

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

**Jan 12 2023**

**S.C. SUPREME COURT**

\_\_\_\_\_  
Certiorari to Cherokee County

Honorable G.D. Morgan, Jr., Circuit Court Judge  
\_\_\_\_\_

JERRY DAVIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000856  
\_\_\_\_\_

APPENDIX  
\_\_\_\_\_

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ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA )  
 2 COUNTY OF CHEROKEE ) COURT OF GENERAL SESSIONS

3  
 4 STATE OF SOUTH CAROLINA, ) TRANSCRIPT  
 5 PLAINTIFF, ) OF  
 6 VS. ) RECORD  
 7 JERRY JEROME DAVIS, ) 2019-GS-11-367  
 8 DEFENDANT. )

9  
 10 March 26<sup>th</sup>, 2020  
 11 Gaffney, South Carolina

12  
 13 B E F O R E:

14 THE HONORABLE R. KEITH KELLY, Judge.

15  
 16 A P P E A R A N C E S:

17 CLAY ALLEN  
 18 PUBLIC DEFENDER  
 Attorney for the Defendant

19 ANDREA PRICE  
 20 ASSISTANT PUBLIC DEFENDER  
 Attorney for the Defendant

21  
 22  
 23 PAMELA E. GREEN  
 24 Circuit Court Reporter  
 Seventh Judicial Circuit

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INDEX OF WITNESSES

(WHEREUPON, there were no exhibits marked during this hearing.)

1 P R O C E E D I N G S

2

3 THE COURT: Is this -- sir, are you Jerry Davis?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. Your lawyer's here in the --  
6 Ms. Price is here in the courtroom. Sir, you'll hear from  
7 her in just a minute.

8 Raise your hand and be sworn.

9 (WHEREUPON, the Defendant was placed under oath at this  
10 time.)

11 THE COURT: All right. You may lower your hand.

12 Sir, have you had a chance to review this report with  
13 your lawyer, Ms. Price?

14 THE DEFENDANT: No, sir. No, sir.

15 THE COURT: Have you talked with your lawyer about any  
16 of this?

17 (Pause.)

18 THE DEFENDANT: Oh, yes, I know what the violation is.  
19 Yes, sir.

20 THE COURT: Okay. She went over the violations with  
21 you.

22 Okay. Is it true that you violated your probation?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Ms. Price, he admits the  
25 violations.

1 MS. PRICE: Yes, Your Honor.

2 I represent Mr. Davis. Went to go see him on Monday.  
3 He is being held currently in our jail on his two warrants  
4 for probation violation. He also has new -- two new charges  
5 that I represent him on are the DV first and a grand larceny  
6 two to ten. Don't have discovery on those yet. He  
7 literally just got arrested on those on the 19<sup>th</sup> of this  
8 month. I expect, from my conversation with him, that it  
9 will be a trial.

10 He has not had an admin hearing yet, Your Honor. As  
11 you already know, these are some pretty outstanding and  
12 difficult times. No news on when we're gonna have an admin  
13 hearing on these, on these particular warrants. However, he  
14 has admitted to the, to the violation here today.

15 I would request that Your Honor, since he's not getting  
16 out anyway cause he does not have a bond on that DV first  
17 that was set by -- Judge Clary here declined to set one,  
18 that we continue this on, that we continue this on to  
19 another term of Court, Your Honor, so he can both have an  
20 admin hearing, and I get some discovery on some cases.

21 Thank you.

22 THE COURT: Well, agent.

23 THE PROBATION AGENT: We got -- we just got called and  
24 said just put him on today's docket.

25 THE COURT: Let me see the lawyers and the agent.

1 (WHEREUPON, a bench conference was held at this time.)

2 THE COURT: Okay. We're, we're back on the record on  
3 this, and I, I understand, from your lawyer, sir, what we  
4 were talking about was about whether or not you have --  
5 you -- not the fact whether or not -- you have not had an  
6 administrative hearing. I don't know of any statute, and I  
7 was on the phone with the State's lawyer, and I don't know  
8 of any statute that guarantees you a preliminary -- I mean  
9 preliminary hearing or an administrative hearing.

10 They've been canceled due to the COVID-19 as I  
11 understand. We're under a state of emergency. But whereas  
12 here you have admitted the violations with able counsel, and  
13 also Mr. Allen himself standing there next to you. I don't  
14 see any, I don't see any violation of due process. But  
15 you -- I'm gonna let Ms. Andrea Price put anything she wants  
16 to on this record on this.

17 You go right ahead.

18 MS. PRICE: Thank you, Your Honor.

19 Just please note, note my objection.

20 THE COURT: Yes, ma'am.

21 MS. PRICE: He has not had an administrative hearing.  
22 Granted these are extraordinary times, but that's one --  
23 first thing that he indicated to me when I went to go see  
24 him is that he had not yet had an administrative hearing on  
25 these charges.

1           He -- Your Honor, he just got picked up on these. He's  
2 just been in jail since the 19<sup>th</sup> of this month. I, I just  
3 feel that, at this point, that it's a little premature for  
4 him to have this at this early of a date. If he wants to  
5 admit to the violation, that -- that's a totally separate  
6 issue, but, in my estimation, he's looking at a 10 year  
7 exposure on these charges. I just wanted to make sure that  
8 his rights were protected as well.

9           THE COURT: Yes, ma'am.

10          MS. PRICE: Thank you, Your Honor.

11          THE COURT: Yes, ma'am.

12          Mr. Allen, would you like to put anything on the  
13 record?

14          MR. ALLEN: One second.

15          (Pause.)

16          MR. ALLEN: Am I on video?

17          THE COURT: Oh, okay. What we did was we muted it here  
18 so we could not hear your conversation with him. I tell you  
19 what, when you talk to someone, Brandy suggested, when you  
20 finish talking, if you'll raise your hand. We'll know to  
21 turn it back on.

22          MR. ALLEN: Okay.

23          THE COURT: We, we did not---

24          MR. ALLEN: I appreciate it. I'm sorry.

25          The, the question that I've asked is has the Court

1 asked him if he consented to do this by video.

