

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
SHREVEPORT DIVISION

ALISHA DISOTELL

CIVIL ACTION NO. 07-cv-1872

VERSUS

JUDGE STAGG

WARDEN LOUISIANA CORRECTIONAL  
INSTITUTE FOR WOMEN

MAGISTRATE JUDGE HORNSBY

**REPORT AND RECOMMENDATION**

**Introduction**

Alisha Jean Disotell (“Petitioner”) pleaded guilty to manslaughter in the Caddo Parish District Court. She received a sentence of 30 years, and it was affirmed on appeal. State v. Disotell, 882 So.2d 1183 (La. App. 2d Cir. 2004), writ denied, 896 So.2d 1000 (La. 2005). Petitioner later filed an application for post-conviction relief in the state court. She now seeks federal habeas relief. It is recommended, for the reasons set forth below, that her petition be denied.

**Relevant Facts**

Petitioner pleaded guilty, and the factual basis (as is customary in Louisiana state courts) was not detailed, so the only sources of facts regarding the crime are the police reports and related documents. The facts set forth below are taken from those documents. They are not findings of fact, but they are the background facts available to provide context to Petitioner’s claims.

The police reports indicate that the victim, Drexell McBride, was drinking heavily at Rusty's Pub one evening in July 2002. The victim's friend said that he was a heavy drinker and had prior relations with prostitutes. The victim was seen in the company of Petitioner, an admitted prostitute, at Rusty's that evening.

Virginia Harris, an employee at Rusty's, told police that the victim was intoxicated that evening and in the company of a female prostitute. Harris could not identify the woman, but she provided a physical description. She said that the prostitute told her, as she sat in McBride's van, that she was going to drive the intoxicated man home and then take a cab, which McBride would pay for, to her home. Harris said McBride told her that his driver was a prostitute. Harris said that she told the woman that nothing better happen to McBride because he was like family to her.

Persons later spotted the McBride's van in a park off Lakeshore Drive near the American Legion building. McBride was in the driver's seat, slumped over into the passenger seat. Police and an ambulance were called, but McBride died on the way to the hospital. Police reported that McBride's wallet was missing, and it was never found. The coroner's report showed that McBride died from a single gunshot wound that entered the left chest, lacerated the left lung and the aorta, with the bullet lodging in a muscle of the back. The coroner reported that the victim's blood alcohol level was .291 percent.

The police who investigated the crime left Rusty's and went to the nearby Travel Lodge on Greenwood Road, which they knew was frequented by prostitutes and drug

abusers. They asked the management if a prostitute was staying there who met the suspect's description. The officers were directed to Room 133, where a white female fitting that description was staying with a black male. The officers conducted a knock and talk at the room. After much delay, the female finally opened the door and came out with a black male. The officers saw another black male in the room. An officer read Petitioner her Miranda rights. Petitioner said she understood and agreed to speak with the officer. He informed Petitioner that the matter was serious, and she immediately asked, "Is this about the guy in the van last night?" She then excitedly described how the man attempted to rape her, causing her to shoot him in self-defense. Petitioner never explained just how McBride attempted the rape, she merely said that it happened. She also said McBride attempted to take her purse and struck her.

Petitioner told the officer that she ran from the scene of the shooting to Cotten's Grocery, where she used a pay phone to call her boyfriend, who then picked her up. The boyfriend, who was one of the black males in the room, denied picking up Petitioner, but he added that intoxication made it difficult to remember whether he picked her up. Petitioner allowed the officers to take from the motel room her .380 caliber Jennings by Bryco pistol and five rounds of PMC .380 caliber ammunition.

Petitioner was first placed in the Shreveport city jail, and she was later transferred to the Caddo Correctional Center. A female inmate who was being released from CCC told officers that she was going to "drop a dime" on Petitioner. She then told them that Petitioner

had been housed with her in the city jail and had shown her crack cocaine that she had hidden in her body. Petitioner had been asking inmates if they had a pipe to use to smoke the drugs. Petitioner was confronted and initially denied having drugs. As a strip search began, she handed over eight plastic baggies of crack cocaine.

A grand jury indicted Petitioner for manslaughter. She agreed to plead guilty to that charge, and the prosecutor agreed that the drug charges would not be pursued. Petitioner faced a maximum sentence of 40 years. Judge Jeanette Garrett imposed a lesser sentence of 30 years.

### **Competence**

Petitioner argues that the trial judge erred in accepting her guilty plea because Petitioner was not sufficiently competent. She makes a similar argument that her counsel rendered ineffective assistance by allowing her to plead guilty despite a lack of competence. The test for deciding competence to enter a guilty plea is whether the defendant “has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, and whether he has a rational as well as factual understanding of the proceedings against him.” Dusky v. U.S., 80 S.Ct. 788 (1960). See also Godinez v. Moran, 113 S.Ct. 2680 (1993).

Petitioner points to the judge’s comments at sentencing that Petitioner told the probation officer that her father was killed over a drug deal when she was 14, and Petitioner “spent some time in the state mental hospital.” She was later left to her own resources on the

street, and she became a prostitute and started using cocaine. Tr. 137. There was also a comment from the prosecutor that the pre-sentence investigation noted that Petitioner said she pleaded guilty “because she was tired of coming to court.” Tr. 133. Petitioner argues that these facts should have triggered concerns about her competency.

Petitioner attached to her post-conviction application and federal petition records from her 1998 stay at the Southeast Louisiana Hospital when she was age 14. Records indicate that Petitioner had threatened suicide and overdosed on Valium prior to her four-month admission. She had a troubled childhood, including a police raid on her parents’ home, where the parents were operating a meth lab. She had been in a number of foster homes and had a history of substance abuse ranging from alcohol to LSD. At the time she was admitted, she was superficially cooperative. She appeared depressed, but had no psychotic features. She had been hospitalized at least twice before. On admission, her two major problems were identified as depression with acting out and substance abuse. A treatment plan was outlined, but Petitioner was hostile and non-compliant. She ended up in restraints a number of times and needed several medications. She seemed to be getting worse, so she was transferred to a long-term adolescent unit.

Petitioner continued to be combative, manipulative, and angry. It was during this stay that she received notice that her father had been killed in a drug-related incident. Petitioner’s attitude improved immensely after her father’s death. She became actively involved in the equestrian program by earning merits for her participation in the treatment programs. She

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