

THE

GIESE

LAW FIRM, LLC

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DEC 01 2016

S.C. SUPREME COURT

November 29, 2016

Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

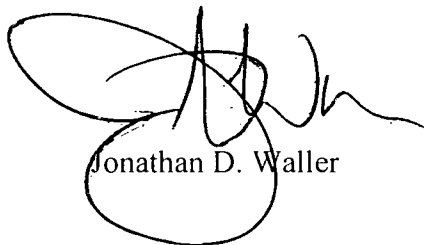
Re: Amy Renee Lane vs. State of South Carolina
C/A No: 2015-CP-38-0708

Dear Mr. Shearouse:

Please find enclosed one (1) original and one (1) copy each of Applicant's Notice of Appeal and Certificate of Service in the above referenced case. I would appreciate you filing the original and returning the clocked copies in the enclosed envelope.

I was appointed to represent Ms. Lane in this matter and am also enclosing a copy of the Order of Dismissal. If you have any questions, please do not hesitate to ask. My telephone number is 803-708-6767.

Sincerely,



Jonathan D. Waller

Cc: J. Clayton Mitchell, South Carolina Office of Attorney General

Enclosures

STATE OF SOUTH CAROLINA
In The Supreme Court

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DEC 01 2016

S.C. SUPREME COURT

APPEAL FROM ORANGEBURG COUNTY
Benjamin H. Culbertson, Circuit Court Judge

2015-CP-38-0708

Amy Renee Lane, #362247,

Appellant,

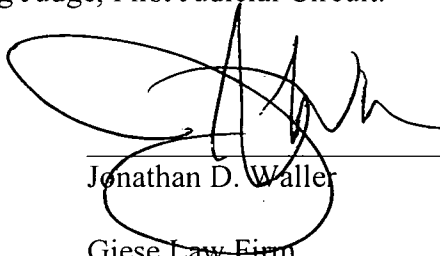
v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Amy Renee Lane, #362247, appeals the Order of Dismissal denying her Application for Post-Conviction Relief filed November 7, 2016 issued by the Honorable Benjamin H. Culbertson, Presiding Judge, First Judicial Circuit.



Jonathan D. Waller

Giese Law Firm
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Columbia, SC 29201
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jonathanwallerlaw@gmail.com
ATTORNEY FOR PETITIONER

This 29 day of November, 2016.

Other Counsel of Record:
J. Clayton Mitchell, Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3319

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Benjamin H. Culbertson, Circuit Court Judge

2015-CP-38-0708

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DEC 01 2016
S.C. SUPREME COURT

Amy Renee Lane, #362247,

Appellant,

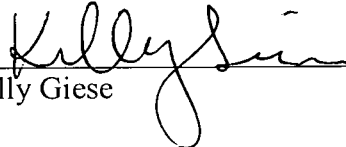
v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, J. Clayton Mitchell, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 29th day of November, 2016, to his office located at P.O. Box 11549, Columbia, SC 29211.



Kelly Giese

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Amy Renee Lane, #362247,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2015-CP-38-0708

ORDER OF DISMISSAL

FILED FOR RECORDED
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CLERK OF COURT
ORANGEBURG.

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed June 5, 2015. Respondent filed a Return and Partial Motion to Dismiss on November 2, 2015, requesting an evidentiary hearing be convened on Applicant's ineffective assistance of counsel allegations. Jonathan D. Waller, Esquire, was appointed by the Orangeburg County Clerk of Court to represent Applicant. An evidentiary hearing was held on May 16, 2016, at the Dorchester County Courthouse. Applicant was present and represented by Counsel Waller. J. Clayton Mitchell of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on her own behalf. Also testifying was Applicant's plea counsel, Michael R. Culler, Jr., Esquire. This Court had before it the Orangeburg County Clerk of Court records, the appellate records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the guilty plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. In May 2014, the Orangeburg County Grand Jury indicted Applicant for armed robbery (2014-GS-38-0714).

Counsel Culler represented Applicant. On November 20, 2014, Applicant pled guilty as indicted to a recommended cap of fifteen years. The Honorable Edgar W. Dickson sentenced Applicant to ten (10) years' imprisonment.

