

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

—————
Certiorari to Horry County

Honorable William H. Seals, Circuit Court Judge
—————

RECEIVED
NOV 26 2018
S.C. SUPREME COURT

KRISTY MERRITT RICH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000524
—————

APPENDIX
—————

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ATTORNEY FOR PETITIONER

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¹ The cover page of the transcript contains a scrivener’s error, listing the year as 2013 rather than 2012.

I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

WITNESS

BY:

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No witnesses were called.

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| <u>NO.</u> | <u>DESCRIPTION</u> | <u>ID.</u> | <u>EVD.</u> |
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No Exhibits were received into the record.

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(COURT IN RECESS THURSDAY, SEPTEMBER 13, 2013 AT 03:10 P.M..)

(WHEREUPON, KRISTY RICH, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

THE COURT: Yes, sir, Mr. Grooms.

SOLICITOR GROOMS: Thank you, Judge.

This is the State versus Kristy Merritt Rich. It is True Bill Indictment 2012-GS-26-0-2-2-1-7 for burglary in the first degree. As well as True Bill Indictment 2012-GS-26-0-2-2-1-5. The Defendant is here today to plead guilty to both of these charges as indicted without recommendation or negotiations from the State. And we request to hold the sentencing in abeyance until the victim can be here and whenever you can be here, Your Honor.

THE COURT: All right. Yes, ma'am. Who is she represented by? What was your name?

A. My name is Lori Hiller and I represent Ms. Kristy Rich.

THE COURT: Did you say Hiller?

MS. HILLER: Hiller. Yes.

THE COURT: Ms. Hiller, have you had a opportunity to talk to Ms. Kristy Merritt Rich about the charges contained in the Indictment, her constitutional rights, and the possible punishment she faces?

MS. HILLER: Yes, Your Honor, we have talked.

1 THE COURT: Do you think she's understood what you've
2 told her?

3 MS. HILLER: Yes, Your Honor.

4 THE COURT: And does she intend to plead guilty or not
5 guilty?

6 MS. HILLER: Guilty, Your Honor.

7 THE COURT: Do you agree with her decision to plead
8 guilty?

9 MS. HILLER: I do, Your Honor.

10 THE COURT: And based upon your investigation of the
11 facts and the circumstances do you believe if this case
12 were to go to trial it would be a substantial likelihood
13 that she would be found guilty beyond a reasonable doubt?

14 MS. HILLER: Yes, Your Honor.

15 THE COURT: Ms. Rich, I need to ask you a series of
16 questions to make sure you're entering into this plea
17 freely and voluntarily knowingly and intelligently but the
18 first question I have is are you under the influence of
19 alcohol or drugs today?

20 MS. RICH: No, sir.

21 THE COURT: Are you taking any medication that would
22 cloud your judgment?

23 MS. RICH: No, sir.

24 THE COURT: Are you aware of any physical, emotional,
25 or nervous condition that would keep you from understanding

1 what's happening in this courtroom today?

2 MS. RICH: No, sir.

3 THE COURT: All right. Now, Ms. Rich, its my
4 understanding that you want to plead guilty to two charges
5 under the Indictments of 2217 and 2215 and the first one
6 would be - that would be the charge of kidnaping that
7 Kristy Merritt Rich did in Horry County on or about July
8 22nd, 2011 unlawfully seize, confine, inveigle, decoy,
9 kidnap, abduct, or carry away one Travis Williams without
10 authority of the law in violation of Section 16-3-910 of
11 the South Carolina Code 1976 as amended.

12 Is what's stated in this indictment concerning the
13 kidnaping the truth?

14 MS. RICH: Yes, sir.

15 THE COURT: Okay. The next Indictment is 2012-GS-26-
16 2217 which reads under the charge of burglary in the first
17 degree that Kristy Merritt Rich did in Horry County on or
18 about July 22nd, 2011 enter the dwelling of Travis Williams
19 located at Magnolia Drive, North Myrtle Beach, South
20 Carolina without consent and with the intent to commit a
21 crime therein and that the Defendant did so in the night
22 time in violation of Section 16-11-311(A) of the South
23 Carolina Code of Laws 1976 as amended.

24 Is what's stated in this Indictment the truth?

25 MS. RICH: Yes, sir.

1 THE COURT: All right. Thank you.

2 Mr. Grooms, you want to give me the facts?

3 SOLICITOR GROOMS: Yes, sir. Briefly, Your Honor, as
4 I stated on July 22nd, 2011 this defendant along with three
5 other males did break into the home of Travis Williams.
6 They did so by kicking down - kicking in a door, rushed
7 into the residence, kicked into another room into the
8 actual home where they met the victim Mr. Williams. He was
9 asleep at the time. He had gotten up when he hears them
10 coming in. They did bound and tie up the victim placed a
11 pillow case over his head where he was held with what he
12 believed to be a gun to his head while they ransacked his
13 home. This lasted at least twenty minutes according to
14 video surveillance. Mr. Williams of course thought it was
15 much longer.

16 There is also allegedly another defendant who is - was
17 waiting outside the vehicle so that covers both th burglary
18 and the kidnaping. They did remove several items from the
19 home which is the Grand Larceny and we'll be dismissing the
20 Grand Larceny. And there is some dispute as to whether
21 there was actually a weapon. We'll be dismissing the
22 possession of a weapon during the course of a violent
23 crime.

24 THE COURT: But it happened - Okay. Okay.

25 SOLICITOR GROOMS: It all happened --

1 THE COURT: It all happened at night time so it
2 doesn't matter about the weapon. But as far as the
3 burglary first goes?

4 SOLICITOR GROOMS: Yes, Your Honor.

5 THE COURT: Ms. Rich, do you agree with the facts as
6 stated by the Solicitor?

7 MS. RICH: Yes, sir.

8 THE COURT: All right. Are you in fact guilty?

9 MS. RICH: Yes, sir.

10 THE COURT: Now, Ms. Rich, you understand these
11 charges have significant consequences. The burglary first
12 carries from fifteen to life. And the kidnaping carries up
13 to thirty years. Do you understand that?

14 MS. RICH: Yes, sir.

15 THE COURT: And you understand that if I were to run
16 them consecutively that I could in theory sentence you to
17 life plus thirty years in jail?

18 MS. RICH: Yes, sir.

19 THE COURT: Do you fully understand and you understand
20 as well that these are violent crimes so therefore you will
21 have to serve eighty-five percent of whatever sentence
22 you're given?

23 MS. RICH: Yes, sir.

24 THE COURT: And you understand that these are the type
25 of crimes if you should get convicted of anything else you

1 will be facing life without the possibility of parole?

2 MS. RICH: Yes, sir.

3 THE COURT: Okay. Now, Ms. Rich, you understand that
4 when you plead guilty you waive certain constitutional
5 rights. The first right you waive is your right to self
6 incrimination. Not in this court or any other court in
7 this land would you be required to testify against
8 yourself, however, when you're pleading guilty you are
9 doing that. Do you understand?

10 MS. RICH: Yes, sir.

11 THE COURT: All right. Now, do you wish to waive your
12 right against self incrimination in this matter?

13 MS. RICH: Yes, sir.

14 THE COURT: All right. Now, do you understand that
15 you are also waiving your right to have a jury trial. In a
16 jury trial the State would have the burden of proving your
17 guilt beyond a reasonable doubt. You would not have to
18 prove your innocence. If you decided not to testify I
19 would explain to the jury that they couldn't consider that
20 against you. Further Ms. Hiller could cross examine the
21 witnesses' presented by the State to discredit them and if
22 she thought it was in your best interest she could call
23 witnesses on your behalf. Further if there were any legal
24 defenses she could raise those to possibly have the charges
25 dismissed against you. But when you plead guilty you don't

1 get to ask any questions about the evidence and the State
2 does not have to produce any evidence. Do you understand
3 that?

4 MS. RICH: Yes, sir.

5 THE COURT: So do you wish to waive your right to have
6 a trial and confront the witnesses against you?

7 MS. RICH: Yes, sir.

8 THE COURT: All right. Now, Ms. Rich, has anyone
9 threatened you in any way to get you to plead guilty?

10 MS. RICH: No, sir.

11 THE COURT: Has anyone promised you anything to get
12 you to plead guilty?

13 MS. RICH: No, sir.

14 THE COURT: And no one has promised you that you will
15 get a lesser sentence or anything like that, that in other
16 words that you're looking at life plus thirty as a
17 possibility. Do you understand that?

18 MS. RICH: I understand.

19 THE COURT: Okay. Now, is the only reason that you're
20 pleading guilty to the charge of kidnaping under 2012-GS-
21 26-2215 is because you're guilty of kidnaping?

22 MS. RICH: Yes, sir.

23 THE COURT: Is the only reason that you're pleading
24 guilty to the charge of burglary in the first degree under
25 Indictment 2012-GS-26-2217 is because you are guilty of

1 burglary in the first degree?

2 MS. RICH: Yes, sir.

3 THE COURT: Now are you satisfied with the services of
4 Ms. Hiller?

5 MS. RICH: Yes, sir.

6 THE COURT: Has she done everything that you've ask
7 her to do?

8 MS. RICH: Yes, sir.

9 THE COURT: And do you need any more time to speak
10 with Ms. Hiller?

11 MS. RICH: No, sir.

12 THE COURT: Okay. And Ms. Hiller has been available
13 to answer any questions that you might have and if you have
14 been honest with Ms. Hiller so that she can properly
15 represent you in this case?

16 MS. RICH: Yes, sir.

17 THE COURT: All right. Now, have you understood all
18 of my questions today?

19 MS. RICH: Yes, sir, I have.

20 THE COURT: And do you have any questions for the
21 Court?

22 MS. RICH: No, sir.

23 THE COURT: Okay. And you understand that if you
24 change your mind about the decision to plead guilty and I
25 understand that this case will come back in front of me the

1 week of the 10th of October for sentencing?

2 Is that correct?

3 SOLICITOR GROOMS: Yes, sir.

4 THE COURT: Now ten days after that you will - You
5 will only have ten days after that date to change or to
6 file an appeal.

7 MS. RICH: Okay. Yes, sir.

8 THE COURT: All right. Under Indictment 2012-GS-26-
9 2215 charging you with kidnaping, how do you plead guilty
10 or not guilty?

11 MS. RICH: Guilty.

12 THE COURT: Under Indictment 2012-GS-26-2217 charging
13 you with Burglary first degree, how do you plead guilty or
14 not guilty?

15 MS. RICH: Guilty.

16 THE COURT: All right. All right, if find there is
17 substantial factual basis for the plea. I find the
18 defendant has entered into it freely voluntarily knowingly
19 and intelligently, I will accept her plea and will pass
20 sentence the week of October the 10th.

21 SOLICITOR GROOMS: Judge, just for the record, this
22 case is not kidnaping, it's not sexual in nature and
23 therefore it should not be --

24 THE COURT: The case is not - it is not sexual from
25 based on what I heard the other day that it is not sexual

1 in nature and therefore she does not have to be on the
2 central registry of sex abuser.

3 MS. HILLER: And, Your Honor, we would ask to save our
4 mitigation at the time of sentencing.

5 THE COURT: You may do so. That way - I'd rather you
6 do it that way, that way I hear it all at one time.

7 MS. HILLER: Thank you.

8 THE COURT: All right. Thank you.

9 SOLICITOR GROOMS: Thank you, Your Honor.

10 THE COURT: Thank you.

11 - END OF TRANSCRIPT OF RECORD -

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STATE OF SOUTH CAROLINA
COUNTY OF Horry

COURT OF GENERAL SESSIONS
2012-GS-26-2215
2012-GS-26-2217

STATE OF SOUTH CAROLINA)
)
)
-vs-)
)
KRISTY MERRITT RICH,)
)
Defendant.)

October 12, 2012

B E F O R E:
HONORABLE W. JEFFERY YOUNG

A P P E A R A N C E S:
STEPHEN GROOMS, Esquire
Attorney for the State
LAURA L. HILLER, Esquire
Attorney for the Defendant

Henry P. Young
Court Reporter

[Faint, illegible text at the bottom of the page]

1 P-R-O-C-E-E-D-I-N-G-S

2 MR. GROOMS: Can we get Christy Rich, please.

3 THE COURT: Good morning.

4 MS. HILLER: Good morning.

5 THE COURT: All right, Mr. Grooms.

6 MR. GROOMS: Thank you, Judge. Judge, this
7 is State versus Kristy Rich, she pled before you
8 roughly a month ago and we're going back on the
9 record for the sentencing phase. This is true bill
10 indictment 2012-GS-26-02217 for burglary in the
11 first degree.

12 THE COURT: Which carries fifteen to life?

13 MR. GROOMS: Yes, sir, Your Honor. As well
14 as true bill indictment 2012-GS-26-02215 for
15 kidnapping, Your Honor, which carries up to thirty.

16 THE COURT: All right.

17 MR. GROOMS: Judge, the victim in this case
18 has been here for every hearing so far. The
19 victims advocate told me just today even yesterday
20 he was going to be here at 9:00, he is in intensive
21 care today with a triple bypass surgery scheduled
22 so he is unable to be here and if you would like a
23 rendition of the facts we can do that.

24 THE COURT: I remember most of them. They
25 went into this, apparently she was dating him, or

1 some relationship there.

2 MR. GROOMS: She did know the victim in this
3 case, he is 61 years old, I believe she set this
4 home invasion in motion. They came down from North
5 Carolina, we've got statements from people in North
6 Carolina saying that they were on the way to rob
7 this gentleman in North Myrtle Beach, they arrived
8 in North Myrtle Beach at around 1:00 a.m., there
9 was three male individuals in this case along with
10 Miss Rich and this was all caught on videotape. On
11 the videotape you see Miss Rich attempting to open
12 the door with a key. While she's doing this the
13 males are running around the house peeping in the
14 windows trying to see if anybody is coming to the
15 door. She can't get in the house and she's on her
16 cell phone, I don't know if she is calling him or
17 not, we never got into that, but the whole thing
18 just seemed set up.

19 Eventually while she's on the phone one of
20 the co-defendants Randy Melvin who has already pled
21 gets, I believe, something and prys the door.
22 Daniel Autry, another co-defendant, kicks in the
23 door and then the younger brother of Randy,
24 Nicholas, is right behind them, they go in. The
25 last thing you see on the video tape is Christy

1 Rich pointing this way.

2 Now, back to that home, when they kicked open
3 that door they kicked in, you go through the garage
4 and his back bedroom is right here. They then
5 kicked in that door, bound and gagged the victim --
6 I'm sorry, didn't gag, bound the victim, put a
7 pillow case over his head, held a vacuum cleaner
8 whose to his head which he thought was a gun,
9 ransacked his home.

10 This lasted for what the victim thought was
11 35 to 40 minutes. I don't believe it was that
12 long.

13 THE COURT: Probably seemed longer than that.

14 MR. GROOMS: Yes. But I believe it was a
15 long time. At the end of the video you see one of
16 the defendants, Randy, walking out with a flat
17 screen TV and then the video goes dead, they pulled
18 the security system out of the wall. Luckily they
19 didn't take that security system with them, the
20 police were able to recover it.

21 And then the defendants went to North
22 Carolina, bought some more drugs, went to a hotel
23 and smoked some more crack, bought a suit for one
24 of the co-defendants to go to court and it wasn't
25 until the victim reviewed the videotape that he

1 even knew Kristy was there. She didn't say
2 anything during the home invasion because she knew
3 he would recognize the voice. And when he saw the
4 tape he said, "That's Kristy, I don't know those
5 other guys but that's Kristy," which is why she's
6 here.