2 THE COURT: I don't, I don't remember if I did or if I  
3 didn't.

4 MS. PRICE: I don't think so.

5 THE COURT: I don't know that I did.

6 MR. ALLEN: Does the Court want to ask him that now?

7 THE COURT: I can, I can ask him that.

8 Sir, you want to do this by video or not?

9 THE DEFENDANT: I just want to -- I, I was told I was  
10 gonna get a bond today. That's what I'm trying to do. I  
11 wanted to get a bond.

12 THE COURT: I can't hear what you said.

13 MR. ALLEN: He was under the impression that -- he was  
14 under the impression that he was coming up for a bond  
15 hearing or thinking he was gonna get a bond he says. That's  
16 what he's trying to -- really trying to get on the, on the  
17 new charges.

18 THE COURT: Oh, I understand about that, but we're here  
19 on the probation matter.

20 THE DEFENDANT: I want to be present.

21 MR. ALLEN: He says he would like to be present  
22 before -- for the probation hearing.

23 THE COURT: Okay. We can absolutely arrange that.  
24 That's no problem. We'll stand this one down until we get  
25 him brought over after lunch.

1 Can we get him over here after lunch?

2 (WHEREUPON, a recess was taken in this case at this  
3 time.)

4 THE COURT: Okay. We're back on the matter of Jerry  
5 Davis.

6 THE OFFICER: Is that all right here?

7 THE COURT: That's good, yes, sir.

8 Sir, you wanted to be physically present in the  
9 courtroom. You're now physically present in the courtroom.  
10 You understand?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Anything else you wanted to put on the  
13 record?

14 MS. PRICE: No, Your Honor.

15 THE COURT: Okay. Agent.

16 THE PROBATION AGENT: Yes, sir, Your Honor. He's here  
17 on two warrants. Warrant-11-200006 and 0070.

18 On the first one is regarding him committing another  
19 domestic violence in the first degree with the same victim.  
20 She had a very large bruise. I've shown defense all the  
21 photos and the text messages where he even admits to hitting  
22 her with a belt.

23 Then, on the second one, he hadn't gotten enrolled in  
24 batterers treatment, and then he had texted me from another  
25 phone number stating why you lied on me to put me on TV, and

1 lies I hit my child's mother. I want to turn myself in, Ms.  
2 Moore. I'm in Atlanta working and I will be there Friday to  
3 turn myself in. Ms. Moore, this is your day. This was my  
4 lawyer, my bondsman, in which he never showed up. And then  
5 he got arrested for some other pending charges that he had.

6 He hasn't done anything really on probation. This is  
7 not his first DV conviction. He had a three year sentence  
8 prior, and he, he just can't do probation.

9 THE COURT: Gotcha.

10 sir, would you like to speak?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right.

13 THE DEFENDANT: I was confused a while ago. I was --  
14 didn't know what was going on. I was just complying with  
15 what that---

16 MS. PRICE: About, about the allegations.

17 THE DEFENDANT: About the allegations, I was confused.  
18 He was like -- I, I was just wanting to sit back and accept  
19 it. Yes, sir.

20 THE COURT: You just want to get it over with?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: So, you want to go forward?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay. Any -- anything you can say --  
25 you've admitted the allegations, okay, and you have counsel.

1 We went back and read the U.S. Supreme Court decision I  
2 think in 1973, something like that. And so we, we've taken  
3 that into account, and it talks about minimal due process,  
4 and you have counsel, and you have the warrant which gives  
5 the Court jurisdiction, and you have admitted that you have  
6 violated your probation on the times -- both of these.

7 Okay.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: So, you wanted to be present in the  
10 courtroom, and I'm putting all this on the record here. So,  
11 we have physically brought you over although, and I will say  
12 this, I don't make a finding, but I don't think you have a  
13 constitutional right to physically be here. We're taking  
14 the pleas and doing other matters with video conferencing,  
15 and there's a new directive out from the Chief Justice  
16 himself, in fact, he signed it Chief, that I just read on  
17 the email and we're going to be using a thing called wedEx  
18 to work remotely if the Court shuts down.

19 So -- but anyway, we have honored your request and  
20 brought you here, and now I understand you to say that you  
21 wish to go forward.

22 Is that right?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And just get it over with, right?

25 THE DEFENDANT: Yes, sir.

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THE COURT: All right. He's revoked in full.

MS. PRICE: Thank you, Your Honor.

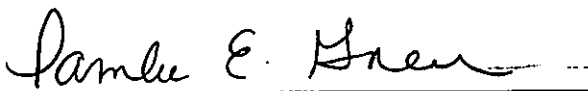
\* \* \*END OF REQUESTED TRANSCRIPT OF RECORD\* \* \*

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Cherokee County, South Carolina, on the 26<sup>th</sup> day of March, 2020.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 1<sup>st</sup>, 2020



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA  
County of: CHEROKEE

STATE VS.

AKA: JERRY JEROME DAVIS  
Race: P Sex: M  
DOB: [REDACTED]  
SSN: [REDACTED]  
SID# 01270726

IN THE COURT OF GENERAL SESSIONS

Indictment Number:

2019 -GS- 11 - 00367  
Probation C/Ws: W-11-20-0006 & W-11-20-0070  
Name of Original Offense: DUI 1ST DEGREE  
Original A/W#: 2019051100367  
Date of Original Offense: 11/3/2019  
Conviction S.C. Code S: 16-25-0220 (A)(5)  
Conviction CDR Code #: 318111  
Original Sentence: 10 YRS PROBATION TO 156 DAYS  
3 YRS PROBATION

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 06/17/19 in the Court of General Sessions of CHEROKEE County, and/or the additional conditions ordered by the Court in probation continuation order(s) issued on 12/17/19, as set forth in the attached warrant(s) or citation(s) dated 1/7/20 & 2/12/20. After hearing the evidence and being duly advised, in the presence/absence of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit)  
3, 6, 10, 7, 8, 9 SPECIAL CONDITIONS

Therefore, IT IS ORDERED that:

- the suspended sentence be revoked and the above named defendant be required to serve 10 months/years, the remainder of the original sentence, and/or pay \$\_\_\_\_\_.
- the suspended sentence be revoked and the above named defendant be required to serve \_\_\_\_\_ months/years of the original sentence and/or pay \$\_\_\_\_\_; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- the above named defendant is placed on electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first or third degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).

