

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Oct 06 2023

S.C. SUPREME COURT

Certiorari to Greenville County

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

ERICK ETON HEWINS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000998

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

MELODY J. BROWN
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201
(803)734-3727

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED JANUARY 14, 2013	1
FINAL BRIEF OF APPELLANT	430
<u>STATE V. HEWINS</u> , UNPUBLISHED OP. NO. 2014-UP-478 (S.C. Ct. App. Dec. 23, 2014)	463
PETITION FOR REHEARING DATED JANUARY 6, 2015	471
ORDER DENYING PETITION FOR REHEARING	476
PETITION FOR WRIT OF CERTIORARI DISMISSED DATED MARCH 23, 2016	478
APPLICATION FOR POST-CONVICTION RELIEF (2016-CP-23-2656)	480
RETURN (2016-CP-23-2656)	513
ORDER GRANTING POST-CONVICTION RELIEF (2016-CP-23-2656)	521
ORDER DENYING PETITION FOR WRIT OF CERTIORARI	527
GUILTY PLEA TRANSCRIPT DATED AUGUST 21, 2018	528
APPLICATION FOR POST-CONVICTION RELIEF (2019-CP-23-3629)	541
AMENDED APPLICATION FOR POST-CONVICITON RELIEF (2019-CP-23-3629)	548
RETURN (2019-CP-23-3629)	555
PCR COUNSEL’S AMENDED APPLICATION FOR PCR (2019-CP-23-3629)	571
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED MAY 25, 2022 (2019-CP-23-3629)	573
APPLICANT’S EXHIBIT NO. 1 (CAD REPORT)	611
STATE’S EXHIBIT NO. 1 (LETTER AND CAD REPORT)	613
ORDER OF DISMISSAL (2019-CP-23-3629)	618
INDICTMENTS	638

State of South Carolina
 County of Greenville

Erick E. Hewins # 297728

vs.

The State of South Carolina

In the Court of Common Pleas
 Case No. 2016-CP-23-02656

Amendments to p.c.r.

Application

FILED
 26 PM

ENTERED COMPUTER

Applicant amends the following issue to p.c.r. application as has not represented by counsel. Applicant's allegation of his attorney being ineffective is with merit under the two prong test set out in Strickland v Washington 466 U.S. 668, 104 S.Ct. 2052 (1984)

1. Trial Court erred by failing to give curative instruction regarding Consent, in applicants case
2. Further Trial Court erred by giving erroneous jury instruction regarding mere presence
3. Trial Counsel's failure to object to alien charge
4. Trial Counsel's failure to object to signature on drug analysis report preventing applicant from challenging fraudulent signature chain of custody.
5. Trial Court erred by violating applicants substantial procedural ~~right to due process~~
6. Fraud upon the Court as prosecutor in applicants case did witness fabricated (knowingly.)
7. Trial Counsel failed to inform the Court of the elements to the charged offense were not proven (Trafficking charge)
8. Trial Court erred in failing to conduct a Jackson v Demo hearing to determine the voluntariness and failed to submit the issue of voluntariness to the jury trier of facts

Affidavit of Service

I Erick E Helms Certify that I have today deposit a copy of the
 p.c.r. amendment in the United States mail here at McCormick
 mail room, postage prepaid; address to

Clerk of Court for Greenville County
 305 east north street
 Greenville SC 29601

FILED - CLERK OF COURT
 GREENVILLE S.C.
 MAY 26 PM 3 59

Sworn or affirmed before me
 This 23rd day of May 2016

Notary public for South Carolina [Signature]
 my commission expires July 09, 2026

Michael G. Sharp

Date May 23, 2016

by Erick Helms

13-804

The State of South Carolina

County of Greenville

ERICK S. HEWINS

Petitioner

vs.

The State of South Carolina

Respondent

In the Court of Common Pleas

Amendment to Federal Rules

of Civil Procedure 60(d)(3)

Fraud upon the Court

Amendment

No statute of limitations for an action brought pursuant to Fed. R. Civ. P. 60(d)(3) MORE OVER Not only does this court possess the inherent authority to consider such fraud the court has a duty to consider whether there's been a fraud on the court, and if so to order an appropriate remedy when ever such fraud comes to the courts attention even fully "Fraud on the Court" May occur when acts of party prevent his adversary from fully and fairly presenting his case or defense. Even fully litigated judgment can be set aside on grounds of fraud, at least by making a civil motion in the original forum. Fraud, on the court must involve unconscionable plan or scheme which is designed to improperly influence court in its decision preventing opposing party from fully and fairly presenting his case. When your opposing attorney lies or submits falsified documents, as he is an officer of the court this amounts to fraud upon the court and voids the whole proceeding while an attorney has an ethical duty not to perpetrate a fraud upon the court by knowingly presenting perjured testimony Federal Rule of Civil Procedure 60(d)(3) committing a criminal act that reflects adversely on the lawyers honesty, trustworthiness, or fitness conduct involving misrepresentation, fraud, deceit, etc.

RECEIVED

MAY 23 2016

Entered to Cole/dm

Additional to the 60<d> <3> motion this amendment will show how Trial Solicitor Ms. Monts and Attorney General Office use fabricated evidence at trial and on Direct Review with the Court of Appeals rendering Judge Few ruling illegal. Not only did Officer Gardner Officer Hall commit perjury Solicitor Ms. Monts got in on the "Scheme" when she had Ms. Kara Bennick come to court and lie. Chain of Custody argument Transcript pages 265-282 will show how this case is tainted by fraud. Now Ms. Monts the Solicitor out of the presence of the jury on record making statements to the Trial Judge that this signature on the property form is Israel Flounders and then she said that it's very hard to read but she believe it says "STATE case" but they was not gone enter it in evidence trial Transcript page 273 Line 19-22. Now if she believe it's hard to read and think it says "The state case". Why in front of the jury Ms. Monts would intentionally get Ms. Kara Bennick the Supervisor of the evidence room to lie under oath in the presence of the jury that Israel Flounders is the one who signed the property form trial transcript pages 277-281. The Drug Analysis Report that is now being submitted for a exhibit do not represent Ms. Monts and Ms. Kara Bennick that this signature says Israel Flounders this exhibit proves that trial court wanted a conviction by all means even trial Judge. Repeated Ms. Monts when she said it reads the "state case" transcript page 273 Line 23 his Reply was "state" case. The parties in this case knowingly presented perjury testimony. What the police officer's along with Solicitor Ms. Monts and Ms. Kara Bennick did was fraud on the court grounds for this case to be vacated. It makes no sense for

a OFFICER OF the COURT to CONDUCT in such MANNER just to get a CONVICTION. THERE is NO way SOLICITOR Ms. MONTS and KARA BENNICK did NOT know this SIGNATURE says ISRAEL FLOUNDERS it looks NOTHING like ISRAEL FLOUNDERS NAME ONE MORE MINOR POINT it SURELY does NOT look like it says the "STATE CASE" as Ms. MONTS said it did Transcript page 273 LINE 19-22. Applicant ask this honorable COURT for what it deems proper and just

Respectfully Submitted

S/s *Erin Damm*

DATE May 19, 2016

State of South Carolina

County of Greenville

In the Court of Common

Pleas Case No: 2016-cp-23-

02656

Affidavits of Service

I ERICK E. HEWINS certify that I have today SERVED the Federal Rule of Civil Procedure 60(d) <3> Amendment Motion upon Respondent by depositing a copy of the same in the United State mail here at McCormick Inst mailroom, Postage Prepaid, addressed to Alan Wilson P.O. Box 11549 Columbia SC 29211

I further certify that all parties Required by Rule to be served have been served this MAY day of 19 2016

Sworn or affirmed before me

This 19th day of May 2016

Notary public for South Carolina

my commission expires July 09, 2026

Michael Camero

ss Erick Hewins

Date May 19, 2016



County of Greenville

"...At Your Service"

DEPARTMENT OF PUBLIC SAFETY

Page 1 of 1

DRUG ANALYSIS REPORT

Department: Greenville Police Department
Officer: Gardner, S.
Subject: Hewins, Erick E.

Case Number: 02-2010-067312
Report Number: 1
Incident Date: 08/09/2010
Received From: Property & Evidence
Received Date: 09/08/2010

This is an official report of the Greenville County Department of Public Safety Crime Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no examinations of evidence submitted in this case have been or will be conducted by any other laboratory or agency.

*James M. Dorriety, Assistant County Administrator
Department of Public Safety*

EXAMINATIONS CONDUCTED

☒ CHEMICAL TEST	☒ MICROSCOPIC	☒ INFRARED SPECTROSCOPY
☐ ULTRAVIOLET SPECTROSCOPY	☐ GAS CHROMATOGRAPHY	☐ MASS SPECTROSCOPY

ITEMS OF EVIDENCE:

Item SC-7: Bag with rock substance
Results: Cocaine base found, 20.29 grams C-II

Item SC-8: Four green tablets
Results: Clonazepam indicated C-IV

Item SC-9: Plant material
Results: Marijuana found, 0.19 grams C-I

I am a Criminalist employed by Greenville County to perform chemical and physical examinations on evidence submitted by law enforcement agencies in criminal cases, and to testify in courts of record in the state of South Carolina on such examinations.

James W. Armstrong
James W. Armstrong

09/10/2010

- ☐ 1 - Greenville SO
☒ 2 - Greenville PD
☐ DPS - Detention
☐ Other

Greenville County Department of Public Safety
Criminal Justice Support-Property Report

1. Status - Check one only: ☒ Found ☐ Safekeeping ☒ GS Evidence ☐ MM Evidence ☐ Recovered ☐ Seizure/FF ☐ Other		2. Case No. 02-10-67312	
3. Date and Time Impounded 08-09-10		4. Case Type Drugs	
It is mandatory to submit a laboratory analysis request form for all articles requiring laboratory or forensic processing.			
5. Found or Recovered From ☐ Location ☒ Suspect ☐ Complainant ☐ Victim ☐ Person reporting ☐ AKA ☐ Other		6. Where property was impounded (Give exact location - address)	
Name Erick Hewins		50 Orchard Park Dr.	
7. Owner's Name		9. Owner's Phone #	
10. Item #		11. Quantity	
12. Description (include make, model, serial numbers and drug weights)			
13. NCIC Hit Yes No			
SC-7 22.2 Beige Rock like substance			
SC-8 4 Green Round pill with "M-9" on one side and "M-9" on other			
SC-9 2 Green Leafy Substance			
SC-10 1 White and Blue Adult bottle			
SC-11 1 Silver Metal Scale			
SC-12 1 Black Motorola Cell Phone			
UNLOADED FIREARM VERIFICATION: ☐ UPCV (clerk verified) ☐ UFOV (officer verified)			
Drug weight/grams 22.2g		Officer's Initials ADP	
14. I hereby acknowledge that the above lists represent all property taken from my possession and that I have received a copy of this report.		P & E Use only Gross weight Evidence clerk's initials	
Signature _____		15. Impounding Officer (print full name) S. Gardner 16. Star No. 835 17. Unit No. 112 18. Signature [Signature] 19. Investigating Officer S. Gardner	
20. Received by (print name) S. Gardner		21. Signature [Signature]	
22. Reason Drop Box		23. Date and Time Received 8-9-10 0326	
24. Reason SC-7, SC-8, SC-9, SC-10, SC-11, SC-12		25. Date and Time Received 8-9-10 1124	
AUTHORIZATION FOR DISPOSITION: It is the authorizing officer's responsibility to notify owners to claim property.			
TYPE OF DISPOSITION: ☐ Cleared for destruction/auction Items _____ ☐ Release item #s _____ to: _____		AUTHORIZED BY: Name (print) _____ Signature _____ Date _____	
Name _____ Address _____ ID# _____		Firearm Release verification: NCIC/CCH check: _____ Name _____ Date _____	

The State of South Carolina
 County of Greenville
 , Erick E. Hewins

Pro, Se Petitioner
 vs.

The State of South Carolina
 Respondent

In the Court of Common Pleas

Amendment to Federal Rules

of Civil Procedure 60 < d > 43

Fraud upon the Court

FILED - CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMER
 MAY 24 PM 3 28

Amendment

No Statute of Limitations for an action brought pursuant to Fed R. Civ. P 60 < d > 37 more over not only does the Court possess the inherent authority to consider such fraud the Court has a duty to consider whether there's been fraud on the Court, and if so to order an appropriate remedy when ever such fraud comes to the Courts attention. Even fully "Fraud on the Court may occur when acts of party prevent his adversary from fairly presenting his case or defense, Even fully litigated judgement can be set aside on grounds of fraud, at least by making a Civil motion in the Original forum. Fraud, on the Court must involve unconscionable plan or scheme which is designed to improperly influence Court in it's decision preventing, opposing party from fully and fairly presenting his case. When your opposing attorney lies or submits falsified documents, as he is an officer of the Court this amounts to fraud upon the Court and voids the whole proceeding while an attorney has an ethical duty not to perpetrate a fraud upon the Court by knowingly presenting perjured testimony federal rule of Civil procedure 60 < d > 437. Committing a Criminal act that reflects adversely on the lawyers, honesty, trust worthiness of fitness conduct involving misrepresentation, fraud, deceit, etc.

Additional to the 604d7437 motion this amendment will show how trial
 Solicitor Ms. Monts and attorney general office used fabricated evidence at
 trial an on direct review with the Court of appeals rendering judge
 few ruling illegal. Not only did officer Hardner, and officer Hall commit perjury
 Solicitor Ms. Monts got in on the "Scheme" when she had Ms. Kara
 Bennick come to Court and lie. Chain of Custody argument (Transcript pg
 265-282) will show how this case is tainted by fraud, Now Ms. Monts the
 Solicitor out of the presence of the jury on record making statements
 to the trial judge that this signature on the property form is Israel
 Flounders and then she said that it's very hard to read but she believe
 it says "State Case" but they was not gone enter it in evidence (trial
 transcript pg 273 lines 19-22) now if she believe it's hard to read and think
 it says "The State Case" why in front of the jury Ms. Monts would
 intentionally get Ms. Kara Bennick the Supervisor of the evidence room
 to lie under oath in the presence of the jury, that Israel Flounders is
 the one who signed the property form (trial transcript pg 277-281) the
 drug analysis report that is now being submitted for a exhibit do not
 represent Ms. Monts or Ms. Kara Bennick, that this signature says Israel
 Flounders. This exhibit proves that trial Court wanted a conviction by all
 means even trial judge repeated Ms. Monts when she said it reads the
 "State Case" (Transcript pg 273 line 23) His reply was "State Case". The
 parties in this case knowingly presented perjury testimony. That the police
 officers along with Solicitor Ms. Monts or Ms. Kara Bennick did was fraud
 on the Court. grounds for this case to be vacated. It makes no sense for
 a officer of the Court to conduct in such manner just to get a conviction
 there is no way Solicitor Ms. Monts or Kara Bennick did not know
 this signature says Israel Flounders. It looks nothing like Israel Flounders
 name. One more minor point it surely does not look like it says the
 "State Case"

As ms. Marks said it did (Transcript pg 273 lines 19-22) Applicant ask this
honorable Court for what it deems proper and just.

State of South Carolina
County of Greenville

Respectfully Submitted

s/s Smith Lewis

Date May 17 2016

In the Court of Common pleas

Case no. 2016-CP-23-02656

Affidavits of Service

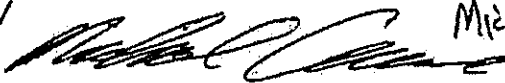
I Erick E. Hewins Certify that I have today served the Federal rule of civil procedure 60(d)(3) Amendment motion upon respondent by depositing a copy of the same in the United States mail here at McCormick Inst Mailroom, postage prepaid, addressed to Alan Wilson P.O. box 11549 Columbia S.C 29211

I further Certify that all parties required by rule to be served have been served this May day of 19 2016

Sworn or affirmed before me
this 19th day of May 2016

Notary public for South Carolina

my Commission expires July 09, 2026



Michael Canary

Erick
Hewins

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2016 MAR 24 PM 3 28

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Erick Hewins, #297728,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

2016-CP-23-2656

RETURN¹

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on April 26, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. Applicant was indicted for trafficking in Cocaine base (greater than 10 grams) (2010-GS-23-8295) and possession of a schedule IV Controlled Substance (clonazepam) second offense (2010-GS-23-8296). He was tried by a jury January 14-17, 2013. Upon Conviction he was sentenced by the Honorable L. Edward Welmaker to twenty five years for trafficking cocaine and one year for possession of cocaine, concurrent, for an aggregate term of twenty six years. A notice of appeal was served January 25, 2013, and the direct appeal perfected. The Court of Appeals affirmed the Conviction and the Sentence (State v. Hewins Op. No. 2014-UP-478 S.Ct. App.) filed December 23, 2014 a petition for rehearing was filed January 6, 2015 and was denied February 24, 2015. The petition for writ of certiorari followed. Supreme Court granted the petition for writ of certiorari on applicant's issue 1-4 on November 5, 2015. On March 23, 2016 the Supreme Court dismissed as

¹ By Order dated June 7, 2016, Brian Johnson, Esquire, was appointed to represent Applicant.

improvidently granted. Applicant filed for post-conviction relief in April 18, 2016, and subsequently amended his application on May 26, 2016.

II.

