McMAHAN & TAYLOR
ATTORNEYS LLC

RECEIVED
AUG 12 2019
S.C. SUPREME COURT

August 8, 2019

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

RE: Sara Hodson, #367533, v. State of South Carolina
2018-CP-32-02878

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal along with the accompanying Order for the above-referenced matter. By way of this letter I am copying the Office of Appellate of Defense, as I was appointed to represent Ms. Hodson.

Best regards,

ASHLEY A. MCMAHAN
ATTORNEY AT LAW

AAM

cc: Sara Hodson, #367533
Taylor Z. Smith, Asst. Attorney General
Lexington County Clerk of Court
Office of Appellate Offense

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STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
AUG 12 2019
S.C. SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Brooks P. Goldsmith, Circuit Court Judge

Case No. 2018-CP-32-02878

Sara Hodson, #367533, ... Petitioner,

v.

State of South Carolina,.....Respondent.

NOTICE OF APPEAL

Applicant, Sara Hodson, appeals the order of the Brooks P. Goldsmith, dated filed August 1, 2019.

Aug. 8th, 2019

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Opposing Counsel:
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APPEAL FROM LEXINGTON COUNTY
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v.

State of South Carolina,.....Respondent.

PROOF OF SERVICE

I, Ashley A. McMahan, certify that I have served the within Notice of Appeal on Respondent by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Taylor Z. Smith, Asst. Attorney General
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

I further certify that all parties required by Rule to be served have been served.

Aug 9th, 2019

ASHLEY A. MCMAHAN, ESQUIRE
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STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT
Sara Hodson, #367533, Applicant, v. State of South Carolina, Respondent.	Case No. 2018-CP-32-02878 **ORDER OF DISMISSAL**

This matter comes before this Court by way of an Application for Post-Conviction filed on August 21, 2018, by Sara Hodson (Applicant). The State (Respondent) filed its Return and Partial Motion to Dismiss on November 1, 2018. An evidentiary hearing in the matter was held before the undersigned on June 27, 2019, at the Lexington County Courthouse. Applicant was present and was represented by Ashley A. McMahan, Esquire. Respondent was represented by Assistant Attorney General Taylor Z. Smith of the South Carolina Attorney General's Office. At the hearing, Jordan Hodson and Applicant testified on Applicant's behalf and E. Deon O'Neil, Esquire, (Counsel) testified on behalf of Respondent. Following a thorough review of the record in its entirety and the testimony and evidence presented at the evidentiary hearing, this Court finds that Applicant has failed to meet her requisite burden of proof and denies this application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. During its October of 2013 term, the Lexington County Grand Jury indicted Applicant for unlawful conduct towards a child (2013-GS-32-03004). During its September of 2015 term, the Lexington County Grand Jury indicted Applicant for aiding and abetting homicide by child abuse (2015-GS-32-02368).

Counsel represented Applicant on these charges. Assistant Solicitor L. Suzanne Mayes of the Eleventh Circuit Solicitor's Office prosecuted the case on behalf of the State. On November 3, 2015, Applicant appeared before the Honorable Doyet A. Early and pleaded as indicted to both charges pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). Judge Early accepted the Alford pleas and deferred sentencing. Thereafter, on February 5, 2016, Applicant moved to withdraw her pleas on the basis that her husband, who had been the codefendant in the case, had "recently provided favorable information through letters." After a hearing on the motion, Judge Early denied Applicant's motion to withdraw her plea. Thereafter, Applicant appeared before the Honorable William P. Keesley for sentencing. Judge Keesley sentenced Applicant to concurrent terms of imprisonment of ten years for unlawful neglect of a child and twenty years for aiding and abetting homicide by child abuse.

Applicant filed a timely notice of appeal. On March 10, 2016, pursuant to Rule 203(d)(1)(B)(iv), SCACR, Applicant filed her *pro se* explanation in which she argued that there was an issue that could be reviewed on appeal. In her explanation, Applicant raised the following issues:

1. I put in for a withdraw of my plea;
2. I received new evidence following the signing of my plea;
3. The solicitors [sic] witness statements should have not been allowed b/c they did not directly relate to the said charges; [and]
4. My attorney did not investigation or interviews for [sic] my behalf.

