STATE OF SOUTH CAROLINA COUNTY OF ABBEVILLE	)	IN THE COURT OF COMMON PLEAS FOR THE EIGHTH JUDICIAL CIRCUIT
Greer Ashley, #338842, Applicant, v. State of South Carolina, Respondent.	)	2018-CP-01-168 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief filed on June 4, 2020, by Greer Ashley (Applicant). The State (Respondent) filed a Return on January 21, 2021, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on January 28, 2021, January 29, 2021, and March 15, 2021 remotely via the WebEx virtual courtroom. Applicant was present at the hearing and represented by Carson Henderson, Esquire. Assistant Attorney General Michael Neubauer of the South Carolina Attorney General's Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf. Bruce Byrholdt, Esquire, Larry Ashley, Donnie Brock, Honea Path Police Officer Timothy Wright II, Honea Path Police Officer Kevin Elder, Honea Path Police Officer Andrew Lunz, Abbeville County Sherriff's Office Deputy Mack Gladden, Abbeville County Sheriff's Office Deputy Evan McCurry, Honea Path Police Lieutenant Matthew Graham, Billy Garrett, Esquire, and Assistant Solicitor Micah Black of the Eighth Circuit Solicitor's Office also testified. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof of establishing any constitutional or statutory violations or deprivations to entitle him to relief. Accordingly, this Court denies and dismisses this application with prejudice. Specific findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 are set forth

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ABBEVILLE COUNTY CLERK OF COURT

below.

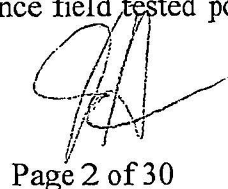
PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. During the March 31, 2017 term, the Abbeville County Grand Jury indicted Applicant for trafficking methamphetamine (400 grams or more) (2017-GS-01-0063). Bruce Byrholdt, Esquire, represented Applicant. Assistant Solicitor Micah Black of the Eighth Circuit Solicitor's Office prosecuted the case.

On October 23, 2017, Applicant plead guilty to the lesser included offense of trafficking methamphetamine 28-100 grams, second offense, before the Honorable Frank Addy, Jr. Pursuant to negotiations between the State and Applicant, Judge Addy sentenced Applicant to imprisonment for fifteen years. Applicant did not appeal his guilty plea or sentence.

SUMMARY OF FACTS

On November 21, 2016, officers from the Honea Path Police Department, and the Abbeville County Sherriff's Office, were attempting to serve active warrants on two subjects in Abbeville County. GP Tr. 10. According to information law enforcement received, the two wanted subjects were in the Honea Path area of Abbeville County. GP Tr. 10. As officers pulled onto a piece of property where the subjects were believed to be located, officers saw Applicant, who fled the area on foot. GP Tr. 10. Law enforcement pursued Applicant and were able to apprehend Applicant about thirty seconds after he fled the property. GP Tr. 11. When Applicant fled he was carrying a detergent bottle like "a running back would" hold a football. GP Tr. 11. Applicant was on probation at the time and repeatedly stated, "My life is over" after law enforcement caught up to him. GP Tr. 11. The detergent bottle was recovered and a large quantity of methamphetamine was found inside. GP Tr. 11. The substance field tested positive for methamphetamine and that



was later confirmed by SLED. GP Tr. 11. The total weight of methamphetamine in Applicant's possession was nine-hundred and seventy-one grams (i.e. two and one fourth pounds). GP Tr. 11. The state told the Court the product tested was "pure ice" and not an unfinished form of methamphetamine. GP Tr. 12.

After being advised of his rights pursuant to Miranda[1], Applicant gave a statement to law enforcement. GP Tr. 11. Applicant stated he had just purchased the methamphetamine from a guy out of Williamston named Paco. GP Tr. 11. Applicant stated he paid Paco a total of twenty-thousand dollars for the drugs. GP Tr. 11-12. Applicant had two prior drug convictions that the State indicated to the Court they would have introduced after securing a conviction had Applicant not pled guilty. GP Tr. 12.

ALLEGATIONS RAISED

In Applicant's post-conviction relief application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
    a. "Counsel did not file a suppression motion for evidence that was seized without a search warrant or arrest warrant in violation of Applicant's Fourth Amendment right."
    b. "Counsel was ineffective because his guilty plea did not comply with Rule 11 of the Federal Rules of Civil Procedure."
    c. "Counsel provided 'bad advice' that led Applicant to plead guilty."
2. Involuntary Guilty Plea
    a. "Applicant's guilty plea was not knowing and intelligently 'made to the court.'"

As requested relief, Applicant states he is seeking a new trial

On January 14, 2021, Applicant, through his attorney, filed an amended application alleging:

[1] Miranda v. Arizona, 384 U.S. 436 (1966).

b. Applicant is informed and believes that his trial counsel was ineffective because he failed to properly advise Applicant regarding the federal and state constitutional issues related to law enforcement's entry onto real estate owned by Larry W. Ashley at 5635 Keowee Road in Honea Path, S.C.
c. Applicant is informed and believes that his trial attorney was ineffective because he failed to conduct a meaningful independent investigation.

At the evidentiary hearing, Applicant stated he was going forward on the allegations set forth in his original application and his amended application.

FINDINGS OF FACTS 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 trial transcript, the application for post-conviction relief, the amended 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).

1. Ineffective Assistance of Counsel

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Petitioner, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Petitioner has the burden of proving the allegations in his PCR action, and when alleging counsel was constitutionally ineffective, he 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. First, Petitioner must prove 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, 466 U.S. 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, 466 U.S. at 690). Petitioner must overcome this presumption to receive relief. Cherry, 300 S.C. 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." Id. 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.