In his Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Counsel failed to act as diligent, conscientious advocate.
 - b. Counsel failed to effectively challenge the search and seizure.
 - c. Counsel deprived of due process.
 - d. Counsel deprived of substantive and procedural right to equal protection.
 - e. Counsel failed to enter drug analysis report into evidence.
 - f. Counsel failed to object to perjury allegations.
 - g. Counsel failed to object to jury recess without his consent.
 - h. Counsel failed to object to jury being sent home when deadlocked.
 - i. Counsel failed to prepare applicant to testify.
 - j. Appellate counsel failed to argue suspicion motion.
2. Prosecutorial Misconduct
 - a. State failed to present any evidence to support drugs were being transported.
 - b. State failed to correctly identify the chain of custody evidence.
 - c. Solicitor initialed case without probable cause.
 - d. Court prejudiced applicant by allowing state to commit perjury without any warnings.

In an amended application filed May 20, 2016, Applicant alleged the following allegations:

1. My defense attorney failed to conscientiously discharge his professional responsibilities while he was handling my case;
2. My defense attorney failed to act as my diligent conscientious advocate;
3. My defense attorney failed to effectively challenge the search and seizure;
4. My defense attorney deprived me of Due Process;

5. Trial Court deprived me of a substantive or procedural right to equal protection;
6. The State failed to present any evidence to support applicant had knowledge that drugs were being transported, to support trafficking;
7. The State failed to correctly identify the chain of custody evidence clerk according to my drug analysis report it does not read who they said at trial;
8. My trial attorney was ineffective for not objecting and not enter the drug analysis report in evidence to prove it's not identifying who the State said was the initials of evidence clerk just another fraud upon the court;
9. My trial attorney was ineffective for not objecting to this perjury case;
10. My trial attorney failed to object to the jury being sent out two times without its consent;
11. My trial attorney is ineffective in not objecting to jury being sent home when the court knew it was deadlocked;
12. My appellate lawyer was ineffective or not arguing the reasonable suspicion motion;
13. Trial Court prejudiced Applicant by allowing the State to commit perjury without any warnings allowing the m to do whatever to get a conviction;
14. Solicitor Ms. Mont initialed this case without probable cause committing misconduct;
15. Counsel failed to prep Applicant to testify.

On May 23, 2016, Applicant filed a document captioned "Amendment to Federal Rules of Civil Procedure 60<d><2> Fraud Upon the Court Amendment, alleging that the trial solicitor, Ms. Monts, and the Attorney General's Office used fabricated evidence at trial and on direct appeal that rendered Judge Few's ruling illegal.

On May 24, 2016, Applicant filed what appears to be the same document in different handwriting.

Applicant filed an additional amended application on May 26, 2016, raising the following additional allegations:

1. Trial Court erred by failing to give curative instruction regarding consent, in Applicant's case;
2. Further trial court erred by giving erroneous jury instruction regarding mere presence;
3. Trial counsel's failure to object to Allen charge;
4. Trial counsel's failure to object to signature on drug analysis report preventing Applicant from challenging fraudulent signature chain of custody;

5. Trial Court erred by violating Applicant's substantial procedural right to due process;
6. Fraud upon the Court as prosecutor in Applicant's case and witness fabricated (knowingly);
7. Trial counsel failed to inform the Court of the elements to the charged offense were not proven (Trafficking charge);
8. Trial Court erred in failing to conduct a Jackson v. Denno hearing to determine the voluntariness and failed to submit the issue of voluntariness to the jury trier of facts.

Respondent denies Applicant is entitled to relief on any of these claims and demands strict proof thereof. Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing. Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the transcript from Applicant's trial, appellate record, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

III.

Applicant claims ineffective assistance of counsel in his application. Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground

for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland, 80 L.E.2d 674). Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant also alleges ineffective assistance of appellate counsel. Respondent contends that Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. *Id.* Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. *Id.* Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. *Id.*

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issues that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

[Signature follows]

VI.

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

VII.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claims of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

PATRICK SCHMECKPEPPER
Assistant Attorney General

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

By: 

ATTORNEYS FOR RESPONDENT

August 29, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Erick Hewins,
#297728,)

Applicant,)

vs.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2016-CP-23-2656

ORDER

ENTERED COMPUTER

2016 MAR 4 PM 2:54
 COURT
 S.C.
 CLERK
 JIMMER

Applicant filed this Application for Post-Conviction Relief on April 26, 2016. The matter was heard October 25, 2016. Applicant was represented by Brian P. Johnson, Esq. The State was represented by Patrick Schmeckpeper, Esq.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court of Greenville County. Applicant was indicted for trafficking in Cocaine base (greater than 10 grams) (2010-GS-23-8295) and possession of a schedule IV Controlled Substance (clonazepam) second offense (2010-GS-8296). He was tried by jury January 14-17, 2013. Upon conviction he was sentenced by the Honorable L. Edward Welmaker to twenty-five years for trafficking cocaine and one year for possession of cocaine, consecutive, for an aggregate term of twenty-six years. A notice of appeal was served January 25, 2013, and the direct appeal perfected. The Court of Appeals affirmed the conviction and sentence. *State v. Hewins*, Op. No. 2014-UP-478 (filed Dec. 23, 2014). A petition for rehearing was filed January 6, 2015 and was denied February 24, 2015. The Petition for writ of certiorari followed. The Supreme Court granted the petition for writ of certiorari on Applicant's issues 1-4 on November 5, 2015. On March 23, 2016 the Supreme Court dismissed as improvidently

J. C. H. H. 1

granted. Applicant filed for Post-Conviction Relief on April 26, 2016 and subsequently amended his application on May 26, 2016.

In his Application, and in amended applications (filed May 20, 2016 and May 26, 2016), Applicant alleges he is being held in custody unlawfully for a number of reasons. The Court will address those presented at the hearing. All other reasons set forth in his application, having not been presented at the hearing, are deemed abandoned.

Applicant claims ineffective assistance of counsel in his application. In a Post-Conviction Relief action, the Applicant bears the burden of proving the allegations in their complaint. *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, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 446 U.S. 668, 686, 104 S.Ct. 2052, 2064 (1984); *Butler*, 334 S.E.2d 813.

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that the counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." *Cherry*, 300 S.C. at 117-118, 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." *Id.*

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

9/2/16

professional judgment. *Strickland*, 446 U.S. 668. The applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

Applicant asserts that trial counsel failed to properly object to law enforcements' second search of his pants pocket¹ and that the failure to object resulted in any issue as to the second search not being preserved for appeal. That the issue was not preserved for appellate review is evidenced by the opinion of the South Carolina Court of Appeals in *State v. Hewins*, Op. No. 2014-UP-478 (2014).

Trial counsel, when at trial was asked what were the issues that needed to be addressed pre-trial, stated "...a suppression issue." (Trial Record p. 40, ll. 18-19).

At trial transcript page 139, lines 23-24, the trial judge stated "I'll be glad to hear from you about the suppression issue Mr. Harbin." Thereafter, trial counsel presents a lengthy and cogent argument for suppression which, in candor, focuses on the first search, referred to by counsel and the Court of Appeals as a *Terry*² frisk. (See particularly Trial Record p. 148, ll. 10-11). However, in rebuttal to the State's counter-argument to trial counsel's argument, trial counsel, addressing Applicant's consent specifically questions whether or not any consent extended to the "second time." (Trial Record p. 155, ll. 21-230).

In his ruling, the trial judge stated that a *Terry* frisk was warranted and allowed "the evidence in." (Trial Record p. 160, ll. 13-15). This, according to the Court of Appeals was a "general ruling" and because trial counsel did not request a specific ruling on the issue of consent for the second search, that constitutionality of the second search is not preserved. *State v. Hewins*, Op. No. 2014-UP-478 (2014).

¹ The Court of Appeals has upheld the constitutionality of the first search of applicant's pants pocket. *State v. Hewins*, Op. No. 2014-UP-478 (2014).

² *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968).

Je 14 463

Based on the analysis above, it is hard for the undersigned to find, despite the Court of Appeal's holding, that trial counsel was not diligent in his attempt to suppress the result of the second search. The second search was the one in which the pills were found. It seems illogical to believe that trial counsel did not expect the trial court to make a ruling on the seizure of the pills, the things giving rise to the prosecution. However, the undersigned must live with the Court of Appeals', the ultimate authority, holding that trial counsel did not preserve for appeal the issue of consent for the second search.

Applying the *Strickland*, supra, test as applied in *Cherry*, supra, the fact that the Court of Appeals has, by its decision in *Hewins*, found that trial counsel's conduct affected the adversarial process to the prejudicial detriment of Applicant. The Court must find in favor of Applicant on the unpreserved issue argument. This case is hard to fit into the parameters set forth in *Strickland*, supra, and *Cherry*, supra. However, looked at it in totality, the test ultimately is: did trial counsel fail in his representation, and did it prejudice Applicant. This leaves out the reasonableness prong. In this case trial counsel diligently sought to suppress the evidence which constituted the bases for the drug charge. This is what is expected of a reasonable attorney. The question then becomes whether or not a reasonable attorney would have asked the trial judge, who has denied the attorney's motion to suppress, to break down with specificity separate rulings on the *Terry* frisk and the consent issue as to the second search. Since case law as cited by the Court of Appeals requires such, trial counsel is ineffective for not doing so regardless of what a reasonable attorney would have done under the same or similar circumstances.

Applicant raises a second issue relating to the trial court's *Allen*³ charge. Applicant alleges trial counsel was ineffective for not objecting to the court's *Allen* charge. Procedurally, the jury sent a note to the trial judge late on the second day of trial (based on the record after

³ *Allen v. U.S.*, 164 U.S. 492, 17 S. Ct. 154 (1896).

jc H # 4

approximately 5:30 and before 5:55 (Trial Record pp. 410 and 412)). At some point (not reflected in the record) the jury indicated that it had reached a verdict on the possession charge but not on the trafficking charge. (Trial Record p. 411, ll. 3-5). At that time, the trial judge indicated he did not want to give an *Allen* charge that late in the day and did not want to accept only one verdict. The trial judge, without objection of counsel, released the jury for the day to return for further deliberation the next day, which they did.

At some time after 9:06 a.m. on the third day, before 11:00 a.m., the jury indicated their deliberations stood as they had when they adjourned the night before. Thereafter, without objection from either of the parties, the trial judge brought in the jury and gave the *Allen* charge.

Trial counsel's representation of Applicant regarding the trial judge's decision to give an *Allen* charge was not ineffective assistance of counsel but rather it was well within the range of competence required of counsel in a criminal case. See *Strickland*, supra; *Cherry*, supra.

Applicant's third ground for relief was framed as an issue with trial counsel's representation of Applicant in a *Jackson v. Denno*⁴ hearing. The record reflects that that was no *Jackson v. Denno* hearing. The trial judge asked if there needed to be pre-trial hearings and did use the term "*Jackson v. Denno*...hearing." (Trial Record p. 41, ll. 10-11). However, there is no other allusion to *Jackson v. Denno*, nor by content do any of the issues argued evidence a *Jackson v. Denno* hearing was held. There is no merit to this last "issue" as there is no issue.

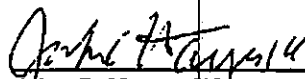
Based on trial counsel's ineffective assistance in failing to preserve a pivotal issue for appellate review, the Applicant is granted a new trial.

IT IS SO ORDERED.

Je H #5

⁴ *Jackson v. Denno*, 378 U.S. 368, 84 S. Ct. 1774 (1964).

October ~~October~~ 27th 2016
Greenville, South Carolina


John C. Hayes, III
Presiding Judge

#6

The Supreme Court of South Carolina

Erick Hewins, Respondent,

v.

State of South Carolina, Petitioner.

Appellate Case No. 2016-002382

Lower Court Case No. 2016-CP-23-02656

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

May 03, 2018

cc:

Taylor Davis Gilliam, Esquire

DeShawn Herman Mitchell, Esquire

Erick Eton Hewins, #297728

1 STATE OF SOUTH CAROLINA) IN THE COURT OF
2) GENERAL SESSIONS
3 COUNTY OF GREENVILLE) OF THE THIRTEENTH
4) JUDICIAL CIRCUIT
5 STATE OF SOUTH CAROLINA,)
6 Plaintiff,) TRANSCRIPT OF RECORD
7 vs.) 2010-GS-23-8295
8 ERICK ETON HEWINS,) 2010-GS-23-8296
9 Defendant.)

10
11 August 21, 2018
12 Greenville, South Carolina

13
14 B E F O R E:

15 HONORABLE WALTON J. MCLEOD, IV, Judge.
16 HONORABLE DONALD B. HOCKER, Judge

17
18 A P P E A R A N C E S

19 JOYCE MONTS, ASSISTANT SOLICITOR
20 For The State

21 WILLIAM EUGENE GROVE, ESQUIRE
22 For Defendant

23
24 Julie A. Cendroski,
25 Circuit Court Reporter
 Seventh Judicial Circuit

I N D E X

WITNESSPAGE

ANNOUNCEMENT OF CASE

By The Clerk

4

PLEA QUALIFICATION

By The Court

5

STATEMENT OF FACTS

By Ms. Monts

10

ACCEPTANCE OF PLEA

11

ORDER OF THE COURT

11

CERTIFICATE OF COURT REPORTER

13

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

MARKEDENTERED

NO EXHIBITS PROFFERED

1 THE STATE OF SOUTH CAROLINA VERSUS ERICK ETON HEWINS

2 MS. MONTS: Your Honor, the State calls the case
3 of the State versus Erick Hewins.

4 THE CLERK: Your Honor, the case of
5 2010-GS-23-8295, the State versus Erick Eton Hewins,
6 indicted for trafficking cocaine base, pleading to
7 possession with intent to distribute cocaine base, and
8 this is a true billed.

9 In the case of 2010-GS-23-8296, he's indicted for
10 possession of a Schedule V -- is that five or four? I'm
11 sorry.

12 MS. MONTS: It should be four.

13 THE CLERK: IV controlled substance. My Roman
14 Numerals are messed up.

15 MS. MONTS: Oh.

16 THE CLERK: Pleading to possession of a Schedule
17 IV controlled substance.

18 MS. MONTS: And this is a true bill as well.

19 THE CLERK: Thank you. Please raise your right
20 hand. (Complies.)

21 Do you swear or affirm to tell the truth, the
22 whole truth and nothing but the truth so help you God?

23 THE DEFENDANT: Yes, ma'am.

24 THE CLERK: Thank you.

25 THE COURT: Okay. Mr. Grove, have you spoken

1 with Mr. Hewins about the charges pending against him
2 today?

3 MR. GROVE: Yes, Your Honor, I have.

4 THE COURT: Have you advised him of the nature of
5 these charges?

6 MR. GROVE: I have, Your Honor.

7 THE COURT: And do you believe he understands the
8 charges?

9 MR. GROVE: I believe he does.

10 THE COURT: And has he indicated to you a desire
11 to plead guilty today?

12 MR. GROVE: He has, Your Honor.

13 THE COURT: Well, Mr. Hewins, good afternoon.

14 THE DEFENDANT: Yes, good afternoon.

15 THE COURT: Now, just a little background, Mr.
16 Hewins. How far did you go in school?

17 THE DEFENDANT: Ninth grade.

18 THE COURT: Ninth grade?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Where did you go to school through
21 the ninth grade?

22 THE DEFENDANT: Wade Hampton.

23 THE COURT: Wade Hampton? Are you under the
24 influence of any drugs or alcohol today?

25 THE DEFENDANT: No, sir.

1 THE COURT: All right. It's my understanding
2 this is being brought before the Court as a negotiated
3 sentence; is that correct?

4 MR. GROVE: That's correct, Your Honor. Mr.
5 Hewins has served a little more than 2,000 days, but the
6 negotiation put forth is five years and he's served more
7 than five years. It's a time served, essentially.

8 THE COURT: Okay. Mr. Hewins, do you understand
9 that I'm not under any obligation to accept this plea?
10 I could actually reject the negotiated sentence, do you
11 understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. You intend to plead guilty
14 today to two charges; is that correct?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. Let me ask you some more
17 questions. Have you had an opportunity to meet with
18 Mr. Grove?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And has he answered all your
21 questions?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Are you satisfied with his services?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you have any additional questions

1 you want to ask him now?

2 THE DEFENDANT: No, sir.

3 THE COURT: Okay. Do you understand that when
4 you enter a guilty plea today you're giving up your
5 right to remain silent and giving up your right to say
6 nothing at all? Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: You understand that you have the
9 right to a jury trial where you can confront, you can
10 bring witnesses in support of you or confront the
11 State's witnesses, but you'll be giving that up today by
12 pleading guilty? You understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. You understand the State would
15 have the burden of proving you guilty beyond a
16 reasonable doubt and you're presumed innocent until
17 proven guilty, but you're waiving that by proceeding
18 with pleading guilty today? Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you also understand that by
21 entering a guilty plea, you give up the right to present
22 any defense on your behalf? Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay. As to Indictment 8295 --
25 2010-GS-23-8295, the indictment provides, Mr. Hewins,

1 that on the 9th day of August, 2010, you did knowingly
2 sell, manufacture, deliver ten grams of cocaine base,
3 crack cocaine, in violation of South Carolina law. Did
4 you read that indictment?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Now, you're pleading -- you'll be
7 pleading guilty today to possession with the intent to
8 distribute cocaine; is that correct?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: How do you plead to the charge?

11 THE DEFENDANT: Guilty.

12 THE COURT: Okay. And as to Indictment Number
13 2010-GS-23-8296, the indictment provided that on
14 August 9th, 2010, you had possession of a Schedule IV
15 controlled substance, Clonazepam, in violation of South
16 Carolina law. Do you understand that charge?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: How do you plead to the charge?

19 THE DEFENDANT: Guilty.

20 THE COURT: Okay. Mr. Hewins, other than the
21 negotiated sentence of which we're here for today, has
22 anyone tried to coerce you or promise you anything in
23 exchange for pleading guilty in addition to the
24 negotiated sentence?

