

Tommy A. Thomas

ATTORNEY AND COUNSELOR AT LAW

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JAN 16 2020

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January 14, 2020

S.C. SUPREME COURT

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

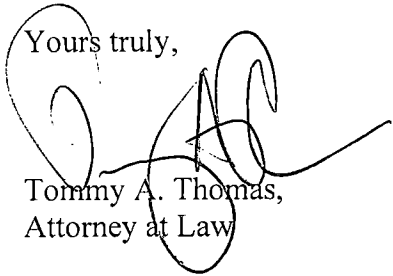
RE: Jennifer Lynn Dale #375190 v. State of South Carolina

Dear Sir or Madam:

Enclosed please find for filing an original and a copy of a Notice of Appeal and Certificate of Service. Please be advised that we were retained to represent Ms. Dale at Post Conviction Relief, however, she is without funds to retain me for this Appeal. I am forwarding her Affidavit of Indigency to Appellate Defense, by copy of this letter.

Kindly return a clocked copy to me in the enclosed envelope. Please feel free to contact me should you have any questions. Thank you.

Yours truly,


Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: Brianna Schill, Esq.
Appellate Defense
Jennifer Lynn Dale #375190

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JAN 16 2020

APPEAL FROM YORK COUNTY
Court of Common Pleas
Post Conviction Relief

S.C. SUPREME COURT

Grace Gilchrist Knie, Circuit Court Judge

Lower Court Case No.: 2018-CP-46-3142

Jennifer Lynn Dale #375190,..... Petitioner

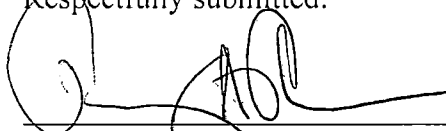
vs.

State of South Carolina,Respondent.

NOTICE OF APPEAL

The Appellant, Jennifer Lynn Dale #375190, appeals the Order of Dismissal signed by the Honorable Grace Gilchrist Knie, dated December 4, 2019 and filed on December 11, 2019. Appellant received written notice of entry of this order on December 17, 2019.

Respectfully submitted.



Tommy A. Thomas
Attorney for Petitioner
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

January 14, 2020

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JAN 16 2020

APPEAL FROM YORK COUNTY
Court of Common Pleas
Post Conviction Relief

S.C. SUPREME COURT

Grace Gilchrist Knie, Circuit Court Judge

Lower Court Case No.: 2018-CP-46-3142

Jennifer Lynn Dale #375190,..... Petitioner

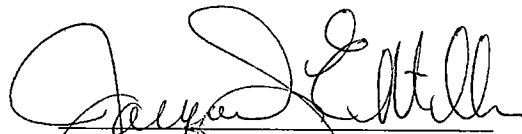
vs.

State of South Carolina,Respondent.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, Secretary to Tommy A. Thomas, Esq., certify that I have served a copy of a Notice of Appeal by depositing a copy of it in the United States Mail, postage prepaid and the return address clearly shown on said envelope to:

Brianna Schill, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549



Jacquelyn E. Miller
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January 14, 2020

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)
)
 Jennifer Lynn Dale, #375190,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS,
 SIXTEENTH JUDICIAL CIRCUIT

Case No.: 2018-CP-46-3142

ORDER OF DISMISSAL

DAVID HAMILTON
 C.C.C.P. # 108
 YORK COUNTY, SC

2019 DEC 11 AM 11:32

FILED-RECEIVED

Hearing Date:	November 13 th , 2019 at 9:30 a.m.
Hearing Judge:	Grace Gilchrist Knie
Counsel for Applicant:	Tommy Arthur Thomas
Counsel for Respondent:	Brianna L. Schill
Court Reporter:	Shirley G. Broom

This matter was before the court on Wednesday, November 13th, 2019 at 9:30 a.m., in York County, SC, the Sixteenth Judicial Circuit upon Applicant's Application for Post-Conviction Relief filed October 15th, 2018. The Respondent filed a Return on December 18th, 2018 requesting an evidentiary hearing. Attorney Tommy Arthur Thomas, Esq. was present representing the interests of the Applicant. Assistant Attorney General Brianna L. Schill of the South Carolina Attorney General's Office was present representing the interests of the Respondent. Shirley G. Broom was the Court Reporter.