7 They were all offered the same plea offer,
8 she turned it down, she was the last one standing,
9 the one that wanted a trial. Once we had gone
10 through the arraignment, once she turned down all
11 offers all she could do was plead to burglary first
12 and kidnapping or go to trial, which is why she's
13 before you today after pleading roughly a month
14 ago.

15 THE COURT: All right.

16 Yes, ma'am?

17 MS. HILLER: Your Honor, just to go over the
18 facts a little bit, Kristy has never denied her
19 involvement in this situation. She does dispute a
20 little bit about how it actually happened but she
21 does not, I mean, she says they were going down
22 there to see Mr. Williams, he usually gave her
23 money, she had no reason to rob him and when they
24 got there it unfolded the way it unfolded, she has
25 never disputed those facts but it wasn't, she will

1 tell you she never meant to go down there with the
2 intent to commit that crime.

3 Your Honor, as to the plea offer, my
4 understanding as her attorney she has never been
5 offered the same offer as her co-defendants, it has
6 always been more time. Your Honor, the last offer
7 we turned down, September 5th was the deadline on
8 that and it was eighteen years. She has never
9 expected this case to go to trial, never wanted it
10 to go to trial, she never wanted to put the Court,
11 Mr. Williams, anyone through that trial. It was
12 just when she turned down that eighteen negotiated
13 offer it was just a fear of that much time, Your
14 Honor.

15 She is here today with her family, her father
16 Danny Merritt is here, her stepmom is here as well,
17 and Barbara Merritt, her mother Dottie Fowler and
18 her stepfather Tim Fowler, along with her sister
19 Miss Linda Beard, and her two children are here as
20 well, Brittany and Derrick are sixteen and fifteen.

21 Your Honor, at this time when this happened
22 she was on a bender, she and her friends were very
23 much wrapped up in doing cocaine and getting more.
24 She does have a drug problem and that is what led
25 to this occurring. Your Honor, even though she did

1 struggle with drugs when she was at home she did
2 always retain custody of her children, she was
3 always a good mother to them, she worked in the
4 food service industry her whole life, she has been
5 there and, Your Honor, since she's been
6 incarcerated, from the first time I went out there,
7 she was working in the laundry, she has always
8 taken any classes she could when she was
9 incarcerated. She has been at J. Reuben Long since
10 the 19th of January which I believe is 267 days
11 today, Your Honor. We are asking that you would
12 consider giving her the minimum in this case, Your
13 Honor, fifteen years is an incredibly long time,
14 and yes, the crime she committed was serious but
15 fifteen years is a lot.

16 THE COURT: Tell me what would qualify her
17 for a minimum sentence on this.

18 MS. HILLER: Your Honor, she has, I mean, as
19 far as the other co-defendants, their sentence that
20 they received, I don't believe I'm misspeaking, was
21 somewhere around twelve, Your Honor.

22 THE COURT: I think that part of the deal
23 with that, they were going to testify against her.

24 MS. HILLER: But she was never offered the
25 same deal, Your Honor. Had she been offered twelve

1 she would have taken it.

2 THE COURT: No question she was the one who
3 knew this man.

4 MS. HILLER: She did know this man.

5 THE COURT: They didn't just randomly hit his
6 house, they were led to the house by her.

7 MS. HILLER: They had been in the home
8 before.

9 THE COURT: She knew what he had in there.

10 MS. HILLER: Yes, Your Honor.

11 Your Honor, Would you like to hear from
12 family at this time?

13 THE COURT: If you would like to call a
14 couple of her family members up I will be glad to
15 hear from them.

16 MS. HILLER: This is Linda Beard.

17 THE COURT: Good morning, Miss Beard.

18 LINDA BEARD: Good morning. Your Honor, I
19 just wanted to say I'm the oldest of four kids,
20 Kristy is my younger sister. Growing up this
21 sister was the sweetest, smartest girl you would
22 ever meet. In the past couple years she lost her
23 way and us as a family tried to help her find it.
24 She has always been a loving mom, she has always
25 been there for her kids. Kristy has not been a

1 troublemaker until she lost her way with the
2 friends she started hanging out with and habits she
3 got and I truly believe if she had not ever gotten
4 involved with the people she was involved with we
5 wouldn't be standing here today and I know, I feel
6 that she regrets ever doing any of the things she
7 has done because I still see her as that sweet
8 little girl running around us growing up.

9 THE COURT: I don't know the victim in this
10 case but no doubt he never saw her as a sweet young
11 thing running around as they put a pillow case over
12 his head and bound him.

13 LINDA BEARD: I know. I just don't know
14 where or why and all I can say is I'm sorry that
15 my sister did this to this gentleman.

16 THE COURT: Ma'am, I'm sure you're a good
17 sister. Thank you for being here today.

18 MS. HILLER: This is Danny Merritt, Kristy's
19 father.

20 THE COURT: Good morning, sir.

21 DANNY MERRITT: Good morning, sir. I'm
22 Kristy's father and I want to apologize to
23 everybody here for what Kristy done. She wasn't
24 raised that way and I'm just lost for words, Your
25 Honor, she is a good kid.

1 THE COURT: And you're a good father, I'm
2 sure this is breaking your heart as well.

3 DANNY MERRITT: It is. Thank you.

4 MS. HILLER. Your Honor, I mean, just to wrap
5 it up, for the sake of her family, Your Honor,
6 fifteen years is an incredibly long time. I ask
7 you consider that.

8 THE COURT: Anything further from the State?

9 MR. GROOMS: Yes, sir. I did misspeak about
10 the sentence, the offer that was sent to the
11 co-defendants was ten years kidnapping and burglary
12 second eight years. We're trying to get it where
13 they would all do double digits and they finally
14 said they wanted to plead but the Department of
15 Corrections said, "Let's not confuse it, let's just
16 do twelve violent," that is what we ended up doing
17 but I did not talk to Miss Hiller about that. The
18 last time I talked to Miss Hiller she said, "We can
19 either do ten years nonviolent or we'll have a
20 trial."

21 THE COURT: Would your client like to say
22 anything?

23 THE DEFENDANT: Yes. I would love to
24 apologize to the Court, I'm sorry for everything I
25 did and if the victim were here I would like to

1 apologize to him. I know he will never forget it
2 but I'm sorry for everything we did to him and to
3 my family and my kids, I'm sorry for everything I
4 have put them through here, and I'm so sorry, I
5 love them so much and I'm really sorry and if I
6 could take it back I would, I'm really sorry.

7 MS. HILLER: I know it is not a sentiment
8 from today, Your Honor, since the first time I met
9 with her she has wanted to take this back, which
10 could never happen.

11 THE COURT: Thank you. You know, what I see
12 here in court is often different from what happened
13 out in the world when these events happen. I can
14 not imagine anything more terrifying than being in
15 your own home and having people come crashing
16 through, bind you, throwing pillow cases over your
17 head and use a hose to make you think they are
18 going to shoot you. I'm sure she's very sorry
19 today. She led a band of bandits into that man's
20 house, so I'm holding her more responsible than I
21 did them. I'm not going to max her out but it is
22 going to be a while before she gets out of jail. I
23 assure you of that because she's going to do 85
24 percent of this and I am going to run them
25 concurrently because they happened at the same time

1 but the sentence on both of these is that you are
2 committed to the State Department of Corrections
3 for a period on both charges, burglary and
4 kidnapping, for 25 years.

5 Good luck.

6 MR. GROOMS: Judge, just for the record --

7 THE COURT: It is not sexual in nature.

8 MR. GROOMS: Thank you, Your Honor.

9 THE COURT: And I wrote that on it.

10 (Hearing Concluded).

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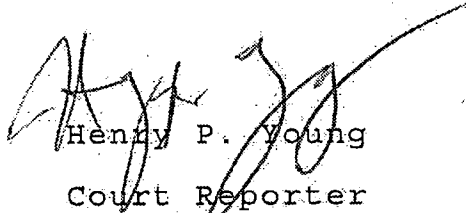
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I, the undersigned Henry P. Young, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case in the Circuit Court for Horry County, South Carolina, on the 12th day of October, 2012.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 16, 2013


Henry P. Young
Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 RICH, KRISTY MERRITT)
)
)
)
 v.)
)
 State of South Carolina)

IN THE COURT OF COMMON PLEAS

20 13 6669

APPLICATION FOR
POST-CONVICTION RELIEF

13 OCT 14 11:10:31
 Horry County
 Clerk of Court
 JUDICIAL WARD

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Leath Correctional Institution
2. Name and location of Court which imposed sentence General Sessions, Horry County
3. Name(s) of co-defendant(s) (if any) Randy Melvin, Zack Stone, Nick Melvin, Daniel Autrey
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Not known
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) October 19, 2012 - 20 year sentence

- (b) _____
- (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty X
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. None
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. None
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. None
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. None
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) My public defender stated she would appeal but never did file a notice or appeal.
 - (b) _____
 - (c) _____
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) I am not guilty of the crime charged and convicted of.
- (b) I had ineffective assistance of counsel. I met with my attorney four times prior to my plea for a total of an hour of time.
- (c) My attorney was not and is not a criminal attorney.
- (d) All of the co-defendants are doing dramatically less time than I am.
- (e) I had no prior criminal record. My attorney knew all of the above but yet failed to zealously represent me.
- (f) There was no trial preparation done by the attorney, no going over all of the criminal discovery with my attorney, so I had no preparation, no legal help except to get me to plea.
- (g) She never told me if she had any meetings with the solicitor other than she had received the plea offer.
- (h) I only met with her for my plea the day of my plea.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) I am not guilty of the crime charged and convicted of.
- (b) I had ineffective assistance of counsel. I met with my attorney four times prior to my plea for a total of an hour of time.
- (c) My attorney was not and is not a criminal attorney.
- (d) All of the co-defendants are doing dramatically less time than I am.
- (e) I had no prior criminal record. My attorney knew all of the above but yet failed to zealously represent me.
- (f) There was no trial preparation done by the attorney, no going over all of the criminal discovery with my attorney, so I had no preparation, no legal help except to get me to plea.
- (g) She never told me if she had any meetings with the solicitor other than she had received the plea offer.
- (h) I only met with her for my plea the day of my plea.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 - (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. None
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. None
 - ii. _____
 - iii. _____
 - iv. _____
 - (c) the disposition thereof:
 - i. None
 - ii. _____
 - iii. _____
 - iv. _____
 - (d) the date of each such disposition:
 - i. None
 - ii. _____
 - iii. _____
 - iv. _____
 - (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. None
 - ii. _____
 - iii. _____
 - iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. None
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. None
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) My attorney never advised me as to my appellate rights, nor filed any appeal except to say she would file a notice of appeal, but never did she explain to me my appellate rights and appellate procedures and since the plea date haven't heard from her in any form or manner.

- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? I thought I was represented at and for my appeal.

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Laura L. Hiller 1053 London Street, Ste. A, Myrtle Beach, SC 29577

ii. _____

iii. _____

(b) The proceedings at which each such attorney represented you:

i. Plea

ii. Sentencing

iii. _____

19. State clearly the relief you seek in filing this application:

A new trial, where I can have an attorney who will zealously represent me and let the court know that I wasn't guilty of this crime as I had no knowledge before hand of any plans by my codefendants. A new trial where the facts can come out such as no prior criminal record, co-defendants who will testify to such facts and the "victim" actually coming and telling of his and my friendship and wouldn't have done anything like I was convicted of to be found guilty.

20. Are you now under sentence from any other court that you have not challenged?

No

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

13

66669

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Anthony H. Rich
Applicant

SWORN or affirmed to and subscribed before me this 1st day of October, 2013

Sandra D. Hill
Notary Public

My Commission Expires: Jan. 9, 2023

13 OCT -4 AM 10:31
HELANIE HUBBINS - WARD
CLERK OF COURT

STATE OF SOUTH CAROLINA)

County of)

20 VERIFICATION 66669

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Antony M. Rich

SWORN to and subscribed before me this 1st day of October, 2013.

Sandra B. Hill (L.S.)
Notary Public

My Commission Expires Jan. 8, 2023

HURRY COUNTY
13 OCT -4 AM 10:31
MELANIE HODGINS - WARD
CLERK OF COURT

| | | |
|------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF HORRY |) | FOR THE FIFTEENTH JUDICIAL CIRCUIT |
| Kristy Meritt Rich, #352864, |) | Case No. 2013-CP-26-6669. |
| |) | |
| Applicant, |) | |
| |) | |
| v. |) | RETURN |
| |) | |
| State of South Carolina, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

FILED
 HORRY COUNTY
 2014 JUN -3 PM 2:35
 MELANIE PUGSIS-WARD
 CLERK OF COURT

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed October 4, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In May 2012, the Horry County Grand Jury indicted Applicant for first degree burglary (2012-GS-26-2217) and kidnapping (2012-GS-26-2215). Laura L. Hiller, Esquire, represented Applicant. On September 13, 2012, Applicant pled guilty as indicted. The Honorable W. Jeffrey Young deferred sentencing to October 12, 2012, at which time he sentenced Applicant to concurrent terms of twenty-five years (25) on each charge. Applicant did not appeal her plea or sentence.

II.

In her Application, Applicant alleges she is being held in custody unlawfully for the following reasons:

1. "I am not guilty of the crime charged and convicted of."
2. "I had ineffective assistance of counsel. I met with my attorney four times prior to my plea for a total of an hour of time."

3. "My attorney was not and is not a criminal attorney."
4. "All of the co-defendants are doing dramatically less time than I am."
5. "I had no prior criminal record. My attorney knew all of the above but yet failed to zealously represent me."
6. "There was no trial preparation done by the attorney, no going over all of the criminal discovery with mv attorney, so I had no preparation, no legal help except to get me to plea."
7. "She never told me if she had any meetings with the solicitor other than she had received the plea offer."
8. "I only met with her for my plea the day of my plea."

Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRPC.

Attached to this return and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegation regarding her guilt should be dismissed. 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 allegation regarding her guilt is an inappropriate challenge to the sufficiency of the evidence. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("[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))). Furthermore, a knowing and voluntary guilty plea waives any non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence. See Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) (citing Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975); State v. Fuller, 254 S.C. 260, 174 S.E.2d 774 (1970)). Because Applicant admitted her guilt at the plea hearing, she cannot now challenge the sufficiency of the evidence against her. See Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (“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.” (citing Blackledge v. Allison, 431 U.S. 63 (1977))). Therefore, Respondent request these allegations be dismissed pursuant to Rule 12(b)(6), SCRPC.

IV.

Respondent submits Applicant’s allegation of ineffective assistance of plea counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, the applicant must prove “counsel’s conduct so undermined the proper functioning of the adversarial process” that the plea proceedings “cannot be relied upon as having produced a just result.” Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v.

Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes plea counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The 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 plea counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea 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." 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).

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of plea counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VI.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

June 2, 2014

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 KRISTY MERITT RICH, #352864)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2013-CP-26-6669

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Bobby G. Frederick, Esquire
1053 London St., Suite A
Myrtle Beach, SC 29577

DATED this 2ND day of June, 2014.

Norma Bigbee
 Norma Bigbee, Legal Assistant
 For Respondent

FILED
 HORRY COUNTY
 2014 JUN -3 PM 2:35
 MELANIE HUGGINS-WARD
 CLERK OF COURT

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STATE OF SOUTH CAROLINA)

TRANSCRIPT OF RECORD

COUNTY OF HORRY)

CASE NO.: 2013-CP-26-6669

PCR HEARING

February 3, 2015

BEFORE: The Honorable G. Thomas Cooper, Jr.

KRISTY MERRITT RICH,

Petitioner,

vs.

THE STATE OF SOUTH CAROLINA,

Respondent.