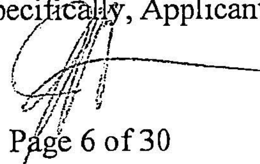
Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from a rigid rule of representation. Rather, Strickland requires the applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 697. The function of the PCR 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. "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel." Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel).

When reviewing a guilty plea, the analysis of counsel's performance under the first prong of Strickland remains unchanged—the applicant must show counsel's representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58-59. The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Id. at 58-59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59. This inquiry "focuses on a defendant's decisionmaking" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372.

a. ***Counsel did not file a suppression motion for evidence that was seized without a search warrant or arrest warrant in violation of Applicant's Fourth Amendment right, and Applicant believes his trial attorney was ineffective because he failed to properly advise Applicant regarding the federal and state constitutional issues related to law enforcement's entry onto real estate owned by Larry W. Ashley at 5635 Keowee Road in Honea Path, SC***

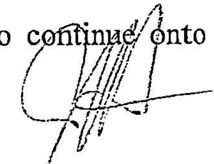
Applicant alleges his attorney failed to file a motion to suppress the drug evidence the police obtained at the time of his arrest. Specifically, Applicant asserts Counsel was ineffective for



failing to file a motion to suppress for evidence that was seized without a search warrant or arrest warrant in violation of the South Carolina Constitution, Article 1, §10, and the Fourth Amendment of the United States Constitution.

Additionally, Applicant alleges his counsel was ineffective because he failed to properly advise Applicant regarding the federal and state constitutional issues related to law enforcement's entry onto the real estate owned by Applicant's uncle, Larry Ashley. Included within this claim is his argument that counsel should have filed a motion to suppress based on this warrantless entry. All claims related to entry onto the property will be addressed here.

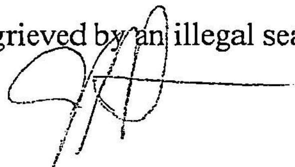
On November 19, 2016, Honea Path Police Department (HPPD) obtained arrest warrants for two individuals, Donnie Brock and Barbara Young. On November 21, 2016, HPPD received information that Mr. Brock and Ms. Young were located at a residence on Keowee Road in Honea Path, contained within Abbeville County. HPPD contacted Abbeville County Sheriff's Office (ACSO) to meet at the 5600 block of Keowee Road, as Keowee Road was outside the jurisdiction of HPPD. Applicant asserts the information received by HPPD was not from a reliable enough source for HPPD or ACSO to obtain a search warrant to search Larry Ashley's property. Applicant additionally asserts HPPD did not have the arrest warrants for Mr. Brock and Ms. Young countersigned by an Abbeville County magistrate prior to arriving at Keowee Road. Applicant asserts the only way to access the plot of land where Mr. Brock and Ms. Young were located is to go through a gate which blocked a dirt driveway on Larry Ashley's property. Applicant further asserts the gate was locked and contained a no trespassing sign on November 21, 2016. Applicant asserts Larry Ashley had a large no trespassing sign posted on a tree which would have been visible to police. Applicant asserts there were no exceptions to the search warrant requirements which would have allowed HPPD or ACSO to continue onto Larry Ashley's property past the no



trespassing signs. Applicant further asserts plea counsel did not visit the Keowee Road property prior to Applicant's plea, Applicant believes vising the property would make it clear the criminal activity occurred on Larry Ashley's property, beyond the no trespassing sign. Applicant believes law enforcement could not have seen Applicant from either Keowee Road or from Larry Ashley's no trespass sign. Applicant asserts plea counsel did not file a motion to suppress until he spoke with Applicant's probation attorney. Applicant asserts plea counsel did not discuss the constitutional issues related to law enforcement searching Larry Ashley's property, to look for Mr. Brock and Ms. Young, without a search warrant. Applicant asserts he was prejudiced by plea counsel's failure to discuss the lack of search warrant issue with him as a ground for suppression. Amended Allegation p. 2-5.

The Fourth Amendment to the United States Constitution protects the people's right to be free from unreasonable searches and seizures. U.S. Const. Amend. IV. Warrantless searches and seizures inside a man's home are presumptively unreasonable absent a recognized exception to the warrant requirement. State v. Robinson, 410, S.C. 519, 526, 765 S.E.2d 564, 568 (2014) (citing United States v. Karo, 468 U.S. 705, 714-15 (1984). Though, "the Fourth Amendment protects people, not places. What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." Robinson. 410 S.C. at 527, 765 S.E.2d at 568 (quoting Katz v. United States, 389 U.S. 347 (1967)).

The Fourth Amendment is not triggered unless a person has an actual and reasonable expectation of privacy. Id. 410 S.C. at 527, 765 S.E.2d at 568 (citing Katz, 389 U.S. at 361). Fourth Amendment rights are personal rights, which, like some other constitutional rights, may not be vicariously asserted. Id. 410 S.C. at 527, 765 S.E.2d at 568-69 (quoting Rakas v. Illinois, 439 U.S. 128, 133-34 (1978). A person who is aggrieved by an illegal search and seizure, only through the



introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed. Id. 410 S.C. at 527, 765 S.E.2d at 569 (citing Rakas 439 U.S. at 134). To claim the protection of the Fourth Amendment, a defendant must demonstrate that he had an actual and reasonable expectation of privacy in the place searched. Id. 410 S.C. at 528, 765 S.E.2d at 569 (citing Minnesota v. Carter, 525 U.S. 83, 88 (1998).

"The Proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure." Id. 410 S.C. at 528, 765 S.E.2d at 569 (quoting Rakas, 439 U.S. at 130 n.1).

The Court in Robinson has held "even if the ultimate Fourth Amendment violation a criminal defendant seeks to vindicate is a trespass under Jones[2], the defendant must demonstrate that he had an actual and reasonable expectation of privacy in the area upon which the police illegally trespassed. Id. 410 S.C. at 532, 765 S.E.2d at 571.