Financial Obligations: Order satisfies:  Department fees (arrest)  Civil judgment:  Department fees  
 Fines and other fees (arrest/balance)  Restitution (and 20%)  Restitution (and 20%)

Additional Conditions ordered by the Court:  
TERMINATE BALANCE OF PROBATION.

- The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.
- The defendant is to be given credit for pretrial detention time served (N/A if defendant has served pretrial SCDC time).
- The defendant has served 156 days/months/years of prior revocations and/or initial SCDC time.
- The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

RECEIVED  
APR 08 2020

This 26 day of MARCH 2020  
GAFFNEY SC

[Signature] SC Court of Appeals  
Presiding Judge  
[Signature] 7<sup>th</sup> Judicial Circuit

You are hereby advised that under the law the Court may at any time review or modify any condition of this probation; impose any lawful condition it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of any attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature \_\_\_\_\_ Witnessed by \_\_\_\_\_

Signed this \_\_\_\_\_ day of \_\_\_\_\_ Month Year at \_\_\_\_\_ SC

FORM 5

STATE OF SOUTH CAROLINA )

County of Cherokee county )

Jerry Davis 304100 )  
Full name and prison number (if any) of Applicant )

v. )

State of South Carolina )

IN THE COURT OF COMMON PLEAS

**21 CP-110783**

APPLICATION FOR

POST-CONVICTION RELIEF

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, SC  
2021 DEC 13 AM 11:02  
BRANDY M. HESTER

**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Rigdeland correction
2. Name and location of Court which imposed sentence Cherokee county
3. Name(s) of co-defendant(s) (if any) \_\_\_\_\_
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2020-000608
  - (b) \_\_\_\_\_

- (c) \_\_\_\_\_
- 5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) March - 26 - 2020 10 years
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_

- 6. Check whether a finding of guilty was made:
  - (a) after a plea of guilty \_\_\_\_\_
  - (b) after a plea of not guilty r
  - (c) after a plea of nolo contendere \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?  
yes

8. If you answered "yes" to (7), list:

- (a) the name of each Court to which you appealed:
  - i. South Carolina in courts of Appeals
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

- (b) the result in each such Court to which you appealed:
  - i. \_\_\_\_\_
  - ii. Denied
  - iii. \_\_\_\_\_

- (c) the date of each such result:
  - i. 2020 - 000608
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

- (d) if known, citations of any written opinion or orders entered pursuant to such results:
  - i. 2020 - 000608
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

- 9. If you answered "no" to (7), state your reasons for not so appealing:
  - (a) n/a
  - (b) \_\_\_\_\_

(c) \_\_\_\_\_

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Because the revocation not write cause
- (b) the ~~so~~ continuance was denied
- (c) and she did not have time for my case

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Same as above that is happen
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. \_\_\_\_\_

(b) the name and location of the Court in which each was filed:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(c) the disposition thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. none
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(b) the proceedings in which each ground was raised:

- i. none
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) I dont know she did say anything
- (b) All she did was say she needed
- (c) time and the Judge told her no.

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? \_\_\_\_\_
- (b) your trial, if any? \_\_\_\_\_
- (c) your sentencing? \_\_\_\_\_
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?  
\_\_\_\_\_

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
  - i. Andrea price
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

19. State clearly the relief you seek in filing this application:

to give some of this time back  
10 years was to much and I feel like  
she did not do her best with my case.

20. Are you now under sentence from any other court that you have not challenged?

NO

**21 CP-110783**

STATE OF SOUTH CAROLINA

County of Cherokee county

VERIFICATION

I, Jerry Davis, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public (L.S.)

My Commission Expires: \_\_\_\_\_

21 CP-110783

APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF

I, Jerry Davis, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

[Signature]  
Applicant

SWORN or affirmed to and subscribed before me this 7<sup>th</sup> day of December, 2021.

[Signature]  
Notary Public

My Commission Expires: 10-1-25

STATE OF SOUTH CAROLINA  
COUNTY OF CHEROKEE

Jerry Davis, #304100,  
Applicant,

v.

State of South Carolina,  
Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2021-CP-11-0783

**RETURN AND MOTION FOR A  
MORE DEFINITE STATEMENT**

NOW COMES Respondent, moving for a more definite statement and making its return to the post-conviction relief (hereafter “PCR”) application filed on December 13, 2021 by Jerry Davis (hereafter “Applicant”). Respondent respectfully offers the following in support of its return:

**I. Procedural History**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Cherokee County Clerk of Court. During its March 2019 term, the Cherokee County Grand Jury indicted Applicant for first degree domestic violence (2019-GS-11-00367) On June 17, 2019, Applicant appeared before the Honorable Grace Gilchrist Knie, circuit court judge, and pled guilty. Applicant was represented by Matthew Craft, Esquire, and Toria Smith, Esquire, represented the State. Judge Knie sentenced Applicant to ten years’ imprisonment, suspended upon service of one hundred and fifty-six days’ time served and three years’ probation.

On March 26, 2020, Appellant appeared before the Honorable R. Keith Kelly, circuit court judge, for a probation hearing. Clay Allen and Andrea Price represented Applicant. The Court revoked Applicant’s probation in full.

Applicant filed a timely notice of appeal on April 8, 2020 that was perfected by Joanna Delany, Esquire, through filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. *State v. Davis*, 2021-UP-413 (S.C. Ct. App. filed Nov. 17, 2021). The remittitur was issued on December 20, 2021.

## II. Statement of Facts

Applicant committed first degree domestic violence on the victim, giving her a large bruise. (Tr. 8). Texts and photographs existed where Applicant admitted to hitting her with a belt. (Tr. 8). On the second charge, he did not enroll in batterers' treatment and texted his probation agent asking why he lied on him, put him on television, and lied that he hit his child's mother. (Tr. 8-9). Applicant was then arrested on other charges. (Tr. 9). Applicant did not really do anything on probation, had a prior domestic violence conviction, and was sentenced to three years' probation. (Tr. 9). The probation agent stated Applicant could not do probation. (Tr. 9).

