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February 5, 2018

Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

RECEIVED

FEB 08 2018

S.C. SUPREME COURT

Re: Brittany Lewis v. State, 2015-CP-126-2916

Dear Clerk Shearouse:

Please find the enclosed Notice of Appeal, Proof of Service, and Order of Dismissal in the above Horry County PCR action. Please return a clocked copy of the Notice of Appeal and Proof of Service in the enclosed SASE.

Should you have any additional questions please do not hesitate to contact my office.

With best regards, I am,



James K Falk

Thank you for your assistance.

Cc: Johnny James Jr. Esq., Brittany Lewis 330208.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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FEB 08 2018

APPEAL FROM Horry COUNTY
Court of Common Pleas
Honorable Paul M Burch Circuit Judge

S.C. SUPREME COURT

Case No.: 2015-CP-26-2916

Brittany Lewis 330208.....PETITIONER

V.

State of South Carolina.....RESPONDENT

NOTICE OF APPEAL

The Petitioner Brittany Lewis appeals the Honorable Paul M Burch's December 18, 2017 Order of Dismissal. Undersigned counsel received notice of entry of the order on January 9, 2018. A copy of the order on appeal is attached hereto.



James K Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402

February 5, 2018

Johnny James, Jr.
Office of S.C. Attorney General
PO Box 11549
Columbia, SC 29211-1549

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FEB 08 2018

THE STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Honorable Paul M Burch, Circuit Judge

Case No.: 2015-CP-26-2916

Brittany Lewis 330208.....PETITIONER

V.

State of South Carolina.....RESPONDENT

PROOF OF SERVICE

I, James Falk, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the U.S. Mail, postage prepaid, addressed to its attorney of record, Johnny James, Jr. Esq. Office of the S.C. Attorney General, PO Box 11549, Columbia, SC 29211-1549. I further certify that all parties required by Rule to be served have been served this February 5, 2018.



James K Falk
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Charleston, SC 29402

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	
Brittany Lewis,)	Case No.: 2015-CP-26-02916
S.C.D.C. No. 330208,)	
)	
Applicant,)	
)	ORDER OF DISMISSAL
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	

FILED
 HORRY COUNTY
 2018 JAN -5 PM 2:18
 HERRICK ELLIOTT
 CLERK OF COURT
 HORRY COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed by Brittany Lewis (“Applicant”) on April 20, 2015. Respondent made its return on or about February 3, 2016. The Court convened an evidentiary hearing into the matter on Wednesday, May 11, 2016, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by James K. Falk, Esquire. Caitlin B. Hastings, of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on her own behalf at the evidentiary hearing. Applicant’s plea counsel, Kia Wilson, Esquire (“Counsel”), and Lauree Richardson Ortiz, of the Fifteenth Circuit Solicitor’s Office (“Solicitor”), also testified. The Court had before it Applicant’s records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Horry County Clerk of Court regarding the subject convictions, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. On January 27, 2014, the South Carolina

Highway Patrol sought and obtained warrants for Applicant's arrest for one charge of felony driving under the influence, great bodily injury results (2014 A26 10700124), and two charges of driving under the influence, death results (2014 A26 10700125, 2014 A26 10700126). Kia T. Wilson, Esq. represented Applicant, and Lauree Richardson Ortiz, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On February 24, 2015, Applicant waived presentment to the grand jury for two indictments for driving under the influence, death resulting (2015-GS-26-00365, -00366), and pled guilty. Upon recommendation by the State of a sentence of 20 years incarceration, the Honorable Larry B. Hyman, Jr. sentenced Applicant to imprisonment for concurrent terms of 25 years. Applicant did not appeal her plea or sentence.

Present Application

In her post-conviction relief application, Applicant alleges she is being held unlawfully for the following reasons:

1. "Breach of Guilty Plea Contract Agreement"
 - a. "Guilty Plea Contract was signed for 20 years sen"
2. "Prosecution Misconduct fraud on the pleading"
 - a. "Solicitor agree to the 20yr. Signature on contract plea"
3. "Atty S Client Doctrine Violation"
 - a. "[Trial] Counsel canceled plea agreement [and deprived] due process"

Applicant requests relief as follows:

- "Sentence reduce to time serve motion for writ of [mandamus] of Guilty Plea Contracted Fed. RCP Rule 59(e) alter the judgment"

At the evidentiary hearing, the parties took testimony to address Applicant's claims of a plea deal for 20 years in both the context of ineffective assistance of counsel and prosecutorial misconduct.

II. 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 has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel & Involuntary Guilty Plea

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; 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." Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at

689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). “[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

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 at 117, 386 S.E.2d at 625 (citing Strickland at 688). 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 at 117-18, 386 S.E.2d at 625 (citing Strickland at 694). The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, she would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of her plea and the charges against her. See Boykin v. Alabama, 395 U.S. 238, 243 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Lecke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

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Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why she should be allowed to depart from the truth of her statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)).