> When a person claims ineffective assistance based on counsel's failure to file a suppression motion, we apply a "refined" version of the Strickland analysis. With respect to the performance prong, we ask whether the unfiled motion would have had some substance. If the motion would have had some substance, then we ask whether reasonable strategic reasons warranted not filing the motion. To satisfy the prejudice prong, the defendant must show that: (1) the [suppression] motion was meritorious and likely would have been granted, and (2) a reasonable probability that granting the motion would have affected the outcome of his trial.

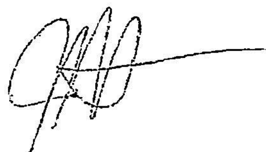
United States v. Pressley, 990 F.3d 383 (2021) (internal citations and quotations omitted).

At the evidentiary hearing, Applicant's counsel amended his allegation to conform to the evidence presented. This includes Applicant's counsel's assertion Deputy Gladden testified he did not see any criminal activity when he first saw the person who turned out to be Applicant. The person who turned out to be Applicant was past the no trespassing sign on Larry Ashley's property

[2] United States v. Jones, ___ U.S. ___, 132 S.Ct. 945 (2012).

when he spotted police on the property. Applicant's counsel further asserts this person had the right to take "flight" if there is no criminal activity observed.

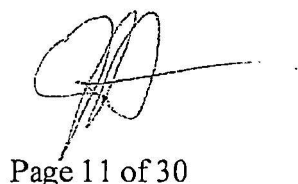
Applicant testified the no trespassing sign on Larry Ashley's tree and on Applicant's gate have been there for a long time. Applicant testified he believes he told Counsel about the no trespassing sign on Larry Ashley's tree, however he does not remember telling Counsel about the sign on Applicant's gate. Applicant testified a car parked on Larry Ashley's driveway would not have been able to see Applicant in the woods. Applicant testified the police began chasing him as soon as they spotted him. Applicant further testified the police were familiar with him, and had arrested him multiple times. Applicant testified he told Counsel he wanted Counsel to file a motion to suppress the evidence before Applicant would consider any plea offer. Applicant testified Counsel said he spoke with the judge and the drugs would not be suppressed. On cross-examination, Applicant testified he thought the motion to suppress should be granted. Applicant testified he spoke with counsel about a motion to suppress the drug evidence in his case due to the police allegedly entering Larry Ashley's land unlawfully. In his amended application for post-conviction relief, Applicant asserts his counsel filed a motion to suppress the drug evidence in his case pursuant to the Fourth Amendment of the United States Constitution, and Article 1, §10 of the South Carolina Constitution. Applicant testified when he spoke with counsel the motion had not been signed, and this led Applicant to request a trial instead of accepting a plea at that time. Applicant testified he signed a plea agreement on October 10, 2017, indicating he did not want to accept a plea offer, and wanted to proceed to trial. Applicant testified at that point he wanted counsel to file a motion to suppress the drugs in his case. On cross examination Applicant testified he asked Counsel about a motion to suppress on October 10, 2017, and was told by Counsel that a



motion to suppress had not been filed at that point. Applicant testified he was told by Counsel that Counsel did not believe a motion to suppress the drugs in this case would be granted.

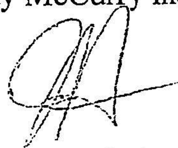
Larry Ashley testified he lived next door to Applicant, and owned a fifty six acre tract of land on Keowee Road. Larry Ashley testified the gate described in Applicant's allegations was located on Applicant's land. Larry Ashley testified there was a no trespassing sign on a tree on his property, which has been there since 2006. Larry Ashley testified the gate on Applicant's property was usually closed. Larry Ashley testified Counsel did not come to his property to inspect the scene. Larry Ashley testified a person would have to drive far into his property to see the trailer where Mr. Brock and Ms. Young were located. Larry Ashley testified he did not give police permission to search his property prior to police entering his land and arresting Applicant. On cross-examination, Larry Ashley testified police have been on his land at previous times and that police usually ask him for permission to enter the property. Larry Ashley testified first responders would drive down the dirt road near Applicant's property when the gate was open.

Officer Kevin Elder testified he was informed Donnie Brock and Barbara Young were located on Larry Ashley's property on November 21, 2016, the day Applicant was arrested. Officer Elder testified he was told Mr. Brock and Ms. Young were located in a trailer on Larry Ashley's property. Officer Elder testified HPPD did not have a search warrant for Larry Ashley's property. Officer Elder further testified HPPD asked ACSO to assist in locating Mr. Brock and Ms. Young on November 21, 2016, however Officer Elder testified the arrest warrants for Mr. Brock and Ms. Young were not countersigned by an Abbeville County Magistrate. On cross-examination, Officer Elder testified HPPD contacted ACSO to help execute an active arrest warrant for Mr. Brock and Ms. Young. Officer Elder further testified the sheriff's office can detain subjects of arrest warrants for city police.



Officer Andrew Lunz testified he met ACSO officers at Keowee Road. Officer Lunz testified his office had two municipal bench warrants from Anderson County that they were attempting to execute. Officer Lunz testified the warrants were not countersigned, which is why they called for assistance from ACSO. Officer Lunz testified he did not remember anyone at the scene calling Larry Ashley to ask for permission to enter the property. Officer Lunz further testified he cannot recall how the officer entered Larry Ashley's land on November 21, 2016. Officer Lunz testified he and fellow officers went a decent way into Larry Ashley's property before he saw Applicant. Officer Lunz testified he was not in the first car on the property, and by the time he saw Applicant other officers were already in pursuit. Officer Lunz testified Applicant was not in his view when he entered the property. Officer Lunz testified they located Ms. Young next to the trailer at the back of Larry Ashley's property. On cross-examination, Officer Lunz testified HPPD contacted ACSO for assistance because the property was outside of HPPD jurisdiction. Officer Lunz further testified he did not recall seeing a closed gate or any no trespassing signs.