## III. Current Action before the Court

In his *pro se* PCR application, Applicant alleges he is detained unlawfully for the following reasons (excerpts verbatim):

1. "Because the revocation was not right because the continuance was denied and she did not have time for my case."<sup>1</sup>

Attached to and incorporated herein are Applicant's Cherokee County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the probation revocation transcript, appellate records, and the current PCR application. Respondent reserves the right to amend this return upon receipt of additional relevant information.

---

<sup>1</sup> This is interpreted as an ineffective assistance of probation revocation counsel claim.

#### IV. Argument

Applicant's allegations of ineffective assistance of probation revocation counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant 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 v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *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*, 286 S.C. at 442, 334 S.E.2d at 814. "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). Applicant 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 Applicant such 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, 386 S.E.2d at 625. With respect to probation revocation counsel, though an Applicant has no Sixth Amendment right to counsel in a probation revocation

proceeding, the same analysis for ineffectiveness that applies in other PCR proceedings involving claims against counsel apply in PCR proceedings against probation revocation counsel. *Turner v. State*, 384 S.C. 451, 455-56, 682 S.E.2d 792, 794 (2009).

“[B]revity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation.” *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating “how additional preparation or communication would have resulted in a different outcome.” *Id.* See *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); *Skeen v. State*, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

Applicant claims that probation counsel was ineffective for failing to prevent probation from being revoked, for not asking for a continuance, and because she did not have enough time to spend on his case. Respondent contends that Applicant likely cannot meet his burden of proof on these claims. Still, the ineffective assistance of counsel allegations probably raise questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. See *Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (“Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.”).

### V. Motion for a More Definite Statement

Respondent moves for a more definite statement regarding Applicant's allegations. Applicant alleges that probation counsel was constitutionally ineffective for not securing a continuance of the hearing and for brevity of time spent together going over the case. However, he does not explain exactly what Counsel did that constituted ineffective assistance of counsel. Applicant fails to set forth with specificity any facts and circumstances upon which the claim is based. The Uniform Post-Conviction Procedure Act requires that applicants must "specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In a PCR application, it is incumbent upon applicants to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). The Supreme Court of South Carolina has provided that:

[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the appellant that he was deprived of counsel is insufficient.

*Coardes v. State*, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974).

Furthermore, Rule 8(a), SCRPC, requires all civil pleadings include "a short and plain statement of the facts showing that the pleader is entitled to relief." Respondent moves pursuant to Rule 12(e), SCRPC, to require Applicant to provide a more definite statement of his claims. Respondent moves to require Applicant to file an additional amended application well in advance of any evidentiary hearing concerning this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the allegation.

## VI. Other Allegations Denied

Each and every other allegation in Applicant's PCR application not explicitly admitted, qualified, or explained in this return is hereby denied by the Respondent.

## VII. Assertion of Rights to Notice of Amendments, Experts

Applicant should raise any claims he intends to raise at the PCR evidentiary hearing well in advance of the hearing. Here, Applicant's court-appointed attorney is the only individual authorized to file amendments to this application, given his representative capacity, Rule 11(a), SCRPC and *pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing is a nullity where person was represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) ("Since there is no right to 'hybrid representation' that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.").

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent or, in the alternative, continue the matter to permit adequate time to investigate and address the claims. *See Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017) ("In most PCR cases . . . we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases."); *Love v. State*, 428 S.C. 231, 242, 834 S.E.2d 196, 201 (2019) ("When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent

from the underlying plea or trial record.”); *see also* Rules 15(a)-(b), SCRPC (explaining how to amend a pleading). Pursuant to Section 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless the Court grants leave upon good cause shown. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits withheld until the last minute resulting in undue prejudice to Respondent.

#### VIII. Conclusion

WHEREFORE, Respondent requests that the Court require Applicant to provide a more definite statement and then hold an evidentiary hearing regarding Applicant’s allegations.

Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

CHELSEY F. MARTO  
Assistant Attorney General

By: Chelsey F. Marto  
ATTORNEYS FOR RESPONDENT

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Post Office Box 11549  
Columbia, South Carolina 29211  
Telephone: (803) 734-0386

February 17, 2022

STATE OF SOUTH CAROLINA  
COUNTY OF CHEROKEE

Jerry Davis, #304100

Applicant,

v.

State of South Carolina

Respondent,

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

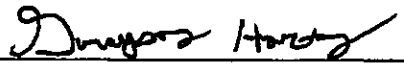
) Case No.: 2021-CP-11-0783

) Certificate of Service by Mail

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Motion for a More Definite Statement in the above-captioned matter on the following person by depositing the same in the United States mail, postage prepaid:

**Rodney Wade Richey, Esquire**  
**Richey & Richey, PA**  
**PO Box 10916**  
**Greenville, SC 29603-0916**

DATED this 17<sup>th</sup> day of February, 2022.

  
\_\_\_\_\_  
Grayson Horton, Legal Assistant  
For Respondent

State of South Carolina	)	
	)	
County of Cherokee	)	
Jerry Davis,	)	2021-CP-11-0783
	)	
Applicant,	)	
	)	
v.	)	Transcript
	)	
The State of SC,	)	of
	)	
Defendant.	)	Post-conviction
	)	Relief Hearing
	)	
	)	
	)	
	)	
	)	
	)	

Date: April 19, 2022

Time: 10:34 a.m.

Location: Spartanburg County Courthouse

180 Magnolia St.

Spartanburg, SC 29306

Reported by  
Amber Payne, CVR

## APPEARANCES

Presiding: The Honorable G.D. Morgan Jr.

For the Applicant: Rodney Richey, Esq.  
Richey and Richey Law Firm  
33 Market Pointe Drive  
Greenville, SC 29607

For the Defendant: Chelsey Marto, Esq.  
SC Attorney General's Office  
1000 Assembly St., Room 519  
Columbia, SC 29201

Also Present: Andrea Price, Esq.  
Seventh Circuit Public  
Defenders Office  
202 N. Petty St., Ste. A  
Gaffney, SC 29340

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EXHIBITS

There were no exhibits marked during this hearing.

