

BURTS TURNER & RHODES
ATTORNEYS AT LAW

SAM BURTS (1907 - 1982)
NOEL TURNER (1928 - 2011)
RICHARD H. RHODES
M. NOEL TURNER, III
WILLIAM H. RHODES

260 NORTH CHURCH STREET
SPARTANBURG, S.C. 29306
PHONE: 864-585-8166
FAX: 864-583-6927
WWW.BTRLAWFIRM.COM

July 9, 2019

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

RECEIVED
JUL 12 2019
S.C. SUPREME COURT

Re: Stephanie Leigh Howard vs. State of South Carolina
2017-CP-42-04446

Dear Mr. Shearouse:

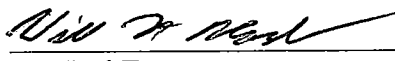
I am enclosing an original Notice of Intent to Appeal on the above PCR matter. I have also enclosed an original proof of service on opposing counsel and the Clerk of Court for Spartanburg County. It is my understanding that there is no filing fee for a Post-Conviction Relief Appeal.

I am also enclosing a copy of a letter which I have sent to the Court Reporter to order a copy of the transcript. A copy of this letter has been sent to the Court Administration and opposing counsel.

Please do not hesitate to contact me should you have any questions or require any further information.

With kind regards, I am

Sincerely,
BURTS, TURNER & RHODES

By: 
Noel Turner
William H. Rhodes

cc:

Jordan Cox, Esquire
Johnny Ellis James, Jr., Esquire
S.C. Attorney General's Office
Rembert C. Dennis Building
1000 Assembly Street
Columbia, SC 29201

Ms. Amy Cox
Clerk of Court for Spartanburg County
180 Magnolia Street
Spartanburg SC 29306

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

THE HONORABLE R. LAWTON MCINTOSH
CASE NO. 2017-CP-42-04446

Stephanie Leigh Howard,
S.C.D.C. No. 371295

Appellant,

versus

State of South Carolina,

Respondent.

PROOF OF DELIVERY

This is to certify that on the 10th day of July, 2019, the undersigned, secretary to William H. Rhodes, Esq., and Noel Turner, Esq., served a copy of the **NOTICE OF INTENT TO APPEAL** by depositing a copy of the same into the United States Mail, postage pre-paid and in the correct amount to the following:

Jordan Cox, Esquire
Johnny Ellis James, Jr., Esquire
S.C. Attorney General's Office
Rembert C. Dennis Building
1000 Assembly Street
Columbia, SC 29201

Ms. Amy Cox
Clerk of Court for Spartanburg County
180 Magnolia Street
Spartanburg SC 29306


JO ANN CHAMPION

SWORN to before me this 10th
day of July, 2019.

 (SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 12-10-2025

RECEIVED
JUL 12 2019
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

THE HONORABLE R. LAWTON MCINTOSH
CASE NO. 2017-CP-42-04446

Stephanie Leigh Howard,
S.C.D.C. No. 371295

Appellant,

versus

State of South Carolina,

Respondent.

NOTICE OF INTENT TO APPEAL

The Appellant appeals from the Final Order of the Honorable R. Lawton McIntosh dated June 13, 2019 and received by the Appellant on June 24, 2019.



Noel Turner, Esquire
William H. Rhodes, Esquire
Burts Turner & Rhodes
260 North Church Street
Spartanburg, S.C. 29306
Attorneys for Appellant

Date: July 9, 2019

Other Counsel of Record:

Jordan Cox, Esquire
Johnny Ellis James, Jr., Esquire
S.C. Attorney General's Office
Rembert C. Dennis Building
1000 Assembly Street
Columbia, SC 29201

Ms. Amy Cox
Clerk of Court for Spartanburg County
180 Magnolia Street
Spartanburg SC 29306

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) FOR THE SEVENTH JUDICIAL CIRCUIT
)

Stephanie Leigh Howard,
S.C.D.C. No. 371295,

) Case No.: 2017-CP-42-04446
)

Applicant,

) ORDER OF DISMISSAL
)

v.

State of South Carolina,

Respondent.

This matter comes before the Court by way of an application for post-conviction relief filed by Stephanie Leigh Howard ("Applicant") on December 5, 2017. Respondent made its return on or about January 16, 2018. The Court convened an evidentiary hearing into the matter on Monday, January 14, 2019, at the Spartanburg County Courthouse in Spartanburg, South Carolina. Applicant was present at the hearing and represented by William H. Rhodes and Noe Turner, Esqs. Jordan Cox and Johnny Ellis James Jr., Esqs., of the South Carolina Attorney General's Office, represented Respondent.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 JAN 18 PM 1:46

