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March 13, 2020

South Carolina Supreme Court  
Post Office Box 11330  
Columbia, SC 29211

RECEIVED  
MAR 17 2020  
S.C. SUPREME COURT

**RE: Joanie Holcombe v. State of South Carolina, Case #2018-CP-04-667**

Dear Sir or Madam:

Please find enclosed the original and one (1) copy of the Appellant's Notice of Appeal and Proof of Service on Taylor Z. Smith of the Office Attorney General in connection with the above-referenced matter. Please file the original and return a clocked copy to my office in the enclosed self-addressed stamped envelope. Also enclosed is a copy of the Order of Dismissal.

Please contact me if you have any questions.

Sincerely,

Linda Vallar Whisenhunt, LLC



Linda Vallar Whisenhunt

LVW/

Enclosure

cc: Joanie Holcombe  
Taylor Z. Smith, South Carolina Office of Attorney General  
Adriane Burk, South Carolina Commission on Indigent Defense

**NOTICE OF APPEAL IN A CIVIL CASE**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Case No. 2018-CP-04-667

RECEIVED  
MAR 17 2020  
S.C. SUPREME COURT

Joanie Holcombe,  
S.C.D.C. No. 373202

Appellant,

v.

State of South Carolina,

Respondent.

**NOTICE OF APPEAL**

Joanie Holcombe appeals the denial of her Post Conviction Relief by the order of the Honorable R. Scott Sprouse, dated March 6, 2020 and filed March 9, 2020. Appellant received written notice of entry of this order on March 12, 2020.

March 13, 2020



Linda Vallar Whisenhunt  
Linda Vallar Whisenhunt, LLC  
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Attorney for Appellant

Other Counsel of Record:  
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South Carolina Office of Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
Attorney for Respondent  
(803) 734-0904

**PROOF OF SERVICE OF A NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Case No. 2018-CP-04-667

RECEIVED  
MAR 17 2020  
S.C. SUPREME COURT

Joanie Holcombe,  
S.C.D.C. No. 373202

Respondent,

State of South Carolina,

Appellant.

**PROOF OF SERVICE**

I certify that I have served the Notice of Appeal on State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on March 13, 2020, addressed to its attorney of record, Taylor Z. Smith, South Carolina Office of Attorney General, Post Office Box 11549, Columbia, South Carolina 29211.

March 13, 2020



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Attorney for Appellant

STATE OF SOUTH CAROLINA )  
COUNTY OF ANDERSON )

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

Joanie Holcombe, #373202, )

Case No. 2018-CP-04-667 )

Applicant, )

v. )

**ORDER OF DISMISSAL**

State of South Carolina, )

Respondent. )

This matter comes before this Court by way of an application for post-conviction relief filed on April 5, 2018, by Joanie Holcombe (Applicant). The State (Respondent) filed its return on June 14, 2018, in which it requested that an evidentiary hearing be convened. An evidentiary hearing in the matter was held before the undersigned on February 18, 2020, at the Anderson County Courthouse. Applicant was present at represented by Linda V. Wisenhunt, Esquire, and 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 called as a witness Rodney W. Richey, Esquire (plea counsel). 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 Anderson County Clerk of Court. During its June of 2016 term, the Anderson County Grand Jury indicted Applicant for murder (2016-GS-04-1016). Plea counsel represented Applicant, and Assistant Solicitor Catherine Huey of the Tenth Circuit

Solicitor's Office prosecuted the case. On July 13, 2017, Applicant appeared before the Honorable R. Lawton McIntosh, waived presentment, and pleaded guilty to homicide by child abuse. Judge McIntosh sentenced Applicant to imprisonment for fifty years. Applicant did not appeal her conviction or sentence.

### **CURRENT PROCEEDING**

On April 5, 2018, Applicant filed an application for post-conviction relief, in which he alleged that he was being held in custody unlawfully based on the following grounds:

1. Ineffective assistance of counsel;
  - a. "Lawyer did not appeal;" and
  - b. "My attorney wasn't in this for me. I asked about another plea was denied—I believe he could have went harder in the mental health situation-/post pardom—I just feel like more could have been done."