1 PROCEEDINGS

2 THE COURT: All right. Next matter, I  
3 believe, is Jerry Davis, 2021-CP-11-0783; is  
4 that correct?

5 MS. MARTO: Yes, Your Honor.

6 THE COURT: All right. Ready to proceed?

7 MS. MARTO: Thank you, Your Honor. May it  
8 please the Court. We're here today on the  
9 case of "Jerry Davis vs. The State of SC." He  
10 is presently confined in the South Carolina  
11 Department of Corrections pursuant to orders  
12 of commitment from The Cherokee County Clerk  
13 of Court. During the March 2019 term, he was  
14 indicted for first degree domestic violence.

15 On June 17, 2019, he appeared before the  
16 Honorable Grace Knie and pled guilty.  
17 Applicant was represented by Matthew Craft,  
18 and Toria Smith represented the State. Judge  
19 Knie sentenced him to ten years imprisonment  
20 suspended upon service of 156 days, time  
21 served, and three years probation.

22 On March 26, 2020, he appeared before the  
23 Honorable R. Keith Kelly for a probation  
24 hearing. He was represented by Clay Allen and  
25 Andrea Price, and the Court revoked

1 applicant's probation in full. This was  
2 appealed April 8th, 2020, and perfected by  
3 (Jane Doe - name indecipherable) through  
4 filing a brief pursuant to "Anders vs.  
5 California." South Carolina Court of Appeals  
6 dismissed applicant's appeal by unpublished  
7 opinion, and the remittitur was issued  
8 December 20th, 2021. The post-conviction  
9 relief application was filed December 13th,  
10 2021. The State's return was made February  
11 the 17th, 2022.

12 With that, I'll turn it over to Mr.  
13 Richey.

14 THE COURT: All right. Mr. Richey?

15 MR. RICHEY: All right. Thank you, Your  
16 Honor. We call Mr. Davis.

17 THE COURT: All right. Mr. Davis -- Davis,  
18 come forward, please.

19 (WHEREUPON, the applicant was sworn.)

20 DIRECT EXAMINATION

21 BY MR. RICHEY:

22 Q Will you state your name, please?

23 A Jerry Davis.

24 Q You've got to speak up.

25 A Jerry Davis.

1           THE COURT:  Maybe -- maybe move that mic a  
2           little bit towards you, and then get up a  
3           little bit closer to the mic.

4   A     Jerry Davis.

5   Q     Yeah.  Okay.  Mr. Davis are you currently at the  
6           Department of Corrections?

7   A     Yes, sir.

8   Q     And what are you there for?

9   A     Probation violation.

10  Q     Okay.  And who represented you on that probation  
11           violation?

12  A     Andrina (as spoken) Price.

13  Q     Okay.  And you filed an application of post-  
14           conviction relief because you believe she did not  
15           effectively represent you, correct?

16  A     Yes, sir.

17  Q     And -- and your -- your probation was revoked;  
18           that's correct?

19  A     Yes, sir.

20  Q     And why do you believe she did not effectively  
21           represent you?

22  A     Because she didn't give me -- they didn't give me  
23           the right hearing, none of that.  Like, she  
24           ain't -- she ain't -- she asked for certain stuff,  
25           but they didn't give it to her.

- 1 Q Right. So one of the things she asked for was an  
2 administrative hearing; is that correct?
- 3 A Yeah. They skipped that and --
- 4 Q And --
- 5 A -- threw me straight in the courtroom.
- 6 Q And so she asked for an administrative hearing, and  
7 the charges that you were violated on, what  
8 happened to those charges?
- 9 A They got dismissed. That's why she was asking for  
10 a continuance.
- 11 Q So -- so is the issue with her, or is it with the  
12 Court?
- 13 A The issue is with the Court.
- 14 Q Okay. And so, you believe that -- and so, Ms.  
15 Price, what could she have done in better  
16 representing you?
- 17 A She could've got me the administrative hearing that  
18 they -- that they skipped and just moved it up.
- 19 Q Okay. Okay. So --
- 20 A She --
- 21 Q So your --
- 22 A She only had two weeks to plan on my case.
- 23 Q Okay. So she gets your case for two weeks, and  
24 they throw you in the court, correct?
- 25 A They threw me straight in the courtroom.

- 1 Q And -- and she -- did she object to that?
- 2 A Yeah. She object to that (as spoken.)
- 3 Q And did she ask the Court to give you an  
4 administrative hearing?
- 5 A Yeah. He told her that it was -- it was off the  
6 table. It was just -- he just told her no, it was  
7 off the table. He's going to court right now.
- 8 Q So you believe that because of the time, two weeks,  
9 that she didn't have adequate time to represent  
10 you?
- 11 A Yes, sir.
- 12 Q You have to speak up. I didn't hear you.
- 13 A Yes, sir.
- 14 Q And you believe that she had -- if she had more  
15 time, then she could have got you a more favorable  
16 result?
- 17 A If she had had more time -- the charges that they  
18 had pending was bogus, and so they wouldn't even --  
19 I wouldn't even got violated for them charges.
- 20 Q Okay. And as to your probation, did you do all the  
21 stuff that was required of your probation?
- 22 A Yes, sir.
- 23 Q You've got to speak up.
- 24 A Yes, sir.
- 25 Q Okay. And so, it's your position the basis for the

1 violation was these outstanding charges --

2 A Yes, sir.

3 Q -- that have been dismissed?

4 A Yes, sir.

5 Q Okay. All right. And you -- your max-out date is  
6 in 2025, correct?

7 A Yes, sir.

8 Q Okay. All right.

9 MR. RICHEY: (To the applicant) Answer any  
10 questions the Attorney General will have for  
11 you.

12 THE COURT: All right. (To Ms. Marto) Cross?

13 MS. MARTO: Yes, Your Honor.

14 CROSS-EXAMINATION

15 BY MS. MARTO:

16 Q Good morning, sir.

17 A Good morning.

18 Q So your main issue was, again, the -- the Court  
19 didn't decide the way you wanted it to, correct?

20 A No. My -- my main issue is my lawyer didn't do  
21 what she was supposed to do then.

22 Q So if she just spent more time on the case, it  
23 would have come out a different decision by the  
24 Court; is that your idea?