25 THE DEFENDANT: No, sir.

1 THE COURT: Okay. You've made up your own mind
2 to plead guilty today?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. You're pleading guilty freely
5 and voluntarily?

6 THE DEFENDANT yes, sir.

7 THE COURT: Knowingly and intelligently?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Are you pleading guilty because you
10 were, in fact, guilty?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Mr. Hewins, you'll have ten days from
13 today's date to appeal this plea to a higher court, and
14 you must do so in writing to this court. Do you
15 understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Okay. Madam Solicitor?

18 MS. MONTS: May it please the Court, Your Honor.
19 The procedural history of this case is that it was tried
20 in the courts in General Sessions here in Greenville
21 County in 2013. There was an appeal, which was denied.
22 There was a PCR, which was granted, so we are now back
23 at the original stage of this case. And we are reducing
24 the charge from trafficking to possession with intent to
25 distribute with a negotiation of five years. Credit for

1 time served of the five years.

2 Your Honor, the allegations are that on August
3 9th of 2010, GPD, Greenville Police Department, officers
4 were investigating activity at the Clarion Inn here in
5 Greenville County on Orchard Park. Defendant, who was
6 seated in a driver's seat of a car, backed into a
7 parking spot. They were trying to identify who he was.
8 He continued to put his hand inside his pocket.

9 While he did that, they did pat him down and felt
10 a hard lump. This hard lump turned out to be \$1,427.00.
11 Defendant also had four clonazepam, a Schedule IV
12 controlled substance, pills in his pocket. Defendant
13 was arrested.

14 A tow truck was called. Prior to the tow truck
15 arriving, they did do a search of the vehicle the
16 defendant had been in. They did find an Advil bottle in
17 the center consul and some additional substance on the
18 back floorboard. Both analyzed as a total of 20.29
19 grams of cocaine base, Your Honor.

20 Defendant does have a prior record but, again,
21 it's a negotiated, so we're -- defense attorney and I
22 are on the same page on this, Your Honor.

23 THE COURT: Okay. Well, I'll accept the plea. I
24 find there's a substantial factual basis for this plea
25 and it's the Defendant's decision to plead guilty today.

1 He's pleading freely, voluntarily, knowingly and
2 intelligently with the assistance of a competent
3 attorney, with whom he is satisfied. Anything from the
4 defense?

5 MR. GROVE: If Your Honor is inclined to accept
6 the negotiated plea that's been presented, I don't think
7 we have anything else to add. Mr. Hewins is anxious to
8 start his life over and begin anew, so we'd ask that you
9 accept that negotiation.

10 THE COURT: Please tell me his time served days
11 again, please.

12 MS. MONTS: Your Honor, it's -- well, it's five
13 years, credit for time served of the five years. The
14 actual amount of days he has done was 2,042.

15 THE COURT: I didn't ask. Mr. Hewins, is there
16 anything you want to tell the Court today?

17 THE DEFENDANT: No, sir.

18 THE COURT: All right. Mr. Hewins, on the charge
19 of possession of a Schedule IV controlled substance, I
20 sentence you to the Department of Corrections for a
21 period of six months, give you credit for time served.
22 The sentence will give you time served.

23 And the charge of possession with intent to
24 distribute cocaine base, I sentence you to the
25 Department of Corrections for the period of five years,

1 give you credit for five years time served. Does that
2 make sense, counsel?

3 MR. GROVE: Yes, Your Honor, thank you.

4 THE COURT: Good luck to you Mr. Hewins.

5 THE DEFENDANT: All right. Thank you, sir.

6 (Whereupon, hearing concluded at 2:26 p.m.)

7

8

9 --- THIS ENDS REQUESTED TRANSCRIPT ---

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 COURT REPORTER CERTIFICATE

2
3 I, the undersigned Julie A. Cendroski, Court
4 Reporter for the Seventh Judicial Circuit Court of the
5 State of South Carolina, do hereby certify that to the
6 best of my ability the foregoing is a true, accurate,
7 and complete transcript of record of all the proceedings
8 and evidence introduced in the hearing and/or trial of
9 the captioned case, relative to appeal, in the court of
10 General Sessions for Greenville County, South Carolina,
11 on the 21st day of August, 2018.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.
14
15
16
17

18 s/Julie A. Cendroski
19 Julie A. Cendroski
20 Circuit Court Reporter
21 Seventh Judicial Circuit
22
23
24
25

FORM 5

STATE OF SOUTH CAROLINA)

County of GREENVILLE)

IN THE COURT OF COMMON PLEAS

ERICK HEWINS)

Full name and prison number (if any) of Applicant)

4109 FORKER CONWAY #11)GREENVILLE S.C. 29609)State of South Carolina 801 747-1718)2019-CP-23- 03629

APPLICATION FOR

POST-CONVICTION RELIEF

ENTERED COMPUTER

19 JUN 25 AM 11:22
Paul Wickensmith GOC GUL SCINSTRUCTIONS B 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 N/A Not
2. Name and location of Court which imposed sentence GREENVILLE County
Court house GENERAL SESSIONS
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) No 2010-GS-23-8295 2010-GS-23-8296

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) January 17, 2013 26 YRS After trial Won Appeal
- (b) August 26, 2018, think came back on plea deal
- (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? YES
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. COURT OF APPEAL
- ii. SUPREME COURT
- iii. GREENVILLE GENERAL SESSIONS
- (b) the result in each such Court to which you appealed:
- i. AFFIRM
- ii. Dismissed as improvidently granted, Post Conviction granted
- iii. RELIEF
- (c) the date of each such result:
- i. December 23, 2014 March 22, 2016
- ii. Oct 25, 2016
- iii. Aug 26 2018
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. OPINION NO 2014-UP-478 OPINION NO 2016-MO-007
- ii. Appellate Case NO 2016-002382
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) W/A

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Not in custody anymore: Fith 5th
- (a) INEffective assistance of trial counsel SIX Amendment
- (b) FOURTEENTH Amendment UNDER State law and
- (c) FEDERAL Rights
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Trial counsel Failed to INVESTIGATE facts of case had
- (b) he did facts would have SHOWN these OFFICER committed
- (c) Perjury and Filed motion to dismiss un Not Reach Plead
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? YES
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? YES
- (d) any other petitions, motions or applications in this or any other Court? YES
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. SEE page 2
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. SEE page 1-2
- ii. _____
- iii. _____

- iv. _____
- (c) the disposition thereof:
- i. SEE page 2
- ii. _____
- iii. _____
- iv. _____
- (d) the date of each such disposition:
- i. SEE page 2
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. SEE page 1-2
- 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
DON'T THINK SO,
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. N/A
- 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) Counsel failed to argue
- (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? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. CHASE Harbin
Jessica LERER, Taylor D. Gilliam
- ii. BRAIN Johnson
Will GROVE
- iii. Randell chambers
- (b) the proceedings at which each such attorney represented you:
- i. Randall chamber Trial
CHASE Harbin Trial
- ii. Jessica LERER Appeal
BRAIN Johnson PCR
- iii. Taylor D. Gilliam Certiora Appeal
Will GROVE General Session

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

Dismissed an off my record an Vacated

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

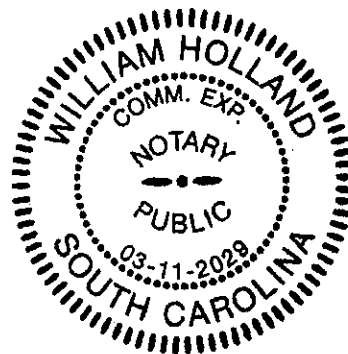
I, Erick Hewitt, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that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

Erick Hewitt

SWORN to and subscribed before me this 21st
day of June, 2014.

William Holland (L.S.)
Notary Public

My Commission Expires: 03-11-2020



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

I, Erick Hewins, 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.

Erick Hewins
Applicant

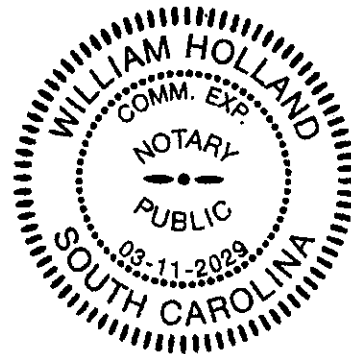
SWORN or affirmed to and subscribed before me this

21st day of June, 2014.

William Holland

Notary Public

My Commission Expires: 03-11-2024



FORM 5

STATE OF SOUTH CAROLINA)

County of GREENVILLE)ERICK ETON HEWINS)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

Amend to Per
IN THE COURT OF COMMON PLEAS

2019-CP-23-03629

APPLICATION FOR

POST-CONVICTION RELIEF
ENTERED COMPUTER19 JUL 23 PM 10:58
Paul Wickens@scoc.org**INSTRUCTIONS B 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 SEE 2019-CP-23-03629
2. Name and location of Court which imposed sentence _____
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) _____

- (b) SEE 2019 CP-23
- (c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) _____
- (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?

8. If you answered Ayes@ 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 Ano@ to (7), state your reasons for not so appealing:

- (a) _____

(b) SEE 2019-CP-23

(c) _____

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

(a) COUNSEL Failed to File For Appeal

(b) UNDER fourth fifth six Amendment,

(c) Eight Amendment

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

(a) Counsel and Judge absolutely should have

(b) NEVER accept plea knowing it was

(c) INJUSTICE and counsel didn't APPEAL when told to

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

(a) any petition in a State Court under South Carolina Law? _____

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered Ayes@ 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. 546 2019 - CP-23
- (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?
- _____
- _____
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. _____

SEC - 2018 - CP - 23

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? _____
 - (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 Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. _____
 - _____
 - _____
 - _____
 - 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:

SEE 2019-CP-23-03629

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

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of GREENVILLE)

VERIFICATION

I, ERICK ETAN HEWINIS, 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.

Erick Hewinis

SWORN to and subscribed before me this 23
day of July, 2019.

[Signature] (L.S.)
Notary Public

My Commission Expires: 9-9-26



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

I, ERICK ETON HEWINS, 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.

Erick Hewins
Applicant

SWORN or affirmed to and subscribed before me this

23 day of July, 2019.

[Signature]
Notary Public

My Commission Expires: 9-9-20



STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Erick Hewins,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

Case No. 2019-CP-23-3629

RETURN, PARTIAL MOTION TO
DISMISS, AND MOTION FOR A MORE
DEFINITE STATEMENT
(COUNSEL APPOINTED)

FILED
2019 DEC 19 PM 2:35
CLERK OF COURT
THIRTEENTH JUDICIAL CIRCUIT
GREENVILLE, SOUTH CAROLINA

In response to the post-conviction relief (PCR) action commenced by Erick Hewins
(Applicant) on July 2, 2019, the State makes this return:

ENTERED COMPUTER

I. FACTS & PROCEDURAL HISTORY

Applicant is **not** presently confined in the South Carolina Department of Corrections. Applicant was arrested on August 9, 2010 for drugs recovered during a *Terry*¹ frisk and subsequent search of Applicant's vehicle. During its July 2011 term, the Greenville County Grand Jury indicted Applicant trafficking in cocaine base, ten to twenty-eight grams—first offense (2010-GS-23-8295) and possession of a schedule IV controlled substance (clonazepam)—second offense (2010-GS-8296).

Trial

On January 14, 2013, Applicant proceeded to a jury trial before the Honorable G. Edward Welmaker. H. Chase Harbin, Esquire represented Applicant and Assistant Solicitor Joyce Monts prosecuted the case. On January 17, 2013, the jury returned a verdict of guilty on each indictment.

¹ *Terry v. Ohio*, 392 U.S. 1 (1968).

Judge Welmaker sentenced Applicant to consecutive sentences of twenty-five years' imprisonment for trafficking cocaine and one year for possession of clonazepam.

Direct Appeal

On January 25, 2013, Counsel Harbin filed a timely notice of appeal. Jessica H. Lerer, Esquire perfected Applicant's appeal by briefing the following issues for the South Carolina Court of Appeals:

- I. Whether the trial court erred by failing to suppress evidence seized by Officer Gardner following his unlawful Fourth Amendment seizure of Defendant where Officer Gardner failed to articulate any reason that he reasonably suspected Defendant was engaged in criminal activity at the time the officers saw Defendant sitting in his vehicle.
- II. Whether the trial court erred when it found Officer Gardner had reasonable suspicion sufficient to conduct a *Terry* frisk where Officer Gardner failed to articulate facts to support his belief that Defendant was armed and dangerous and where Officer Gardner allowed too much time to lapse between asking Defendant to exit his vehicle and actually conducting the frisk.
- III. Whether the trial court erred in failing to suppress evidence seized by Officer Gardner during a second unlawful search of Defendant.
- IV. Whether the trial court erred in admitting evidence where the state failed to properly identify by testimony or sworn statement the evidence custodian initially responsible for retrieving the evidence or the condition of the evidence when it was in.

On December 23, 2014, the South Carolina Court of Appeals affirmed Applicant's conviction in an unpublished opinion. *State v. Hewins*, Op. No. 2014-UP-478 (S.C. Ct. App. filed Dec. 23, 2014). Applicant's subsequent petitions for rehearing and for writ of certiorari to the

South Carolina Supreme Court were denied and the case was remitted back to the circuit court on March 23, 2016.

2016-CP-23-2656

On April 26, 2016, Applicant filed for PCR, alleging he was being held in custody unlawfully for a number of reasons. On October 25, 2016, the Court convened an evidentiary hearing into the matter before the Honorable John C. Hayes, III. Applicant was present and represented by Brian P. Johnson, Esquire. Former Assistant Attorney General Patrick Schmeckpeper represented the State. Judge Hayes granted PCR in a written order issued October 27, 2015, and filed November 4, 2015. Judge Hayes found Applicant's trial counsel was ineffective for failing to properly object to the trial court's decision not to suppress the evidence found during law enforcements' second search of Applicant's pants pocket. In the order, Judge Hayes references the unpublished opinion from the Court of Appeals in finding Applicant was prejudiced by the failure of trial counsel to preserve issues related to the second search for appeal. As a result, Judge Hayes ordered Applicant's sentence be vacated and the charges be remanded for a new trial.

PCR Appeal

On November 23, 2016, the State filed a timely notice of appeal. Former Assistant Attorney General DeShawn Mitchell briefed the following issue for the South Carolina Supreme Court:

Did the post-conviction relief court erred as a matter of law by granting Hewins a new trial, where it applied an incorrect standard and erroneously granted relief despite failing to make the requisite finding that Hewins would have prevailed on appeal had the issue been preserved for appellate review and Hewins failed to meet his requisite burden of proof?

On May 3, 2018, the Court issued an order denying the State's petition for writ of certiorari. *Hewins v. State* (S.C. Sup. Ct. filed May 3, 2018). The case was remitted back to the circuit court on May 21, 2018.

Guilty Plea

On August 21, 2018, Applicant appeared before the Honorable Walton J. McLeod, IV and pleaded guilty to the lesser-included offense of possession with intent to distribute cocaine base and as indicted to possession of a schedule IV controlled substance. Pursuant to the negotiated plea agreement, Judge McLeod sentenced Applicant to five years' imprisonment. Because Applicant had served over five years at the time of the plea, he essentially received a sentence of time served. Applicant did not appeal his guilty plea or sentence

II. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges his guilty plea conviction should be vacated based on the following reasons, verbatim:

1. "Ineffective assistance of trial counsel fifth six amendment fourteenth amendment under state law and federal rights"
 - a. "Trial counsel failed to investigate facts of case had he did facts would have shown these officer committed perjury and filed motion to dismiss an not reach plea deal"

In an amended application filed July 23, 2019, Applicant raised the following issues:

1. "Counsel failed to file for appeal under fifth six amendment, eight amendment"
 - a. "Counsel and judge absolutely should have never accept plea knowing it was injustice and counsel didn't appeal when told."

Applicant requests relief as follows:

"Dismissed an off my record an vacated"

Attached herewith and incorporated by reference are the Greenville County Clerk of Court regarding the subject convictions, Applicant's appellate records, including the trial transcript, the records of Applicant's first PCR action, the records of the current PCR action, and the plea transcript.

III. PARTIAL MOTION TO DISMISS

The State submits Applicant's allegations of ineffective assistance of counsel, except for failure to file an appeal, should be dismissed because Applicant waived all nonjurisdictional defects and defenses when he entered into his guilty plea. *See Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) ("The general rule is that guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including the claims of a violation of a constitutional right prior to the plea."). Further, any confusion regarding Applicant's waiver is directly refuted by the plea transcript, which includes the following exchange:

THE COURT: Okay. Do you understand that when you enter a guilty plea today you're giving up your right to remain silent and giving up your right to say nothing at all? Do you understand that?

APPLICANT: Yes, sir.

THE COURT: You understand that you have the right to a jury trial where you can confront, you can bring witnesses in support of you or confront the State's witnesses, but you'll be giving that up today by pleading guilty? You understand that?

APPLICANT: Yes, sir.

THE COURT: Okay. You understand the State would have the burden of proving you guilty beyond a reasonable doubt and you're presumed innocent until

proven guilty, but you're waiving that by proceeding with pleading guilty today? Do you understand that?

APPLICANT: Yes, sir.

THE COURT: Do you also understand that by entering a guilty plea, you give up the right to present any defense on your behalf? Do you understand that?

APPLICANT: Yes, sir.

(Plea Tr. 7).

In the application, Applicant did not present any valid reason why he should be able to depart from the above statements made during his guilty plea. *Dalton v. State*, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (Ct. App. 2007); *see also Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975), *overruled on other grounds by United States v. Whitley*, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so). Moreover, the plea transcript reflects Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the court's questions. Thus, the State submits the plea transcript is dispositive as to this issue, and moves to summarily dismiss the claim raised in Applicant's original application.

