

FALK LAW FIRM, LLC.

James K. Falk

(843) 606-6007

(843) 972-9005 Fax

Admitted to practice: KY(1984) S.C. (2010) jfalklaw@gmail.com

July 19, 2018

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

RECEIVED

JUL 23 2018

S.C. SUPREME COUR

Re: Vanessa Frayer 365066 v State, 2016-CP-10-4888

Dear Clerk Shearouse:

Please find the enclosed Notice of Appeal, Proof of Service, and Order of Dismissal in the above Charleston 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:

Kelly Oppenheimer *Esq.*

Vanessa Frayer 365066.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JUL 23 2018

S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Roger M Young, Sr. Circuit Judge

Case No.: 2017-CP-10-1165

Vanessa L. Frayer 365066.....PETITIONER

V.

State of South Carolina.....RESPONDENT

NOTICE OF APPEAL

The Petitioner Michael Bellamy appeals the Honorable Roger M Young Sr's July 9, 2018 Order of Dismissal. Undersigned counsel received notice of entry of the order on July 18, 2018. A copy of the order on appeal is attached hereto.



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

July 18, 2018, 2018

Kelly Oppenheimer, Esq.
Office of S.C. Attorney General
PO Box 11549
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JUL 23 2018

S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Honorable Roger M Young Sr., Circuit Judge

Case No.: 2017-CP-10-01165

Vanessa Frayer 365066.....PETITIONER

V.

State of South Carolina.....RESPONDENT

CERTIFICATE 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, Kelly Oppenheimer 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 July 18, 2018.



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

cc
AG
AJ
GS
SOL

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
)
Vanessa L. Frayer, #365066,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2017-CP-10-1165

ORDER OF DISMISSAL

FILED
2018 JUL 10 PM 12:35
JULIE M. HARRINGTON
CLERK OF COURT

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed March 6, 2017, by Vanessa L. Frayer (Applicant). The State (Respondent) made its Return and Motion for a More Definite Statement on May 22, 2017, requesting an evidentiary hearing be held. An evidentiary hearing was convened on May 22, 2018, at the Charleston County Courthouse. Applicant was present at the hearing and was represented by James K. Falk, Esquire. Respondent was represented by Assistant Attorney General Kelly Oppenheimer of the South Carolina Attorney General's Office.

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. During its December 2014 term, the Charleston County Grand Jury indicted Applicant for distribution of cocaine base, third offense (2014-GS-10-07082). Assistant Public Defender Jason T. King, of the Ninth Circuit Public Defender's Office, represented Applicant on this charge. On August 12, 2015, Applicant proceeded to a jury trial before the Honorable Michael G. Nettles. Following deliberations, the jury convicted Applicant as indicted. Judge Nettles sentenced her to a term of imprisonment of twelve years.

Applicant filed a timely notice of appeal, and Appellate Defender Laura R. Baer, of the South Carolina Commission on Indigent Defense, Office of Appellate Defense, perfected an appeal on Applicant's behalf. On appeal, Applicant raised the following issue: "Whether the trial court erred in denying defense counsel's request for a jury charge on mere presence where the video recording of the controlled buy showed at least six other people in and around the residence where the informant claimed he purchased the cocaine?" Following briefing, the South Carolina Court of Appeals issued an unpublished opinion affirming Applicant's conviction and sentence. *State v. Frayer*, Op. No. 2016-UP-511 (S.C. Ct. App. Filed December 14, 2016). The Remittitur was issued on December 30, 2016.

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

1. "Given too extensive sentence for charge;" and
2. "Ineffective lawyer representation."

At the hearing, Applicant proceeded forward on the claims in her original application, as well as allegations her trial counsel was ineffective for failing to investigate, failing to obtain a jury instruction on mere presence, failing to convey a plea offer, and failing to prepare for trial.