At the hearing, Applicant testified on her own behalf. Geoffrey M. Dunn, Esq., (Trial Counsel) and Applicant's father, Ricky Lee Dale, also testified. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet her requisite burden of proof and denies this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. During the January 18th, 2018 term, the York County Grand Jury indicted Applicant for burglary, first-degree (2018-GS-46-00243), possession of a weapon during the commission of a violent crime (2018-GS-46-00243), and armed robbery (2018-GS-46-00244). Geoffrey M. Dunn (Counsel) represented Applicant. Assistant Solicitor Marina Hamilton (Hamilton) of the Sixteenth Circuit Solicitor's Office prosecuted the case.

On January 24th, 2018, Applicant pled guilty before the Honorable Daniel D. Hall to the lesser-included offenses of attempted armed robbery and second-degree burglary. Applicant also pled guilty as indicted to possession of a weapon during the commission of a violent crime. Hamilton dismissed two counts of attempted murder, two counts of kidnapping, and discharging a firearm into a dwelling under the terms of the plea agreement. Pursuant to negotiations between the State and Applicant, Judge Hall sentenced Applicant to eight years' imprisonment for attempted armed robbery, eight years' concurrent imprisonment for burglary in the second degree, and five years' concurrent imprisonment for possession of a weapon during the commission of a violent crime. Applicant did not appeal her conviction or sentence.

FACTUAL HISTORY

On June 18th, 2017, Applicant drove three individuals, who would later become her co-defendants, to a residence. (GP Tr. 11.) Applicant and her co-defendants broke into the residence armed with shotguns to retrieve a gun from one of the residents. (GP Tr. 11-12.) Once inside, the co-defendants assaulted a twelve-year-old child living at the home. (GP Tr. 12.) Once the group realized the child was not the intended target, Applicant took him to his mother's room while still armed with a shotgun. (GP Tr. 12.) Two co-defendants, also armed with guns, took \$340 from

the pants of one of the residents during the incident. (GP Tr. 12.) A cooperating co-defendant told the State that Applicant helped initiate the idea to “get this done.” (GP Tr. 12.)

ALLEGATIONS RAISED

In her original application for post-conviction relief, Applicant alleged that she is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea

On October 28th, 2019, Applicant filed an amended application alleging the following claims:

1. That Defense Counsel failed to take into consideration the fact that the Applicant was living at her father’s residence and had the right to be there, thus mitigating the issue of Burglary;
2. That the Applicant was not involved in the incident. That she was forced to drive the Co-Defendant’s to the location of the incident. That these issues of defense and/or mitigation were not taken into consideration by Defense Counsel;
3. That Defense Counsel was ineffective in not consulting the Defendant regarding the evidence against her or evaluating the evidence that the State had in her case;
4. That Defense Counsel was ineffective in not fully advising the Applicant regarding her guilty plea. The Applicant did not understand why she was entering into the plea. She believed that she had viable defenses;
5. That Defense Counsel was ineffective in his failure to speak with the Applicant’s Father regarding ownership of the house and her right to be there;
6. That Defense Counsel was ineffective in not properly investigating the case and the Applicant’s involvement in this case;
7. That the Applicant had witnesses to speak in her favor. These witnesses were not called by Defense counsel;
8. That the Applicant was charged with Possession of a Weapon when no weapon was found.

An evidentiary hearing was held on November 13th, 2019. At the outset of the hearing, PCR Counsel indicated Applicant would be going forward on the allegations set forth in Applicant’s amended application.

SUMMARY OF PCR TESTIMONY

Applicant's Testimony

Applicant testified her charges arose from an incident in which a man was robbed inside the home of her father, Ricky Lee Dale (Dale). Applicant testified she knew the individuals inside the home because she was also living in Dale's home. Applicant testified the incident occurred because her boyfriend at the time and co-defendant, Pendergrass, was trying to retrieve a pistol from an individual inside Dale's home.

Applicant testified she spoke to Counsel several times over the phone, but she only met with Counsel in-person one time prior to her guilty plea hearing. Applicant testified the in-person meeting lasted fifteen-to-twenty minutes. Applicant testified she did not review discovery with Counsel.