The South Carolina Court of Appeals allowed Applicant to proceed with her appeal on June 17, 2016. Thereafter, Applicant's appellate counsel, John H. Strom, Esquire, filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), raising the following issue:

> The trial court abused its discretion in refusing to allow [Applicant] to withdraw her Alford plea to unlawful conduct towards a child and to aiding and abetting homicide by child abuse where, after [Applicant] entered her plea, her co-defendant husband stated in letters written to her that he was prepared to testify

that she was not [sic] present when Minor 1 ingested a fatal amount of methamphetamine.

Following a review pursuant to Anders, the Court of Appeals dismissed Applicant's appeal and granted appellate counsel's motion to withdraw as counsel. State v. Hodson, Op. No. 2017-UP-371 (S.C. Ct. App. filed October 11, 2017). The Remittitur was issued on October 30, 2017.

CURRENT PROCEEDING

On August 21, 2018, Applicant filed an Application for Post-Conviction Relief, in which she made the following allegations:

1. Ineffective assistance of counsel;
    a. I feel my attorney inadequately represented me a [sic] my best interest; and
    b. My attorney Mr. O'Neil did not interview anyone on my behalf nor did he get a specialist to represent the defense in my case. He also I feel allowed the court to "rush" and pressure me into a decision which can be verified by reviewing the dates on my indictments and the date on my plea was accepted. Mr. O'Neil also told me that I would likely not receive more than 15 yrs (likely only 10 yrs) which played heavily into my accepting the plea agreement. And lastly Mr. O'Neil was negligent in informing me that I could immediately file for a sentence reduction.
2. Newly discovered evidence
    a. I received a letter from my co-defendant after the plea acceptance stating he was fully responsible for the injury and I was unaware of my daughter being hurt.

On June 19, 2019, Applicant filed an Amended Post-Conviction Relief Application, in which she made the following additional allegations:

1. Ineffective assistance of counsel.
    a. Counsel failed to call mitigating witnesses that would have resulted in a lesser sentence for the Applicant.

At the start of the evidentiary hearing, Respondent requested that Applicant specify for the record the grounds upon which Applicant would move forward at the hearing. Applicant

specified that she would be moving forward only upon the allegations specifically mentioned in the original and amended applications. Because those allegations are the only grounds upon which Applicant moved forward at the evidentiary hearing, all other grounds are deemed to be waived and will not be addressed in this Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented at the evidentiary hearing, which allowed the Court to scrutinize the credibility of all witnesses presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. See Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that trial counsel was constitutionally ineffective, he must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result." Strickland, 466 U.S. at 686

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the

attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have 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 to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Petitioner such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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 (1985). The "prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial." Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009). 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. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 697. Therefore, the function

of the post-conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney. Id. at 690.

"A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). "Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea." Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see Jamison v. State, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea"). "[W]hile most pleas of guilty consist of both a waiver of trial and an express admission of guilt, the latter element is not a constitutional requisite to the imposition of criminal penalty." Alford, 400 U.S. at 37. Indeed, "[a]n individual accused of crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime." Id. The Supreme Court in Alford noted:

> That [the defendant] would not have pleaded except for the opportunity to limit the possible penalty does not necessarily demonstrate that the plea of guilty was not the product of a free and rational choice, especially where the defendant was represented by competent counsel whose advice was that the plea would be to the defendant's advantage.

Id. at 30.

In essence, an Alford plea is a guilty plea, which carries the same penalties and punishments. State v. Herndon, 403 S.C. 84, 91, 742 S.E.2d 375, 379 (2013). Furthermore, the entry of an Alford plea "has the same preclusive effect as a standard guilty plea." Zurcher v. Bilton, 379

S.C. 132, 137, 666 S.E.2d 224, 227 (2008). Indeed, in South Carolina, "there is no significant distinction between a standard guilty plea and an Alford plea." Herndon, 403 S.C. at 93, 742 S.E.2d at 380.