STATEMENT OF FACTS ADDUCED AT TRIAL

On June 13, 2014, officers from the City of Charleston Police Department organized a "buy-walk" with the assistance of a confidential informant (CI).¹ The police searched the CI, fitted him with an audio wire and a camera, and gave him prerecorded money. Tr. 51, line 24-

¹ According to Detective Patrick Gill of the City of Charleston Police Department, a "buy-walk" is when the department searches a CI, fits him with a wire and recording equipment, gives him prerecorded money, and takes him to a predetermined area where the CI then makes a controlled drug purchase and comes back to a designated meeting place. It differs from a "buy-bust," where the police immediately arrest someone following the purchase, because here the arrest took place three months later. Tr. 51, lines 2-23.



Tr. 54, line 18. The police listened though the audio wire after dropping the CI off in the designated area. Tr. 55, lines 7–13. The CI made a purchase, walked back to the designated meeting place, was re-searched by police, and wrote a statement. Tr. 55, line 14–Tr. 56, line 6. Applicant was identified as the person who sold the CI the drugs, and police arrested her approximately three months later and charged her with distribution of cocaine base. Tr. 96, line 24–Tr. 97, line 3; Tr. 103, line 22–Tr. 105, line 1.

Applicant proceeded to trial on August 12, 2015. She made a pretrial motion to redact portions of the buy video, which was a combined DVD of the video and audio recordings captured by the CI. Tr. 20, lines 16–20. After much discussion, the trial court watched the video. Tr. 30, line 6–Tr. 34, line 4. Both parties agreed partial redaction was proper and agreed to meet during the lunch break to determine which portions of the video to mute when played for the jury, which they did. Tr. 34, lines 17–25; Tr. 65, lines 8–19.

The State then proceeded to present its case. First, the State called Patrick Gill, a narcotics detective with the City of Charleston Police Department. Tr. 48, line 10–Tr. 49, line 5. He explained the process of doing a “buy-walk” controlled drug buy and described what happened in this particular case. Tr. 50, line 1–Tr. 56, line 6. He testified the team met with the CI to do a briefing, during which the CI was searched, wired to an audio recorder and a camera, and given prerecorded money. Tr. 52, lines 14–18. He stated that he was able to listen on a real-time wire as the CI walked and that the camera the CI wore gave a first-person view so the police could see everything the CI sees. Tr. 54, lines 8–14.

Next, the State called Christopher Singleton, the CI. He testified he worked with the City of Charleston on June 13, 2014, and bought sixty dollars’ worth of crack cocaine, although he thought it did not look like a “sixty.” Tr. 70, lines 3–20. When asked who he bought the drugs

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from, he identified Applicant. Tr. 71, 1-lines 1–11. Singleton identified the buy video, State’s Exhibit #1, and testified it was a fair and accurate representation of what happened on June 13, 2014. Tr. 73, lines 7–24. The solicitor played the video while Singleton was on the stand and asked him questions about it. She asked him who the female voice belonged to that can be heard talking about \$60 on the video, and he identified the voice as belonging to “the lady in the courtroom.” Tr. 75, lines 23–25. He further identified her as the one sitting in the chair in the video. Tr. 76, lines 1–4. To clarify, the following exchange took place:

The State: So when you ordered up the 60 who did you order from?

Singleton: The young lady in the courtroom.

The State: And that lady sitting down on the video, who is that?

Singleton: The young lady sitting in the courtroom.

Tr. 76, lines 18–21. Singleton testified when he got back to where the officers were, he gave the drugs he purchased to Detective Engles, the officers searched him again, and he wrote a statement. Tr. 76, line 22–Tr. 77, line 25.

Detective Sean Engles, a narcotics detective with the City of Charleston Police Department, testified next. He explained he was the case agent for this particular drug buy. Tr. 87, lines 4–8. He testified about using Singleton as a CI on many occasions because he was reliable and stated, “Everything that we later review on the video has been consistent with the statements he gives us after the buys.” Tr. 89, lines 2–10. Detective Engles related that Singleton bought \$60 worth of crack cocaine, which field-tested positive at the scene. Tr. 94, line 13–Tr. 95, line 4. He then testified he took the drugs to the police evidence drop box. Tr. 95, line 24–Tr. 96, line 23.



The State called three more witnesses to complete the chain of custody: Linda Wilson-evidence technician, Susan Payne-evidence custodian, and Ashley Earl-controlled substance analyst. They each testified regarding their roles in handling the drug evidence. Tr. 105–19.