Applicant testified on her own behalf at the evidentiary hearing. Applicant additionally called as witnesses her original plea counsel, Andrea L. Price, Esq. ("Counsel"), Applicant's aunt Wilma Dianne Whitt, and Dr. Thomas V. Martin. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Spartanburg County Clerk of Court regarding the subject convictions, the pleadings, the exhibits introduced at the evidentiary hearing, and the briefs submitted by the parties subsequent to the hearing at this Court's request. 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 Spartanburg County Clerk of Court. Applicant was indicted at the August 2016 term of the Spartanburg County Grand Jury for bank robbery (2016-GS-42-04433). Andrea L. Price, Esq. represented Applicant, and Timi Poulos, Esq., of the Seventh Circuit Solicitor's Office, prosecuted the case. On January 25, 2017, Applicant pled guilty as indicted. The Honorable Roger L. Couch sentenced Applicant to imprisonment for a term of 12 years. Applicant, by and through counsels Rhodes and Turner, moved for reconsideration of her sentence by filing on January 27, 2017. Judge Couch convened a hearing on Applicant's motion on February 2, 2017. Applicant was represented by counsels Rhodes and Turner, and the State was again represented by Assistant Solicitor Poulos. Judge Couch denied the motion from the bench. Applicant did not appeal her plea, sentence, or the denial of her motion for reconsideration.

Present Application

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

1. Ineffective assistance of counsel for:
 - a. "failure to keep Applicant informed of important developments;"
 - b. "failure to adequately communicate statutory classification of offense and its consequences;"
 - c. "failure to properly advise Applicant on plea offers and expectations in order to make an informed decision to accept or reject offers;"
 - d. "failure to request a mental health evaluation of Applicant;"
 - e. "failure to investigate and adequately prepare for plea;"
 - f. "failure to adequately advise judge at plea of all relevant mitigating facts; and"
 - g. "advising Applicant that she would receive a probationary sentence of home detention without having any agreement with the State to support the contention."

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 JUN 18 5 PM 1:46

2. Involuntary guilty plea, in that:
 - a. "Applicant was not fully advised of the consequences of the plea and the charges against her in order to make an informed decision."
 - b. "Applicant was misadvised as to the expected outcome."
 - c. "Plea counsel recommended rejecting a reasonable offer from the State, which would have resulted in significantly less period of incarceration than pleading straight-up to bank robbery without a recommendation."
 - d. "Plea counsel informed the Applicant that it was highly unlikely that she would receive jail time in a straight-up plea to bank robbery."
 - e. "Instead, Plea Counsel led the Applicant to believe that she would receive probation, and at the worst she would be sentenced to a period of home detention."

Applicant requests relief as follows:

- "Vacate, set aside or correct the sentence and grant a new trial."

At the evidentiary hearing, Applicant additionally asserted that she was not competent to assist Counsel at trial or enter a guilty plea, and could have pursued a M'Naughten defense.

Additionally, at the outset of the hearing, Applicant knowingly, intelligently, and voluntarily waived any possible allegations of ineffective assistance of appellate counsel and proceeded with counsels Rhodes and Turner's representation.

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2019 JUN 18 PM 1:46

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel & Involuntary Guilty Plea

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813

(1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Butler, 286 S.C. at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (quoting Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 JUN 18 PM 1:46

reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694). With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Applicant further claims her plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of the plea and the charges against him or her. Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); see also Boykin v. Alabama, 395 U.S. 238, 243 (1969) (Courts must make sure defendants have "a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought, and forestalls the spin-off of collateral proceedings that seek to probe murky memories."). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. Crawford v. United States,

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 JUN 18 PM 1:14

519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir.1985)).

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); Richardson v. State, 310 S.C. 360, 363, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Id. at 696-97.

1. Failure to Keep Applicant Informed

The record before this Court shows that Counsel kept Applicant thoroughly apprised of the status of her case.¹ "The brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." Collins v. State, 422 S.C. 250, 258, 810 S.E.2d 871, 875 (2018). In order to show prejudice from a claim of inadequate consultation, an applicant

¹ Applicant's allegations overlap in many respects. To the extent this allegation pertains to the nature of the charges, their classifications, and their sentencing ranges, that issue is addressed in Section II.A.2. To the extent that this allegation pertains to plea negotiations, that issue is addressed in Section II.A.3. To the extent that this allegation pertains to Applicant's mental health issues, those issues are collectively addressed in Section II.A.4.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 JUN 18 PM 1:36

must show what evidence or argument could have been developed had counsel more frequently communicated with Applicant. Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)). Mere speculation and conjecture on the part of the applicant is insufficient to substantiate an allegation that counsel's deficient performance was prejudicial to her. Id.

