

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

NATIFAH WILLIAMS,

Petitioner,

v.

**GOVERNMENT OF THE VIRGIN ISLANDS,
GOVERNOR KENNETH E. MAPP,
OFFICE OF THE ATTORNEY GENERAL,
ATTORNEY GENERAL CLAUDE E. WALKER,
VIRGIN ISLANDS BUREAU OF CORRECTIONS
PERSONNEL, DIRECTOR RICK MULLGRAV,
ACTING ASSISTANT WARDEN SHERN MORRIS,**

Respondents.

SX-14-CV-387

**PETITION FOR A WRIT OF
HABEAS CORPUS**

MEMORANDUM OPINION

THIS MATTER comes before the Court on *pro se* Petitioner Natifah Williams (hereinafter “Williams” or “Petitioner”) Petition for a Writ of Habeas Corpus (hereinafter “Petition”) filed on September 26, 2014. For the reasons set forth below, the Petition will be granted.

BACKGROUND

On July 8, 2011, Petitioner Natifah Williams along with her sister and co-defendant Adelina Williams were arrested following a stabbing incident that resulted in the death of Tamirah Bruno and injuries to several minor girls. In Criminal Number SX-11-CR-803, Williams was charged, in a fifteen Count Information, with First Degree Murder/Principals, three counts of Attempted Murder in the First Degree/ Principals, four counts of Assault in the First Degree/ Principals, five counts of Assault in the Third Degree/ Principals, Possession of a Dangerous Weapon During the Commission of a Crime of Violence/ Principals, and Reckless Endangerment in the First Degree/ Principals.

On August 22, 2012, Williams pled guilty to

Count One, to wit: Voluntary Manslaughter and sentenced to ten (10) years incarceration with credit granted for time served. Williams also pled guilty to Counts Ten, Eleven and Twelve: Assault in the Third degree and was sentenced to two (2) years on each count to run consecutively for a total of six (6) years. The sentencing for the lesser included offense to Count One and the sentencing in Counts Ten, Eleven and Twelve run consecutively to each other for a maximum penalty of sixteen (16) years. For her guilty plea to Count Fourteen: Reckless Endangerment, Williams was sentenced to five (5) years incarceration with all suspended and instead placed on five years supervised probation. The remaining Counts were dismissed with prejudice.

Williams was sworn, the court determined that Williams was competent to enter a knowing and voluntary plea, and that the factual basis was sufficient for acceptance of the plea.

On September 26, 2014, Williams filed a Petition for a Writ of Habeas Corpus in order to withdraw her plea. By Order entered March 8, 2016, in the interest of justice, the Court *sua sponte* ordered that counsel be appointed for “the sole purpose of explaining to Petitioner the consequences of withdrawing her plea.” Williams was also granted sixty (60) days to inform the Court if she wished to withdraw the Petition. Williams continued to file *pro se* motions and never provided a direct response to the Court’s March 8, 2016 Order.

As grounds for her Petition, Williams asserts that her convictions should be reversed because of ineffective assistance of counsel and that her plea violated her due process rights because it was involuntary.¹

¹ Ultimately, Williams requests a reduction of her sentence. Williams included a motion for sentence reduction in her habeas petition and filed several subsequent motions for sentence reduction. At this stage, the Court declines to address the merits of Williams’ motion for sentence reduction. *See Blyden v. Gov’t of the V.I.*, 2016 V.I. Supreme LEXIS 5, *8 (VI. 2016) (internal quotation marks omitted) (granting the petition for a writ of habeas corpus does not address the underlying merits of the petition’s allegations, nor does it entitle the petitioner to the ultimate relief sought in the petition).

STANDARD OF REVIEW²

Pursuant to Title 5, Section 1301 of the Virgin Islands Code, "[e]very person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint." 5 V.I.C. §1301. A petition must satisfy the following requirements set forth in Title 5, Section 1302 of the Virgin Islands Code:

- (1) It shall specify that the person in whose behalf the writ is applied for is imprisoned or restrained of his liberty and the officer or person by whom, and the place where, he is so confined or restrained, naming all the parties, if they are known, or describing them, if they are not known.
- (2) If the imprisonment is alleged to be illegal, the petition shall state in what the alleged illegality consists.
- (3) The petition shall be verified by the oath of the party making the application.