Additionally, the State interprets Applicant's allegation that the judge should not have accepted the plea as an allegation of trial court error. This allegation appears to raise a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Trial court error does not constitute an appropriate basis for a finding of ineffective assistance of counsel, and is not a cognizable claim for post-conviction relief. *Wolfe*, 326 S.C. at 162, 485 S.E.2d at 369 n.2; *See generally Stepney v. State*, 278 S.C. 47, 292 S.E.2d 41 (1982) (explaining that issues that could

have been raised on direct appeal cannot be considered on PCR application absent claims of ineffective assistance of appellate counsel); *See also Roscoe*, 345 S.C. at 20, 546 S.E.2d at 419 (noting that allegations of trial court error are not cognizable on PCR). Direct appeal issues which could have been reviewed on appeal and were not objected to at trial or during guilty plea proceeding may only be presented to support a claim of ineffective assistance of counsel, not as a separate ground for relief. *Hyman v. State*, 278 S.C. 501, 502, 299 S.E.2d 330, 331 (1983).

The State submits that (1) Applicant freely and voluntarily gave up his right to present a defense when he entered into the guilty plea; and (2) trial court error is not a cognizable PCR claim. As a result, the State moves for summary dismissal on these issues pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that this allegation should be dismissed as a matter of law.

IV. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL

Should this Court deny the State's motion to summarily dismiss as set forth above, the State nonetheless submits Applicant's allegations of ineffective assistance of counsel are without merit. However, it is impossible for the State to adequately respond to Applicant's allegations because Applicant has failed to provide any specific facts to support such claims. The State requests Applicant, through counsel, provide specific claims and facts to support these vague allegations. *See* S.C. Code Ann. § 17-27-50 (2014) (requiring an applicant to "specifically set forth the grounds upon which the application is based"); *see also Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (stating it is incumbent upon an applicant to make at least a *prima facie* showing entitling him to relief before an evidentiary hearing will be scheduled and held); Rule 8(a)(2), SCRPC (requiring all civil pleadings to include "a short and plain statement of the

facts showing that the pleader is entitled to relief”); Rule 71.1(d), SCRCPP (“Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.”). Thus, the State moves to require Applicant to provide a more definite statement of his allegations of ineffective assistance of counsel pursuant to Rule 12(e), SCRCPP.

Ineffective Assistance of Plea Counsel, Generally

The Sixth and Fourteenth Amendments to the United States Constitution guarantees Applicant, like all other defendants, the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984); *Taylor v. State*, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCPP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); *State v. Pendergrass*, 270 S.C. 1, 4, 239 S.E.2d 750, 751 (1977). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel’s performance was deficient; and second, that the deficient performance prejudiced the applicant. *Id.* 668; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

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, 130 S. Ct. 1473, 1482, 176 L. Ed. 2d 284 (2010). In order to prove deficient performance, the applicant must show counsel’s representation fell below an objective standard of “reasonableness under prevailing professional norms.” *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). 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.

Strickland, however, “does not guarantee perfect representation[—]only a ‘reasonably competent attorney.’” *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (quoting *Strickland*, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” *Harrington*, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” *Strickland*, 466 U.S. at 689; see also *Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Thus, a fair assessment of attorney performance requires every effort be made 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. *Id.* Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

A reviewing court "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed at the time of counsel's conduct." *Strickland*, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment." *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." *Id.*

The *Strickland* standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; *see also Harrington*, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. *Harrington*, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," *not* whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690) (emphasis added).

The second, or “prejudice” prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance prejudiced the 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. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial.*” *Id.* at 687 (emphasis added). Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart* extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel.” *Hill*, 474 U.S. 52; *cf. Padilla*, 559 U.S. at 373 (recognizing that 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.

Thus, the analysis of counsel’s performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel’s representation fell below an objective

standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58–59; accord *Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his guilty 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 decisionmaking” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting *Strickland*’s high bar 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 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.* Thus, 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 guilty plea and the evidence presented at the PCR hearing. *Harres*, 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 evaluate the prejudice prong only. *Id.*

White v. State Claim

Applicant claims plea counsel failed to file a direct appeal after Applicant asked him to do so. The decision of the South Carolina Supreme Court in *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974), holds that even though the post-conviction relief court finds the applicant had never voluntarily and intelligently abandoned his appeal, the South Carolina Supreme Court has no jurisdiction to grant a belated appeal. However, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the

South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected. *Id.* at 119, 108 S.E.2d at 39-40.

The State submits Applicant cannot meet his burden showing he is entitled to a belated appeal pursuant to *White*. Applicant simply cannot show prejudice under *Hill* given the high bar of a guilty plea appeal and where Applicant was released with time served. However, should this Court find Applicant was denied his right to a direct appeal, the State requests an evidentiary hearing to fully resolve this issue and will file an amended return to address the merits of his underlying claims. *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 [PCR] court”). However, as discussed above, it is impossible for the State to adequately respond to Applicant’s allegation of ineffective assistance of counsel because Applicant has failed to provide any specific facts to support his allegations. The State requests Applicant, through counsel, provide specific claims and facts to support this vague allegation.

V. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

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 Love*, 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.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRPC. *See also* Rules 15(a)-(b), SCRPC. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRPC.

Pursuant to S.C. Code Ann. § 17-27-150, 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. Furthermore, 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. 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.

VI. GENERAL DENIAL

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

VII. CONCLUSION

WHEREFORE, having made its return, the State respectfully requests this Court grant its motion to summarily dismiss Applicant’s claims set forth in section III and grant its motion for a more definite statement as set forth in section IV. The State requests Applicant, through counsel,

amend the application to provide the required specificity for his allegation of ineffective assistance of counsel. Until Applicant files an amended application, Applicant has not shown sufficient cause to warrant an evidentiary hearing on this application. The State respectfully requests this Court to only schedule a hearing after an amended application is so filed.

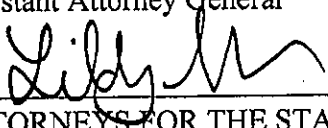
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LILLIAN L. MEADOWS
Assistant Attorney General

By: 

ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

November 21, 2019

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

ERICK HEWINS,
APPLICANT.

V.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

AMENDED APPLICATION

ENTERED COMPUT

CASE # 2019-CP-23-3629 21

2020 MAR -6 PM 3:21

This matter comes before the Court by way of application of post conviction relief filed July 2, 2019, alleging ineffective assistance of trial counsel. A Return, Partial Motion to Dismiss, and Motion for a More Definite Statement was made on November 21, 2019. This application is intended to incorporate Mr. Hewins' allegations of Fifth, Sixth, Eighth and Fourteenth Amendment violations of the Constitution of the United States & Art. I Sec. 3, 10, & 14 of the South Carolina Constitution and add the allegations of:

1) ineffective assistance of plea counsel for advising the Applicant to plead guilty when investigation would have shown CAD evidence that law enforcement lied and the search was unconstitutional; and

2) Due Process violations due to the unconstitutional search.

Respectfully submitted,

Page 2

Susannah Ross
Attorney for the Applicant
330 E. Coffee St,
Greenville, SC 29601
(864) 242-0029

Greenville, South Carolina

This 2 day of March, 2020

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

ERICK HEWINS,)

Applicant,)

vs.)

THE STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

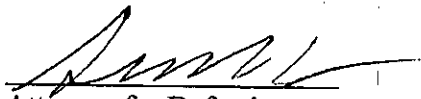
2019-CP-23-3629

AFFIDAVIT OF SERVICE
BY MAIL

2020 MAR -6 PM 3:21

1. I am the attorney for the Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Supplemental Application** on the above-captioned matter on the following person by depositing the same in the United States mail with proper postage affixed thereto:

Office of the Attorney General
PCR Division
P.O. Box 11549
Columbia, SC 29211
Attn: Lilly Meadows


 Attorney for Defendant

This 2 day of March, 2020

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS
2019-CP-23-03629

ERICK ETON HEWINS,
APPLICANT,)

vs.)

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA,
RESPONDENT.)

COPY

May 25, 2022
Greenville, South Carolina

B E F O R E:

THE HONORABLE G.D. MORGAN, JUDGE.

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

SUSANNAH C. ROSS, ESQ.
Attorney for the Applicant

TAYLOR Z. SMITH, ESQ.
Attorney for the Respondent

HOLLIE M. JENKINS
Circuit Court Reporter

INDEX (CONTINUED)E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
------------	--------------------	------------	-------------

(Applicant's Exhibits)

A-1	CAD Report.....	15.....	15
-----	-----------------	---------	----

(State's Exhibits)

S-1	Letter and CAD Report.....	21.....	23
-----	----------------------------	---------	----

All Exhibits were retained by the Clerk of Court for
Greenville County.

P R O C E E D I N G S

THE COURT: The next case is Erick Hewins.

All right. Mr. Smith, whenever you're ready.

MR. SMITH: Okay. Your Honor, this is the case of Hewins vs. State. The case number is 2019-CP-23-3629.

Mr. Hewins is not currently in prison. He was arrested on August 9th, 2010, for drugs during a Terry frisk in the search of his vehicle. He was indicted for trafficking in cocaine base 10 to 28 grams first offense, and possession of a schedule four controlled substance second offense.

In January of 2013, he proceeded to a jury trial before Judge Welmaker. He was convicted of both charges at that trial and sentenced to 25 years for trafficking and a consecutive one year for possession.

He was represented by the same attorney again on appeal. And on appeal, they raised four issue in the Court of Appeals, whether the trial court erred by failing to suppress evidence seized by the officer during an unlawful seizure.

And issue two, whether the trial court erred when it found the officer had reasonable suspicion to conduct a Terry frisk.

Three, whether the trial court erred in failing to suppress evidence seized during the second search of

1 Mr. Hewins.

2 And, four, whether the trial court erred in admitting
3 evidence where the State failed to properly identify the
4 evidence custodian responsible for retrieving the evidence
5 or the condition of the evidence when it was in.

6 The Court of Appeals affirmed in an unpublished
7 opinion and denied Mr. Hewins petition for rehearing.

8 Mr. Hewins, actually, filed a pro se petition for
9 writ of certiorari in the Supreme Court. And the Supreme
10 Court granted that and then, ultimately, issued an order
11 dismissing the writ as improvidently granted.

12 Then Mr. Hewins filed an application for
13 post-conviction relief. That case number was
14 2016-CP-23-2656. Judge Hayes granted post-conviction
15 relief to Mr. Hewins. And the State's appeal was not
16 successful.

17 On -- on retrial, Mr. Hewins decided to accept a plea
18 offer. He pleaded guilty to the lesser included offense
19 of possession with intent to distribute cocaine base, and
20 as indicted to possession of a schedule four controlled
21 substance.

22 There was a negotiated plea agreement. And Judge
23 McLeod followed that and sentenced Mr. Hewins to five
24 years imprisonment. And due to the amount of time he had
25 already been in prison, it was, essentially, a time served

1 sentence. And he did not appeal from that.

2 And he has since filed his application. His original
3 application alleges that trial counsel failed to
4 investigate facts that would have shown the officer
5 committed perjury. And I think it means should have filed
6 a motion to dismiss and not to reach a plea deal.
7 Mr. Hewins did file some other amendments in this case,
8 but he did so after counsel had already been appointed.

9 And Ms. Ross has filed an amended application raising
10 two claims. First, that plea counsel was ineffective for
11 advising Mr. Hewins to plead guilty when an investigation
12 into computer-assisted dispatch evidence would have shown
13 that the law enforcement officer lied and that the search
14 was Unconstitutional.

15 And, two, that the search was Unconstitutional and it
16 violated Mr. Hewins due process rights.

17 But I -- I guess I, first, would ask Ms. Ross to
18 confirm that those are the issues -- you know, the -- the
19 issues today just are those raised in the amended
20 application.

21 And then I have a motion as well.

22 THE COURT: Is that correct, Ms. Ross?

23 MS. ROSS: They are, Your Honor.

24 THE COURT: All right. Mr. Smith, you've got a
25 motion?

1 MR. SMITH: Yes, Your Honor. In this case, it's the
2 State's position that the claim should be dismissed as a
3 matter of law. Whenever a defendant pleads guilty, he
4 waives -- waives his rights to a trial. And I would cite
5 the case of Dalton vs. State, which is 376 S.C. 130. And
6 I quote from that, A guilty plea is a solemn judicial
7 admission of the truth of the charges against an
8 individual. Thus, an inmate's right to contest the
9 validity of such a plea is usually, but not invariably,
10 foreclosed. Case law says that courts should be cautious
11 in setting aside a guilty plea.

12 Jameson vs. State is 410 S.C. 456. In that 2014
13 case, the South Carolina Supreme Court observed that
14 guilty -- guilty pleas must be treated as final in the
15 vast majority of cases.

16 And in State v. Inman, which 395 S.C. 539, the South
17 Carolina Supreme Court instructed that the long-standing
18 test for determining the validity of a guilty plea is
19 whether the plea represents a voluntary and intelligent
20 choice among the alternative courses of actions open to
21 the Defendant.

22 And, also, in Jameson, the Supreme Court said that a
23 guilty plea constitutes a waiver of non --
24 non-jurisdictional defects and claims a violation of
25 Constitutional rights.

1 In this case, Your Honor, because the matter had
2 already gone to trial, Mr. Hewins had already had an
3 opportunity to see the evidence against him, saw
4 everything played out at trial -- as a matter of fact, he
5 represented himself on appeal to a certain extent. He
6 petitioned for cert in the South Carolina Supreme Court,
7 which granted his petition at first. And he filed a pro
8 se petition that raised Fourth Amendment issues, among
9 others.

10 And he, also, filed in the Court of Appeals a copy of
11 the computer-assisted dispatch report that he seems to
12 take issue with, which shows that he had notice of that.
13 The date stamp on that -- although I can't remember the
14 exact date, I believe it was 2015, and showing the brief
15 there. So that proves that he had knowledge that there
16 were certain arguments that potentially could have been
17 made and that he was cognizant of the facts of the search.

18 And when it comes back down, he decides to plead
19 guilty. It would -- I -- I would be hard pressed to come
20 up with a hypothetical scenario of a defendant who had
21 more awareness of potential legal issues in a case than
22 Mr. Hewins did when he decided to plead guilty.

23 So I ask Your Honor to rule as a matter of law that
24 he knowingly and voluntarily waived his right to raise any
25 of these challenges.

1 THE COURT: All right. Ms. Ross.

2 MS. ROSS: Well, Your Honor, the Applicant disagrees
3 on that. He has talked to me about the CAD report that's
4 been referenced and has stated that he's never been given
5 an answer to -- to what --

6 MR. HEWINS: My driver's license number is on there.

7 MS. ROSS: Yeah. It looks like his driver's license
8 numbers are on the CAD report. And he's never been --
9 it's never been investigated. He's never been given an
10 answer about why they are on there. And that -- that he
11 needed that answer and he wouldn't have pled guilty if
12 he'd known that there was something untoward about the CAD
13 report.

14 THE COURT: But that -- as I understand from
15 Mr. Smith, that CAD report was -- or is in the record, at
16 least, from the appeal and the trial.

17 Is that right, Mr. Smith?

18 MR. SMITH: Yes, Your Honor. I can find the page
19 number. But this, certainly, was discussed at trial. I
20 believe it was admitted as an exhibit. Of course,
21 Mr. Hewins was represented at the time. And, at least,
22 one officer was questioned about the report. And I
23 believe that his counsel may have questioned two officers
24 about the report.

25 MR. HEWINS: What -- they're lying --

1 THE COURT: Mr. Hewins, you -- you need to be quiet.
2 Okay. You can talk to your lawyer, but you can't speak
3 out.

4 Do you understand?

5 (WHEREUPON, there was no response.)

6 THE COURT: Do you understand?

7 MR. HEWINS: Yeah.

8 THE COURT: Ms. Ross, what about -- so the CAD was,
9 actually, admitted into evidence as an exhibit. And
10 there's -- there's no argument it's a different CAD, is
11 there? I mean, that's the CAD that was entered --
12 admitted into evidence?

13 MS. ROSS: I believe it's the same one, Your Honor.
14 If you -- I beg the Court's indulgence.

15 THE COURT: Yes, ma'am.

16 (Pause.)

17 (WHEREUPON, Ms. Ross and Mr. Hewins had an
18 off-the-record conversation.)

19 THE COURT: You need to be quiet -- quiet down a
20 little bit.

21 Do you want to talk to him out -- if you want to talk
22 to him outside, I'm fine with that.

23 MR. HEWINS: I'm trying to seek the truth --

24 MS. ROSS: Okay.

25 MR. HEWINS: -- not a bunch of lies.

1 MS. ROSS: So he -- you might have heard some of what
2 he -- he was saying. He has said that these numbers on
3 the CAD report, the driver's license are providing
4 information that's untrue. And that he's looking for the
5 truth. And he wanted me to move for funding for a PI to
6 investigate what the numbers were on the CAD report and
7 whether that -- that report and those numbers could be
8 used to cross-examine the officer who lied in his initial
9 trial.

10 THE COURT: Anything else, Mr. Smith?

11 MR. SMITH: I can't put -- put my finger on the exact
12 page number, Your Honor, but I did look at it earlier.
13 And I have submitted those records to the Court and shared
14 them with Ms. Ross. So I -- I submit that it is in there,
15 so.

16 THE COURT: All right. Here's -- I'm -- I'm going to
17 go ahead and hear the matter. I'll note your motion in
18 the matter at this time. I'm going to go ahead and hear
19 any evidence that may be needed to be put up.