Applicant testified she told Counsel she wanted to go to trial because she believed she had viable defenses. Applicant testified she told Counsel her side of the story: that she was previously abused by Pendergrass and that she was afraid of him. Applicant further testified she told Counsel that Pendergrass forced her to drive the co-defendants to Dale's home and partake in the crime. Applicant testified she had to drive her and her co-defendants to Dale's home to commit the armed robbery or she was "going to be dead." Applicant testified that on a previous occasion, Pendergrass beat her in front of her child, and Pendergrass tried to strangle her. Applicant also testified there were multiple other instances of abuse leading up to the robbery at Dale's home. Applicant testified her father called the police to report the abuse, but she did not press charges.

Applicant also testified she discussed with Counsel the fact that she lived in Dale's home. Applicant testified this would provide her a defense to her charges. Applicant testified she lived in Dale's home, along with her four children, her siblings, and the twelve-year old victim who was

injured during the underlying crime. Applicant further testified she did not have a dispute with any of the victims in this case, nor did she have any reason to assault or rob anyone in Dale's home.

Applicant testified she did not have a weapon that night and that she did not own a weapon. Applicant testified she discussed this with Counsel, but that Counsel did not discuss any defense with her regarding her weapons charge. Applicant testified that, to her knowledge, Counsel did not discuss Applicant's defenses with Dale.

Applicant testified she wanted to go to trial, but decided to plead guilty based on Counsel's advice. Applicant testified the only plea offer she received was the negotiated plea offer she ultimately accepted. Applicant testified she did not understand what a negotiated plea was at the time of her guilty plea. Applicant testified she was the only person who spoke on her behalf at her guilty plea hearing.

On cross-examination, Applicant testified she did not recall telling the plea court she reviewed discovery with Counsel. After reviewing the plea court transcript, Applicant testified she responded affirmatively when the plea court asked her if she reviewed discovery with Counsel. Additionally, after reviewing the plea-hearing transcript, Applicant testified she was explained her constitutional rights and told the plea court she understood she was waiving those rights. Applicant testified she told the plea court she wanted to plead guilty to each of the crimes. Applicant testified she recalled telling the plea court she was pleading guilty of her own free will. Applicant testified she told the plea court she was pleading guilty because she was in fact guilty of the charges. Applicant testified she told the plea court she had enough time to speak with Counsel regarding her case, and that she had no complaints regarding Counsel's representation of her. After reviewing the guilty plea transcript, Applicant testified she told the plea court she understood the

plea court's explanation of what a negotiated sentence means and the sentence she would receive pursuant to her negotiated sentence.

Applicant testified she only told Counsel and the judge presiding over her bond hearing that she was forced to drive her co-defendants to the scene of the crime. Applicant testified she did not tell the police upon her arrest. Applicant testified she told the plea court she was not under the influence of drugs or alcohol at the time of her plea hearing. Applicant also testified she was not suffering from mental illness at the time of her plea hearing.

Ricky Lee Dale's Testimony

Dale testified he is Applicant's father, and he has personal knowledge of prior abuse by Pendergrass. Dale testified Pendergrass previously strangled Applicant in front of Applicant's young son. Dale testified the home where the incident occurred is in his name, but Applicant is allowed to be there. Dale testified Applicant had her own key to his home and she could come and go as she pleased.

Dale testified he spoke with Counsel regarding Applicant's defenses. Dale testified that when he and Counsel specifically discussed the defense as it relates to the burglary charge, Counsel told him it was "part of the plea." Dale testified to the best of his knowledge Applicant did not have a gun on the night of the incident, and that she did not have a gun, generally.

Counsel's Testimony

Counsel testified he has been practicing law since November 2004, and half of his practice as an attorney has been in criminal law. Counsel testified he met with Applicant in person three-to-four times and also talked to her a few times by phone. Counsel testified she mailed all discovery to Applicant and reviewed the discovery with her.

Counsel testified Applicant never denied driving her co-defendants to the home where the crime occurred. Counsel testified Applicant told him the situation turned out worse than she believed it was going to be, and that Applicant took steps to protect the twelve-year old victim after he was attacked. Counsel testified Applicant told him she was forced to drive the co-defendants and assist with the crime; however, Counsel testified Applicant did not show as much emotion as she did during her testimony at the PCR hearing when she initially told Counsel this. Counsel testified the alleged abuse and coercion is something he would have told the solicitor during plea negotiations.