Based on this standard set forth above, and the reasoning below, this Court finds Applicant has failed to meet her requisite burden of establishing any constitutional ineffectiveness of counsel. The allegations are addressed fully below:

Newly discovered evidence.

The Uniform Post-Conviction Procedure Act states a person may institute a post-conviction relief action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of material fact not previously presented, the post-conviction relief application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C). An applicant seeking relief based on newly discovered evidence after he has pleaded guilty must show:

> [T]hat (1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the 'interest of justice' requires the applicant's guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilty encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions.

Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

Jordan Hodson testified that he is Applicant's husband and that he was her codefendant in the underlying criminal case. He testified that he wrote letters to Applicant in January of 2016, in which he took full responsibility for the fate of the deceased child. He testified that the letters

stated that he was entirely to blame and that Applicant was completely innocent of any crime. He testified that he alone is to blame for the fate of the infant child. On cross-examination, Hodson admitted that he had entered an Alford plea and was thereby maintaining his innocence when he did so. He also admitted, when confronted with the text of the letters, that the letters did not constitute an admission of guilt on his part and the statement that Applicant was innocent of any crime, but agreed that he had written in the letters that Applicant was not cooking methamphetamine with him at the home of another on the night before the child's death. He testified that he had been manufacturing meth at Ivan's home on that night. He testified that he had dropped the child in the shower.

Applicant testified that she received the two letters from Mr. Hodson in January of 2016, shortly after entering her Alford plea. She testified that she was not present when Mr. Hodson was cooking methamphetamine at Ivan's house on the night before her child's death. She testified that the letters contained statements that were favorable to her and that she would not have entered an Alford plea had she known beforehand that Mr. Hodson would have provided favorable testimony for her at trial. She admitted that she had testified during her plea hearing that she understood her trial rights and that she would be waiving them by entering an Alford plea. She affirmed at the evidentiary hearing that she knew that she could have called Mr. Hodson as a witness at trial.

Counsel testified that Applicant had always maintained to him that she was not cooking methamphetamine with Mr. Hodson at Ivan's house on the night before the child's death. He testified that he had attempted to discuss the case with Mr. Hodson's defense attorney during his preparation of the case but was rebuffed since the parties were codefendants, and did not necessarily have identical interests, at the time. He testified that he and Applicant had discussed

using Mr. Hodson as a witness at trial, but he was unsure whether Mr. Hodson's testimony would have been favorable or unfavorable to Applicant had they done so. He testified that he and Applicant had discussed making unpleasant accusations against Mr. Hodson at trial as a trial strategy. He testified that Applicant took the unpredictable nature of any testimony that could come from Mr. Hodson when she made her decision to enter an Alford plea. He testified that he moved to withdraw Applicant's Alford plea because she told him that she would not have entered the plea had she known that Mr. Hodson would have provided favorable testimony for her at trial.

This Court finds that Applicant's claim of newly discovered evidence has already been ruled upon. Applicant entered her Alford plea on November 3, 2015. Mr. Hodson wrote the two letters to Applicant in January of 2016. Counsel moved to withdraw Applicant's plea in a motion filed on February 8, 2016, on the ground that Applicant would not have entered an Alford plea had she known that Mr. Hodson's testimony would have been favorable to her defense strategy. Judge Early denied that motion on March 14, 2016, after hearing oral arguments from Applicant and the State, and after considering the content of the letters and the testimony provided by Applicant at her plea hearing. Applicant renewed the motion to withdraw her plea when appearing before Judge Keesley for sentencing on March 23, 2016, at which time Judge Keesley denied that motion on the ground that it had already been ruled upon by Judge Early. Applicant appealed, and argued that she would not have entered an Alford plea if she had been aware beforehand of the claims that Mr. Hodson made in his letter to Applicant in January of 2016. The Court of Appeals affirmed in State v. Hodson, Op. No. 2017-UP-371 (S.C. Ct. App. filed October 11, 2017).

