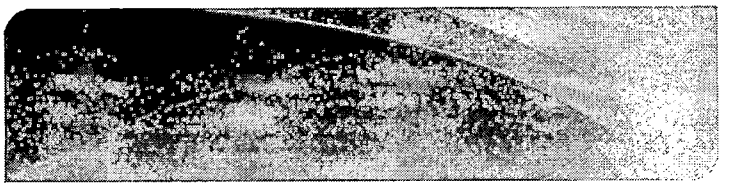

Rodney D. Davis
101 Meeting Street, 5th Floor
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E-Mail: Davis@LowcountryLawOffice.com

July 18, 2018

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

RECEIVED
JUL 23 2018
S.C. SUPREME COURT

RE: Erica Butts v. State of South Carolina, Case No.: 2014-CP-10-2518

Dear Mr. Shearhouse:

Enclosed for filing is the Notice of Appeal (original and clocked copy) in the above Post Conviction Relief (PCR) case. Also enclosed are the following:

(1) Proof of service of the Notice of Appeal on the respondent;

(2) The Order of Dismissal &

(3) A Request for Representation on Appeal.

The Applicant-Appellant was represented by me as an indigent pursuant to my contract with the South Carolina Commission on Indigent Defense (SCCID) to handle PCR cases. By copy of this letter, I am forwarding a duplicate set of documents to the SCCID.

The Request for Representation on Appeal and the Affidavit in Support thereof are signed by me as attorney for Applicant-Appellant. If you need anything further, do not hesitate to contact me. Thank you for your time and attention to this matter.

Sincerely,

Rodney D. Davis
South Carolina Bar #: 12396
101 Meeting Street, 5th Floor
Charleston, SC 29401
(843) 882-5065
Davis@LowcountryLawOffice.com

CC: Johnny James, Jr.
Assistant Attorney General

Paula Murdoch
Appellate Division, SCCID

RECEIVED

JUL 23 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Case No.: 2014-CP-10-2518

Erica Butts, Appellant,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Erica Butts appeals the denial of her Post Conviction Relief application in this case. The Application for relief was denied, following an evidentiary hearing before the Honorable Maite Murphy on January 30, 2018. Applicant's attorney received a copy of the Order of Dismissal on or about July 3, 2018.

July 18, 2018

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Other Counsel of Record:
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RECEIVED
JUL 23 2018
S.C. SUPREME COURT

FILED
2018 JUL 18 PM 12:17
JULIE J. ARMSTRONG
CLERK OF COURT
BY

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

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July 18, 2018

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RECEIVED
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S.C. SUPREME COURT

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Case No.: 2014-CP-10-2518

Erica Butts, Appellant,

v.

State of South Carolina, Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State by mailing a copy of it to the address of record, Johnny James, Jr., P.O. Box 11549, Columbia, South Carolina 29211-1549, on 7/18, 2018.

7/18, 2018

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Other Counsel of Record:
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Columbia, SC 29211-1549
Attorney for Respondent

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
)	CASE NO: **2014-CP-10-2518**
)	
ERICA BUTTS, #348484)	**MOTION AND ORDER INFORMATION**
Plaintiff,)	**FORM AND COVERSHEET**
vs.)	
)	
STATE OF SOUTH CAROLINA)	
Defendant.)	

Plaintiff's Attorney:	Defendant's Attorney:
Rodney D. Davis, Esquire	Johnny E. James, Jr., Esquire
Address: Lowcountry Law Office	Address: South Carolina Attorney General's Office
4000 Faber Place Drive, Suite 300	PO Box 11549
Charleston, SC 29405	Columbia, SC 29211
Phone: ____Fax ____	Phone: ____ Fax____
E-mail: ____Other: ____	E-mail: ____Other: ____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: ____
Estimated Time Needed: ____ Court Reporter Needed: ☐ YES/☒ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant — June 8, 2018 Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $____

EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: ____
- ☐ Other: ____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: ____

JUDGE CODE ____

Date: ____

CLERK'S VERIFICATION

Collected by:____ Date Filed: ____
☐ MOTION FEE COLLECTED: $ ____
☐ CONTESTED – AMOUNT DUE: $ ____

SCCA 233 (11/2003)