Counsel testified the State's discovery regarding the presence of a gun consisted of the report that a twelve-year old was "pistol-whipped," as well as a report that gunshots were heard. Counsel testified the State had a co-defendant who was willing to testify against Applicant and testify to the fact that she helped plan the crime.

Counsel testified he researched the issue of whether you can burglarize your own home, and the results were either a "gray area" or not favorable to Applicant. Counsel testified he was concerned because even if he could prove to a jury that Applicant lived in Dale's home, she still arguably arrived at the home for the purpose of committing a crime. Counsel further testified Applicant was still facing other charges, including armed robbery, which he was concerned about as the robbery charge would not be covered by this defense. Counsel testified the mandatory minimums Applicant was facing were worse than Applicant's plea offer. Counsel testified he could not recall whether Applicant lived with Pendergrass at any relevant point.

Regarding Applicant's plea offer history, Counsel testified Hamilton only made one offer to Applicant, which was the plea offer Applicant ultimately accepted. Counsel testified he attempted to get a more favorable plea offer from Hamilton, however, she would not agree to offer

a better plea bargain. Counsel testified he discussed the terms of the plea offer with Applicant and her family. Counsel testified Applicant appeared to understand their discussion regarding the plea offer. Counsel testified he spoke with all witnesses that Applicant identified.

Counsel testified if Applicant ultimately wanted to go to trial, he would have taken her case to trial. Counsel testified it is always ultimately the client's decision to plead guilty or to proceed to trial.

On cross examination, Counsel testified Applicant seemed upset during her plea hearing. Counsel testified he personally believed Applicant's story that she suffered abuse and was forced to partake in the crime, but the issue was ultimately whether the jury would believe Applicant's story.

On re-direct, Counsel testified she understood she could ultimately go to trial if she wanted to. Counsel testified that based on a benefit-risk analysis, he believed it was in Applicant's best interest to plead guilty. Counsel testified Applicant appeared to understand what was going on during the plea hearing.

APPLICABLE LAW

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant 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." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases.

The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Strickland*, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. *Id.* at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. *Id.* Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." *Id.* (quoting *Strickland*, 466 U.S. at 688 (1984)). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 117-18, 386 S.E.2d at 625. When there has been a guilty plea, the applicant must prove counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

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.

Involuntary Guilty Plea

In evaluating issues concerning guilty pleas, this Court will consider the entire record, including the transcript of the guilty plea proceeding and the evidence presented at the post-conviction relief hearing. *Roddy v. State*, 339 S.C. 29, 528 S.E.2d 418 (2000). Voluntariness of a guilty plea is not merely determined by an examination of a specific inquiry by the plea court alone but rather is determined by the record of both the guilty plea proceeding and the post-conviction relief hearing. *Id.* In order to find a guilty plea was knowingly and voluntarily entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. *Boykin v. Alabama*, 395 U.S. 238 (1969). Further, “[a] guilty plea is a solemn, judicial admission of the truth of the charges” against the applicant; thus, an applicant’s right to contest the validity of such a plea is usually foreclosed. *Dalton v. State*, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (citing *Blackledge v. Allison*, 431 U.S. 63 (1977)). Therefore, admissions “made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” *Id.* (citing *Crawford v. United States*, 519 F.2d 347 (4th Cir. 1975)); *Edmonds v. Lewis*, 546 F.2d 566 (4th Cir. 1976).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court viewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the plea transcript, and Applicant’s records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

1. Counsel failed to take into consideration the fact that the Applicant was living in her father's residence and had the right to be there thus mitigating the issue of Burglary; and Counsel was Ineffective in his failure to speak with the Applicant's father regarding ownership of the house and her right to be there.

Applicant alleges Counsel was ineffective for failing to assert a defense that she lived in the home where the crime occurred.

As stated above, Counsel testified he researched the issue of whether you can burglarize our own home, and his results were that it was either a legal "gray area" or not favorable to Applicant's case. Counsel testified he was concerned because even if he could prove to a jury that Applicant lived in Dale's home, she still arguably arrived at the home for the purpose of committing a crime. Counsel further testified she was still facing other charges, including armed robbery, which he was concerned about. Counsel testified the mandatory minimums Applicant was facing were worse than Applicant's plea offer. Counsel testified he could not recall whether Applicant lived with Pendergrass at any relevant point. Counsel testified he discussed this defense with Applicant as well as Dale. Counsel also testified this possible defense is something he would have discussed with the solicitor when negotiating her plea.

Applicant testified she did not believe Counsel discussed the fact that she lived at Dale's house with Dale. Applicant also testified she believed this defense would have resulted in an acquittal. Dale testified he discussed Applicant's potential defense with Counsel.

This Court finds Counsel and Dale's testimony on this issue credible, while also finding Applicant's testimony not credible. This Court further finds Applicant has failed to establish how Counsel was deficient in any way regarding Applicant's possible defense to the burglary charge. Counsel discussed this possible defense with Applicant and Dale, and Applicant waived her constitutional right to assert this defense at trial by pleading guilty. Also, Counsel credibly testified he researched this issue and his results were not necessarily favorable to Applicant's case. Counsel

also credibly testified it was likely he discussed this potential defense with Hamilton during plea negotiations. Accordingly, Counsel was not deficient.

Applicant has also failed to establish any resulting prejudice from Counsel's alleged deficiency. Applicant has failed to credibly show there is a reasonable probability she would not have pleaded guilty and would have insisted on going to trial. *Hill*, 474 U.S. at 58-59; *Roscoe*, 345 S.C. at 16, 20. Based on the standard set forth above, this Court finds Applicant has failed to meet her requisite burden of establishing constitutional ineffectiveness of Counsel and, therefore, this allegation is denied and dismissed with prejudice. Accordingly, this allegation is denied and dismissed with prejudice.

2. Failure to use prior abuse and coercion by co-defendant Pendergrass as defense/mitigation.

Applicant alleges Counsel was ineffective for failing to use the alleged prior instances of abuse, as well as Applicant's argument that she was coerced to partake in the crime as a defense or in mitigation.

As stated above, Counsel testified Applicant never denied driving her co-defendants to the home where the crime occurred. Counsel testified Applicant told him the situation turned out worse than she believed it was going to be, and Applicant took steps to protect the twelve year old victim after he was attacked. Counsel testified Applicant told him she was forced to drive the co-defendants and assist with the crime, however Counsel testified Applicant did not show as much emotion as she did during her testimony at the PCR hearing. Counsel testified the alleged abuse and coercion is something he would have told Hamilton during plea negotiations.

Applicant testified she told Counsel she wanted to go to trial because she believed she had viable defenses. Applicant testified she told Counsel her side of the story: that she was previously abused by Pendergrass and that she was afraid of him. Applicant further testified she told Counsel

that Pendergrass forced her to drive the co-defendants to Dale's home and partake in the crime. Applicant testified she had to drive her and her co-defendants to Dale's home to commit the armed robbery or she was "going to be dead." Applicant testified on a previous occasion, Pendergrass beat her in front of her child, and Pendergrass tried to strangle her. Applicant also testified there were multiple other instances of abuse leading up to the robbery at Dale's home. Applicant testified her father called the police to report the abuse, but she did not press charges.

This Court finds Counsel's testimony on this allegation very credible, while also finding Applicant's testimony not credible. This Court finds Applicant has failed to establish how Counsel was deficient in any way regarding the coercion and prior abuse allegedly sustained by Applicant. Counsel testified Applicant informed him she believed she had a defense based on the alleged coercion and prior instances of abuse. Counsel testified this was information he likely used when discussing Applicant's case with Assistant Solicitor Hamilton. Applicant ultimately chose to waive her constitutional right to assert such a defense at trial by pleading guilty.

Furthermore, to the extent Applicant argues Counsel was deficient for failing to mention this defense as mitigation at her guilty plea hearing, this argument is equally without merit. Applicant's plea was a negotiated plea, therefore, the plea court could either accept the plea and sentence as negotiated, or alternatively, reject the plea and allow Applicant to proceed to trial. Accordingly, this alleged mitigation would not have influenced Applicant's sentence.