At the close of the State’s case, Applicant moved for a directed verdict, which the trial court denied. Tr. 120, line 14–Tr. 121, line 17. The State asked for a jury charge explaining the trial court’s rulings on which portions to mute on the video, but the trial court denied the request. Tr. 125, line 7–Tr. 126, line 11. Defense counsel requested a jury charge on mere presence but made no argument supporting his request. Tr. 127, lines 9–12. The State opposed the requested charge, arguing “[t]here has been no testimony that she was merely present” and added that “because the language of the distribution includes conspiring, aiding, abetting, and all of that . . . that would cover things better.” Tr. 127, line 16–Tr. 128, line 4. The trial court determined a mere presence charge did not apply, stating, “And I think probably where you have a constructive possession case with where there is some amount of controlled substance in a room I think that would apply [, but] there is no evidence of that in this case.” Tr. 128, lines 6–10.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on her own behalf and presented the testimony of Assistant Public Defender Jason T. King (hereinafter “Counsel”). This Court also had before it a copy of Applicant’s trial transcript, the records of the Charleston County Clerk of Court, Applicant’s appellate records, and Applicant’s records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant first presented the testimony of Counsel. Counsel testified he was appointed to represent Applicant on or about September 16, 2014, and he was the second attorney assigned to her case. He testified Applicant was initially in custody

prior to trial, and he met with her twice in the county jail before she was released on bond in January of 2015. He elaborated those meetings took place on September 29, 2014, and October 15, 2014. He further testified they had two meetings scheduled in his office, one on February 17, 2015, and the other on April 2, 2015, after Applicant was released on bond, but he was unsure if she had appeared for those meetings. He elaborated they met at the courthouse on April 7, 2015, and May 5, 2015, during which time Applicant's case had been scheduled for a plea. He further elaborated during their April 7th meeting, Applicant indicated she wanted more time in which to hire private counsel.

Counsel also testified the State offered to reduce the charge to distribution of cocaine, second offense with a negotiated five-year sentence in exchange for Applicant's plea. He testified he met with Applicant regarding this offer and advised her to take the offer. He further testified, however, Applicant rejected the offer.

Counsel testified he explained to Applicant she was charged with distribution of cocaine, third offense, and this carried a minimum of ten years. He elaborated he explained to her the eighty-five percent rule, as well as the difficulty presented with her two prior proximity convictions. He further elaborated Applicant had pled guilty to selling drugs from the same house twice before, and this was her third strike. He explained Applicant would have been eligible for life without the possibility of parole based on these prior convictions.

He testified this was a confidential informant case, which was based on a buy-walk. He explained when Applicant was arrested, she did not have the pre-marked money on her, and the money was not introduced at trial. Counsel testified he highlighted the fact the State did not introduce this pre-marked money into evidence at trial. He further explained the State was able to prove Applicant sold the drugs based on the video of the buy-walk and the CI's testimony.

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Counsel testified he received the discovery in this case while Applicant was in custody. He elaborated he reviewed the video of the drug buy and gave Applicant a copy of that video. He further elaborated the video depicted a hand-to-hand transaction. He explained it appeared on the video as if Applicant was holding court. He testified on the video, a flash of the baggie which contained the drugs could be seen, but the baggie was not in the CI's hand. He elaborated the transaction took place at Applicant's sister's house, and her sister felt disrespected when the CI entered the home. He elaborated the CI told Applicant he "needed sixty," and Applicant then instructed the CI to go to the other side of the room. He explained the CI never approached Applicant's sister in order to purchase drugs. Counsel also testified Applicant instructed the CI he could stay and smoke the cocaine, but he would need to pay her sister in order to do so. He further testified Applicant's sister wrapped up the cocaine for the CI.

He further elaborated another individual attempted to buy seven dollars' worth of cocaine from Applicant, but Applicant would not sell to him because she needed the sixty dollars the CI was offering. Counsel explained he was able to suppress this other potential transaction at trial.

