THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

HONORABLE WILLIAM A. MCKINNON

2019-CP-42-02590

AMY BERRIDGE, SCDC# 379048

APPELLANT,

vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

Amy Berridge appeals the denial of her Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable William A. McKinnon, Circuit Judge on September 13, 2021 an Order issued on October 12, 2021 and filed on October 22, 2021. The Appellant received notice of the judgment on October 25, 2021.

Rodney Richey, Esquire
Attorney for the Appellant
33 Market Point Drive
Post Office Box 10916
Greenville, SC 29603
(864) 467-0503
(864) 467-0646 fax

Other Counsel of Record:
Chelsey F. Marto, Esquire
Office of Attorney General State of SC
Post Office Box 11549
Columbia, SC 29211-1549

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Amy Berridge, #379048 Applicant,	)	Case No.: 2019-CP-42-02590
v.	)	**ORDER OF DISMISSAL**
State of South Carolina, Respondent.	)	

This matter comes before this Court by way of Applicant's post-conviction relief application filed July 22, 2019. Respondent made its return on September 24, 2019, requesting an evidentiary hearing be convened. An evidentiary hearing was held on September 13, 2021, at the Spartanburg County Courthouse. Rodney W. Richey, Esquire, represented Applicant. Assistant Attorney General Chelsey F. Marto represented Respondent.

Applicant testified on her own behalf at the evidentiary hearing. Counsel Steven D. Epps, Esquire, also testified. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet her requisite burden of proof of establishing she is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In March 2018, the Spartanburg County Grand Jury indicted Applicant for murder and possession of a firearm during the commission of a violent crime (2018-GS-42-01366, Cts. I & II). Steven D. Epps, Esquire represented Applicant. Solicitor Barry Barnette prosecuted the case. On September 21, 2018, Applicant entered an *Alford* plea to the lesser-included offense of voluntary manslaughter

before the Honorable J. Mark Hayes, II, circuit court judge. On January 31, 2019, Judge Hayes sentenced Applicant to thirty years' imprisonment, provided that upon service of twenty-five years, the balanced would be suspended with probation for five years.

Applicant filed a motion to reconsider the sentence on February 8, 2019, arguing that the revelation during the plea proceeding that Solicitor Barnette's paralegal, Sharon "Cookie" Peeler, was a cousin of the victim was a surprise that impacted the mitigation of Applicant's sentence. The State filed its return on February 18, 2019. By written order filed April 22, 2019, Judge Hayes denied Applicant's request for a hearing on the motion and denied the motion to reconsider the sentence. Applicant did not appeal her conviction or sentence.

Summary of Relevant Facts

On January 6, 2018, the sheriff's office was called to respond to a stabbing. (Tr. 10). Landon Woods was stabbed several times. (Tr. 10). He went to his neighbors to wait for the police to arrive. (Tr. 10). Officers spoke with Woods, who stated he was unsure who assaulted him, but stated they took a ride in a U-Haul. (Tr. 10-11). Woods got a ride in the U-Haul and when he returned to his house he was assaulted. (Tr. 11).

The sheriff's office started an investigation. (Tr. 11). Officers went to the outback building, where they observed glasses in the entrance, believed to belong to Woods. (Tr. 11). They saw blood in the outbuilding and collected several items from the home, which they sent for testing at SLED. (Tr. 11).

Officers looked at several other suspects before identifying the actual perpetrators. (Tr. 11-12). Officers ultimately received a call from a witness, who described Woods getting in a U-Haul with a small red gas can. (Tr. 12). The witness stated he saw the suspect with a red gas can come around the vehicle and get in the passenger's side of the vehicle. (Tr. 12). The U-Haul had

a distinct picture of a red panda on it and was traced in the Spinx parking lot and Britt Auto in a direction consistent with what the victim described. (Tr. 13). A BOLO was put out on the U-Haul. (Tr. 13).