Applicant has also failed to establish any resulting prejudice from Counsel's alleged deficiency. Applicant has failed to credibly show there is a reasonable probability she would not have pleaded guilty and would have insisted on going to trial. *Hill*, 474 U.S. at 58-59; *Roscoe*, 345 S.C. at 16, 20. Additionally, as previously discussed, this alleged mitigation would not have influenced the sentence, as Applicant's plea was a negotiated plea. Based on the standard set forth

above, this Court finds Applicant has failed to meet her requisite burden of establishing constitutional ineffectiveness of Counsel and, therefore, this allegation is denied and dismissed with prejudice. Accordingly, this allegation is denied and dismissed with prejudice.

3. *Failure to Investigate*

Failure to Investigate, Generally

“[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case.” *Walker v. State*, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012) (reversed on other grounds by *Walker v. State*, 407 S.C. 400, 756 S.E.2d 144 (2014)). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. *Porter v. State*, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018) (citing *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)).

Failure to Investigate Applicant’s Case

Applicant alleges Counsel was ineffective for failing to sufficiently investigate Applicant’s case.

As mentioned above, Counsel testified he reviewed the evidence the State had against Applicant, including but not limited to, witness statements and incident reports. Counsel also testified he contacted all witnesses that Applicant requested he contact. Applicant testified she generally did not think Counsel did an adequate job at investigating his case.

This Court finds Counsel’s testimony on this issue credible, while also finding Applicant’s testimony not credible. Counsel credibly testified he investigated Applicant’s case. Additionally,

Applicant has not provided any testimony or evidence showing Counsel would have uncovered any additional evidence by way of additional investigation. Accordingly, Counsel was not deficient.

This Court further finds Applicant failed to meet his burden of proof as to prejudice, which requires Applicant to show this Court what further information Counsel would have uncovered through additional investigation. Moreover, Applicant has failed to credibly show there is a reasonable probability she would not have pleaded guilty and would have insisted on going to trial. *Hill*, 474 U.S. at 58-59; *Roscoe*, 345 S.C. at 16, 20. Accordingly, this allegation is denied and dismissed with prejudice.

4. *Failure to Review Discovery with Applicant*

Applicant asserts Counsel was ineffective for failing to review the State's evidence with Applicant.

Counsel testified he mailed all discovery to Applicant and reviewed the discovery with her. Applicant testified she did not review discovery with Counsel. Applicant testified she did not recall telling the plea court she reviewed discovery with Applicant. However, after reviewing the plea transcript, Applicant acknowledged she told the plea court she reviewed discovery with Counsel.

This Court finds the testimony of Counsel as to this allegation very credible, while also finding Applicant's testimony on this issue not credible. This Court finds Applicant has failed to establish how Counsel was deficient in any way regarding Counsel's review of discovery with Applicant. The credible testimony shows Counsel reviewed discovery with Applicant. Accordingly, Counsel was not deficient.

Applicant has also failed to establish any resulting prejudice from Counsel's alleged deficiency. Based on the standard set forth above, this Court finds Applicant has failed to meet

her requisite burden of establishing constitutional ineffectiveness of Counsel and, therefore, this allegation is denied and dismissed with prejudice.

5. *Failure to Call Witnesses*

Applicant alleges Counsel was ineffective for failing to call witnesses to speak on her behalf.

Counsel testified he spoke with every witnesses Applicant asked him to speak to, including Dale. Applicant testified she did not believe Counsel ever spoke to Dale regarding her possible defense and mitigating factors. Dale testified he spoke with Counsel regarding Applicant's possible defenses.

This Court finds Counsel and Dale's testimony on this issue credible, while also finding Applicant's testimony not credible. This Court further finds Applicant has failed to establish how Counsel was deficient in any way regarding Applicant's witnesses. Counsel credibly testified he spoke with all of the witnesses identified by Applicant. Dale also testified he spoke to Counsel, contrary to Applicant's assertion. To the extent applicant argues Counsel was deficient for failing to call Applicant's witnesses in mitigation, this argument is equally without merit. As previously discussed, Applicant's plea was a negotiated plea, and therefore, character witnesses would not have affected Applicant's sentence. Accordingly, Counsel was not deficient.