25 A No. If she'd have spent more time on my case, it

- 1           wouldn't even be -- it wouldn't even been in a big  
2           courtroom.
- 3    Q       Okay.  And what would she have done with more time?
- 4    A       I'd have got -- I'd have went -- I'd have went to  
5           court and got out on bond and went through the  
6           process like it was supposed to went.
- 7    Q       Okay.
- 8    A       I was only in jail for six days.
- 9    Q       Okay.
- 10   A       I had just -- they had just violated me.  I was in  
11          jail for six days.
- 12   Q       And prior to the probation hearing, did you enroll  
13          in batterer's treatment?
- 14   A       Yes, ma'am.
- 15   Q       Well, then why does this say in the probation  
16          transcript that you didn't?
- 17   A       That's -- that's what probation had on my  
18          probation.
- 19   Q       Okay.  Okay.  But it said that you didn't enroll,  
20          so why would they have said that if you had  
21          enrolled?
- 22   A       I don't know.  I was going to them classes.  It was  
23          at the -- it was in the probation office.
- 24   Q       Okay.
- 25                MS. MARTO:  No further questions, Your Honor.

1 THE COURT: All right. (To Mr. Richey) Any  
2 redirect?

3 MR. RICHEY: No. (To the applicant) You can  
4 come on and step down.

5 (To the Court) That's no more questions.

6 THE COURT: You can step down.

7 (WHEREUPON, the applicant was excused.)

8 MR. RICHEY: Call Ms. Price.

9 (WHEREUPON, the witness was sworn.)

10 DIRECT EXAMINATION

11 BY MR. RICHEY:

12 Q Can you state your name, please, ma'am?

13 A It's Andrea, A-n-d-r-e-a. Price, P-r-i-c-e.

14 Q And, Ms. Price, where are you employed at?

15 A I'm with the Seventh Circuit Public Defenders  
16 Office.

17 Q Okay. And do you recall representing Mr. Davis?

18 A I do. He was one of my first clients when I  
19 transferred from the Spartanburg to the Cherokee  
20 office.

21 Q Okay. And -- and this was a probation revocation  
22 case, right?

23 A It was.

24 Q And can you tell me the time frame when you got the  
25 case till when y'all went to court?

- 1 A I started in the Gaffney office on March the 16th  
2 of 2020. And when I got there, Mr. Davis's case  
3 was on my caseload.
- 4 Q Okay. And did you talk to him prior to him going  
5 to court?
- 6 A I certainly did.
- 7 Q Okay. And was -- now, was he a walk-in, or was he  
8 in jail?
- 9 A He was in jail at the time. I went down to the  
10 jail to see him on March the 23rd of 2020.
- 11 Q And do you know why he had -- why he had his  
12 probation violation hearing prior to his  
13 administrative hearing?
- 14 A I'm not quite sure about that. And that was all  
15 addressed with the Court on the transcript. I  
16 think it maybe had something to do with COVID, but  
17 I'm not sure, because I had never heard of having a  
18 hearing before the administrative hearing.
- 19 Q And so you requested the Court give you more time?
- 20 A At least to have the administrative hearing  
21 before --
- 22 Q Yeah.
- 23 A -- having it.
- 24 Q And -- and the charges -- he has some pending  
25 charges at the time; is that correct?

1 A He did.

2 Q And do you know whether those charges got  
3 dismissed? I think he testified they got  
4 dismissed.

5 A The strong-arm robbery did get dismissed --

6 Q Okay.

7 A -- ultimately. The other two, I think he -- he  
8 pled to one, I think, the week before.

9 Q Okay.

10 A If my recollection is correct. But I know the  
11 strong-arm robbery got dismissed --

12 Q And --

13 A -- as I've already told him.

14 Q And there was a larceny case that got dismissed, a  
15 copy of that; do you recall that?

16 A I don't recall that, but I know he had one pending.

17 Q Okay.

18 A But I know it's not on my caseload now, so . . .

19 Q And in determining -- in determining the violation  
20 of probation -- he testified that he did do the  
21 Battery classes and that type of thing -- is the  
22 charge that -- is the pending charges, was that the  
23 basis for the revocation, the initial basis?

24 A No. There -- there were other -- other violations  
25 that were in the 1106 that were the basis for the

1 revocation.

2 Q Okay. Did you discuss that with him?

3 A I did. That was one of the things that we talked  
4 about when I went to the jail to see him.

5 Q And did he request -- he requested a continuance of  
6 the hearing; is that correct? From you to put --  
7 to continue the -- the probation hearing?

8 A At that point, we talked about that, yes.

9 Q Okay. And what was your response to that?

10 A I said that I would address that with the Court.

11 Q Okay. Okay. Is there anything that you could've  
12 done to get (as spoken) the case continued?

13 A I did ask for that, and it was -- it was denied as  
14 you can see by Judge Kelly. Mr. Davis was on video  
15 originally from the jail with Mr. Allen. He had  
16 gone over there to -- to assist. It was all very  
17 new to us at the time. And then Mr. Davis said  
18 that he wanted to come over to the courthouse, so  
19 we had him transported after lunch.

20 Q Okay. Hold on one second.

21 MR. RICHEY: Thank you, ma'am. Answer the  
22 questions the Attorney General has for you.

23 THE WITNESS: Okay.

24 CROSS-EXAMINATION

25 BY MS. MARTO:

1 Q Good morning, ma'am.

2 A Thank you.

3 Q So did you feel like you didn't have enough time to  
4 go over the case, or do you feel like you had  
5 enough time to prepare for the probation  
6 revocation?

7 A I felt that I had enough time to -- to prepare  
8 based on the allegations that were present in the  
9 1106, but, again, I had never heard of having a --  
10 a hearing prior to the administrative hearing.