20 So, Ms. Ross, I will recognize you.

21 MS. ROSS: Thank you, Your Honor. I appreciate that.

22 Well, first, he'd move to investigate these numbers
23 and just have an investigator to look at this CAD report
24 and --

25 THE COURT: Well, I'm going to hear some testimony.

1 MS. ROSS: One second.

2 (Pause.)

3 MS. ROSS: Okay. Then we'd call Mr. Hewins to the
4 stand at this time.

5 THE CLERK: Mr. Hewins, please place your left hand
6 on the Bible and raise your right hand.

7 WHEREUPON,

8 ERICK ETON HEWINS,
9 after first having been duly sworn, testified as follows:

10 THE CLERK: Thank you.

11 You may be seated.

12 MR. SMITH: And, Your Honor, I don't mean to
13 interrupt. But I would just ask that the State be allowed
14 to be heard on the motion for an investigator, if that
15 becomes necessary.

16 THE COURT: All right. I'll let you -- I'll hear you
17 on that.

18 THE CLERK: Please state your full name for the
19 record.

20 THE WITNESS: Erick Eton Hewins.

21 DIRECT EXAMINATION

22 BY MS. ROSS:

23 Q Okay. Mr. Hewins, can you explain to the Court what
24 the CAD report is showing? What is your argument?

25 A My argument is that at the initial trial, everybody

1 got to speculate and tell lies about what -- seeking the
2 truth. Because right here is my driver's license number.
3 But every time I asked law enforcement, or the Court, or a
4 lawyer don't nobody seem to know what this number is. But
5 I know my driver's license number.

6 So my argument would be had Grove investigated this
7 and the facts of the case, he would have discovered that
8 these officers was fabricating to the Court and the case
9 should have been dismissed. And not just to the Court,
10 but to the Grand Jury, you know. It was egregious how
11 they just got to sit there and lie all the way through
12 court like that and then nobody corrected it.

13 So my argument is that had Mr. Grove investigated
14 this, instead of negotiating the plea -- which he ain't
15 the first lawyer that tried to get me to plead guilty.
16 All of them do. You know what I'm saying? I be changing
17 lawyers every so many years because don't none of them
18 really want to do their job, so.

19 But my argument is, had he investigated this right
20 here, the Fourth Amendment strategy would have been to
21 have this dis -- dismissed because Officer Gardner, Rachel
22 Hall, and Sergeant Ben Cochran [phonetic] all sat here in
23 court and fabricated all the way through trial.

24 And we can show it by the -- by this CAD report.
25 This CAD report is reliable. But they got to sit here and

1 speculate, and run around it, and just say what they want
2 to say. So that's why I'm back here in court again.

3 THE COURT: All right

4 BY MS. ROSS:

5 Q Now, do you have your driver's license with you that
6 you could put --

7 A No. I don't have my driver's license with me. But
8 I've got paperwork here with my driver's license number on
9 it that's from the courts, too. This right here has my
10 driver's license number on it.

11 Q And what is that number?

12 A It's [REDACTED].

13 MR. SMITH: Objection, best evidence, rule.

14 THE COURT: Overruled.

15 BY MS. ROSS:

16 Q Now, do you see that same number on the CAD report?

17 A Yes, ma'am. It -- it -- it looks like a 12...

18 Q If I hand you a pen, can you indicate where it is on
19 the CAD report?

20 A Yes, ma'am, I could.

21 Q Okay.

22 A (Witness complied.)

23 MS. ROSS: This is not complete, but we'd offer this
24 as Applicant's Exhibit No. 1 only as to Page 1 of the CAD
25 report. Because it looks like my copy on Page 2 is

1 incomplete.

2 THE COURT: All right. Any objection?

3 MR. SMITH: No objection as to Page 1.

4 THE COURT: All right. Applicant's Exhibit No. 1 is
5 admitted into evidence.

6 (WHEREUPON, Applicant's Exhibit No. 1 was marked for
7 identification and admitted into evidence.)

8 MS. ROSS: And then if I may approach.

9 THE COURT: Yes.

10 BY MS. ROSS:

11 Q Now, did you know about the CAD report? Had you seen
12 it prior to your guilty plea?

13 A Yeah. I had seen it, yeah.

14 Q And it's true what the State's saying that you had
15 used it in some of your pleadings and --

16 A I think Mr. Harbin used some of it during trial.
17 See, he -- he -- he left out the part, I -- I believe, that
18 I'm talking about here today. He used the other half --

19 Q I got you.

20 A -- of the CAD.

21 Q And -- but knowing that that was out there and having
22 gone through a trial --

23 A I didn't know nothing was out there until -- until --
24 until I come back --

25 Q Right. So at the time of --

1 A -- and pled guilty.

2 Q -- your plea; right, later after you'd come back --

3 A Yeah.

4 Q -- and all the pleadings where you'd included that
5 report -- so at the time of the plea, you knew that that
6 report was out there and you went ahead and pled guilty
7 anyway?

8 A I mean, I knew the CAD was out there.

9 Q Okay.

10 A But -- but my thing was this -- my thing is -- was
11 about my driver's license number. See, like, right now
12 today, I still don't know -- I see my driver's license
13 number, but I don't know if that's my driver's license
14 number. Because won't nobody tell me. You know what I'm
15 saying? Won't nobody like -- in law enforcement or court
16 won't be truthful enough to expose that.

17 Q Okay.

18 A Everybody want to undermine it, brush it to the side.
19 So my thing is I want to seek the truth and find out
20 that -- do Officer -- did Officer Norton [phonetic] know
21 who I was the night of the incident.

22 Because at trial, he said his main reason for
23 detaining me was because he didn't know who I was. He
24 said he -- he said they ran my name three or four
25 different times. They didn't know who I was. But

1 according to the CAD system that has my driver's license
2 there, he was lying.

3 Q So your position is that -- exactly what you said,
4 that the CAD report would show that the officer lied in
5 his trial testimony about not --

6 A Yes.

7 Q -- knowing who you were when he'd already gotten a
8 report of your identity?

9 A Right.

10 Q Okay.

11 A And then he went on a fishing expedition. And --
12 and -- and had Mr. Grove investigated the same way that
13 I'm trying to do, then all the Fourth Amendment strategy
14 at trial would have been the officer went on a -- he knew
15 who my client was. He lied about it. He took advantage
16 of my client and -- and -- and went on a fishing
17 expedition.

18 Q Okay.

19 A That's not allowed under South Carolina state --
20 Supreme Court.

21 Q All right. And so you feel like the search was
22 Unconstitutional under the United States Constitution and
23 the South Carolina Constitution?

24 A Right.

25 Q And, yet, you still pled guilty that second time?

1 A The first time.

2 Q The first guilty plea?

3 A Yeah. Because -- because, again, Mr. Grove didn't
4 investigate the case and gave me erroneous advice to plead
5 guilty.

6 Q And had you known, what would you have done? Had
7 he --

8 A I would have taken it to trial. Because it's -- the
9 case is a clear-cut case. I don't know what made him even
10 negotiate a plea.

11 Q Okay.

12 A I don't know what made him even go and even discuss a
13 plea when the case is clear-cut.

14 MS. ROSS: All right. Well, I have no further
15 questions.

16 Please answer any questions --

17 THE COURT: All right. Cross.

18 CROSS-EXAMINATION

19 BY MR. SMITH:

20 Q Mr. Hewins, you testified earlier that you told
21 Mr. Grove you wanted him to look into this report?

22 A Yes.

23 Q Okay. When did you tell him that?

24 A As soon as I come back from SCDC.

25 Q So back when he first started representing you?

1 A Yes.

2 Q Okay. So --

3 A And his answer was that he didn't trust the system.

4 So --

5 Q So when you --

6 A -- he advised me to plead guilty because he didn't
7 have confidence in the system. That's all he kept saying.

8 Q So at your guilty plea hearing when the Judge asked
9 you if you were satisfied with Mr. Grove's services, why
10 did you answer "yes"?

11 A Why did I answer "yes"? Because I seen he wasn't
12 going to fight.

13 Q So you were satisfied with his services --

14 A No, not really. No, I wasn't.

15 Q So you lied?

16 A I guess I did.

17 Q Okay. Did you, also, lie when the Judge asked you
18 did Mr. Grove answer all your questions?

19 A Answer all my questions? No, I didn't lie about
20 that.

21 Q So you did feel that he'd answered all your
22 questions?

23 A I mean, my thing was this, I seen that -- that he
24 wasn't going to put up no fight, which I'm not new to
25 this. I've been from lawyer to lawyer to lawyer because

1 all of them do the same thing. So I just go ahead and
2 pled guilty.

3 Q Okay. Just ready to get it over with?

4 A Yeah.

5 Q Okay. So the Judge asked you, "You understand that
6 you have the right to a jury trial where you can
7 confront -- you can bring witnesses in support of you or
8 confront the State's witnesses. But you'll be giving that
9 up today by pleading guilty. Do you understand that?"

10 And you answered, "Yes, sir."

11 That's what you said; right?

12 A Yes.

13 Q Okay. And then the Judge asked you, "You understand
14 that the State would have the burden of proving you guilty
15 beyond a reasonable doubt. And you're presumed innocent
16 until proven guilty. But you're waiving that by
17 proceeding with pleading guilty today. Do understand that?"

18 And you answered. "Yes, sir"; right?

19 A Yes, I did.

20 Q Okay. And the Judge asked you, "Do you understand by
21 entering a guilty plea, you give up the right to present
22 any defense on your behalf?"

23 And you told him, "Right."

24 You did; right?

25 A Right.

1 Q You understood that?

2 A Right.

3 Q Okay.

4 A Because I knew my lawyer wasn't going to fight. All
5 of them pretend like they don't want to go to trial, so.
6 You -- you know how it go.

7 Q And the Judge asked you, You're pleading guilty
8 because you were, in fact, guilty?

9 And you said, "Yes, sir."

10 That's what happened; right?

11 A That's what I said, but I wasn't, in fact, guilty.

12 Q Okay.

13 A I just went along with his advice because he didn't
14 have faith in the system.

15 Q And --

16 A At least, that's what he told me.

17 Q While you represented yourself on appeal --

18 A Say what?

19 Q Just one moment, please.

20 MR. SMITH: Your Honor, may I approach?

21 THE COURT: Yeah.

22 MR. SMITH: May I have this marked for identification
23 as State's Exhibit No. 1?

24 (WHEREUPON, State's Exhibit No. 1 was marked for
25 identification only.)

1 BY MR. SMITH:

2 Q Mr. Hewins, I am handing you a three-page document.
3 Can you confirm that that is your letter to the South
4 Carolina Court of Appeals?

5 A Yeah.

6 Q Okay. And it's stamped at the top showing the
7 Supreme -- the Court of Appeals received it; right?

8 A Yeah.

9 Q And what's the date that's stamped on it?

10 A February the 6th, 2015.

11 Q Okay. And you mention in that letter that you have
12 the CAD report that you want them to take a look at;
13 right?

14 A Yes.

15 Q And you underlined "CAD"; right?

16 A I guess.

17 Q You don't see it on there?

18 A Oh, up here, yeah.

19 Q It's underlined; right?

20 A Yeah.

21 Q Okay. And then the first and third page of the CAD
22 report went with that; right?

23 A Yes.

24 Q And they're right there with it. And would you agree
25 with me that on Page 1 of that CAD report, you have

1 underlined the same number you're talking about here
2 today?

3 A I think so, yes.

4 MR. SMITH: All right. Your Honor, I would move to
5 admit this as State's Exhibit No. 1.

6 THE COURT: Any objection?

7 MS. ROSS: No, Your Honor.

8 THE COURT: All right. State's Exhibit No. 1 is
9 admitted into evidence exhibit.

10 (WHEREUPON, State's Exhibit No. 1 was admitted into
11 evidence.)

12 MR. SMITH: No more questions, Your Honor.

13 Thank you.

14 THE COURT: All right. Any redirect?

15 MS. ROSS: No, Your Honor.

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

17 All right. Any additional witnesses from the
18 Applicant?

19 MS. ROSS: No, Your Honor.

20 MR. HEWINS: Oh, one question.

21 MS. ROSS: I beg the Court's indulgence.

22 THE COURT: All right.

23 (Pause.)

24 MS. ROSS: He's telling me he wanted the -- the
25 dispatcher for the CAD report to be present as a witness

1 and told me about that. I attempted to locate that person
2 and didn't -- could not. And so they're not here.

3 THE COURT: All right. Any additional witnesses?

4 MS. ROSS: No, Your Honor.

5 THE COURT: All right. State.

6 MR. SMITH: Without waiving its right to reserve the
7 motion to dismiss, I'd call Mr. Grove as a witness.

8 THE COURT: Let me just on the record -- on the
9 formal motion to dismiss is -- the case law requires that
10 if it's apparent on the face of the application that the
11 Applicant's not entitled to relief and the motion to
12 dismiss is proper -- this is a close call, I will say
13 that. But on the face of the application where they
14 allege ineffect -- ineffective assistance of plea counsel
15 for advising him to plead guilty gets into the realm where
16 I think we needed to take testimony.

17 So that's why the motion to dismiss was denied.

18 MR. SMITH: Okay.

19 THE COURT: And that's why I'm hearing the evidence.

20 THE CLERK: Mr. Grove, please place your left hand on
21 the Bible and raise your right hand.

22 WHEREUPON,

23 WILLIAM EUGENE GROVE,
24 after first having been duly sworn, testified as follows:

25 THE CLERK: Thank you.

1 You may be seated.

2 Please state your full name for the record.

3 THE WITNESS: William Eugene Grove, G-R-O-V-E.

4 DIRECT EXAMINATION

5 BY MR. SMITH:

6 Q Mr. Grove, when were you admitted to practice law in
7 South Carolina?

8 A November of 2009.

9 Q Can you give me a summary of your professional
10 experience since then?

11 A I worked right out of law school for a plaintiff's
12 firm in the Charleston area for about a year. In 2010, I
13 took a job at the PD -- as a public defender in Marlboro
14 County. A couple years after that, I moved to Florence
15 and worked as a public defender until 2015. Then I moved
16 here to Greenville and worked as an assistant public
17 defender, senior public defender, and then, ultimately,
18 deputy public defender.

19 I left the public defender's office in May of 2021
20 and opened up a private practice. And I still have that
21 job today.

22 Q Okay. How did you come to be involved in Mr. Hewins
23 underlying criminal case?

24 A Mr. Hewins case was returned on a PCR in 2018 in
25 June. The -- I think he was remitted to the detention

1 center on June the 1st. On June the 8th of 2018, the
2 public defender's office opened a file. Through the
3 ordinary course of opening files, I was assigned his case.
4 And that is how I came to represent him.

5 Q Okay. What is your understanding of the procedural
6 history of Mr. Hewins case?

7 A So he was charged and indicted a great long while
8 ago, 2010, maybe. I don't remember exactly when. He had
9 a couple of lawyers, but, ultimately, went to trial. He
10 was convicted and got 25 and a consecutive one on the two
11 charges.

12 That was appealed. That appeal was denied. But if I
13 remember correctly, in the dicta of the appeal, one of the
14 grounds for appeal was the second search of his pocket and
15 it was not reviewed by the appellate court because they
16 determined that it was not preserved.

17 That, essentially, created in and of itself a -- a
18 PCRable [sic] issue. And I think the PCR was granted
19 fairly easily at that point given the -- the ruling by the
20 appellate court. Then after that PCR, he was -- this case
21 was reopened and -- and assigned to me.

22 Q During the course of your representation of
23 Mr. Hewins, did you talk with the lawyer who represented
24 him at his trial?

25 A Yes. I -- I believe for a while he had Larry Crane.

1 I spoke with Mr. Crane about him. Then he, obviously,
2 also, was represented by Chase Harbin, ultimately, at
3 trial. And I had multiple conversations with Mr. Harbin
4 about the case.

5 Q Okay. Without saying what you discussed with
6 Mr. Harbin, what topics, generally, did you discuss with
7 him?

8 A Primarily the Fourth Amendment issues, which
9 Mr. Hewins is not wrong. There are legitimate Fourth
10 Amendment issues in his case that were reviewed, were
11 denied. And in the six or so -- 10 or so weeks that I
12 represented him, we, ultimately, decided to abandon
13 pursuit of those in exchange for a plea.

14 Q During the course of your representation of him, did
15 you review the appellate documents from his case?

16 A I did. And I -- and I spoke directly with the
17 lawyers. I spoke to Susan Hackett, who, I think,
18 actually, handled some of his appeal or, at least, was
19 very familiar with it. And, obviously, I, also, spoke
20 with Mr. Harbin. I read the appeal.

21 Q Did you read the trial transcript?

22 A I don't remember if I read the full trial transcript.
23 But I spoke directly with trial counsel and was made aware
24 of various and sundry issues from the trial.

25 Q Okay. And you're aware that Mr. Hewins filed some

1 appellate documents on his own behalf during his appeal?

2 A I am.

3 Q Okay. When this case came back and you were
4 representing Mr. Hewins, did you discuss with him the
5 Fourth Amendment issue?

6 A We did. He -- I mean, he is incredibly intelligent
7 and very well versed in the law. And I think -- I don't
8 remember, specifically, if that was one of our first
9 conversations.

10 But by the time I met with him -- maybe I had been
11 assigned to him a week prior to our first meeting. I knew
12 of -- of some of these issues. And he was ready to
13 discuss them. And I don't remember -- again, I don't
14 remember if that was in our first conversation or not.
15 But we absolutely talked about Fourth Amendment issues,
16 and whether or not we thought we could be successful, and
17 if we were going to pursue them what that would look like.

18 Q Did you review the CAD admitted into evidence at
19 trial?

20 A I don't think that I did. I was aware of
21 inconsistent testimony. As I remember it, officers gave
22 conflicting accounts.