A traffic stop was made on the night of January 5, morning of January 6, 2018. (Tr. 13). The officer identified Applicant and her co-defendant and remembered the co-defendant had multiple knives on him. (Tr. 13). A warning citation was issued on Applicant. (Tr. 13). The officer's bodycam was on and in the video the U-Haul had a picture of a red panda on it. (Tr. 14). A BOLO was put out for the information and a stop issued. (Tr. 14). Applicant was found driving the vehicle and was taken into custody. She admitted to picking up Woods with co-defendant for drugs. (Tr. 14). She stated she talked with Woods when the co-defendant came in and told her to get back in the car. (Tr. 14). She stated she saw a crowbar in his hand when she went in the vehicle and began moving it. (Tr. 14). She then saw Woods running to the neighbor's house with blood on him. (Tr. 14-15). The perpetrators went to their respective mothers' houses at some point and a pair of tennis shoes with the victim's blood was found at a house and the victim's blood was found in the U-Haul. (Tr. 15).

Current Action before this Court

In her current PCR application, Applicant alleges she is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. Actual innocence, in that:
   a. "I did not kill Mr. Woods. I did not conspire to kill Mr. Woods. I did not know my co-defendant had stabbed Mr. Woods. Mr. Woods ran out of the building alive."
   b. "I did not know Mr. Woods. I had no blood on me. Mr. Woods was running / alive last time I saw him."
2. Ineffective assistance of counsel, in that:
   a. "After I was sentenced my lawyer Mr. Epps told me if I went to trial he could not of represented me. He said he would have to of been chair II. He said this

the day after I was sentenced. My plea was open from 2 years – 30 years. I feel he wanted me to take the plea so I would not go to trial."

b. "I have a letter from Mr. Epps saying he might of should of objected but did not when Ms. Peeler addressed the court."

3. Prosecutorial misconduct, in that:
   a. "Sharon Peeler works for Barry [Barnette] at the [solicitor's] office. She sat in on several of my interviews. I was told none of that could be used in court. We did not know at the time Ms. Peeler was related to the victim Mr. Woods. I feel when Ms. Peeler addressed the court she spoke of things that should not have been brought up. The only reason she knew those things was because she was there for the interviews."

At the PCR hearing, Applicant proceeded forward on the following allegations:

1. Ineffective assistance of counsel:
   a. Failure to prepare for trial;
   b. Failure to discuss the evidence and discovery with Applicant;
   c. Failure to discuss the elements of the crimes charged with and pled to and;
   d. Failure to develop a trial strategy.

All other allegations raised in her initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

Summary of the Testimony

Applicant Testimony

Applicant testified that she was charged with murder and convicted of voluntary manslaughter. Applicant stated she was represented by Mr. Steven Epps at the plea hearing. She stated she is now seeking post-conviction relief for ineffective assistance of counsel. Applicant testified that the *Alford* plea was partially explained to her. She stated she knew she pled while maintaining her innocence. Applicant stated she did not believe there was sufficient evidence to convict her and asked for a jury trial instead several times. Applicant stated Counsel told her about a plea and spoke with her about weighing the options. She stated Counsel encouraged her to plead because her co-defendant was sentenced to life imprisonment before her matter was resolved. She stated she now wishes she would have gone to trial.

Applicant stated Roy Sutherland was her co-defendant. She testified they picked up the victim on the side of the road, put him in a U-Haul, beat him with a crowbar, and hit him in the head. Applicant stated she and her co-defendant were stopped three days later and she was later charged with murder.

Applicant stated that Counsel discussed the charges with her but never provided her with her discovery. Applicant stated they never discussed the evidence the State had against her. Instead, they only discussed the evidence they had against her co-defendant. Applicant stated Counsel was not prepared and at one hearing he did not bring relevant documents to court. Applicant stated he was not qualified to represent her and told her he could only sit second chair if the case went to trial, not first. Applicant testified Counsel told her he was not qualified to handle a murder trial. Applicant testified he did not object when a State witness spoke at the plea hearing. She stated she did not proceed to trial because she did not want to be sentenced to life imprisonment. She testified Counsel never discussed hand of one hand of all or accomplice liability.

On cross-examination, Applicant stated that she discussed her narrative of the facts during meetings with Counsel. She stated she asked Counsel for the evidence, who told her it was too much for her to see. Applicant stated he never brought anything to the prison with him during their meetings. She stated the only discovery she was shown was from Solicitor Barnette. Applicant stated she wanted to go to trial, but she and Counsel both decided pleading was the best option instead. Applicant stated she proceeded forward with the plea because she did not think she would receive thirty years' imprisonment, despite being told she could receive up to thirty years' imprisonment.

