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September 20, 2019

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

RE: Rebecca Smoak, #377159, Appellant -vs- State of South Carolina, Respondent
2018-CP-39-1122

Dear Mr. Shearouse:

I was appointed to represent Ms. Smoak in a post-conviction relief action. Judge Kinlaw has denied her relief and dismissed the action. Ms. Smoak has instructed me to file an appeal.

Enclosed, for filing, please find the following relating to this matter:

1) A copy of Judge Kinlaw's written Order of Dismissal;
2) A Notice of Appeal;
3) A Proof of Service; and
4) A Certificate of Filing (as to the filing of the Notice of Appeal and Proof of Service with the Pickens County Clerk of Court).

I am turning this matter over to the Office of Appellate Defense for any further proceedings.

Sincerely yours,

Don A. Thompson

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Alex Kinlaw, Jr., Circuit Court Judge

Case No. 2018-CP-39-1122

Rebecca Smoak, #377159,

Appellant,

vs.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Rebecca Smoak appeals the order of the Honorable Alex Kinlaw, Jr., dated July 19, 2019. Appellant received written notice of entry of this order on August 26, 2019.

September 13, 2019

Don A. Thompson
(S.C. Bar No. 5545)
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Attorney for Appellant

Other Counsel of Record:
Taylor Z. Smith
Assistant Attorney General
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Columbia, South Carolina 29211
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(803) 734-3970

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Alex Kinlaw, Jr., Circuit Court Judge

Case No. 2018-CP-39-1122

Rebecca Smoak, #377159,

Appellant,

vs.

State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina (respondent) by depositing a copy of it in the United States Mail, postage prepaid, on September 13, 2019, addressed to the State's attorney of record, Taylor Z. Smith, Assistant Attorney General, S.C. Attorney General's Office, Post Office Box 11549, Columbia, South Carolina 29211.

September 13, 2019

Don A. Thompson
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(864) 270-2831
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Alex Kinlaw, Jr., Circuit Court Judge

Case No. 2018-CP-39-1122

Rebecca Smoak, #377159,

Appellant,

vs.

State of South Carolina,

Respondent.

CERTIFICATE OF FILING
WITH PICKENS COUNTY CLERK OF COURT

I certify that I have filed the Notice of Appeal and Proof of Service in this matter with the Pickens County Clerk of Court by depositing a copy of it in the United States Mail, postage prepaid, on September 13, 2019, addressed to The Honorable Harold P. Welborn, Jr., Pickens County Clerk of Court, P.O. Box 215, Pickens, S.C. 29671.

September 19, 2019

Don A. Thompson
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Attorney for Appellant

STATE OF SOUTH CAROLINA COUNTY OF PICKENS	)	IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT
Rebecca Smoak, #377159, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2018-CP-39-01122 **ORDER OF DISMISSAL**

2019 JUL 25 P 2:03

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

This matter comes before this Court by way of an Application for Post-Conviction filed on October 18, 2018, by Rebecca Smoak (Applicant). The State (Respondent) filed its Return and Partial Motion to Dismiss on December 26, 2018. An evidentiary hearing in the matter was held before the Honorable Alex Kinlaw, Jr., on April 16, 2019, at the Greenville County Courthouse. Applicant was present and was represented by Don A. Thompson, Esquire. Respondent was represented by Assistant Attorney General Taylor Z. Smith of the South Carolina Attorney General's Office. At the hearing, Applicant testified on her own behalf and John M. Gravlee, Esquire, 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 Pickens County Clerk of Court. During its May 2017 term, the Pickens County Grand Jury indicted Applicant for possession of a weapon during the commission of a violent crime (2017-GS-39-1313) and murder (2017-GS-39-1314). Assistant

Public Defender John M. Gravlee (Counsel), of the Pickens County Public Defender's Office, represented Applicant on these charges. Assistant Solicitor John Baker Cleveland, III, of the Thirteenth Circuit Solicitor's Office, prosecuted the case. On July 25, 2018, Applicant appeared before the Honorable Edward W. Miller and pleaded guilty to the lesser-included offense of voluntary manslaughter and pleaded guilty as indicted to possession of a weapon during the commission of a violent crime. Pursuant to a negotiated sentence, Judge Miller sentenced Applicant to a term of imprisonment of twenty years for voluntary manslaughter and five years for the weapons charge. The sentences were to be served concurrently. Applicant did not appeal her plea or sentence.