Regardless, this Court finds that Applicant has failed to demonstrate that the letters from Mr. Hodson constitute newly discovered evidence. The letters did not yet exist at the time of Applicant's plea hearing, but the sentiments contained therein and the testimony of Mr. Hodson could have been discovered before Applicant entered an Alford plea. Counsel testified that Applicant had always maintained to him that she was not cooking methamphetamine with Mr. Hodson on the night before the child's death, and that she had merely been his ride to and from the cook site, with the child in tow. Applicant testified at the evidentiary hearing that she was not present while methamphetamine was being cooked on that night. Applicant therefore would have known that Mr. Hodson had personal knowledge of whether she was or was not present while methamphetamine was being cooked at the home of Ivan on the night before the child's death. During her plea hearing, Applicant affirmed to Judge Early that she understood that she had the right to demand a jury trial, and to confront and cross examine the State's witnesses and to call her own witnesses at a trial, but that she would be waiving those rights by entering an Alford plea. Applicant affirmed that she wished to waive those rights and enter an Alford plea. After listening to the solicitor's recitation of facts, Applicant affirmed that she believed that the State would have likely been able to prove its case beyond a reasonable doubt. Applicant could have proceeded to trial and called her husband as a witness in her defense, or cross-examined him if the State had presented him as a witness. However, since Applicant and her husband were codefendants, Counsel was unable to question Applicant's husband and, as a consequence, Applicant and Counsel were unable to determine whether any testimony provided by Applicant's husband at her trial would have been helpful to Applicant's to defense. Applicant and Counsel considered proceeding to trial, and calling Applicant's husband as a witness, but Applicant decided to waive her trial rights and enter an Alford plea in light of the State's evidence against

her and in light of the unpredictability of any testimony that Applicant's husband might have provided at trial. The testimony of Applicant's husband would have been evidence if Applicant had proceeded to trial, but Applicant and Counsel did not know whether that evidence would have been beneficial or detrimental to Applicant's defense. The fact that Applicant decided to enter an Alford plea rather than relying upon unpredictable and potentially harmful testimony from her husband does not make his subsequent statements newly discovered evidence. Applicant testified at the evidentiary hearing that she would not have entered an Alford plea had she known at the time that her husband would have testified the way that he did at the evidentiary hearing; however, this does not change the fact that Applicant waived her right to elicit testimony from her husband in part as a strategic calculation of the risk that his testimony could pose to her. This Court finds that Applicant could have called her husband as a witness if she had proceeded to trial, that Applicant made the strategic choice not to do so when she waived her trial rights and entered and Alford plea. Applicant has therefore failed to satisfy the first element of newly discovered evidence.

This Court finds that the weight and quality of Mr. Hodson's testimony and the statements in his letters to Applicant are insufficient to require that her Alford plea be vacated. Mr. Hodson was adamant at the evidentiary hearing that the death of the Hodsons' baby was entirely the result of his own actions and that Applicant was entirely innocent of any wrongdoing; however, this Court finds that his testimony was not credible. Mr. Hodson entered an Alford plea in his criminal case, thereby refusing to admit his guilt. Mr. Hodson admitted at the evidentiary hearing that he knew that he was refusing to admit his guilt when he entered his Alford plea. This Court finds that Mr. Hodson's admission of guilt and protestation of Applicant's innocence, and the statements that he made in his letters to Applicant, contradict his