Deputy Evan McCurry testified he was in a marked patrol car when he arrived at Keowee Road. Deputy McCurry testified police were not actively chasing anyone when they pulled into the driveway of Larry Ashley's property. Deputy McCurry testified though HPPD had arrest warrants they did not have a search warrant at the time they entered Larry Ashley's property. Deputy McCurry testified he did not ask for consent from Larry Ashley before entering the property. Deputy McCurry testified to the best of his knowledge Mr. Brock and Ms. Young lived in a trailer on the property. Deputy McCurry testified he cannot remember the driveway law enforcement used to enter the property on November 21. 2016. Deputy McCurry further testified he did not recall a no trespassing sign when he entered the property. Deputy McCurry testified he cannot recall when he saw Applicant, Deputy McCurry indicated he was in the second car in line.



On cross-examination Deputy McCurry testified he assisted in the arrest of Applicant. Deputy McCurry testified he entered the property and proceeded to the area where Mr. Brock and Ms. Young were supposed to be located. Deputy McCurry testified when they reached the closed gate they proceeded to a second entrance which police have previously used. Deputy McCurry testified he did not manipulate the gate in order to enter the property. Deputy McCurry testified when police approached Applicant, Applicant ran away. Deputy McCurry testified Applicant was not found near any dwelling, but was located on the road leading to the back of Larry Ashley's property.

Deputy Mack Gladden testified he was in the lead car when police entered the property. Deputy Gladden testified he does not recall seeing a no trespassing sign, or a closed gate. Deputy Gladden testified police did not go down the path with the gate because this path was very difficult to navigate without a truck. Deputy Gladden testified he did not stop and speak with Larry Ashley prior to entering the property because he saw a truck and a white male on the property, who he believed to be the suspect police had an arrest warrant for. Deputy Gladden testified he was able to see Applicant through the trees when police entered the property. On cross-examination Deputy Gladden again testified he did not see a no trespass sign on the property. Deputy Gladden testified when he reached Applicant law enforcement found a substance which appeared to be drugs, and Applicant stated "I am going to jail for life."

Investigator Jeffrey Hines testified he and other law enforcement officers entered the property through a second driveway due to the muddy conditions on November 21, 2016. Investigator Hines testified he did not see a no trespassing sign, and he did not recall seeing a closed gate on that day.

Billy Garrett[3], Esquire, testified he had a conversation with Applicant, during which he questioned whether the law enforcement had the right to pass a no trespassing sign on Larry Ashley's property in order to execute the arrest warrants. Mr. Garrett further testified he told Applicant's plea counsel there may be a search issue based on the way the search was described by Applicant. Mr. Garrett testified he spoke with Applicant's plea counsel and Applicant's counsel stated he was going to try and suppress the evidence based on the potential issues with the police entry onto the property.

Assistant Solicitor Micah Black testified he responded to a standard discovery request from Applicant's plea counsel. Assistant Solicitor Black testified he received a motion to suppress from Applicant's plea counsel on October 10, 2017. Assistant Solicitor Black testified he sent an email to Applicant's plea counsel on October 18, 2017, regarding statements Applicant made to police when he was arrested. Assistant Solicitor Black testified in the email he sent Counsel he asked, if he would want a Jackson v. Denno[4] hearing prior to trial. Assistant Solicitor Black testified a suppression hearing was never officially scheduled, however around the same time Applicant's counsel filed the motion to suppress, Assistant Solicitor Black provided Applicant's counsel with a plea offer for fifteen years where Applicant would have to serve eighty-five percent. Assistant Solicitor Black testified he spoke with Applicant's counsel and indicated the fifteen year plea offer would be taken off the table if Applicant proceeded with a suppression hearing.

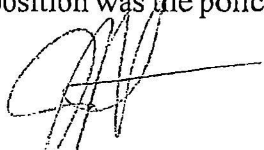
Bruce Byrholdt (Counsel) testified he met with Applicant and discussed Applicant's case prior to drafting the motion to suppress. Counsel testified he met with Applicant at the jail and

[3] Mr. Billy Garrett, Esquire, represented Applicant on a probation violation at the time of Applicant's guilty plea for trafficking methamphetamine between twenty-eight and one-hundred grams. Mr. Garrett was not present at Applicant's guilty plea, however the court agreed to run Applicant's sentence for his probation violation concurrent with the fifteen year sentence Applicant would receive as part of his negotiated plea. GP Tr. p. 4, l. 6- p. 5, l. 9.
[4] Jackson v. Denno, 378 U.S. 368 (1964).

discussed plea offers early because Applicant was on probation when he was arrested. Counsel testified he met with Applicant on October 10, 2017, and discussed Applicant's case. Counsel testified he filed the motion to suppress on the same day he met with Applicant. Counsel testified he cannot recall if he filed the motion to suppress after he met with Applicant on October 10, 2017 or before his meeting with Applicant on that day. Counsel testified he wanted to use the motion to suppress as a way to persuade the Assistant Solicitor to reduce the charges and facilitate a plea deal. Counsel testified Assistant Solicitor Black knew Counsel was going to file a motion to suppress. Counsel testified he did not schedule a hearing on the motion to suppress because Applicant agreed to a plea offer which was contingent on Applicant not going forward with his motion to suppress. Counsel confirmed he was told by Assistant Solicitor Black the fifteen year plea offer would be off the table if Applicant proceeded with a suppression hearing. Counsel testified there was no reference to the motion to suppress in his email to Assistant Solicitor Black on October 18, 2017, however the motion to suppress was filed at this point.