CURRENT PROCEEDING

On October 18, 2018, Applicant filed an Application for Post-Conviction Relief, in which she made the following allegations:

1. I did not even know there was an appeal process. My lawyer never told me about an appeal process. I found out about the process and then it was too late to appeal.
2. I feel my lawyer was incompetent. He did not represent me as he should have. He was vague and did not supply me with complete and concrete information regarding my plea offer. I went in court unprepared and confused. He also never once mentioned to me an appeal process. He was relocating to Greenville County Public Defender's Office at the time of my court date and I feel this took precedence over my case. My case was the only one he had left in Pickens County.
3. I also feel like Pickens County Law Enforcement did not do their job, to serve and protect. I called the Sheriff's Office multiple times and they did not respond.
4. My lawyer only met with me three times. The last time was rushed. I did my best to try to understand what I was being told, but I found it all quite confusing and feel I was not given all the information I needed to make proper decisions. I have never been through those types of court proceedings before.
5. I did everything by protocol trying to resolve my problem. I contacted Bob Stewart, Building Code, I personally went to the Sheriff's Office, was not allowed to speak directly to the Sheriff, I

talked to Judge Baker at Magistrate's Court, I had a Sheriff's deputy at my house on three different occasions, and I called law enforcement the day before and the day of the incident.

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 solely upon three allegations:

1. That Applicant did not understand the plea because of her poor health, and Counsel did not explore it with her;
2. That Counsel did not take the time necessary to make sure that Applicant knew what she was doing; and
3. That Applicant did not realize that she was entering into a negotiated plea.

Because these are the only grounds for relief upon which Applicant proceeded at the evidentiary hearing, all over 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. U.S. Const. amend. VI; 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 pled 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").

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

Applicant did not understand the plea because of her poor health, and Counsel did not explore it with her. Counsel did not take the time necessary to make sure that Applicant knew what she was doing.

The basis of these allegations is that Applicant was asserting that she had mental health issues that prevented her from understanding the significance and consequences of the actions she took at the plea hearing, and that she was mentally incompetent and could therefore not stand trial or plead guilty, and that Counsel failed to appreciate her mental health deficiencies and take steps to ascertain her mental incompetence.

Applicant testified that she did not intentionally hurt anyone. She testified that she had been having issues with a man living in a tent in the neighboring yard for around five years. She testified that she and the victim had been arguing and that she went to the neighboring yard with her shotgun and that the victim grabbed the barrel of her shotgun and that the shotgun went off.

Applicant testified that she had lots of health issues at the time of her plea hearing, including vertigo, strokes, bone spurs, depression, anxiety, and schizophrenia. She testified that her past strokes had affected her short-term memory. She testified that her poor health prevents her from doing lots of things, and that she suffers from twenty-five different medical conditions. She testified that she has dead tissue in her brain due to her stroke. She testified that her mental and physical condition at the time of the plea hearing affected her ability to understand what was going on. She testified that she does not remember the length of her meetings with Counsel. She testified that she remembers talking on the phone with Counsel, but that she does not remember what they talked about. She testified that she did not tell Counsel that she had been diagnosed with schizophrenia. She testified that Counsel did not have a physician conduct an evaluation on her before her plea hearing. She testified that she does not remember exactly what was said

during the plea hearing. She testified that her medical conditions prevented her from understanding what was happening at the plea hearing and from expressing herself. Applicant admitted to telling Judge Miller at her plea hearing that she had never been treated for mental illness, but testified at the evidentiary hearing that she had misheard that question from Judge Miller at the plea hearing. She testified at the evidentiary hearing that, when Judge Miller asked her during the plea hearing whether she had ever been treated for mental illness, that she answered, "Yes." She testified that she has a bachelor's degree in physical education.