During the plea proceeding, Judge Couch asked Applicant if she had enjoyed an opportunity to consult with Counsel about "these matters," to which Applicant replied that she had. (Plea Tr. 7, ll. 19-23). Applicant confirmed she was satisfied with Counsel's performance to that point. (Plea Tr. 7-8). Applicant denied needing any time to speak with Counsel further. (Plea Tr. 8, ll. 2-4). Applicant denied there was anything else she wanted Counsel to do. (Plea Tr. 8, ll. 5-7). Asked again by the court, Applicant again expressed her satisfaction with Counsel's representation. (Plea Tr. 8, ll. 8-10).

Later during the proceeding, Judge Couch explained to Applicant in detail that she had constitutional rights to be tried before a jury, where she would be presumed innocent, and where the burden would be upon the State to prove her guilt beyond a reasonable doubt. (Plea Tr. 11, ll. 17-25). Judge Couch continued by explaining to Applicant that she had the right to present any witnesses she felt would be favorable to her, that she had the right to confront or question anybody who would testify against her at trial, and that she had the right to present any defenses to the charges. (Plea Tr. 13, ll. 1-12). Still further, Judge Couch told Applicant she had the right to remain silent, and that the jury would be instructed that her silence could not be used against her. (Plea Tr. 13, ll. 13-18). Applicant confirmed she understood her rights and that she had no questions regarding them. (Plea Tr. 13, ll. 19-24). After the State's recitation of facts, Applicant

FILED
CLERK OF COURT
Spartanburg Court
2019 JUN 18 PM 3:46

declined the opportunity to “reconsider or take back anything” she told the court. (Plea Tr. 18, ll. 11-14).

Applicant testified she first met with Counsel at a preliminary hearing on July 25, 2016. The preliminary hearing did not actually occur, but Applicant and Counsel enjoyed about 30 minutes to meet and discuss her case. Applicant additionally testified to multiple phone conversations similarly lasting 20-30 minutes. Applicant testified she told Counsel about her suicide attempt, mental health problems, her history of prior hospital admissions, and provided her medical records. Applicant asserted she only met Counsel three times, and that each meeting lasted 30 minutes or less. Applicant testified that on one occasion she thought she was supposed to meet with Counsel at her office and waited there for about thirty minutes, missing a court date as a consequence, which resulted in a bench warrant for her arrest. Applicant testified she had no opportunity to meet with Counsel immediately before the plea, and that there were no discussions during the plea hearing. Applicant testified she never received letters or paper documents from Counsel, only phone calls. On cross-examination, Applicant testified that the issuance of the bench warrant was simply the result of miscommunication.

Applicant’s aunt, Wilma Dianne Whitt, testified that she attended three meetings with Counsel alongside Applicant. Whitt testified the first meeting took place on September 3, 2016 and lasted for about twenty minutes. Whitt testified the second meeting took place on October 13, 2016, and lasted about thirty minutes in the hallway of the public defender’s office. Whitt testified the third meeting took place January 12, 2017, and lasted twenty to thirty minutes outside of the courtroom. Whitt further noted that the last of those three meetings was the day a bench warrant was issued for Applicant’s arrest.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 JUN 18 PM 7:46

Counsel testified she first met Applicant face-to-face on July 25, 2016, but noted they had previously conversed by phone, with their first call taking place May 24, 2016. Counsel testified she met with Applicant face-to-face on five occasions, and spoke to Applicant by phone on a number of other occasions. Counsel recalled that in their first meeting, Applicant was able to tell Counsel what happened and what was contained in the State's case; Applicant admitted her guilt to Counsel and Counsel set out negotiating a plea on her behalf. Counsel noted that nothing Applicant said contradicted the information provided by the State in discovery.

Applicant generally expressed that she could not remember the plea proceeding very well. Applicant denied any knowledge or understanding of her constitutional rights to a jury trial, or to confront the witnesses against her, and professed that she could not remember being informed of those rights during the plea hearing. Applicant did affirm she understood the State carried the burden of proof during a criminal trial. On cross-examination, Applicant affirmed she was truthful in her responses to the plea court.

The Court finds Applicant has failed to present *any evidence* to support her burden of proof to show any deficiency on the part of Counsel in adequately communicating with her, let alone any prejudice from the lack of communication alleged. Counsel credibly testified meeting with Applicant on five occasions and speaking to Applicant on the phone numerous times. The miscommunication and resulting bench warrant does not appear to have been anything more than an honest misunderstanding between Applicant and Counsel, and this Court perceives no prejudice to Applicant from the incident. Applicant fully informed Counsel of the facts pertinent to her case at the first meeting. Applicant was fully informed of her constitutional rights and acknowledged she understood them during the plea proceeding. For all of these

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 JAN 18 PM 01:40

reasons, the Court finds Applicant has presented no evidence to support her burden as to either prong of Strickland and, accordingly, her request for relief by way of this allegation is DENIED.

2. Failure to Explain Charges, Potential Sentence

The record before this Court shows that Applicant was thoroughly apprised of the charges against her and the consequences of her conviction on the charges. "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." Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997).