entering an Alford plea, and they therefore lack credibility. The statements to Applicant in Mr. Hodson's letters and his testimony at the evidentiary hearing appeared to be opportunistic attempts to throw a lifeline to Applicant once there was no longer any legal risk to himself. Furthermore, the substance of the statements in the letters and Mr. Hodson's testimony are not exculpatory for Applicant. Counsel's own medical expert, whom he hired in preparation of Applicant's defense, confirmed the conclusion of the State's expert that the deadly decline in the health of the child occurred over a period of time that could have extended for days, and would have been attended by physical manifestations of a problem. Police found evidence of drug use in the Hodsons' home, and in the bedroom of Applicant and Mr. Hodson. Ivan, at whose home Mr. Hodson was cooking methamphetamine, would have testified to the fact that the Hodsons came to his residence with pseudoephedrine and the now-deceased child in tow and left with methamphetamine. Sentencing Tr. 13. By Applicant's own admission, at the very least, she was transporting Mr. Hodson to and from a meth cook on the night before her child died from the ingestion of methamphetamine. Counsel's testimony was that all of these factors, combined with the broadness of the homicide by child abuse statute, made him conclude that Applicant would have likely been found guilty at trial, *even if* Applicant's assertion that she was not present while the methamphetamine was being manufactured were true. Counsel shared this opinion with Applicant and she made her decision to enter an Alford plea in this context. This Court finds that neither the statements in the two letters presented by Applicant nor in Mr. Hodson's testimony at the evidentiary hearing is exculpatory in light of the remaining evidence in the case. As such, Applicant's claim that the letters from Mr. Hodson constitute newly discovered evidence fails, and is therefore denied and dismissed with prejudice.

Counsel was constitutionally ineffective for failing to interview witnesses.

Applicant testified that Counsel never interviewed Mr. Hodson or other witnesses as a part of his investigation. She testified that she met with Counsel a "handful" of times during her case. She testified that Counsel did not discuss potential defenses with her, and she testified that he did review the evidence in the case with her to some extent.

Jordan Hodson testified that he is Applicant's husband and that he was her codefendant in the underlying criminal case. He testified that he alone is to blame for the fate of the Hodsons' infant child. He testified that Applicant was present or cooking methamphetamine at Ivan's house, but that she merely dropped him off and picked him up afterwards. He testified that he dropped their child in the shower and that is why the child died. He admitted when being cross-examined that he had entered an Alford plea and was thereby maintaining his innocence when he did so.

Counsel testified that he has been in private practice since November of 2006. He testified that he has handled multiple cases involving homicide by child abuse. He testified that he was appointed to represent Applicant in December of 2012. He testified that he kept a digital log of his meetings with Applicant because he was required to do so in order to be compensated in accordance with his appointment. He testified in great detail about his meetings with Applicant. He testified that he attempted to contact any potential witnesses whose names were given to him by Applicant. He testified that some of the potential witnesses mentioned by Applicant were not willing to testify on her behalf. He testified that he had attempted to discuss the case with Mr. Hodson's defense attorney during his preparation of the case but was rebuffed since the parties were codefendants and did not necessarily have identical interests at the time. He testified that he and Applicant had discussed using Mr. Hodson as a witness at trial but that

they did not know whether his testimony would have been favorable or unfavorable to her had they done so. He testified that there were not any witnesses who would have been helpful to Applicant's case at trial since there were not eyewitnesses in the case, except for the Hodsons' children and Ivan. He testified that there was a chance that the State would have used one of the Hodsons' children to testify against Applicant at trial due to the fact that the child may have witnesses drug use or some other similarly harmful behavior on the part of Applicant or Mr. Hodson before. He testified that the State intended to use Ivan as a witness at trial to testify that Applicant had been manufacturing methamphetamine at his home—with the deceased child present—on the night before the child's death.

A defense attorney has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Id. at 691. Thus, "[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Moreover, counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). "[C]ounsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions. . ." Strickland, 466 U.S. at 691. "[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Id. at 690; Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (Ct. App. 2014). An "applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR

hearing in order to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing Pauling v. State, 331 S.C. 606, 503 S.E.2d 468 (1998)). At the evidentiary hearing, Applicant failed to submit the testimony of any witness, save Mr. Hodson. Applicant failed to show that any witness would have provided favorable testimony for her at trial, but she merely speculated that witnesses exist who could have provided favorable testimony. Therefore, she has failed to demonstrate how any unused witness testimony would have been favorable, and how she was prejudiced by the lack of that testimony. This Court finds that Mr. Hodson's admission of guilt and protestation of Applicant's innocence contradicts his entering an Alford plea, and therefore lacks credibility and is without merit. Mr. Hodson's testimony at the evidentiary hearing appeared to be an opportunistic attempt to throw a lifeline to Applicant once there was no longer any legal risk to Mr. Hodson. Mr. Hodson's testimony about his dropping the child in the shower was not consistent with the conclusions reached by the experts in the criminal case. This Court finds that Mr. Hodson's testimony was not exculpatory for Applicant.