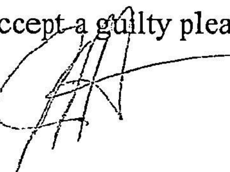
Counsel testified he Applicant was arrested in the woods behind Larry Ashley's house, however at the plea hearing Assistant Solicitor Black stated the arrest occurred at 5677 Keowee Road. Counsel testified he recalled telling the plea judge he reviewed cases about flight as well as other relevant cases and he believed the evidence would not be suppressed in this case. Counsel testified he did not do any research regarding law enforcement entering someone else's property without a search warrant when there are no trespass signs. However, at Applicant's plea hearing, Counsel stated he reviewed case law regarding the motion to suppress, and he doubted the evidence would be suppressed in this case based on the current case law. . GP Tr. p. 16, l. 22- p. 17, l. 3.

Counsel testified he was never told about a no trespass signs on the property by Applicant or Larry Ashley. Counsel indicated his position was the police had a valid arrest warrant, the police



were attempting to execute those warrants, they recognized someone who ran away when he spotted the police, and the police gave chase. Counsel testified if he were told no trespassing signs were on the property, and the arrest warrants were not countersigned, this may have changed his analysis of the situation. On cross-examination, Counsel testified he researched case law in preparation for Applicant's case, but he believed the evidence would not be suppressed. Counsel indicated he only had two motions to suppress granted in his career and it was not easy to have drug evidence suppressed. Counsel testified he informed Applicant of doubts regarding the suppression of the evidence, and advised Applicant the fifteen year plea offer would be off the table if a suppression hearing was held. Counsel testified he thought that getting the suppression motion granted would have been a "long shot." Counsel testified he thought it was in Applicant's best interest to plea due to the fact Applicant was facing twenty-five to thirty years in prison and a mandatory two hundred thousand dollar fine if Applicant were convicted at trial. Counsel testified he spoke with Applicant regarding the motion to suppress, but their conversations did not include issues regarding the no trespassing signs. Counsel again indicated he did not believe the evidence would be suppressed and stated he believe Applicant would have been found guilty.

This Court finds Applicant's allegation is without merit. Applicant has failed to show his counsel was deficient. Applicant testified he spoke with Counsel prior to Counsel filing the motion to suppress and indicated he wanted to proceed to trial. Counsel testified he filed a motion to suppress on October 10, 2017, the same day he spoke with Applicant. Mr. Black testified he received a copy of Applicant's motion to suppress prior to Applicant pleading guilty. Applicant additionally has failed to show he was prejudiced by Counsel's performance. Counsel testified he spoke with Applicant and informed him the motion to suppress would likely not be granted, and it would be in Applicant's best interest to accept a guilty plea instead of risking twenty-five to thirty

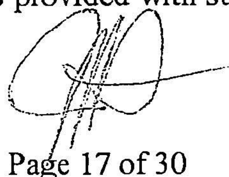


years in prison. Applicant has failed to provide any evidence to show his counsel was ineffective for failing to file a motion to suppress.

Additionally, Applicant has failed to show counsel was deficient in his research and conversations regarding Applicant's motion to suppress, and constitutional issues related to law enforcement's entry onto Larry Ashley's property, when Applicant was arrested police were executing arrest warrants with the assistance of officers from the Abbeville County Sheriff's Office. Applicant failed to inform his plea counsel of the existence of no trespass signs on the property, which Applicant alleges, may have presented additional issues for Counsel to consider in a suppression hearing. At Applicant's plea hearing, Counsel stated after he reviewed case law from the South Carolina Supreme Court, the recent decisions on search dealing with flight and the recent decisions from the United States Supreme Court, Counsel doubted the evidence would be suppressed. GP Tr. p. 16, l. 22- p. 17, l. 3. Counsel informed Applicant of the likelihood of succeeding on a motion to suppress drug evidence, especially considering the quantity of drugs which were seized during the arrest.

Counsel provided proper advice to Applicant based on the information presented, including Counsel's lack of information regarding the no trespassing signs, and Applicant's inability to demonstrate a reasonable expectation of privacy on his uncle's land at the time of his arrest. Applicant was spotted by police while in a wooded area on his uncle's property. Applicant could not have asserted he had a reasonable expectation of privacy on the land where he was arrested. Additionally, Applicant has failed to present sufficient evidence to demonstrate he had a reasonable expectation of privacy on his uncle's land when he was spotted by police.

Applicant has additionally failed to show he would have proceeded to trial absent the legal advice given by Counsel. Applicant was provided with sufficient legal assistance from Counsel



and was informed of the likelihood of succeeding with his motion to suppress. Applicant was informed the plea offer would be off the table if Applicant proceeded with his motion to suppress, and Applicant would be facing twenty five to thirty years in prison if he proceeded to trial and were convicted. Applicant was aware the plea offer was for a negotiated plea which would ensure Applicant would face no more than fifteen years in prison. Applicant was provided with sufficient information no only on the likelihood of succeeding with his motion to suppress, but with his chances of acquittal if he went to trial, and the amount of prison time he would face if he were convicted at trial. This Court finds Counsel's testimony to be credible, and believes Counsel properly researched and advised Applicant based on the information Counsel was provided by Applicant and Larry Ashley, and the circumstances surrounding Applicant's arrest. Accordingly, Applicant's claim his plea counsel was ineffective for failing to file a motion to suppress, and for failing to properly advise Applicant regarding the constitutional issues related to law enforcement's entry onto Larry Ashley's property are without merit. These claims are denied and dismissed with prejudice.

b. Counsel was ineffective because his guilty plea did not comply with Rule 11 of the Federal Rules of Civil Procedure.