At the start of the evidentiary hearing before the undersigned on February 18, 2020, Applicant affirmed that she would be proceeding upon two grounds only: (1) that she did not knowingly and voluntarily waive her right to direct appellate review of her conviction and sentence and (2) plea counsel was constitutionally ineffective for failing to present to the plea court in mitigation additional information about Applicant's mental health challenges. This Court finds that all allegations other than these two have been waived by Applicant and they will not be addressed in this order.

### **Testimony at PCR Hearing**

Applicant testified on her own behalf at the PCR hearing. She testified Herverly B. O. Young, Esquire, was initially appointed to represent her, and did so for a brief time, after which point plea counsel was appointed as her attorney. She testified she met with plea counsel on approximately ten occasions before pleading guilty. She testified she and plea counsel discussed the case, the State's evidence against her, and mitigating factors. She testified that plea counsel

and the State requested that her mental health be evaluated by the South Carolina Department of Mental Health. She testified that she believes plea counsel did not provide the plea court with enough information about the status of her mental health, and testified that plea counsel did not notify the plea court of the fact that she was suffering from postpartum depression.

She testified she and plea counsel did not discuss at all before she pleaded guilty that she had the right to direct appellate review, and she testified she did not know what it meant "to appeal." She testified that they did not discuss an appeal after she pleaded guilty. She affirmed that the plea court informed her that she had the right to appeal her conviction and sentence, and testified that she asked plea counsel about that right after she pleaded guilty. She testified that plea counsel informed her that he would visit her in jail to discuss the right, but that he did not do so. She testified that plea counsel did not file a notice of appeal. She testified that she thought the sentence was excessive, and wanted plea counsel to file a notice of appeal regarding the length of the sentence.

During the State's cross-examination of Applicant, Applicant affirmed that the plea court had informed her that she could be subject to a prison sentence from twenty years up to life if she pleaded guilty, and that she affirmed to the plea court that she understood the potential sentences she could face. She affirmed that the plea court had informed her that she had the right to appeal and that she affirmed to the plea court that she understood the right. Applicant testified she mailed a letter to plea counsel approximately one week after pleading guilty in which she asked plea counsel about her right to appeal, but testified that plea counsel did not contact her in response.

Applicant affirmed that the State and plea counsel stated at her plea hearing that Applicant suffered from mental health issues and from depression. She affirmed that the plea

court referred to Applicant's mental health issues before he imposed the sentence. Applicant affirmed that the plea court ordered the South Carolina Department of Corrections to evaluate Applicant's mental health and to provide her with treatment.

Applicant called plea counsel as a witness at the PCR hearing. He testified he was appointed to represent Applicant after Young left the Public Defender's Office. He testified he met with Applicant on multiple occasions and that their conversations concerned mainly Applicant's desire to plead guilty instead of going to trial. He testified he and Applicant focused on the mitigating circumstances in the case, which he identified as her young age, her mental health challenges, the fact that Applicant was the mother to another young child, and that Applicant did not have a criminal record prior to committing homicide by child abuse. He testified that it was difficult to develop a defense centered on Applicant's mental health because she desired to plead guilty in order to "get on with the case." He testified he requested that the Department of Mental Health conduct a mental health evaluation, at which he discovered that Applicant also had domestic issues in her family. He testified he thought that Applicant wanted to plead guilty in order to protect a man who was living in the home at the time of the crime. He testified he mentioned these issues in mitigation during Applicant's plea hearing. He testified Applicant did not want him to make an issue with the plea court that she had been suffering from postpartum depression, and that he did not think he could force her to bring up the issue against her will. He testified he informed Applicant of the possible sentences she could receive, and that the possible outcomes did not look promising for her.

