

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Jan 18 2023

S.C. SUPREME COURT

—————
Certiorari to Florence County

Honorable George M. McFaddin, Circuit Court Judge
—————

JOHN D. LANE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001083
—————

APPENDIX
—————

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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Assistant Attorney General
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Columbia, SC 29211-1549

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)	
COUNTY OF FLORENCE)	COURT OF GENERAL SESSIONS
)	2018-GS-21-00566
)	
)	
)	
State of South Carolina)	TRANSCRIPT OF RECORD
vs.)	
John Deberth Lane)	
)	
_____ DEFENDANT)	August 27, 2019
		Florence, South Carolina

B E F O R E:

THE HONORABLE D. CRAIG BROWN, JUDGE.

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

JOHN JEPERTINGER, DEPUTY SOLICITOR
Attorney for the State

ELIZABETH NEYLE, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

KESHIA REED
Official Court Reporter

I N D E X

(WHEREUPON, there were no witnesses.)

THE COURT: All right. Listen up very carefully. When you plead guilty, you give up certain important constitutional rights. Each of you have a right to a jury trial. I would tell the jury that you are presumed innocent. That you're presumed not guilty. The State would be required to prove your guilt beyond a reasonable doubt. You would have the right to question witnesses against you. You would have the right to remain silent. And if you did, I tell the jury they could not hold that against you. You have the right to present a defense although you're not required to do so. If you made any incriminating statements, you would have a right to challenge the admissibility of those statements. Does anyone in here not understand those rights? When you plead guilty, you give up those rights. Does anyone in here not understand that when they plead guilty they give up those rights? Some of you may come before the Court waiving presentment of your charge to the grand jury. Please understand that each of you have a right to have your charge or charges presented to the grand jury for them to determine whether or not there's sufficient evidence to bring your case into this court. However, you may waive that right proceed here today and plead guilty. Does anyone in here not understand their right to have their charge or charges presented to the grand jury? Does

anyone in here not understand that they may waive that right proceed here today and plead guilty?

(WHEREUPON, no response.)

(WHEREUPON, this begins the guilty plea.)

THE COURT: Yes, sir.

MR. JEPERTINGER: Please the Court, standing in front you is John Deberth Lane on 2018-GS-21-566. He's pleading to trafficking in herion four grams or more but less than 14 grams, Judge. This would be for a lesser-included offense. He'd originally been charged with trafficking in herion 28 grams or above. There was also a charge of possession of a weapon during the commission of a violent crime that the State will be dismissing. Your Honor, there's a negotiated sentence of ten years. We are also dismissing a failure to stop for a blue light. He's in jail on a bench warrant. I prepared the order to lift a bench warrant as well.

THE COURT: Sir, if you'll raise your right hand. You swear to tell the truth, the whole truth, and nothing but the truth so help you God?

THE DEFENDANT: Yes, sir.

THE COURT: You're John Deberth Lane?

THE DEFENDANT: Yes, sir.

THE COURT: Sir?

THE DEFENDANT: Yes, sir.

THE COURT: I need you to speak up, okay.

THE DEFENDANT: Yes, sir.

THE COURT: You ever been treated for alcohol abuse, drug abuse or mental illness?

THE DEFENDANT: No, sir.

THE COURT: Within the last 24 hours, have you taken any medication, drugs or alcohol?

THE DEFENDANT: No, sir.

THE COURT: Are you aware of any physical emotional or nervous problem that would prevent you or keep you from understanding what's going on here today?

THE DEFENDANT: No, sir.

THE COURT: Now, Mr. Lane, were you in here a minute ago when I went through everyone's constitutional rights with them?

THE DEFENDANT: Yes.

THE COURT: Do you understand those rights?

THE DEFENDANT: Yeah.

THE COURT: Do you understand that when you plead guilty give up those rights?

THE DEFENDANT: Yes, sir.

THE COURT: Understanding your rights and understanding that when you plead guilty, you give them up how do you plead here today guilty or not guilty? Sir?

THE DEFENDANT: Guilty.

THE COURT: The State indicates that you're pleading guilty to trafficking in heroin four grams or more but less than 14 grams first offense, is that right?

THE DEFENDANT: Yes, sir.

THE COURT: You understand it carries a minimal sentence of seven years up to 25?

THE DEFENDANT: Yes, sir.

THE COURT: The State's indicated they've negotiated a ten year sentence with your lawyer for you, is that your understanding?

THE DEFENDANT: Yes, sir.

THE COURT: You understand that a negotiated plea I can either accept it or set it aside and let you plead on a different day in front of another judge. You understand that?

THE DEFENDANT: Yes, sir.

THE COURT: You want me to accept this negotiated plea?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Now, in addition, you understand that this particular charge is considered under South Carolina law to be a violent offense as well a serious offense? You understand that?

THE DEFENDANT: Yeah.

THE COURT: Sir?

THE DEFENDANT: Yes, sir.

THE COURT: I need a verbal response from you, okay? You understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Understanding that, you still want to plead guilty to this charge?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Now, you represented by Ms. Neyle in this case. You satisfied with her representation?

THE DEFENDANT: Yes, sir.

THE COURT: You talk to her enough?

THE DEFENDANT: Yes, sir.

THE COURT: Understood your talks with her?

THE DEFENDANT: Kind of.

THE COURT: You need any more time to talk to her?

THE DEFENDANT: No, sir.

THE COURT: You have any complaints about her whatsoever? Sir?

THE DEFENDANT: No, sir.

THE COURT: All right. Has anyone promised you anything or held out any hope of reward to get you to plead today?

THE DEFENDANT: No, sir.

THE COURT: Has anyone used any threats, force, pressure or intimidation to get you to plead?

THE DEFENDANT: No, sir.

THE COURT: Has anyone mistreated you in any way whether it be law enforcement or the Solicitor's office?

THE DEFENDANT: No, sir.

THE COURT: You had enough time to make up your mind as to whether or not you want to plead guilty to this charge or go to trial on it?

THE DEFENDANT: Yes, sir.

THE COURT: What do you want to do?

THE DEFENDANT: Guilty.

THE COURT: Are you pleading guilty of your own freewill?

THE DEFENDANT: Yeah.

THE COURT: Sir?

THE DEFENDANT: Yeah.

THE COURT: Have you understood my questions?

THE DEFENDANT: Yeah.

THE COURT: Mr. Jepertinger.

MR. JEPERTINGER: Your Honor, on October the 11th of 2017 here in Florence County, officers of the Florence Police Department responded to [REDACTED] Cemetery Street in the City of Florence in response to the report of a person passed out in the driver seat of a car. Once

on scene, Patrol Officer Bozeman and Patrol Officer Seman observed the defendant sitting in the driver seat passed out with a load .22 caliber riffle lying in plain view in the passenger seat. Officers were able to wake up the defendant and remove him from the vehicle. Seman located approximately -- well, no proximation about it, Judge, he found 69.91 grams in the pockets of this defendant and it was herion as tested by MaryBeth McCormick of SLED, Judge. The 69.91 grams, of course, had we gone to trial we was looking at 25 to 40 years. And he's gotten a substantial break, but this is going to be a no parole offense, Judge, and he's aware of it. I know Ms. Neyle informed him of that. He had some prior criminal record, prior drug record, but since it's a negotiated sentence I'd ask that you go along with it.

THE COURT: All right. Mr. Lane, you heard those facts you agree with them?

THE DEFENDANT: Yes, sir.

THE COURT: Sir?

THE DEFENDANT: Yes, sir.

THE COURT: You guilty of this charge?

THE DEFENDANT: Yes, sir.

THE COURT: And how do you plead guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: Mr. Jepertinger brought this up, but I want to make sure you understand it. You understand you can count on doing day for day of this sentence 85 percent?

THE DEFENDANT: Okay.

THE COURT: Before you even eligible for parole?

THE DEFENDANT: Okay.

THE COURT: You understand that?

THE DEFENDANT: Okay.

THE COURT: You still want to plead guilty?

THE DEFENDANT: Yeah.

THE COURT: All right. I find there is substantial factual basis for this plea. I also find defendant's decision to plead has been entered into freely, voluntarily, knowingly and intelligently. That he's had the advice and counsel of an attorney with whom he's indicated he's completely satisfied. One other thing, Mr. Lane, and I'm sorry. You understand this falls under the three strike rule.

You talk to him about that, Ms. Neyle?

MS. NEYLE: I have, Your Honor.

THE DEFENDANT: I don't have three strikes.

THE COURT: It counts as a strike is why I'm telling you.

THE DEFENDANT: Oh, okay.

THE COURT: You understand that?

THE DEFENDANT: Yes, sir.

THE COURT: All right. You understand that if you get three ---

THE DEFENDANT: It ain't gone be no more.

THE COURT: Okay. You still want to plead guilty?

THE DEFENDANT: Yeah.

THE COURT: Again, I found a substantial factual basis that he's freely, voluntarily, knowingly and intelligently entered the plea. And I will at this time accept it.

Ms. Neyle, happy to hear from you.

MS. NEYLE: Thank you, Your Honor. Mr. Lane has 111 days credit. He initially did eight days and then 103 days on his bench warrant. Your Honor, he's 55 years old. He's a certified plumber and welder. He works hard, but drug use has plagued most of his adult life, Your Honor.

The facts of this case he's not a sophisticated drug trafficker. He was found passed out in the car and he almost died. I believe he overdosed, Your Honor.

He has three children. They're all adult age. Your Honor, we have -- I discussed with him that it's a violent charge, a serious charge and what that means. We've discussed it. It's a no parole offense. He

understands that the negotiation is for ten years. He ask that you would accept it. He understands that his failure to stop for a blue light charge and the weapon charge is dismissed as a result of this plea. And he understands that he's getting the benefit of a lesser charge by pleading guilty today, Your Honor. I inherited this case a little bit later. Mr. Etheridge originally represented him. But Mr. Lane and I have met a couple of times at the jail. We've gone through his case and I would ask that you go along with the negotiated sentence.

THE COURT: Thank you. Mr. Lane, anything you want to tell me, sir?

THE DEFENDANT: No, not really.

THE COURT: Okay. All right. On 2018-GS-21-00566, defendant's hereby committed to the state department of corrections for a period of ten years, given credit for 111 days. Good luck to you, Mr. Lane.

THE DEFENDANT: Thank you.

MR. JEPERTINGER: Thank you, Your Honor.

END OF REQUESTED TRANSCRIPT

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Florence)
)
 John Deberth Lane #293885)
 Full name and prison number (if any) of Applicant.)
)
 v.)
)
 State of South Carolina)
)

2020 CP 21 701
 IN THE COURT OF COMMON PLEAS

2020 MAR -2 PM 3:52
 DOIRIS O'HARA
 CLERK OF COURT
 FLORENCE COUNTY, SC
 APPLICATION FOR
 POST-CONVICTION RELIEF

FILED

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 Mardougal Correctional Institution
2. Name and location of Court which imposed sentence Florence county court house
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) 2018-GS-21-00566
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 8-27-2019
 - (b) _____

(c) _____
6. Check whether a finding of guilty was made:

- (a) after a plea of guilty
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO

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

(a) the name of each Court to which you appealed:

- i. _____
- ii. _____
- iii. _____

(b) the result in each such Court to which you appealed:

- i. _____
- ii. _____
- iii. _____

(c) the date of each such result:

- i. _____
- ii. _____
- iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. _____
- ii. _____
- iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) Because my Lawyer was not working with me
- (b) _____
- (c) _____

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

- (a) Ineffective Counsel - see page 8
- (b) _____
- (c) _____

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

- (a) Attorney failed to investigate case properly.
- (b) forcing me to plea guilty
- (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. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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. _____

ii. _____

iii. _____

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

i. _____

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) _____

(b) _____

(c) _____

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

- (a) your arraignment and plea? yes
- (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. Elizabeth Neyle - 180 north Irby st Florence SC 29501
- 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:

New Trial

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

NO

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

I, John Lane, 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.

