

ROSS AND ENDERLIN, PA
ATTORNEYS AT LAW

May 30, 2018

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Mr. Daniel E. Shearouse
Clerk, The S.C. Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

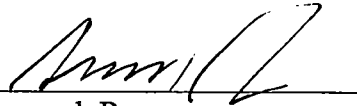
S.C. SUPREME COURT

Re: Sasha D. Thomas v. State
2017-CP-42-2247

Dear Mr. Shearouse:

Enclosed you will find the original Notice of Appeal in the above matter along with Proof of Service upon the Respondent and the Order of Dismissal. These matters are being referred to the Office of Appellate Defense.

Sincerely,



Susannah Ross
Attorney at Law

enclosure

cc: Office of the Attorney General
Office of Appellate Defense
Spartanburg County Clerk of Court

330 E. COFFEE ST. • GREENVILLE/SC • 29601
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THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Grace Gilchrist Knie, Circuit Court Judge

2017-CP-42-2247

Sasha D. Thomas, Appellant,

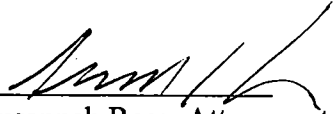
v.

The State, Respondent.

NOTICE OF APPEAL

Sasha D. Thomas appeals the Honorable Grace Gilchrist Knie's Order of Dismissal filed May 21, 2018.

This 30 day of May, 2018.


Susannah Ross, Attorney at Law
330 E. Coffee St.
Greenville, SC 29601
(864) 242-0029
Attorney for Appellant

Other Counsel of Record:
Valerie Giovanoli, Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3970
Attorney for Respondent


STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
SASHA D. THOMAS ,)
)
APPELLANT,)
)
)
VS.)
)
)
THE STATE OF SOUTH CAROLINA,)
)
RESPONDANT.)
_____)

IN THE SUPREME COURT

CERTIFICATE OF SERVICE
BY MAIL

1. I am the attorney for the Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Notice of Appeal** on the above-captioned matter on the following person by depositing the same in the United States mail with proper postage affixed thereto:

**Attorney General
Alan Wilson
P.O. Box 11549
Columbia, SC 29211**



Attorney for Defendant

This 30 day of May, 2018

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
Sasha D. Thomas, #329945)
Applicant,)
v.)
State of South Carolina,)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

2017-CP-42-2247

ORDER OF DISMISSAL

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This matter comes before the Court by way of an application for post-conviction relief filed on June 27, 2017, by Sasha D. Thomas (Applicant). Respondent made its Return on or about December 12, 2017, moving for a more definite statement by the Applicant and requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on February 2, 2018, at the Spartanburg County Courthouse in Spartanburg, South Carolina. Respondent withdrew its motion for a more definite statement at the beginning of the hearing.

Applicant was present and represented by Susannah C. Ross, Esquire. Respondent was represented by Valerie Giovanoli, Esquire of the South Carolina Attorney General's Office. At the evidentiary hearing, Applicant testified on her own behalf. Respondent called Andrea Price, Esquire, as its only witness at the hearing. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet her requisite burden of proof and denies the application.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of confinement of the Spartanburg County

Clerk of Court. In March 2016, the Spartanburg County Grand Jury indicted Applicant for felony driving while intoxicated ("DUI") where great bodily injury results and driving under suspension, license not suspended for DUI, first offense (2016-GS-42-1425). Andrea Leah Price, Esquire, represented Applicant. Solicitor Barry Joe Barnette represented the State of South Carolina. On December 15, 2016, Applicant pleaded guilty as indicted before the Honorable J. Derham Cole. Judge Cole sentenced Applicant to imprisonment for fifteen years and a fine of \$10,000 for felony DUI, suspended upon the service of ninety (90) months and the payment of \$5,100. For driving under suspension, Applicant was sentenced to probation for five years and thirty days. The terms are to run concurrently.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed Applicant's appeal on March 6, 2017, for failure to provide a sufficient explanation, pursuant to Rule 203(d)(1)(B)(iv) SCACR. State v. Thomas, App. Case No. 2016-002571 (S.C. Ct. App. March 6, 2017). The remittitur was returned to the circuit court on March 27, 2017.

FACTUAL HISTORY

On December 30, 2015, Applicant was driving a 2007 Chrysler while traveling on Florence Rd. in Spartanburg County, South Carolina. (Tr. p. 14, lines 9-10). At the same time and place a 2013 Chevrolet Impala was traveling the same direction, carrying a single passenger. (Tr. p. 14, lines 10-11). At approximately 4:28 p.m., Applicant attempted to pass the other vehicle and caused a collision, severely injuring the driver of the Impala. (Tr. p. 14, lines 5, 12-17). Trooper Cannon with the South Carolina Highway Patrol conducted the initial investigation.