23 As we sit here today, I -- I thought it was about the
24 timing of events. I -- I will defer to Mr. Hewins. He
25 was there. It may have been about his driver's license

1 number. Quite frankly, I'm not sure, but.

2 Q Okay. Did you review the discovery you received in
3 this case?

4 A I did.

5 Q Okay. Do you know if that report was in the
6 discovery?

7 A I -- I brought my file. I'm -- I'm happy to look
8 through it. I don't remember offhand whether that CAD
9 report was included in that.

10 Q Can I ask you to do that?

11 A Sure.

12 I don't see it in here. What I -- what I have is
13 what I would call the initial discovery response. That
14 would be the officer's reports, a lab report, the property
15 and evidence sheet from the department of public safety,
16 his NCIC.

17 And -- and, again, we opened our file on June the 8th
18 of 2018. And I believe he pled guilty on August the 21st
19 of 2018.

20 Q Okay. Did you receive any discovery that is not
21 contained in what you have here today?

22 A No, sir. It would all be in his file.

23 Q Okay. So it's possible that it was something that
24 you did not yet -- received?

25 A Absolutely. It is, certainly, possible that it is

1 not something that I ever laid my eyes on.

2 Q Okay. Did Mr. Hewins ask you about the fact that his
3 driver's license number allegedly appeared in the report?

4 A I don't remember having a specific conversation about
5 his driver's license. I -- I can remember having
6 conversations about -- it's now Special Agent Gardner with
7 SLED, but he was with, I guess, the Greenville Police
8 Department at the time, Bragg, Ferrar [phonetic], a couple
9 of the other officers in here and their inconsistencies.

10 I don't remember, specifically, a conversation about
11 his driver's license or his driver's license number.
12 We -- we may very well have had a conversation about that.

13 But we absolutely discussed the testimony from the
14 trial, the inconsistencies in that testimony. We went on
15 to discuss how that changed the value, if you want to call
16 it that, of -- of what his case was worth, so to speak.
17 And we decided, ultimately, that we received a good value
18 in a PWID first offense for time served negotiated.

19 Q Speaking of that plea agreement, how did the
20 negotiations -- how were the negotiations affected by your
21 opinion that there was a Fourth Amendment issue in his
22 case?

23 A I think that PWID for time served is -- was an
24 appropriate value for what we were setting aside relative
25 to what we were risking if we had gone forward and been

1 unsuccessful.

2 Q Okay. So just to put it in clear terms, was your
3 advice to Mr. Hewins that he, basically, was trading a
4 potential Fourth Amendment suppression argument for time
5 served five years?

6 A Yeah. I don't -- I don't -- I don't know that I said
7 it in exactly those words. But that is routinely how I
8 would have discussed that exact situation. That what we
9 are giving up is the ability to pursue a Fourth Amendment
10 claim, which could have resulted in an outright dismissal
11 of the case. What we are getting in exchange for that is
12 avoiding a 25-year mandatory minimum and the assurance of
13 a time served sentence under a negotiated plea.

14 Q So it was, essentially, a bargain?

15 A That's right.

16 Q Okay. Did Mr. Hewins give you any reason to believe
17 that he did not understand the trade off there?

18 A No.

19 Q Okay. What did he tell you about his willingness to
20 take that offer?

21 A As best I remember it -- it's almost four years ago
22 now -- he wanted assurances that that's what was going to
23 happen, which is how we ended up at a negotiation, rather
24 than a recommendation. And I think that -- as I remember
25 it, he indicated to me if we couldn't meet those terms, he

1 was willing to go to trial. That was always sort of in
2 the background.

3 Q Right.

4 A That if not this, then trial. And he was adamant
5 about that from the time that I represented him. But they
6 met our terms. And so we entered a plea.

7 Q When negotiating his plea deal, did you ever discuss
8 the Fourth Amendment issue with the Solicitor?

9 A Yes.

10 Q Okay.

11 A And she, as I remember it, was trial counsel for the
12 State. And so she was already well aware of the issues.

13 Q Okay. Did Mr. Hewins ask you to do any sort of
14 investigation into the Fourth Amendment issue that you did
15 not do?

16 A I don't think so. I mean, we -- we had talked about
17 it. And if there was anything left undone, it was left
18 undone because we received the offer that we, ultimately,
19 accepted. But then we, in doing that, abandoned the idea
20 of a trial or suppression.

21 Q Were you willing to try Mr. Hewins case if he decided
22 not to plead guilty?

23 A Sure.

24 Q Did you express that to him?

25 A Yes, sir.

1 Q Did he give you any reason to believe that he did not
2 understand that that was the case?

3 A No.

4 MR. SMITH: Okay. No more questions.

5 Thank you.

6 THE COURT: Cross.

7 CROSS-EXAMINATION

8 BY MS. ROSS:

9 Q Good afternoon.

10 Now about, specifically, the CAD report, do you
11 recall reviewing that with Mr. Hewins?

12 A I do not.

13 Q And he talks about how certain portions are on
14 different lines.

15 MS. ROSS: If I may approach.

16 BY MS. ROSS:

17 Q So certain portions of his driver's license number
18 are in these two lines in the CAD report. Did you ever
19 investigate whether that was the case?

20 A No. I -- I talked with his trial counsel about the
21 inconsistencies in the trial testimony. He -- Mr. Hewins
22 and I talked about that as well. But specific to the CAD
23 report, no. I -- again, I represented him from June 8th
24 to August 21st.

25 Q All right. And did -- and at that point, you didn't

1 follow up further whether investigator or Officer Gardner
2 had lied about whether he knew the identity of Mr. Hewins
3 when he said he did not?

4 A Not after we received the offer and accepted it.

5 Q Okay. So, basically, once you got that offer, you
6 were complete?

7 A Once he accepted it and entered his plea, I mean, we
8 were -- we were done.

9 MS. ROSS: All right. I beg the Court's indulgence.

10 (Pause.)

11 BY MS. ROSS:

12 Q Had -- had he asked -- had Mr. Hewins asked you to
13 investigate the CAD report, initially, upon your
14 appointment on the case?

15 A If you'll give me just a second.

16 Q Sure.

17 A I don't have any notes about him asking about the CAD
18 report. I have a lot of notes, but none of them reference
19 the CAD report.

20 Q Okay. So you didn't make any assurances to him about
21 the CAD report and don't see that mentioned in your notes?

22 A I -- I don't. And that doesn't mean that we didn't
23 have a conversation about it.

24 MR. HEWINS: I asked him first time he came to visit
25 me --

1 THE COURT: Mr. Hewins, you need to speak a little
2 lower. You can just tell her to come over there and y'all
3 can talk. But speak a little bit lower

4 BY MS. ROSS:

5 Q Do your notes reflect your first jail visit to see
6 Mr. Hewins when he was brought to Greenville?

7 A So we opened our file on June the 8th. My first
8 conversation with him was on the telephone on June the
9 11th. And then my first in-person visit with him was on
10 June the 14th.

11 On that day, he and I had extensive conversations
12 about his bond, you know, what his intentions were. Later
13 that day, I spoke with Susan Hackett at appellate defense
14 to get more information on the case. I then met with him
15 again on July the 5th. We had a bond hearing. I think
16 he, actually, had Larry Crane for the bond hearing.

17 Q Isn't it true that in initial discussions with
18 Mr. Hewins, he said he did not want to plead guilty?

19 A Yes. That's absolutely -- I mean, do you want me to
20 read my -- I can tell you, yes. I have notes that reflect
21 he did -- he wanted to pursue a trial on June the 14th,
22 yes.

23 Q Is it possible that he had said something about the
24 CAD report to you that just are not reflected in your
25 notes from that day?

1 A It's possible, sure.

2 MS. ROSS: Nothing further.

3 THE COURT: All right. Any redirect?

4 MR. SMITH: Yes, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. SMITH:

7 Q If Mr. Hewins told you he did not want a trial, that,
8 obviously, would have taken place before he decided to
9 plead guilty; right?

10 A Yes, sir.

11 MR. SMITH: No more questions.

12 Thank you.

13 THE COURT: All right. Any recross?

14 MS. ROSS: No, Your Honor.

15 THE COURT: All right. You may step down, Mr. Grove.
16 Thank you.

17 All right. Any other witnesses?

18 MR. SMITH: No, Your Honor.

19 That's the State's case.

20 THE COURT: All right. Before I take it under
21 advisement, is there anything else from the parties?

22 MS. ROSS: No, Your Honor.

23 THE COURT: All right. From the State?

24 MR. SMITH: Just, Your Honor, I think it's clear from
25 the appellate records that Mr. Hewins knew that there was

1 some Fourth Amendment issue. That he was aware of the CAD
2 report. In the State's exhibit, he had underlined his
3 driver's license number.

4 So he had, also, sat through the first trial. So
5 anything the officers said at trial, he would have heard
6 it at that time. He was aware of all the issues and
7 decided to waive the issues by pleading guilty to get the
8 benefit of the bargain.

9 Thank you.

10 THE COURT: And, Ms. Ross, anything?

11 MS. ROSS: No, Your Honor.

12 THE COURT: All right. I will take it under
13 advisement. And I'll let you know my decision.

14 Thank you.

15 *****END OF TRANSCRIPT OF RECORD*****

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

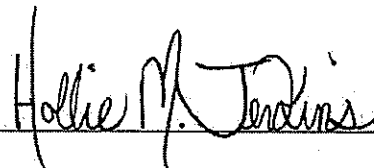
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 25th day of May, 2022.

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

July 21, 2022

A handwritten signature in cursive script, reading "Hollie M. Jenkins", is written over a horizontal line.

Hollie M. Jenkins, Court Reporter

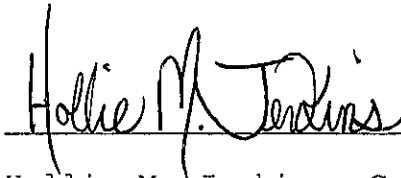
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 25th day of May, 2022.

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

July 21, 2022

A handwritten signature in cursive script, reading "Hollie M. Jenkins", is written over a horizontal line.

Hollie M. Jenkins, Court Reporter

DATE: 01/14/13 TIME: 11:43

PAGE: 000003

Requested By: MOORE, J

INCIDENT RECALL

Incident	Time	Type	Pri	Dispo	Address	Blk	Apt	Callers Name	P-Unit	Class	T
					Location			Callers Address		Date	Operator
					BEAT	TEAM/DIST	AREA	Callers Phone			
CP10067312	00:36	88VE	3A	95	50 ORCHARD PARK DR					CP/112-2	10/04/95 CP475
					CLAYTON INN					09:11	
					CPHL	CP	CP				

Date: _____ Time: _____

Donner

[illegible]

EXHIBIT

Applicant

5/25/22

NEWARK POLICE DEPARTMENT

DATE: 01/24/13 TIME: 11:41

PAGE 0000

[illegible]

INCIDENT RECALL

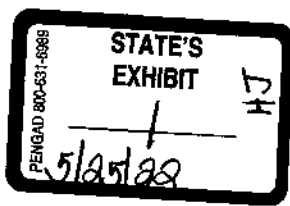
[illegible]

Vehicle Subject Information

NO FOREIGN DISSEM PROJECT

SECRET
REF ID: A66008 5731

REV 10-2



613

RECEIVED

FEB 06 2015

SC Court of Appeals

This is the Cad Report that will Refute this OFFICERS testimony concerning my identification not coming back this Cad Report that was admitted into evidence at trial has OFC. Hall OFC. GARDNER on the scene at 00:36 My Identification coming back at 00:37. Am showing the Court they OFC. Hall & GARDNER committed PERJURY again. I've ask Jessica H. LERER to disclose to Court of appeals in she a REFUSE to. CLERK OF COURT go you place This on file to safeguard my right. My Identification number is 090162139 which is highlighted on the Cad Report that was used at trial but now is being Withhold from Court of Appeal by Jessica H. LERER. This Report PROVES I gave the CORRECT name the first time. These OFFICERS fabricated about having trouble getting my information. I demand Jessica H. LERER to disclose this to the Court.

GREENVILLE POLICE DEPARTMENT

Date 01/14/13 Time 11:41

PAGE 000001

Requested By: MOORE, FRAN

INCIDENT RECALL

Incident	Time	Type	Pri	Dispo	Address Location	Bldg Apt	Callers Name Callers Address Callers Phone	P-unit	Close Date/ Time	Operator
CP10067312	00 36	88VE	3A	9S	50 ORCHARD PARK DR CLARION INN CPH1 CP CP			CP/112-Z	10/08/09 02 17	CP476

Date Time

Operator

10/08/09 00 36	Primary Event	MAIN	Opened	10/08/09 00 36				16	SEGE, WESLEY
10/08/09 00 36	Incident Initiated By:	CP/SEGE, WESLEY						16	SEGE, WESLEY
10/08/09 00 36	Stat CP/127-2	6	-ON SCENE		LOC CLARION INN			16	SEGE, WESLEY
10/08/09 00 36	Officer 1 Name:	HALL, RACHEL			Officer 2 Name			16	SEGE, WESLEY
10/08/09 00 36	Primary Unit	CHANGED			To CP/127-2			16	SEGE, WESLEY
10/08/09 00 36	NO TAG ON SECOND VEHICLE							16	SEGE, WESLEY
10/08/09 00 37	OQ Information	Reply ID: 4397136	Date: 8/9/10 00 36:09					16	SEGE, WESLEY
10/08/09 00 37	Attachment:							16	SEGE, WESLEY
10/08/09 00 37	Reply Text	GVLPD203 DMV	1A27006A2C					16	SEGE, WESLEY
10/08/09 00 37	E5631620100809	00 38 14						16	SEGE, WESLEY
10/08/09 00 37	0139B520100809	00 38 14						16	SEGE, WESLEY
10/08/09 00 37	XTAG	SC02302001A27006A2C						16	SEGE, WESLEY
10/08/09 00 37	XTAG							16	SEGE, WESLEY
10/08/09 00 37	2000 FVI948	VALIDATION FVI948	TAG EXP 01/2012					16	SEGE, WESLEY
10/08/09 00 37	DECAL EXP	01/2011						16	SEGE, WESLEY
10/08/09 00 37	1996 TOYT	45 CAMRY	VIN 4T1EG12K6TU947481	EMPT WGT				16	SEGE, WESLEY
10/08/09 00 37	002 GVM	000000						16	SEGE, WESLEY
10/08/09 00 37	PADGETT, SHERRY	BEORAR						16	SEGE, WESLEY
10/08/09 00 37	109 W PRENTISS	AVE						16	SEGE, WESLEY
10/08/09 00 37	GREENVILLE	SC	296054031	GREE CNTY				16	SEGE, WESLEY
10/08/09 00 37	ALTERNATE TAG	YEAR						16	SEGE, WESLEY
10/08/09 00 37	TTL	772060214220073	F	TTL ISSUE DT 01/14/2010	SALES			16	SEGE, WESLEY
10/08/09 00 37	PRICE	\$0 00						16	SEGE, WESLEY
10/08/09 00 39	Stat CP/H1	5			Loc: CLARION INN			16	SEGE, WESLEY
10/08/09 00 39	Officer 1 Name	BRAGG, JOHNATHAN			Officer 2 Name			16	SEGE, WESLEY
10/08/09 00 39	Stat CP/112-Z	5			Loc: CLARION INN			16	SEGE, WESLEY
10/08/09 00 39	Officer 1 Name	GARDNER, SCOTT			Officer 2 Name			16	SEGE, WESLEY
10/08/09 00 39	Stat CP/F1	5			Loc: CLARION INN			16	SEGE, WESLEY
10/08/09 00 39	Officer 1 Name	DIGIROLAMO, JIMMY			Officer 2 Name			16	SEGE, WESLEY
10/08/09 00 40	Stat CP/112-Z	6	-ONSCENE		Loc CLARION INN			16	SEGE, WESLEY
10/08/09 00 40	Officer 1 Name	GARDNER, SCOTT			Officer 2 Name			16	SEGE, WESLEY
10/08/09 00 40	APU 10-4 @ 0040	637						16	SEGE, WESLEY
10/08/09 00 42	Stat CP/F1	6	-ONSCENE		Loc: CLARION INN			16	SEGE, WESLEY
10/08/09 00 42	Officer 1 Name	DIGIROLAMO, JIMMY			Officer 2 Name			16	SEGE, WESLEY
10/08/09 00 43	Stat CP/H1	6	-ONSCENE		Loc: CLARION INN			16	SEGE, WESLEY
10/08/09 00 43	Officer 1 Name	BRAGG, JOHNATHAN			Officer 2 Name			16	SEGE, WESLEY
10/08/09 00 46	Unit CP/127-Z	Timed Out						16	SEGE, WESLEY
10/08/09 00 46	Officer 1 Name	HALL, RACHEL			Officer 2 Name			16	SEGE, WESLEY
10/08/09 00 48	Stat CP/101	5			Loc CLARION INN			16	SEGE, WESLEY
10/08/09 00 48	Officer 1 Name	COTHRAN, BENJAMIN			Officer 2 Name			16	SEGE, WESLEY
10/08/09 00 48	Stat CP/101	6	-ONSCENE		Loc CLARION INN			16	SEGE, WESLEY
10/08/09 00 48	Officer 1 Name	COTHRAN, BENJAMIN			Officer 2 Name			16	SEGE, WESLEY

GREENVILLE POLICE DEPARTMENT
Date 01/14/12 Time 11:41

INCIDENT RECALL

PAGE 000003
Requested By: MOORE, FRAN

Incident	Time	Type	Pri	Dispo	Address Location	BEAT	TEAM/Dist	AREA	Bldg Apt	Callers Name	Callers Address	Callers Phone	P-unit	Close Date/ Time	Operator
10/08/09 02 27	Stat CP/112-Z														
10/08/09 02 27	Officer 1 Name														
10/08/09 02 27	Route Closed: MAIN														JULIAN, MONIKA
10/08/09 02 27	Disposition														JULIAN, MONIKA
10/08/09 02 27	Disposition														JULIAN, MONIKA
10/08/09 02 27	Incident Closed														JULIAN, MONIKA
10/08/09 02 27	Disposition														JULIAN, MONIKA
10/08/09 02 27	Disposition														JULIAN, MONIKA
10/08/09 02 27	Disposition														JULIAN, MONIKA
10/08/09 02 27	Disposition														JULIAN, MONIKA
10/08/09 02 27	OffCP/112-2														JULIAN, MONIKA
10/08/09 02 27	Officer 1 Name														UNKNOWN
10/08/09 02 30	10-34 CODE 4 PRRAR 116														UNKNOWN
10/08/09 02 43	10-29 CODE 4 DIGIROLAMO 106														OPALACZ, KATHLEEN
10/08/09 03 39	10-29 CODE 4 127														OPALACZ, KATHLEEN
															BLAKE-KILGORE, V D

==== Vehicle / Subject Information ====

NO VEHICLE OR SUBJECT RECORDS FOR EVENT LCP100809067312

SELECTION CRITERIA LCP100809067312

***** End of Report *****

White, Jan

From: Taylor Smith <taylor.smith@scag.gov>
Sent: Tuesday, May 24, 2022 8:20 PM
To: Court Transports (CourtTransports@doc.sc.gov)
Cc: gmorganlc@sccourts.org; brian@brianjohnsonlaw.com; Victim Services; White, Jan; hjenkins@sccourts.org; Jonathan Eckstrom (C054560)
Subject: Continuance in inmates' hearing.