[Signature]

SWORN to and subscribed before me this 27 day of March 2020.

[Signature] (L.S.)
Notary Public

My Commission Expires: 11/22/2024

2020 MAR -2 PM 3:53
DORIS PAULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

FILED

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

I, John Lane, 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.

John D. Lane
Applicant

SWORN or affirmed to and subscribed before me this
27 day of February, 2020

[Signature]
Notary Public

My Commission Expires: 11/20/2024

2020 MAR -2 PM 3:53
DORIS PAULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

FILED

LEGAL
MAIL
ONLY

STATE OF South Carolina
County of Florence.
John Deberth Lane #293885

V.
STATE OF South Carolina

IN THE Court of Common Pleas
Case #:

FILED
2020 MAR -2 PM 3:53
DORIS POLLOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

Motion, To Amend Post-Conviction
Application.

Comes Now the Application. John Deberth Lane, who moves this Honorable Court By way of Motion. To AMEND the Application for Post Conviction Relief to include the following Grounds for Relief:

Counsel was ineffective when she failed to move pursuant SC CODE OF laws § 44-53-1930 which provides that A defendant is entitled to Immunity based on Drug overdose, applied Even IF Evidence would have been inevitably discovered see 2019 WL 3852758, Based on the foregoing Counsel should have moved to dismiss the charges.

Counsel was required by duty to conduct investigation into the facts of the case and determine the best defense available, Had Counsel read the arrest report issued by Officer Baseman, she would have discovered I had been found overdose from drugs in my car, and medical attention was required I was Hospitalized for 7 Days as the result of the Drug overdose. As per: 44-53-1930 I was immune from prosecution as a result. Failure to move for dismissal of all charges subsequent to the arrest.

Counsel was therefore ineffective for failure to move for dismissal

Respectfully Submitted

John Deberth Lane #293885

CITY OF FLORENCE
INCIDENT REPORT

CASE NUMBER

2,017-010109

NCIC

INCL. ENTS.

E V E N T	INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM					
	1. 35A - TRAFFICKING HEROIN/ TRAFFICKING COCAINE		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	20		<input type="checkbox"/> Individual <input type="checkbox"/> Business <input type="checkbox"/> Financial Inst. <input type="checkbox"/> Government <input type="checkbox"/> Relig. Org. <input type="checkbox"/> Soc. Public <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Public Off.					
	2. 52D - POSSESSION OF A WEAPON DURING VIOLENT CRIME		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	20							
V I C T I M	INCIDENT LOCATION (DIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)							ZIP CODE	WEAPON TYPE			
	1264 CEMETERY ST, FLORENCE SC							29608	13			
	INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME	24 HR. CLOCK	LOCATION NO.				
	10/11/2017	0300		10/11/2017	0838	10/11/2017	0826 0835	08				
	COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	ETH			
CHARLES, KEITH WAYNE		ST		<input checked="" type="checkbox"/> SOU	B	M	62	N				
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.						
1/2 E CEMETERY ST		FLORENCE		SC	29608	08						
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	ETH				
SOCIETY PUBLIC				<input checked="" type="checkbox"/> SOU								
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.								
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.						
		FLORENCE		SC		00						
VISIBLE INJURY (MCT. 1)		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO EXPLAIN -										
VICTIM (NO. 1) USING:		ALCOHOL: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK DRUGS: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK										
VEHICLE:		<input type="checkbox"/> TWO-MAN VEH. <input type="checkbox"/> ONE-MAN VEH. <input type="checkbox"/> DETECTIVE/PLASMT. <input type="checkbox"/> OTHER <input type="checkbox"/> ALONE <input type="checkbox"/> ASSISTED J - This Jurisdiction S - State O - Out of State U - Unknown										
S U B J E C T	SUBJECT NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE	ETH.	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES	
	LANE, JOHN DEBERTH		B	M	54	N		6-9	180	BLK	BRO	
	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.											
	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.						
BA		FLORENCE	SC	29601-1403	00							
#	SUBJECT (NO. 1) USING:		ALCOHOL: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK		ARRESTED NEAR OFFENSE SCENE		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		DATE/TIME OF OFFENSE		DATE/TIME OF ARREST	
	DRUGS: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK TYPE D		TOTAL # ARRESTED		1		10/11/2017		0300		10/11/2017 0838	

Offenses:
TRAFFICKING HEROIN **TRAFFICKING COCAINE**
POSSESSION OF A WEAPON DURING VIOLENT CRIME

AT APPROXIMATELY 0835 HOURS ON WEDNESDAY, 10/11/2017, THIS OFFICER (PO SIEBAN) AND PO BOSEMAN RESPONDED TO THE 1264 CEMETERY ST IN REFERENCE TO A SUSPICIOUS VEHICLE. WHILE EN ROUTE, CENTRAL DISPATCH ADVISED THE VEHICLE WAS IN THE FRONT YARD AND WAS DESCRIBED AS A BURGANDY HONDA ACCORD. CENTRAL DISPATCH THEN ADVISED THE VEHICLE WAS OCCUPIED AND THE OCCUPANT WAS NON-RESPONSIVE. UPON ARRIVAL, I OBSERVED A BURGANDY 2005 HONDA ACCORD (SC TAG #JNG871) IN THE FRONT YARD OF 1264 CEMETERY ST WITH THE BACK TIRES IN THE ROADWAY ON CEMETERY ST. PO BOSEMAN AND I APPROACHED THE VEHICLE AND I OBSERVED A BLACK MALE WEARING A WHITE SHIRT (LATER DETERMINED TO BE JOHN LANE, SUSPECT) SLUMPED OVER IN THE DRIVER'S SEAT. AS I CONTINUED TO APPROACH, I OBSERVED A BROWN AND BLACK RIFLE (LATER DETERMINED TO BE A REMINGTON .22 MODEL 552 RIFLE SERIAL #1767748) BETWEEN THE CENTER CONSOLE AND PASSENGER SEAT. PO BOSEMAN AND I DREW OUR DEPARTMENT ISSUED FIREARMS (GLOCK 22) GAVE LANE LOUD VERBAL COMMANDS TO TURN THE VEHICLE OFF AND PUT HIS HANDS IN THE AIR. INITIALLY, THE VEHICLE WAS IN DRIVE AND RUNNING. AFTER SEVERAL COMMANDS, LANE PLACED THE VEHICLE IN PARK AND TURNED THE VEHICLE OFF. I THEN RETRIEVED THE FIREARM FROM THE VEHICLE AND SECURED IT IN MY MARKED PATROL VEHICLE (UNIT 173). I THEN WENT TO THE DRIVER'S SIDE OF THE ACCORD, ESCORTED LANE FROM THE VEHICLE, AND PLACED HIM IN HANDCUFFS TO THE REAR WHICH WERE CHECKED FOR FIT AND DOUBLE LOCKED. DUE TO THE POSSIBILITY OF MORE WEAPONS, I CONDUCTED A PATDOWN ON LANE. WHILE PATTING LANE DOWN, I FELT A LARGE BAG WITH A SOFT, POWDER LIKE SUBSTANCE IN HIS

P R O P E R T Y		SUBJECT IDENTIFIED		SUBJECT LOCATED		ACTIVE		ADJ. CLOSED		ARRESTED UNDER 18		EX-CLEAR UNDER 18	
10-D (Type)		Narco/De				<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> UNFOUNDED		<input checked="" type="checkbox"/> ARRESTED 18 AND OVER		<input type="checkbox"/> EX-CLEAR 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE		1. <input type="checkbox"/> OFFENDER SIXTH		2. <input type="checkbox"/> NO PROSECUTION		3. <input type="checkbox"/> EXTRACTION SECURED		4. <input type="checkbox"/> VICTIM DECLINES COOPERATION		5. <input type="checkbox"/> UNW/CL - NO CUSTODY			
REPORTING OFFICER(S)		DATE		UNIT NUMBER		APPROVING OFFICER		DATE		UNIT NUMBER			
PO E SIEBAN		10/11/2017		268B		SGT H WYNN		10/11/2017		228C			
						FOLLOW-UP INVESTIGATION OFFICER							
						<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		LCPL S MCKENZIE		10/11/2017		217G	

SC0210100

CITY OF FLORENCE
INCIDENT REPORT

CASE NUMBER		NCE	
2017-010109		ING.	ENTD.

REAR RIGHT POCKET.

I THEN HAD LANE SIT ON THE GROUND AS EMS ARRIVED TO ASSESS LANE'S MEDICAL NEEDS. WHILE SPEAKING WITH LANE, I DETECTED A STRONG ODOR OF AN ALCOHOLIC BEVERAGE EMITTING FROM HIS PERSON. I ALSO OBSERVED LANE HAD SIGNIFICANTLY SLURRED SPEECH AND GASSY, WATERY, BLOODSHOT EYES. I ALSO OBSERVED LANE HAD A DIFFICULT TIME FORMING SENTENCES AND APPEARED EXTREMELY LETHARGIC AND SLOW TO RESPOND TO QUESTIONS. PO BOSEMAN ADVISED HE BELIEVES HE OBSERVED DRUGS IN PLAIN VIEW IN THE DRIVER'S SEAT. I OBSERVED A WHITE POWDER SUBSTANCE AND A SMALL WHITE ROCK-LIKE SUBSTANCE ON THE DRIVER'S SEAT CONSISTENT WITH COCAINE AND COCAINE BASE. WHILE AT THE DRIVER'S SIDE DOOR, I ALSO DETECTED AN ODOR OF MARIJUANA EMANATING FROM THE VEHICLE. INSIDE THE VEHICLE, IN PLAIN VIEW, I OBSERVED SEVERAL BLACK ICE AIR FRESHENER HANGING FROM THE REAR VIEW MIRROR. I ALSO OBSERVED EMPTY SANDWICH BAGS IN PLAIN VIEW IN SEVERAL LOCATIONS IN THE VEHICLE. I THEN OBSERVED A SMALL WHITE POWDER SUBSTANCE ON LANE'S DARK GREY SHORTS. THE SUBSTANCE WAS NEAR HIS GROIN AND APPEARED CONSISTENT WITH COCAINE. AT THAT TIME, LANE ADVISED HE WANTED TO GO TO THE HOSPITAL. A FLORENCE COUNTY EMS WORKER AND I PICKED LANE OFF OF THE GROUND. DUE TO THE SUSPECTED DRUGS BOTH ON LANE AND IN THE VEHICLE AS WELL AS THE PARAPHERNALIA, I SEARCH LANE INCIDENT TO PROBABLE CAUSE. INSIDE LANE'S LEFT REAR POCKET, I RECOVERED HIS WALLET WHICH CONTAINED \$71 IN CASH. INSIDE LANE'S RIGHT REAR POCKET, I RECOVERED A SANDWICH BAG WITH CONTAINED SEVERAL SMALLER PLASTIC BAGS. INSIDE TWO OF THE SMALLER CLEAR PLASTIC BAGS WAS A WHITE POWDER SUBSTANCE CONSISTENT WITH COCAINE. INSIDE THREE CLEAR PLASTIC BAGS, I LOCATED A GREYISH POWDER SUBSTANCE WHICH WAS DENSER THEN THE PREVIOUS TWO BAGS. THE THREE BAGS APPEARED TO CONTAIN HEROIN OR A MIXTURE THEREOF. IT WAS LATER DETERMINED THE TWO BAGS OF WHITE POWDER WEIGHED APPROXIMATELY 62 GRAMS AND THE THREE BAGS OF GREYISH POWDER WEIGHED APPROXIMATELY 44 GRAMS. LANE WAS THEN TRANSPORTED TO MCLEOD HOSPITAL. PO BOSEMAN ADVISED HE CLEARED THE FIREARM AND LOCATED A WHITE POWDER SUBSTANCE ON THE FIREARM. PO BOSEMAN ALSO ADVISED THE FIREARM WAS LOADED WITH A ROUND IN THE CHAMBER. I COLLECTED THE FIREARM AND SEVEN .22 ROUNDS. I OBSERVED, NEAR THE BREACH OF THE FIREARM, A WHITE POWDER SUBSTANCE CONSISTENT WITH COCAINE. PO BOSEMAN THEN RESPONDED TO MCLEOD HOSPITAL TO WATCH LANE.