Applicant acknowledged that even if Counsel could not handle a murder trial, she pled to

voluntary manslaughter instead. However, she testified that she did not intend to plead until the last minute. Applicant stated she understood she could have been convicted at trial, but did not think she would actually be found guilty of murder.

Counsel Testimony

Counsel stated he represented Applicant leading up to the plea hearing. Counsel stated that they reviewed discovery at various times. Counsel stated he did not take a laptop into the jail, but took the printed materials with him to the jail to review with Applicant. He stated he did not know if he printed a full copy of all discovery materials or if Applicant requested she be provided with a full copy. Counsel stated that his paralegal went through the call logs and took notes about discovery issues with witnesses. Counsel testified that he normally puts everything in a file and goes through certain aspects of the case, but cannot say with absolute certainty what he did in this case.

Concerning his qualifications, Counsel stated he spoke with Applicant the day after she was sentenced about how he is not qualified to try a death penalty case, but is qualified to represent someone charged with murder and had done so before representing Applicant. Counsel stated he was qualified to represent her on this case. Counsel stated that his initial concern was that this case was going to be prosecuted by Solicitor Barnette. He stated he was initially concerned that they may pursue the death penalty but, after discussing this concern with Solicitor Barnette, he was assured early on that they would not seek the death penalty.

Counsel stated that Applicant may have been charged under hand of one hand of ala However, Counsel stated that there was an image from a bodycam video where Applicant had a cut on her hand, indicating she may have been more involved than she otherwise indicated. Counsel stated this would be problematic at trial because with that image the State could have

argued that Applicant was directly involved in the assault that caused the victim's death. He stated he did not discuss this image or its implications with her because he knew her story, which did not line up with the evidence but was still unwavering. He stated he did not think that getting into the weeds on this issue would benefit the defense.

Counsel stated they discussed hand of one hand of all. He stated he has thoroughly researched that theory and it was an issue in this case that was discussed. He stated he did not discuss principal liability with her.

Counsel stated he would have been prepared for trial if she chose to reject the plea offer, even though it would have been a bad idea. Counsel stated Applicant pled to avoid life imprisonment.

On cross-examination, Counsel stated that he discussed the murder and weapons possession charges with Applicant. Counsel testified that Applicant stated she did not commit the crime and could not be found guilty. Counsel stated he told Applicant there was sufficient enough evidence to convict. He stated he told her she was facing a minimum thirty years' imprisonment for murder, which would have to be served day-for-day. He stated he told her voluntary manslaughter carried less time. He stated he believed that the State could show that she was direct participant in the activity that caused his death. Counsel stated he discussed the elements of the charges originally charged with and pled to. He stated he prepared a case information sheet on the murder charge for Applicant that had this information on it and that he reviewed the entire statute with her. He stated he discussed the elements and sentence for voluntary manslaughter, even though it was not on the sheet.

Counsel stated he told her what an *Alford* plea was. Counsel stated that her concern with the plea process was the amount of time she would serve. He testified they were hopeful at first

because they felt showing the State that she was confident she would be found not guilty would be helpful. Counsel stated that it was Applicant's decision to enter the plea and he still believes that that was the best option. Counsel stated that they did not discuss all discovery, but discussed all relevant discovery.

Counsel stated that Applicant's argument from start to finish was that she did not kill the victim. However, Counsel stated that the State did not have to prove she was the killer, but that she was guilty under accomplice liability. Counsel stated he warned Applicant when her story did not make sense and warned her about putting such a narrative in front of the jury.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea and sentencing transcripts, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "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 v. Washington*, 466 U.S. 668, 686 (1984);

Butler, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRCP ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695.

Realistically, this matters "'only in the rarest case'" because "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

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

Invalid Plea

In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

For a plea to be valid, the applicant must have been aware of the nature and crucial

elements of the offense the maximum and minimum penalties, and the rights she is waiving by accepting the plea. *Boykin v. Alabama,* 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 29 (2000). A plea is not knowing or voluntary if a defendant "lacks knowledge of material evidence in the prosecution's possession." *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999).