During her plea hearing, Applicant affirmed to Judge Early that she understood that she had the right to demand a jury trial, and to confront and cross examine the State's witnesses and to call her own witnesses at a trial, but that she would be waiving those rights by entering an Alford plea: Applicant affirmed that she wished to waive those rights and enter an Alford plea. After listening to the solicitor's recitation of facts, Applicant affirmed that she believed that the State would have likely been able to prove its case beyond a reasonable doubt. Applicant could have proceeded to trial and called witnesses in her defense or cross-examined them if they were put up by the State, but she waived those rights in order to plead and avail herself of the benefit of a plea bargain. This Court also finds that Counsel met with Applicant for a substantial number

of times, and that Applicant's testimony to the contract lacks credibility and is without merit. This Court finds that Counsel's testimony at the hearing was highly credible compared to testimony offered by Applicant or Mr. Hodson.

This Court finds that Counsel was not constitutionally ineffective for failing to interview witnesses since Applicant has failed to show any deficiency in Counsel's performance or resulting prejudice. As such, this allegation is denied and dismissed with prejudice.

Counsel was constitutionally ineffective for failing to get a specialist to represent Applicant.

Applicant alleges that Counsel was constitutionally ineffective for failing to hire an expert to conduct an evaluation of the cause of death of her deceased child. She testified that she met with Counsel a "handful" of times during her case. She testified that Counsel did not discuss potential defense with her, and she testified that he did review the evidence in the case with her to some extent. Counsel testified that he has been in private practice since November of 2006. He testified that he has handled multiple cases involving homicide by child abuse. He testified that he was appointed to represent Applicant in December of 2012. He testified that the State would periodically add new charges to Applicant's case stemming from the death of Applicant's child as more evidence came to light during the investigation. He testified that the State's expert concluded that the child died from methamphetamine ingestion after suffering for an extended period of time, which could have been as long as multiple days. He testified that he hired Kim Collins, a forensic pathologist, to conduct an independent examination of the child. He testified that the defense's expert concurred with the State's expert and concluded that the child would have displayed visible and obvious signs of deteriorating health for an extended period of time before death, which could have been as long as multiple days. He testified that he reviewed the conclusions of both the State's expert and the defense's expert with Applicant. He testified that

Applicant gave him no reason to think that she did not understand his explanation of that evidence. Applicant then testified in rebuttal that Counsel had never discussed these matters with her and that she was hearing them for the first time during her evidentiary hearing.

A defense attorney has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Id. at 691. Thus, "[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Moreover, counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). "[C]ounsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions..." Strickland, 466 U.S. at 691. "[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Id. at 690; Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (Ct. App. 2014). This Court finds that Applicant's allegations that Counsel never consulted with an expert and never reviewed those findings with her to be without merit and lack credibility. This Court finds that Counsel consulted with a forensic pathologist as part of his investigation in Applicant's case, that those conclusions were not favorable to Applicant's defense, and that he discussed the matter with Applicant. This Court finds that Counsel was not constitutionally ineffective for failing to hire an expert since Applicant has failed to show any deficiency in Counsel's performance of resulting prejudice. As such, this allegation is denied and dismissed with prejudice.

Counsel was constitutionally ineffective for allowing the court to rush and pressure Applicant into a decision about whether to plead guilty to proceed to trial.

Applicant alleges that she was rushed to enter her Alford plea. Counsel testified that he was appointed to represent Applicant in December of 2012. He testified that the State would periodically add new charges to Applicant's case stemming from the death of Applicant's child as more evidence came to light during the investigation. He testified that he did not rush or pressure Applicant to enter a plea. He testified that he and Applicant discussed Applicant's options about pleading or going to trial on many occasions. He testified that it was ultimately Applicant's decision to plead guilty.

This Court finds that Counsel was not constitutionally ineffective for rushing or pressuring Applicant to enter an Alford plea. The testimony of Applicant that she was rushed or coerced is without merit and lacks credibility in light of Counsel's more credible testimony and Applicant's own testimony at her plea hearing before Judge Early. Applicant has presented not reason for this Court to disturb the finding of Judge Early that Applicant knowingly and voluntarily entered her plea. Applicant has failed to show any deficiency in Counsel's performance or resulting prejudice. As such, this allegation is denied and dismissed with prejudice.

Counsel was constitutionally ineffective for advising Applicant that she probably would not receive a sentence greater than fifteen years and likely only ten years.

Applicant alleges that Counsel advised her that she would not receive a sentence greater than fifteen years and that she would likely only be given a sentence of ten years. Counsel testified that he did not promise Applicant that she would receive any particular sentence. He testified that he was hoping for a lesser sentence than the one that Applicant received. He

testified that he reviewed with Applicant the potential sentences to which she could be exposed if she proceeded to trial and if she accepted the plea offer extended by the State. During Applicant's plea hearing, Counsel affirmed to Judge Early that he had explained the potential sentences that Applicant was facing and that, in his opinion, Applicant understood his explanation. Applicant affirmed to Judge Early that she understood the potential sentences to which she would be exposed by pleading guilty. She affirmed to Judge Early that she did not have any more questions for the plea court about the possible sentence. She affirmed to Judge Early that she wished to enter an Alford plea. She affirmed that no one had promised her anything in order to get to her enter the plea. She affirmed that she was satisfied with Counsel's services. This Court finds that Counsel did not advise Applicant that she would receive a specific sentence, and that any testimony by Applicant to the contrary is not credible and lacks merit. This Court finds that Counsel was not constitutionally ineffective for advising Applicant that she would receive a specific sentence since Applicant has failed to show that Counsel's performance was deficient or any resulting prejudice. As such, this allegation is denied and dismissed with prejudice.

Counsel was constitutionally ineffective for advising Applicant that she would immediately be able to file for a sentence reduction after her sentencing.

Applicant alleged that Counsel advised her that she would be immediately able to file for a sentence reduction after her sentencing. Counsel testified that he reviewed with Applicant the potential sentences to which she could be exposed if she proceeded to trial and if she accepted the plea offer extended by the State. He testified that Applicant did not ask him to file for a sentence reduction. He testified that Applicant did request that he move to withdraw her guilty plea and that he did so. During Applicant's plea hearing, Counsel affirmed to Judge Early that he

had explained the potential sentences that Applicant was facing and that, in his opinion, Applicant understood his explanation. Applicant affirmed to Judge Early that she understood the potential sentences to which she would be exposed by pleading guilty. She affirmed to Judge Early that she did not have any more questions for the plea court about the possible sentence. She affirmed to Judge Early that she wished to enter an Alford plea. She affirmed that no one had promised her anything in order to get to her enter the plea. She affirmed that she was satisfied with Counsel's services. This Court finds that Applicant did not request that Counsel move for a sentence reduction, and that any testimony by Applicant to the contrary is not credible and lacks merit. This Court finds that Counsel was not constitutionally ineffective for failing to move for a sentence reduction since Applicant has failed to show that Counsel's performance was deficient or any resulting prejudice. As such, this allegation is denied and dismissed with prejudice.

Counsel was constitutionally ineffective for failing to call mitigation witnesses at her sentencing who could have provided favorable testimony that would have resulted in a lesser sentence for Applicant.