SGT WYNN WAS NOTIFIED AND RESPONDED TO THE SCENE. SGT WYNN ALSO CALLED THE ON CALL NARCOTICS AND INV MCKENZIE RESPONDED TO THE SCENE. SGT WYNN PHOTOGRAPHED THE VEHICLE AND THE FIREARM. I LATER PLACED THE PHOTOS ON A CD AND LOGGED THEM INTO EVIDENCE. I THEN SPOKE WITH THE COMPLAINANT (KEITH CHARLES). CHARLES, WHO LIVES AT 1254 1/2 CEMETERY ST, ADVISED HE CAME OUT OF THE LOCATION THIS MORNING (APPROXIMATELY 0625 HOURS) TO DO LAUNDRY. CHARLES ADVISED HE OBSERVED THE VEHICLE ON THE FRONT LAWN AND STATED HE HASNT SEEN THE ABOVE VEHICLE BEFORE. CHARLES EXPLAINED HE CALLED LAW ENFORCEMENT AND WHILE WALKING TOWARD THE VEHICLE HE OBSERVED LANE NON-RESPONSIVE IN THE FRONT SEAT. I THEN SEARCHED AND INVENTORIED THE VEHICLE. INSIDE THE DRIVER'S SIDE DOOR POCKET, I LOCATED A SMALL CLEAR PLASTIC BAG WITH A WHITE POWDER SUBSTANCE CONSISTENT WITH COCAINE. I ALSO COLLECTED THE SUSPECTED COCAINE BASE OFF OF THE DRIVER'S SEAT. I ALSO LOCATED \$20 IN ASSORTED CASH IN A COMPARTMENT BELOW THE RADIO. I ALSO AGAIN OBSERVED THE SANDWICH BAGS IN PLAIN VIEW IN THE VEHICLE. I ALSO OBSERVED THE VEHICLE HAD FRESH DAMAGE ON THE DRIVER'S SIDE FRONT FENDER AND HAD A CRACKED WINDSHIELD ON THE PASSENGER SIDE. I CALLED FOR NEXT TOWING COMPANY ON ROTATION AND BAKER TOWING RESPONDED FOR THE VEHICLE. I ALSO COMPLETED A TOW SHEET FOR THE VEHICLE. INV MCKENZIE ARRIVED AND I TURNED THE FIREARM, AMMUNITION, SUSPECTED COCAINE, SUSPECTED CRACK COCAINE, AND SUSPECTED HEROIN OVER TO HIM. THE \$20 FROM THE VEHICLE AS WELL AS THE \$71 IN LANE'S WALLET WERE SEIZED AND TURNED OVER TO INV MCKENZIE.

I THEN RESPONDED TO MCLEOD HOSPITAL TO SPEAK WITH LANE. UPON ARRIVAL, I AGAIN OBSERVED THE WHITE POWDER NEAR LANE'S GROIN. I ALSO OBSERVED LANE HAD WHITE POWDER ON HIS LIPS. LANE APPEARED EXTREMELY LETHARGIC AND UNRESPONSIVE. A MCLEOD NURSE ADMINISTERED NALOXONE (NARCAN) WHICH REVERSES THE EFFECTS OF OPIOID BASE OVERDOSES. LANE IMMEDIATELY WOKE INDICATING HIS BODY CONTAINED AN OPIOID BASED DRUG. I THEN READ LANE HIS MARIANDA RIGHTS AND LANE BEGAN TO ASK WHAT HAPPENED. LANE THEN ADVISED HE FOUND THE "DRUGS" IN HIS CLOSET AND KNEW THEY SHOULDN'T BE THERE. LANE EXPLAINED HE WAS TAKING THE DRUGS BACK TO THE ORIGINAL OWNER BUT LANE WOULD NOT ADVISED WHAT DRUGS THEY WERE OR WHO THEY BELONGED TO. LANE ALSO STATED HE WAS RETURNING THE FIREARM TO SOMEONE. LANE ADVISED THE DRUGS MESSED HIM UP AND CAUSED HIS CURRENT CONDITION. LANE HAD NO RECOLLECTION OF THE INCIDENT BUT MENTIONED SOMETHING TO THE EFFECT OF HOW THE TRUNK OF HIS VEHICLE SHOWS THE TYPE OF WORK HE DOES (THERE WERE TOOLS IN THE TRUNK OF THE VEHICLE). INV MCKENZIE OBTAINED WARRANTS FOR TRAFFICKING HEROIN OR A MIXTURE THEREOF (WARRANT #2017A2120201769), TRAFFICKING COCAINE (WARRANT #2017A2120201788), AND POSSESSION OF A WEAPON DURING A VIOLENT CRIME (WARRANT #2017A2120201770). I ALSO RAN A CRIMINAL HISTORY ON LANE AND HE IS PROHIBITED FROM POSSESSING A FIREARM AS HE IS A CONVICTED FELON. LANE WAS ADMITTED TO MCLEOD HOSPITAL DUE TO THE OVERDOSE. PO BOSEMAN WATCHED LANE UNTIL

		JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY	
P	TYPE (GROUP)	10-Drugs/Narcotic			TOTAL VALUE
R	Returned				
O	Count/Finded				
P	Dist/Damaged				
E	Recovered				
R	Retained				
T	Station				
Y	Undersize				
A	SUBJECT IDENTIFIED	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	SUBJECT LOCATED	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> ACTIVE <input type="checkbox"/> ADM CLOSED <input checked="" type="checkbox"/> UNFOUNDED
D	REASON FOR EXCEPTIONAL CLEARANCE:	<input type="checkbox"/> 1. OFFENDER DEATH <input type="checkbox"/> 2. NO PROSECUTION <input type="checkbox"/> 3. EXTRADITION DENIED <input type="checkbox"/> 4. VICTIM DECLINED COOPERATION <input type="checkbox"/> 5. JUVENILE - NO CUSTODY			
M	REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE
I	PO E SIEBAN	10/11/2017	268B	SGT H WYNN	10/11/2017
S				FOLLOW-UP INVESTIGATION OFFICER	UNIT NUMBER
T				<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO LCPL S MCKENZIE	10/11/2017 217G

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE)	FOR THE TWELFTH JUDICIAL CIRCUIT
)	
)	
John D. Lane, #293885,)	2020-CP-21-0701
)	
Applicant,)	
)	
v.)	RETURN
)	(Counsel Appointed)
State of South Carolina,)	
)	
Respondent,)	
)	

In response to John D. Lane’s (Applicant) action for post-conviction relief (PCR) commenced March 2, 2020, the State makes this return:

I. Procedural History

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the April 2018 term of the Florence County Grand Jury for trafficking in heroin—twenty-eight grams or more and possession of a weapon during the commission of a violent crime (2018-GS-21-566). Applicant was represented by Elizabeth Neyle, Esquire. Deputy Solicitor John Jepertinger prosecuted the case.

Applicant pleaded guilty to trafficking in heroin—more than four grams but less than fourteen grams, on August 27, 2019, before the Honorable D. Craig Brown.¹ The State negotiated a sentence of ten years. Judge Brown accepted the Applicant’s guilty plea and sentenced Applicant to serve the negotiated sentence. Applicant did not appeal.

¹ The State dropped the weapons charge.

II. Facts

On October 11, 2017, Florence County Police Department responded to a report of a person passed out in the driver's seat of a car. Plea Tr. 8. At the scene, an officer observed Applicant sitting in the driver seat, passed out, with a rifle laying in plain view. Plea Tr. 9. Officers woke Applicant up and removed him from the vehicle. Plea Tr. 9. In Applicant's pockets, officers found 69.91 grams of heroin. Plea Tr. 9.

III. Current Application

Applicant timely filed this PCR action on March 2, 2020. Applicant alleges he is being held in custody unlawfully, for the following reasons:

1. Ineffective assistance of counsel:
 - a. Attorney failed to investigate case properly. Had Counsel read the arrest report issued by Officer Boseman, she would have discovered I had been found overdose from drugs in my car, and medical attention was required. I was hospitalized for seven days as a result of the drug overdose. As per 44-53-1935 44-53-1930 I was immune from prosecution as a result.
 - b. Attorney forced me to plea[d] guilty.
 - c. Counsel was ineffective when she failed to move pursuant to S.C. Code of Laws § 44-53-1930 which provides that a defendant is entitled to immunity based on a drug overdose, applied even if evidence would have been inevitably discovered. See 2019 WL 3852758. Based on the foregoing, Counsel should have moved to dismiss the charges
 - d. Counsel was therefore ineffective for failure to move for dismissal.

Applicant requests relief in the form of a new trial.

Attached to this return and incorporated herein are the Florence County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, an entire plea transcript from Applicant's guilty plea, and the records of this PCR action.

IV. Response to Allegation of Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of plea counsel are without merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's

performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989).

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). “[A] defendant entering a guilty plea 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 v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). “The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To prove prejudice, the applicant must show a reasonable probability he would not have pleaded guilty and would have insisted on going to trial absent plea counsel's alleged deficiency. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

Strickland requires trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688-689. “Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.” *Id.* at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. *Id.* at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's

trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). In making a fair assessment of attorney performance, a court must make every effort to “eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time.” *Strickland*, 466 U.S. at 689.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). To support a claim that trial counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses’ testimony in a manner consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant’s mere speculation about what the witnesses’ testimony would have been cannot, by itself, satisfy the applicant’s burden of showing prejudice. *Id.*

Applicant cannot satisfy either requirement of *Strickland*. However, the record likely does not refute or disprove Applicant’s allegations of ineffective assistance of counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. See *Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”),

V. Any Future Amendments & Invocation of Discovery

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, Op. No. 27921 (S.C. Sup. Ct. filed Oct. 2, 2019) (Shearouse Adv. Sh. No. 39 at 14), or, alternatively, the State will request a continuance in the matter. *See Id.* at 24 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

Pursuant to section 17-27-150 of the South Carolina Code, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Further, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love, supra.*

VI. Any and All other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VII. Conclusion

WHEREFORE, the State requests an evidentiary hearing be held on the claims of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

MICHAEL D. DAVIDSON
Assistant Attorney General

By: s/Michael D. Davidson
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Columbia, SC 29211

August 21, 2020

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE)	TWELFTH JUDICIAL CIRCUIT
JOHN D. LANE)	CASE NO.: 2020-CP-21-00701
Applicant,)	
v.)	AMENDED
)	POST CONVICTION RELIEF
STATE OF SOUTH CAROLINA,)	APPLICATION
Respondent.)	
_____)	

Applicant, by and through his undersigned attorney, hereby amends his application for Post-Conviction Relief filed March 2, 2020. This amended complaint adopts and includes all grounds in the original application. Applicant further alleges as additional grounds regarding his claim of ineffective assistance of counsel as to Elizabeth Neyle as follows:

1. Prior to the guilty plea, Applicant's counsel Elizabeth Neyle failed to review all of the evidence prior to the plea.
2. Applicant's counsel Elizabeth Neyle failed to provide a copy of the states evidence to the Applicant.
3. Applicant's plea counsel Elizabeth Neyle, failed to discuss a defense strategy with applicant or to properly review evidence with Applicant.