Applicant alleges his counsel was ineffective because Applicant's guilty plea did not comply with Rule 11 of the Federal Rules of Civil Procedure.

This Court finds Applicant's allegation is without merit, and should be dismissed with prejudice. Rule 1 of the Federal Rules of Civil Procedure indicates "These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1. Applicant claim that his criminal guilty plea should comply

with Rule 11 of the Federal Rules of Civil Procedure fails as a matter of law because the Federal Rules of Civil Procedure are inapplicable to state criminal proceedings. Therefore, this claim is denied and dismissed with prejudice.

c. Counsel provided 'bad advice' that led Applicant to plead guilty.

Applicant asserts Counsel was ineffective because he provided bad advice that lead to Applicant's guilty plea.

In the context of a guilty plea, the court must determine whether 1) counsel's advice was within the range of competence demanded of attorneys in criminal cases—i.e. was counsel's performance deficient, and 2) if there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty. Smith v. State, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006) (citing Hill v. Lockhart, 474 U.S. 52, 56–58 (1985).

Applicant at his PCR hearing testified he spoke with Counsel prior to agreeing to a guilty plea. Applicant testified he did not want to accept a plea offer, and instead wanted to proceed with a motion to suppress. Applicant testified he was told by Counsel the judge would not suppress the drugs in Applicant's case. Applicant testified he felt the motion to suppress should have been granted by the judge. On cross-examination Applicant testified when he spoke with Counsel the motion to suppress had not been filed. When asked whether he felt his motion to suppress would be granted by the judge, Applicant testified he thought Counsel would know.

Counsel testified he does not recall how many times he met with Applicant. Counsel testified on October 10, 2017, he met with Applicant, discussed Applicant's case, drafted a motion to suppress, and filed the motion to suppress on the same day. Counsel testified at his October 10, 2017, meeting with Applicant, they discussed the fact that Applicant's case was going to be called for trial in a few weeks. Counsel testified he discussed plea offers with Applicant very early in his

representation of Applicant. Counsel testified Applicant was on probation and due to his charges he was looking at a serious sentence. Counsel testified he told Applicant that getting the drugs suppressed would be a "tough haul" and Counsel informed Applicant if he testified his testimony could be impeached due to his record of prior convictions. Counsel testified through his plea negotiations with Assistant Solicitor Black he was able to get Applicant's charges reduced. Counsel testified he communicated all plea offers to Applicant, and advised Applicant of the risk associated with proceeding to trial based on the State's evidence, and the charge Applicant was facing. Counsel testified he advised Applicant of the pros and cons of accepting a plea or proceeding to trial, and it was Applicant's decision to make. Counsel testified he informed Applicant he did not believe the Court would grant Applicant's motion to suppress. Counsel testified he did legal research for Applicant's motion to suppress and based his advice on the legal research he did after filing Applicant's motion to suppress. Counsel testified he thought proceeding to trial would be a "big gamble" and Applicant would likely have been found guilty.

This Court finds Applicant's allegation is without merit. This Court finds Applicant has failed to show how Counsel was deficient. Applicant has failed to prove Counsel's advice was not within the range of competence demanded of attorneys in criminal cases. Though Applicant was hoping for a lesser sentence than he received, Applicant was informed prior to his plea hearing that he would be facing twenty-five to thirty years if convicted at trial. Additionally, Applicant's counsel informed Applicant he did not believe the evidence in Applicant's case would be suppressed. This court views Applicant's counsel's testimony on this point, and otherwise, as credible. Applicant's counsel provided Applicant with competent advice. Applicant has additionally failed to establish he was prejudiced by Counsel's advice. Applicant has failed to show that he would have proceeded to trial if not for counsel's advice. Applicant, at his plea

hearing, plead guilty to a fifteen year negotiated sentence for Trafficking Methamphetamine 28-100 grams, which was a lesser included charge. Applicant was indicted for Trafficking Methamphetamine 100 plus grams and was facing a possible sentence of twenty five to thirty years in prison if Applicant was convicted at trial. Applicant, through his plea, was able to avoid a sentence ten to fifteen years greater than the sentence he received by pleading guilty. At his plea hearing, Applicant was initially hesitant to plead guilty, and indicated he wanted to speak with another attorney, Billy Garrett, who represented Applicant for a probation violation. GP Tr. p. 4, l. 6-15; p. 6, l. 12-13. However, despite being given multiple opportunities to stop his plea hearing, and proceed to jury selection, Applicant made the decision to plead guilty. GP Tr. p. 6, l. 17-25; p. 8, l. 25- p. 9, l. 19; p. 13, l. 3-25; p. 16, l. 15-17. This Court finds Applicant has failed to demonstrate ineffective assistance of counsel based on the advice Applicant received from Counsel. Therefore this claim is denied and dismissed with prejudice.

d. ***Applicant believes his trial attorney was ineffective because he failed to conduct a meaningful independent investigation.***

Applicant asserts his counsel failed to conduct a meaningful independent investigation prior to Applicant's guilty plea. Applicant, in his amended allegations asserts Counsel never independently investigated why Honea Path Police and Abbeville County Sheriffs were on Larry Ashley's property at the time of Applicant's arrest. Applicant asserts Counsel never walked or drove the property owned by Applicant or Larry Ashley. Applicant asserts though Counsel filed a motion to suppress, his deficient independent investigation would have prohibited Counsel from meaningfully arguing the motion even if Counsel had argued the motion at a suppression hearing. Applicant believe he was prejudiced by Counsel's failure to conduct a meaningful independent investigation.

Failure 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)).