 ORIGINAL

APPEARANCES:

Joshua Thomas, Esq.
Attorneys for the Respondent.

Kenneth Massey, Esq.
Attorneys for the Petitioner.

Official Court Reporter
Natalie Dahl, RPR

I N D E X

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 |
|---|---------|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| | WITNESS | | | | | | | | | | | | | | | | | | | | | | | |
| | | LAURA HILLER, ESQ. | | | | | | | | | | | | | | | | | | | | | | |
| | | Direct Examination by Mr. Massey..... | | | | | | | 4 | | | | | | | | | | | | | | | |
| | | Cross-Examination by Mr. Thomas..... | | | | | | | 17 | | | | | | | | | | | | | | | |
| | | Redirect Examination by Mr. Massey..... | | | | | | | 24 | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | |
| | | KRISTY RICH | | | | | | | | | | | | | | | | | | | | | | |
| | | Direct Examination by Mr. Massey..... | | | | | | | 26 | | | | | | | | | | | | | | | |
| | | Cross-Examination by Mr. Thomas..... | | | | | | | 34 | | | | | | | | | | | | | | | |
| | | Redirect Examination by Mr. Massey..... | | | | | | | 37 | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | |
| | | LAURA HILLER, ESQ. (RECALLED) | | | | | | | | | | | | | | | | | | | | | | |
| | | Direct Examination by Mr. Thomas..... | | | | | | | 38 | | | | | | | | | | | | | | | |
| | | Cross-Examination by Mr. Massey..... | | | | | | | 39 | | | | | | | | | | | | | | | |

E X H I B I T S

(NO EXHIBITS)

P-R-O-C-E-E-D-I-N-G-S

1
2 MR. THOMAS: This is Kristy Rich versus State of
3 South Carolina, 2013-CP-26-6669. It is a May 2012
4 indictment for burglary first degree and kidnapping.
5 She's represented by Laura Hiller. She pled guilty on
6 September 13, 2012 as indicted. Judge Jeffrey Young
7 actually sentenced her on October 12, 2012 to 25 years
8 for the first degree burglary, and concurrent 25 for
9 kidnapping. She filed this PCR in October 2013
10 alleging ineffective assistance of counsel, actual
11 innocence and allegations about codefendant's plea
12 deals. She is present in court represented by Kenneth
13 Massey, and the State moves to dismiss the allegations
14 regarding the codefendant's plea deal and her actual
15 innocence to the extent they are not ineffective
16 assistance of counsel claims.

17 MR. MASSEY: May it please the Court, Your Honor.
18 I would oppose that because that is the underlying
19 reason for this is the ineffective assistance of
20 counsel is the plea deal. With my client's prior
21 record, which was zero, with the prior record of the
22 others and the plea deal they got, and the plea deal
23 my client got, so I oppose it on that basis, Your
24 Honor.

25 THE COURT: Motion is denied. You may proceed.

1 MR. MASSEY: I'll call Ms. Hiller to the stand.

2 (LAURA HILLER, having been duly sworn,
3 testified as follows:)

4 THE CLERK: State your name and spell your last
5 for the Court.

6 THE WITNESS: Laura Hiller, H-I-L-L-E-R.

7 DIRECT-EXAMINATION

8 BY MR. MASSEY:

9 Q If you would, where do you practice?

10 A I have my own practice. It is in Myrtle Beach.
11 I practice with my husband, Hiller & Hiller.

12 Q How long have you practiced?

13 A I have been practicing law since 2008, June of
14 2008, and I have been in my own practice since 2011.

15 Q You received this case some time in March of
16 2013?

17 A I would have to check. I don't remember the
18 exact date.

19 Q Take your time.

20 A It is 2012, March of 2012.

21 Q And you started practicing you said in 2008?

22 A That's correct.

23 Q And had you done trial work like this case
24 before, prior to this?

25 A When I worked for the attorney -- the first job I

1 had, I had helped him with quite a few murder,
2 burglary, serious charges. I hadn't done those on my
3 own. I went out on my own and I had handled some
4 burglary charges, yes, but most of my work is
5 magistrate court and still is.

6 Q Magistrate level, not general sessions?

7 A I do practice in general sessions, but the
8 majority of my work --

9 Q When you worked for that firm you are speaking
10 about, prior to working with your husband, where was
11 that?

12 A I worked with Bobby Frederick in Myrtle Beach
13 also.

14 Q And you said you helped him, did you sit in the
15 second seat or --

16 A I did.

17 Q And do you remember the first time that you met
18 with Ms. Merritt?

19 A Yes. I met her at the jail. The first meeting
20 was on the 8th of March in 2012.

21 Q How many times did you meet with her?

22 A My notes someday I met with her one, two, three,
23 four -- seven times.

24 Q If I told you her recollection is about five
25 times is that incorrect?

1 A My notes say I was out at the jail seven times.
2 I don't just write down notes. I mean I wrote a note
3 after I would have gone.

4 Q In your notes, do you keep a record of all of the
5 times you meet with the attorneys, client, court, calls
6 and so forth; is that correct?

7 A I try to make sure everything is in there. Stuff
8 does get missed.

9 Q And did you ever ask her about her education?

10 A I did not -- let me go back to the notes from
11 that first meeting.

12 (A brief pause in the proceedings.)

13 A I don't have a note where I did. I have a note
14 where we talked about what she did for a living, but I
15 don't have a note in here. I usually do, but I don't
16 have a note about her education level. Maybe I did
17 not.

18 Q Did you ask her about her previous criminal
19 record?

20 A Yes.

21 Q What was her answer?

22 A My understanding is she really had no prior
23 record.

24 Q In fact, until she had this charge, she had no
25 record?

1 A That's correct.

2 Q And do you remember her asking for another
3 attorney?

4 A I do not remember that, and I don't have a note
5 of it. I don't remember it.

6 Q And you don't recall that at the plea deal or
7 where you did the plea -- did you do the plea in
8 September of 2013?

9 A She was on the trial roster, correct.

10 Q And the sentencing with Kristy Rich was in
11 October of 2013, a month later?

12 A That is correct.

13 Q At any of those times, in September or October,
14 did she ask for another attorney?

15 A Like I say, I don't recall and I don't have a
16 note of it.

17 Q Did you ever recall talking -- is it in your
18 notes that you talked to the codefendant's attorney?

19 A It is in my notes that I spoke to the
20 codefendants' attorneys.

21 Q Do you know who it was?

22 A I have Ryan Stampfle.

23 Q How many times did you speak with him?

24 A I have a note that I spoke with him once on
25 August 23rd of 2012. I also spoke with Johnny Gardner

1 on that date. Apparently, I did not get up with Hyman
2 on that -- Alex Hyman, who would have represented
3 another codefendant. I have a note that I can't
4 distinguish for another attorney. I know I spoke with
5 Stampfle that time and again when we got closer to the
6 -- when we got on the trial roster.

7 Q What was the total time you spoke with either
8 Stampfle or Mr. Gardner.

9 (A brief pause in the proceedings.)

10 A I apologize.

11 Q Take your time.

12 (A brief pause in the proceedings.)

13 A I have a half hour of time in my file.

14 Q For both attorneys, or just one?

15 A Half hour, and it has two phone calls listed.

16 Q And did they discuss what their offers were from
17 the Solicitor's Office?

18 A I believe that is what we were talking about and
19 whether they were going to go to trial and what their
20 testimony would be against, you know -- against Kristy
21 or whether she was going to testify against them, those
22 sorts of things.

23 Q What was the total time she was facing?

24 A She was looking at life.

25 Q What was the -- there was two plea deals; is that

1 correct?

2 A There was a written plea offer for 20 years that
3 the prosecutor gave us, and I definitely shared with
4 her it was ten and ten running consecutive.

5 Q So she has to do ten and then ten?

6 A Another ten, right. Both violent, as I recall.

7 Q So she would have to do 85 percent?

8 A Right. And then there was a second offer for 18
9 years.

10 Q Is that violent also?

11 A Yes. I do know I talked to him a lot. I was
12 definitely asking to give her time more in line with
13 what the codefendants received. I thought it was very
14 unfair that this prosecutor was trying to give her more
15 time than these guys, some of them with records. She
16 did not have one. I argued extensively with the
17 prosecutor about that. When I was reviewing this file
18 for today, I noticed in the sentencing colloquy with
19 the judge that the prosecutor had put on the record
20 that I had said that we wanted ten non-violent or we
21 would go to trial. I don't recall saying that to him,
22 but I didn't say it when we were on the record. I
23 don't think the prosecutor was lying, so I assume I
24 did, but he said that is why he never gave us the
25 12-year offer on the record. I honestly only caught

1 that when I was reviewing this file.

2 Q This morning when you talked to me?

3 A That is right.

4 Q Let me ask you this. Do you feel that that was
5 an error on your part?

6 A Absolutely. If I said something that caused the
7 prosecutor not to give us the same offer as the other
8 people, I made a huge mistake.

9 Q Again, we talked this morning?

10 A Yes. Absolutely.

11 Q And you said to me -- let me ask you this. Is
12 the most you ever had a client get?

13 A Yes, it is.

14 Q What was your response when you told me -- you
15 followed it up with something; do you recall?

16 A I'm sorry. I assume it was something like this
17 case stuck with me. It's bothered me.

18 Q I think you told me you didn't get over it?

19 A That is definitely true. I would say I said
20 that.

21 Q Let's go to September when you had the plea.

22 Where did you meet Kristy for the plea? Did you meet
23 her here in lockup or go to J. Reuben and discuss it
24 with her; and if so, how long did you speak with her?

25 A I have a note that I met with her on

1 September 13th, but I assume that I met with her here
2 on the plea day because that is definitely the way my
3 understanding of the way J. Reuben does transport. It
4 is hard to meet on the day of the plea at the jail.

5 Q You are looking at your records?

6 A Yes.

7 Q So when you talked to her about the plea, you are
8 talking to her here in lockup?

9 A I believe so.

10 Q Not at J. Reuben?

11 A I believe so, yes, that that would have been
12 here.

13 Q Can I ask you why you didn't go to J. Reuben?

14 A Because I believe -- and I don't have a note of
15 what time of day this was. If I was allowed to go back
16 to my calendar I may be able to figure it out, but
17 usually if pleas are in the morning, it is pretty much
18 impossible to meet with someone before transport. It
19 just doesn't make sense, and they give us a space to
20 meet here.

21 Q How long did you have a plea in hand before you
22 talked to Ms. Merritt?

23 A We pled straight up. I mean, as far as how long
24 had she been on the trial roster? I don't understand
25 the question.

1 Q When you got that plea offer from the Solicitor
2 and you got it --

3 A What plea offer?

4 Q The plea offer of the ten and ten.

5 A Ten and ten?

6 Q Let me ask it this way. She's going to plea on
7 September 13, 2013?

8 A Correct.

9 Q Did you already know on that day when the plea
10 was, and when did you know it that day, or did you know
11 it prior to?

12 A I knew that we were pleaing, I'm certain, prior
13 to the 13th. I mean, all I can do is look back and see
14 how my notes are written, and they may not be as
15 complete as I wish they were. I wish there was more in
16 there so I could be completely clear, but I have a
17 meeting with her at J. Reuben on August 23rd, again on
18 September 4th and then I assume on the 13th at the
19 courthouse -- no, it says on the 13th I met with her at
20 the jail. Usually a jail visit is a jail visit. Let
21 me see. From the way my notes read -- and I apologize
22 for misspeaking earlier -- it looks like I met with her
23 on the 13th at J. Reuben for a total of my time being
24 an hour, which I probably would not have seen her that
25 entire time.

1 Q The intake, walking back?

2 A Right. All of that stuff. Waiting for her, all
3 of that. Then we went to court, and I have another
4 amount of time for being in court, and I certainly
5 would have seen her back in lockup there as well. That
6 was on the 13th.

7 Q The same day she pled?

8 A Yes. I have both of those as two separate
9 entries, so I met with her twice.

10 Q So, in theory, you met with her that morning, she
11 pled that afternoon?

12 A That is right. When I met with her on the 4th,
13 which was a week prior, basically, the only note I have
14 from that meeting is it says she is not pleaing. At
15 that point, we were not planning on taking a plea
16 offer. That was, I assume, we're talking about the 18
17 years. Because the 20 we rejected sometime before that
18 point. That offer was one that together we decided was
19 too much. I had counseled that we could probably do
20 better. I assume -- this is an assumption -- I assume
21 on the 4th that what we were discussing was the 18-year
22 offer and that we were rejecting that. Then she ended
23 up on the trial roster probably right after that
24 conversation, I don't know.

25 Q About a month later you are doing the actual

1 sentencing in October?

2 A Right. And that was because the prosecutor
3 wanted her to plea to get her off of the trial roster
4 instead of trial. He wanted the plea. I forget why he
5 wanted to wait on sentencing, but that was also the
6 prosecutor's decision to wait on sentencing until next
7 month, maybe waiting for codefendants. I really don't
8 remember why. It could have had something to do with
9 the victim. I don't recall or have a note of it.

10 Q In your records, does it show that you met with
11 the Solicitor?

12 A I apologize. I misspoke when I was reading
13 through this. I have a phone call -- phone calls to
14 him -- one, two, three, four -- six different phone
15 calls over the course of the case. I do have one
16 meeting listed here. There could have been others, but
17 I can't testify that there were.

18 Q When is the one that you have documented that you
19 were face-to-face with?

20 A That was I believe in the beginning of the case.
21 Yes. That was on the 30th of March, 2012.

22 Q You got the case around the 7th of March?

23 A Right that is why I was probably at roll call
24 dealing with another client. I hunted him down to get
25 a bond date for Kristy, because she needed a bond. Her

1 bond was denied before I was involved by magistrate.

2 Q Did you hand up any documents that would be
3 mitigating documents or any witnesses or people to
4 speak on her behalf at the plea, which is in October?

5 A In October, her sister, Linda, spoke on her
6 behalf.

7 Q Who is present?

8 A Yes. I did not have any paperwork to hand up.

9 Q No documents?

10 A No, I did not.

11 Q Do you think you did a competent defense for
12 Ms. Merritt?

13 MR. THOMAS: That calls for a legal conclusion.
14 That is your providence.

15 THE COURT: I'll sustain that. She can tell what
16 she did.

17 THE WITNESS: You would like me to answer, Your
18 Honor?

19 THE COURT: No.

20 THE WITNESS: I didn't think so. Just making
21 sure.

22 Q Do you think the sentence she received is fair?

23 A No, I don't.

24 Q Would you like to see Ms. Merritt have a new
25 trial, knowing that the PCR cannot reduce time, you

1 either get a trial or you don't?

2 A I would like her to have a chance, another chance
3 at this. If it were my call, I would have given it to
4 her that day.

5 Q Because you testified -- you did say that the
6 Solicitor said you made statements about the plea deal
7 and what your understanding was and what his
8 understanding was?

9 A That's right. That is what he said on the record
10 at the sentencing in October. With what he said on the
11 record, we may have miscommunicated in a way. He was a
12 new prosecutor at the time and I didn't have a read on
13 him and he probably didn't have a read on me. I
14 believe that that may have caused her an offer for 12
15 years.

16 Q Do you think you misread the prosecutor?

17 A I do. I don't think he would go to trial as
18 quickly as he did. I didn't understand how he was
19 going to go through with the case.

20 Q If she hadn't taken the plea, were you ready to
21 try the case when it was on the trial roster?

22 A I would have liked to have been more ready.
23 Absolutely I could have done more work.

24 Q Were you ready in September?

25 A No.

1 Q Were you ready in October?

2 A In October she already pled so, no, I was not
3 ready. There wasn't a reason to be.

4 MR. MASSEY: No further questions.

5 THE COURT: Cross-examination?

6 MR. THOMAS: Please the Court.

7 CROSS-EXAMINATION

8 BY MR. THOMAS:

9 Q Ms. Hiller, did you file for discovery in this
10 case?

11 A I did.

12 Q And I guess if you could basically give us an
13 overview of what the State's theory of the case was.

14 A When I received discovery from the State it
15 included a silent video, security video that the guy
16 had that was outside of his home. It included
17 statements of all the codefendants and my client. My
18 recollection of the State's case was that Kristy and
19 these guys had gone to the house to get money from the
20 guy, that much was for sure. Now, the State took it a
21 little farther and said they went there to rob him.
22 That was never Kristy's position. They don't have
23 anything from Kristy saying that is what they were
24 going to do. You can see them trying to get into the
25 home on the surveillance camera. They do get into the

1 home, and the testimony is when they got into the home,
2 the man was tied up and held at a vacuum cleaner point,
3 which he believed to be a gun. They took the TV -- I
4 don't recall the details. Anyway, they did that. That
5 is where the kidnapping, burglary and robbery came
6 from. Then they left. The State definitely held the
7 position that Kristy planned it and there was no
8 dissuading them of that, that she planned it. That is
9 why they sat on that, why he would not come off more
10 time for Kristy as opposed to the others.

11 Q In fact, did you get a chance to review the video
12 with her?

13 A I don't have specifically in my notes that we
14 watched it together, but I do have enough time on some
15 these jail visits that I believe we did go over
16 discovery. It certainly is my habit to go over
17 relevant discovery with a client, but I don't have it
18 specifically here. I can't tell you for certain one
19 way or the other, but I expect we did.

20 Q And, in fact, the video shows Ms. Rich on the
21 video?

22 A Yes, she is on the video.

23 Q And the victim couldn't identify anyone in the
24 house?

25 A I believe that is correct.

1 Q But when he watched the video, he said, Well,
2 actually, I know her?

3 A That's right.

4 Q As far as your investigation or anything, did she
5 ever tell you -- I mean, did she tell you that she
6 wasn't there, that you need investigate anything else?

7 A The conversations I had with her are kind of
8 attorney/client privilege, but I will say that she did
9 tell me that this was not -- she never planned for what
10 happened to happen.

11 Q In fact, that is sort of the part of your
12 mitigation when you presented it to the judge? I mean,
13 you argued against the State's position that she was
14 the ring leader?

15 A I did. I did.

16 Q You said she was on the trial roster; were the
17 codefendants going to testify against her at trial?

18 A That is what the prosecutor told me. That is why
19 I was calling to try to talk to the codefendants'
20 attorneys, to figure if that was the case. It seems
21 like they were.

22 Q And as far as your negotiations with the
23 Solicitor, you asked him for a ten-year plea offer; do
24 you recall that?

25 A I do not recall that. What is on the record is

1 that the Solicitor said -- when he was talking about
2 the different plea offers that happened in the case, he
3 said that he had originally made the 18-year offer,
4 that I had asked him to give me something closer to
5 what the codefendants were given, and he said there was
6 a lot of confusion, I guess, on his part. He was sort
7 of creating -- like her first offer was split ten and
8 ten. All of the offers in the case were odd. They
9 weren't like ten years or five or anything. It was
10 this many years violent followed by this many years
11 none, something like that. I guess, on the record, he
12 was trying to explain to the judge that he tossed all
13 of those concepts out to do a 12-year offer for the
14 codefendants instead, and he did not share that 12-year
15 offer with us because I apparently told him we would
16 only take ten non-violent. I don't recall telling him
17 that, but I didn't correct it on the record. I'm in
18 the habit of correcting people on the record when they
19 say I said something incorrect.

20 Q So, obviously, the Solicitor never made a
21 ten-year offer?

22 A He did not. Certainly not.

23 Q And the Solicitor never made a 12-year offer?

24 A He did not.

25 Q The only offer he made was 18 or straight up or

1 go to trial?

2 A We had a 20-year offer, the first one, an 18-year
3 offer, straight up or trial, yes.

4 Q And the 18 was off the table by the time you went
5 on the trial docket?

6 A Correct.

7 Q And at that point it was straight up?

8 A Correct.

9 Q Did you explain to her what a straight-up plea
10 would mean?

11 A Yes. I'm certain I explained to her that the
12 very best we could get was 15 years, because she was
13 pleaing to burglary first.

14 Q And did you explain to her everything else that
15 she was going -- let me ask you this. At what point --
16 you said this was a trial a week before the plea. At
17 what point did it change from a trial to a plea?

18 A I can't tell you exactly when that happened. I'm
19 certain that we talked about it on the 13th. It
20 probably was on the 13th, if I'm looking at my contact
21 with Kristy. I have the fourth thing saying that she
22 was not pleaing, and then my next contact with her was
23 on the 13th. So it must have been on that morning that
24 we decided that, in that hour and third meeting that we
25 had that morning.

1 Q And when you had that discussion with her, did
2 you explain to her the rights she was giving up by
3 pleaing instead of going to trial?

4 A I did.

5 Q In terms of, I guess, whose decision it was to go
6 to trial, to enter the plea, whose decision was that?

7 A It is always my client's, but I gave her advice
8 to take a plea rather than trial. It was strong
9 advice, and I'm certain I told her I thought I would
10 lose the trial if we went. I did not put her in a
11 position that picking a trial would make sense to
12 anybody.

13 Q Well, your advice under those circumstances, were
14 you -- you said on direct you weren't prepared at that
15 time, but would you have been prepared if she said she
16 wanted to go to trial?

17 A Here is my problem. I'm looking back at the
18 notes and I'm really hating myself not having more
19 notes here, and I apologize to Kristy and to you and
20 the Court. I have on the 4th she said she wasn't
21 pleaing, and I assume after that point I put serious
22 time in that case to get it ready, but I don't have
23 notes of it. Here is the other thing. I don't have
24 that much time. I mean, if I were doing trial prep, I
25 assume I was trying to get the government to pay for

1 that, and it is not in here. So I don't think I was
2 ready for trial on the 13th based on what I'm seeing
3 here, that is what I have.

4 Q I guess my question is, basically you read all of
5 the statements at that point?

6 A Correct, I had. I reviewed everything.

7 Q Viewed the video, talked to her, talked with the
8 codefendants or at least their attorneys to some
9 extent. What more could you have done to prepare for
10 the trial?

11 A I mean, obviously you spend time preparing
12 cross-examination of your police officers,
13 codefendants, all of that. I don't have any time in my
14 file showing I did any of that. I would have spent
15 time preparing a direct examination for my client
16 whether or not we chose to testify. I have no time in
17 here for subpoenas for character witnesses. She had no
18 record, so that may have been a direction we would have
19 gone. That is not in here. That would have been time
20 I should have spent getting that case ready for trial.
21 I mean, I don't have any of the stuff I would see in
22 one of my trial cases that I'm planning to actually
23 take to trial. It is not in this file.

24 Q Is it possible that the decision to enter a plea
25 came at some point before the 13th?

1 A I have a note on the 4th she was not pleaing.
2 The next time I spoke with her was the 13th. It is
3 possible, but I certainly don't see how.

4 Q Did you ever tell her she had to plead guilty
5 because you weren't ready for trial?

6 A No, I don't think so.

7 Q Did you give her any indication that you weren't
8 ready for trial?

9 A What I gave her an indication of is that I did
10 not think we had a good case for trial, that I did not
11 think I could win that trial. That is what I told her.

12 Q As far as she understood when she entered that
13 plea, you didn't tell her what the sentence was going
14 to be, you told her it could be anywhere from --

15 A From 15 to life, but I thought we had a better
16 chance at 15 at a plea than we would after a trial,
17 because I did not think I was going to win this trial.

18 MR. THOMAS: Thank you very much.

19 THE COURT: Redirect?

20 REDIRECT-EXAMINATION

21 BY MR. MASSEY:

22 Q You were prepared for a plea?

23 A Certainly.

24 Q But you weren't prepared for trial?

25 A There is nothing in my notes that said I did any

1 of that time.

2 Q No trial prep?

3 A Correct.

4 Q And there is a difference between plea and a
5 trial?

6 A Huge difference.

7 Q Huge difference. Also, in this case, she had a
8 relationship with the victim; is that correct?

9 A Yes, absolutely.

10 Q A long-term relationship?

11 A I don't know how long it was, but I do know there
12 was an existing relationship with him.

13 Q Do you recall her age?

14 A I remember she was somewhere between 30 and 40.
15 I don't recall.

16 Q Do you recall his age?

17 A He was 61.

18 Q There was a beneficial relationship?

19 A Yes. It was a sugar daddy relationship.

20 THE COURT: What did you say?

21 THE WITNESS: Sugar daddy.

22 THE COURT: Oh, I didn't hear.

23 MR. MASSEY: No further questions.

24 MR. THOMAS: No follow-up.

25 THE COURT: You may come down. Thank you very

1 much. Next witness.

2 MR. MASSEY: I call Kristy Rich to the stand.

3 (KRISTY RICH, having been duly sworn,
4 testified as follows:)

5 DIRECT-EXAMINATION

6 BY MR. MASSEY:

7 Q Where are you incarcerated?

8 A Lee Correction, Greenwood.

9 Q Have you been there since you were sentenced?

10 A Yes, sir.

11 Q Do you recall how long that has been since you've
12 been there by how much time you've done?

13 A Two years and four months.

14 Q What was your actual sentence?

15 A Twenty-five years.

16 Q And you had three codefendants?

17 A Yes, sir.

18 Q Daniel Altry (phonetic)?

19 A Yes, sir.

20 Q Do you remember what his sentence was?

21 A Twelve years.

22 Q Nicholas Melvin?

23 A Yes, sir.

24 Q And his sentence?

25 A Eight years.

1 Q And Zachary Stone?

2 A No. His charges were dropped.

3 Q So they were dropped?

4 A Yes.

5 Q So three codefendants?

6 A Randy Melvin is the other one that is
7 incarcerated with 12 years.

8 Q Now, you filed an application for post-conviction
9 relief; is that correct?

10 A Yes, sir.

11 Q And I understand you can't get a reduction in
12 time?

13 A Yes, sir.

14 Q You get a new trial, and all the time you did is
15 for naught; you understand that?

16 A Yes, sir.

17 Q You pled guilty?

18 A Yes, sir.

19 Q Do you think you were competent to plead guilty
20 and had competent counsel?

21 A No. No, sir.

22 Q Why do you say no?

23 A Because I wanted to go to trial and my attorney
24 told me she was not comfortable with going to trial,
25 that my best situation would be to take the open plea.

1 It would start at 15 years, and she was confident that
2 I would get 15 years, no more than that, but she was
3 not comfortable with me going to trial.

4 Q You just heard her testify. She said that you
5 notified her about the 4th of September that you did
6 not want the plea?

7 A Yes, sir.

8 Q So did you talk about what you had to do to
9 prepare for this trial?

10 A No, sir.

11 Q So on the 4th, you told her no trial?

12 A No plea.

13 Q When was the next time you saw her?

14 A Week-and-a-half later maybe.

15 Q The day of the plea?

16 A Yes, sir.

17 Q She testified it was in the morning and you pled
18 in the afternoon; is that correct?

19 A It was closer to around lunchtime, I would think.

20 Q So the next time you saw her is --

21 A Day of the plea, yes, sir.

22 Q What changed your mind about a week earlier?

23 A Because she scared me. She told me she was not
24 comfortable with it, and I said that -- I made a
25 comment I wanted another attorney. She said I was

1 fixing to go to trial because I was on the docket and I
2 had to have an attorney, that my best scenario
3 situation would be to plea, that she could get me 15,
4 but nothing over 15, that she was pretty confident.
5 With the trial, she was not comfortable with taking it.

6 Q Did you ask her -- did you have a conversation
7 with her on the 4th or the 13th of September whether or
8 not she talked to your codefendants and what they
9 received?

10 A Yes. I actually got a message. Someone went to
11 court with a codefendant, and she came and saw me. I
12 asked her about it, because they got 12 years. I
13 couldn't understand why I was not getting the 12-year
14 plea.

15 Q You heard her testify. She testified about
16 seven, eight times that she met with you; is that
17 correct?

18 A Yes, sir.

19 Q How many times did she actually meet with her?

20 A I would say maybe five.

21 Q How long did these consultations take place?

22 A Very few minutes, maybe 10, 15 minutes at the
23 most. I can recall one day I weren't in there five
24 minutes.

25 Q You say about five times?

1 A Yes, sir.

2 Q So you are talking about half an hour of time?

3 A Yes, sir.

4 Q Before you plead?

5 A Yes, sir.

6 Q If you use her math of seven or eight, you are
7 looking at over an hour?

8 A Yes, sir.

9 Q You wouldn't put it over an hour of total time of
10 meeting with her?

11 A No, sir.

12 Q Did you ask her to do certain things about your
13 defense like talking to certain people?

14 A Yes. Talk to my codefendants, talk to the
15 victim, anybody she could, several times.

16 Q I'm sure you talked to her about your criminal
17 record, because you didn't have one?

18 A Yes, sir. Yes, sir.

19 Q What did she say to that?

20 A That is why I didn't take the 20-year plea,
21 because she said with me having a clean criminal
22 history that I would be fine. I should get a lower
23 plea. All of my codefendants had prison time, did a
24 lot of prison or jail times and extensive backgrounds,
25 and my plea would be a lot less than theirs.

1 Q Did you ask her to file an appeal in your case
2 after you did the plea and sentencing?

3 A I asked the day of court was there something she
4 could do, and I heard nothing else from her. I got put
5 straight in lockup and a week-and-a-half later straight
6 to prison.

7 Q You asked her about an appeal. Did you receive a
8 letter about an appeal?

9 A No. I received nothing.

10 Q You state in your application that you had
11 ineffective assistance of counsel. You made a
12 statement that she's not a criminal attorney. You
13 heard her state that she's done criminal work?

14 A Yes, sir, I heard her.

15 Q Did you ask her about her background?

16 A No, sir. No. I assumed automatically that I
17 would have a criminal lawyer considering my charges,
18 and I didn't think I would have to worry about that.

19 Q She said she did magistrate criminal work; is
20 that correct?

21 A Yes, sir.

22 Q And your charges were general sessions?

23 A Yes, sir.

24 Q You also stated that she never told you about any
25 meetings she had with the Solicitor; is that correct?

1 A That's correct.

2 Q Now, she's testified that she does not have the
3 requisites for some of those meetings, but she met with
4 them or talked with them?

5 A Yes, sir.

6 Q Did she tell you about those conferences?

7 A No, sir.

8 MR. MASSEY: Court's indulgence.

9 (A brief pause in the proceedings.)

10 Q (MR. MASSEY) When did you ask her to be relieved or
11 asked for a new lawyer?

12 A In September. I think it was maybe when she was
13 trying to get me to take a plea and I said I didn't
14 want a plea.

15 Q Would that have been September 4th?

16 A Yes, sir.

17 Q So prior to going to court and doing your plea?

18 A Yes, sir.

19 Q So she had about a week, week-and-a-half to file
20 documents?

21 A Yes, sir.

22 Q When you had that conversation with her, did you
23 leave it that she was going to relieve herself or you
24 would get other counsel?

25 A Yes, sir. She told me that if I go to trial I

1 would have to have an attorney and that we were so
2 close to trial that -- and then she talked to me after
3 that about the open plea, that she thought maybe she
4 could get me the 15 years, maybe suspended down a
5 little bit. So I thought....