Applicant has also failed to establish any resulting prejudice from Counsel's alleged deficiency. Applicant has failed to credibly show there is a reasonable probability she would not have pleaded guilty and would have insisted on going to trial. *Hill*, 474 U.S. at 58-59; *Roscoe*, 345 S.C. at 16, 20. Moreover, as previously discussed, these witnesses would not have changed the outcome of Applicant's guilty plea due to the fact that Applicant's plea was a negotiated plea. Based on the standard set forth above, this Court finds Applicant has failed to meet her requisite

burden of establishing constitutional ineffectiveness of Counsel and, therefore, this allegation is denied and dismissed with prejudice.

6. *Failure to Argue that Applicant Did Not Have a Gun*

Applicant alleges Counsel was ineffective for failing to argue that she should not have been charged with possession of a weapon because she did not have a gun on the night of the crime.

Counsel testified the State's discovery regarding the presence of a gun consisted of the report that a twelve-year old was "pistol-whipped," as well as a report by witnesses that gunshots were heard. Counsel testified the State had a co-defendant who was willing to testify against Applicant and testify to the fact that she helped plan the crime. Applicant testified she did not have a gun in her possession on the night of the crime, nor did she generally own a gun.

This Court finds Counsel's testimony on this issue very credible, while also finding Applicant's testimony not credible. This Court further finds Applicant has failed to establish how Counsel was deficient in any way regarding Applicant's alleged defense to the possession of a weapon charge. As Counsel credibly testified, the State had evidence to support its argument that a gun was involved in this case, but the issue was up to whether the jury would believe the State's theory or Applicant's defense theory. Additionally, as Hamilton mentioned during Applicant's plea hearing, this was a hand-of-one, hand-of-all case. (GP Tr. 12). Furthermore, Applicant waived his right to pursue this defense at trial by pleading guilty. Accordingly, Counsel was not deficient.

Applicant has also failed to establish any resulting prejudice from Counsel's alleged deficiency. Applicant has failed to credibly show there is a reasonable probability she would not have pleaded guilty and would have insisted on going to trial. *Hill*, 474 U.S. at 58-59; *Roscoe*, 345 S.C. at 16, 20. Applicant ultimately chose to plead guilty, thereby waiving any possible

defenses to the charges, and received a substantial benefit by pleading guilty. Accordingly, this allegation is denied and dismissed with prejudice.

Involuntary Guilty Plea

Applicant alleges her plea was involuntary because her plea offer was not adequately explained to her, and because she did not understand why she was entering a plea.

Counsel testified he discussed the terms of the plea offer with Applicant and her family. Counsel testified Applicant appeared to understand their discussion regarding the guilty plea. Applicant testified she did not understand the terms of her plea agreement, nor did she understand what it meant to enter a negotiated plea. Applicant initially testified she did not recall the plea court explaining to her what a negotiated sentence is. However, after reviewing the transcript, Applicant testified the plea transcript indicates she told the plea court she understood the court's explanation of a negotiated plea.

This Court finds the testimony of Counsel as to this allegation very credible, while also finding Applicant's testimony not credible. This Court finds Applicant's plea was entered freely and voluntarily. The credible testimony shows Applicant wanted to plead guilty and received a great benefit in accepting the State's plea offer. Counsel credibly testified he discussed the terms of Applicant's plea agreement with Applicant. Applicant testified at her plea hearing that she was not suffering from any mental disability. (GP Tr. 5). Applicant testified at her plea hearing that she was pleading guilty on her own free will. (GP Tr. 10). Additionally, the plea court advised Applicant as to the meaning of a negotiated sentence, and Applicant indicated she understood the plea court's explanation. (GP Tr. 10). Based on the standard set forth above, this Court finds Applicant has failed to meet her requisite burden of establishing that her plea was not entered freely and voluntarily. Therefore, this allegation is denied and dismissed with prejudice.

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief pursuant to the Uniform Post Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10 to -160. Counsel was not deficient in any manner regarding his performance before or during trial, nor was Applicant prejudiced by Counsel's representation. Furthermore, the record and the PCR testimony show Applicant freely and voluntarily entered his plea. Accordingly, all allegations are denied and dismissed with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR (providing the appropriate procedure to perfect an appeal). Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Further, Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for the appropriate procedures for appealing a judgment in a PCR action.