5 V.I.C. § 1302.

DISCUSSION

Williams petitions for habeas corpus relief under Title 5, Section 1301 of the Virgin Islands Code.³ As explained in *Rivera-Moreno*, "when presented with a petition for a writ of habeas corpus, the court must first determine whether the petition states a prima facie case for relief—that is, whether it states facts that, if true, entitle the petitioner to relief—and also whether the stated claims are for any reason procedurally barred." *See Rivera-Moreno v. Government of the Virgin Islands*, 61 V.I. 279, 311 (V.I. 2014) (internal quotation marks omitted). "If the court determines that the petition does not state a prima facie case for relief or that the claims are all procedurally barred, the court will deny the petition outright, but if it appears that the writ should be issued, the Superior court shall grant the writ of habeas corpus without delay." *Id.* (citations omitted and internal quotation marks omitted).

² On August 18, 2017, [the Supreme Court of the Virgin Islands] issued an order adopting the Virgin Islands Habeas Corpus Rules, with an October 1, 2017 effective date. However, because the operations of the Virgin Islands Judiciary were adversely affected by Hurricane Irma and Hurricane Maria, the Virgin Islands Habeas Corpus Rules will not take effect until December 1, 2017. *See* Promulgation Order No. 2017-008.

³ Pet. at 1.

“Granting the writ of habeas corpus constitutes an intermediate step in the statutory procedure.” *Id.* “It does not address the underlying merits of the petition's allegations, nor does it entitle the petitioner to the ultimate relief sought in the petition.” *Id.*; *cf. Blyden*, 2016 V.I. Supreme LEXIS 5, at *8 (internal quotation marks omitted). Instead, “issuing the writ and serving it on the Government respondents simply requires the Government to file a return responding to the petition and to produce the petitioner in court for a hearing on the merits of his allegations.” *Id.*

1. The Petition Satisfies the Specification of Respondent Requirement under Title 5 V.I.C. § 1302(1).

The Court’s first determination is whether the writ was directed to the person having custody of petitioner and whether the writ names all the parties or describes them if they are unknown. 5 V.I.C. §§ 1305 and 1302(1).⁴ Petitioner must be in substantial compliance with the requirements in order to satisfy the specification requirement under Section 1302 (1).

In the instant matter, Williams specifically names the Government of the Virgin Islands, Governor John P. de Jongh, Office of the Attorney General, Attorney General Vincent Frazier, Virgin Islands Bureau of Corrections Personnel, Director Julius Wilson, Warden Basil Richards, and Assistant Warden Diane Prosper the Respondents in her Petition.⁵ Williams also indicates that she is currently incarcerated at the Golden Grove Adult

⁴ Title 5, Section 1305 of the Virgin Islands Code requires that “[t]he writ shall be directed to the person having custody of or restraining the person on whose behalf the application is made.” 5. V.I.C. §1305.

Section 1302 (1) also states that the writ should “name [sic] all the parties ... or describe them, if they are not known.” 5 V.I.C. §1302 (1).

⁵ The caption of the Petition was amended to reflect that Governor Kenneth E. Mapp is the current elected Governor of the Virgin Islands. Shern Morris was appointed Acting Assistant Warden and replaced both Basil Richards as the Warden and Diane Prosper and Assistant Warden. Rick Mullgrav replaced Julius Wilson as the Director of the Virgin Islands Bureau of Corrections. Claude E. Walker replaced Vincent Frazier as the Attorney General. *See* Order entered September 13, 2017.

Correctional Facility (hereinafter “GGACF”).⁶ Ergo, the Court finds that Williams is in substantial compliance with the requirements of Section 1302(1).⁷

2. The Petition Satisfies the Illegality Requirement under Title 5 V.I.C. § 1302(2).

Next, the Petition must state the alleged illegality by stating a *prima facie* case for relief. 5 V.I.C. §1302 (2); *see also Simon v. Gov't of the V.I.*, 2017 V.I. Supreme LEXIS 43, at *8 (V.I. July 26, 2017) (it is now settled that where a habeas corpus petition states facts which, if true, entitle the petitioner to relief, the petition states a *prima facie* case) (citing *Rivera –Moreno*, 61 V.I. at 311). The court must determine “whether the stated claims are for any reason procedurally barred.” *See id; cf. Blyden*, 64 V.I. at 376 (citing *Rivera-Moreno*, 61 V.I. at 311).

In the matter *sub judice*, Williams primarily seeks habeas relief on grounds that the plea agreement was unconstitutional because her plea was involuntary and there was ineffective assistance of counsel at the plea agreement stage.⁸

A. Involuntary Plea Agreement

Williams argues that because her guilty plea was not knowing or voluntary, it violated her constitutional right to due process and her incarceration is unlawful.⁹

In *Hightree v. People of the V.I.*, 60 V.I. 514, 530 (2014), the Supreme Court of the Virgin Islands explained that “a defendant must knowingly, voluntarily, and intelligently

⁶ On review of the Petition, Williams does not specifically state that she is an inmate at the Golden Grove Adult Correctional Facility. However, Williams indicates that she is an inmate at Golden Grove in the address block in the certificate of service in the Petition.