At the outset of the plea proceeding, Judge Couch informed Applicant that she was before him on a charge of entering a bank depository or building with the intent to steal, and that the charge carried a possible sentence range of zero to 30 years; Applicant indicated she understood. (Plea Tr. 5, ll. 10-16). The plea court further advised Applicant that the crime was classified as a serious offense, and explained the classification could enhance the sentence of convictions in the future for certain crimes, but noted that it would not affect her sentence at day; Applicant indicated she understood. (Plea Tr. 5-6). Judge Couch continued and explained that her offense carried a "no parole provision," and that she would not be eligible for parole before serving "about 85 percent of whatever the sentence is."² (Plea Tr. 6, ll. 12-19). The plea court further explained that ultimately parole was a creature of statute, and whether Applicant would be granted parole would be up to a Parole Board; Applicant indicated she understood. (Plea Tr. 6-7). Judge Couch explained that the State was making no sentencing recommendation as part of the plea and that he would have the authority to sentence Applicant to the maximum

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2009 JUN 18 PM 1:46

² Entering a bank with intent to steal is a Class A felony and is thus a "no parole offense" subject to a minimum service of 85% before parole may be granted. See S.C. Code Ann. § 16-1-90(A) (Class A felony); S.C. Code Ann. § 24-13-100 (Class A felonies defined as "no parole offense"); S.C. Code Ann. § 24-13-150(A) (providing for 85%).

permitted by law; Applicant indicated she understood. (Plea Tr. 8, ll. 11-19). Only then did Applicant plead guilty. (Plea Tr. 8, ll. 20-24).

The plea court thereafter confirmed with Counsel that Counsel reviewed with Applicant “the nature of the charges, the penalties involved, any defenses she might have had to the charge, any alternatives as far as negotiations that may have gone on.” (Plea Tr. 8-9). Counsel replied that she had done so “several times[,]” expressed her belief that Applicant understood the discussions, indicated she agreed with Applicant’s decision, and confirmed Applicant was able to assist her in preparing for the matter. (Plea Tr. 11-21).

Applicant asserted during the evidentiary hearing that she could not remember the plea proceeding very well. Applicant noted that she thought she was pleading to a non-violent offense, but that the sentencing sheet was marked “violent.” Applicant was uncertain as to the impact of the classification, and testified that although Judge Couch addressed the issue during the plea, she did not understand. On cross-examination, Applicant testified she understood she was facing between zero and thirty years, but that she still thought she would receive home detention. Applicant acknowledged Judge Couch explained the classification of the offense during the plea proceeding. Applicant could not remember speaking at the plea hearing.

Applicant cannot meet her burden of showing prejudice from the deficiency she alleges. That Applicant cannot now remember the plea proceeding, whether by choice or condition, does not obviate the truthfulness of her acknowledgements during the proceeding. The plea court clearly and thoroughly explained the charge against Applicant, the minimum and maximum charge, and its classification. The plea court explained to Applicant in plain and simple terms that she was pleading guilty to a “no parole offense” which would require service of at least 85% of the sentence imposed. Applicant indicated every time that she understood, and reaffirmed she

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 JUN 18 PM 4:46

was being truthful at the plea during the evidentiary hearing. Accordingly Applicant cannot show any prejudice from the deficiency alleged, and her request for relief by way of this allegation is DENIED.

3. Misadvice as to Plea Offers, Expected Sentence

The record before the Court shows that Counsel wisely advised Applicant to reject one plea offer, advised Applicant accept a second offer, and advised Applicant to plead guilty without the benefit of an offer. As noted at the outset of Section II.A.2., above, “[w]ishful 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.” Wolfe, 326 S.C. at 165, 485 S.E.2d at 371.

The Court will not restate every part of the thorough colloquy of the plea court already addressed above, but must here re-emphasize that Judge Couch explained that the State was making no sentencing recommendation as part of the plea and that he would have the authority to sentence Applicant to the maximum permitted by law, and that Applicant indicated she understood. (Plea Tr. 8, ll. 11-19). The facts of the case as articulated by the State at the plea proceeding provide that Applicant was recognized as a customer by one of the victimized tellers, despite Applicant’s disguise, was arrested in possession of the disguise and the money stolen from the bank, and fully confessed to investigators after her arrest. (Plea Tr. 14-16).