11 Q Do you think there was anything that you could have  
12 done that would cause Judge Kelly to ultimately  
13 reach different decisions of the --

14 A I don't believe so based on the allegations in the  
15 1106. It was just not based upon his arrest.

16 Q Okay. And, again, he had additional violations  
17 beyond the additional charge that he pled on?

18 A Yes. He did.

19 MS. MARTO: No further questions, Your Honor.

20 THE COURT: All right. (To Mr. Richey) Any  
21 redirect?

22 REDIRECT EXAMINATION

23 BY MR. RICHEY:

24 Q Are you -- are you sure the only -- are you sure  
25 that he did not have -- are you sure the only --

1 did he have other violations other than the pending  
2 charges?

3 A Oh -- oh, I'm sure they're in the 1106.

4 Q Okay.

5 MR. RICHEY: Thank you.

6 MS. MARTO: No further questions, Your Honor.

7 THE COURT: All right. You may step down.

8 THE WITNESS: Thank you, Your Honor.

9 (WHEREUPON, the witness was excused.)

10 THE COURT: All right. Any other witnesses?

11 MR. RICHEY: No, Your Honor.

12 THE COURT: All right. Anything from the  
13 State?

14 MS. MARTO: No witnesses, Your Honor.

15 THE COURT: All right. Anything else from the  
16 parties?

17 MS. MARTO: No, Your Honor.

18 MR. RICHEY: No, Your Honor.

19 THE COURT: All right. I'll take it under  
20 advisement. Thank you.

21 MS. MARTO: Thank you, Your Honor.

22 (Whereupon the within hearing was  
23 concluded at 10:46 a.m.)

24 (\*This transcript may contain quoted material.

25 Such material is reproduced as read or quoted

1 by the speaker.)

STATE OF SOUTH CAROLINA    )  
   )  
 COUNTY OF SPARTANBURG    )

CERTIFICATE

I, Amber Payne, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina on April the 19<sup>th</sup>, 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party herein.

Amber J. Payne, CVR

Date: 8/24/2022  
 Notary public for South Carolina  
 My commission expires August 12, 2029



imprisonment, suspended upon service of one hundred and fifty-six days' time served and three years' probation.

On March 26, 2020, Applicant appeared before the Honorable R. Keith Kelly, circuit court judge, for a probation hearing. Clay Allen and Andrea Price represented Applicant. The Court revoked Applicant's probation in full.

Applicant filed a timely notice of appeal on April 8, 2020, that was perfected by Joanna Delany, Esquire, through filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. *State v. Davis*, 2021-UP-413 (S.C. Ct. App. filed Nov. 17, 2021). The remittitur was issued on December 20, 2021.

#### **Summary of Relevant Facts**

Concerning the probation violations committed, Applicant committed first degree domestic violence on the victim, giving her a large bruise, after being released on probation. (Tr. 8). Texts and photographs existed where Applicant admitted to hitting her with a belt. (Tr. 8). Applicant also did not enroll in batterers' treatment and texted his probation agent asking why he lied on him, put him on television, and lied that he hit his child's mother. (Tr. 8-9). Applicant was then arrested on other charges. (Tr. 9). Applicant did not do much on probation in terms of meeting the conditions of his probation requirements, had a prior domestic violence conviction, and was sentenced to three years' probation. (Tr. 9). The probation agent stated at the probation revocation hearing that Applicant could not do probation well. (Tr. 9).

#### **Current Action Before this Court**

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

1. "Because the revocation was not right because the continuance was denied and she did not have time for my case."

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

1. Ineffective assistance of Counsel for:
  - a. Failure to obtain a continuance until after an administrative hearing was held; and
  - b. Failure to adequately prepare for the hearing.

All other allegations raised in his 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 stated he thought Counsel was ineffective for failing to obtain the requested continuance, for not having sufficient time to prepare his case, and for failure to get him an administrative hearing. Applicant stated that he thought if Counsel spent enough time with him on the probation matter, he would not have gone back to jail. Applicant stated that probation was revoked because of subsequent charges he obtained that were later dismissed. Applicant stated he did enroll in batterers' classes and was unsure why the State stated that he did not enroll at the probation hearing because he went to classes on this matter.

#### ***Counsel Testimony***

Counsel testified that she requested a continuance from the Court, which was denied. However, she did state on cross-examination that she felt she had enough time to handle the hearing effectively. Counsel stated that typically an administrative hearing is held before the probation hearing but thought the Court was handling things differently than normal at the time because of COVID. She stated that Applicant's strong armed robbery charge, which he incurred while out on probation, was dismissed. She stated that Applicant's probation was revoked because of the subsequent charges incurred, as well as for other violations of his probation.

**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 probation hearing transcript, direct appeal records, 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), SCRPC ("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.

With respect to probation revocation counsel, though an Applicant has no Sixth Amendment right to counsel in a probation revocation proceeding, the same analysis for ineffectiveness that applies in other PCR proceedings involving claims against counsel apply in PCR proceedings against probation revocation counsel. *Turner v. State*, 384 S.C. 451, 455-56, 682 S.E.2d 792, 794 (2009).

#### ***Failure to Obtain Continuance***

Applicant alleges Counsel was ineffective for failure to obtain a continuance of the probation matter until after an administrative hearing was held. Counsel requested a continuance until after the administrative hearing when at the probation hearing, and this request was denied. (Tr. 4). Accordingly, Counsel was not ineffective because a continuance was, in fact, requested, and Applicant failed to show what more Counsel could have done to secure a continuance or how that continuance would have impacted the results of the proceedings. Thus, this Court finds the allegation without merit and relief is denied on this ground.

#### ***Inadequate Preparation Time***

Applicant's claim of ineffective assistance of counsel because of inadequate preparation time is without merit. "[B]revity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating "how additional preparation or communication would have resulted in a different outcome." *Id.* See *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case);

*Skeen v. State*, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

This Court finds Applicant's allegation of ineffective assistance of counsel because of inadequate preparation time is without merit. This Court finds probation counsel credibly testified that she had sufficient time to handle the hearing effectively. Additionally, Applicant has failed to show how more time spent in preparation would have changed the results of the proceedings. Thus, Applicant has failed to meet his burden of proof on this ground and relief is denied as a result.