Counsel testified that he has been a public defender for four years, and worked as a law clerk for two years. He testified that he had been appointed to represent Applicant immediately after her arrest. He testified that he met with her on three occasions while she was in custody, with each of their jail meetings lasting for at least twenty minutes each, and that he met with her on another three or four occasions after she was out on bond. He testified that he met with her on at least one occasions with John DeJong. He testified that he did not have quick meetings with Applicant. He testified that there was a substantial amount of discovery in the case and that he reviewed it with Applicant on multiple occasions. He testified that he had many phone calls with Applicant. He testified that Applicant told him that the victim grabbed the barrel of her shotgun and that the shotgun went off. He testified that he did not pursue the defenses or accident or self-defense. He testified that the autopsy reports revealed that Applicant had shot the victim twice—and that she was suing a single-shot, breach-action shotgun that had to be reloaded between each firing. He testified that the autopsy revealed that the victim had been shot once in the shoulder and a second time in the abdomen. He testified that he discussed with Applicant her claim that the shotgun accidentally discharged. He testified that he believed that a jury would not think that Applicant's actions demonstrated anything other than pre-meditated murder. He testified that the

shotgun and the clothing that Applicant had been wearing at the time of the killing were wet and looked as if Applicant had tried to wash away the evidence. He testified that the spent shotgun shells were found near a vodka bottle and a bottle of pills in Applicant's home. He testified that Applicant's blood alcohol content was .27 at the time at which she was tested after her arrest. He testified that neither voluntary nor involuntary intoxication would have been legitimate defenses for Applicant to pursue considering the facts of the case. He testified that self-defense would not have been a possible defense because Applicant had walked to the victim's tent from her home with a shotgun.

Counsel testified that Applicant is an intelligent person, but that she has a short-term memory problem. He testified that Applicant never told him that she had any mental health issues. He testified that he did discuss Applicant's health issues with her but that she did not have mental health issues that prevented her from understanding the negotiated plea. He testified that he was aware that Applicant suffered from some physical ailments at the time of her plea. He testified that Applicant did tell him that she had had a stroke, but that he was not worried about her mental competency based upon his interactions with her. He testified that he was not aware that Applicant may have been in a mental institution in the past. He testified that, had he known that Applicant may have been in a mental institution in the past, he probably would have asked for a mental health evaluation in her case. He testified that he did not suspect that Applicant needed a mental health evaluation. He testified that he had no reason to believe that he suspect that Applicant was not mentally competent. He testified that he did not believe that her mental health was an issue in the case, and again referenced his assessment of Applicant as having been mentally "sharp." He testified that Applicant has a bachelor's degree and that she was mentally quicker in understanding things than his other clients. He testified that he believed that Applicant

understood the substance of their conversations and understood what was happening in her case. He testified that Applicant did not give him any indication that she did not understand the things that he was telling her about her case or that she did not understand the terms of the negotiated plea. He testified that he did not get any indication from Applicant's answers to Judge Miller's questions at the plea hearing that Applicant did not understand the questions or what was happening. He testified that he is certain that Applicant understood the terms of the negotiated sentence.

Due process prohibits the conviction of a mentally incompetent person. Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 595 (1992) (citing Bishop v. United States, 350 U.S. 961 (1956)). That right "cannot be waived by a guilty plea." Id. at 308 S.C. 230, 232, 417 S.E.2d 594, 595-96 (1992) (citing Pate v. Robinson, 383 U.S. 375 (1966)). The "test for competency to plead guilty is no more stringent than the test for competency to stand trial." State v. Lambert, 266 S.C. 574, 579, 225 S.E.2d 340, 343 (1976). That test is "whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him." Carnes v. State, 275 S.C. 353, 354, 271 S.E.2d 121, 122 (1980) (citing Dusky v. United States, 362 U.S. 402 (1960)). The applicant in a PCR case "bears the burden of proof and is required to show by a preponderance of evidence he was incompetent at the time of his plea." Jeter, at 308 S.C. 232.