Applicant filed a notice of appeal on December 04, 2014. The South Carolina Court of Appeals dismissed Applicant's appeal on February 25, 2015. The remittitur was returned to the circuit court on March 13, 2015.

In this action, Applicant alleges that she is being held in custody unlawfully for the following reasons:

1. Involuntary and unintelligent guilty plea; and
2. Ineffective assistance of counsel in failing to recognize a conflict of interest.

III. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, 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, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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. 668. Applicant must overcome this presumption in order 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. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

IV. 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 Clerk of Court records regarding the subject convictions, the guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible and persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Failing to challenge the admissibility of Applicant's confession

Applicant alleges Counsel was ineffective for failing to challenge the admissibility of her confession. She argued that she would have proceeded to trial if Counsel properly advised her that she could successfully suppress her confession. Applicant testified Counsel did not discuss the statement. She testified that she felt compelled to accept the State's plea offer because her mother thought it was in her best interests. Counsel testified that he advised Applicant that the chances of suppressing the statement not good. Counsel emphasized that two codefendants were cooperating with the State and would testify against her if she proceeded to trial. Counsel advised her to plead guilty.

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 plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). 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, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

Post-conviction relief "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction." S.C. Code Ann. § 17-27-20(b); see also Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("It is uniformly held that an application for post-conviction relief is not a substitute for an appeal."). Applicant's allegations regarding the charges against her are an inappropriate challenge to the sufficiency of the evidence. Simmons, 264 S.C. at 423, 215 S.E.2d at 885 ("[T]he Uniform Post-conviction Procedure Act 'shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.'" (citing Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973))). "A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)).

This Court finds these allegations are not proper for this forum. Applicant must have taken this case to trial and argued for suppression of the statement at that stage. Instead, she admitted to the truth of the allegations set forth in the indictments at the plea hearing. Applicant may not now challenge the sufficiency of the evidence.

It was reasonable for Counsel to advise Applicant to plead guilty to a plea arrangement where the sentence was capped at fifteen years. This Court finds Applicant took advantage of a favorable plea deal and by doing so waived any evidentiary challenges to the evidence. This Court also finds it is not likely Applicant's statement would have been suppressed. "The fact that one is intoxicated at the time a confession is made does not necessarily render him incapable of comprehending the meaning and effect of his words." State v. Saxon, 261 S.C. 523, 529, 201 S.E.2d 113, 117 (1973). "Therefore, proof that an accused was intoxicated at the time he made a

confession does not render the statement inadmissible as a matter of law, unless the accused's intoxication was such that he did not realize what he was saying." Id. Applicant has not shown that she did not have the mental capacity to freely give a voluntary statement due to her intoxication.

To the extent Applicant argued her plea was not entering freely, knowingly, and voluntarily, this Court finds the record fully supports the contrary. Applicant did not present any credible evidence to support this allegation. Applicant has failed to prove Counsel rendered deficient performance in any regard. She has also failed to present the Court with any credible evidence showing he was prejudiced by the alleged deficiencies.

Failure to File a Notice of Appeal

Applicant further alleges Counsel was ineffective in failing to perfect an appeal after she requested him to do so. Applicant testified that she wanted to appeal and that she asked Counsel to file a notice of appeal.

This Court further finds Applicant has met her burden to prove Counsel was ineffective in failing to perfect an appeal. "[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036, 145 L. Ed. 2d 985 (2000). While a notice of appeal was filed by Counsel, it was not perfected and was eventually dismissed by the court of appeals because of deficiencies in the filing. This Court grants Applicant's request for a belated appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974).

All Other Allegations

As to any and all allegations that were raised in the application and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

V. CONCLUSION

Other than the belated appeal issue, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; ~~and~~ *except as to Applicant's right to a belated appeal; and* (AMC)
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 27 day of October, 2016.

Benjamin H. Culbertson

BENJAMIN H. CULBERTSON
Presiding Judge

Conway, South Carolina

THE

GIESE

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