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF FLORENCE
2020-CP-21-00701

John D. Lane

Vs.

State of South Carolina

Florence, South Carolina

April 20, 2022

Before the Honorable George M. McFaddin, Jr.

APPEARANCES

For the State: D. Russell Barlow

For the Applicant: Ola A. Johnson

Reported by: DCRP (Translated by Michael C. Watkins
Official Court Reporter)

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(NO EXHIBITS)

PRE-HEARING MOTIONS

1 MR. BARLOW: May it please the Court? Russ Barlow on
2 behalf of the State. This is a post conviction matter of
3 John D. Lane versus the State, case number 2020-CP-21-0701
4 out of Florence County. For a brief procedural background,
5 applicant -- this arose out of a call on a vehicle at
6 nighttime, it was a suspicious vehicle, and the applicant
7 was found in his. car passed out by the police. He was
8 indicted at the April 2018 term of the Florence County grand
9 jury for trafficking in heroine 28 grams or more, and
10 possession of a weapon during the commission of a violent --
11 that was in indictment 2018-GS-21-566. Applicant was
12 represented by Ms. Elizabeth Neyle, Esquire, and Deputy
13 Solicitor John Jepertinger prosecuted the case. Applicant
14 pled guilty to trafficking in heroine more than four grams
15 but less than 14 grams on August 27th, 2019, before the
16 Honorable D. Craig Brown. The State negotiated a sentence
17 of ten years, and Judge Brown accepted the applicant's
18 guilty plea and sentenced the applicant to serve the
19 negotiated sentence, and applicant did not appeal.
20 Applicant timely commenced his PCR action on March 2nd,
21 2020, and applicant asserted he was being held in custody
22 unlawfully. And alleged that ineffective assistance of
23 counsel, that his attorney failed to investigate his case
24 properly. And that had the counsel read the arrest report
25 issued by Officer Boseman she would have discovered that he

PRE-HEARING MOTIONS

1 had been found to have overdosed from drugs in his car and
2 medical attention was required. That he was hospitalized
3 for seven days as a result of a drug overdose. And per SC
4 Code annotated sections 44-53-1935 and 44-53-1930, he was
5 immune from prosecution as a result. He also alleged that
6 the attorney forced him to plead guilty. He also alleged
7 that counsel was ineffective when she failed to moved
8 pursuant to SC Code of Laws annotated sections 44-53-1930,
9 which provide that a defendant is entitled to immunity based
10 on a drug overdose applied even if evidence would have been
11 inevitably discovered, he cited 2019 Westlaw 3852758, and
12 based on the foregoing counsel should have moved to dismiss
13 the charges. Counsel was therefore ineffective for failure
14 to remove for dismissal. On April 4th, 2022, applicant
15 through counsel amended his PCR application with six
16 allegations. First, prior to the guilty plea applicant's
17 counsel, Ms. Elizabeth Neyle, failed to review all of the
18 evidence prior to the plea. Number two, applicant's
19 counsel, Elizabeth Neyle, failed to provide a copy of the
20 State's evidence to the applicant. Number three,
21 applicant's plea counsel, Elizabeth Neyle, failed to discuss
22 a defense strategy with applicant or to properly review
23 evidence with applicant. Number four, applicant's counsel,
24 Elizabeth Neyle, failed to meet with the applicant a
25 sufficient number of times to review the evidence. Number

PRE-HEARING MOTIONS

1 five, Elizabeth Neyle, failed to inform applicant that the
2 charge he entered a plea to was violent and a no-parole
3 offense requiring applicant to serve 85 percent of his
4 sentence. Number six, applicant was coerced into entering
5 his plea, and plea counsel, Elizabeth Neyle, failed to use
6 as a defense, or to explain to applicant the possible
7 defense of immunity under South Carolina Code annotated
8 sections 44-53-1920, and 44-53-1930, as the City of Florence
9 incident report dated 10-11-2017, or related to this case
10 reflects -- (inaudible audio) -- the applicant -- or that
11 the applicant was taken to the hospital due to a drug
12 overdose and received treatment for this following his
13 arrest. Applicant requests relief in the form of a new
14 trial. At this time, Your Honor, the State would move to
15 dismiss allegation number six of the amended PCR application
16 as a matter of law. I have copies for the Court if you
17 would like, I provided them to counsel. May I approach?

18 THE COURT: Yes, sir.

19 MR. BARLOW: Your Honor, the State maintains that SC
20 Code annotated sections 44-55-1920 deals with limited
21 immunity for a person who seeks medical assistance for
22 another. And SC Code annotated 44-55-1930 -- beg the
23 Court's indulgence.

24 THE COURT: Yes, sir.

25 MR. BARLOW: Excuse me, correction, Your Honor, it's

PRE-HEARING MOTIONS

1 sections 44-53-1920, and 44-53-1930, deals with limited
2 immunity for overdose victims. 1930A provides that a person
3 who experiences a drug or alcohol related overdose and is in
4 need of medical assistance may not be prosecuted for any of
5 the offenses listed in section 44-53-1920. So 1930 directs
6 you back to 1920 to the listed offenses under 1920. And
7 under 1920 none of the -- he's not been charged with any of
8 the offenses enumerated under 44-53-1920. Therefore, it's
9 the State's position that this law is not applicable in this
10 case, and the allegations should be dismissed as a matter of
11 law, because he was charged with trafficking and that is not
12 enumerated under that statute.

13 THE COURT: Mr. Johnston?

14 MR. JOHNSON: Your Honor, we would just argue the
15 indictment that he pled under is the -- of course, the
16 trafficking, 44-53-370. And since this is a PCR the
17 argument would be that trial counsel or plea counsel had the
18 duty to talk to my client about this and the fact that, you
19 know, a lot of it has to do with what could happen. So at a
20 trial for trafficking there is a situation where the Court
21 determines -- or there's a judgment made about weight, and,
22 of course, there are trafficking cases where the jury could
23 ultimately be charged with the other section under
24 distribution, or the other things that do fall within the
25 statute. Because it still lists 44-53-19 -- excuse me,

PRE-HEARING MOTIONS

1 44-53-370, it does list that under 1920, under 44-53-1920.
2 So the argument would be that if this case had gone to trial
3 is there a potential that the solicitor could have changed
4 the charge to something that did fall under this statute,
5 whether it was the possession or the distribution listed, as
6 is says here under the statute delivery of controlled
7 substance under 44-52-370A is listed under the 1920, I
8 believe, B1. So I think the argument would be whether it's
9 possession of a controlled substance under 44-53-370, or it
10 goes to the 370, but then also falls -- when you look at the
11 election language it does cite 370. So, I mean, 370 is the
12 trafficking -- contains that trafficking statute. My point
13 would be, you know, you can't really predict what will
14 happen in the future, whether the charge will be changed,
15 whether there's a lesser included offense that falls under
16 that or something happens at pretrial or trial. And, of
17 course, it's impossible to totally predict the future. But
18 the plea counsel basically was in a position where she
19 should have consulted with my client, made him aware of all
20 of his and discussed it with him, and given the options that
21 he had to consider that and going forward not knowing what
22 could happen at trial, but at least giving him full
23 advisement of what the law says and what could happen, and
24 what possible defenses could exist under that statute.

25 THE COURT: I respectfully grant the State's motion on

JOHN LANE - DIRECT

1 that. I've given these eyes a plain reading here today.
2 Mr. Johnson, you made a good argument, but as I read these
3 as they are written by the legislature and not considering
4 the myriad, more or less, that could have happened, I'll
5 grant the State that motion.

6 MR. JOHNSON: Yes, sir. And we will proceed on the
7 other grounds.

8 THE COURT: Okay. Proceed then.

9 MR. JOHNSON: Thank you, Your Honor. At this time I
10 would call Mr. John Lane to testify.

11 The witness, JOHN LANE, was first duly sworn and
12 Testified as follows:

13 DIRECT EXAMINATION

14 BY MR. JOHNSON:

15 Q Mr. Lane, who represented you for this guilty plea?

16 A Ms. Elizabeth Neyle.

17 Q Okay. Do you see her in the courtroom today?

18 A Yes, I -- she's sitting right there.

19 Q Okay. And prior to your guilty plea, do you feel like
20 that was something you did voluntarily or involuntarily?

21 A Well, it was like forced. Because she mentioned to me
22 that if I didn't take that plea that day that he was going
23 to pick a jury trial the next following Wednesday. And she
24 never gave one chance -- I seen her once in the county jail,
25 seen her once up here, and that's what she threw in my face.

JOHN LANE - DIRECT

1 I begged and pleaded, you know, to run a few things by him,
2 but she came back: Well, he said if you don't take this
3 plea he's going to pick a jury trial for you next week.

4 Q Okay.

5 A So I had no choice but to, you know.

6 Q Okay. How many times did she meet with you to review
7 the case?

8 A She met once at the county jail, and once in here the
9 day that she had me sign that paper.

10 Q Okay. Did she ever review the evidence with you?

11 A No. But she mentioned what I had, what I was charged
12 with. But as far as just going through procedures and
13 telling me what she could or what she looked up or what she
14 tried, she never mentioned anything about any kind of --
15 never -- she never did any work.

16 Q Okay. Did you receive a copy of discovery?

17 A No.

18 Q No. Okay. Did you ever talk to her? Did she ever
19 bring up any defense strategies with you?

20 A Not one.

21 Q Okay. Is there anything that you felt like should have
22 been discussed that you had in mind?

23 A Yes. I think that it should have been made clearly
24 that I was found overdose, and from the last 30 years you
25 couldn't find any drug related situations with me, that I

JOHN LANE - DIRECT

1 was a productive member of society and held a job, and I
2 just had a drug problem, which is why that situation came
3 about. And the drugs that I had on me was just something I
4 got a deal on for myself and I happened to almost kill
5 myself with it. She helped me none. I don't think she did
6 anything that she really could have did. She tried
7 really --

8 Q Did she review the elements of this offense with you,
9 trafficking, and telling you what the elements were?

10 A You mean as far as the penalties?

11 Q Well, the elements, how they prove their case, what
12 does it mean to be guilty of trafficking. Did she go over
13 that with you?

14 A The only thing she told me is: Mr. Lane, they found it
15 in your body.

16 Q Okay.

17 A That was all she told me. And I explained to her that
18 I was, you know, an addict.

19 Q Okay. Did she ever show you any paperwork to establish
20 the weight of the drugs or any other grounds for
21 trafficking?

22 A She never showed me a chart or anything, but she
23 mentioned the amount.

24 Q Did she ever discuss with you your offense being
25 no-parole or 85 percent offense, how that would affect you?

JOHN LANE - DIRECT

1 A Yeah, she did. Because I was asking her to talk with
2 him about the violent and non-violent of it, and she
3 mentioned that the ten years would be 85 percent.