Applicant has not put evidence before this Court as to her supposed mental health issues other than her own testimony. Although she did testify at the evidentiary hearing about strokes that she has suffered on at least one occasion in her life, Applicant's testified cogently and clearly on her own behalf before this Court. She was responsive to questions and was able to

communicate her own position on various issues through her testimony. Similarly, the transcript of the plea hearing is peppered with examples of Applicant's clear and cogent answers and affirmations to Judge Miller's questions. Applicant did not tell Counsel during his representation of her that she suffered from any type of mental illness or that she was unable to understand the substance of their discussions. Counsel thoroughly reviewed the evidence in the case with Applicant and reviewed with her potential defenses, the elements of the charges, and the evidence in the case. Applicant was engaged in Counsel's discussions with her regarding her defense. Counsel knew that Applicant had a bachelor's degree, and based upon that fact and the nature of his discussions with her, Counsel believed Applicant to be an intelligent individual. Counsel was aware of Applicant's physical ailments, and even mentioned them to Judge Miller during the plea hearing. Plea Tr. 12. When asked by Judge Miller at her plea hearing if Applicant had ever been treated for mental illness, Applicant answered, "No, sir." Plea Tr. 4. Applicant's assertion that she answered "yes" rather than "no" lacks all credibility in light of the transcript and in light of Applicant's testimony that she did not understand the question. This Court finds that, based upon Applicant's disclosure of her physical ailments to Counsel, Counsel's testimony that Applicant did not make him aware that she was allegedly suffering from mental health issues—which comports with her affirmation to Judge Miller at the plea hearing that she did not have a history of mental illness—it was reasonable for Counsel to not request a mental health evaluation of Applicant or to questions her mental competency. Applicant's allegations that, at the time of her criminal case, she did not understand what was happening in her case, did not understand her discussions with Counsel, and did not understand the questions asked of her by Judge Miller at the plea hearing are without merit and lack credibility.

This Court finds that Applicant has failed to meet her burden of proof in showing that she was incompetent at the time of her guilty plea. This Court finds that Applicant has failed to meet her burden of proof in showing that Counsel was constitutionally ineffective for failing to request a competency hearing since she has not shown any deficiency or resulting prejudice in Counsel's performance. As such, these allegations are denied and dismissed with prejudice.

Applicant did not realize that she was entering into a negotiated plea.

Applicant testified that she believed that the solicitor's plea offer was for voluntary manslaughter with a range of two to twenty years in prison. Applicant testified that Counsel told her that twenty years was the maximum amount of time that the Judge Miller would be able to give to Applicant after the guilty pleas. Applicant also testified at the hearing that she did not understand that the maximum sentence would be twenty years in prison. She testified that she understood the charge but not the amount of time to which she would be sentenced. Applicant testified that somebody told her that she would have to serve 85% of her sentence, but that she could not remember who told her that due to her stroke. Applicant testified that she discussed the plea agreement with Counsel and he recommended that she take the plea deal. She testified that she did not understand the sentence and believed that Judge Miller would decide the sentence. She testified that she did not remember what was said during the plea hearing. She testified that she does not remember talking with Judge Miller during the plea hearing. Applicant testified that Judge Miller did not say during the hearing that he had to accept or reject the negotiated plea. She testified that Judge Miller gave her a substantial break during the plea hearing so that she could think more about her decision to plead guilty. She testified that she did not believe that a twenty-year sentence was justified in this case.