Plea counsel testified he did not recall discussing with Applicant the possibility of an appeal. He testified he did not discuss the possibility of an appeal before the plea hearing. He testified he did not recall Applicant asking him after her plea hearing about appealing. He

testified he received a phone call from Applicant's mother after the plea hearing in which she asked about the options available to Applicant. He testified he discussed with the mother the possibility of appeal and discussed with her the possibility that Applicant could file an application for post-conviction relief. He testified that the phone call may have been within the ten-day appeal deadline. He testified he did not consult with Applicant about appealing after the plea hearing and did not believe that there were any grounds for an appeal. He testified Applicant's attitude with the plea hearing was that she wanted to admit that she committed the crime and expressed to plea counsel her resignation that, "[W]hatever I get, I get."

On cross-examination, plea counsel testified he informed the plea court that Applicant's mental health had been evaluated, that she had mental health challenges, and that he did not doubt Applicant's mental competency to stand trial. He testified he believed that the sentence Applicant would receive after pleading guilty would be substantial because the evaluations showed that Applicant was competent in light of the heinous nature of her crime. He testified he shared his concern about a potentially lengthy sentence to Applicant and that she could potentially be sentenced to life in prison.

On redirect, plea counsel testified he consulted with Applicant about mitigating circumstances that could apply in her case. He testified he entered into plea negotiations with the State, and was able to work out that Applicant would plead guilty to homicide by child abuse rather than murder because it had a lower minimum sentence.

#### **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,

which allowed the Court to scrutinize their credibility. 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. 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 her post-conviction relief action and, when alleging that counsel was constitutionally ineffective, she 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, at 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, 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, at 690). Applicant must overcome this presumption to receive relief. Cherry, 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, 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, she 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, at 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 (S.C. 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, 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:

***Applicant did not knowingly and voluntarily waive her right to direct appellate review of her conviction and sentence.***

Applicant argues that she did not knowingly and voluntarily waive her right to a direct appeal. She admits that the plea court informed her that she had the right to appeal her conviction and sentence, but claims that she informed plea counsel after the conclusion of her plea hearing that she desired to appeal. Her testimony was that plea counsel did not address her request for more information about appeals and to appeal, despite the fact that she raised the issue with him in person after the plea hearing and by letter within the days following the plea hearing. Plea counsel testified that he did not remember whether Applicant asked him about an appeal and whether he received a letter from Applicant about appealing her sentence; however, he testified he talked with Applicant’s mother shortly after her plea hearing about the topic.

Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470 (2000). In determining whether the duty attached, a post-conviction relief court “must take into account all the information counsel knew or should have known.” Id. at 480 (citation omitted). When counsel has consulted with the defendant regarding the right to appeal, “Counsel performs in a professionally unreasonable manner only by failing to follow the defendant’s express instructions with respect to an appeal.” Id., at 478 (emphasis

added). In order to establish he was prejudiced by counsel's failure to file an appeal, Applicant must show he would have appealed absent counsel's deficient performance. See Id., at 484.

In White v. State, 263 S.C. 110, 119, 108 S.E.2d 35, 39 (1974), the South Carolina Supreme Court held that even though the post-conviction relief court may find that an applicant did not voluntarily and intelligently waive his right to appellate review of the conviction and sentence, the PCR court does not have jurisdiction to grant a belated appeal. However, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his right to a direct appeal, the Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected. Id. at 119, 108 S.E.2d at 39-40.

This Court finds Applicant has not demonstrated that she did not knowingly and voluntarily waive her right to direct appellate review of her conviction and sentence. Applicant has failed to demonstrate that she reasonably demonstrated to plea counsel that she was interested in appealing. Plea counsel's testimony was that Applicant was highly motivated to plead guilty, understood that she could be facing as much as a life sentence, and understood that the sentence imposed would likely be substantial due to the fact that her actions were heinous and not excused by mental illness or incompetence. Applicant has failed to demonstrate that a rational defendant in her situation would want to appeal because she pleaded guilty to homicide by child abuse in order to leave the plea court with the option to sentence her to a lower minimum sentence that would have otherwise been available. This allegation is denied and dismissed with prejudice.