Counsel also testified he requested a charge on mere presence, and the only argument for such a charge was Applicant was not selling the drugs. He explained the trial court declined to charge mere presence. He further explained had this been a constructive possession case, mere presence might have applied, but that was not the situation. He testified in order to support this argument, he attempted to locate Applicant's sister, who did not testify at trial.

He elaborated he had his investigator attempt to locate Applicant's sister on August 12, 2015, and he left his business card at her sister's house. He further elaborated he was unable to find Applicant's sister, as the only contact information they had for her was the address at which this drug transaction took place. He further elaborated he did not believe Applicant's sister could

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be charged for her involvement, and he did not believe her sister would testify she was the one selling the drugs. Counsel explained based on the video, he did not believe Applicant's sister was the one selling the drugs.

Following Counsel's testimony, Applicant testified on her own behalf. Applicant testified she was released on bond in January of 2015. She also testified she appeared in court approximately once before trial. She further testified she did not have any conversations with Counsel regarding a plea offer, and she would have taken the five-year offer had Counsel presented her with such. She testified she and Counsel did not discuss the potential sentence she faced, and she was unaware her charge carried between ten to thirty years.

Applicant also testified Counsel did not meet with her while she was in the county jail nor video conferenced him. She explained she had not met with Counsel until she went to meet with him in his office, which was approximately one week prior to trial. She elaborated Counsel did not do anything in preparation for her case and never contacted her, but she attempted to contact him. She further testified she did not discuss her sister with Counsel, and they never discussed the drug buy video. She elaborated Counsel showed her the video one day before court. She further elaborated she did not tell Counsel anything about locating her sister, nor told him her sister was the one selling drugs. Applicant also testified on the video the CI talked to her sister about money, not drugs.

Applicant testified she wanted a new attorney, but her trial was quickly approaching. She explained she had no letters to Counsel regarding her desire to hire new counsel.

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 further had the opportunity to



observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. 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).

Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in the 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, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668 (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 that 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.

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After careful review based on the standard discussed above, this Court finds that Applicant has failed to carry his burden in this action. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

Counsel's alleged failure to investigate

Applicant contends Counsel was ineffective for failing to investigate. Specifically, Applicant contends Counsel was ineffective for failing to contact her sister prior to trial and failing to present the testimony of her sister at trial. "Although counsel should conduct a reasonable investigation into potential defenses, *Strickland* does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client." *Tucker v. Ozmint*, 350 F.3d 433, 442 (4th Cir. 2003) (quoting *Green v. French*, 143 F.3d 865, 892 (4th Cir. 1998)). Moreover, "failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result." *Porter v. State*, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018) (citing *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." *Wiggins v. Smith*, 539 U.S. 510, 521-22 (2003).

Here, Counsel testified he had his investigator attempt to locate Applicant's sister, but he was unable to locate her. Additionally, Counsel's investigator left a business card at the address provided for Applicant's sister, to no avail. Furthermore, he testified the only possible location of Applicant's sister he had was the location of the drug buy. Applicant provided him with no other contact information for her sister. Indeed, Applicant contends she never discussed her



sister with Counsel. Based on the foregoing, this Court finds Counsel's investigation into Applicant's sister was reasonable.

Similarly, this Court finds Applicant has failed to establish any resulting prejudice from the alleged deficiency. An applicant for post-conviction relief "*must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the post-conviction relief hearing in order to establish prejudice from the witness' failure to testify at trial.*" *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (emphasis in original). When an applicant merely speculates as to what the witnesses' testimony would have been, that speculation, by itself, cannot satisfy the applicant's burden of showing prejudice. *Id.* (quoting *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995)). Applicant wholly failed to present the testimony of her sister at the evidentiary hearing. Without such testimony, this Court is left to speculate as to what Applicant's sister would have testified. Such speculation does not rise to the level of proof required in order for Applicant to meet her burden. Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to obtain a jury instruction on mere presence

Applicant contends Counsel was ineffective for failing to obtain a jury instruction on mere presence. As an initial matter, this Court finds Applicant has failed to establish any deficiency on the part of Counsel, as he did, indeed, request a charge on mere presence. *See* Tr. 127.