4 Q Okay. She did mention that?

5 A But she didn't mention that it was going to be violent.

6 Q She didn't mention that?

7 A No. She mentioned it was going to be 85 percent, but
8 then putting the violent in put it in a whole another
9 situation.

10 Q Okay. So you didn't understand that it was violent --

11 A No. I didn't understand that I was pleading to a
12 violent offense.

13 Q Okay.

14 A But I knew what I decided to do was plead to the 85
15 because she had my back against the wall and, you know.

16 Q Did she ever have a private investigator meet with you
17 and work on your case?

18 A She had none, never.

19 Q Well, is there anything else you think she should have
20 done to work on your case?

21 A Well, I think she should have at least tried to do a
22 little investigating and maybe a little more convincing.
23 Because as far as my record and stuff like that outlined, I
24 think she could have did a little bit better, and my age and
25 stuff like that, and the way that happened, yes. I think

JOHN LANE - CROSS

1 she could have did a little bit better than what she did,
2 because she showed no effort. It was like a rush, rush
3 thing to her, you know, like: Okay. Let me get you out of
4 the way.

5 Q Okay. Did you fully understand what happened when you
6 entered the plea? Did you fully understand it?

7 A I fully understood that I was pleading to ten years,
8 85 percent.

9 Q Okay. Do you feel like she met her required burden and
10 did her job sufficiently as effective counsel for you?

11 A No, I don't think she did.

12 MR. JOHNSON: Okay. No more questions, Judge.

13 THE COURT: Mr. Barlow?

14 MR. JOHNSON: Thank you, Your Honor.

15 CROSS EXAMINATION

16 BY MR. BARLOW:

17 Q Good morning, Mr. Lane.

18 A Good morning.

19 Q So you're here today alleging that Ms. Neyle was
20 ineffective assistance -- your plea counsel, Ms. Neyle, was
21 ineffective in your plea case, correct?

22 A Correct.

23 Q Okay. And I would just like to confirm for the record
24 that you understand that if you're successful here today and
25 you're granted PCR, that you will be retried for all of the

JOHN LANE - CROSS

- 1 matters you were indicted for.
- 2 A Okay. I understand that.
- 3 Q You do? Okay. Was Ms. Neyle your first attorney?
- 4 A No, she wasn't.
- 5 Q Okay. Who was?
- 6 A Gardner Law Firm, Mr. Johnny Etheridge.
- 7 Q Was he appointed or was he re --
- 8 A No, he was hired. I retained him and I didn't
- 9 finish --
- 10 Q How long was he your attorney?
- 11 A For about 18 months.
- 12 Q So that would be 18 months?
- 13 A 16 months. 16 months.
- 14 Q Eighteen months before you were tried, or before you
- 15 pled?
- 16 A Sixteen months, yes.
- 17 Q And were y'all planning to go to trial?
- 18 A Were we planning on going to trial? We was planning on
- 19 coming out better than what that situation was, but somehow
- 20 or another I got a bench warrant and we lost communication,
- 21 and it went from him to his son, and when it got to the
- 22 courtroom he asked to not represent me anymore. So I was
- 23 left with a public defender with my hands tied with a bench
- 24 warrant, and I just had to sit in jail until she came to see
- 25 me that one time.

JOHN LANE - CROSS

1 Q So circling back here to the question on whether or not
2 you understand that you would be retried on all the matters
3 if you're granted PCR, do you understand that you could
4 receive more time than you are currently serving if you go
5 to trial and are granted PCR?

6 A Yeah, I understand that.

7 Q Okay. Before you pled, how many times did you meet
8 with Ms. Neyle?

9 A Once.

10 Q Okay.

11 A Once at the county jail, and once with the paperwork in
12 front of me.

13 Q So twice total.

14 A Yeah.

15 Q Okay. And during any of those meetings, do you recall
16 reviewing discovery with Ms. Neyle?

17 A No.

18 Q Do you recall discussing the elements of each of the
19 offenses you were charged with with Ms. Neyle?

20 A When you speak of elements you mean --

21 Q What you were charged with basically was -- did she
22 discuss with you what you were charged with and what you
23 were facing?

24 A Yes, she did.

25 Q Okay. Do you recall discussing possible defenses with

JOHN LANE - CROSS

1 Ms. Neyle?

2 A Yes, I did. I mentioned a few things to her and asked
3 her if she could get some things done that I felt like was
4 within reach, and she said she would try. But then it was
5 like, no, no, no.

6 Q Okay. Did you give your attorney any leads or
7 witnesses to investigate?

8 A No, but she had all of the paperwork.

9 Q Okay. Sir, at your plea trial, do you recall the State
10 presenting the facts surrounding the allegations? Do you
11 remember the State presenting the facts at your plea hearing
12 and you agreeing to them? The facts of the night of what
13 occurred, the night that you were arrested.

14 A Who you said?

15 Q That the State, the solicitor at that time, presented
16 to the Court the facts of the case.

17 A They got it printed, he didn't really say too much
18 about that.

19 Q Do you recall agreeing with the facts presented by the
20 State?

21 A I recall pleading guilty because of what she said and
22 what she said he was ready to do, I pled guilty.

23 THE COURT: Mr. Williams, that wasn't his question.

24 You need to answer the question, please. Ask it again, sir.

25 MR. BARLOW: Yes, sir.

JOHN LANE - CROSS

1 Q Do you recall agreeing with the facts as presented by
2 the State at your plea hearing?

3 A Could you repeat it one more time?

4 Q Sure. Do you recall agreeing with the facts that the
5 State presented at your plea hearing?

6 A Yeah. I had to say yes.

7 Q So you agree that you agreed with the facts that were
8 surrounding your arrest, the night of your arrest?

9 A No. Because they didn't really mention anything about
10 the morning of my arrest too much, about how it went down
11 and how I ended up in the hospital for seven days, none of
12 that came out. It was just like: Okay. You had drugs, you
13 know. I don't remember them -- he would let the Judge know
14 anything about me being overdosed, having to be kept in the
15 hospital for seven days, none of that came out. That's the
16 facts I know. Should that have been the facts that should
17 have been presented? I'm asking you. I want to answer your
18 question right because this is what I'm trying to --

19 Q Well, my question is just do you recall agreeing to the
20 State's presentation of the facts of the night surrounding
21 your arrest. The Judge asked you and agreed with him.

22 A I don't remember. I can't -- you've got me puzzled
23 with that question.

24 Q Do you recall telling the Judge that you had no
25 complaints about counsel, about Ms. Neyle?

JOHN LANE - CROSS

1 A Because it was over with. She had already made her
2 statement on what the solicitor was willing to do. And she
3 also made a statement that he said he's tired of -- okay.
4 And then tired of me is what, with you see me nine years
5 prior on another charge and you're tired of me? She made
6 that statement to me that he said it, and that he was ready
7 to pick a jury.

8 Q Do you recall telling the plea Judge that you were
9 satisfied with Ms. Neyle's services?

10 A What else was I supposed to do? It was over with.

11 Q Do you recall telling the Judge that you talked to your
12 attorney enough?

13 A I think I did say that. But like I said, she made it
14 clear that it had to be done or they were going to pick a
15 jury. Okay. Like it was going to be all you had in your
16 pocket.

17 Q Do you recall telling the Judge you kind of understood
18 what your attorney discussed with you?

19 A Now we're getting somewhere. That's what I said.

20 Q And do you recall the Judge telling you, or asking you
21 whether you needed more time to speak with your attorney?

22 A It wasn't going to do me any good because I see she
23 wasn't trying to help me. She put on the table what it was,
24 and it was her and Mr. Jepertinger.

25 Q Do you recall telling the Judge that you had enough

JOHN LANE - CROSS

1 time to make up your mind whether to plead guilty or go to
2 trial?

3 A I don't recall that. I don't remember that.

4 Q Do you recall telling the Judge you understood you were
5 entering a guilty plea?

6 A Yeah, I remember that.

7 Q Do you recall telling the Judge -- or do you recall the
8 Judge rather asking you if you understood the particular
9 charge you were pleading to is a violent and serious
10 offense?

11 A No.

12 Q Do you recall the Judge asking you if you understood
13 that the violent and serious offense requires a day for day
14 sentence and 85 percent?

15 A I remember that, the 85 percent, I didn't remember the
16 violent part of it.

17 Q Do you recall the Judge explaining the charge counts as
18 a strike under the three strike rule?

19 A Yes, I think so.

20 Q Do you recall the solicitor providing the Court for
21 your negotiated charge as violent, serious, and no-parole
22 offense?

23 A No, sir.

24 Q Did anyone threaten you or coerce you into pleading
25 guilty?

JOHN LANE - CROSS

- 1 A Huh?
- 2 Q Did anybody threaten or coerce you into pleading
3 guilty?
- 4 A Well, coerce me, like I said, with the information that
5 she brought to me about what I said is why I decided to
6 plead guilty that day because it put a little fear in me,
7 and I know all I had left to defend me was her and up
8 against Mr. Jupertinger. So, I mean, that's what I did.
- 9 Q Did you ever tell Ms. Neyle that you wanted to go to
10 trial?
- 11 A I told Ms. Neyle that -- at first when they came to
12 visit me I told her, I said: I would take it to trial
13 because, I mean, I'm not a drug dealer, you know, I'm an
14 addict. I had that for my personal use, and I don't think
15 that's right for you to come at me with this and saying that
16 they won't reduce it, you know. I remember telling her
17 that.
- 18 Q And it's your testimony that it was for personal use.
19 Do you remember the amount that you were found with?
- 20 A Yeah, I got a deal on it.
- 21 Q What was the amount that you --
- 22 A Seven grams.
- 23 Q Okay. And how was it packaged?
- 24 A How was it packaged?
- 25 Q Yeah.

JOHN LANE - REDIRECT

1 A The way I bought it, in seven grams.

2 Q Excuse me?

3 A It was packaged into seven grams.

4 Q Do you remember the Judge discussing your right to a
5 jury trial?

6 A Yeah.

7 Q Do you recall telling the plea Judge that you
8 understood that right and wished to plead guilty anyway?

9 A Yeah.

10 Q Was it your decision to plead guilty?

11 A Yeah. At that time, yeah.

12 MR. BARLOW: No further questions.

13 THE COURT: Mr. Johnson?

14 MR. JOHNSON: Just briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. JOHNSON:

17 Q When the Attorney General asked you about your answer
18 on page seven of the transcript where the Court asked you if
19 you understood your talks with your attorney and you said
20 kind of, what were you conveying to the Court there about
21 the level of understanding you had?

22 A Because she wasn't telling me anything that I pretty
23 much was asking her if she was telling me only what Mr.
24 Jepertinger was saying to her and wasn't about to hear
25 nothing else, you know, and that I shouldn't go back to the

ELIZABETH NEYLE - DIRECT

1 jailhouse that day without pleading guilty because it was
2 going to be -- repercussions was going to be severe, that's
3 what I was understanding. So --

4 Q So you felt that coerced you into entering that plea?

5 A That's exactly what it did.

6 MR. JOHNSON: Okay. Thank you. No more questions,
7 Your Honor.

8 THE COURT: Mr. Barlow?

9 MR. BARLOW: Nothing from the State, Your Honor.

10 THE COURT: Thank you, sir, you may come down. Mr.
11 Johnson, anyone else?

12 MR. JOHNSON: We rest, Your Honor.

13 THE COURT: Okay. Mr. Barlow?

14 MR. BARLOW: Your Honor, the State would call Ms.
15 Elizabeth Neyle.

16 The witness, ELIZABETH NEYLE, was first duly sworn and
17 Testified as follows:

18 DIRECT EXAMINATION

19 BY MR. BARLOW:

20 Q Good morning, Ms. Neyle.

21 A Good morning.

22 Q How long have you been practicing law?

23 A I was admitted to the South Carolina Bar in November of
24 2012.

25 Q And what percentage of your time and your practice has

ELIZABETH NEYLE - DIRECT

1 been in criminal law?

