment.

On March 25, 2015, Applicant appeared in the Berkeley County Court of General Sessions before the Honorable Kristi L. Harrington, circuit court judge, and pled guilty to the lesser-included offense of voluntary manslaughter. At the hearing, Applicant informed the plea court she understood she could receive a sentence between two years to thirty years for voluntary manslaughter and that she understood and expected to serve every day of her fifteen year negotiated sentence. (Plea Tr. 5-6). Applicant told the plea court she was "very greatly" satisfied with counsel's services and had no complaints as to the manner in which he handled her case. (Plea Tr. 9). Counsel told the plea court he had informed Applicant she should expect to serve eight-five percent of her sentence before becoming parole eligible unless something substantial occurred. (Plea Tr. 18). Pursuant to negotiations between Applicant and the State, Judge Harrington sentenced Applicant to fifteen years imprisonment and informed her again that "[t]he next fifteen years of your life are going to be in the department of corrections." (Plea Tr. 20-21). Applicant did not appeal her guilty plea or sentence.

FACTUAL HISTORY

These charges arise from the home invasion and subsequent murder of a seventy-one year old victim. Applicant and two co-defendants spent the evening of July 14, 2012, smoking crack cocaine in a motel room. When they ran out of crack cocaine and money, Applicant and her co-defendants decided to rob the victim, of whom they were aware through mutual friends and knew

kept a large amount of money in his home. Then they drove to the victim's home in Hannahan, where they tricked him and gained entry into his home by Applicant pretending to be a legal secretary for his attorney. Once inside, they demanded access to his safe until the victim eventually acquiesced. At some point, they decided to kill the victim and they tie the victim's hands behind his back with duct tape, bind his legs, and secure a plastic bag over his head with duct tape; thereafter, the victim suffocated to death. (Plea Tr. 9-12).

Applicant came forward very quickly and agreed to cooperate with the State. She provided law enforcement with "very valuable information about the crime" and gave statements implicating herself and her co-defendants in the murder. (Plea Tr. 12-13). At the plea hearing, Applicant agreed with the facts as presented by the State. (Plea Tr. 14).

ALLEGATIONS RAISED

In his application, Applicant alleged she is being held in custody unlawfully based on allegations of:

- 1) "I was up for 7 days high on crack prior to the crime."
- 2) "Randy Clarke threatened my life when I told him he shouldn't kill [the victim]."
- 3) "I was high on crack at the time of the crime."
- 4) "When police questioned me I was forthcoming and cooperative."
- 5) "Given the solicitor said I was instrumental in putting Robert and Randy in prison."
- 6) "The victim[']s son was against me getting a lot of time."
- 7) "My lawyer lied to me and told me I'll be eligible for parole next year."

At the start of the evidentiary hearing, Applicant only proceeded forward on the allegation that her counsel misadvised her about parole eligibility and abandoned all other grounds for relief.



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SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on her own behalf. Applicant testified at the time of her guilty plea, she thought she would be eligible for parole shortly after entering the Department of Corrections. She testified she has since learned she is not eligible for parole and her release date is in 2025. (PCR Tr. 6-7). She testified plea counsel gave her the following information regarding parole eligibility:

He told me that I had to do a quarter of my time before I was eligible for parole and then whenever I went in front of a parole board to tell them -- they were going to ask me if I felt any remorse for my crime and he told me to tell them that I didn't do it, that I was just there and that's what I should tell the parole board because he was telling me I was eligible for parole.

(PCR Tr. 6-7). She elaborated counsel told her she would be eligible for parole in 2016 based on her pre-trial detention. (PCR Tr. 8-9). She testified this conversation took place "probably a month or so before [she] actually went to court." (PCR Tr. 7). She then qualified her previous testimony and said counsel "insinuated that [she] was eligible for parole." (PCR Tr. 7). She testified she was still under the assumption that she is was eligible for parole despite the plea court telling her she should be prepared to serve her entire sentence. (PCR Tr. 7-8). Applicant testified she would not have pled guilty if she knew she would not be eligible for parole. (PCR Tr. 7-8).

Applicant testified the plea court told her she should be prepared to serve every day of her fifteen year sentence and acknowledged this was a negotiated guilty plea. (PCR Tr. 10-11). She also acknowledged she was facing thirty years to life imprisonment for murder and two years to thirty years imprisonment for voluntary manslaughter. (PCR Tr. 10). She testified she

discussed her case and the State's evidence with counsel and that she agreed with the State's recitation of facts at her guilty plea. (PCR Tr. 11). She testified she told the plea court she was satisfied with counsel, but explained she was still under the assumption she would be parole eligible. (PCR Tr. 11). She acknowledged the plea court told her voluntary manslaughter is a violent and most serious offense, but she did not understand the consequences of those classifications. (PCR Tr. 11-13).

Plea counsel Grover Seaton, III, testified next. He testified he took this case over from a local appointed attorney who did not practice criminal defense. (PCR Tr. 15). He testified Applicant and the State entered into a written agreement allowing her to plead to the lesser-included offense of voluntary manslaughter. (PCR Tr. 15). He testified the prosecutor was adamant on a thirty year sentence until the victim's family asked for leniency for Applicant and then the State agreed to reduce the negotiated sentence to fifteen years. (PCR Tr. 15, 18). Counsel testified this case could have easily been a death penalty case and he feels like he saved her life. (PCR Tr. 15). He testified he met with Applicant numerous times and explained all the risks and benefits of pleading guilty versus proceeding to trial, as well as the State's evidence. (PCR Tr. 16). He testified there was an abundance of evidence implicating Applicant and he co-defendants, including Applicant's statements to law enforcement, and proceeding to trial would have been "very deleterious." (PCR Tr. 17, 20). He testified Applicant's primary concern was minimizing her sentence and trying to make something of her life once released. (PCR Tr. 17-18).

Counsel testified he advised Applicant the plea offer was for a negotiated fifteen year sentence and that she would not be eligible for release until she served at least eight-five percent



of her fifteen year sentence. (PCR Tr. 19-20, 22). He adamantly denied making Applicant any promises regarding parole eligibility or advising her she would be eligible for relief after serving one-quarter of her sentence. (PCR Tr. 19-23).

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 hearings. 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. Specifically, this Court finds plea counsel's testimony credible and finds Applicant's testimony not credible. 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).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she 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." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume 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. 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he or she would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds Applicant has failed to carry her burden in this action. Applicant alleges plea counsel was ineffective for misadvising her that she would be eligible for parole after serving one-quarter of her sentence. The record clearly refutes this allegation. During her guilty plea, the plea court repeatedly advised Applicant she should expect to serve every day of her fifteen year sentence and Applicant indicated to the court that she understood. (PCR Tr. 5-6, 20-21). Additionally, Counsel told the plea court he had informed Applicant she should expect to serve eight-five percent of her sentence before becoming parole eligible unless something substantial occurred. (Plea Tr. 18). Moreover, counsel's credible testimony also refutes this allegation. Counsel unequivocally testified he advised Applicant she would not be eligible for early release until she had served eighty-five percent of her fifteen year sentence and adamantly denied he ever advised her that she would be



eligible for early release after serving one-quarter of her sentence. (PCR Tr. 19-23). This Court finds counsel properly advised Applicant regarding parole eligibility and the anticipated time she would be required to serve within the Department of Corrections.

The Court finds plea counsel adequately conferred with Applicant, reviewed all pertinent discovery materials with Applicant, was able to secure an extremely favorable plea negotiation on Applicants behalf despite the horrific circumstances of the crime, and fully advised Applicant of all aspects of her guilty plea. Ultimately, this Court finds plea counsel was thoroughly competent in his representation of Applicant and in his advice to Applicant that a guilty plea was in her best interest. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

CONCLUSION

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

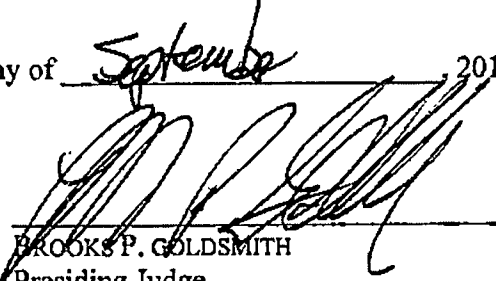
This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides 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. This application for post-conviction relief must be denied and dismissed with prejudice; and
2. Applicant Brittany Lyn Swanger (SCDC No. 363442) shall remain in the custody of the State.

AND IT IS SO ORDERED this 11 day of September, 2017.



BROOKS P. GOLDSMITH
Presiding Judge
Ninth Judicial Circuit

_____, South Carolina

STATE OF SOUTH CAROLINA)
 COUNTY OF BERKELEY)
 Brittany Swanger #363443,)
 Plaintiff(s),)
 -vs-)
 State of South Carolina,)
 Defendant(s).)

IN THE COURT OF COMMON PLEAS
 9th JUDICIAL CIRCUIT
 CASE NO.: 2016CP0800190
 APPOINTMENT OF COUNSEL OR GAL
 (Select one.)

ORDER
 AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- Post-Conviction Relief (PCR)/habeas case Adoption Juvenile
 SVP case Custody and/or Visitation Abuse and Neglect
 Minor Name Change Other: Post Convict Rel 500

It appears Brittany Swanger #363443, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
 counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:
 counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
 court appointed counsel has obtained, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
 Other: .

Therefore, it is ordered that Lance Boozer hereby is appointed as (Select one.)

- counsel lead counsel (if capital PCR case) guardian ad litem
 for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

(If Death Penalty PCR Case) It is further ordered that, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED
 April 1, 2016

Mary P Brown JW
 Circuit Judge Clerk of Court

Plaintiff Attorney:

Lance Boozer	
807 Gervais Street, Ste 203	
Columbia, SC 29201	

Defendant Attorney:

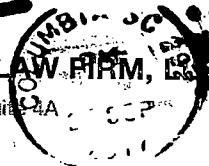
James Rutledge Johnson	
PO Box 11549	
Columbia, SC 29211	

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

FILED
 2016 APR -1 AM 11:47
 CLERK OF COURT
 BERKELEY COUNTY, SC

THE BOOZER LAW FIRM, L.P.

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The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
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