6 Q So your thought on September 4th was that you
7 were going to be getting another attorney or she would
8 ask to be relieved?

9 A Yes, sir.

10 Q So were you surprised when she was still your
11 attorney?

12 A Yes, sir.

13 Q Do you know whose idea it was to file a PCR?

14 A It was mine.

15 Q Did she ever have a conversation with you or your
16 sister about filing a PCR?

17 A Not to me. Not to my knowledge.

18 Q So you understand if you win this, you get a new
19 trial, you don't get credit for any time?

20 A Yes, sir, I understand.

21 Q And you are still asking for a new trial?

22 A Yes, sir.

23 Q And you still stand behind your application,
24 ineffective assistance of counsel?

25 A Yes, sir.

1 MR. MASSEY: Nothing further.

2 THE COURT: Cross-examination?

3 MR. THOMAS: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. THOMAS:

6 Q During your brief -- what you describe as your
7 brief meetings with counsel, did you have an
8 opportunity to discuss the witness statements?

9 A I got my motion of discovery and read everything.

10 Q So you reviewed all of the statements?

11 A Yes, sir.

12 Q You obviously understood that the State was
13 alleging that you basically led these people to go rob
14 this gentleman?

15 A I understand that is what they alleged.

16 Q And so Ms. Hiller explained to you how those
17 allegations gave rise to the charges of kidnapping and
18 to the burglary?

19 A Yeah. But they also didn't -- didn't -- no one
20 tried to prove that my codefendants knew him also.

21 Q Okay. And, basically, you got an opportunity to
22 tell her your side of things?

23 A Yes, sir.

24 Q And I know there was a 20-year plea offer; you
25 declined that?

1 A Yes, sir. I was told to decline that.

2 Q You were told to, but whose decision was it?

3 A It was mine, because she said we could get a
4 better plea.

5 Q And you got an 18-year offer?

6 A First was 20-year violent. Second plea was
7 10-year and 10-year -- it was not ten and eight. It
8 was ten and ten. Actually, if someone were to look at
9 the paper work, they will see it is not 18; it was ten
10 and ten.

11 Q But either way, you declined that second plea
12 offer?

13 A Yes.

14 Q In terms of your discussions with her leading up
15 to trial, she said she wasn't comfortable going to
16 trial because she didn't think she could win?

17 A She said she was not comfortable with this, with
18 my whole case.

19 Q Because in her assessment the evidence against
20 you was strong and she didn't think you had a chance to
21 win?

22 A I'm assuming that is what she was thinking.

23 Q And as far as -- based on that, you are the one
24 that makes the decision to enter into the open plea?

25 A I still wanted to go to trial because she said

1 they had me on the court docket to go to trial. She
2 said she did not feel comfortable with it and that my
3 best situation was to take the open plea and she could
4 get me around 15, maybe suspended a little less, that I
5 would not get over 15.

6 Q So she promised you 15 years?

7 A Yes, sir.

8 Q Let me ask you. When the judge said he'll give
9 you 15 to life, why didn't you say no, no, no, I was --

10 A Because I -- I trusted my attorney.

11 Q And you also had an opportunity -- you said that
12 you wanted a new attorney?

13 A Yes, sir.

14 Q When the judge asked you if you were satisfied
15 with Ms. Hiller's services, why didn't you say I want a
16 new attorney?

17 A I don't remember him asking me that. I don't
18 recall that the day I was sentenced.

19 Q As far as your codefendants go -- strike that.

20 MR. THOMAS: That is all I have. Thank you.

21 MR. MASSEY: One or two.

22

23

24

REDIRECT-EXAMINATION

25

1 BY MR. MASSEY:

2 Q You weren't prepared for trial on the 4th, were
3 you?

4 A No.

5 Q You weren't prepared for trial on the 13th of
6 September, were you?

7 A No, sir.

8 Q And you never had been in trouble before?

9 A No, sir.

10 Q So you thought you are listening to the best
11 advice; is that correct?

12 A Yes, sir.

13 Q And it is your understanding today that you
14 didn't have that at that time?

15 A Yes.

16 MR. MASSEY: Nothing further.

17 MR. THOMAS: No follow-up.

18 THE COURT: You may come down. Any summation?

19 MR. MASSEY: Yes, Your Honor.

20 MR. THOMAS: Actually, Your Honor, I would like
21 to recall Ms. Hiller for the State's case.

22 THE COURT: I'm sorry. Go ahead.

23 THE CLERK: Is she still under oath, Judge?

24 THE COURT: Yes, ma'am.

25 DIRECT-EXAMINATION

1 BY MR. THOMAS:

2 Q What were your discussions with your client after
3 her sentencing?

4 A I don't recall.

5 Q Did you -- did she ever ask you to file an
6 appeal?

7 A I don't recall talking to her about that. I do
8 recall in between the sentencing and the plea talking
9 with Linda. I have a note that they wanted to appeal
10 the guilty plea, and it was in between the sentence and
11 appeal.

12 Q But you don't have anything after the sentencing
13 hearing from Ms. Rich telling you she wanted an appeal?

14 A I probably did not speak to her after she was
15 sentenced.

16 Q So you don't have any -- did you have any
17 communications from her after sentencing?

18 A I do not.

19 Q And as far as if you had filed an appeal in this
20 case, what would you -- what grounds -- let me ask you
21 this. Do you think you had grounds to file an appeal?

22 A An appeal on a guilty plea is an appeal to
23 whether the colloquy went correctly, and it is my
24 understanding whether she pled voluntarily, whether
25 there was something wrong there. I did not see

1 anything there. I did speak to the family after the
2 sentencing -- I remember we were talking down in the
3 lobby in this courthouse -- and I told them to find a
4 PCR attorney and if there was anything I could do to
5 help, I would.

6 MR. THOMAS: Thank you, Ms. Hiller.

7 CROSS-EXAMINATION

8 BY MR. MASSEY:

9 Q You don't recall any conversations from the plea,
10 September 13th, to the sentencing, which is a month
11 later?

12 A I mean, any conversations with Kristy?

13 Q Yes.

14 A I have a jail visit on the 4th.

15 Q But after the plea?

16 A After the sentencing, I don't have any record of
17 any communication with Kristy.

18 Q And you stated to the family of Ms. Merritt about
19 a PCR attorney?

20 A I did, because I did not think that they had
21 anything that was going to get them anywhere on appeal
22 for a guilty plea.

23 Q And you understand what you have to do is file a
24 PCR and what the underlying cause of action is,
25 correct?

1 A Yes. Absolutely.

2 Q And you advised them in so many words; is that
3 correct?

4 A I did.

5 MR. MASSEY: No further questions, Your Honor.

6 MR. THOMAS: No redirect.

7 THE COURT: You may come down.

8 MR. THOMAS: We can excuse her, Your Honor.

9 MR. MASSEY: Absolutely, Your Honor. Thank you,
10 Ms. Hiller.

11 THE COURT: Mr. Massey.

12 MR. MASSEY: May it please the Court, Your Honor.
13 I think the Court understands the gravity of what
14 Ms. Rich was facing with time going through a legal
15 matter. She's never been in court before. We do
16 understand she was there, we all understand that.
17 With a PCR it is ineffective assistance of counsel,
18 and with all respect, I don't think that Kristy
19 thought she was getting the service that she demanded
20 for a general sessions charge. I think that Ms. Rich
21 was getting advice in a competent way for a criminal
22 matter, but not of this caliber, not with all of the
23 codefendants and all that was going on. This was
24 probably a pretty heinous crime; it had to be for the
25 victim. I think that this might have been somewhat

1 out of her depth on this. She advised the family to
2 seek a PCR and told Kristy this.

3 Kristy got a large amount of time compared to
4 what the codefendants did. I don't think there was
5 some working -- I've done this for awhile where you
6 work with the codefendants' attorneys. If they are
7 not going to point the finger, you try to work to get
8 a deal as close as to what the other fellows or ladies
9 will get. I don't think there was any of that. I
10 don't think there was -- trying to understand what
11 Kristy was facing with these criminal charges and
12 trying to get that across to the Solicitor and trying
13 to say, okay -- and sometimes you have to play a
14 bluff, we know that in these cases. I think the
15 Solicitor got the bluff on this case. I think she
16 deserves a new trial. I think if there is any
17 question of doubt, I think she deserves a new trial
18 on that matter. That is all I have to say, Your
19 Honor.

20 THE COURT: Thank you.

21 MR. THOMAS: Your Honor, I understand the
22 allegations here of ineffective assistance of counsel,
23 but what it boils down to is she entered into an open
24 plea and got a harsh sentence from the judge. There
25 is no question here that the testimony today shows

1 they discussed the facts of this case. The facts
2 overwhelmingly indicates that she's somehow involved
3 in this. Counsel told her I thought we would lose,
4 and I think that is a valid assessment of the evidence
5 by trial counsel in this case. Based on that
6 assessment, she said the best deal here is to enter
7 into this plea.

8 Now, it is not Ms. Hiller's job to go out and get
9 a plea. The Solicitor makes a plea offer. The
10 Solicitor made a 20-year plea offer; that was
11 declined. He made an 18 or 10-and-10 offer; that was
12 declined. The Solicitor never made an offer that was
13 relative to the codefendant. Ms. Hiller said she
14 tried and the Solicitor didn't offer one. The fact
15 that she was not able to secure a plea offer is not a
16 viable claim for ineffective assistance of counsel.
17 She testified that she reviewed everything. She said,
18 Yeah, maybe I could have subpoenaed people. But if
19 they had gone to trial that day, I don't think Ms.
20 Hiller could have done anything differently, whether
21 she spent an infinite amount of time between the 4th
22 and the 13th, or whether she spent the amount of time
23 that is in her records. So in that situation, I would
24 say that the guilty plea was clearly entered with the
25 understanding that it is an on open plea, 15 to life.

1 Ms. Hiller never promised her anything. If she did
2 promise her anything, the judge cleared that up when
3 he said 15 to life. I admit, she's under oath at that
4 point in time, had no complaints about her attorney.
5 She said she had plenty of time to talk with her. She
6 understood what she was doing and admitted to the
7 facts. That is black letter law. That is not an
8 involuntary guilty plea under these circumstances. I
9 point out that Ms. Hiller is a very good attorney, she
10 is. She cares about her client. I think that was
11 obvious, but the fact that she's willing to help her
12 out at this point, we have to view that in the light
13 of the totality of the circumstances. The fact that
14 she told her to file a PCR is in no way an admission
15 she did something wrong. I think even her testimony
16 up there shows she did everything she could under
17 these circumstances. It is a harsh sentence
18 comparatively, but that what the judge decided and
19 there is nothing that Ms. Hiller could have done to
20 change that.

21 THE COURT: Thank you. Counsel.

22 MR. MASSEY: Nothing, Your Honor.

23 THE COURT: Good. I'll accept proposed orders
24 within 30 days.

25 (The proceedings concluded.)

1 CERTIFICATE OF REPORTER

2 State of South Carolina)

3 County of Horry)

4

5 I, Natalie Dahl, Official Court Reporter for the
6 State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete Transcript
8 of Record of the evidence introduced in the hearing of
9 the above-captioned case, relative to appeal, in the
10 Court of Common Pleas for Horry County, South
11 Carolina, on the 3rd day of February, 2015.

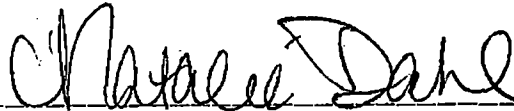
12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.

14

15 July 13, 2018

16

17



18

Natalie Dahl, RPR

19

Court Reporter

20

21

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25

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| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF HORRY |) | FOR THE FIFTEENTH JUDICIAL CIRCUIT |
| Kristy Meritt Rich, #352864, |) | Case No. 2013-CP-26-6669 |
| |) | |
| Applicant, |) | |
| |) | |
| v. |) | ORDER OF DISMISSAL |
| |) | |
| State of South Carolina, |) | |
| |) | |
| Respondent. |) | |
| |) | |

Horry County
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This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 4, 2013. Respondent made a timely Return on or about June 2, 2014. The Court convened an evidentiary hearing into the matter on February 3, 2015, at the Horry County Courthouse. Applicant was present at the hearing and represented by Kenneth Blaine Massey, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on her own behalf at the evidentiary hearing. Applicant's plea counsel, Laura L. Hiller, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Horry County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this case. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In May 2012, the Horry County Grand Jury indicted Applicant for first degree burglary (2012-GS-26-2217) and kidnapping

(2012-GS-26-2215). Laura L. Hiller, Esquire ("plea counsel"), represented Applicant. On September 13, 2012, Applicant pled guilty as indicted. The Honorable W. Jeffrey Young deferred sentencing to October 12, 2012, at which time he sentenced Applicant to concurrent terms of twenty-five years (25) on each charge. Applicant did not appeal her plea or sentence.

II. ALLEGATIONS

In her Application, Applicant alleges she is being held in custody unlawfully for the following reasons:

1. "I am not guilty of the crime charged and convicted of."
2. "I had ineffective assistance of counsel. I met with my attorney four times prior to my plea for a total of an hour of time."
3. "My attorney was not and is not a criminal attorney."
4. "All of the co-defendants are doing dramatically less time than I am."
5. "I had no prior criminal record. My attorney knew all of the above but yet failed to zealously represent me."
6. "There was no trial preparation done by the attorney, no going over all of the criminal discovery with my attorney, so I had no preparation, no legal help except to get me to plea."
7. "She never told me if she had any meetings with the solicitor other than she had received the plea offer."
8. "I only met with her for my plea the day of my plea."

At the evidentiary hearing, Applicant proceeded on the following grounds:

1. Ineffective assistance of counsel for failing to investigate.
2. Ineffective assistance of counsel for failing to adequately prepare for trial.
3. Ineffective assistance of counsel for failing to secure a plea offer in line with Applicant's co-defendants.
4. Ineffective assistance of counsel for failing to file a notice of appeal.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The

Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Summary of Testimony

Plea counsel testified she has been a practicing attorney since 2008. She recalled becoming involved in Applicant's case in March 2012. Plea counsel testified she met with Applicant at least seven (7) times. She recalled reviewing the State's discovery response with Applicant. Plea counsel recalled Applicant denied she went to the victim's house with the intent to rob him. Accordingly, plea counsel prepared to take the case to trial. She recalled speaking to the co-defendants' attorneys, who indicated some of the co-defendants were prepared to testify against Applicant at trial. She also recalled some of the co-defendants receiving ten (10) and twelve (12) year plea offers. Plea counsel testified she discussed the co-defendants' plea deals with Applicant. She also testified she discussed the process of a jury trial with Applicant, including her right to testify.

Plea counsel also recalled ongoing plea negotiations with the State. She testified the State initially offered to allow Applicant plead guilty to lesser charges in exchange for an aggregate twenty (20) year sentence. Plea counsel testified the State's second offer was for an aggregate sentence of eighteen (18) years. Plea counsel testified she discussed both of these plea offers with Applicant, and Applicant rejected them both. Plea counsel recalled attempting to negotiate a sentence in line with the co-defendant's ten (10) and twelve (12) year sentences. Plea counsel also testified she did not recalled telling the State Applicant would only accept an offer of ten (10) years, but she attributed the State's failure to make a twelve (12) year offer to her efforts to secure a lesser sentence for Applicant.