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

Good evening,

Judge Morgan has continued the post-conviction relief hearing for Roy Jones (SCDC ID 129886), which was scheduled to take place at 9:30 a.m. in the morning at the Greenville County Courthouse. Please cancel transport for Mr. Jones. Please let me know if you need any other information.

Thank you,
Taylor

20A CP 230 3756

TAYLOR SMITH, Assistant Attorney General
South Carolina Department of Corrections
Criminal Division | Office 803-734-0907
P.O. Box 11549 | Columbia, SC 29211
scag.gov



This email, along with any attachments, is considered confidential and may be legally privileged. If you have received it in error please notify the sender immediately by reply email and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. This email, and attachments, are subject to FOIA requests. Thank you for your cooperation.

POST-CONVICTION RELIEF HEARINGS
THIRTEENTH JUDICIAL CIRCUIT
THE HONORABLE G. D. MORGAN, JR., PRESIDING JUDGE
GREENVILLE COUNTY COURTHOUSE

Wednesday, May 25, 2022

TIME	APPLICANT/SCDC No. AND INSTITUTION	DOCKET No./ COUNTY	APPLICANT'S ATTORNEY	RESPONDENT'S ATTORNEY	RESPONDENT'S ANTICIPATED WITNESS(ES)/MOTIONS
~~09:30 AM~~	~~Roy Lee Jones 129886 Broad River Secure Facility~~	~~2019-CP-23-3756 Greenville~~	~~Brian P. Johnson~~	~~Taylor Z. Smith~~	~~Alex R. Stalvey Kristie Bjornstad Hodge~~
			<i>continued see Email</i>		
09:30 AM	Jacob M. Hendricks 369154 Broad River Corr. Inst.	2019-CP-39-1542 Pickens	Don A. Thompson	Taylor Z. Smith	David D. Cantrell, Jr. Courtney C. Landsverk
02:00 PM	Erick E. Hewins Not Incarcerated	2019-CP-23-3629 Greenville	Susannah C. Ross	Taylor Z. Smith	William Eugene Grove Joyce Krolak Monts
02:00 PM	John R. D. Franklin 275454 Lee Corr. Inst.	2019 CP-23-7162 Greenville	Susannah C. Ross	Taylor Z. Smith	Christopher Todd Posey Joyce Krolak Monts William C. McMaster, III Scott Gardner

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Erick Hewins,

Applicant,

v.

State of South Carolina,

Respondent.

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

) Case No. 2019-CP-23-03629

) ORDER OF DISMISSAL

This matter comes before this Court by way of a pro se application for post-conviction relief filed by Erick Hewins ("Applicant") on June 25, 2019. The State's ("Respondent") return to the application was served on Applicant on November 21, 2019. An evidentiary hearing in this matter was held before the undersigned at the Greenville County Courthouse. Applicant was present and was represented by Susannah C. Ross. Taylor Zane Smith of the South Carolina Attorney General's Office represented Respondent. Following a thorough review of the record in its entirety and the evidence presented at the evidentiary hearing, this Court finds that Applicant has failed to prove that he is entitled to post-conviction relief and denies the application with prejudice.

PROCEDURAL HISTORY

Applicant is not currently imprisoned in the South Carolina Department of Corrections ("SCDC"). During its July of 2011 term, the Greenville County Grand Jury indicted Applicant for trafficking in cocaine base (crack cocaine) (2010-GS-23-008295), possession of a Schedule IV controlled substance (clonazepam) (2010-GS-23-008296). On January 14-17, 2013, Applicant proceeded to a jury trial with the Honorable G. Edward Welmaker ("trial court") presiding. Hunter Chase Harbin ("trial counsel") represented Applicant at that trial, and Joyce Krolak Monts ("the

solicitor”), then of the Thirteenth Circuit Solicitor’s Office, prosecuted him. At the conclusion of trial, the jury found Applicant guilty as indicted. The trial court sentenced Applicant to imprisonment for one year for possession and for a consecutive term of twenty-five years for trafficking.

Trial counsel filed a timely notice of appeal. Chief Appellate Defender Robert M. Dudek of the South Carolina Commission on Indigent Defense and Jessica H. Lerer¹ (“appellate counsel”) represented Applicant on appeal initially. Appellate counsel argued that the trial court erred: (1) in denying the defense’s motion to suppress drugs seized from Applicant by a law enforcement officer; (2) in finding that the officer had reasonable suspicion to conduct a frisk of Applicant pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968); (3) in denying the defense’s motion to suppress evidence seized by the officer from Applicant during a second search of Applicant; and (4) in admitting evidence over the defense’s objection to the chain of custody. The South Carolina Court of Appeals affirmed in an unpublished opinion, finding that: (1) there was evidence to support the trial court’s finding that the officer had reasonable suspicion to justify his stop of Applicant; (2) there was evidence to support the trial court’s finding that the officer had a reasonable suspicion to believe that Applicant was armed and dangerous, justifying his pat-down of Applicant; (3) there was evidence to support the officer’s first reach into Applicant’s pocket; that the issue of whether the officer’s second reach into Applicant’s pocket was justified by Applicant’s consent was not preserved for direct appellate review; and (4) that the trial court did not abuse its discretion in overruling Applicant’s chain-of-custody objection to the admission of the drug evidence. *State v. Hewins*, Op. No. 2014-UP-478 (S.C. Ct. App. filed December 23, 2014) (per curiam). In an order issued on February 24, 2015, the Court of Appeals denied Applicant’s petition for rehearing.

¹ Lerer was appointed as lead counsel as part of the Appellate Practice Project.

The South Carolina Supreme Court, in an order issued on March 24, 2015, among other things, denied Petitioner's motion to appoint counsel, which left Applicant proceeding as a pro se appellant. Applicant also filed a motion to, among other things, proceed as a pro se appellant; in light of the Supreme Court's previous order denying Applicant's to appoint counsel, the Court took no action on that second motion. In an order issued on November 5, 2015, the Supreme Court granted Applicant's petition for a writ of certiorari in part and denied it in part. Applicant then argued that the trial court erred: (1) by not suppressing evidence seized from Applicant by the officer; (2) in finding that the officer had a reasonable suspicion justifying a *Terry* frisk; (3) in not suppressing evidence seized by the officer during a second search of Applicant; and (4) in admitting evidence over the defense's chain-of-custody objection. On March 23, 2016, the Supreme Court dismissed the writ of certiorari as improvidently granted. The remittitur was issued on that same date.

On April 26, 2016, Applicant filed a pro se application for post-conviction relief, raising multiple claims, which this Court interprets as follows: (1) trial counsel was constitutionally ineffective for not having the trial court correctly apply the law regarding consent; (2) trial counsel was constitutionally ineffective for not producing evidence of a motel parking ordinance; (3) trial counsel was constitutionally ineffective for not requesting a hearing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978); (4) trial counsel was constitutionally ineffective for not communicating to Applicant a plea offer from the solicitor; (5) trial counsel was constitutionally ineffective for not requesting a hearing pursuant to *Jackson v. Denno*, 378 U.S. 368 (1964); (6) trial counsel was constitutionally ineffective for not requesting a jury instruction on a lesser-included offense; (7) trial counsel was constitutionally ineffective for raising a consent argument to the officer's two reaches into Applicant's pocket; (8) trial counsel was constitutionally ineffective for

not calling witnesses at trial to impeach the officer's credibility; (9) trial counsel was constitutionally ineffective for not objecting to the trial court's jury instructions given pursuant to *Allen v. United States*, 164 U.S. 492 (1896); (10) trial counsel was constitutionally ineffective for not objecting to an improper comment from the solicitor; (11) trial counsel was constitutionally ineffective for not objecting to the presence of an alternate juror in the jury room during the jury's deliberations; and (12) appellate counsel was constitutionally ineffective for not arguing the merits versus the preservation issues. On October 25, 2016, Applicant appeared at the Greenville County Courthouse before the Honorable John C. Hayes, III ("PCR court"), for an evidentiary hearing on the application. Applicant was represented by Brian P. Johnson, and Patrick L. Schmeckpeper of the South Carolina Attorney General's Office represented Respondent. On October 27, 2016, the PCR court issued an order granting the application in part and denying in part, finding that: (1) trial counsel was constitutionally ineffective for not preserving for direct appellate review the issue of the officer's second reach into Applicant's pocket because attorneys are required to preserve issues for appellate review and the lack of preservation itself affected the adversarial process to Applicant's detriment; (2) trial counsel's performance with respect to the *Allen* charges was not deficient; and (3) there was no merit to Applicant's argument about a *Jackson v. Denno* hearing because there was no such issue.

Respondent filed a timely notice of appeal. Respondent argued that the PCR court erred in granting the application by failing to apply the correct standard, which required it to consider whether Applicant had proved that he would have been successful on appeal had the search issue been preserved for appellate review, and because Applicant had failed to satisfy that standard. On May 3, 2018, the Supreme Court denied Respondent's petition. The remittitur was issued on May 21, 2018.

On August 21, 2018, Applicant appeared before the Honorable Walton J. McLeod, IV ("plea court"), and pleaded guilty to possession with intent to distribute cocaine base (2010-GS-23-08295), a lesser-included offense of trafficking, and possession of a Schedule IV controlled substance (clonazepam) (2010-GS-23-08296). Applicant was represented at that hearing by William Eugene Grove ("plea counsel"), and the solicitor again prosecuted him. The plea court sentenced Applicant to imprisonment for six months for possession of a controlled substance and for five years for possession with intent to distribute, with both sentences running concurrently, and with credit for time served. Applicant did not appeal those convictions or sentences.

CURRENT PROCEEDING

On June 25, 2019, Applicant filed the present pro se application for post-conviction relief, and raised multiple claims, which this Court interprets as follows: (1) plea counsel failed to conduct an adequate pre-trial investigation, which would have shown that the officer committed perjury; and (2) plea counsel was constitutionally ineffective for not moving to dismiss rather than reaching a plea deal. Applicant prayed in the application that the convictions would be dismissed and that the sentences would be vacated. On March 6, 2020, Applicant, through counsel, filed an amended application, that incorporated some or all of Applicant's claims previously raised and also raised the following claims: (1) plea counsel was constitutionally ineffective for advising Applicant to plead guilty when an adequate investigation would have shown evidence that the law enforcement officer lied and that the officer's search was unconstitutional; and (2) that the illegal search violated

Applicant's due process rights.^{2,3}

On May 25, 2022, Applicant appeared before this Court at the Greenville County Courthouse for an evidentiary hearing on this current application. Applicant was represented at the hearing by Susannah C. Ross, and Taylor Zane Smith of the South Carolina Attorney General's Office represented Respondent.⁴ At the start of that hearing, Applicant affirmed that he would proceed only upon the claims presented in the amended application filed through counsel. This Court finds that all other claims are waived and abandoned and will only consider the claims presented in the amended application.⁵

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Before this Court are: the records of the Greenville County Clerk of Court for Applicant's convictions and sentences; Applicant's records from SCDC; the transcript from Applicant's trial; the records from Applicant's direct appeal, including the notice of appeal, the record on appeal, the parties' final briefs

² On July 23, 2019, Applicant filed a pro se amended application, but he did so the day after counsel had been appointed to represent him. Because Applicant was represented by counsel at that time, this Court will not consider his pro se amendment. "Since there is no right to 'hybrid representation' that is partially pro se and partially by counsel, substantive documents, with the exception of motions to relieve counsel, filed pro se by a person represented by counsel are not to be accepted unless submitted by counsel." *Miller v. State*, 388 S.C. 347, 347, 697 S.E.2d 527, 527 (2010).

³ On January 27, 2022, Applicant, through counsel, filed another amended application that was identical to the amendment that counsel had already filed. Because the two amendments were identical, this Court will disregard the second.

⁴ Applicant had already completed his sentences by the time of the hearing.

⁵ Respondent moved to dismiss the application as a matter of law at the start of the hearing, arguing that the record was clear that Applicant was aware that the Court of Appeals found that the issue of the officer's second reach into his pocket had been unpreserved for appellate review, that Applicant could have raised the issue again if he had proceeded to trial instead of pleading guilty, and that Applicant nevertheless decided to waive his right to challenge the prosecution's case by entering guilty pleas in accordance with the plea agreement. This Court denied that motion and allowed Applicant to put up his evidence, although the ruling admittedly was a close call.

(including appellant's reply brief), appellate counsel's July 16, 2014, supplemental citations letter, the Court of Appeals' opinion, the petition for rehearing, the Court of Appeals' order denying the petition for rehearing, Applicant's pro se filings and letters and motions, Applicant's pro se petition for a writ of certiorari to the Court of Appeals, Respondent's return to the petition for a writ of certiorari to the Court of Appeals, the Supreme Court order denying Applicant's motions, the Supreme Court order granting Applicant's petition for a writ of certiorari in part and denying it in part, the parties' final briefs filed in the Supreme Court, the order dismissing the writ of certiorari as improvidently granted, and the remittitur; the transcript from Applicant's guilty plea hearing; and all filings in this matter. Set forth below are the relevant findings of facts and conclusions of law with regards to the claims that Applicant advanced at the evidentiary hearing, as required by S.C. Code Ann. §17-27-80 (1985).

Applicant's claim that plea counsel was constitutionally ineffective for advising Applicant to plead guilty when an adequate investigation would have shown evidence that the law enforcement officer lied, and that the officer's search was unconstitutional.

Applicant testified before this Court that everyone speculated and lied at his trial. He testified that, if plea counsel had done an adequate pre-trial investigation rather than negotiating a plea agreement, he would have discovered that the law enforcement officers were lying, and that the case against him should have been dismissed. He testified that plea counsel should have pursued a trial strategy based on the Fourth Amendment. He testified that a computer assisted dispatch ("CAD") report, the first page of which was admitted into evidence before this Court as Applicant's exhibit one, proves true his testimony. He testified that he had seen the CAD report before pleading guilty and that trial counsel had used at least part of the report at trial. He then testified that he "didn't know nothing was out there until . . . [he came] back" and pleaded guilty,

but he also agreed that he knew that the report "was out there." PCR Tran. 15-16.⁶ He testified that he knows his driver's license number and that the CAD report contains his driver's license number, but then testified that he does not "know if that's [his] driver's license number. Because won't nobody tell me." PCR Tran. 16. He testified that a law enforcement officer testified at trial that he detained Applicant because he did not know Applicant's identity, and Applicant questioned that testimony from the officer because the CAD report contained Applicant's driver's license number, which he thought was an indication that the officer's testimony had been false. He testified that, had plea counsel conducted an adequate investigation, he could have argued at trial that the officer lied about his reason for detaining Applicant and that he really was on a "fishing expedition." PCR Tran. 17. He felt that the officer's actions violated his constitutional rights. He testified that he pleaded guilty because plea counsel failed to conduct that investigation and erroneously advised him to plead guilty. He testified that he would have proceeded to trial had he known of the issue beforehand, which made the case, in his mind, "a clear-cut case." PCR Tran. 18. He testified that he did not think that plea counsel should have even negotiated a plea agreement.

On cross-examination, Applicant agreed that he told plea counsel that he wanted him to investigate the issue of the CAD report and testified that he did so himself as soon as he was released from SCDC after he was awarded a new trial. He agreed that that discussion took place as soon as plea counsel began representing him. He testified that the only thing that plea counsel told him was to plead guilty because plea counsel did not trust the "system." PCR Tran. 19. He denied that, at the time of his guilty plea hearing, he had been satisfied with plea counsel's representation of him and explained that his affirmation to the plea court that he was satisfied was

⁶ Citations styled this way are references to the transcript of the May 25, 2022, hearing before this Court.

a lie. He testified that his affirmation to the plea court that plea counsel had answered all of his questions had been true. He testified that he pleaded guilty because he saw that plea counsel would not "put up no fight," which he also believes is true of all of the lawyers who have represented him. PCR Tran. 19-20. He agreed that he pleaded guilty because he was "[j]ust ready to get it over with." PCR Tran. 20. He explained that he affirmed to the plea court that he wanted to waive his constitutional rights and plead guilty because he knew that plea counsel would not "fight." PCR Tran 20-21. He testified that he falsely affirmed his guilt to the plea court because plea counsel told him to do so, as plea counsel did not "have faith in the system." PCR Tran. 21.