CC
AG - mail
AT
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SOL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
Erica Butts, S.C.D.C. No. 348484,	)	Case No.: 2014-CP-10-02518
Applicant,	)	**ORDER OF DISMISSAL**
v.	)	
State of South Carolina,	)	
Respondent.	)	

FILED
2018 JUN 28 PM 12:50
JULIE J. ARMSTRONG
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed by Erica Butts ("Applicant") on April 17, 2014. Respondent made its return on or about March 27, 2015. The Court convened an evidentiary hearing into the matter on January 30, 2018, at the Charleston County Judicial Center in Charleston, South Carolina. Applicant was present at the hearing and represented by Rodney D. Davis, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on her own behalf at the evidentiary hearing. Applicant's plea counsel, Melisa W. Gay, Esq. ("Counsel"), Applicant's expert witness Dr. Lois Veronen, and Applicant's mother LaDonna Butts also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea and sentencing transcripts, the records of the Charleston County Clerk of Court regarding the subject convictions, Applicant's direct appeal records, 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 Charleston County Clerk of Court. Applicant was indicted at the June

2010 term of the Charleston County Grand Jury for homicide by child abuse (2010-GS-10-04123). Melisa Gay, Esq. represented Applicant, and Elizabeth Gordon, Esq., of the Ninth Circuit Solicitor's Office, prosecuted the case. On August 25, 2011, Applicant entered an Alford[1] plea to the indictment before the Honorable Roger M. Young, Sr. Sentencing was deferred until a representative of the victim's family could be available, and Judge Young directed that any circuit judge could impose the sentence. Applicant appeared before the Honorable Deadra L. Jefferson on November 3, 2011, who sentenced Applicant to imprisonment for a term of life without parole.

Applicant filed a motion to reconsider the sentence on November 10, 2011. The State files its memorandum in opposition on February 22, 2012. Judge Jefferson denied the motion to reconsider the sentence by order filed January 14, 2013.

Applicant filed a timely notice of appeal. On December 23, 2013, the South Carolina Court of Appeals dismissed Applicant's appeal for want of a sufficient explanation required by Rule 203(d)(1)(B)(iv), SCACR. State v. Butts, S.C. Ct. App. Order filed Dec. 23, 2013. The Remittitur was issued on January 8, 2014.

Present Application

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

1. Ineffective assistance of counsel, in that:
    a. Counsel submitted a defective appeal;
2. Involuntary guilty plea, in that;
    a. The guilty plea agreement was violated;
    b. The guilty plea must be signed; and
3. Ineffective assistance of appellate counsel.

[1] North Carolina v. Alford, 400 U.S. 25 (1970).

At the evidentiary hearing, Applicant proceeded instead only on an allegation that Applicant's guilty plea was unknowing and involuntary because plea counsel failed to investigate and prepare a defense based on battered spouse syndrome and advise Applicant of such a defense. Respondent did not object to the amendment, but moved to dismiss the application as amended on grounds that battered spouse syndrome evidence was not relevant where the victim was not the alleged batterer, and on grounds that the record already before the Court clearly established Counsel attempted to develop a battered spouse syndrome defense strategy. This Court denied Respondent's motion to dismiss but took Respondent's arguments under advisement as reasons to deny relief.

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

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." 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). 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, 59 (1985).

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. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97.

1. Failure to Prepare Defense Based on Battered Spouse Syndrome

Applicant alleges her guilty plea was involuntary and unknowingly entered because Counsel was ineffective in failing to adequately investigate, develop, and execute a defense based upon battered spouse syndrome and inform Applicant of the availability of such a defense at trial. In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

The admissibility of battered spouse syndrome evidence is governed by statute:

> Evidence that the actor was suffering from the battered spouse syndrome is admissible in a criminal action on the issue of whether the actor lawfully acted in self-defense, defense of another, defense of necessity, or defense of duress. This section does not preclude the admission of testimony on battered spouse syndrome in other criminal actions.

S.C. Code Ann. § 17-23-170; see also State v. Grubbs, 353 S.C. 374, 380-81, 577 S.E.2d 493, 496-97 (Ct. App. 2003) (exploring the history of the development of battered spouse syndrome in S.C. law); Robinson v. State, 308 S.C. 74, 417 S.E.2d 88 (1992). Battered spouse syndrome is well-established in South Carolina caselaw in the context of self-defense, but there is scarcely any caselaw on the subject as it might apply to duress.