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Plea counsel testified she met with Applicant a week before the plea, at which time Applicant indicated she would proceed to trial. Plea counsel indicated her notes did not reflect much time spent on the case between this meeting and the plea. However, she denied telling Applicant she was not prepared for trial. Instead, plea counsel advised Applicant the chance of success at trial was small. Plea counsel testified Applicant made the ultimate decision to enter a guilty plea. Plea counsel also testified she advised Applicant the judge could issue a sentence between fifteen (15) years and life. Plea counsel denied promising Applicant a specific sentence, but did advise Applicant she would argue for a lower sentence based on Applicant's lack of a criminal record. Plea counsel testified she spoke with Applicant's family after the plea, and they were upset with the sentence. She recalled advising the family they could file a post-conviction relief application. However, she did not recall them asking her to file an appeal. She also had no communications with Applicant about filing an appeal. Plea counsel admitted there were no viable appellate issues stemming from the plea.

Applicant testified she had four (4) co-defendants. She testified two (2) co-defendants received twelve (12) year sentences, the third received an eight (8) year sentence, and the fourth had his charges dropped. She recalled discussing these sentences with plea counsel. Applicant testified she told plea counsel to investigate the co-defendants and her relationship with the victim. She recalled reviewing some discovery with plea counsel. She also recalled discussing the charges and potential sentences with plea counsel. Applicant testified she informed plea counsel she wanted a trial because she did not go to the victim's house with the intent to rob him.

Applicant admitted she rejected the State's initial offers of twenty (20) and eighteen (18) years. Applicant testified she wanted to go to trial, but plea counsel scared her by saying she was

not prepared for trial. Applicant alleged she wanted to relieve plea counsel before the plea. However, she admitted she entered the plea because she did not believe she would be successful at trial. Applicant alleged plea counsel advised her she would receive a sentence of fifteen (15) years for her plea. Applicant recalled the judge advising her he could give her a life sentence, but she did not recall him asking her if she was satisfied with her attorney. Applicant testified she asked for an appeal of her sentence, but one was never filed.

B. Ineffective Assistance of Plea Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, Applicant must prove plea counsel's "conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether plea counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes plea counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). 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 Court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the Court measures plea counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea counsel's 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. IN the context of a guilty plea, Applicant must show there is a reasonable probability that, but for plea counsel's alleged errors, she would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

1. Failure to Investigate

The Court finds Applicant failed to meet her burden to show plea counsel ineffective for failing to investigate. Plea counsel reviewed the discovery provided by the State, which included statements and a video of the crime. She spoke with the attorneys representing the co-defendants. Plea counsel appeared to be deeply familiar with the facts of Applicant's case. The Court finds plea counsel's investigation was reasonable under the circumstances. See Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011) (citing Daniels v. State, 676 S.E.2d 13 (Ga. 2009)). Furthermore, failure to conduct an independent investigation is not *per se* ineffective assistance of counsel, especially where an investigation would not have uncovered any helpful information. Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). The only fact of the case Applicant disputes is her intent at the time of the burglary. She has presented no evidence how a further investigation would have yielded information relevant to that issue.

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The Court also notes Applicant had an intimate relationship with the victim in this case. The victim recognized Applicant from the surveillance video of the crime. In light of the facts of this case, Applicant has failed to show how a further investigation would have caused her to proceed to trial. See Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009) (applicant must show “something that would have affected counsel's advice to [the applicant] to accept the plea bargain offered or that would have caused [the applicant] to decline to accept it”). Accordingly, the Court finds Applicant has not met her burden to show plea counsel’s investigation was deficient or that she was prejudiced by the extent of plea counsel’s investigation.

2. Failure to Adequately Prepare for Trial

The Court finds Applicant failed to meet her burden to proving plea counsel ineffective for failing to prepare for trial. Plea counsel was clearly familiar with the facts of the case. She was also familiar with the State’s evidence, including the victim’s identification of Applicant from a surveillance video and the co-defendants’ statements. Plea counsel also indicated she understood Applicant’s version of events and would have presented a defense that Applicant did not go to the victim’s house with the intent to rob him. The Court gives no credit to plea counsel’s attempts to cast herself as unprepared for trial.¹ Furthermore, to the extent Applicant alleges plea counsel failed to adequately consult with her prior to the anticipated trial date, the Court notes brevity of consultation is not *per se* grounds for relief. See Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) (“Therefore, it is not enough to merely show that counsel only met

¹ The Court notes plea counsel demonstrated at the evidentiary hearing that she has a strong desire to see Applicant receive a new trial or a reduced sentence. Unfortunately for Applicant, plea counsel also demonstrated she is a competent attorney who thoroughly and professionally represented Applicant in light of the overwhelming evidence of Applicant’s guilt.

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with Easter twice before trial as long as counsel devoted sufficient time to insure an adequate defense and to become thoroughly familiar with the facts of the case and the law applicable to the case.”); cf. Avery v. Alabama, 308 U.S. 444 (1940) (no denial of constitutional right to assistance of counsel where counsel appointed three days before capital trial). Although plea counsel indicated her notes do not reflect much trial preparation in the week leading up to the plea, her testimony otherwise indicates she adequately prepared and conferred with Applicant, and was thoroughly competent in her representation.

Furthermore, Applicant has presented no evidence of how further trial preparation would have affected her decision to enter a guilty plea. See Harris v. State, 377 S.C. 66, 76, 659 S.E.2d 140, 145 (2008) (applicant must show how counsel’s alleged lack of preparation would have changed outcome of the proceedings) (citing Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997))). The Court finds not credible Applicant’s testimony she pled guilty because plea counsel was unprepared. Applicant was given an opportunity to voice any displeasure she had with plea counsel at her plea. At that time, she indicated to the judge she was satisfied with counsel’s performance and needed no further time to consult with her. (Sep. 13, 2013 Plea Tr. p. 11, lines 3-16). In light of her sworn testimony at her plea, Applicant cannot now be heard to complain that she needed more time with plea counsel or that she wanted a new attorney. See Kolle v. State, 386 S.C. 578, 597 n.7, 690 S.E.2d 73, 83 n.7 (2010) (Kittredge, J., dissenting) (an inmate should not be able to collaterally attack a plea where counsel’s alleged deficiency was known at the time of the plea and the inmate lied about counsel’s performance at the plea); Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007)



("[S]tatements 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." (citations omitted)). Instead, the Court finds credible plea counsel's testimony she advised Applicant they were unlikely to be successful at trial because of the overwhelming evidence against Applicant. The Court agrees with this assessment and finds counsel's advice was reasonable under the circumstances. Stalk, 383 S.C. at 563, 681 S.E.2d at 594. Accordingly, the Court finds Applicant has not met her burden to demonstrate counsel was ineffective in preparing for trial.

3. Failure to Secure a Plea Offer of a Lesser Sentence

The Court finds Applicant failed to meet her burden of proof to show plea counsel ineffective for failing to secure a plea offer to a lesser sentence. Trial counsel has no affirmative duty to request certain plea offers from the State. Van Wart v. United States, CRIM. RWT-07-0492, 2013 WL 3788535, at *3 (D. Md. July 18, 2013) (quoting United States v. Pender, 514 Fed. Appx. 359 (4th Cir. 2013) (unpublished)). Instead, the State has the discretion to offer a defendant the opportunity to enter a plea as opposed to calling a case for trial. State v. Blakely, 402 S.C. 650, 658, 742 S.E.2d 29, 33 (Ct. App. 2013) (quoting State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2012)). However, a defendant cannot force the State to accept the terms of her proposed plea offer. See, e.g. State v. Miller, 375 S.C. 370, 389, 652 S.E.2d 444, 454 (Ct. App. 2007) ("The State is not bound to accept a defendant's terms simply because a defendant reveals otherwise undiscoverable facts in the hope of securing a favorable plea agreement." (citing State v. Whipple, 324 S.C. 43, 476 S.E.2d 683 (1996))).

Plea counsel attempted to negotiate a suitable plea offer for Applicant. The State only

offered Applicant pleas of twenty (20) and eighteen (18) years. Applicant admitted she made the decision to reject these offers. The State made no further plea offers. Plea counsel cannot be held at fault for the State refusing to make an offer to Applicant similar to its offers to the co-defendants.² Accordingly, the Court finds Applicant has not demonstrated plea counsel was ineffective for failing to secure a plea offer similar to the co-defendants' offers.

The Court further finds Applicant has not demonstrated plea counsel mis-advised her about the potential sentence she would receive for her plea. On this issue, the Court finds plea counsel's testimony credible and Applicant's testimony not credible. Plea counsel advised Applicant she was entering her plea without negotiations or recommendations. Although plea counsel told Applicant she hoped the judge would issue a minimum sentence, she also advised Applicant the judge would ultimately decide the sentence. Furthermore, the transcript clearly indicates the judge explained the possible sentence to Applicant. (Sept. 13, 2013 Plea Tr. p. 8, lines 10-18). Applicant also admitted she had not been promised a lesser sentence. (Sept. 13, 2013 Plea Tr. p. 10, lines 14-18). Therefore, Applicant cannot now claim she expected to receive a fifteen (15) year sentence. Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997) ("Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made."); see also Holden v. State, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011) (alleged mis-advice regarding sentence length

² Again, the Court gives no credit to plea counsel's attempts to shoulder blame for the State not extending an offer acceptable to Applicant. There is simply no evidentiary support in the record to show plea counsel's negotiations affected the State's decision to not offer a ten (10) or twelve (12) year plea.

cured by plea colloquy). Accordingly, the Court finds Applicant has not demonstrated plea counsel was ineffective in failing to secure a lower sentence.

4. Failure to File a Notice of Appeal

The Court finds Applicant failed to meet her burden of proving she did not knowingly and voluntarily waive her right to a direct appeal from her guilty pleas. Trial counsel normally must ensure that a criminal defendant is made fully aware of his appeal rights. White v. State, 263 S.C. 110, 118, 208 S.E.2d 35, 39 (1974). However, “[a]bsent extraordinary circumstances ... there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.” Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (citing Roe v. Flores-Ortega, 528 U.S. 470 (2000); Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995)). Extraordinary circumstances arise where “there are nonfrivolous grounds for appeal” or the applicant “reasonably demonstrated an interest in appealing.” Id. Furthermore, a defendant may waive a direct appeal by making a “knowing and intelligent decision not to pursue the appeal.” Simuel v. State, 390 S.C. 267, 271, 701 S.E.2d 738, 739-40 (2010) (quoting Sheppard v. State, 357 S.C. 646, 594 S.E.2d 462 (2004)).

The Court finds credible plea counsel’s testimony that Applicant never requested an appeal be filed. The Court also finds credible plea counsel’s testimony she saw no viable appellate grounds. Accordingly, the Court finds Applicant has not demonstrated the existence of extraordinary circumstances that would require plea counsel to even consult with Applicant regarding a right to an appeal. Furthermore, the judge advised Applicant of the right to appeal her plea. (Sept. 13, 2013 Plea Tr. p. 12, lines 4-7). Her failure to request plea counsel file an appeal constitutes a waiver of any right to an appeal. Bonnette v. State, 277 S.C. 17, 18, 282

S.E.2d 597, 598 (1981) (“Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver.” (citing 92 C.J.S. Waiver, p. 1063 (1955))). Therefore, the Court finds Applicant has not demonstrated she did not knowingly and voluntarily waive her right to a direct appeal from her plea.

C. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter 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.

IV. CONCLUSION

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

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from his attorney’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), SCRCR, provides that if Applicant wishes to seek appellate review, her attorney 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.

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IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 17 day of MARCH, 2015.



THE HONORABLE G. THOMAS COOPER, JR.
Presiding Judge

CHARLESTON, South Carolina

Johns

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)

Kristy Rich 352864
Full name and/prison number (if any) of Applicant.)

15

7861

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Leath Correctional Institution
2. Name and location of Court which imposed sentence General Sessions, Horry County
3. Name(s) of co-defendant(s) (if any) Randy Melvin, Rick Melvin, Daniel Autrey
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) _____
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) October 19, 2012 25 yr. sentence
 - (b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty X _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

no _____

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) my attorney stated they would file an appeal

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

Ineffective Assistance of Counsel

- (a) ~~my 1st attorney did not file an appeal~~
- (b) ~~To have a PCR hearing after which I~~
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) my 1st attorney Laura Hiller (on paper)
- (b) my PCR attorney Kenneth Messerly
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. PCR
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. Horry County
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____

- iv. _____
- (d) the date of each such disposition:
 - i. February 2nd 2015
 - ii. _____
 - iii. _____
 - iv. _____

- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. I was denied my PCR
 - ii. _____
 - iii. _____
 - iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:
 - i. _____
 - ii. _____
 - iii. _____
- (b) the proceedings in which each ground was raised:
 - i. _____
 - ii. _____
 - iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) I am filing ineffective counsel on my PCR attorney
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? _____
- (c) your sentencing? yes _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Laura Hiler Myrtle Beach, S.C.
 - ii. Kenneth Massey (PCR) Myrtle Beach, S.C.
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Plea
 - ii. PCR
 - iii. _____

19. State clearly the relief you seek in filing this application:

To be able to have a trial, for a chance to

20. Are you now under sentence from any other court that you have not challenged?

no

Had she failed to file an appeal, she never explained that an appeal or a sentence reduction could be filed immediately, she only advised my family that I would have to file a PCR once I was at prison had I known about an appeal or a sentence reduction I would have filed for it. Had her performance been adequate, the outcome of my situation would have been different. She failed to represent character witnesses, expert testimony, failed to make mention of less capable involvement in the charged offense. She failed to prepare a plausible and viable defense. She failed to prepare and properly inform me of the strategic defense of accepting an open ended plea. This violates my constitutional rights of the 8th + 14th Amendment.

The rights are afforded to every individual through the United States Constitution.

Counsel failed to submit an appeal within the 10 day time frame allotted by the Court, immediately after the sentencing phase, I informed my attorney I needed something prepared and she led ~~me~~ ^{my family} to believe a PCR was all there was.

I also had a PCR hearing and when I was denied I was led to believe my attorney filed an appeal but, at a later time was informed he did nothing but after months informed my family there was nothing he could do that I need to write the Parole board and plead my case.

19.

appeal my case.

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

15

7861

I, Kristy Riel hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Kristy Riel
Applicant

SWORN or affirmed to and subscribed before me this
29th day of October, 2015.

Jandra B. Hill
Notary Public

My Commission Expires: Jan. 8, 2013

NOTARY PUBLIC
JAN 8 2013
ALBANY COUNTY

| | | |
|--------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | FOR THE FIFTEENTH JUDICIAL CIRCUIT |
| COUNTY OF HORRY |) | |
| |) | |
| Kristy Merritt Rich, |) | Case No.: 2015-CP-26-7861 |
| S.C.D.C. No. 352864, |) | |
| |) | |
| Applicant, |) | |
| |) | RETURN AND |
| v. |) | PARTIAL MOTION TO DISMISS |
| |) | |
| State of South Carolina, |) | |
| |) | |
| Respondent. |) | |
| |) | |

In response to the post-conviction relief application filed November 3, 2015 the Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Horry County Clerk of Court's orders of commitment. The Horry County Grand Jury indicted Applicant at the May 2012 term for kidnapping (2012-GS-26-02215) and first-degree burglary (2012-GS-26-02217). Laura L. Hiller, Esquire represented Applicant.

On September 13, 2012, Applicant pled guilty as indicted and without negotiations or recommendations. On October 12, 2012, the Honorable W. Jeffery Young sentenced the Applicant to twenty-five (25) years' imprisonment for kidnapping and twenty-five (25) years' imprisonment for first-degree burglary, to be served concurrently. Applicant did not appeal.

2013-CP-26-06669

Applicant filed her first application for PCR on October 4, 2013 (2013-CP-26-06669). Applicant set forth the following allegations:

1. "I am not guilty of the crime charged and convicted of."