Applicant testified that she was informed of plea offers by Counsel over the phone. Applicant recalled learning of a five-to-seven-year offer in a phone conversation with Counsel lasting from twenty to thirty minutes. Applicant also recalled a phone conversation with Counsel also lasting twenty to thirty minutes; Counsel communicated an offer to plead guilty in exchange for one year of incarceration, to be followed by two years of home detention. Applicant testified

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 JUN 11 PM 1:45

that Counsel expressed that an offer for straight home detention would be forthcoming, and that Counsel went so far as to ask for home detention during the plea proceeding. In considering whether to accept or reject the one-year offer, Applicant recalled asking Counsel why she would accept one year if an offer of only home detention was forthcoming. Applicant acknowledged the offer of only home detention was never made by the State. Applicant initially testified that she thought the one year offer was still on the table at the time of the plea, but then retracted her claim and expressed she did not know. Applicant asserted she still felt the home detention offer would be forthcoming. Applicant explained that she pled straight up because she was advised to do so by Counsel. Applicant acknowledged the potential sentence was zero to thirty years. Applicant claimed Counsel advised her that she would receive a probationary sentence as part of her plea. As to the facts of her case, Applicant openly admitted her guilt during the evidentiary hearing and explained the facts from her perspective. Applicant was a customer of the bank she robbed on May 10, 2016, and went there earlier in the day wearing the same clothes she wore when she ultimately robbed it, notwithstanding the hat, glasses, and mask she utilized for disguise. Applicant denied drinking that day, and asserted she had been taking her prescribed medications, but stated she didn't remember going into the bank for the robbery.

On cross-examination, Applicant admitted she was trying to conceal her identity during the robbery. Applicant acknowledged she asked for money, left the bank with the money, got in her car, and drove away, but did not make it back to her home as the police stopped her along the way. Applicant testified she did remember being stopped by the police with the bank's money in the car. Applicant further recalled she spoke with the police after her arrest, but could not remember the contents of their conversation. Counsel later told her that she had given a confession, which would have been used against her in a trial. Applicant plainly stated at the

FILED
CLERK OF COURT
PATERSON COUNTY
2019 JUN 28 PM 1:16

evidentiary hearing: "I was guilty, of course." Applicant testified that she understood she was facing between zero and thirty years, but still believed that she would be sentenced to home detention or probation. Applicant acknowledged she told Judge Couch that she understood what was occurring during the plea proceeding, but reaffirmed that she believed the whole time that she was going to get home detention and that she believed the offer of one year of incarceration followed by a period of home detention was still on the table.

Counsel testified she was admitted to the South Carolina bar in 2006 and possessed twelve years of experience working in the public defender's office. Counsel acknowledged that a straight-up plea is "dangerous." Counsel testified that she advised Applicant to reject the initial offer to plead guilty in exchange for a sentence of five to seven years because she believed it was a little high, and reaffirmed her belief it was a little high. Applicant thus rejected the first offer. Counsel recalled that she offered to the State that her client would plead in exchange for a sentence of only home detention, as Applicant had specifically asked her to do so. The solicitor rejected Applicant and Counsel's proposal, indicating that Applicant needed to spend at least a year in jail, and counter-offered that Applicant could plead in exchange for one year in jail, to be followed by home detention. Counsel advised Applicant to take the offer, but Applicant rejected it. Counsel explained she discussed with Applicant the potential defenses they could raise in a trial, but noted her belief that it was in Applicant's best interest to enter a plea of guilty. Counsel did not believe she could raise an insanity defense because she never saw anything in Applicant to indicate a diminished capacity to distinguish moral right and wrong, or anything to indicate incompetency. On cross-examination, Counsel reviewed the strong evidence in the case: Applicant went into the bank, presented no weapon, but demanded money, then left and was

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2009 JUN 18 PM 3:47

arrested by the police before she could get home. Counsel noted Applicant did not resist arrest, and cooperated with police, giving a statement which indicated what happened.

The Court finds Applicant has failed to meet her burden of showing any deficiency of Counsel in advising her to plead guilty, let alone any prejudice to Applicant from that advice. First, Counsel's advice to Applicant to reject the first offer, thus leading to a substantially more favorable second offer, reflects her twelve years of experience with the public defender's office and the use of thoughtful judgment in navigating her client through plea negotiations. Second, because Applicant rejected the second, very generous offer from the State against the advice of Counsel, the Court can hardly discern how Counsel performed deficiently or how Applicant could have been prejudiced. Both Applicant and Counsel clearly acknowledged Applicant's plain guilt and the overwhelming strength of the case against her. The Court does not find credible Applicant's assertions that Counsel led her to believe that an offer to plead in exchange for a sentence of only home detention was forthcoming. Applicant's belief in this regard appears to be the product of wishful thinking, though not as Applicant insists of such character as to have rendered her plea involuntary, as is further explained in the following section. The Court does find credible Counsel's testimony as to how the plea negotiations progressed and how she counseled her Applicant through the course of those negotiations. Counsel did not lead Applicant to believe, or otherwise promise her, that she would receive a sentence of only home detention, or less than a year of prison followed by home detention. Finally, to whatever extent Applicant may have had any confusion about the terms of her guilty plea or what sentence she could expect from pleading guilty, the extremely thorough plea colloquy cleared any confusion. For all of these reasons, the Court finds no deficiency in Counsel's advice to Applicant

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 JUN 8 PM 1:47

throughout plea negotiations, nor any prejudice from the deficiency alleged, and her request for relief by way of these allegations is DENIED.