Duress is not a defense to homicide, for "when the crime is the murder of an innocent person, the choice of two evils rationale is unavailing." State v. Rocheville, 310 S.C. 20, 425 S.E.2d 32 (1993). The Court in Rocheville explained the reasoning underpinning the defense of duress:

> The rationale of the defense of duress is that if the only means of avoiding greater harm is for the defendant to engage in illegal conduct resulting in a lesser harm, he [or she] should not be held criminally liable for the illegal conduct. The commission of the crime which results in a lesser harm is therefore justified. However, when the crime is the murder of an innocent person, the choice of two evils rationale is unavailing. The resulting harm, the murder of an innocent person, is at least as great as the threatened harm, the death of the defendant.

"To excuse a criminal act, the degree of coercion must be present, imminent, and of such a nature as to induce a well-grounded apprehension of death or serious bodily harm if the act is not done." State v. Robinson, 294 S.C. 120, 121, 363 S.E.2d 104, 104 (1987). "Coercion is no defense if there is any reasonable way, other than committing the crime, to escape the threat of harm." Id.

Plea and Sentencing

During the August 25, 2011, plea proceeding, the court inquired as to Applicant's motives for pleading and whether she was coerced:

> THE COURT: All right. These are all things you give up when you do that, when you enter this plea. But you're basically doing this because you think you would be convicted if you went to trial, even though you're telling me you didn't do it, right?
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: All right. This is your choice and your choice alone?
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: Has anybody promised you anything or threatened you to get you to enter this plea?
>
> THE DEFENDANT: No.
>
> . . .
>
> THE COURT: All right. Does she understand what she's doing, Ms. Gay?
>
> MS. GAY: Yes, sir. We've extensively gone over the case and the defenses.

(Aug. 25, 2011 Tr. 5-6). Judge Young thereafter found the plea was freely, voluntarily, and intelligently made. (Aug. 25, 2011 Tr. 6-7).

During the sentencing hearing, both the State and Counsel requested that Applicant be sentenced separate from her co-defendant, Shanita Cunningham, but Judge Jefferson indicated a preference to sentence the two together in the absence of any safety concern. (Nov. 3, 2011 Tr. 3-5). The State requested the maximum sentence. (Nov. 3, 2011 Tr. 9, ll. 9-10; p. 20, ll. 6-7). The solicitor noted the precise scope and severity of the minor victim's beatings:

> Your Honor, if I may also submit, the pathologist indicated these injuries did not occur at one time. This was a culmination of a continual beating. The estimation was about two weeks, which just happened to coincide with the exact amount of time this child had been in Shanita and Erica's care.

(Nov. 3, 2011 Tr. 10, ll. 1-6). Co-defendant's counsel, Cassandra Woosley, Esq., after extensive remarks from the victim's family, informed the Court "that both Erica and Shanita would hit [the victim] for urinating on the floor." (Nov. 3, 2011 Tr. 24, ll. 14-15).

Counsel in mitigation described Applicant as a "mild" and "meek" person. (Nov. 3, 2011 Tr. 28, ll. 23-24). Counsel provided to the court a report from the Medical University of South Carolina, informed the court that she had Applicant evaluated, and that MUSC found Applicant competent and criminally responsible. (Nov. 3, 2011 Tr. 29, ll. 13-22). Counsel explained her efforts to explore Applicant's relationship with the co-defendant, and described an abusive relationship with the co-defendant. (Nov. 3, 2011, Tr. 29-30). In particular, Counsel detailed Applicant's submissive role in the relationship and Counsel's efforts to develop a defense based upon the relationship:

> [Dr. Wade] reported an abusive dysfunctional relationship with Shanita Cunningham, who is controlling and aggressive, and he also said her reports of numerous individuals, which he cites in the reports, Ms. Cunningham often was physically aggressive in her behaviors toward Ms. Butts, who remained fearful.
>
> Now, in my practice I tried very hard to expand on that to see if my client would open up to me about some stuff that maybe I could provide to the psychologist to help her create maybe a Battered Woman Syndrome defense. Erica would never do that. She would never tell me anything bad about Ms. Cunningham. She loves her and has loved her for years[.]