2. "I had ineffective assistance of counsel. I met with my attorney four times prior to my plea for a total of an hour of time.
3. "My attorney was not and is not a criminal attorney."
4. "All of the co-defendants are doing dramatically less time than I am."
5. "I had no prior criminal record. My attorney knew all of the above but yet failed to zealously represent me."
6. "There was no trial preparation done by the attorney, no going over all of the criminal discovery with my attorney, so I had no preparation, no legal help except to get me to plea."
7. "She never told me if she had any meetings with the solicitor other than she had received the plea offer."
8. "I only met with her for my plea the day of my plea."

Respondent made a timely return on or about June 2, 2014. The Court convened an evidentiary hearing into the matter on February 3, 2015, at the Horry County Courthouse. Applicant was present at the hearing and represented by Kenneth Blaine Massey, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent. The application for post-conviction relief was denied and dismissed with prejudice on March 25, 2015. Applicant did not appeal the dismissal.

II.

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

1. Ineffective assistance of counsel; in that:
 - a. "Failed to file an appeal. She never explained that an appeal or sentence reduction could be filed immediately. She only advised my family that I would have to file a PCR once I was at prison had, I known about an appeal or a sentence reduction I would have filed for it."
 - b. "Failed to present character witnesses, expert testimony."
 - c. "Failed to make mention of less capable [sic] involvement in the charged offense."
 - d. "Failed to prepare a plausible [sic] and viable defense."
 - e. "Failed to prepare and properly inform me of the strategic defense of accepting an open ended plea."
2. Ineffective assistance of PCR counsel; in that:
 - a. "I also had a PCR hearing and when I was denied I was led to

believe my attorney filed an appeal but at a later time was informed he did nothing, but after months informed my family there was nothing he could do that I need to write the parole board and plead my case.”

Attached to this return and incorporated herein are the records of the Georgetown County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, and the order of dismissal from Applicant's prior PCR action. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Excepting the allegations that prior trial counsel and prior PCR counsel each failed to file notices of appeal, the application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

Applicant was convicted on September 13, 2013, and did not appeal her plea or sentence. The current application was not filed until November 3, 2015—more than a year after the one-year statutory filing period expired. Therefore, excepting Applicant's claims pursuant to Austin, the application should be summarily dismissed as barred by the statute of limitations.

IV.

Excepting the allegation that prior PCR counsel failed to file a notice of appeal, the application should be summarily dismissed because it is successive to Applicant's previous PCR application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina

Code states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991).

Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised ... in the previous application." Id. at 450, 409 S.E.2d at 394. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id., see also Graham v. State, 378 S.C. 1, 661 S.E.2d

337 (2008) (applying the above rules to White claims that could have been raised in a prior PCR action). Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant's current allegations, including Applicant's claim pursuant to White v. State, were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant has failed to establish any sufficient reason why she could not have raised her current allegations in her previous application for post-conviction relief. Therefore, she has failed to meet the burden imposed upon her, and the application should be dismissed as successive to Applicant's previous PCR application.

V.

Applicant alleges that her prior PCR counsel failed to appeal the denial of her first PCR application. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under § 17-27-90." Aice, 305 S.C. at 451, 409 S.E.2d at 394.

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. Id. Austin "is limited to its particular factual situation..."

Aice, 305 S.C. at 452, 409 S.E.2d at 394. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. Respondent requests an evidentiary hearing *solely* on the matter of the Applicant's entitlement to an Austin Review.

VI.

Respondent denies each allegation not expressly admitted, qualified or explained.

VII.

WHEREFORE, except for Applicant's claim pursuant to Austin v. State, Respondent moves to summarily dismiss the application, because it is untimely and successive. Respondent requests an evidentiary hearing solely on the issue of Applicant's request for a belated review of the dismissal of her prior PCR action pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

Respectfully submitted,


ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

May 16, 2017

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 KRISTY MERRITT RICH, #352864,)
)
 Applicant,)
)
 vs.)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

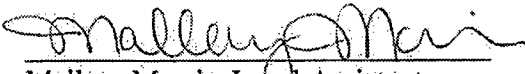
2015-CP-26-7861

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by e-mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Partial Motion to Dismiss** on the above-captioned matter on the following person by e-mail:

Mr. Steven W. Fowler, Esquire
1018 Highway 17 South
North Myrtle Beach, SC 29582

DATED this 16th day of May, 2017.



 Mallory Morris, Legal Assistant
 For Respondent

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State of South Carolina)
County of Horry)

Kristy Merritt Rich)
vs.)
State of South Carolina)

Court of Common Pleas
2015-CP-26-07861

Transcript of Record

November 29th, 2017
Conway, South Carolina

BEFORE:

Honorable William H. Seals, Jr., Judge.

APPEARANCES:

Steven W. Fowler, Esq.
Attorney for the Applicant

Johnny E. James, Jr., Esq.
Attorney for the State

Teresa J. F. Bautz, RPR
Official Court Reporter

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I N D E X

| WITNESS | DIR | CROSS | RED | REC |
|-------------------|-----|-------|-----|-----|
| Kristy M. Rich | | | | |
| Mr. Fowler | 6 | -- | 12 | -- |
| Mr. James | -- | 11 | -- | -- |
| Kenneth B. Massey | | | | |
| Mr. James | 13 | -- | -- | -- |
| Mr. Fowler | -- | 15 | -- | -- |

E X H I B I T S

| NO. | DESCRIPTION | ID | EV |
|-----|------------------------|----|----|
| 15 | No exhibits submitted. | | |

21 Exhibits retained by Clerk of Court.

1 (The hearing commenced at approximately
2 12:14 p.m.)

3 THE COURT: Yes, sir.

4 MR. JAMES: If it may please the Court, this is
5 the matter of Kristy Merritt Rich versus the State of
6 South Carolina, Docket No. 2015-CP-26-7861. Ms. Rich
7 is present here in the courtroom today and is
8 represented by Mr. Steve Fowler, Esquire.

9 Your Honor, Ms. Rich was indicted by the Horry
10 County Grand Jury in May of 2012 for kidnapping and
11 first degree burglary. Laura Hiller, Esquire
12 represented Ms. Rich on those charges. On
13 September 13th, 2012, Ms. Hiller pled guilty -- I'm
14 sorry, Ms. Rich pled guilty as indicted without
15 negotiations or recommendations. And the Honorable
16 Jeffrey Young on October 12, 2012, sentenced Ms. Rich
17 to 25 years imprisonment, and 25 years imprisonment for
18 first degree burglary as well as the kidnapping.

19 She filed a first application for post conviction
20 relief on October 4th, 2013, and that was Docket No.
21 2013-CP-26-6669. She proceeded to an evidentiary
22 hearing on that application on February 3rd, 2015, at
23 which time she was represented by Mr. Kenneth Massey,
24 Esquire, and the State was represented by Joshua
25 Thomas, Esquire. That application for post conviction

1 relief was denied and dismissed with prejudice on
2 March 25th, 2015, and Ms. Rich did not appeal.

3 In the current application, Your Honor, she filed
4 that on November 3rd, 2015. Your Honor, there is a
5 pending partial motion to dismiss that application on
6 grounds that it is successive, filed well after the
7 statute of limitations and excepting, of course, the
8 allegation that prior PCR counsel failed to file a
9 notice of appeal that she requested.

10 And so, Your Honor, because it is untimely and
11 successive, we would respectfully request that the
12 application's allegations of ineffective assistance of
13 plea counsel be summarily dismissed.

14 THE COURT: All right. Mr. Fowler?

15 MR. FOWLER: May I have a moment, Your Honor.

16 (Discussion off the record.)

17 MR. FOWLER: Your Honor, we would object to that
18 in the application and both in my discussions with my
19 client, that she is very concerned and it shows in the
20 application of both her underlying case on this and
21 along with the PCR counsel, we feel like today we show
22 evidence and testimony that in both the PCR and the
23 underlying trial counsel, plea counsel, would be shown
24 deficient and lacking, Your Honor. So we object to
25 this -- to the State's motion.

1 THE COURT: How do you plan to get around the
2 statute of limitations?

3 MR. FOWLER: We'll discuss that with my client on
4 the stand, Your Honor.

5 THE COURT: I'm going to grant the State's motion
6 to dismiss.

7 MR. FOWLER: All right.

8 MR. JAMES: Thank you, Your Honor.

9 THE COURT: Call your next case.

10 MR. JAMES: Oh, I'm sorry, Your Honor. That was a
11 partial motion to dismiss.

12 THE COURT: All right.

13 MR. JAMES: To be clear, there is still an
14 allegation that prior PCR counsel, and quoting from the
15 application as set forth in our return, let's see: I
16 also had a PCR hearing, and when I was denied I was led
17 to believe my attorney filed an appeal but at a later
18 time was informed he did nothing, but after months
19 informed my family there was nothing he could do, that
20 I need to write the parole board and plead my case.
21 So, Your Honor, there's still an Austin claim
22 outstanding.

23 THE COURT: All right. I'm ready to proceed when
24 you are, Mr. Fowler.

25 MR. FOWLER: I would like to call Ms. Rich to the

1 stand, please.

2 KRISTY M. RICH, after being duly sworn, testified
3 as follows:

4 THE CLERK: You can have a seat. State your name
5 for the Court.

6 THE APPLICANT: My name is Kristy Rich.

7 DIRECT EXAMINATION

8 BY MR. FOWLER:

9 Q Ms. Rich, you're familiar -- you and I have spoken
10 by phone; right?

11 A Yes, sir.

12 Q And twice, at least; right?

13 A Yes, sir.

14 Q And you're familiar with what a PCR hearing is;
15 correct?

16 A Yes, sir.

17 Q So you understand what's going on today?

18 A Yes, sir, I do.

19 Q All right. In terms -- you also in your
20 application as the State has mentioned, you stated that
21 you've already had one PCR on this; correct?

22 A Yes, sir, I have.

23 Q Who was your trial counsel on that?

24 A Kenneth Massey.

25 Q Okay. What was your communication with him?

1 A He came to visit me at Leath one time, and then
2 communicated with my family.

3 Q Okay.

4 A With my sister.

5 Q Okay. What was the result of that PCR?

6 A It was denied.

7 Q Okay. Do you feel like at that time that
8 additional information could have been presented to the
9 Court?

10 A Yes, sir, I do.

11 Q What specifically?

12 MR. JAMES: Objection, Your Honor. Ineffective
13 assistance of post conviction relief is not a
14 cognizable claim on a post conviction relief hearing.
15 The only issue that remains for us to consider is the
16 Austin issue.

17 THE COURT: Granted.

18 MR. FOWLER: All right.

19 Q Well, in terms of your PCR hearing, okay?

20 A Yes, sir.

21 Q Do you remember, you said in your application, I
22 needed something prepared. And I think you stated in
23 your application that you felt your -- you were told
24 that PCR was your only option; is that correct?

25 How did you initially come to a PCR before today's

1 hearing on the previous PCR?

2 A My trial -- Laura Hiller had recommended to my
3 family, told my family after I was sentenced that that
4 was the only thing that I could do was a PCR once I got
5 to prison.

6 Q Okay.

7 A There was nothing else that could be done.

8 Q So is that why you didn't file any kind of appeal?

9 A Yes, sir.

10 Q Okay.

11 A I didn't know about a sentence reduction, I didn't
12 know about appeals. I didn't know anything except for
13 what she had told my family.

14 Q So that sent you to the previous PCR; correct?

15 A Yes, sir.

16 Q All right. At that point, what were your
17 discussions with your attorney on appeals at that point
18 of a PCR?

19 A After my PCR was denied, I was led to believe that
20 he had filed for my appeal. He told my sister he was
21 working on something, that he would take care of
22 everything. And then after a few months I didn't hear
23 anything, my sister called him and called him and
24 called him. And he said, well, there was nothing else
25 he could do except --

1 MR. JAMES: Objection, hearsay.

2 THE COURT: Sustained.

3 Q So you didn't have any -- well, did you have any
4 conversation with him after your PCR hearing?

5 A I wrote him. But I had no way to contact him, I
6 couldn't call him.

7 Q All right. But you did try to communicate;
8 correct?

9 A Yes, sir.

10 Q Okay. In those communications what did you say to
11 him in writing?

12 A I asked him if he was working on anything, that I
13 need an appeal filed, that my sister said he was
14 appealing everything, that he was working on something,
15 and I need to know what it was.

16 Q So you'd indicated that to him that that was your
17 knowledge; correct?

18 A Yes, sir.

19 Q In terms of -- did you find out if he did file an
20 appeal or not?

21 A After several months he told my sister that he
22 didn't. The only thing I could do was write the parole
23 board.

24 Q Did he ever indicate to you that --

25 A No.

1 Q -- he did not? So there was no direct
2 communication -- well, was there any direct
3 communication after your PCR where he represented you?

4 A No, sir.

5 Q Okay. So he -- okay. Did you indicate to him in
6 a timely fashion that you wanted a PCR appeal?

7 A Yes, sir.

8 Q Okay. Why do you feel like you needed to appeal
9 that PCR?

10 A Because there was several things with my case. I
11 was pushed into a plea, I was scared, and my attorney
12 told me that was what I needed to take, because if I
13 didn't and went to trial, it would be bad. There were
14 several issues with it. All of my codefendants were
15 housed together. They all went against me because they
16 got less sentences.

17 Q So you felt like there were substantial issues
18 that you could stand on for the appeal; correct?

19 A Yes, sir.

20 Q Okay. So okay, very good. And you notified him
21 in a timely manner now that you look back at it?

22 A Yes, sir.

23 MR. FOWLER: No further questions, Your Honor.

24 THE COURT: All right. Cross?

25 CROSS-EXAMINATION

1 BY MR. JAMES:

2 Q Ms. Rich, when precisely did you ask Mr. Massey to
3 file an appeal on your behalf?

4 A I wrote a letter maybe a month or so after we had
5 been to court. But my sister had also talked to him
6 right after we went to court, right after my PCR was
7 denied. She stayed in constant contact on the phone
8 with him.

9 Q Okay. Did he ever respond to the letter that you
10 sent?

11 A The only thing I got back, and I wish I would have
12 brought it today, but I didn't know exactly if I was
13 coming today, was the stuff, a copy of where my PCR had
14 been denied.

15 Q Out of an abundance of caution, Ms. Rich, you
16 indicated that you weren't certain if you were coming
17 today. Is there a reason why you didn't know if you
18 were coming today?

19 A I was supposed to leave yesterday to come, and I
20 didn't come. There was some problems with my
21 transportation at the prison.

22 Q Okay.

23 MR. JAMES: No further questions, Your Honor.

24 THE COURT: All right. Redirect?

25 REDIRECT EXAMINATION

1 BY MR. FOWLER:

2 Q So were you aware of the time limits for filing a
3 PCR appeal?

4 A No, sir.

5 Q Did your attorney tell you anything about that?

6 A No, sir.

7 Q Okay. So did you feel like your sister was an
8 adequate person to notify him that you wanted an
9 appeal?

10 A Yes, sir. Because she had -- she was my power of
11 attorney, and she took care of everything when it came
12 to him before I came to court, before we came to court
13 with him.

14 Q And as to whether you were coming today, were you
15 referring to a transportation issue?

16 A My trans -- yeah.

17 Q Okay.

18 A So...

19 Q All right.

20 MR. FOWLER: No further questions, Your Honor.

21 THE COURT: All right. You may step down.

22 THE WITNESS: Thank you.

23 (Witness excused.)

24 THE COURT: Thank you. Call your next witness.

25 MR. FOWLER: Let me confer with my client.

1 (Discussion off the record.)

2 MR. FOWLER: No further witnesses, Your Honor.

3 THE COURT: All right. State?

4 MR. JAMES: State calls Mr. Massey.

5 KENNETH MASSEY, after being duly sworn, testified
6 as follows:

7 THE CLERK: Have a seat. Just state your name.

8 THE WITNESS: Kenneth Massey.

9 DIRECT EXAMINATION

10 BY MR. JAMES:

11 Q Good afternoon, Mr. Massey.

12 A Good afternoon.

13 Q How did you come to represent Ms. Rich on her PCR?

14 A A friend of her family knew her family, her sister
15 over in NC contacted me.

16 Q After the post conviction relief hearing, did
17 Ms. Rich ask you to file a notice of appeal on her
18 behalf?

19 A Not at all. In fact, as soon as I got the
20 determination I sent it in the mail to her and also
21 sent it to her sister over in North Carolina. And I
22 believe she called me like a month and a half, two
23 months later, after her sister had called me. Because
24 I always talked to the sister first. But I think she
25 did call me.

1 Q And just to be clear, the post conviction relief
2 hearing, did the judge rule from the bench, or did he
3 take it under advisement?

4 A I believe he took it under advisement, from what I
5 remember.

6 Q And thereafter you got a filed order?

7 A I did. I think it was sometime after that.

8 Q Okay.

9 A Our hearing lasted almost three hours.

10 Q Yikes. And you sent that filed order to Ms. Rich
11 or to her sister?

12 A To both.

13 Q To both.

14 A The client and to her sister.

15 Q And then the client called about a month and a
16 half after that?

17 A I believe so, or she wrote me. But I did talk to
18 her sister like a week after that.

19 Q Okay. Did her sister -- were you prompted to file
20 anything after the discussion with her sister?

21 A No.

22 Q Did you ever inform Ms. Rich of her right to
23 appeal from a post conviction relief?

24 A I'm sure I did, yes.

25 Q Do you have any records to indicate as much?

1 A No, I don't. I went up there two or three times.
2 When I say up there, where she was in prison. And I
3 spoke to her sister numerous times.

4 MR. JAMES: I have no further questions.

5 THE COURT: All right. Cross?

6 CROSS-EXAMINATION

7 BY MR. FOWLER:

8 Q So would you say that her sister was a proper
9 agent for her in representing her?

10 A She got all communications that I gave to the
11 client, yes.

12 Q When you say you spoke with her sister, fairly
13 soon after the PCR hearing?

14 A I believe so. Not after the hearing, it was after
15 I received and after she had received a copy from me of
16 the judge's determination.

17 Q So you and her had a discussion, you and the
18 sister?

19 A Um-hum.

20 Q Okay. So you were in the courtroom when my client
21 testified earlier; correct?

22 A Yes.

23 Q And she indicated that the sister had indicated
24 that she would like an appeal; correct?

25 A I don't remember that question, no, I don't.

1 Q Okay. But so you -- I guess the thing --

2 A When I got the call from the sister asking about
3 what they could do then, it was like a month and a
4 half, two months later. And I told them the time had
5 expired. The best thing they could do is probably
6 parole.

7 Q Okay. Did you receive any letters from Ms. Rich
8 in regards to the appeal?

9 A From Kristy, not that I recall, no.

10 Q Okay.

11 MR. FOWLER: No further questions, Your Honor.

12 THE COURT: All right. You may step down.

13 (Witness excused.)

14 THE COURT: Call your next witness.

15 MR. JAMES: No other witnesses, Your Honor.

16 THE COURT: All right. I'll take it under
17 advisement.

18 MR. JAMES: Thank you, Your Honor.

19 MR. FOWLER: Thank you.

20 (The hearing concluded at approximately
21 12:30 p.m.)

22 (End of Transcript of Record)

23

24

25

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
 COUNTY OF HORRY)
)
 Kristy Merritt Rich,) Case No.: 2015-CP-26-07861
 S.C.D.C. No. 352864,)
)
 Applicant,)
) **ORDER OF DISMISSAL**
 v.)
)
 State of South Carolina,)
)
 Respondent.)

HORRY COUNTY
 2018 FEB 28 PM 12:45
 HERRICK ELLIS
 CLERK OF COURT
 HORRY COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed by Kristy Merritt Rich (“Applicant”) on November 3, 2015. Respondent made its return on or about May 16, 2017. The Court convened an evidentiary hearing into the matter on Wednesday, November 29, 2017, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by Steven W. Fowler, 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 prior PCR counsel, Kenneth B. Massey, Esq. (“Counsel”) 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 Horry County Clerk of Court regarding the subject convictions, the Order of Dismissal of Applicant’s prior PCR action, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the May 2012

term of the Horry County Grand Jury for kidnapping (2012-GS-26-02215), and burglary, first degree (2012-GS-26-02217). Laura L. Hiller, Esq. represented Applicant, and J. Stephen Grooms, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On September 13, 2012,¹ Applicant pled guilty as indicted before the Honorable W. Jeffrey Young. On October 12, 2012, Judge Young sentenced Applicant to imprisonment for concurrent terms of 25 years on each charge. Applicant did not appeal her plea or sentence.

First PCR Application: 2013-CP-26-06669

Applicant filed her first application for post-conviction relief on October 4, 2013 (2013-CP-26-06669). She alleged the following grounds for relief in his application:

1. "I am not guilty of the crime charged and convicted of."
2. "I had ineffective assistance of counsel. I met with my attorney four times prior to my plea for a total of an hour of time."
3. "My attorney was not and is not a criminal attorney."
4. "All of the co-defendants are doing dramatically less time than I am."
5. "I had no prior criminal record. My attorney knew all of the above but yet failed to zealously represent me."
6. "There was no trial preparation done by the attorney, no going over all the criminal discovery with my attorney, so I had no preparation, no legal help except to get me to plea."
7. "She never told me if she had any meetings with the solicitor other than she had received the plea offer."
8. "I only met with her for my plea the day of my plea."

Respondent made its return on June 2, 2014, and an evidentiary hearing into the matter was convened on February 3, 2015, before the Honorable G. Thomas Cooper, Jr. Applicant was present at the hearing and represented by Kenneth Blaine Massey, Esq. Joshua L. Thomas, of the South Carolina Attorney General's Office, represented Respondent. At the evidentiary hearing, Applicant proceeded forward on the following grounds:

¹ The Court notes what appears to be a scrivener's error on the face of the plea transcript, which indicates Applicant pled guilty on September 13, 2013. The sentencing sheets and sentencing transcript both indicate Applicant was sentenced October 12, 2012.

1. Ineffective assistance of counsel for failing to investigate.
2. Ineffective assistance of counsel for failing to adequately prepare for trial.
3. Ineffective assistance of counsel for failing to secure a plea offer in line with Applicant's co-defendants.
4. Ineffective assistance of counsel for failing to file a notice of appeal.

Applicant testified on her own behalf, and Laura L. Hiller, Esq., also testified. By written order dated March 17, 2015, and filed March 25, 2015, Judge Cooper denied and dismissed the application. Applicant did not appeal the final order of the Court.

Present Application

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

1. "Ineffective assistance of counsel,"
 - a. "My 1st attorney Laura Hiller failed to file an appeal. She never explained that an appeal or a sentence reduction could be filed immediately. She only advised my family that I would have to file a PCR once I was at prison had I known about an appeal or a sentence reduction I would have filed for it. Had her performance been adequate the outcome of my situation would have been different."
 - b. "She failed to present character witnesses, expert testimony, failed to make mention of less capable involvement in the charged offense."
 - c. "She failed to prepare a plausible and viable defense. She failed to prepare and properly inform me of the strategic defense of accepting an open ended plea. This violates my constitutional rights of the 8th and 14th amendment."
2. Ineffective assistance of PCR counsel, in that:
 - a. "I also had a PCR hearing and when I was denied I was led to believe my attorney filed an appeal but at a later time was informed he did nothing but after months informed my family there was nothing he could do that I need to write the parole board and plead my case."

At the evidentiary hearing, Respondent renewed its motion to dismiss the claims of ineffective assistance of counsel and proceed only on the claim pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

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. Respondent's Partial Motion to Dismiss

Respondent argues Applicant's allegations of ineffective assistance of plea counsel should be summarily dismissed as untimely and successive. The Act provides that:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A). Applicant pled guilty on September 13, 2012, and was sentenced October 12, 2012. Applicant did not appeal. Therefore, the statute of limitations ran on Monday, October 14, 2013. The present application was not filed until November 3, 2015. Excepting Applicant's White and Austin claims, the application is time-barred.

Furthermore, Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a

subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised ... in the previous application." Id. at 450, 409 S.E.2d at 394. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Excepting only the Austin claim, Applicant's current allegations were or could have been raised in the proceedings based on Applicant's prior applications for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. The arguments provided by Applicant at the evidentiary hearing were not compelling. Applicant has failed to establish any sufficient reason why she could not have raised her allegations of ineffective assistance of plea counsel in her previous application for post-conviction relief. Applicant's allegations are either identical to, or very closely overlap those allegations raised in her first application for post-conviction relief.

For these reasons, the Court affirms its ruling at the evidentiary hearing, Respondent's motion to dismiss Applicant's claims of ineffective assistance of plea counsel is **GRANTED**, and Applicant's allegations of ineffective assistance of plea counsel are **DISMISSED**.

B. Austin Claim

Applicant alleges that she was denied the right to appeal the dismissal of her previous post-conviction relief application. Where an Applicant is denied an opportunity to properly appeal an adverse final ruling of a court in a post-conviction relief action, he or she may seek limited relief in a subsequent action to correct the unfairness. Austin v. State, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991). "A PCR applicant is entitled to an Austin appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived." Odom v. State, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999) (citing King v. State, 308 S.C. 348, 348-49, 417 S.E.2d 868 (1992)). If the PCR court finds an applicant was denied his or her right to appeal, the applicant can petition for certiorari and the South Carolina Supreme Court will review whether he or she was prejudiced by the failure to obtain appellate review. Id. "The one-year statute of limitations for PCR applications is not applicable to appeals filed pursuant to Austin v. State." Id., 337 S.C. at 263, 523 S.E.2d at 756.

At the evidentiary hearing, Applicant testified Counsel told her he was working on something after her first application for relief was denied. Applicant testified she asked if she needed to file an appeal. On cross-examination, Applicant expanded on her answer, and explained she wrote a letter to Counsel about a month later. Applicant testified her sister was involved in assisting her in the matter and had stayed in contact with Counsel.

Counsel testified he talked to Applicant about her right to an appeal, but that she never asked for any appeal. Counsel indicated Applicant called him roughly a month-and-a-half after he sent the order denying relief. Counsel denied Applicant's sister ever prompted him to file an appeal from the prior PCR.

The Court finds Applicant is entitled to no relief pursuant to Austin v. State. The Court finds Applicant was fully apprised of her right to appeal from an adverse result in a PCR action by both Counsel and by the Order of Dismissal itself. The Court finds Applicant simply failed to request Counsel seek an appeal in a timely manner, thereby waiving her right. Accordingly, Applicant's request for Austin 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 she must file and serve a notice of appeal **within thirty (30) days** from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

[Order & Signature on following page]

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 15th day of Feb, 2018.



WILLIAM H. SEALS, JR.
Presiding Judge
Fifteenth Judicial Circuit

Mari _____, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF Horry)

Kristy M. Rich, #352864)

Plaintiff)

v.)

State Of South Carolina)

Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.
2015-CP-26-7861

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

| | |
|---|--|
| Plaintiff's Attorney: Steven W. Fowler, Bar No. 69683 Address: 730 Main St., Unit 237 N. Myrtle Beach, SC 29582 phone: fax: e-mail: other: | Defendant's Attorney: Johnny E. James Jr, Bar No. 10000 Address: Post Office Box 11549 Columbia, SC 29911-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: other: |
|---|--|

2018 FEB 28 PM 1:45
 Horry County
 Clerk's Office

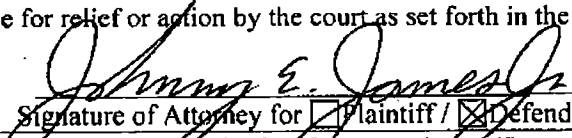
MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

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

February 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, SCRPC)
 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: _____

MAILED
 2/15/18 - JPH



ALAN WILSON
ATTORNEY GENERAL

February 26, 2018

HORRY COUNTY
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC
2018 FEB 28 PM 12:45

The Honorable Renee N. Elvis
Clerk of Court, Horry County
Post Office Box 677
Conway, SC 29528-0677

Re: Kristy M. Rich, #352864 v. State of South Carolina
2015-CP-26-7861

Dear Ms. Elvis:

Enclosed please find the original **Order of Dismissal** signed by the Honorable William H. Seals, Jr., in the above-captioned case, for filing in your office.

Pursuant to Rule 71.1(f), of the South Carolina Rules of Civil Procedure, please "provide notice of entry of judgment and serve a copy of the order or judgment to the parties as provided in Rule 77(d), SCRCP."

In addition, please forward proof of service and a time stamped copy back to our office for our file.

Should you have any questions, please do not hesitate to call me at (803) 734-3737.

Sincerely,

Johnny Ellis James Jr.
Assistant Attorney General

JEJ/mm

Enclosure

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on MAY 24, 2012, the Grand Jurors of Horry County present upon their oath:

KIDNAPPING

CDR: 0095 16-03-0910

That Kristy Merritt Rich did in Horry County on or about July 22, 2011, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Travis Williams, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



J. GREGORY PEMBREE
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Scott Causey North Myrtle Beach Dept of Public Safety

DOCKET NO. 2012-GS-26- 02215

C

**The State of South Carolina
County of Horry**

J. Stephen Grooms 12H00402

COURT OF GENERAL SESSIONS

MAY, 2012 TERM

ARREST WARRANT NUMBER

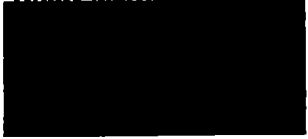
J743362
CDR: 0095 16-03-0910
DOA: 1/20/2012

THE STATE

vs.

ACTION OF GRAND JURY

Kristy Merritt Rich W/F



TRUE BILL

Brandon Causey
Foreperson of Grand Jury
Date: **MAY 24 2012**

ATTORNEY: Hiller, Laura L.

VERDICT

Indictment for

KIDNAPPING

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury
Date:

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

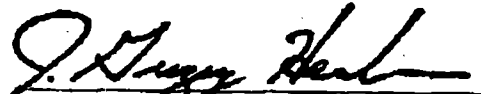
At a Court of General Sessions, convened on MAY 24, 2012, the Grand Jurors of Horry County present upon their oath:

BURGLARY, FIRST DEGREE

CDR: 0079 16-11-0311

That Kristy Merritt Rich did in Horry County on or about July 22, 2011, enter the dwelling of Travis Williams located at Magnolia Drive, North Myrtle Beach, without consent and with the intent to commit a crime therein and the defendant did so in the nighttime, in violation of Section 16-11-0311(A), S. C. Code of Law, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY PEMBREE
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Scott Causey North Myrtle Beach Dept of Public Safety

DOCKET NO. 2012-GS-26- 02217

**The State of South Carolina
County of Horry**

J. Stephen Grooms

12H00402

COURT OF GENERAL SESSIONS

MAY, 2012 TERM

ARREST WARRANT NUMBER

J743360

CDR: 0079 16-11-0311

DOA: 1/20/2012

THE STATE

vs.

ACTION OF GRAND JURY

TRUE BILL

Kristy Merritt Rich W/F

ATTORNEY: Hiller, Laura L.

Brendia Lanna
Foreperson of Grand Jury

Date:

MAY 24 2012

VERDICT

Indictment for

BURGLARY, FIRST DEGREE

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury

Date:

ORIGINAL