2 A I started working for the Florence County Public
3 Defender's Office in 2015, so seven years as of now.

4 Q Were you appointed or retained in this case?

5 A I was appointed.

6 Q How long before the plea hearing?

7 A Mr. Lane initially had private counsel. In looking
8 back at my notes I noticed that they were relieved back in
9 June of 2019, and the Judge appointed the public defender's
10 office, I was subsequently assigned to Mr. Lane's case. And
11 I believe I received Rule Five on his case July 30th of
12 2019, and then the first time that I met with him was
13 August 14th.

14 Q Okay. How many times did you meet with Mr. Lane
15 between the time you were appointed and the date of the plea
16 hearing?

17 A I met with him twice at the jail on August 14th, 2019,
18 and August 23rd of 2019, and then I met with him the day of
19 his plea on August 27th.

20 Q Okay. During those meetings, did you discuss Mr.
21 Lane's charges and what he was facing, and what the State
22 was required to prove?

23 A I did.

24 Q And would you briefly characterize the State's evidence
25 in this case?

ELIZABETH NEYLE - DIRECT

1 A I believe the Florence City Police were alerted to a
2 suspicious vehicle and they encountered Mr. Lane in the car,
3 I believe he was asleep or passed out, and they got him out
4 of the car. And I believe upon a search of the vehicle or
5 Mr. Lane's person there was a large amount of drugs found,
6 including heroine.

7 Q Did you discuss Mr. Lane's version of the facts?

8 A I don't recall. The first time I met with Mr. Lane at
9 the jail on August 14th and we started discussing his case
10 he told me he wanted to plead. So we didn't -- I don't
11 recall getting into true specifics of what happened.

12 Q You just -- so it's your testimony that Mr. Lane, the
13 first time you met with him he wanted to plead.

14 A Yes.

15 Q Did you review discovery with Mr. Lane?

16 A I believe I reviewed discovery. He had requested his
17 Rule Five, and on August 23rd when I met with him for the
18 second time in the jail I gave him a copy of his Rule Five.

19 Q And that's in your notes?

20 A Yes, it's in my notes.

21 Q Okay. So you did provide the applicant with his
22 discovery.

23 A Yes.

24 Q And you did review.

25 A Yes, I believe so.

ELIZABETH NEYLE - DIRECT

1 Q Did you discuss the punishments associated with his
2 offenses, the maxes and the minimums?

3 A I did.

4 Q I didn't mean to interrupt you.

5 A I did, yes.

6 Q Okay. Did you discuss possible defenses with him if he
7 went to trial?

8 A I did.

9 Q And did you inform Mr. Lane of his right to a jury
10 trial?

11 A Yes.

12 Q And did Mr. Lane ever express that he wished to have a
13 jury trial, or did he maintain that he wanted to go --
14 wanted to plead?

15 A I don't have anything in my notes indicating he wanted
16 to go to trial. I think he was frustrated at certain issues
17 with his case, but at no time do I recall or do I have in my
18 notes that he wanted to go to trial.

19 Q Did Mr. Lane ever tell you that he did not understand
20 something that you were explaining to him?

21 A I believe there was certain issues he didn't
22 understand, but we -- once he told me that we went over them
23 and discussed them further.

24 Q Do you think that you were able to clarify those
25 issues?

ELIZABETH NEYLE - DIRECT

1 A I believe so.

2 Q And so Mr. Lane appeared to comprehend everything that
3 you had discussed with him.

4 A Yes.

5 Q And how active was Mr. Lane in either crafting a
6 defense position or assisting you in preparing for the plea
7 hearing or providing you information?

8 A I don't recall.

9 Q Okay. Did you ever discuss with Mr. Lane hiring an
10 investigator?

11 A No.

12 Q What was the reason for that?

13 A I didn't see anything further to investigate, and he
14 had continuously said he wanted to plead so I didn't think
15 it was necessary.

16 Q Now, did you enter plea negotiations on behalf of
17 Mr. Lane?

18 A I did. The Solicitor had made an offer of ten years to
19 a lesser included charge, and once I met with Mr. Lane on
20 August 14th we discussed that offer and he had said that he
21 wanted an offer with non-violent time. I then spoke with
22 the solicitor and asked for a non-violent plea, he refused
23 citing to Mr. Lane's extensive prior record.

24 Q But you did communicate that offer to the applicant?

25 A Yes.

ELIZABETH NEYLE - DIRECT

1 Q And that's common practice for you to communicate
2 offers to your clients?

3 A Yes.

4 Q Did you inform Mr. Lane of the consequences of his
5 plea?

6 A I did.

7 Q In your opinion, do you -- did Mr. Lane understand the
8 facts against him?

9 A Yes.

10 Q Prior to Mr. Lanes plea, did you feel adequately
11 prepared to proceed to trial?

12 A I did. This was a quick turnaround in terms of being
13 appointed. If he had decided to go to trial I would have
14 been prepared to do so, but as I met with him from the get
15 go he indicated he wanted to plead.

16 Q And what was Mr. Lane's inclination as to resolving
17 these charges? Did he indicate to you -- well, I've asked
18 and you've answered, we'll move on. In your opinion, did
19 you -- well, rather, did you agree with Mr. Lane's
20 inclination or counsel him otherwise as to plead?

21 A I counseled him to take the plea offer, I advised him
22 to do so.

23 Q And in your professional opinion you think that was the
24 best thing for him to do.

25 A Yes.

ELIZABETH NEYLE - CROSS

1 Q And today do you stand by the counsel you provided in
2 that regard?

3 A I do.

4 Q So did you feel that the plea would be in the
5 applicant's best interest?

6 A Yes.

7 Q Why?

8 A He was facing a minimum of 25 years up to 40 years with
9 his initial charge. I don't think he would have been
10 successful at trial, and this was a plea deal where he would
11 have served substantially less time. I thought it was a
12 good plea deal for him.

13 MR. BARLOW: Beg the Court's indulgence.

14 THE COURT: Yes, sir.

15 (Break in proceedings.)

16 MR. BARLOW: Please answer any questions Mr. Johnson
17 has for you. Thank you.

18 THE COURT: Mr. Johnson?

19 CROSS EXAMINATION

20 BY MR. JOHNSON:

21 Q Did you have the drug analysis results?

22 A I did.

23 Q Okay. Did you provide those to my client?

24 A With my notes given that I had given him the Rule Five,
25 the drug analysis would have been included in that Rule

ELIZABETH NEYLE - CROSS

1 Five.

2 Q Did you have his complete chain of custody for those
3 drugs and analysis?

4 A I did have a chain of custody and I believe he was
5 given a copy of that.

6 Q Okay. Did you ever file a motion to challenge the
7 chain of custody in this case?

8 A No.

9 Q Okay. Did you do anything to find out based on the
10 report if there were any witnesses, other witnesses to this
11 besides the police coming up on a vehicle?

12 A No.

13 Q Did you explore whether or not the initial call listed
14 as a suspicious vehicle, was that a call made by a civilian
15 or was there a 911 call? Did you ever find that out?

16 A No.

17 Q Does your office hire or maintain private
18 investigators?

19 A We do.

20 Q Did you not have any of the private investigators look
21 into any of that?

22 A No.

23 Q Okay. Was there a reason for that?

24 A The reason being that Mr. Lane indicated he wanted to
25 plead. If he had told me that he wanted to go to trial I

ELIZABETH NEYLE - CROSS

1 would have been glad to investigate and have our office
2 investigators do so.

3 Q Okay. The report from the City of Florence indicates
4 there were photographs taken by the officers. Did you have
5 that in discovery?

6 A I don't recall. I don't recall.

7 Q Okay. So that might exist with the city police but you
8 don't have it.

9 A I don't know. If it was on a CD -- I only printed out
10 my paper discovery, so there may be a CD, but I just don't
11 recall at the moment.

12 Q And you're not sure if you gave those photographs to
13 the defendant -- or to the applicant?

14 A I don't know.

15 Q Okay. And on page seven of the transcript when the
16 Court questioned Mr. Lane and they asked him if he
17 understood his conversations with you and he said: Well,
18 kind of. At that point -- unless somebody -- if somebody
19 doesn't say yes and they say something different, and they
20 indicate they don't understand the conversations with you,
21 did you not have the option to ask the Court to step back
22 and have a conversation with your client so he could fully
23 understand you? Was that an option that you had?

24 A That would have been an option. I believe the Judge
25 was Judge Brown and he always gives people the option if

ELIZABETH NEYLE - CROSS

1 they need to speak with their attorney further.

2 Q Well, based on the comment where he replied kind of and
3 asked if he understood his talks with you, don't you feel it
4 would have been appropriate for you at that time to pause
5 and to have a conversation with Mr. Lane?

6 A No.

7 Q Okay. You felt he understood?

8 A I did.

9 Q Okay. Now, how many times did you meet with Mr. Lane
10 did you say?

11 A I met with him twice in the jail on August 14th and
12 August 23rd, and then I met with him at the courthouse
13 before his plea on the 27th.

14 Q Okay. And --

15 A Three times.

16 Q Did you do anything else to explore his background or
17 go through some of the things he wanted you to look into
18 to -- either in mitigation or to possibly explore the option
19 of arguing that this would be a possession case as opposed
20 to trafficking? Did you follow through with everything he
21 asked you to do?

22 A We discussed his background, but I don't believe I
23 investigated anything further.

24 Q Did he ask you to?

25 A I don't recall.

ELIZABETH NEYLE - CROSS/REDIRECT

1 Q Okay. Were there any videos that you were aware of
2 made of this incident by law enforcement?

3 A There may have been an in-car camera of the incident,
4 and I believe we may have been given a copy of that. I know
5 I didn't review it with Mr. Lane at the jail, but if we were
6 given a copy of it I would have reviewed it.

7 MR. JOHNSON: Okay. No more questions, Your Honor.

8 THE COURT: Mr. Barlow?

9 MR. BARLOW: Briefly, sir, thank you.

10 REDIRECT EXAMINATION

11 BY MR. BARLOW:

12 Q You indicated that you did not challenge the chain of
13 custody. Why is that?

14 A I believe I reviewed it and I believed it was adequate.
15 Like I said, Mr. Lane wanted to plead and so that's
16 something I would have dealt with further at trial, but he
17 indicated that he didn't want to go to trial.

18 Q And do you remember the mitigation you provided to the
19 Court?

20 A I believe I indicated that Mr. Lane had a life long or
21 adult drug problem and that framed a large part of his
22 criminal record, and I believe that's what I told the Judge.

23 MR. JOHNSON: Beg the Court's indulgence.

24 (Break in proceedings.)

25 MR. JOHNSON: That's all, Your Honor.

1 THE COURT: Mr. Johnson?

2 MR. JOHNSON: Nothing further.

3 THE COURT: Okay. You may step down. Anybody else,
4 Mr. Barlow?

5 MR. BARLOW: We rest, Your Honor.

6 THE COURT: All right. Would one of you give me the
7 transcript of the plea so I can go read it and come back
8 with a ruling?

9 (Break in proceedings.)