Similarly, this Court finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. "The law to be charged must be determined from the evidence presented at trial." *State v. Holland*, 385 S.C. 159, 165-66, 682 S.E.2d 898, 901 (Ct. App. 2009). In



determining whether the evidence requires a particular charge, the trial court views the facts in a light most favorable to the defendant. However, “[a]n instruction should not be given unless justified by the evidence.” *Id.* at 166, 682 S.E.2d at 901.

Two typical situations exist where a “mere presence” charge is applicable: accomplice liability cases and constructive possession cases.

“Mere presence” is generally applicable in two circumstances. First, in instances where there is some doubt over whether a person is guilty of a crime by virtue of accomplice liability, the trial court may be required to instruct the jury that a person must personally commit the crime or be present at the scene of the crime intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act. Secondly, mere presence is generally an issue where the state attempts to establish the defendant’s possession of contraband because the defendant is present where the contraband is found. In such cases, the trial court may be required to charge the jury that the defendant’s mere presence near the contraband does not establish possession.

State v. James, 386 S.C. 650, 653-54, 689 S.E.2d 643, 645 (Ct. App. 2010) (quoting *State v. Dennis*, 321 S.C. 413, 420, 468 S.E.2d 674, 678 (Ct. App. 1996)).

Neither of these circumstances is present in the instant case. It does not involve accomplice liability, nor is it a situation where drugs were simply found somewhere with no indication of who had possession. The evidence shows Applicant was the one who transacted the controlled drug buy with the CI. The evidence presented here included the CI’s testimony at trial that Applicant was the person from whom he ordered the “sixty” of drugs. He also identified her as the woman who was sitting in the video. The video itself also provided evidence. While it is true the camera does not actually show the drugs changing hands, the CI never approaches anyone else requesting drugs, but rather only approaches Applicant. She then directs him over to the side while another man comes in. Applicant also tells the CI what to do if



he wants to pay to smoke it there. Moreover, Applicant is the only one sitting in the video, and it appeared as if she was “holding court.” Additionally, Detective Engles testified Appellant delivered sixty dollars’ worth of crack cocaine to him after the encounter. Tr. 94, line 11–Tr. 95, line 4. Furthermore, the trial court specifically denied Counsel’s request for a charge on mere presence, indicating there was no evidence of such in this case. See Tr. 127-28. Based on the foregoing, this allegation must be denied and dismissed with prejudice.

Counsel’s alleged failure to convey a plea offer

Applicant alleges Counsel was ineffective for failing to convey a plea offer from the State. In order to prevail on a claim counsel was ineffective for failing to convey a plea offer, the applicant must show: (1) plea counsel’s failure to communicate the State’s initial plea offer constituted deficient performance and (2) the applicant was prejudiced by the deficient performance, in other words there was a reasonable probability that but for this deficient performance, the applicant would have accepted the original plea offer. *Davie v. State*, 381 S.C. 601, 675 S.E. 416 (2009).

Here, Applicant testified Counsel did not convey a plea offer for a term of imprisonment of five years and a reduction of the charge to distribution of cocaine, second offense. She further testified had Counsel presented her with this offer, she would have accepted it. By contrast, Counsel testified the State made an offer for a reduction to distribution of cocaine, second offense with a negotiated sentence of five years. He testified he conveyed and reviewed this offer with Applicant more than once. This Court finds Counsel’s testimony with regards to this allegation very credible, whereas Applicant’s testimony is not credible. Furthermore, because Counsel did indeed convey the State’s offer to Applicant, this Court finds Applicant has failed to establish any deficiency on the part of Counsel.