[conclusion and signature line on following page]

**Conclusion**

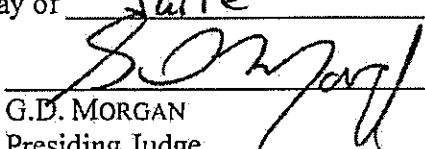
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court notifies the Applicant that he 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), SCRPC provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's 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 8<sup>th</sup> day of June, 2022.

  
\_\_\_\_\_  
G.D. MORGAN  
Presiding Judge  
Seventh Judicial Circuit

Gaffney, South Carolina.

FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF CHEROKEE  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2021CP1100783

Jerry Davis		State Of South Carolina	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  
 Affirmed;  Reversed;  Remanded;  Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order: (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

G.D Morgan	2773	6/8/2022
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on 6/8/22 , and a copy mailed first class or placed in the appropriate attorney's box on 6/8/22 , to attorneys of record or to parties (when appearing pro se) as follows:

Rodney Wade Richey PO Box 10916 Greenville, SC  
29603-0916

Alan McCrory Wilson S.C. Attorney General's Office PO  
Box 11549 Columbia, SC 29211-1549

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ATTORNEY(S) FOR THE PLAINTIFF(S)

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ATTORNEY(S) FOR THE DEFENDANT(S)

---

Court Reporter

---

Brandy W. McBee - Clerk of Court

**Court Reporter:**

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.**

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**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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**WITNESSES**

Gaffney Police Dept.

*[Handwritten signature]*

**ARREST WARRANT**

**DIRECT INDICTMENT**

**ACTION OF GRAND JURY**

**TRUE BILL**

*[Handwritten signature]*

Foreperson of Grand Jury  
Date: 3-21-19

**VERDICT**

Foreperson of Petit Jury  
Date:

DOCKET NO. **19-GS-11-00307**

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

**COURT OF GENERAL SESSIONS**

March 21 2019 TERM

THE STATE

vs.

JERRY JEROME DAVIS

Indictment for

**DOMESTIC VIOLENCE IN THE FIRST DEGREE**

SC Code: 16-25-20 (A)(B)

CDR: 3811

Class: FEL/E

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.

2019 MAR 21 AM 11:00

BRANDY W. MCBEE

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHEROKEE )

INDICTMENT

At a Court of General Sessions, convened on March 21 2019  
 the Grand Jurors of Cherokee County present upon their oath:

**DOMESTIC VIOLENCE IN THE FIRST DEGREE**

- That Jerry Jerome Davis did in Cherokee County on or about January 13, 2019,
- (1) cause physical harm or injury to a person's own household member (Sandra Johnson); or
  - (2) did offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril; and
    - (1) great bodily injury to the person's own household member resulted or the act was accomplished by means likely to result in great bodily injury to the person's own household member; or
    - (2) the person violated a protection order and in the process of violating the order committed domestic violence in the second degree,

in violation of 16-25-20(A)(B), CODE OF LAWS OF SOUTH CAROLINA, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Cherokee
STATE VS.

INDICTMENT/CASE#: 2019GS1100367

AKA: Jerry Jerome Davis

A/W#: 2019GS1100367

Race: BLACK Sex: M Age: 37

Date of Offense: 1/13/2019

DOB: 1982 SS#: [REDACTED]

S.C. Code §: 16-25-0020(A)(B)

Address: [REDACTED] Sarran Street

CDR Code #: 3811

City, State, Zip: Gaffney, SC 29341

DL#: [REDACTED] SID#: SC01270726

SENTENCE SHEET

\*CDL Yes [ ] No [ ] CMV Yes [ ] No [ ] Hazmat Yes [ ] No [ ]

[ ] CONVICTED OF or [X] PLEADS

In disposition of the said indictment comes now the Defendant who was

TO: Domestic / Domestic Violence, 1st degree (0-10 yrs.)

In violation of § 16-25-0020(A)(B) of the S.C. Code of Laws, bearing CDR Code # 3811

[ ] NON-VIOLENT [X] VIOLENT [ ] SERIOUS [ ] MOST SERIOUS [ ] Mandatory GPS(CSC) [ ] §17-25-45

The charge is: [X] As Indicted, [ ] Lesser Included Offense, [ ] Defendant Waives Presentment to Grand Jury.

The plea is: [ ] Without Negotiations or Recommendation, [X] Negotiated Sentence, [ ] Recommendation by the State.

SMITH, TORIA D SC Bar# 102470x [Signature] Craft, Matthew SC Bar# [Signature]

WHEREFORE, the Defendant is committed to the State Department of Correction, for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of 75 156 (day) months/years and/or payment of \$; plus costs and assessments as applicable\*; the balance is suspended with probation for 3 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

[ ] CONCURRENT or [ ] CONSECUTIVE to sentence on:

[X] The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc.
[ ] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

[ ] RESTITUTION: [ ] Deferred [ ] Def. Waives Hearing [ ] Ordered PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:
[ ] Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like §14-1-206 (Assessments 107.5%), §14-1-211(A)(1) (Conv. Surcharge) \$100, §14-1-211(A)(2) (DUI Surcharge) \$100, §56-5-2995 (DUI Assessment) \$12, §56-1-286 (DLI Breath Test) \$25, Provision (Public Def/Probation) \$500, §14-1-212 (Law Enforce. Funding) \$200, §14-1-213 (Drug Court Surcharge) \$150, §50-21-114 (DUI Breath Test Fee) \$50, §56-5-2942(C) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments) \$ 18.75.

TOTAL: \$643.75

Clerk of Court/Deputy Clerk: [Signature]
Court Reporter: [Signature]

Obtain GED [ ]
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling [ ]
Random Drug/Alcohol testing [X]
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
\$ paid to Public Defender Fund
Other: STROPPA created signed, DU conditions of probation, contact with victim allowed per her request regarding the parties minor children.
[X] Appointed PD or appointed other counsel, Provision requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge: [Signature]
Judge Code: 2760
Sentence Date: 6/17/19