(Nov. 3, 2011 Tr. 30-31). Counsel later continued explaining she "sent [Applicant] to two different psychiatrists and psychologists trying to see if there is something I'm missing, some kind of version of facts that I'm missing, and she has admitted her responsibility." (Nov 3, 2011, Tr. 32, ll. 9-13). Counsel reported Applicant never denied her presence or that she participated in the beatings. (Nov. 3, 2011 Tr. 32, ll. 5-6). Counsel also informed the court that, though they were segregated while in custody, Applicant and co-defendant Cunningham communicated with

one another in jail and that Counsel believed Applicant to have felt very intimidated by Cunningham. (Nov. 3, 2011 Tr. 40-41). Counsel again circled around to her efforts to communicate with her client:

> I have offered my client several opportunities just, you know, spill out all these bad things about Ms. Cunningham mainly just because she could, under the circumstances of providing people for her to talk to, and she has never chosen to do that. She has chosen to say specifically, you know, we both disciplined her, yes we argued, but we argued because we both have reasons to be upset, but yet, personality wise, I think it is objective, I have a meek personality client, and the co-defendant is much more aggressive, objectively from things that have happened in her life and her history, and I think that has played out in other statements that have been given to me by their family members and friends.

(Nov. 3, 2011 Tr. 42, ll, 1-15). Attorney Woosley, on behalf of Cunningham, alerted the Court to statements by Applicant to law enforcement admitting to whipping the minor victim on two separate occasions with a belt. (Nov. 3, 2011 Tr. 42, ll. 17-23). Applicant told the court: "[o]n that day I was responsible, but I didn't mean to kill her." (Nov. 3, 2011 Tr. 44, ll. 12-13). Judge Jefferson imposed life sentences on both Applicant and co-defendant.

Evidentiary Hearing

At the evidentiary hearing, Counsel testified Applicant started her relationship with Cunningham at the age of 15. Applicant moved to South Carolina from Michigan only for Cunningham to break parole and follow shortly after. Counsel described Applicant as docile and passive, and described Applicant's relationship with Cunningham as extremely abusive. Counsel recalled sending Applicant to be professionally evaluated, but that Applicant wouldn't talk. Counsel posited she should have done something to have Applicant and Cunningham more thoroughly separated during pre-trial incarceration, and that Applicant opened up about her experiences once she was housed more securely in SCDC. Counsel noted in retrospect the evaluating doctor was a white male, and that Applicant had a history of assault by a male.

Counsel recalled she tried to talk to Applicant in her own right and attempted to get information from her to prepare a defense, but met no success. Counsel described Cunningham as big, muscular, nasty, creepy, and mean. Counsel stated she would have made Applicant aware of the battered spouse defense if she'd been able to better develop the defense. However, on cross-examination, Counsel confirmed that she conceived of the defense early on in her representation, after meeting with Applicant's mother.

Applicant's expert witness, Dr. Lois Veronen, described battered spouse syndrome as a misplaced loyalty to one's abuser. Dr. Veronen explained that a battered individual develops fear of the abuser that extends into other aspects of the abused's life, providing for self-loathing and self-blame on the part of the abused. Battered spouse syndrome results from one or more of a combination of physical, psychological, and emotional abuse. Dr. Veronen testified battered spouse syndrome could result in failure on the part of the abused to stop violence or report it.

Dr. Veronen then explained she met with Applicant for six hours and prepared a report based upon her meeting with Applicant and based upon voluminous discovery provided to her. The meeting focused primarily on Applicant's relationship with Cunningham. Dr. Veronen professionally opined that Applicant suffers from battered spouse syndrome as a result of her relationship with Cunningham and from depression resulting from the death of the minor victim. Dr. Veronen testified Applicant lived in fear of Cunningham, and that she continued to be isolated with that fear in the jail setting; combined with threats, she was less likely to talk to her attorney. Dr. Veronen asserted the competency evaluation by MUSC was not close in scope to her own evaluation. Dr. Veronen reported her understanding of the underlying facts—Applicant would plead with the minor victim to try to avert violence on the part of Cunningham, and thought of calling her mother, but did not do so until the minor victim could not be awakened.