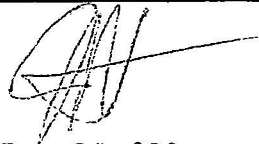
Applicant testified he was in the woods when the police entered Larry Ashley's property and would not have been visible from Keowee Road. Applicant testified there were multiple no trespassing signs on Larry Ashley's property which existed for long time. Applicant testified he asked Counsel to visit the property multiple times prior to his plea, and Counsel never visited the property. Applicant testified he met with Counsel three times at Counsel's office. Applicant testified he only met with Counsel one or two times once he was arrested on a probation violation in September 2017. Applicant testified he did not have any phone calls with Counsel while incarcerated prior to his plea. Applicant testified he explained to Counsel his concerns with the police entering Larry Ashley's land due to the existence of the no trespassing signs. Applicant testified he never heard Counsel talk about hiring a private investigator to take photos and videos of the scene. Applicant testified he thought his counsel's representation was deficient. On cross-examination, Applicant testified he recalled telling the plea judge he was satisfied with his attorney. Applicant testified he recalled telling the plea judge his attorney did everything he wanted him to do, though Applicant testified he was pressured into taking the plea deal.

Counsel testified he could not recall how many times he met with Applicant. Counsel testified he only met with Applicant's uncle before Applicant was released from jail on bond. Counsel testified he did not have any telephone conversations with Applicant while Applicant was incarcerated because the phone call would have been recorded. Counsel testified he did not have any handwritten notes in his file detailing his conversations with Applicant. Counsel testified he

did not hire a private investigator in this case, however on cross-examination Counsel indicated he does not hire a private investigator in the majority of his cases. Counsel testified he would have talked with Applicant about going to trial during their October 10, 2017, meeting. Counsel testified his trial preparations included reviewing discovery, talking with Applicant, and conducting legal research to see if the physical evidence would be suppressed. Counsel testified he also reviewed an audio recording from police at the time Applicant was arrested. Counsel testified he did not investigate how far onto Larry Ashley's property the police were when they spotted Applicant. Counsel testified he relied on his client's details regarding what happened on the day of Applicant's arrest. Counsel testified he did not talk to any other witnesses, due to the fact Applicant testified he was in the woods by himself. Counsel testified he did not attempt to contact Donnie Brock, who was also arrested on the property on the same day. Counsel testified he did not serve any subpoena for witnesses to testify. Counsel testified he was not provided any names of potential witnesses by Applicant. Counsel testified he did not go onto the property where Applicant was arrested. Counsel testified he was told by Applicant that Applicant was close enough to see the police, got scared, and took off running prior to his arrest. Counsel testified if he was informed of the no trespassing signs this may have altered his analysis while drafting his motion to suppress the drug evidence. On cross-examination Counsel testified he had many meeting with Larry Ashley, and a few meetings with Applicant, both at Counsel's office, and at the jail. Counsel testified Applicant never denied his involvement in the case. Counsel testified he was never told of the existence of the no trespassing signs on Larry Ashley's property. Counsel further testified neither Applicant, nor Larry Ashley ever provided Counsel with any potential witnesses for him to call.

This Court finds Applicant has failed to show his counsel was ineffective for failing to conduct a meaningful independent investigation prior to Applicant's plea. Applicant has failed to demonstrate how Counsel's investigation was deficient. Counsel testified he did not visit the scene of the arrest prior to Applicant's plea, however Counsel did conduct a legal investigation into possible issues Counsel could address during a suppression hearing. Counsel testified he did not speak with any witnesses, nor did he subpoena any witnesses, though Counsel noted Applicant and his uncle Larry Ashley never provided Counsel with any possible witnesses, and Applicant stated he was arrested by himself in the woods. Counsel relied on the information provided to him by Applicant, and investigated all issues he was made aware of through his conversations with Applicant, Applicant's probation attorney, and Larry Ashley. Applicant has also failed to show he was prejudiced by Counsel's investigation. Counsel admitted his analysis of the legal issues surrounding the police presence on Larry Ashley's property may have changed if he was provided information about the no trespass signs. However counsel testified he was not made aware of any no trespassing signs prior to Applicant's decision to plead guilty. Counsel testified he informed Applicant of the likelihood of succeeding on a motion to suppress, and advised Applicant it would be in his best interest to accept a fifteen year negotiated plea instead of risking the possibility of a twenty-five to thirty year sentence if he were convicted at trial. Applicant was aware of the benefit he would receive from this plea, and Applicant made an informed decision to accept a plea which would reduce his possible prison time by fifteen years. Applicant has failed to present any information that would have been uncovered as a result of further investigation. This court finds Applicant's allegation Counsel did not conduct a meaningful independent investigation to be without merit. Therefore this claim is denied and dismissed with prejudice.

2. <u>Involuntary Guilty Plea</u>



a. Applicant's guilty plea was not knowing and intelligently 'made to the court.'

Applicant asserts his plea was not knowingly and intelligently made to the court. Applicant argues his plea was the result of ineffective assistance of counsel giving him bad advice and not filing a suppression motion as he said he was going to do.

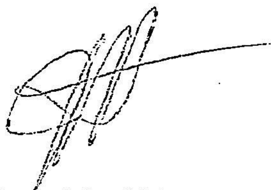
"[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." Reed v. Becka, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Accordingly, because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. Boykin v. Alabama, 395 U.S. 238 (1969); Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. Brady v. United States, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. *Id.* at 755; see also United States v. Smith, 440 F.2d 521, 528–529 (7th Cir.) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." North Carolina v. Alford, 400 U.S. 25, 31 (1970). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, Brady, 397 U.S. at 750–53, or by increasing the risks of punishment on those who do not. Alford, 400 U.S. at 37 (1970); cf. United States v. Cox, 464 F.2d 937, 942 (6th Cir. 1972) ("It is well established that a guilty plea is not rendered invalid because

it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment." (citing Brady, 397 U.S. 742)). An applicant who enters a plea on the advice of counsel may "only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the [applicant] would not have pled guilty, but would have insisted on going to trial." Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill, 474 U.S. 52).