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

IAC Allegation #1 – Failure to Explain, Enforce Plea Deal

Applicant claims in her application, as well as in her testimony at the evidentiary hearing, that she signed a written agreement wherein she would receive a sentence of 20 years in exchange for her guilty plea. At the plea proceeding, Solicitor called the case and indicated that it was recommending a twenty-year sentence. Tr. 3, ll. 3-9. Applicant affirmed that she understood the nature of the charges and their elements. Tr. 3, ll. 13-22. Applicant further affirmed that she had discussed the potential penalties with her attorney and that she understood she could receive a sentence of up to twenty-five years. Tr. 4, ll. 8-15. The plea court invited

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Applicant to ask the court at any time if she had any question about the process or what the consequences would be. Tr. 10, ll. 5-11. The sentencing sheets signed by Applicant accurately reflect a recommendation by the state and an ultimate sentence of 25 years.

At the evidentiary hearing, Applicant testified that she signed "a 20 year plea," but that she got 25 years after pleading guilty. Applicant testified that Counsel informed her that the solicitor and the plea judge had agreed to a 20 year plea and that is what she would probably get. Applicant affirmed she believed she would get 20 years. Applicant denied ever wanting a trial, as she knew what she did was wrong.

Counsel testified that the offer made at a status conference was a recommendation for 20 years. Counsel confirmed Applicant never wanted a trial. Counsel testified she tells every client that no sentence is guaranteed, and that sentencing is not up to either the defendant or the State, but to the judge who hears the case. Counsel explained to Applicant the charges carried a potential sentence of between 1 and 25 years. Counsel denied that any contract was ever signed with the State and repeatedly stated that there was never any chance of a negotiated sentence, only a recommendation. Counsel testified she spoke with the plea judge alongside the Solicitor immediately prior to the plea and reported to Applicant her belief that the judge was inclined to take the recommendation, but cautioned that it was not a promise. Counsel testified Applicant was under no illusion that the 20 years was anything more than a recommendation.

The Solicitor testified she made a plea offer of a recommendation for 20 years. She further emphasized that a negotiated sentence was never an option, as the victim's family was already upset with the offer of a recommendation.

The Court finds no deficiency on the part of counsel and that Applicant knowingly, intelligently, and voluntarily entered her guilty plea. The record shows that the plea agreement

was for a recommendation of 20 years. The plea transcript and testimony of Counsel show that Applicant was fully apprised of the non-binding nature of the recommendation, that it was neither a guarantee nor a promise, and that her full range of sentencing exposure was up to 25 years on each charge. Applicant herself demonstrated an understanding of the charges against her and affirmed that she had no desire for a trial, but wished only to admit guilt for her actions. No evidence of any written agreement was introduced to this Court and, in light of Counsel's credible testimony denying any contract was ever signed, this Court find's Applicant's testimony to the contrary not credible. Applicant can show neither deficiency on the part of counsel nor prejudice therefrom and, accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

B. Prosecutorial Misconduct – Breach of Plea Agreement

Applicant also alleges the State breached a written plea agreement in which Applicant, in exchange for her plea, would receive a sentence of 20 years incarceration. There is no evidence before this Court to support Applicant's claim of a written agreement, let alone one for a negotiated sentence of 20 years. As explored above, the testimony of both Counsel and the Solicitor is that the offer and agreement was only for a recommendation of 20 years, not a negotiated sentence. Counsel specifically recalled the offer was made at a status conference and denied any written contract was ever signed. No written agreement has been produced to this Court. Accordingly, Applicant has failed to meet her burden and her request for relief by way of this allegation is **DENIED**.

III. CONCLUSION

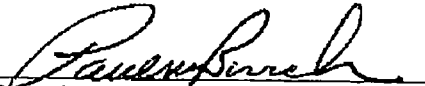
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant her application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

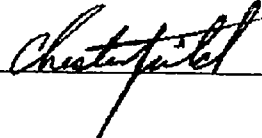
This Court notifies the Applicant that she must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

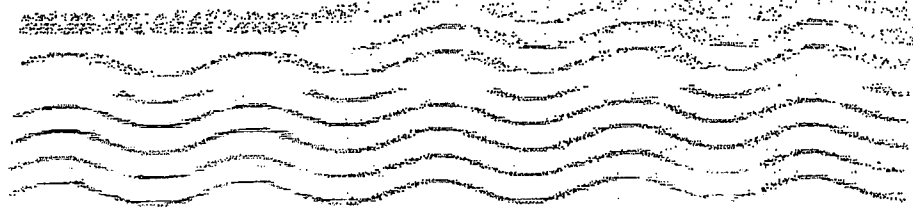
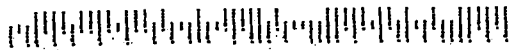
IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 18th day of December, 2017.


PAUL M. BURCH
Presiding Judge
Fifteenth Judicial Circuit


_____, South Carolina



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Clerk of Court
Supreme Court of South Carolina
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