IT IS THEREFORE ORDERED:

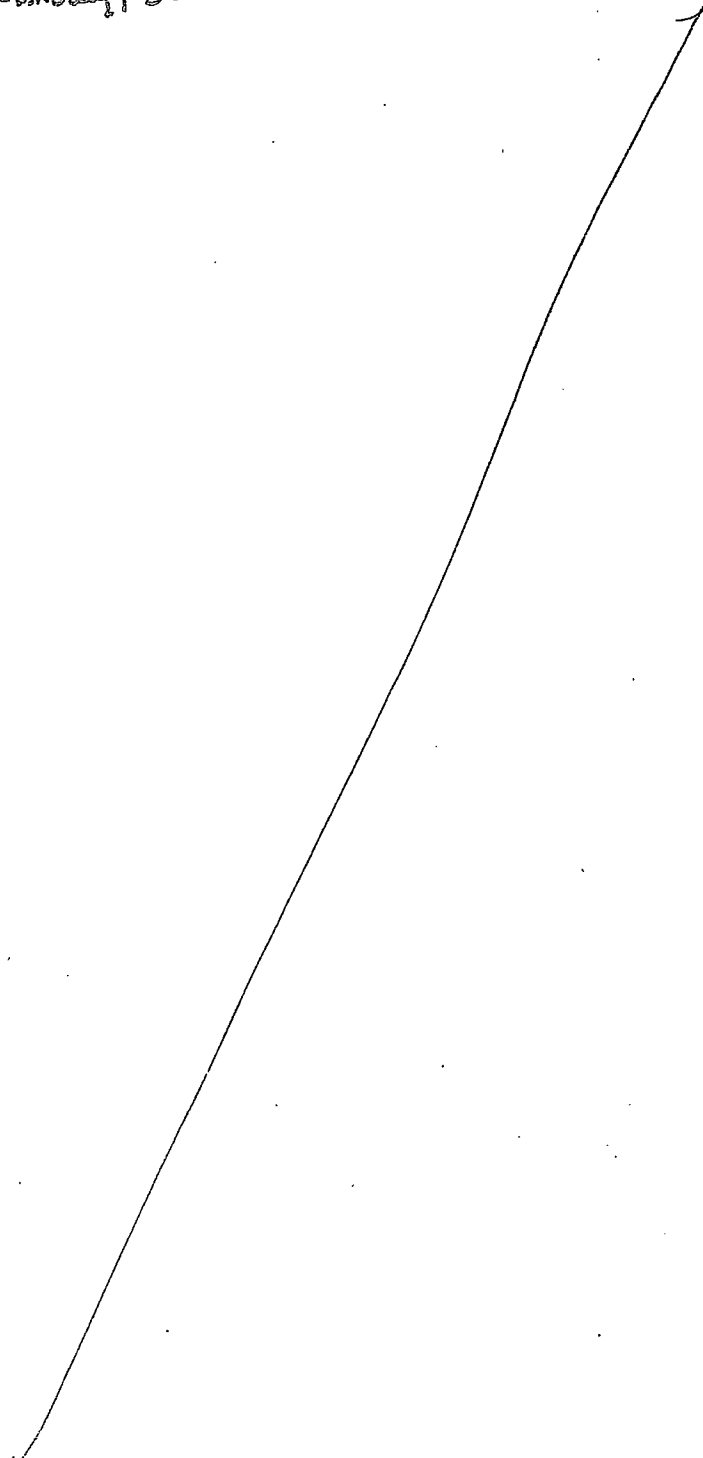
1. The Application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall be remanded to the custody of SCDC.

AND IT IS SO ORDERED.

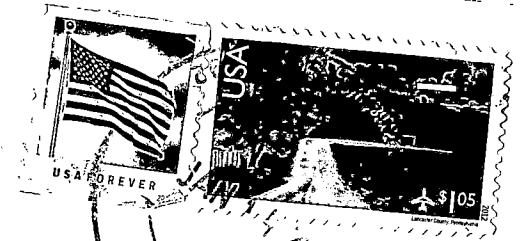


GRACE GILCHRIST KNIE
Presiding Circuit Court Judge
Sixteenth Judicial Circuit

December 4th, 2019
Spartanburg, SC



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