The voluntariness of a guilty plea, however, "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." Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997); cf. Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant's claim his lawyer misadvised him).

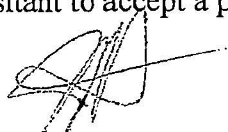
Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. Boykin, 395 U.S. at 243. Additionally, the defendant "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory



minimum penalty, and the nature of the constitutional rights being waived." Pittman, 337 S.C. at 599, 524 S.E.2d at 624.

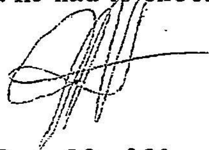
Applicant testified he did not speak with his attorney the morning of his plea, prior to going before the judge. Applicant testified his attorney did not arrive to the courthouse until right before lunch. On cross-examination Applicant testified he remembered discussing discovery with Counsel. Applicant testified he was hesitant to plead guilty during his plea hearing. Applicant requested multiple times to have a break where he could speak with Counsel, additionally, Applicant sought to delay his plea hearing in order to have a conversation with his probation attorney. However, Applicant testified he told the plea judge he did not need more time to talk with his attorney prior to pleading guilty. Applicant testified he recalled telling the plea judge he was not threatened or promised anything to get him to accept the plea. However, at the evidentiary hearing, Applicant testified he was advised by his attorney that he had to say yes to the plea judge's questions. Applicant testified he recalled telling the plea judge he was pleading guilty on his own free will. Applicant testified he recalled telling the plea judge Applicant's counsel did everything Applicant wanted him to do. However, at the evidentiary hearing, Applicant testified he was pressured into taking a plea deal. Applicant testified he recalled the plea judge informing him of his charges, the maximum sentence his charge carried, and the negotiated sentence Applicant and the State agreed to. Applicant testified he recalled the plea judge informing Applicant of his right to appeal within ten days of his plea. Applicant further testified he recalled the plea judge discussing his constitutional rights, including the right to remain silent, the right to confront witnesses, and the right to challenge the State's evidence against him.

Counsel testified he had discussions about a plea deal early into his representation of Applicant and Applicant was initially hesitant to accept a plea. Counsel testified he explained the



pros and cons of going to trial or accepting a plea, and this decision was left to Applicant. Counsel testified he spoke with Assistant Solicitor Micah Black and Judge Addy prior to Applicant pleading guilty, Counsel testified this conversation was to ensure Judge Addy would accept the negotiated plea offer. Counsel testified, at Applicant's plea hearing, he told Judge Addy he reviewed cases about flight, along with other cases and based his decision on the likelihood of succeeding on Applicant's motion to suppress on this research. On cross-examination, Counsel testified he reviewed discovery with Applicant and believed applicant understood the evidence against him. Counsel testified he discussed Applicant's constitutional rights, and stated Applicant was well aware of his rights. Counsel testified he discussed with Applicant the plea offer was for fifteen years, and explained the specifics of a negotiated plea. Counsel testified he explained to Applicant the motion to suppress would be a long shot, and the negotiated plea offer would be contingent on not going forward with the motion to suppress. Counsel further testified Applicant was given multiple opportunities to end his plea hearing, and proceed to a jury trial, however Applicant chose to plead guilty. Counsel testified he felt Applicant was not under any more pressure than any other criminal defendant. Counsel testified it was Applicant's choice to plead guilty, and Counsel would have been prepared to go to trial if Applicant chose to not plea.

This court find Applicant's allegation to be without merit. Applicant was aware of the crime he was charge with, and the possible penalties if he was convicted. Given the record before this court, applicant's assertions are not credible. Applicant was informed about the negotiated plea offer from the State, and knew accepting this plea would reduce his possible jail sentence by ten to fifteen years. Applicant had multiple opportunities to speak with his counsel, both before, and during the plea hearing. Applicant was informed of his constitutional rights by Counsel and the plea judge. Though Applicant was told he had to choose between going forward with his plea

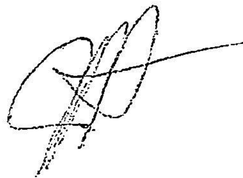


hearing, or proceeding to trial, Applicant made an informed decision to accept the negotiated plea offer and limit his possible jail time to fifteen years. This court finds Applicant has failed to show his plea was not knowingly and intelligently given to the court. Additionally Applicant has not provided any evidence, outside of his own self-serving testimony, to indicate he would have rejected the plea offer, and proceeded to trial, if he was provided with more information. Therefore, Applicant's claim is denied and dismissed with prejudice.

CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from post-conviction relief counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. 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. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

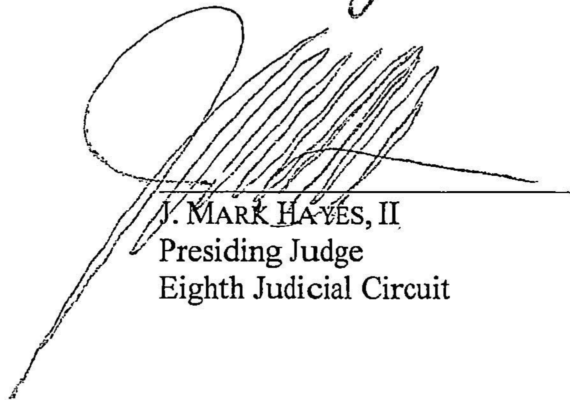


IT IS THEREFORE ORDERED THAT:

1. The application for post-conviction relief is denied and dismissed with prejudice; and

2. Applicant is to remain in the custody of the Respondent.

AND IT IS SO ORDERED this 18th day of August, 2021.



J. MARK HAYES, II
Presiding Judge
Eighth Judicial Circuit

Abbeville, South Carolina