10 THE COURT: I have taken notes, I have read the
11 information provided to the Court, I have read the plea
12 transcript several times now. In addition to my earlier
13 ruling I do not find that trial counsel was ineffective at
14 trial. This transcript is replete where the defendant
15 stated numerous times, at least four or five times, that he
16 was pleading guilty. He raised concerns about not knowing
17 the violent status of the charge, yet Judge Brown asked him:
18 Do you understand that this particular charge is considered
19 under South Carolina law to be a violent offense as well as
20 a serious offense? Do you understand that? Yeah. The
21 Court: Sir? The defendant: Yes, sir. This is before the
22 plea was accepted by the Court. The Court asked the
23 defendant: Are you satisfied with her representation as a
24 lawyer? Yes, sir. The Court: You talked to her enough?
25 Defendant: Yes, sir. The Court: You understand your talks

1 with her? The defendant: Kind of. Then Judge Brown says:
2 Do you need any more time to talk with her? The defendant,
3 having the chance to stop things and go talk to her, says:
4 No, sir, don't need anymore time. Towards the end, Judge
5 Brown: Do you understand this falls under the three strikes
6 rule? Have you talked to him about that Ms. Neyle? I have
7 Your Honor. Defendant: I don't have any three strikes.
8 The Court, Judge Brown: It counts as a strike is what I'm
9 telling you. The defendant: Oh, okay. Again, before the
10 plea is accepted by the Court, Judge Brown again: Do you
11 still want to plead guilty? Yeah. I find that much, if not
12 all what of Mr. Lane alleged today was contradicted by this
13 guilty plea transcript. I'm unimpressed with his answers
14 that many times that were I find to be evasive and
15 non-responsive to the questions asked by -- even by his own
16 lawyer. I simply don't find that Mr. Lane met his burden of
17 proof today so I deny the post conviction application for
18 relief. Mr. Johnson, Mr. Barlow, I thank you. Ms. Neyle,
19 thank you for coming back in. Mr. Lane, good luck to you,
20 sir.

21 (End of the hearing.)

22

23

24

25

1 I, the undersigned, Michael C. Watkins,
2 Official Court Reporter for the Sixth Judicial
3 Circuit of the State of South Carolina, do hereby
4 certify that the foregoing is a true, accurate and
5 complete transcript of the proceedings had (as
6 recorded by DCRP and transcribed by me) and evidence
7 introduced in the trial of the captioned case
8 relative to appeal in the Court of Common Pleas for
9 Florence County, South Carolina, on the 20th day of
10 April, 2022.

11 I further certify that I am not of counsel, nor
12 interest to any party hereto.


13

14

October 15, 2022

15

16


Michael C. Watkins

17

18

Court Reporter

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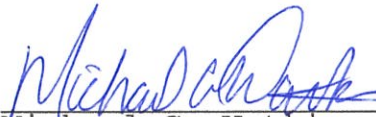
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OCT 26 2022
APPELLATE DEFENSE

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 8 relative to appeal in the Court of Common Pleas for
 9 Florence County, South Carolina, on the 20th day of
 10 April, 2022.

11 I further certify that I am not of counsel, nor
 12 interest to any party hereto.

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October 15, 2022


 Michael C. Watkins

Court Reporter

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 APPELLATE DEFENSE

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

John D. Lane, #293885

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) TWELFTH JUDICIAL CIRCUIT

) CASE NO. 2020-CP-21-0701

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Applicant John D. Lane on March 2, 2020. Respondent made its Return on August 21, 2020. An evidentiary hearing into the matter was convened on April 20, 2022, at the Florence County Courthouse before the Honorable George M. McFaddin, Jr. Applicant was present at the hearing and represented by Ola A. Johnson, Esquire. D. Russell Barlow, II, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the hearing, and testimony was additionally provided by his former plea counsel Elizabeth Neyle, Esquire. Following a thorough review of the record in its entirety and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to meet his requisite burden of proof, denies relief, and dismisses this application with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections (SCDC). Applicant was indicted at the April 2018 term of the Florence County Grand Jury for trafficking in heroin—twenty-eight grams or more and possession of a weapon during the commission of a violent crime (2018-GS-21-566). Applicant

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was represented by Assistant Public Defender Elizabeth Neyle of the Twelfth Circuit Public Defender's Office. Deputy Solicitor John Jupertinger of the Twelfth Circuit Solicitor's Office prosecuted the case.

On August 27, 2019, Applicant appeared before the Honorable D. Craig Brown, circuit court judge, and pleaded guilty to the lesser-included offense of trafficking in heroin—more than four grams but less than fourteen grams pursuant to plea negotiations entered into between Applicant and the State.¹ Judge Brown accepted the Applicant's guilty plea and sentenced Applicant to serve the negotiated ten-year sentence per the plea agreement. Applicant did not appeal.

FACTS

On October 11, 2017, officers of the Florence Police Department responded to 1254 Cemetery Street in the City of Florence in response to the report of a person passed out in the driver seat of a car. (Plea Tr. p. 8). Once on scene, Patrol Officer Bozeman and Patrol Officer Seman observed the Applicant sitting in the driver seat, passed out with a load .22 caliber rifle lying in plain view in the passenger seat. (Plea Tr. p. 9). Officers were able to write up the defendant and remove him from the vehicle. (Plea Tr. p. 9). Officer Seman found 9.9 grams of heroin in the pockets of Applicant. (Plea Tr. p. 9).

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ISSUES RAISED

Applicant *timely* commenced this post-conviction relief action on March 2, 2020. In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

- 1. Ineffective assistance of counsel:

¹ The State dropped the weapons charge.

- a. Attorney failed to investigate case properly. Had Counsel read the arrest report issued by Officer Boseman, she would have discovered I had been found overdose from drugs in my car, and medical attention was required. I was hospitalized for seven days as a result of the drug overdose. As per 44-53-1935 44-53-1930 I was immune from prosecution as a result.
- b. Attorney forced me to plea[d] guilty.
- c. Counsel was ineffective when she failed to move pursuant to S.C. Code of Laws § 44-53-1930 which provides that a defendant is entitled to immunity based on a drug overdose, applied even if evidence would have been inevitably discovered. See 2019 WL 3852758. Based on the foregoing, Counsel should have moved to dismiss the charges
- d. Counsel was therefore ineffective for failure to move for dismissal.

On April 8, 2022, Applicant's counsel filed amendments to his PCR application with the following allegations:

1. Ineffective Assistance of Counsel
 - a. Prior to the guilty plea, Applicant's counsel Elizabeth Neyle failed to review all of the evidence prior to the plea.
 - b. Applicant's counsel Elizabeth Neyle failed to provide a copy of the states evidence to the Applicant.
 - c. Applicant's plea counsel Elizabeth Neyle, failed to discuss a defense strategy with applicant or to properly review evidence with Applicant.
 - d. Applicant's counsel Elizabeth Neyle failed to meet with the Applicant a sufficient number of times to review the evidence.
 - e. Elizabeth Neyle failed to inform Applicant that die charge he entered a plea to was violent and a "no parole" offense requiring Applicant to serve 85 % of his sentence.
 - f. Applicant was coerced into entering his plea and plea counsel Elizabeth Neyle failed to use as a defense or to explain to Applicant the possible defense of immunity under South Carolina Code Sec. 44-53-1920 and 44-53-1930 and the City of Florence incident report (dated 10-11-17) related to this case reports that the Applicant was taken to Ute hospital due to a drug overdose and received treatment for this following his arrest.

At the evidentiary hearing, PCR counsel for Applicant proceeded on the following allegations:

1. Ineffective Assistance of Counsel
 - a. Prior to the guilty plea, Applicant's counsel Elizabeth Neyle failed to review all of the evidence prior to the plea.
 - b. Applicant's counsel Elizabeth Neyle failed to provide a copy of the states evidence to the Applicant.
 - c. Applicant's plea counsel Elizabeth Neyle, failed to discuss a defense strategy with applicant or to properly review evidence with Applicant.
 - d. Applicant's counsel Elizabeth Neyle failed to meet with the Applicant a sufficient number of times to review the evidence.

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- e. Elizabeth Neyle failed to inform Applicant that the charge he entered a plea to was violent and a "no parole" offense requiring Applicant to serve 85 % of his sentence.
- f. Applicant was coerced into entering his plea and plea counsel Elizabeth Neyle failed to use as a defense or to explain to Applicant the possible defense of immunity under South Carolina Code Sec. 44-53-1920 and 44-53-1930 as the City of Florence incident report (dated 10-11-17) related to this case reflects dial the Applicant was taken to Ute hospital due to a drug overdose and received treatment for this following his arrest.

MOTION TO DISMISS ALLEGATION 1(F)

At the outset of the PCR evidentiary hearing, the State motioned this Court to dismiss Applicant's allegation 1(f) as a matter of law. Specifically, the State maintained that S.C. Code Ann. § 44-53-1920 and § 44-53-1930 do not apply to trafficking offenses. Applicant averred that Plea Counsel was ineffective for failing to move for a dismissal based on the statute because Plea Counsel could have asked the State to reduce the charges to a lesser-included offense that would have provided immunity to Applicant from prosecution. This Court granted the motion to dismiss allegation 1(f) as a matter of law based on the plain language of the statute.

SUMMARY OF RELEVANT TESTIMONY

APPLICANT'S TESTIMONY

On direct examination, Applicant testified that his plea was forced because Plea Counsel Elizabeth Neyle said he would be tried the following week if he did not plead that day, so he took this as a threat. Applicant testified that Plea Counsel only spoke to him once at the county jail and then once on the day of the plea. Applicant testified that Plea Counsel never reviewed the evidence, then corrected himself and said she reviewed his charges but never mentioned anything else about the case. Applicant testified that Plea Counsel did not do any work and never gave him a copy of the discovery.


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Applicant testified that Plea Counsel should have made clear he was found overdosed and just had a drug problem, so she should have moved to dismiss the case. Applicant testified that he had not had any drug charges in 3 years and that the drugs they found on him were for his personal use. Applicant testified that Plea Counsel explained to him that based on the weight of the drugs, it is a trafficking charge. Applicant testified that Plea Counsel explained the sentence of 10 years would be 85%, but she did not ever say it would be violent. Applicant testified that Plea Counsel did not hire a private investigator.

When Applicant was asked whether there was anything else Plea Counsel should have done, Applicant testified Plea Counsel should have at least tried to investigate, been a little more convincing, negotiated a better deal based on his age, and not made him feel rushed.

On cross-examination, Applicant testified that he understood that if PCR relief were granted today, Applicant would be retried for all indicted matters, even those that were dismissed. Applicant testified that Plea Counsel was not his first attorney; it was Kevin Etheridge. Applicant testified that Etheridge was counsel for 16-18 months. When Applicant was asked if he wanted to go to trial, Applicant testified that he wanted to come out better than the deal he got. Applicant testified that he understood he could get significantly more time if PCR were granted.

Applicant testified that Plea Counsel only met with him once at the county jail, then once at the courthouse with paperwork in front of him. Applicant testified that Plea Counsel never reviewed discovery with him. Applicant testified that Plea Counsel did review the elements of the offense with him and possible defenses, but then she failed to investigate them. Applicant testified that he did not give Plea Counsel any leads or witnesses to investigate, but she had the paperwork. Applicant testified that he agreed with the facts from the night of his arrest that were read into the record at his plea hearing. Applicant testified that they did not discuss his overdose or being

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hospitalized for seven days at the plea hearing. Applicant testified that Plea Counsel should have presented these facts to the court.