***Plea counsel was constitutionally ineffective for failing to present to the plea court in mitigation additional information about Applicant's mental health challenges.***

Applicant argues that plea counsel was constitutionally ineffective because he did not present more information about her mental health issues to the plea court, which may have helped to mitigate the sentence imposed by the court.

A defense attorney has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Strickland 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). A defense attorney’s “[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.” Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing Kibler v. State, 267 S.C. 250, 227 S.E.2d 199 (1976)). An applicant alleging that his attorney failed to prepare for the case must show how additional preparation would have resulted in a different outcome. Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997). 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). “[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 (S.C. Ct. App. 2014).

At the plea hearing, Applicant affirmed to the plea court that there was anything further she wished plea counsel would do that he had not done, and affirmed that plea counsel had done

all that she asked of him. Plea Transcript 8, 10-11. The State informed the plea court that the Department of Mental Health had evaluated Applicant and concluded that she was competent to stand trial, understood the difference from right and wrong, and had the ability to conform her conduct to the requirements of law at the time of the crime, despite noting that Applicant had a history of mental health treatment for depression and adjustment disorder. Plea Transcript 13-14. Plea counsel informed the court that he agreed with those assessments. Plea Transcript 14. Plea counsel informed the plea court that he did not doubt Applicant's competency to stand trial, but noted that she had a history of mental disorders, including depression. Plea Transcript 17-18. Plea counsel explained to the plea court that Applicant had a "questionable" home environment and had dropped out of school at a young age. Plea Transcript 20. Before issuing its sentence, the plea court noted that Applicant has psychological issues. Plea Transcript 23. In issuing its sentence, the plea court also recommended the Department of Corrections conduct a mental health evaluation of Applicant. Plea Transcript 24.

Based upon the transcript from Applicant's plea hearing and the testimony present by the witnesses at the PCR hearing, this Court finds Applicant has failed to show any deficiency in plea counsel's performance with respect to mitigation at her plea hearing. The record shows that plea counsel made it clear to the plea court that Applicant had mental or emotional issues, among other problems, that suggested she was worthy of mercy in sentencing. It is difficult for this Court to see, in light of the statements of plea counsel and the State to the plea court, how it could have been any clearer to the plea court that Applicant was beset by troubles when she suffocated her newborn by placing him in a toilet and garbage can. Furthermore, Applicant has failed to show that there was any further information that should have been presented to the plea court.

This Court finds Applicant has failed to demonstrate that plea counsel's performance with respect to mitigation affected her decision to plead guilty rather than proceeding to trial. Applicant did not testify that she wanted a trial but was forced to plead guilty due to some failure on the part of plea counsel. On the contrary, plea counsel's undisputed testimony showed that Applicant desired to plead guilty throughout her criminal case. Applicant has failed to explain the benefit that would have been gained had plea counsel made some additional statement during the plea hearing about Applicant's mental health troubles.

This Court finds Applicant has failed to show that plea counsel was constitutionally ineffective for failing to supply the plea court with more information in mitigation during her plea hearing because she has not shown any deficiency in counsel's performance and resulting prejudice. This claim is 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.

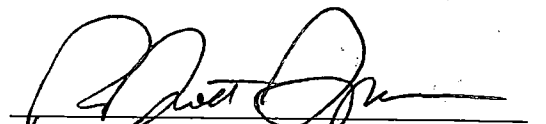
This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to appellate counsel's 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 6 day of March, 2020.

  
\_\_\_\_\_  
R. Scott Sprouse  
Chief Judge for Administrative Purposes  
Tenth Judicial Circuit

3-6, South Carolina

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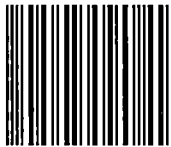
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