Upon approaching Applicant's vehicle, Trooper Cannon immediately smelled a strong odor of alcohol and conducted a field sobriety test on Applicant. (Arrest Warrant Aff. p. 1). Based upon her performance in the sobriety exam, Applicant was placed under arrest. (Arrest Warrant

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Aff. p. 1). Subsequently, video evidence was acquired and the incident report was amended to reflect Applicant's fault in causing the accident. Applicant's blood was examined following the accident and was determined to contain a blood alcohol level of .142. (Tr. p. 14, lines 22-24). Applicant's blood results also revealed that she was under the influence of marijuana at the time of the accident. (Tr. p. lines 23-25).

Following the accident, the victim was transported to Spartanburg Regional Medical Center and treated for his injuries. (Tr. p. 13 lines 11-13). Victim's medical records admitted at the time of Applicant's guilty plea revealed that he suffered a broken collarbone, having been shattered in four places. (Tr. p. 14, lines 15-17). The injuries sustained by the victim required surgery, costing up to \$60,000 in medical bills. (Tr. p. 14, 17-21). At the time of the accident, Applicant had a suspended driver's license as a result of prior traffic violations. (Tr. p. 22, lines 3-6).

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. "Failure to prepare trial strategy or tactics"
 - b. "Failure to prove motion of discovery to include video of wreck, no toxicology report"
 - c. "Failure to call witness for testimony"
 - d. "Statute 56-05-2945(B)(1) states great bodily injury mean bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ. [Applicant's] victim only had a broken collar bone."
 - e. "Failure to call expert witness to formulate opinion concerning [victim's] injuries which established prejudice to [Applicant's] sixth amendment rights."



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- f. "Failure to include lesser included offense of reckless driving"
 - g. "All of this prejudice the outcome of the case and violated 14th and 6th amendment rights."
2. "Involuntary Guilty Plea"
- a. "Involuntary plea was unlawfully included and not made voluntarily or with a complete understanding of the nature of the charges and the inadequacies of the plea potential."

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant Testimony

At the evidentiary hearing, Applicant testified on her own behalf. Applicant testified that she was aware that a successful post-conviction relief application would allow her a new trial that she could possibly face up to fifteen years if convicted. Applicant testified that when she spoke to law enforcement at the scene of the accident, she did not feel as if she was a suspect in the accident. On cross-examination, Applicant admitted that the video evidence showed that she was at fault for the accident.

Applicant testified that she was being truthful during her guilty plea when she agreed to the Solicitor's recitation of the facts surrounding her case. Applicant testified that it was true that her blood alcohol level was .142 and contained levels of THC at the time of the accident. Applicant testified that she only met with her plea counsel twice prior to her guilty plea and that she never received a copy of her discovery file.

Plea Counsel's Testimony

Andrea Price, Esquire, testified at the evidentiary hearing on behalf of the State of South Carolina. Counsel testified as having represented Applicant during her guilty plea. Counsel testified that she received a completed discovery file of Applicant's case in February 2016. Counsel testified that she met with Applicant on May 3, 2016 to review the discovery file. During

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her review of the discovery file, Counsel testified that she was able to determine that Applicant's blood alcohol level was in fact .142 at the time of the accident. Counsel testified that discovery revealed that Applicant had made incriminating statements regarding her alcohol use, specifically that Applicant stated that she used alcohol all day, every day.

Counsel testified that she met with Applicant once the case was placed on the trial docket. Counsel testified that Applicant wished to proceed with a plea in order to avoid the uncertainty of a jury trial. Counsel testified that this is corroborated by the fact that Applicant signed her plea documents three days prior to the day she entered her guilty plea. According to Counsel, Applicant never expressed a desire to proceed to a trial. Counsel testified that based on the victim's injuries, she believed that the victim suffered great bodily injury as defined in the South Carolina Code of Laws. Counsel testified that prior to her guilty plea, Applicant and Counsel reviewed all the discovery available to her.

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 can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court's findings and conclusions set forth below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove

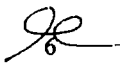


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that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. 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. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 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, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, an applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded 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 of proof and has not established any ineffectiveness of counsel. Below are the findings in regards to each specific allegation of ineffective assistance of counsel raised by Applicant:



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Applicant alleges that plea counsel was ineffective in her representation during her guilty plea. Applicant alleges that her plea counsel failed to prepare trial strategy or tactics. Plea counsel testified credibly at the evidentiary hearing, detailing her last meeting with Applicant. Counsel testified that upon learning the case was set on the trial docket, Applicant signed her plea sheets and wished to enter her guilty plea rather than risk a trial. Applicant signed her plea sheets three days prior to entering her guilty plea. Based upon this testimony and Applicant's lack of evidence supporting her allegation, Applicant has failed to meet her burden of proof.