Applicant testified that he pled guilty because of what Plea Counsel said about the trial the next week and he felt threatened by her saying he would be tried the next week. Applicant testified that he told the plea court he was satisfied with Plea Counsel and talked to her enough but felt there was no other choice. Applicant testified that he told the plea court he "kind of" understood conversations with Plea Counsel, but there was nothing else he could do. Applicant testified that he understood he was entering a plea. Applicant testified that he did not recall telling the judge he knew it was a violent and serious offense but does remember the 85% and 3-strike discussion.

Applicant testified that he felt coerced to plead based on Plea Counsel telling him the State would try the case the next week. Applicant testified that it put a little fear in him. Applicant testified that he told Plea Counsel that he would rather take it to trial because he was not trafficking, he was an addict, and all the drugs were for personal use. Applicant testified that he wanted the charges reduced. Applicant testified that he was found with seventy grams, and it was packaged to sell as grams. Applicant testified that the judge discussed the right to a jury trial and that he understood and wanted to plead guilty. Applicant testified that it was his decision to plead.

On redirect examination, Applicant testified that he "kind of" understood conversation with Plea Counsel because she was only conveying what the state told her and he felt coerced based on trial the next week.

PLEA COUNSEL ELIZABETH NEYLE'S TESTIMONY

On direct examination, Plea Counsel testified that she met Applicant twice at the jail, once in July when she was appointed, in August 2019, and then on the day of the plea hearing. Plea Counsel testified that Florence City Police were alerted to a car with a man passed out, and when

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law enforcement approached, there was a gun in plain view; they searched the car and found lots of drugs. Plea Counsel testified that Applicant always said he wanted to plead from their first meeting. Plea Counsel testified that Applicant reviewed discovery, and she gave him a copy of his discovery at their second meeting. Plea Counsel testified that she reviewed the offense, elements, and sentences and discussed possible defenses at trial. Plea Counsel testified that she discussed with Applicant his right to a jury trial.

Plea Counsel testified that Applicant was frustrated with certain issues in his case but never wanted to go to trial. Plea Counsel testified that Applicant said he didn't understand certain issues, but then they would discuss them, and he appeared to understand. Plea Counsel testified that they never discussed hiring an investigator because there was nothing to investigate, and he repeatedly said he wanted to plea, so it was not necessary. Plea Counsel testified that the State made the offer of ten years to Plea Counsel, and she discussed it with Applicant; however, Applicant wanted an offer for non-violent time. Plea Counsel testified that the State rejected that counter based on Applicant's extensive prior record. Plea Counsel testified that she told Applicant of the State's reply, and Applicant understood. Plea Counsel testified that she would have been prepared to go to trial if needed, but Applicant always maintained he wanted to plead. Plea Counsel testified that she felt the plea was in Applicant's best interest because he was originally facing a mandatory minimum twenty-five year sentence.

On cross-examination, Plea Counsel testified that she had drug analysis reports and gave them to Applicant with the rest of his Rule 5, SCRCrimP, discovery materials. Plea Counsel testified that she had the complete chain of custody and that was given to Applicant. Plea Counsel testified that Applicant always maintained that he wanted to plead, so there was no need to use a private investigator or do any further investigation. Plea Counsel testified that she felt Applicant

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understood what was happening during the plea. Plea Counsel testified that she met with Applicant on Aug 14 and 23rd and then met at the courthouse before plea on Aug. 27th. Plea Counsel testified that she discussed Applicant's background to present as mitigation. Plea Counsel testified that Applicant asked her to get dash cam videos maybe.

On redirect examination, Plea Counsel testified that she did not challenge the chain of custody because she did not see any issue with it, and Applicant wanted to plead. Plea Counsel testified that she gave mitigation to the court, including drug addiction as the reason for his criminal record.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court further had the opportunity to observe the witnesses at the evidentiary hearing and evaluate their credibility, and the Court has weighed their testimony accordingly in its discussion below. This Court finds the combined record of the plea transcript, and the testimony and evidence presented at the evidentiary hearing establishes Applicant received effective assistance of counsel. Accordingly, this Court denies relief and dismisses this application with prejudice. Set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code.

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL

Applicant's allegations of ineffective assistance of 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

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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). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC. The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). 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). "When counsel focuses on some issues to the exclusion of others, a strong presumption that he [or she] did so for tactical reasons rather than through neglect." Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough, 540 U.S. at 6; see also Murphy v. Davis, 901 F.3d 578,

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592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). 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. "This does not require a showing that counsel's actions' more likely than not altered the outcome,' but the difference between Strickland's prejudice standard and a more-probable-than-not standard is slight and matters' only in the rarest case." Harrington, 562 U.S. at 111-12 (quoting Strickland, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." Id. at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

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 375 (recognizing the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel's performance was deficient; and second, evidence that counsel's deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

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; accord

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Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56.

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 decision making" 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. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—no whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 381, 517 S.E.2d 442, 444 (1999).

Surmounting the high bar of Strickland is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." Lee, 582 U.S. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.'"). Reviewing "[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney's

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deficiencies. Lee, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences. Id. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harris, 282 S.C. at 134, 318 S.E.2d at 361.

The performance and prejudice standards, however, "do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Id. at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Id. at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may do so. Id. The prejudice prong only. Id.

This Court finds Applicant cannot meet his burden as to his claims of ineffective assistance of trial counsel. The specific claim is addressed below:

1(a)(b)(c)(d): Plea Counsel Failed to Meet a Sufficient Number of Times to Review

Evidence and Discuss Defenses

Applicant alleges Plea Counsel was ineffective for failing to provide a copy of the State's evidence to Applicant, failing to review the available evidence with Applicant, and failing to discuss defense strategy with him. This Court finds these allegations to be without merit.

At the PCR hearing, Applicant testified that Plea Counsel never reviewed the evidence against him, then corrected himself and said she reviewed the charges but never mentioned

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anything else about the case with him. Applicant testified that Plea Counsel never gave him a copy of the discovery. However, on cross-examination, Applicant testified that Plea Counsel reviewed the elements of the offense with him and possible defenses, but then she failed to investigate them. Then Applicant testified that he did not provide her with a list of witnesses or things he would like investigated, but she had some paperwork.

This Court finds that Plea Counsel reviewed discovery with Applicant, provided him with a complete copy of the State's evidence, set up meetings within the short time she represented Applicant to discuss the evidence, and pursued a valid defense strategy as an alternative to pleading guilty. Therefore, the Court finds Applicant has not proven his allegations that Plea Counsel's performance in preparing for trial was deficient.

In addition, the Court finds Applicant has not met his burden of establishing prejudice from any of Plea Counsel's alleged failures. To establish prejudice, Applicant must show that, but for Plea Counsel's alleged errors, he likely would not have pleaded guilty and would have insisted on going to trial. Hill, 474 U.S. at 59. However, Applicant testified at sentencing that the choice to plead guilty was his, and he was satisfied with Plea Counsel.

Also, Applicant has not explained how receiving or reviewing additional evidence or discussing additional defense strategies would have changed his mind about pleading guilty. An applicant who alleges his or her defense attorney was ineffective in failing to spend more time preparing or to provide a copy of the discovery materials must demonstrate prejudice by showing what evidence could have been discovered or what other defenses could have been pursued. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls, 422 S.C. 174, 810 S.E.2d 836.

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Furthermore, an applicant must also show how the new evidence or defenses would have resulted in a different outcome. Id. (citing David v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)). Because Applicant has not established a reasonable probability that, but for Counsel's allegedly deficient performance, he would not have pleaded guilty, this Court finds Applicant has failed to establish prejudice as to these allegations. Hill, 474 U.S. at 59; Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Accordingly, these allegations are denied and dismissed with prejudice. **Plea Counsel Failed to Explain the Offense was Violent, Affected Parole Eligibility, and Required 85% of the Time to be Served**

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Applicant alleges Plea Counsel was ineffective for failing to explain that he was pleading to a violent no-parole offense that requires 85% of the time to be served. This Court finds this allegation is without merit.

At the PCR hearing on direct examination, Applicant testified that Plea Counsel only explained that he was pleading to ten years imprisonment but did not explain it was violent and required 85% of the time to be served. However, Applicant also testified that he fully understood his guilty plea.

On cross-examination, Applicant testified that he did not remember telling the sentencing judge that he understood it was a violent and serious offense. However, Applicant also testified that he remembered the sentencing judge informing him that the offense affected his parole eligibility, required 85% of the time to be served, and explained South Carolina's three-strike rule.

Plea Counsel testified that Applicant asked her to go to the Solicitor and ask for a non-violent offense, but the Solicitor rejected Applicant's request. Plea Counsel testified that she relayed the Solicitor's rejection to Applicant, and he was fully aware that it would be a violent offense.

This Court finds that Applicant has failed to prove deficiency on the part of Plea Counsel and any prejudice therefrom. The plea transcript is replete with Applicant stating that he was pleading guilty. Applicant did raise concerns about the violent nature of the offense but was asked by the court and told the court he understood it was violent, and he was satisfied with his lawyer and had talked to her enough. Then Judge Brown asked Applicant if he needed more time, and Applicant told the court he did not need more time. Furthermore, Judge Brown explained that this offense counts as a strike under the three-strike rule. Notably, much, if not all of the claims are refuted directly by the plea transcript.

Therefore, for the reasons stated above, the Court denies relief and dismisses the allegations with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. The Court finds Plea Counsel's representation was neither deficient nor prejudicial. 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 PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule

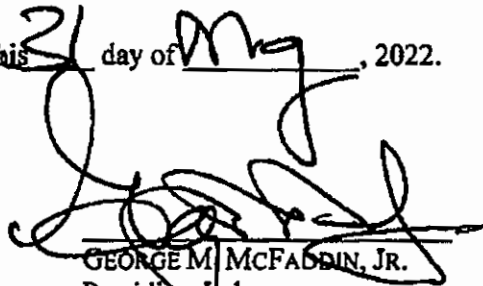
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71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. Post-conviction relief is denied and the application for post-conviction relief be dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 31 day of May, 2022.



GEORGE M. MCFADDIN, JR.
Presiding Judge
Twelfth Judicial Circuit

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FLORENCE COUNTY, SC

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WITNESSES

Shannon O Mckenzie Florence Police Department

John C Jupertinger

ARREST WARRANT NUMBER

2017A2120201769 2017A2120201770

ACTION OF GRAND JURY

TRUE BILL

Stan Carls

Foreperson of Grand Jury
Date: 4-5-18

VERDICT

Foreperson of Petit Jury Date:

DOCKET NO. 2018-GS-21-00566

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

APRIL TERM 2018

THE STATE

vs.

JOHN DEBERTH LANE

Indictment for

TRAFFICKING IN HEROIN
AND
POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME

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STATE OF SOUTH CAROLINA)
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 COUNTY OF FLORENCE)

INDICTMENT FOR
 TRAFFICKING IN HEROIN
 AND
 POSSESSION OF A WEAPON DURING THE
 COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on APRIL 5, 2018 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- TRAFFICKING IN HEROIN

That John Deberth Lane did in Florence County on or about October 11, 2017, sell, deliver, purchase, or bring into this state, or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this state, or was knowingly in actual or constructive possession of a quantity of Heroin in an amount of twenty-eight grams or more, same being a controlled substance all within the meaning of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, in violation of Section 44-53-0370(e)(3)(c), S. C. Code of Laws, 1976, as amended, for the crime of Trafficking.

**COUNT TWO- POSSESSION OF A WEAPON DURING
 THE COMMISSION OF A VIOLENT CRIME**

That John Deberth Lane did in Florence County, on or about October 11, 2017, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime to wit: Trafficking in Heroin, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
 TWELFTH CIRCUIT SOLICITOR