⁷ *See Nunez v. Gov't of the V.I.*, 2013 V.I. LEXIS 14, *4 (V.I. Super. Ct. Mar. 6, 2013) (the petitioner has satisfactorily identified the proper custodial respondent when the Petitioner named the Government of the Virgin Islands, Office of the Attorney General, and the Bureau of Corrections, all individually as Respondents and further indicated that he was an inmate at Golden Grove Adult Correction Facility).

⁸ *See Hughley v. Gov't of the V.I.*, 61 V.I. 323, 330 (2014) (noting that courts have consistently allowed the pleadings of *pro se* litigants to be read liberally and have afforded leniency in these cases because of *pro se* litigants' lack of formal legal training).

⁹ Pet. at 3,4,8.

enter a guilty plea, which includes being advised of the minimum and maximum sentence that may be imposed for the offense.

[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea. He may only attack the voluntary and intelligent character of the guilty plea.

Elliott v. Gov't of the V.I., 60 V.I. 702, 707 (2014) (citing *Tollett v. Henderson*, 411 U.S. 258, 267, 93 S. Ct. 1602, 36 L. Ed. 2d 235 (1973)). “[A] defendant who has pled guilty has waived, for purposes of both direct appeal and a collateral action for habeas corpus, all errors that purportedly occurred prior to acceptance of the plea agreement, other than those relating to the subject-matter jurisdiction of the Superior Court, the voluntariness of the plea agreement itself, and ineffective assistance of counsel at the plea agreement stage.” *See id.* (citing *Bruno v. People of the V.I.*, 59 V.I. 748, 757 n.7 (2013). *Cf. Tindell v. People*, 56 V.I. 138, 147 (V.I. 2012) (a defendant who has pled guilty or *nolo contendere* only possesses an absolute right to challenge the sufficiency of the jurisdictional allegations on appeal, and may not challenge any other defect in the information unless authorized by some other authority.)

“[B]eing informed of the minimum mandatory sentence of a crime is a mandatory prerequisite to knowingly pleading guilty to that crime.” *See Bryan v. Gov't of the V.I.*, 56 V.I. 451, 458 (2012). In *Bryan*, where the defendant “pled guilty to second degree murder without first being informed of the mandatory minimum sentence, he did not know the direct consequences of his plea, and this rendered his plea uninformed and less than knowing... and the acceptance of the defendant’s guilty plea violated the Due Process Clause of the Fourteenth Amendment.” *Id.* at 459 (citation omitted).

In the case at bar, Williams asserts that her plea was involuntary because she was “not given the proper instructions on the mandatory minimum sentence for second degree murder, or a more lesser included offense of involuntary manslaughter.”¹⁰ Petitioner states that “Court Appointed Counsel [sic] stated ...that it would be best to sign and take said plea because she would not win the case and ‘would be sentence [sic] to life.’”¹¹ Petitioner implies that she did not have a good understanding of what she was pleading to. Petitioner argues that because she was not informed of the direct consequences of her guilty plea, then the court’s acceptance of the plea violated due process because her plea was not voluntary. In light of *Bryan* and *Hightree*, if these facts as stated are true, Petitioner would be entitled to habeas relief and her claims are not procedurally barred.

B. Ineffective Assistance of Counsel

The Sixth Amendment guarantees a right to effective counsel. *See Morton v. People of the V.I.*, 59 V.I. 660, 669 (2013). “[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.” *See Strickland*, 466 U.S. at 690. “A convicted defendant making a claim of ineffective assistance must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment.” *See Strickland*, 466 U.S. at 690. “There is a two-part standard for evaluating claims of ineffective assistance of counsel.” *Id.* “The defendant must show that counsel’s representation fell below an objective standard of reasonableness.” *Id.*, at 687-688. Additionally, the “defendant must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.*, at 694. *See also Ibrahim v. Gov’t of the V.I.*, No. 2007-76, 2008 V.I. Supreme LEXIS 20, at *5 (V.I. Jan. 18, 2008) (counsel’s

¹⁰ Pet. at 4.

¹¹ Pet. at 2.

performance fell below an objective standard of reasonableness and that counsel's performance prejudiced the defendant resulting in an unreliable or fundamentally unfair outcome in the proceeding).

"In *Hill v. Lockhart*, 474 U.S. 52 (1985), the U.S. Supreme Court applied the standard set forth in *Strickland* to guilty plea challenges based on ineffective assistance of counsel."