Dr. Veronen never met with Cunningham. The doctor confirmed Applicant was competent, but argued Applicant's actions were out of allegiance to Cunningham. Dr. Veronen confirmed that in most instances of battered spouse syndrome, the abuser is typically the victim, not a third party.

Applicant testified to meeting with Counsel, who told her that the only defenses would require her to speak against Cunningham in some way. Applicant recalled Counsel's belief that Applicant was not telling Counsel everything, and that Counsel did not believe her. Applicant testified she never made bond and, while her relationship with Cunningham ended when she was locked up, the two were housed near one another and she could still see Cunningham while incarcerated. Applicant explained Cunningham tried to get her to take full responsibility for the crime, and that Cunningham beat Applicant upon discovering Applicant trying to get statements for Counsel. Nonetheless, Applicant described jail as mild as compared to their prior relationship, which involved beatings, being drug into the kitchen near knives, and ripping out earrings. Applicant tried to leave the relationship, but was afraid of Cunningham and too scared to report anything. Applicant did not think the victim was dying on the day of the child's passing, but was afraid the child was going to die. Applicant testified she was advised to take the plea by her mother and Counsel, and that she believed she would get 20 years by pleading. On cross-examination, Applicant asserted she did tell Counsel everything, including that she was afraid of Cunningham, but that she didn't explain to Dr. Waid the abuse she suffered from Cunningham. Applicant never reported Cunningham's abuse to jail authorities. Applicant was afraid to be open with any evaluators so long as she was still in close proximity to Cunningham.

Applicant's mother, LaDonna Butts, testified she saw Cunningham abusing Applicant. Applicant and Cunningham appeared at Ms. Butts' house fighting, and Ms. Butts recalled finding Cunningham choking her daughter. Ms. Butts never spoke with Dr. Waid.

Ruling

The Court finds Applicant is entitled to no relief. First, this Court finds Respondent's legal argument—that battered spouse syndrome is irrelevant in a homicide where the victim is not the abuser, but a third-party—highly compelling. As explored in the recitation of the law above, battered spouse syndrome may be relevant for four potential defenses: self-defense, defense of another, necessity, and duress. Of the four, only duress is worth mentioning here, and in light of both the law and the present facts, it would have been of no help to Applicant. Following in the reasoning of Rocheville, just as no amount of duress can justify the murder of another person, no amount of duress can permit the brutal, protracted, repeated beating of a toddler child until dead, nor can it permit the silent consent to as much. The choice of two evils rationale is unavailing. The multiple statements during sentencing that Applicant did not merely passively observe the victim's abuse, but actively participated, were unchallenged. Applicant's fear of Cunningham provides no justification or excuse for the killing of a child.

Second, the underlying record, as well as the testimony presented at the evidentiary hearing, provide that Counsel was aware of battered spouse syndrome and attempted to develop a defense based on the condition, but was unable to do so due to the unwillingness of Applicant to disclose much, if anything, in psychological evaluations prior to her plea. Applicant argues that Applicant's unwillingness to cooperate in the development of the defense was the result of her continued subjugation to Cunningham while incarcerated. Though this argument has some persuasive merit, this Court is not compelled. Fundamentally at issue is the performance of

Counsel, who identified a potential defense, told her client she would need to speak against Cunningham to make any defense work, sent Applicant to be evaluated, and was at every stage foiled by Applicant's unwillingness to cooperate. Counsel could not make Applicant talk or cooperate with the defense. There is some general argument that Counsel could have done more to separate Applicant from Cunningham while incarcerated, but ultimately the conditions of Applicant's incarceration were not within Counsel's control. Further, there is not clear evidence that Applicant would have timely cooperated but for her incarceration proximately near Cunningham. To the contrary, Dr. Veronen's expert testimony clearly established that the conditioned fear resulting from battered spouse syndrome persists not merely after separation from the abuser, but even after the abuser's death. As such, the evidence before this Court indicates Applicant still would not have cooperated had she been more fully separated from Cunningham.

Third, the Court cannot find that, but for the alleged deficiencies of Counsel, Applicant would not have pled guilty but would have insisted on going to trial. As noted above, the battered spouse syndrome defense strategy was identified by Counsel prior to the plea and prevented by the lack of Applicant's cooperation. Though battered spouse syndrome was not specifically mentioned during the qualification of the plea, Judge Young asked Applicant if she wanted to explore having a defense put up by Counsel—Applicant declined. Counsel at that time affirmed they had "extensively gone over the case and the defenses." (Aug. 25, 2011 Tr. 6, ll. 19-22). The Court finds Applicant knew of the possible defense and affirmatively declined to pursue it.

Altogether, this Court finds no deficiency on the part of Counsel, nor prejudice therefrom. To the contrary, this Court finds Counsel performed well within the range of

competence demanded of attorneys in criminal cases. This Court observes no unreasonable failures on the part of Counsel, but rather finds Counsel endeavored to defend a client who would not, or perhaps could not, assist in the conceived strategy. Additionally, Applicant cannot meet her burden of showing prejudice by presenting a strategy she would not have cooperated with, and which would not have been applicable in the present case. Accordingly, Applicant's request for post-conviction relief 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 his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he 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 20 **day of** June **, 2018.**

MAITE MURPHY
Presiding Judge
Ninth Judicial Circuit

St. George, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE SUPREME COURT OF SOUTH CAROLINA
	)	
COUNTY OF CHARLESTON	)	
	)	Case No.: 2014-CP-10-2518
	)	
ERICA BUTTS,	)	
Applicant.	)	
	)	
-versus-	)	REQUEST FOR REPRESENTATION ON APPEAL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

On behalf of the request of the above-named Applicant, to be represented by the South Carolina Commission of Indigent Defense, Appellate Division (SCCID), the undersigned attorney would show unto this Honorable Court that:

1. He is the attorney for the Applicant-Appellant in the above captioned case. The Applicant-Appellant was in custody during and taken into custody immediately following the Post Conviction Relief (PCR) hearing and was not available to personally sign this request;

2. The Applicant-Appellant was represented by the undersigned attorney as an indigent, pursuant to a contract with the SCCID;

3. The Applicant-Appellant has been informed that he may request assistance from the SCCID Appellate Division in perfecting his appeal;

4. A timely Notice of Intent to Appeal has been filed on the Applicant-Appellant's behalf;

5. The Applicant-Appellant has been informed that nothing requires SCCID Appellate Division to pursue this appeal unless that office's Chief Attorney is satisfied that there is arguable merit to this appeal and that he cannot afford to hire an attorney.

At this time, the Applicant-Appellant requests the aid of the SCCID Appellate Division in perfecting his appeal to the South Carolina Court of Appeals.

Respectfully Submitted,

Rodney D. Davis
South Carolina Bar #: 12396

7/18, 2018
Charleston, South Carolina.

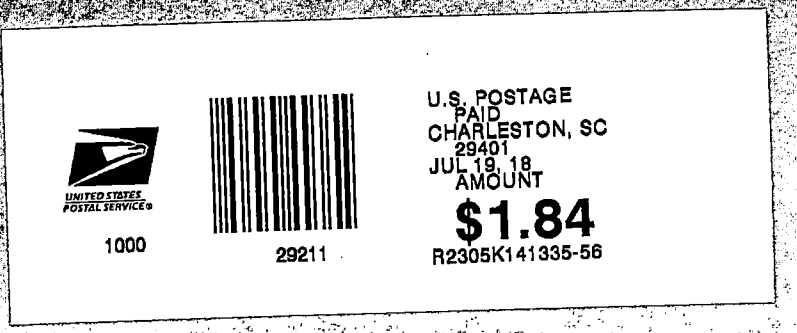
STATE OF SOUTH CAROLINA)
) **VERIFICATION**
COUNTY OF CHARLESTON)

PERSONALLY appeared before me, Rodney D. Davis, being first duly sworn, deposes and says that he has read the foregoing *Request for Representation on Appeal* on behalf of Erica Butts and the same is true of his knowledge except those matters alleged on information and belief, and as to those matters, he believes them to be true.

Rodney D. Davis
South Carolina Bar #: 12396

SWORN to and subscribed to me
this 18 day of July, 2018.

Notary Public for South Carolina
My Commission expires 11/17/2026



Rodney D. Davis
101 Meeting Street, 5th Floor
Charleston, SC 29401

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