4. Failure to Investigate Applicant's Mental Health, Advise Court of Mitigating Facts

The gist of Applicant's grounds for relief is that she suffered from significant intellectual disabilities for years prior to her plea resulting in numerous hospitalizations and diagnosis of intellectual disorders. Applicant asserts ineffectiveness on the part of Counsel for not fully investigating her intellectual disability and the role it played in the bank robbery. Applicant also asserts that during the plea and prior, that she could not assist Counsel or understand the proceedings. Therefore, Applicant's plea was not freely, voluntarily and knowingly made.

In determining whether to seek a competency evaluation, an attorney may reasonably rely on his or her own perceptions of a defendant's competency. Garren v. State, 423 S.C. 1, 13, 813 S.E.2d 704, 710 (2018) (citing Jeter v. State, 308 S.C. 230, 232-33, 417 S.E.2d 594, 596 (1992); Ramirez v. State, 419 S.C. 14, 22-23, 795 S.E.2d 841, 845-46 (2017)). "When establishing Strickland prejudice in the context of plea counsel's failure to request a mental competency evaluation, the applicant need only show a reasonable probability that he was incompetent at the time of the plea." Garren, 423 S.C. at 12, 813 S.E.2d at 710 (quoting Ramirez, 419 S.C. at 27, 795 S.E.2d at 845). The test for competency is the same whether a defendant pleads guilty or goes to trial: whether the defendant has the present ability to consult with his or her attorney with a reasonable degree of rational understanding and the requirement that the defendant have a rational as well as a factual understanding of the proceedings against him. Id., 423 S.C. at 14, 813 S.E.2d at 711 (quoting Sims v. State, 313 S.C. 420, 423-24, 438 S.E.2d 253, 254-55 (1993)).

First, as to the claim that Counsel should have presented information regarding Applicant's mental health during mitigation, the Court notes that Counsel did in fact relate

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 JUN 18 PM 1:47

relevant aspects of Applicant's intellectual health treatment to the sentencing court. While admittedly not extensive (as was done during the motion to reconsider sentence hearing), Applicant's intellectual health was discussed. Trial counsel obviously reviewed Applicant's medical records. Any argument that Applicant was prejudiced by Counsel's failure to give a more exhaustive presentation in mitigation is defeated by the fact that counsels Rhodes and Turner made just such a presentation during the hearing on the motion for reconsideration, but to no avail. Though Applicant offered medical records from Applicant's primary care physician, records from the United States Social Security Administration regarding disability, and Dr. Martin's testimony, which were not presented during the plea or the hearing on the motion to reconsider, that evidence was either (a) not credible, as this Court explains below, or (b) merely cumulative to what had already been presented, accepted, and acknowledged.³

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 JUN 18 PM 1:47

As to Applicant's competence, Counsel testified that throughout her representation of Applicant, she was able to obtain information important to her defense. Applicant was able to provide detailed information that matched what was provided to Counsel through discovery. Counsel testified that Applicant never denied committing the robbery and only turned down the one-year offer, because she did not believe she should go to jail. Counsel testified that through her experience as a public defender, she had no reason to believe Applicant was incompetent at the time of her guilty plea.

During the post-conviction relief hearing, Applicant's expert, Dr. Thomas V. Martin, was qualified as an expert in forensic psychiatry. Dr. Martin testified that in his opinion, Applicant was suffering from diminished capacity at the time of the plea and could not fully understand the process.

³ Judge Couch explicitly explained at the hearing on the motion for reconsideration that he was aware of "those factors" when he issued the original sentence, and that her "issues" were why he sentenced her to 12 years for a crime that carries up to 30 years in prison. (Reconsideration Tr. 12-14).

The Court contrasts this matter and Dr. Martin's testimony to that presented in Ramirez v. State. In Ramirez, the Supreme Court of South Carolina held counsel's failure to request a competence evaluation was deficient based upon an expert witness' finding of incompetency and the attorney's own interactions with the applicant. The expert's report on Ramirez's mental health detailed a psychological evaluation of the defendant after five sessions, with each session lasting between three and four hours. The expert in Ramirez additionally supported his opinion with medical records, a number of psychological tests, and collateral interviews with Ramirez' family. The expert found Ramirez suffered from mental retardation from birth, attention deficit hyperactivity disorder (ADHD), and was only able to reach an eighth-grade education when he was sixteen years old. The expert concluded Ramirez had poor judgment and an impaired ability to regulate his impulses. The expert found Ramirez to be highly malleable, easily confused, and suffering limitations across the entire range of cognitive function, resulting in severely limited language and reading comprehension skills. The expert determined Ramirez was functioning at the intellectual level of a four to seven year old child. Ramirez's own attorney admitted she believed he never fully understood what was going on prior to and during the guilty plea.

In this case, however, Applicant was evaluated by Dr. Martin in May 2018—four months after her guilty plea and nearly two years after the bank robbery. Dr. Martin met with Applicant only once for a three hour session. Dr. Martin determined Applicant "was very amicable throughout this consultation and was considered a viable historian." Dr. Martin noted Applicant "presented no evidence [she] was malingering, and she appeared genuine and forthcoming throughout the examination." Dr. Martin described Applicant's thoughts as "overall coherent and goal-oriented." Dr. Martin presented no opinion as to Applicant's educational or intellectual limitations. Dr. Martin identified that Applicant was suffering from particular mental health

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 JUN 18 PM 1:47

disorders, which had previously been identified within Applicant's medical reports, and was under the influence of psychotropic medications which he asserted would have put her in "a fog."

Dr. Martin admitted that Applicant was very aware of her actions during the bank robbery and that she understood her actions were wrong. Nonetheless, Dr. Martin opined that Applicant did not have a rational understanding of what she was doing at the time of her bank robbery, or afterward. Dr. Martin further opined that Applicant was not competent to enter her guilty plea. The doctor reached his conclusions, in part, because of (1) Applicant's "irrational" decision to turn down a one year plea deal, (2) her uninspired disguise during the robbery, (3) her medical history, and (4) the neuroleptic, antipsychotic, and sedative medications she was on at the time of the plea. The doctor expressed no concerns about Applicant's testimony at the evidentiary hearing, and explained that although she had been impaired during the evaluation in May, she had been stable enough at that time to be competent to stand trial and be held criminally responsible. Dr. Martin did not believe Applicant would meet the M'Naughten standards.

The Court finds Dr. Martin's testimony not to be credible in light of the other evidence in the case and the unconvincing basis and reasoning for his opinion. The Court observed Dr. Martin during his testimony and based upon those observations, the transcripts of record for the guilty plea and the motion to reconsider, as well as Counsel's testimony, the evidence establishes that Applicant was legally competent to both assist Counsel and to understand the nature of the proceedings. Irrational decisions alone do not amount to incompetency—the greater part of criminal activity is *per se* irrational. Applicant's disguise included gloves, sunglasses, a hat, and a surgical mask. Although she was identified, Applicant took thoughtful measures to conceal her

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 JUN 18 PM 1:47

identity. Applicant robbed her personal bank branch, providing the potential advantage of familiar surroundings. Applicant testified she didn't really have an escape plan, but alternately indicated she was attempting to make it home with the bank's money before she could be stopped by police. These facts provide to establish a planned bank robbery and attempted escape, not the absence of rational understanding.

It is not disputed that Applicant suffered from significant intellectual health problems at the time of the robbery and at the time of her guilty plea. But contrary to her assertions, Applicant answered the plea court's question correctly when asked, "Now ma'am, do you suffer from any conditions *that would affect your ability to reason or to make good decisions today?*" (Plea Tr. 7, ll. 7-10) (emphasis added). When Applicant responded, "I don't think so. No, sir, Your Honor," (Plea Tr. 7, line 12) she responded accurately. Applicant has presented no credible evidence to the contrary. Therefore, without giving any weight to Dr. Martin's testimony, Applicant failed to meet her burden of proof. Even if Counsel was deficient, Applicant cannot establish prejudice.

A review of Applicant's responses during the plea colloquy convinces the undersigned that Applicant understood the nature of the proceedings and freely, voluntarily, and knowingly pled guilty in the face of apparent overwhelming evidence of her guilt. Applicant relies upon the analysis by the South Carolina Supreme Court in Garren v. State in support of her claims, but this Court is simply not persuaded by the evidence presented at the evidentiary hearing.

Applicant points out that Dr. Martin's testimony was not contradicted and that is true. Uncontradicted testimony, expert or lay, does not equate into a finding of fact. The Court, as a trier of fact, is free to believe all or part or none of Dr. Martin's testimony. See Black v. Hodge, 306 S.C. 196, 198, 410 S.E.2d 595, 596 (Ct. App. 1991) ("Stated in the larger sense, the question

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 JUN 18 PM 1:00

is simply this: must a trier of fact always believe uncontradicted testimony? The answer to the question is, plainly, no.”); Okatie River, L.L.C. v. Se. Site Prep, L.L.C., 353 S.C. 327, 338, 577 S.E.,2d 468, 474 (Ct. App. 2003) (“The court is not required to accept undisputed evidence as establishing the truth where there is reason for disbelief. This is especially true where the court finds the unchallenged testimony not convincing.”) (citations omitted). Because the Court finds Dr. Martin not to be a credible witness, his medical conclusions are not accepted.

For all of these reasons the Court finds that Applicant has failed to meet her burden of showing deficiency on the part of counsel, or any prejudice from the deficiency alleged, in not obtaining a mental health evaluation. Accordingly, her request for relief by way of this allegation is DENIED.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 JUN 18 PM 1:47

[Conclusion and signature on following page]

III. CONCLUSION

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

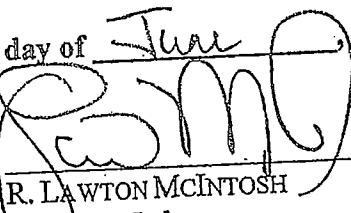
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), 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.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 JUN 18 PM 1:47

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 13 day of June, 2019.


R. LAWTON MCINTOSH
Presiding Judge
Seventh Judicial Circuit

Anderson, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

STEPHANIE LEIGH HOWARD, #371295,

Applicant,

v.

STATE OF SOUTH CAROLINA,


Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Order of Dismissal has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

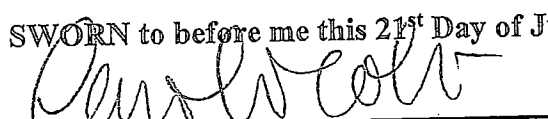
William H. Rhodes, Esquire
Burts Turner & Rhodes
260 North Church Street
Spartanburg, South Carolina 29306

This 21st Day of June, 2019.



EVA COOK
LEGAL ASSISTANT FOR RESPONDENT

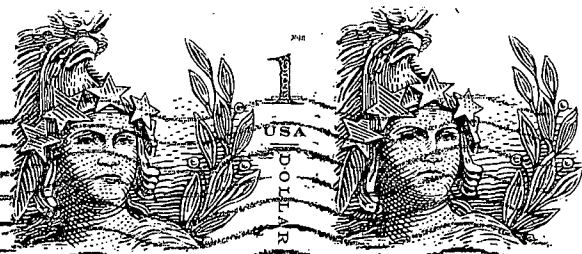
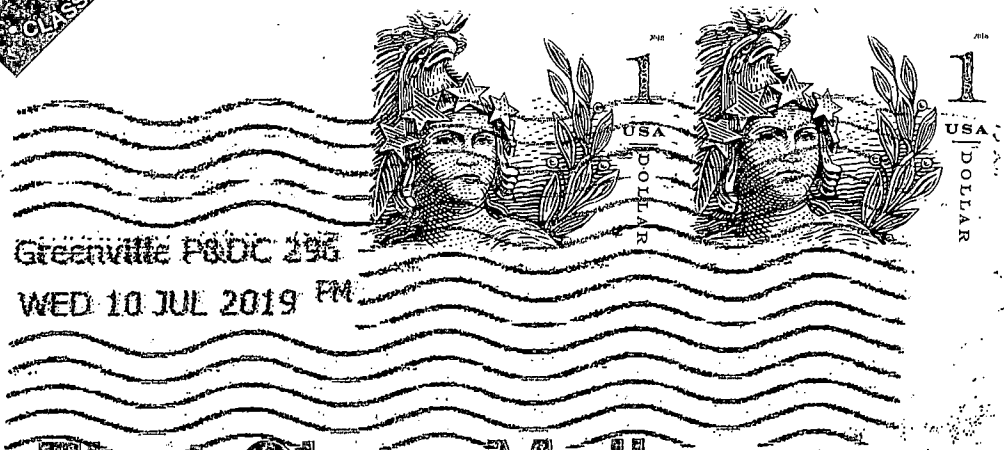
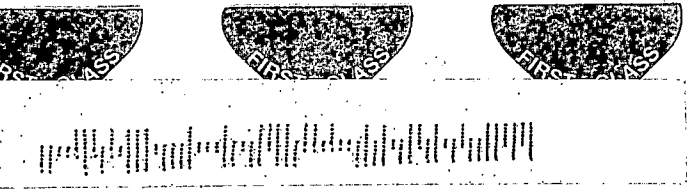
SWORN to before me this 21st Day of June, 2019.


Notary Public for South Carolina.
My Commission Expires: 5/20/2023

RECEIVED

JUL 12 2019

S.C. SUPREME COURT 2017-CP-42-04446



Greenville P&DC 296
WED 10 JUL 2019 PM

First Class Mail

BURTS TURNER & RHODES
 ATTORNEYS AT LAW
 POST OFFICE BOX 3408
 SPARTANBURG, SOUTH CAROLINA 29304

TO:
 The Hon. Daniel E. Shearouse
 Clerk, The S.C. Supreme Court
 P.O. Box 11330
 Columbia, SC 29211