See Delsol v. Gov't of the V.I., 49 V.I. 119, 133 (Super. Ct. 2007). According to *Hill v. Lockhart*,

The first half of the *Strickland v. Washington* test is nothing more than a restatement of the standard of attorney competence. The second or "prejudice" requirement, on the other hand, focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. In other words, in order to satisfy the "prejudice" requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.¹²

To prove ineffective assistance of counsel, Williams must: (1) "identify acts or omissions of counsel that are alleged to have been outside the wide range of reasonable professional judgment and competent assistance" and (2) "show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *See Gumbs v. People of the V.I.*, 64 V.I. 491, 506 (2016) (citing *Strickland* 466 U.S. at 694 (citation omitted)).

"A defendant who is represented by counsel during the plea process and accordingly enters the plea under such advice, the voluntariness of the plea depends on whether the counsel's advice 'was within the range of competence demanded of attorneys in criminal cases.'" *See McMann v. Richardson*, 397 U.S. at 771, (1970). A defendant pleading guilty under counsel's advice "may only attack the voluntary and intelligent character of the guilty

¹² 474 U.S. at 58-59 (emphasis added).

plea by showing that the advice he received from counsel was not within the standards set forth in *McMann*.” See *Tollet*, 411 U.S. at 267.

In reviewing the Petition, the Court need not directly address the merits of Williams’ ineffective assistance of counsel claims. See *Blyden*, 64 V.I. at 381 (noting that by going directly to the merits of Petitioner’s claims based only on the allegations of his petition, the Superior Court demanded too much of the Petitioner too soon). The Court need only determine whether the facts, if true, would entitle Williams to habeas relief and whether any claims are procedurally barred. See *Rivera-Moreno*, 61 V.I. at 311. “[A] claim of ineffective assistance of counsel will rarely be procedurally barred in a habeas proceeding.” See *Blyden*, 64 V.I. at 381.

In her Petition, Williams argues that the writ should be granted because there was ineffective assistance of counsel at the plea agreement stage because she was “‘bomb-rushed’ into taking the plea she took unconstitutionally, involuntarily, and on the premise of ineffective assistance of her Court Appointed Attorney [sic].”¹³ Specifically, Williams argues that there was ineffective assistance of counsel because she did not have an opportunity to discuss anything with her court appointed attorney about her case.¹⁴ Significantly, Williams asserts that she was “not given the proper instructions on the mandatory minimum sentence for second degree murder, or a more lesser included offense of involuntary manslaughter.”¹⁵

These facts as stated, if true, would entitle the Petitioner to habeas corpus relief and the ineffective assistance of counsel claim is not procedurally barred. The Court finds that Williams is in substantial compliance with Section 1302(2).

¹³ Pet. at 8.

¹⁴ Pet. at 2.

¹⁵ Pet. at 4.

3. The Petition Satisfies Verification Requirement under Title 5 V.I.C. § 1302(3).

Last, the Petition must satisfy the verification requirement. Title 5, Section 1302(3) requires the Petition to be “verified by the oath of the party making the application.” 5 V.I.C. §1302(3).

Williams’ Petition was verified by oath and was signed by the Petitioner.¹⁶ Therefore, the Petition satisfies the verification requirement under Section 1302(3).

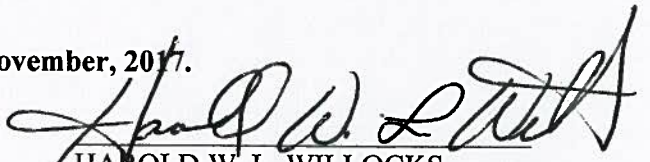
CONCLUSION

Williams’ Petition states a *prima facie* case for relief on claims that are not procedurally barred. Therefore, Williams is entitled to a writ of habeas corpus without delay. The Court will enter an Order consistent with this Memorandum Opinion.

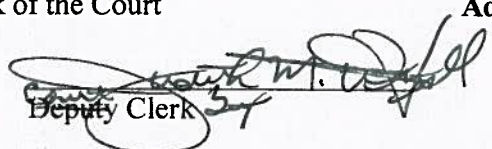
DATED this 7 day of November, 2017.

ATTEST:

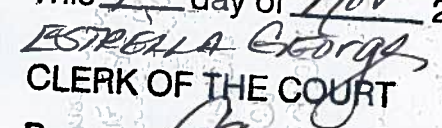
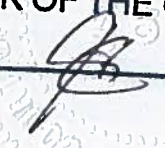
Estrella George
Clerk of the Court


HAROLD W. L. WILLOCKS
Administrative Judge of the Superior Court

By:


Deputy Clerk

Dated: 11/9/17

CERTIFIED TO BE A TRUE COPY
This 9th day of Nov 20 17

ESTRELLA GEORGE
CLERK OF THE COURT
By  Court Clerk

¹⁶ Pet. at 9.