Applicant testified that Mr. Hodson was present at her sentencing but that he did not speak on her behalf. She testified that she had suggested to Counsel that Erin Davis and Angel Blankenship be called as witnesses at trial. Counsel testified that he attempted to contact any potential witnesses whose names were given to him by Applicant. He testified that some of the potential witnesses mentioned by Applicant were not willing to testify on her behalf. He testified that he had attempted to discuss the case with Mr. Hodson's defense attorney during his preparation of the case but was rebuffed since the parties were codefendants and did not necessarily have identical interests at the time. He testified that he and Applicant had discussed using Mr. Hodson as a witness at trial but that they did not know whether his testimony would

have been favorable or unfavorable to her had they done so. He testified that he and Applicant had discussed making unpleasant accusations against Mr. Hodson at trial in Applicant's defense.

A defense attorney has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Id. at 691. Thus, "[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Moreover, counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). "[C]ounsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions. . ." Strickland, 466 U.S. at 691. "[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Id. at 690; Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (Ct. App. 2014). An "applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing Pauling v. State, 331 S.C. 606, 503 S.E.2d 468 (1998)). Applicant did not have either Ms. Davis or Ms. Blankenship testify on her behalf at the PCR hearing, but merely speculated that they would have provided favorable testimony. Therefore, she has failed to demonstrate how any testimony from them would have been favorable during her sentencing hearing, and how she was prejudiced by the lack of their testimony.

Mr. Hodson entered an Alford plea in his criminal case, thereby refusing to admit his guilt. Mr. Hodson admitted at the evidentiary hearing that he knew that he was refusing to admit guilt when he entered his Alford plea. This Court finds that Mr. Hodson's admission of guilt and protestation of Applicant's innocence, and the statements that he made in his letters to Applicant, contradict his entering an Alford plea, and they therefore lack credibility and are without merit. This Court finds that Counsel conducted a reasonable investigation but that he was unable to secure favorable testimony from Mr. Hodson due to the potentially adversarial nature of their status as codefendants at the time of the case. During Applicant's sentencing hearing, after which time she had already received the two letters from Mr. Hodson, she made strong, critical statements with regards to Mr. Hodson. She testified that:

> The only mistake I made was leaving my baby with her dad. He is the only other person beside me that should have protected my baby above all else and he failed that day. Because of his failure, my baby is gone forever.

Sentencing Tr. 38.

Applicant also testified that she was "being punished for what [Mr. Hodson] has gone." Id. This testimony indicates that Applicant's posture towards Mr. Hodson was still adversarial at the time of her sentencing hearing, and belies her allegations that he would have been a favorable witness during her sentencing hearing.

This Court finds that Counsel was not constitutionally ineffective for failing to secure witnesses at Applicant's plea hearing since Applicant has failed to demonstrate deficiency in Counsel's performance or prejudice resulting therefrom. As such, these allegations are denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant her Application for Post-conviction Relief. Therefore, this application is denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 30 day of July, 2019.

BROOKS P. GOLDSMITH, IV
Presiding Judge
Eleventh Judicial Circuit

Aiken, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2018CP3202878

Sara Elizabeth Hodson 367533		South Carolina State of	
PLAINTIFF(S)		DEFENDANT(S)	
Submitted by:		Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	Judge Code	8/1/2019 Date

For Clerk of Court Office Use Only

This judgment was entered on **August 1st 2019**, and a copy mailed first class or placed in the appropriate attorney's box on **August 1st 2019**, to attorneys of record or to parties (when appearing pro se) as follows:

Ashley A. McMahan PO Box 5501 West Columbia, SC 29169

Taylor Zane Smith PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

LSIA COMER/jp

Court Reporter

Lisa M. Comer - Clerk of Court

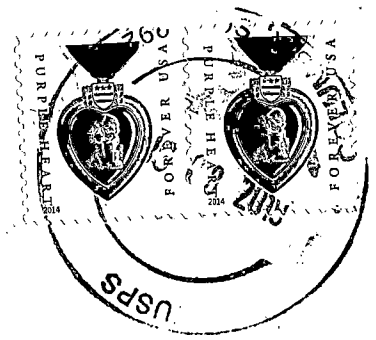
Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

McMAHAN & TAYLOR
ATTORNEYS at
PO Box 5501
West Columbia, SC
29171



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