Applicant next alleges ineffective assistance of counsel for failing to call a witness for testimony, as well as failing to call an expert witness to formulate opinion concerning victim's injuries. Applicant had the opportunity to present witnesses at the evidentiary hearing to prove her allegations, but failed to provide any witness other than herself. By failing to provide these witnesses at the evidentiary hearing, Applicant is unable to establish any prejudice from counsel's failure to use them during the guilty plea. (See Underwood v. State, 309 S.C. 560-425 S.E.2d 20 (1992) (prejudice from trial counsel's failure to interview or call witnesses could not be shown where witnesses did not testify at PCR hearing). Therefore, Applicant's allegations are denied for failing to meet her burden of proof.

Applicant alleges that her plea counsel was ineffective for failing to disprove the fact that the victim suffered great bodily injury. Specifically, Applicant does not believe the victim's injuries amount to what is required in S.C. Code § 56-05-2945(B):

As used in this section, "great bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

During her guilty plea, the Solicitor entered into evidence the victim's medical records related to the accident involving Applicant. These records were accepted without objection. As a result of



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the accident, the victim suffered a shattered clavicle that was broken in four places. It was also revealed that the victim underwent surgery and subsequent physical therapy treatments. Applicant offered no evidence to dispute the claim of "great bodily injury," other than asserting the victim "only had a broken collar bone." Applicant has failed to meet her burden of proof.

In her applicant for post-conviction relief, Applicant alleges the following additional claims of ineffective assistance of counsel:

- Failure to prove motion of discovery to include video of wreck, no toxicology report.
- Failure to include lesser included offense of reckless driving.
- All of this prejudice the outcome of the case and violated 14th and 6th amendment rights.

During the PCR hearing, Applicant failed to present testimony or other evidence to support these claims. Additionally, a review of the record finds the allegations are without merit. Based upon a review of the entire record and her failure to produce supportive testimony at the PCR hearing, Applicant has failed to meet her burden of proof. Therefore, the remaining allegations of ineffective assistance of counsel are denied and dismissed with prejudice.

Involuntary Guilty Plea

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, 654 S.E. 2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). An applicant may attack the voluntary, knowing, and intelligent character of a guilty plea entered on advice of counsel by demonstrating that counsel's representation was below an objective standard of reasonableness. Porter v. State, 368 S.C. 378, 629 S.E. 2d 353 (2006). 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



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plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969); Roddy v. State, 339 S.C. 29 (2000).

Applicant alleges her guilty plea was not knowingly and voluntarily made. Applicant also alleges her guilty plea was not made with a complete understanding of the nature of the charges and the inadequacies of the plea potential. This Court finds the record supports Applicant's plea was made knowingly, voluntarily and upon the sound advice from Counsel. The underlying facts to the crime are overwhelming to establish the Applicant's guilt of the offenses to which she pled. Her plea attorney, Ms. Andrea Price, appeared credible when she testified during the evidentiary hearing. The transcript of the plea hearing is thorough as to the Applicant's understanding of her right to a trial and her willingness to forgo the trial. Specifically, the Transcript of Record shows that the Judge questioned the Applicant extensively regarding her willingness to enter the guilty plea, her understanding of the guilty plea, and the potential sentence of pleading guilty. Therefore, the Applicant has failed to meet her burden of proof.

CONCLUSION

Based on all the foregoing, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant her application for post-conviction relief. Therefore, the allegations are 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



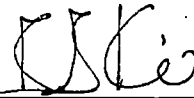
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counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 19th day of May, 2018.



GRACE G. KNIE
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina

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M. Hope Blackley
Clerk of Court

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

7TH JUDICIAL CIRCUIT

Sasha D. Thomas
Applicant # 326945

CASE # 2017CP42-2247

vs
Steel
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the Order Dismissal
In this action dated 5-19, 2018 on 5-21-18

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

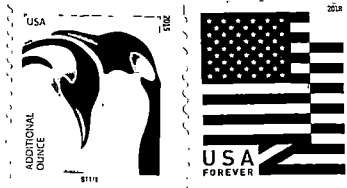
Megan Jameson
Susan Ross

5-21-18
(Date)

Cassie Gray
(Signature)

SUSANNAH ROSS

330 EAST COFFEE ST.
GREENVILLE SC 29601



Mr. Daniel E. Shearouse
Clerk, The S.C. Supreme Court
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