Moreover, this Court finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. Counsel testified after discussing the plea offer with Applicant and advising her to take the offer, Applicant rejected it. Although Applicant contends she would have accepted this offer, this Court finds Applicant's testimony is not credible. Therefore, Applicant has wholly failed to establish despite Counsel's alleged deficiencies, she would have accepted the plea offer. This Court finds this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to prepare for trial

Applicant alleges Counsel was not prepared for trial. Specifically, Applicant contends Counsel neither contacted her nor did anything in preparation for trial. "There is a strong presumption counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). Moreover, when there is evidence that counsel met with Applicant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective. *See Harris v. State*, 377 S.C. 66, 659 S.E.2d 140 (2008), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018) (holding the post-conviction relief court's determination trial counsel's preparation was inadequate was not supported by the record when counsel had been practicing law for thirty years, half of his practice involved criminal cases, and trial counsel met with his client on a number of occasions). Here, Counsel testified he met with Applicant on a number of occasions. He further testified he explained to Applicant the charge and the potential sentence, and also reviewed the discovery materials with her. Applicant, on the other hand, testified she did not meet with Counsel until she went to meet with him in his office

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approximately one week prior to trial. She further testified she and Counsel discussed neither her charge, the potential sentence, nor the discovery. This Court finds Counsel's testimony with respect to this allegation very credible, whereas Applicant's testimony is not credible. Based on the foregoing, this Court finds Applicant has failed to establish any deficiency on the part of Counsel. In addition, Applicant has presented no evidence which would establish any prejudice on the part of Applicant. In particular, Applicant has wholly failed to provide this Court with any reason as to why additional preparation on the part of Counsel would have affected the outcome at trial. Accordingly, this allegation must be denied and dismissed with prejudice.

Harsh sentence for which Applicant was charged

Applicant further contends the sentence she was given is too harsh for that with which she was charged. A trial court has broad discretion in imposing criminal sentences within the limits prescribed by law. *State v. Franklin*, 267 S.C. 240, 226 S.E.2d 896 (1976); *Clark v. State*, 259 S.C. 378, 192 S.E.2d 209 (1972). The courts normally have no discretion to correct a sentence given within statutory limits. To be entitled to relief, the applicant must prove the alleged excessive sentence was the result of partiality, prejudice, oppression or corrupt motive, or that the sentence constitutes cruel and unusual punishment per se. *Clark*, 259 S.C. 378, 192 S.E.2d 209; *State v. Cogdell*, 273 S.C. 563, 257 S.E.2d 748 (1979). Here, Applicant was charged with distribution of cocaine, third offense. For such an offense, Applicant "must be imprisoned for not less than ten years nor more than thirty years." S.C. Code Ann. § 44-53-375(A)(3). Applicant was sentenced to a term of imprisonment of twelve years. Clearly, the sentence Applicant received was well within the sentencing range prescribed. Accordingly, this allegation must be denied and dismissed with prejudice.

CONCLUSION

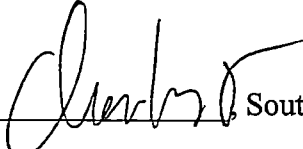
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCR, provides that 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.

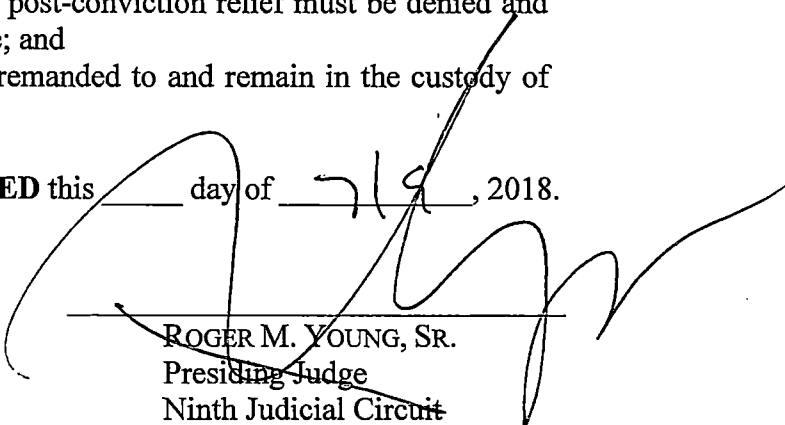
IT IS THEREFORE ORDERED:

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to and remain in the custody of the State

AND IT IS SO ORDERED this _____ day of 7/9, 2018.



South Carolina



ROGER M. YOUNG, SR.
Presiding Judge
Ninth Judicial Circuit



FALK LAW FIRM
PO Box 1058
Charleston, SC 29402

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