Applicant was questioned about a letter that he mailed to the South Carolina Court of Appeals while his direct appeal was pending. That letter was admitted into evidence before this Court as Respondent's exhibit one. He agreed that the first and third pages of the CAD report accompanied his letter, and that he requested in the letter that the Court of Appeals consider the report. He also agreed that he had underlined on the report, which accompanied his letter, the number he had just previously claimed was his driver's license number.

Plea counsel testified at the hearing before this Court. He testified that he was appointed to represent Applicant shortly after Applicant's case was remanded for re-trial after he was awarded post-conviction relief. He testified that he discussed Applicant's case with trial counsel, Susan B. Hackett, who is an appellate lawyer at the Commission on Indigent Defense who represents those convicted of crimes when they are appealing their convictions, and with Lawrence W. Crane, a lawyer who had represented Applicant in the case before trial counsel did so. He testified that he agreed with Applicant's allegation that there was a viable Fourth Amendment issue in Applicant's case and said that he discussed that issue with trial counsel. He testified that he and Applicant decided, over the course of the six to ten weeks during which he represented Applicant, that

Applicant would abandon that issue in exchange for a plea agreement. He could not recall if he had read all of the transcript from Applicant's trial, but he agreed that he was aware of the legal issues from the trial. He described Applicant as someone who is intelligent and understands the law and testified that he and Applicant discussed the Fourth Amendment issue and how it would play out if they pursued the issue at a second trial. He did not think that he reviewed the CAD report, but he was aware of the allegation that the law enforcement officers who testified at trial gave conflicting accounts of their interaction with Applicant; he did not remember specifically discussing with Applicant the driver's license number, but he thought that it was possible that they discussed that topic. He did not see a copy of the CAD report in his file, but he agreed that it was possible that he had not yet received all of the discovery from the solicitor by the time of Applicant's guilty plea hearing. He did not recall reviewing the CAD report with Applicant. He testified that he did not have any note indicating that Applicant specifically asked him to investigate the report.

Plea counsel testified that he and Applicant considered how the alleged inconsistencies in the officers' accounts "changed the value" of what Applicant's case "was worth," and that they decided that Applicant received a good value by entering guilty pleas in exchanged for sentences that were essentially "time served negotiated." PCR Tran. 30. He testified that he thought that a conviction for possession with intent to distribute with a sentence of time served was an appropriate resolution in exchange for the issue that Applicant was waiving by pleading guilty considering the risk to which Applicant would have been exposed had he proceeded to trial and been unsuccessful. He agreed that his explanation would have been like saying that Applicant was trading a potential Fourth Amendment issue for a five-year, time-served sentence, and avoiding the possibility that Applicant would again receive a twenty-five-year mandatory sentence. He

testified that Applicant gave him no reason to believe that he did not understand the trade off associated with the plea agreement, and that Applicant indicated to him that, if the solicitor would not meet the terms that were ultimately agreed upon, that Applicant would be willing to go to trial again. He agreed that Applicant wanted a second trial when he was first appointed to represent him but testified that Applicant changed his mind during the representation. He testified that Applicant did not ask him to do anything with respect to the Fourth Amendment issue that he failed to do, and that, if anything was left undone, it was left undone because Applicant accepted the plea agreement and abandoned the idea of a trial. He made it clear to Applicant that he would try the case if Applicant did not plead guilty. As he explained it, his investigation ended when Applicant accepted the plea offer.

All defendants have a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. *Strickland v. Washington*, 466 U.S. 668 (1984); *Lomax v. State*, 379 S.C. 93, 665 S.E.2d 164 (2008). A post-conviction relief applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that his lawyer was constitutionally ineffective, he must prove that the conduct of his lawyer "so undermined the proper functioning of the adversarial process that [that conduct] cannot be relied upon as having produced a just result." *Strickland*, 466 U.S. at 686. In evaluating allegations of ineffective assistance of counsel, the post-conviction relief court applies the two-pronged test outlined in *Strickland*. First, the applicant must prove that the performance of his lawyer was deficient. *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (quoting *Strickland*). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). In order for a post-conviction relief applicant to successfully prove that his defense attorney's

performance was deficient, the applicant must prove "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed by the Sixth Amendment." *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quotation omitted). "The proper measure of counsel's performance remains whether he has provided representation within the range of competence required of attorneys in criminal cases." *Id.* (citations omitted). The "preeminent authority for all" courts when they are considering an applicant's claim of constitutional ineffectiveness requires that the courts be highly deferential to a defense lawyer's performance because:

[I]t is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable A fair assessment of attorney performance requires that every effort be made 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. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.

Id. at 444-45, 334 S.E.2d at 815-16 (quoting *Strickland*). An applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. "The burden of rebutting this presumption rests squarely on the defendant, and it should go without saying that the absence of evidence cannot overcome it. In fact, even if there is reason to think that counsel's conduct was far from exemplary, a court still may not grant relief if the record does not reveal that counsel took an approach that no competent lawyer would have chosen." *Dunn v. Reeves*, 141 S. Ct. 2405, 2410 (2021) (quotation omitted).

Second, the deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for [the lawyer'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. "Representation is an art, and an act or omission that is unprofessional in one case may be sound

of even brilliant in another. Even if a defendant shows that particular errors of counsel were unreasonable, therefore, the defendant must show that they actually had an adverse effect on the defense." *Hill v. Lockhart*, 474 U.S. 52, 58 (1985) (quotation omitted). With respect to a guilty plea counsel, an applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill*, 474 U.S. at 59. A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing: (1) that counsel was deficient and (2) that there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. *Roscoe v. State*, 345 S.C. 16, 546 S.E.2d 417 (2001). The "prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial." *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether a lawyer's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Strickland*, 466 U.S. at 697. Moreover, *Strickland* does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, *Strickland* requires the post-conviction relief applicant to prove that "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified

acts or omissions were outside the wide range of professional competent assistance” required of a criminal defense attorney. *Id.* at 690.

“A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed.” *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977)). “Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea.” *Garren v. State*, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see *Jamison v. State*, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”). The South Carolina Supreme Court has instructed that:

The longstanding 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. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.

State v. Inman, 395 S.C. 539, 556, 720 S.E.2d 31, 40 (2011) (internal quotations and citations omitted). “[A] guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights.” *Jamison*, at 468, 765 S.E.2d at 129 (citations omitted).

In evaluating Applicant’s arguments, this Court must consider the first prong of *Strickland*. A defense attorney “has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Strickland*, 466 U.S. at 691. Thus, “[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any

aggravating evidence introduced by the State.” *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). A defense attorney’s decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel’s judgment. *Simpson v. Moore*, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). Applicant has failed to prove that there was any deficiency in plea counsel’s advice to Applicant. Plea counsel conducted a reasonable investigation into the potential Fourth Amendment issue when representing Applicant. He consulted with trial counsel, an appellate lawyer about the issue, and a criminal defense lawyer who has previously represented Applicant. He read at least some of the transcript from Applicant’s trial, at which the issue had been addressed through argument from the parties and testimony from the relevant witnesses; since the potential Fourth Amendment issue was Applicant’s primary concern and basis for the grant of post-conviction relief to Applicant, it is likely that the portion that plea counsel read would have included material relevant to the issue. He discussed the issue with Applicant extensively and explained to Applicant his two choices—proceed to trial or enter into a plea agreement that took the potential issue into account—and the possible consequences associated with each choice. He did everything with respect to the potential Fourth Amendment issue that Applicant asked him to do, except that he would have stopped investigating the issue once Applicant decided to abandon it by pleading guilty. He and Applicant decided that Applicant would abandon the potential issue in exchange for a plea agreement. This Court finds that all plea counsel’s testimony about his investigation into the potential Fourth Amendment issue and his discussions with Applicant about the potential issue was credible. Under these circumstances, plea counsel’s investigation was reasonable and his decision to stop investigating when Applicant decided to plead guilty was reasonable.

Applicant's testimony leads this Court to conclude that Applicant knew of the potential Fourth Amendment issue at least as early as his trial in January of 2013 because Applicant questioned the veracity of an officer's testimony as that officer testified at trial. Respondent's exhibit one, and Applicant's admission that he sent that letter to the Court of Appeals with the CAD report attached, and with his driver's license number underlined, proves that Applicant knew of the potential Fourth Amendment issue while his direct appeal was ongoing. Applicant knew of the potential Fourth Amendment issue when he was released from prison after Judge Hayes granted his previous application for post-conviction relief because Applicant testified that he began to investigate the issue of the CAD report himself as soon as he was released. He testified that he told plea counsel at the very beginning of the representation that he wanted plea counsel to investigate the CAD report issue. Applicant gave conflicting testimony, though, when he testified that he did not know that "nothing was out there" until he pleaded guilty; Applicant's testimony that he did not know of the CAD report until after he pleaded guilty is not credible. Applicant's testimony that he did not know if his driver's license number, which is on the CAD report, was actually his driver's license number is not credible and conflicts with his own testimony. Applicant has failed to specify what further investigation into the CAD report plea counsel should have done.

This Court turns now to the second prong of *Strickland*. A defense attorney's "[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing *Kibler v. State*, 267 S.C. 250, 227 S.E.2d 199 (1976)). An applicant alleging that his attorney failed to prepare for the case must show how additional preparation would have resulted in a different outcome. *Skeen v. State*, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997). As already discussed, this Court finds that Applicant has failed to prove

that there was any deficiency in plea counsel's performance with respect to his advice to Applicant about the advisability of Applicant's entering into the plea agreement. However, even if plea counsel's performance had been deficient in some way, Applicant has failed to establish that further investigation would have yielded a different outcome if Applicant had gone to trial. Applicant did not establish that any issue with the CAD report and his driver's license number would have proven that the officers lied at trial, or that any evidence against him would have to be suppressed, or that the case against him would have had to be dismissed.

At any rate, Applicant has failed to prove that there is a reasonable likelihood that he would have proceeded to trial instead of pleading guilty had plea counsel done some additional investigation. This Court finds that Applicant's testimony that he would have gone to trial had plea counsel done more investigation is not credible because it is contradicted by plea counsel's credible testimony about his investigation and discussions with Applicant and by Applicant's affirmations at the guilty plea hearing that he was satisfied with plea counsel's representation of him and that plea counsel had done everything that Applicant wanted him to do, and because Applicant agreed before this Court that he pleaded guilty because he was ready to "get it over with." Applicant's attempts to disavow those affirmations now are self-serving and not credible. Applicant's testimony that he would have gone to trial instead of pleading guilty if he had known of the issue before he pleaded guilty is not credible because Applicant admitted in his testimony that he knew of the issue before pleading guilty and because the record independently proves that Applicant knew of the issue before pleading guilty. The evidence before this Court demonstrates that Applicant had full awareness of the potential Fourth Amendment issue in his case, including any aspect of the issue related to the CAD report, and that he chose to waive his right to make that Fourth Amendment challenge again at a second trial in exchange for a favorable plea agreement,

which plea counsel had explained to him would be an agreement accounting for the fact that the potential issue existed in the prosecution's case, should Applicant have decided to go to trial again. Applicant pleaded guilty to get the benefit of the bargain with a full understanding of the consequences of pleading guilty, and his testimony to the contrary is not credible.

This claim is denied and dismissed with prejudice.

Applicant's claim that the unconstitutional search violated his due process rights.

Applicant's claim that the search was unconstitutional is not properly before this Court. Post-conviction relief is not a substitute for any remedy incident to the direct review of a defendant's sentence or conviction. S.C. Code Ann. § 17-27-20(B). "Error in a petitioner's trial which could have been reviewed on appeal may not be asserted for the first time, or reasserted, in PCR proceedings." *Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975); *Cummings v. State*, 274 S.C. 26, 27-28, 260 S.E.2d 187, 188 (1979). Additionally, our Supreme Court recently instructed that a post-conviction relief applicant's standalone constitutional claim was properly before it because that issue was not preserved at trial for direct appellate review by that applicant's criminal defense lawyer. *Fortune v. State*, 428 S.C. 545, 558, 837 S.E.2d 37, 44 (2018). "[A] guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." *Jamison*, at 468, 765 S.E.2d at 129. By pleading guilty, Applicant waived his right to challenge the constitutionality of the officers' actions. If Applicant wanted to make such a challenge, he could have proceeded to trial. Applicant specifically affirmed to Judge McLeod at his guilty plea hearing that he understood that, by pleading guilty, he would be waiving his right to confront the prosecution's evidence and the right to present a defense. As a matter of law, this Claim is dismissed because Applicant has waived his right to make this particular constitutional challenge and because this claim is not properly before this Court as Applicant pleaded guilty.

Nevertheless, Applicant's claim fails on the merits, too. The South Carolina Supreme Court has instructed that:

The longstanding 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. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.

Inman, at 556, 720 S.E.2d at 40. The United States Supreme Court has already identified the rights that a defendant needs to waive for his decision to plead guilty to be one that is voluntary, knowing, and intelligent: (1) the right against compulsory self-incrimination, (2) the right to a jury trial, and (3) the right to confront one's accusers. *Boykin v. Alabama*, 395 U.S. 238, 243 (1969). Additionally, a defendant must be aware of the nature and crucial elements of the offense for which he is being accused, the maximum and minimum possible penalties, and the nature of any constitutional rights being waived by the entry of a guilty plea. *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). It is not required that a court direct a defendant's attention to "each and every constitutional right and obtain a separate waiver for each . . . [A]n enumeration of specific rights waived is not required where the record otherwise reveals affirmative awareness of the consequences of a guilty plea." *State v. Lambert*, 266 S.C. 574, 578-79, 225 S.E.2d 340, 342 (1976) (internal citation omitted). Applicant has failed to prove that he was unaware of these rights; not only that, but he specifically waived them on the record at his guilty plea hearing. To the extent that Applicant is arguing that his guilty pleas were not entered knowingly and voluntarily because he did not know of the potential Fourth Amendment issue, this Court finds that that argument is not credible. To the extent that Applicant is challenging the knowing and voluntary nature of his pleas based upon his alleged belief that plea counsel had not done an inadequate investigation, this Court finds that that argument is not credible. This Court incorporates again all previous findings

in this order above. Applicant, in full understanding of the alternative courses of action open to him, made a knowing, voluntary, and intelligent choice to plead guilty. This claim is denied and dismissed with prejudice.

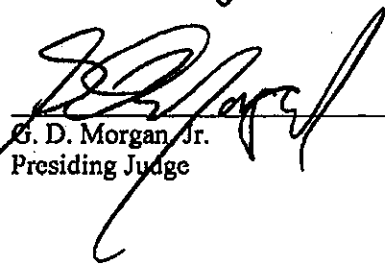
CONCLUSION

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 8th day of May, 2023.


G. D. Morgan, Jr.
Presiding Judge

Greenville, South Carolina

638

DOCKET NO. 2010-GS-23-
AOF

008295

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July

TERM 2010 2011

THE STATE

vs.

ERICK ETON HEWINS

DL SUSPENDS

Did Clerk receive driver's license?

YES _____ NO _____

If no, explain _____

Defendant

WITNESSES

S. Gardner

Greenville Police Department

8/9/2010

ARREST WARRANT NUMBER

M383853

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

0452

TRAFFICKING COCAINE BASE (CRACK
COCAINE)

VIOLATION §44-53-0375

Clerk of Court
Greenville County

OCT 26 2010

RECEIVED

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
TRAFFICKING COCAINE BASE (CRACK COCAINE)

JUL 19 2011

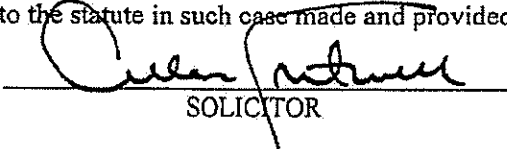
At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That ERICK ETON HEWINS did in Greenville County, on or about the 9th day of August 2010, knowingly sell, manufacture, deliver or bring into the State of South Carolina or did knowingly provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive possession of more than 10 grams of Cocaine Base (Crack Cocaine). This is in violation of §44-53-375 of the South Carolina 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.


SOLICITOR

DOCKET NO. 2010-GS-23-008296
AOF

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July

TERM 2010 2011

THE STATE

vs.

ERICK ETON HEWINS

DL SUSPENDS

Did Clerk receive driver's license?

YES _____ NO _____

If no, explain _____

Defendant

WITNESSES

RE

S. Gardner

Greenville Police Department

8/9/2010

ARREST WARRANT NUMBER

M383854

ACTION OF GRAND JURY

TRUE BILL

John Ed

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

0180

POSSESSION OF A SCHEDULE IV
CONTROLLED SUBSTANCE: CLONAZEPAM

VIOLATION §44-53-0370

Clerk of Court
Greenville County

OCT 26 2010

RECEIVED

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF A SCHEDULE IV CONTROLLED
SUBSTANCE: CLONAZEPAM

JUL 19 2011

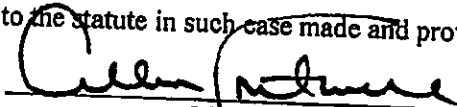
At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That ERICK ETON HEWINS did in Greenville County, on or about the 9th day of August 2010, willfully and unlawfully have in his possession and under his control a quantity of a schedule IV controlled substance, CLONAZEPAM. This is in violation of §44-53-370 of the South Carolina 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.


SOLICITOR