Counsel testified that he explained to Applicant that she was facing a potential sentence of thirty years to life in prison for the indicted charge of murder and an extra five years for the weapons charge. He testified that Applicant wanted him to explore potential plea offers. He testified that the lowest plea offer was a negotiated sentence of twenty years, to which Applicant ultimately pleaded guilty. He testified that he explained the terms of a negotiated plea to Applicant and told her that the sentencing court would be able to accept the negotiated sentence or leave it. He testified that he told Applicant that the plea offer would be a twenty-year sentence and that she would have to serve at least 85% of it and would be given credit for time served. He testified that Applicant did not give him any indication that she did not understand the nature of the negotiated sentence. He testified that he was certain that Applicant understood that the terms of the negotiated sentence would have required a twenty-year sentence. He testified that he never told Applicant that Judge Miller could have sentenced her within a two to twenty year range. He testified that Judge Miller said during the plea hearing that the court could not deviate from the twenty-year negotiated sentence and that the court had to either accept it or reject it. He testified that he and Applicant would have walked out and not pleaded guilty had Judge Miller rejected the negotiated sentence. He testified that Judge Miller did give him a thirty-minute break during the plea hearing so that he could talk with Applicant. He testified that he did not remember exactly what they talked about during the break. He testified that he thinks that the hesitation on the part of Applicant was that she disagreed with the solicitor's recitation of facts as it related to the nature of the confrontation between Applicant and the victim. He testified that would have taken the case to trial on murder and asked for a jury charge on voluntary and involuntary manslaughter had Applicant decided to go to trial instead of pleading guilty. He testified that Applicant came out of the meeting wanting to plead guilty pursuant to the negotiated sentence.

Counsel testified that the facts in Applicant's case were not helpful to her and that he did not have much to work with in her defense.

This Court finds that Counsel was not constitutionally ineffective for failing to explain the nature of the negotiated sentence to Applicant and that Applicant knowingly and voluntarily entered her guilty plea; rather, this Court finds that Counsel adequately explained the terms of the negotiated sentence and that Applicant understood them. Counsel entered plea negotiations at Applicant's request after they reviewed the evidence in the case, the lack of viable defenses that Applicant would have should she have taken her case to trial, and the potential sentences that Applicant could face after trial. Counsel thoroughly explained to Applicant the terms of the negotiated offer of twenty years, and Applicant accepted the offer knowing that she would be sentenced to twenty years in prison for voluntary manslaughter should the plea court accept the negotiated sentence, which she believed was preferable to going to trial for murder. Counsel was sure that Applicant understood the substance of his explanations based on their quality of their interactions. Judge Miller mentioned multiple times during the plea hearing that the sentence would be a negotiated sentence. Judge Miller also pointed out that statements on behalf of the victim's family and Applicant's mitigation testimony would have had no effect on the sentence due to its being a negotiated sentence. Applicant affirmed to Judge Miller that she understood her trial rights but nevertheless wanted to plead guilty. Plea. Tr. 5-6. Applicant affirmed that the solicitor's recitation of facts was true. Plea Tr. 8-9. Applicant affirmed that she was satisfied with Counsel's representation of her. Plea Tr. 8. Applicant's allegations that Counsel did not explain that her pleading guilty pursuant to a negotiated sentence would require plea court to sentence her to twenty years, if the court accepted the negotiated sentence, is without merit and lacks credibility in light of Counsel's testimony and the transcript from the plea hearing. This Court

finds that Applicant wanted to plead guilty to voluntary manslaughter and possession of a weapon during the commission during a violent crime and be sentenced in accordance with the negotiated sentence rather than proceeding to trial on murder due to the weak defenses that would have been available to her at trial.

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

#14

2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 19th day of July, 2019.

ALEX KINLAW, JR.
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina

2019 JUL 25 P 2:03

CLERK OF COURT
GREENVILLE COUNTY
SOUTH CAROLINA

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TO:

The Honorable Daniel E. Shearhouse
Clerk, Supreme Court of South Carolina