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. at 34, 528 S.E.2d at 421 (citing *State v. Ray,* 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "'[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.'" *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874 (quoting *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). Further, "guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea." *Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

This Court finds Applicant's plea was entered freely, knowingly, intelligently, and voluntarily. After being sworn in, Applicant stated she intended to plead and was not on any substance impacting her decision or ability to understand the decision. (Tr. 5-6). Applicant stated she was satisfied with Counsel, that no one threatened or promised her into pleading, and that the decision was made freely and voluntarily. (Tr. 6-7). Applicant stated she intended to waive the right to a jury trial, where she would be presumed innocent and the burden of proof would be on the State to prove she was guilty beyond a reasonable doubt and where the jury would have to find her guilty by a unanimous verdict. (Tr. 7). She stated she understood she was waiving her

right to call and confront witnesses, to subpoena witnesses or evidence, to present favorable evidence, to establish a defense, and to remain silent. (Tr. 8). She stated she understood that she could be sentenced to up to thirty years' imprisonment, that the crime pled to was violent and most serious, and that she understood the consequences of such a distinction. (Tr. 16). Applicant stated she still wanted to plead, that she thought there was sufficient enough evidence for her to be found guilty at trial, and that all of her answers at the plea hearing were truthful and honest. (Tr. 17). The prosecutor stated that they shared the discovery with the defense. (Tr. 17). Accordingly, this Court finds that the plea was freely, knowingly, intelligently, and voluntarily entered and thus cannot be withdrawn now.

Failure to Prepare for Trial/Develop Trial Strategy

Applicant claims Counsel was ineffective for failing to prepare for trial and for failing to develop a trial strategy. However, because Applicant freely, knowingly, intelligently, and voluntarily entered the plea, waiving her right to a jury trial and to establish a defense at trial, Counsel was not ineffective on this ground. Counsel stated that he would have been prepared to go to trial if Applicant decided not to plead, but that the decision to plead was her own and in her best interest. Accordingly, this claim is without merit and relief denied on this ground.

Failure to Review Evidence with Applicant

This Court finds Applicant's allegation that Counsel failed to review the evidence with her is without merit. Testimony at the PCR hearing indicates the relevant discovery was shown to Applicant prior to the plea. Applicant conceded she was provided a copy of the discovery by Solicitor Barnette. Counsel credibly testified that he brought all printed materials into the jail with him to discuss with Applicant, but did not share the image of Applicant with a cut on her arm. Counsel stated that he reviewed all relevant discovery with Applicant prior to the plea. *See*

Gibson v. State, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999)(finding a plea is not knowing or voluntary if a defendant "lacks knowledge of material evidence in the prosecution's possession."). Applicant has failed to show what discovery was not shown to her or how it was material to the case. She has also failed to show how the discovery of such evidence, specifically the image, would have led her to deciding to go to trial instead. Thus, this Court finds this allegation is without merit and denies relief on this ground.

Failure to Discuss Elements of Crimes

This Court finds Applicant's allegation that Counsel was ineffective for failing to discuss elements of the crimes charged with and pled to is without merit. At the plea hearing, Applicant stated she intended to enter a plea to voluntary manslaughter. (Tr. 4-5). She stated she understood that she could be sentenced to up to thirty years' imprisonment for voluntary manslaughter, that the crime pled to was violent and most serious, and that she understood the consequences of such a distinction. (Tr. 16). Applicant stated she still wanted to plead, that she thought there was sufficient enough evidence for her to be found guilty at trial, and that all of her answers at the plea hearing were truthful and honest. (Tr. 17). At the PCR hearing, Counsel stated that he discussed the murder and weapons possession charges with Applicant. He stated he told her she was facing a minimum thirty years' imprisonment for murder, which would have to be served day-for-day. He stated he told her voluntary manslaughter carried less time. He stated he believed that the State could show that she was direct participant in the activity that caused his death. Counsel stated he discussed the elements of the charges originally charged with and pled to. He stated he prepared a case information sheet on the murder charge for Applicant that had this information on it and that he reviewed the entire statute with her. He stated he discussed the elements and sentence for voluntary manslaughter, even though it was not on the sheet. Counsel

stated that he told Applicant that the State did not have to prove she was the killer, but that she was guilty under accomplice liability. Counsel credibly testified they discussed hand of one hand of all. Thus, this Court finds that Applicant was sufficiently advised of and understood the elements of the charges indicted with and pled to. Accordingly, this claim is without merit and relief is denied on this ground.

Conclusion

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

This Court notifies Applicant that she must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 12 day of October, 2021.

WILLIAM A. MCKINNON
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina.