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STATE OF SOUTH CAROLINA
COUNTY OF YORK

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IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Ernest Floyd Jackson, II,

ANGIE M. BRYANT
C.C.C.P. & GS
YORK COUNTY, SC

Case No.: 2022-CP-46-01806

Applicant,

ORDER GRANTING BELATED
APPEAL PURSUANT TO AUSTIN v. STATE

v.

State of South Carolina,

Respondent.

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S.C. SUPREME COURT

This matter came before the court for a hearing on December 5, 2023. The Applicant, Ernest Floyd Jackson, II, was represented by Counsel Michael H. Lifsey. The Respondent, State of South Carolina, was represented by Assistant Attorney General Zachary W. Jones.

PROCEDURAL HISTORY

In November of 2017, Applicant was tried in his absence and convicted of trafficking cocaine base, ten grams or more but less than twenty-eight grams, first offense (2017-GS-46-01962). His sentence was sealed following the conviction. On March 30, 2018, Applicant's sentence was unsealed and Applicant was sentenced to imprisonment for ten years.

On April 11, 2018, Applicant pled guilty to trafficking crack cocaine, ten grams or more but less than twenty-eight grams, second offense (2017-GS-46-01958) for which he received a sentence of seventeen years imprisonment, which was to run concurrent to the ten year sentence he was then currently serving.

Applicant filed his first application for post-conviction relief on February 21, 2019 (2019-CP-46-00632). An evidentiary hearing was held on that application on June 30, 2021. Applicant was represented at that hearing by Counsel Thurmond Brooker. On October 22, 2021,

an order was signed denying the application and dismissing it with prejudice. No appeal was taken from that order of dismissal.

This application for post-conviction relief was filed on June 16, 2022. In this application, Applicant alleges ineffective assistance of counsel by prior PCR counsel in not filing an appeal of the denial of his application for post-conviction relief and requests a hearing pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

FINDINGS OF FACT

Applicant testified on his own behalf. His recitation of the procedural history of the case was generally consistent with the history outlined above. Applicant testified that he requested that an appeal be filed by Mr. Brooker on his behalf if his application was denied at the Circuit Court level. He further testified that he never waived or gave up his right to appeal. Applicant testified that he did not find out that his application for post-conviction relief had been denied until approximately six months after the order had been issued denying the application and that that his purpose in filing this second application was to seek appellate review of the order denying his prior application. This Court finds the testimony of the Applicant credible in these matters.

Attorney and prior counsel for Applicant Thurmond Brooker testified. Mr. Brooker testified that he did not recall the specific conversation concerning an appeal testified to by Applicant but that it was his usual practice to file an appeal of any PCR application that was denied but that he failed to do so in this case. Mr. Brooker further testified that Applicant never indicated to him that he did not want to file an appeal and that he never discussed waiving that right with Applicant. This Court finds the testimony of Mr. Brooker credible in these matters.

At the conclusion of the evidentiary hearing, the State conceded that Applicant had met his burden showing he was entitled to appellate review pursuant to *Austin*.

Based on the testimony of both Applicant and Mr. Brooker, and the concession of the State, this court finds that Applicant requested that the denial of his prior post-conviction relief action be appealed, Applicant did not knowingly and intelligently waive his right to appeal, and that no appeal was ever filed.

CONCLUSIONS OF LAW

PCR applicants have a right to seek appellate review. Section 17-27-100, S.C. Code of Laws, as amended, and *Austin v. State*, 305 S.C. 453, 409 S.E. 2d 395 (1991). A PCR Applicant is entitled to a belated *Austin* appeal if the PCR judge find either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived. *Odom v. State*, 337 S.C. 256, 523 S.E. 2d 753 (1999).

THEREFORE, IT IS ORDERED that Applicant is entitled to appellate review of the dismissal of his prior PCR application, 2019-CP-46-00632.

AND IT IS SO ORDERED this 6 day of December 2023.



GRACE GILCHRIST KNIE
Circuit Court Judge

York, South Carolina

argue Double Jeopardy prevented Applicant from being prosecuted on these charges.¹ At the close of all evidence and after hearing arguments from both sides, the Court directed the parties to submit memoranda of law in support of their respective positions, specifically on the following question:

Applicant claims his guilty plea violated double jeopardy inasmuch as the crack cocaine drug transactions of May 3, May 20, and June 2, 2016 constituted a "single continuous conspiracy" arising out of the same facts and circumstances of his conviction for trafficking crack cocaine on June 2, 2016. Also that trial counsel erroneously informed applicant that a conviction under 2017-GS-46-1958 constituted a third serious or most serious conviction. Applicant urges error based upon a "single continuing conspiracy" referenced above.

Applicant asserts that the five-part multi prong test provided in *State v. Amerson*, 311 SC 316, 428 S.E.2d 821 (1992), for determining whether one or more conspiracies exist should be used to find a continuing conspiracy.

In this case, Applicant was charged with three counts of trafficking in crack cocaine and only one count of conspiracy. Since there is only one count of conspiracy and since the substantive charges of trafficking crack cocaine are not the same offense as conspiracy for double jeopardy purposes, how is the *Amerson* test relevant to the facts of this case?

Additionally, this Court had before it a copy of the York County Clerk of Court's records regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the application and amendment, Respondent's return, the plea transcript, and Applicant's appellate records. After a review of the record and all evidence presented, for the reasons set forth below, this Court finds Applicant has failed to meet his requisite burden of proof and denies relief.

¹ In November 2017, Applicant was convicted of trafficking cocaine base – ten grams or more but less than twenty-eight grams, first offense (2017-GS-46-001962), for which he was sentenced to imprisonment for a period of ten years. He alleges this is the conviction which would have triggered double jeopardy with respect to the trafficking charge that is the subject of this action.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. During its August 2016 term, the York County Grand Jury indicted Applicant for trafficking in crack cocaine – ten grams or more but less than twenty-eight grams (2016-GS-46-02575), and possession of intent to distribute crack cocaine within proximity of a park (2016-GS-46-02576). Additionally, during its May 2017 term, the York County Grand Jury indicted Applicant for possession of crack cocaine with intent to distribute within proximity to a park or school (2017-GS-46-01957), trafficking crack cocaine – ten grams or more but less than twenty-eight grams (2017-GS-46-01958), trafficking crack cocaine – ten grams or more but less than twenty-eight grams (2017-GS-46-01962), distribution of crack cocaine within proximity of a park (2017-GS-46-01964), and conspiracy (2017-GS-46-01963). Applicant was represented by Mindy Lipinski, Esquire. Assistant Solicitor Thomas Matthew Hogge of the Sixteenth Circuit Solicitor's Office prosecuted the case.

In November 2017, Applicant was tried in his absence and convicted of trafficking cocaine base -- ten grams or more but less than twenty-eight grams, first offense (2017-GS-46-001962). His sentence was sealed following his conviction. On March 30, 2018, Applicant's sentence was unsealed, and Applicant was sentenced to imprisonment for a period of ten years.² Applicant filed a timely notice of appeal and retained Thurmond Brooker as appellate counsel. On August 28, 2018, the South Carolina Court of Appeals dismissed Applicant's appeal due to appellate counsel's failure to timely order the transcript as required by South Carolina Appellate Court Rule 207. The remittitur issued on September 25, 2018.

² Applicant is not challenging this conviction or sentence in this PCR action. His application lists only his convictions from his guilty plea, the allegations raised pertain only to the entry of that plea, and Counsel for Applicant expressly waived any allegations regarding the trial.

Meanwhile, on April 11, 2018, Applicant appeared before the Honorable Edgar W. Dickson and pleaded guilty to trafficking crack cocaine – ten grams or more but less than twenty-eight grams, second offense (2017-GS-46-01958), pursuant to a negotiated plea agreement, which included the dismissal of all other charges. Judge Dickson accepted Applicant's guilty plea and sentenced him to the negotiated sentence of seventeen years, which was to run concurrent to the ten-year sentence Applicant was already serving. Applicant received credit for time served for 202 days. Applicant did not appeal his convictions or sentences from his guilty plea.

FACTUAL BASIS SUPPORTING GUILTY PLEA

On May 3, 2016, a confidential informant told Drug Enforcement Unit officers that he could purchase a half of an ounce of crack for six-hundred dollars. GP Tr. 5. The informant set up a buy with Applicant on Chestnut Street in Rock Hill. GP Tr. 5. The informant, Applicant, and Applicant's uncle were present at the residence when Applicant took the informant to the shed and gave him fifteen grams of crack cocaine in exchange for six-hundred dollars. GP Tr. 5-6. The informant later made additional buys from Applicant.³ GP Tr. 6.

ALLEGATIONS

In his current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. Ineffective Assistance of Counsel
 - a. "Trial counsel was ineffective in allowing Defendant to plea to charges with trial court lacked jurisdiction to hear."
2. Prosecutorial Misconduct
 - a. "The State violated applicant's right of due process, where it failed to provide

³ Testimony at the evidentiary hearing established the informant made additional buys from Applicant on May 20, 2016, and June 2, 2016. The June 2 transaction was the subject of the November 2017 trial. The charges arising from the May 20 sale were dismissed as part of Applicant's plea bargain.

applicant with all discovery under Rule 5, Brady and Giglio.”

3. Involuntary Guilty Plea

a. “Applicant plea was not [voluntarily] and [intelligently] given.”

In his amended application, Applicant alleges:

1. Applicant believes that trial counsel was ineffective in pleading defendant to trafficking in methamphetamine because the indictment was for trafficking in crack cocaine. Methamphetamine is a chemically distinctive drug from crack cocaine, no evidence of the existence of methamphetamine and no proof of methamphetamine existed.

2. Trial court lack jurisdiction to sentence defendant to trafficking in methamphetamine because Applicant was never indicted for trafficking in methamphetamine.

3. Appellant (sic) believes that trial counsel was ineffective in pleading Applicant to trafficking in methamphetamine because such plea violated the Double Jeopardy clauses of the constitutions of South Carolina and the United States of America. Specifically, Application’s (sic) guilty plea to trafficking in methamphetamine (indictment allege crack cocaine) on May 3, 2016 was a single continuous conspiracy arising out of the same facts and circumstance of his conviction for Tracking in Cocaine on June 2, 2016.

4. Appellant (sic) believes that his guilty pleas was not knowingly and intelligently give because trail counsel erroneously informed Applicant that a conviction under indictment 2017-gs-46-1958 constituted a third serious or most serious conviction, and that the State would seek life imprisonment if he was convicted at trial. However, Applicant’s conviction under indictment 2017-gs-46-1958 and 2017-gs-46-1962 constituted a single continuance conspiracy and would only have been a second serious or most serious conviction, and would not have subject Application (sic) to a life sentence. But for trial counsel’s erroneous advise/statement of the law, Applicant would not have plead guilty.

Applicant withdrew amended allegations #1 and #2, as well as the Brady claim listed in his original application at the beginning of the evidentiary hearing. Those allegations are therefore dismissed with prejudice.

SUMMARY OF TESTIMONY

Applicant testified he believed it would be a hardship to him if Brooker were not allowed to represent him, and he wanted Brooker to continue as his counsel. He stated he made his decision to plead guilty based on advice from Counsel, not Brooker.

Brooker testified as to his involvement with Applicant during the criminal proceeding. Brooker testified he first became involved when Applicant was trying to decide if he wanted to go to trial or plead guilty in the second case, which is the subject of this action. Brooker testified he was involved in case Applicant decided to proceed to trial. Brooker explained if Applicant had not decided to plead guilty, he would have taken over the representation and asked for a continuance to prepare for trial.

Brooker stated he was present for at least one, possibly two, conversations between Applicant and Counsel as Counsel discussed the pros and cons of pleading guilty. Brooker also testified he spoke to Applicant about what his options were and reemphasized what Counsel said, but he did not give Applicant an independent assessment because he did not have access to discovery. Brooker testified anything he told Applicant about the facts of the case would have been reemphasizing what Counsel said as he had heard what Counsel explained to Applicant during at least one meeting. Brooker further testified, although Applicant asked Brooker for advice regarding the decision to plead guilty or pursue a trial, Brooker stated he did not advise Applicant because he told Applicant he could not perform an independent evaluation of case. Brooker further testified he could not recall if he told Counsel about any conversations between himself and Applicant outside of Counsel's presence.

Brooker testified he believed he told Applicant that if the information provided to him by Counsel was accurate regarding a third strike, the law says Applicant would be subject to potential life imprisonment. Brooker stated he would have instructed Applicant as to what the law was but that he could not tell Applicant how it applied to Applicant's situation. Brooker testified he did not recall if he and Applicant had any discussions regarding the applicability of double jeopardy to Applicant's case. Brooker acknowledged he was aware Applicant was

concerned with avoiding a potential life sentence and stated he believed it was one of the biggest motivating factors in Applicant's decision whether to plead guilty.

Counsel testified she was involved in Applicant's case from the very beginning and stayed involved for quite some time. She testified she visited with Applicant almost immediately after receiving the case. Counsel testified the State initially extended a plea offer before the trial on the first charge. She explained that she drew up a document outlining all of Applicant's charge and potential penalties, which she asked him to sign, but he refused. Counsel explained the first charge eventually went forward as a trial in Applicant's absence, and she had at least one conversation with Applicant while he was on the run, in which she explained he had been convicted on some charges but acquitted on others, his sentenced had been sealed, and he needed to turn himself in.

Counsel acknowledged Applicant informed her he was looking to retain counsel, and she asked him to have whoever he retained call her. Counsel testified she spoke to Brooker and tried to give him a clear picture of the chain of events. Counsel further testified once Applicant had been apprehended, she reached out to Brooker so he could be present for sentencing to allow him to preserve issues for appeal. Counsel recalled the three of them first had a group meeting and discussed what to do from there, but since they did not know Applicant's sentence at that time, the discussion was primarily prospective and theoretical. Counsel testified she had an idea of what the State's new offer would be on the second set of charges, and they also spoke about whether to accept the new plea agreement.

Counsel testified that throughout the time leading up the plea, Applicant would reference conversations he had with Brooker. Counsel explained she felt that Brooker's advice was not necessarily conflicting with hers, but that she and Brooker used different terms, so she arranged a

second meeting where everyone could be together and Brooker could give Applicant advice. Counsel testified Brooker met with Applicant independently after the second group meeting, and Brooker reached out to her to set up the solo meeting between Brooker and her client. She stated she was aware Applicant and Brooker were continuing to talk by phone because Applicant would reference what Brooker said to him.

Counsel testified the issues Brooker was working on were embedded within the issue of whether Applicant should plead guilty to the second charge. Counsel explained, from Applicant's perspective, he had been convicted at trial, and he wanted Brooker to handle the appeal and try to undermine the trial, but Applicant was also concerned about forfeiting any additional rights by pleading guilty. Counsel testified Applicant also wanted to understand what would happen if he did not plead guilty, so the issues were interconnected in Applicant's mind. Counsel stated this case had a unique procedural history, and the solicitors were not letting the second set of charges go because they wanted Applicant to receive additional time, so that was a complicating factor in deciding how to handle the case.

Counsel further testified she has always been a trial attorney and has not handled many appeals or PCRs, so she deferred to Brooker to give Applicant advice on those collateral attacks. Counsel also explained that because Brooker was paid and she is a public defender, she felt what Brooker said carried more weight with Applicant, and she felt they both needed to be in the room to give Applicant dual advice. Counsel testified she believed if Brooker had told Applicant the plea would affect the appellate outcome regarding the trial, Applicant would have chosen to go to trial. She testified Applicant only agreed to plead guilty because he had a first strike from 2008 plus the trial strike, and both attorneys were concerned with the possibility he would receive a life sentence. Counsel testified Applicant relied heavily on both her and Brooker, and

she believed that if Brooker had told Applicant he should go to trial, Applicant would have. Counsel also testified she asked Applicant if he needed more time to talk to Brooker before they went forward with the plea hearing.

Next, Counsel testified the charge at issue in this case was trafficking in crack cocaine in violation of section 44-53-375(C) of the South Carolina Code. Counsel testified she received documents in discovery from the York County Drug Enforcement Unit, including a report⁴ which outlines three drug distributions on May 3, 2016, May 20, 2016, and June 2, 2016. Counsel explained the June 2 sale was the subject of the trial; the May 3 sale was the subject of the plea; and the State dismissed the charges related to the May 20 event.

Counsel reviewed the report, and stated she did not remember another man, Dennis Watkins, known as Peanut, participating in any of the transactions, other than being present at the house where they took place. Counsel stated the confidential informant had grown up with the Jackson family and had seen Applicant around. Counsel further explained the informant knew Peanut could make an introduction between him and Applicant, who was known as Black, because Applicant would not sell to him without an introduction. Counsel explained the full background is not apparent from the videotapes of the sales, but text messages indicated a relationship eventually developed to the point that the informant and Applicant were talking by themselves. Counsel explained when you watch the videos, you could see other people in front of the house where the transactions took place, including Peanut, just hanging out and talking to the informant, and Applicant would sometimes arrive later, but Peanut never participated in the sales themselves. Counsel testified even if Peanut made the introduction for the first transaction, it is not on the video, although she agreed it is mentioned in the report.

⁴ Applicant's Exhibit 1.

Counsel further agreed the discovery suggested Peanut might have known what was going on, and she and Applicant talked about why he was not charged and whether he could be implicated. Counsel explained his exact role was not clear, but on the videotapes, the drugs and money never passed through Peanut, and she did not think a defense involving Peanut was going to succeed in getting Applicant acquitted. Counsel explained she believed in order for Peanut to be charged as a conspirator, he would have to know he was making the introduction for the purpose of engaging in a drug conspiracy, although she agreed the transactions did not necessarily have to pass through him in order for him to be implicated. Counsel stated Peanut had a history with the police, but he essentially just sat outside all day and was occasionally a source of information for officers. Counsel acknowledged Peanut was at the house during the first transaction, but she testified he did not participate other than being present, and she did not have any knowledge of when he made the introduction between Applicant and the informant.

Counsel testified Applicant was concerned about why Peanut was not charged and thought maybe Peanut had set him up. Counsel explained she told Applicant that even if Peanut had been charged, it would not exonerate Applicant because of the text messages setting up and discussing the buys. Counsel testified Applicant always believed the entire operation was a set up because of a previous unsuccessful murder prosecution, and he believed the police were out to get him. Counsel testified Applicant wanted her to flesh out whether Peanut might have been involved, but she was never able to do so. Counsel further testified she explained to Applicant that Peanut was not going to come into court and say he was the one in the shed instead.

Counsel further testified the defense team talked to Peanut, and he did not want anything to do with them. Counsel stated for each sale there were text messages between Applicant and the informant discussing how much the informant wanted to buy and how much Applicant had

available, and those messages did not go through Peanut in any way. Counsel also explained when the informant got the house, he did not, for example, have Peanut make a call and then Applicant would show up. Counsel testified Peanut was just outside hanging around because that is what he did every day. She testified she thought the informant and Applicant knew of each other, and Peanut may have vouched for the informant, but that was the extent of his involvement.

Counsel testified the second transaction on Friday, May 20, was initiated after the informant met with officers and was searched and provided with funds. Counsel stated Peanut was also present in the yard of the house during this transaction, but the video clearly showed he was not in the shed when the actual sale took place, and the sale did not take place in front of him. Counsel further explained the way the second sale played out, stating the video showed the informant arriving at the house and standing outside with Peanut when Applicant drove up. Counsel explained that while the wording of the report suggests Peanut was present for the second transaction, her recollection was that the actual sales always happened in the shed behind the house, and Peanut was never on videotape anywhere other than in the front yard. Counsel explained there were also sometimes other people in the yard as well, including children and other men who walked up to speak to the people in the yard. Counsel testified, however, the only people in the shed on the tapes are Applicant and the informant, and the text messages did not involve Peanut, only, again, Applicant and the informant.

Counsel testified the third transaction took place on June 2, 2016, and again the informant met with officers, was searched and received money, then left and drove to the house. Peanut was there when the informant arrived, then Applicant showed up. Counsel explained, again, while Peanut was present in the yard with Applicant and the informant, she did not recall him

being present when the money or drug exchange occurred, and it did not happen there in the yard. Counsel explained this was a big sale, and law enforcement had gotten a significant amount of money cleared for this purchase. Counsel testified her recollection was that the informant gave Applicant the money, then Applicant left to go get the drugs from somewhere else and was gone a very long time, leaving the informant and Peanut in the yard talking. Counsel explained when Applicant came back, he and the informant either went into the shed or behind the house for the actual exchange of drugs.

Then, Counsel explained, after the big sale on June 2, officers conducted a traffic stop and found another ten-to-fourteen grams in Applicant's car. They then interviewed Applicant and his girlfriend, who was also in the car, and searched Applicant's apartment where more drugs were found tucked inside a man's shoe. Counsel explained, at the trial, the State dropped the charges related to the drugs found at the apartment, but proceeded on the drugs found during the traffic stop. Counsel testified the jury "split the baby" on the charges at trial.

Counsel explained Applicant pleaded guilty to charges arising from the events of May 3, the first sale. She testified the video from that date was better than the video from the May 20 transaction, where you could not see Applicant's face as much or as often. She recalled the State believed two of the three sales were very clear as to who was involved. She testified the State dropped the charges from May 20, and Applicant pleaded guilty to the others.

Counsel agreed all three transactions took place within about thirty days, and all happened at the same place. Counsel further agreed Applicant, the informant, and Peanut, along with other people, were present at some point during all three transactions. Counsel also agreed all three sales occurred in a similar format or sequence. Counsel testified Applicant was convicted of trafficking at trial for the June 2 transaction and was also charged with trafficking

related to the May 3 sale. Counsel testified she believed the charges from the May 20 sale were only distribution charges because it did not meet the requisite weight, but she agreed all of the charges arose under the same statute.

Counsel testified she was not specifically aware of the Amerson case, but she was familiar with the five-pronged test to determine whether the State can charge separate incidents or if they must be charged together. Counsel testified, however, the allegation in this case was not that there was a conspiracy, particularly not with Peanut. Counsel acknowledged Applicant was originally charged with conspiracy, but she explained the conspirator would have been whoever Applicant obtained the drugs from when he left the scene during the June 2 buy.

Counsel explained Applicant was convicted at a trial in his absence for the charges arising from June 2, and the plea was related to a transaction that took place thirty days prior to the June sale. Counsel agreed both indictments⁵ charged a violation of section 44-53-375(C). Counsel reemphasized Peanut was not involved in the transactions and stated it was routine to have separate trials for separate transactions. She testified she understood Applicant's argument, but she feared it might also allow the State to stack the weights of different transactions, resulting in a situation in which Applicant or other defendants might win a battle but ultimately lose the war. Counsel testified she never seriously considered making the argument, although she and Applicant discussed why the State was allowed to pursue each transaction separately and his perceived unfairness of that situation. Counsel testified they also talked about trying to identify Applicant's sources, but he was either not willing to give them up or could not give sufficient information.

⁵ Applicant's Exhibit 2.

Counsel also testified she and Applicant discussed double jeopardy because Applicant thought the situation was so unfair. Counsel testified she had seen the State pursue separate convictions like this before and noted Brooker never brought up the double jeopardy issue when the three of them discussed what Applicant should do. Counsel testified she discussed with Applicant the fact that the jury obviously had issues with the State's case in the first trial, and there was a chance a second jury would also, but the overwhelming concern was that if the defense did not prevail, Applicant was facing a life sentence.

Counsel testified it was a complicated situation, which is why she brought Brooker into meet with them, to discuss what issues Applicant might waive if he pleaded guilty. Counsel testified she felt it was somewhat unfair how the State had "cornered" Applicant, but she explained the State also originally offered him a largely global deal and opined he might have have had an argument for less time before the case ended up on the trial docket. Counsel testified her recollection was the best offer Applicant received was either a range of ten-to-fifteen years or a cap of seventeen years, but Applicant refused it.

On cross-examination, Counsel clarified the charges stemmed from three separate sales. Applicant pleaded guilty to one, was convicted at trial of one, and the State dismissed the other. Counsel testified the charges from May 3 included trafficking – 10 to 28 grams and distribution; the May 20 charges included distribution and distribution with proximity; and the June 2 charges included another proximity count, two counts of trafficking, one count of distribution, and one count of conspiracy. Counsel explained the single charge from May 3 was sufficient to meet the weight for trafficking. For the June 2 transaction, Counsel stated the two counts arose from the sale of fourteen grams to the informant and the additional fourteen grams law enforcement found in Applicant's car. Counsel testified the total combined weight of the drugs involved on June 2

was well over twenty-eight grams. Counsel further stated the weight each count was based on was sufficient to meet the minimum for trafficking, and the conspiracy charge, along with one count of trafficking, was dropped prior to the start of the trial.

Assistant Solicitor Thomas Matthew Hogge testified he prosecuted all three of the cases against Applicant. Hogge testified law enforcement determined the initial charges, and he dropped the conspiracy charge due to lack of evidence once he received and reviewed the file. Hogge testified the State's theory for both the plea and the trial was based on the weight of the transactions, not a conspiracy, and the jury was not charged on conspiracy during the trial. Hogge testified he specifically remembered arguing to the jury regarding the significant amount of drugs.

Hogge further testified to his recollection of the videotapes of the buys. Hogge stated Peanut was always present at the house, but he was never involved in the actual transactions, which never occurred in the front yard. Hogge testified the videos only showed Applicant and the informant. Hogge also testified, during the June 2 video, specifically, it was clear Peanut was unaware of the exact nature of the transaction until he and the informant were talking while the informant was waiting for Applicant to return.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has heard the testimony and evidence presented at the evidentiary hearing, observed the witnesses and evaluated their credibility, considered the arguments of counsel, and weighed these factors accordingly in its discussion below. Further, this Court has reviewed the Clerk of Court records regarding the subject conviction, the appellate records, and Applicant's original and amended applications, as well as the plea transcript. This Court finds the combined record from the criminal case and the testimony and evidence presented the evidentiary hearing

establishes Applicant received effective assistance of counsel, and relief should be denied and this application dismissed with prejudiced. Set forth below are the relevant findings of fact and conclusion of law as required by section 17-27-80 of the South Carolina Code of Laws:

Standard of Review

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove “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 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel’s performance was deficient. Id. Under this prong, the court measures an attorney’s performance by its “reasonableness under professional norms.” Id. (quoting Strickland, 466 U.S. at 688 (1984)). Second, counsel’s deficient performance must have 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.” Id. at 117-18, 386 S.E.2d at 625. An applicant who pleads guilty with the advice of counsel may collaterally attack the plea only by showing (1)

counsel was ineffective and (2) 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, 20, 546 S.E.2d 417, 419 (2001) (citing Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994); Hill v. Lockhart, 474 U.S. 52 (1985)). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Lockhart, 474 U.S. at 56.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

This Court finds Applicant has failed to prove his plea counsel's performance was deficient in any way, nor was Applicant prejudiced by her performance. Counsel met with Applicant and reviewed with him the evidence and discovery in the case, as well as Applicant's version of the facts and possible defenses. This Court finds Applicant ultimately chose to plead guilty freely and voluntarily and with the advice of competent counsel in order to accept a favorable bargain from the State and avoid the possibility of a sentence of life without parole.

Allegations of Ineffective Assistance of Counsel for Failing to Raise Double Jeopardy as a Defense Leading to Applicant's Involuntary Guilty Plea

Applicant argues his plea counsel was constitutionally ineffective for failing to advise Applicant the plea violated the Double Jeopardy Clause because the various drug sales for which he was indicted constituted a single continuing conspiracy for trafficking in cocaine, and thus his

guilty plea under indictment 2017-GS-1958 was involuntary. In support of this argument, Applicant cites the five-part test for determining whether a defendant engaged in a single conspiracy or multiple conspiracies as set forth in Amerson shows the three drug buys were part of a single conspiracy. State v. Amerson, 311 S.C. 316, 319-20, 428 S.E.2d 871, 873 (1993) (“The factors considered are (1) the time periods covered by the alleged conspiracies; (2) the places where the conspiracies are alleged to have occurred; (3) the persons charged as conspirators; (4) the overt acts alleged to have been committed in furtherance of the conspiracies, or any other descriptions of the offenses charged which indicate the nature and scope of the activities being prosecuted; and (5) the substantive statutes alleged to have been violated.”). Thus, Applicant argues the guilty plea entered for the May 3 sale after Applicant had been convicted at trial for the June 2 sale violated the Double Jeopardy clause. However, Applicant was convicted of two counts of the substantive offense of trafficking, not conspiracy, and in any event, the sole count of conspiracy charged against Applicant was dismissed. Thus, this Court finds Amerson is wholly inapplicable, Applicant’s convictions do not violate the Double Jeopardy clause, and relief should be denied because Applicant plead guilty freely and voluntarily.

Amerson is Inapplicable to Applicant’s Case and Double Jeopardy is not a Defense

This Court finds Amerson is inapplicable to Applicant’s case, and therefore, Applicant’s convictions do not violate the Double Jeopardy Clause. Accordingly, the Court also finds Counsel was not constitutionally ineffective in failing to advise Applicant of double jeopardy as a defense.

It is axiomatic that “a conspiracy to commit a crime is a separate offense from the crime itself.” United States v. Felix, 503 U.S. 378, 391 (1992). Thus, the State can prosecute the same

defendant for the conspiracy and other separate, overt acts the defendant undertakes in furtherance of that conspiracy without running afoul of double jeopardy. In South Carolina, the State can prosecute conspiracy in several ways – the Code contains a general drug conspiracy offense (44-53-420), and proof of a conspiracy can also be used to prove the substantive offense of trafficking crack cocaine (44-53-375). Thus, under section 44-53-375, conspiracy to traffic crack cocaine *is* trafficking. As the Supreme Court stated in State v. Raffaldt,

trafficking may be accomplished by a variety of criminal acts, to wit:

- knowingly selling, manufacturing, cultivating, delivering, purchasing, or bringing ten grams or more of cocaine (or any mixtures containing cocaine) into this State; or
- providing financial assistance or otherwise aiding, abetting, attempting; or
- conspiring to sell, manufacture, cultivate, deliver, purchase, or bring ten grams or more of cocaine (or any mixtures containing cocaine) into this State; or
- knowingly having actual or constructive possession or knowingly attempting to become in actual or constructive possession of ten grams or more of cocaine (or any mixtures containing cocaine).

It is the amount of cocaine, rather than the criminal act, which triggers the trafficking statute, and distinguishes trafficking from distribution and simple possession.

318 S.C. 110, 117, 456 S.E.2d 390, 394 (1995).

The State can also, of course, prosecute a defendant for multiple, discrete substantive trafficking offenses without the need to allege or prove a conspiracy. That is what ultimately happened in Applicant's case. Although Applicant was initially charged with both conspiracy under section 44-53-420, in addition to three distinct, substantive trafficking offenses under 44-53-375, the State declined to prosecute the conspiracy and dismissed that charge specifically because, as the solicitor credibly testified, he could not prove an agreement between Applicant and any other person. See State v. Dasher, 278 S.C. 454, 455, 298 S.E.2d 215, 216 (1982) ("The gravamen of the offense of conspiracy is the agreement or combination.").

Instead, the solicitor credibly testified the State's theory of proof for trafficking in both cases was based on the weight of the drugs Applicant sold to the informant in each controlled transaction, and the jury in Applicant's trial on the June 2 sale was not instructed on the law of conspiracy. Moreover, both indictments are labeled "Trafficking Crack Cocaine," and the corresponding arrest warrant for the May 3 indictment -- the subject of the guilty plea actually at issue here -- describes the offense as the distribution of fifteen grams of crack cocaine to another person during a controlled buy. Further, the only mention of conspiracy in the text of either the May 3 or June 2 indictment is the alternative phrasing of the trafficking statute, which states a person commits the offense of "trafficking in crack cocaine" if the person:

knowingly sells, manufactures, delivers, purchases, or brings into this State, *or* who provides financial assistance *or* otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver, purchase, or bring into this State, *or* who is knowingly in actual or constructive possession *or* who knowingly attempts to become in actual or constructive possession of ten grams or more... cocaine base. . . .

S.C. Code § 44-53-375(C) (emphasis added). As discussed below, the Court finds this statutory language alone does not transmute the charge from a substantive offense into a conspiracy offense.

Thus, the Court finds Applicant's case is more analogous to State v. Gordon, as argued by Respondent, rather than Amerson. In Amerson, the defendant was charged with two counts of conspiracy to traffic marijuana as part of a four-year enterprise importing marijuana from Texas to South Carolina. 311 S.C. at 320, 428 S.E.2d at 473-74. While Amerson was charged with two counts of conspiracy -- one for pre-1990 conduct, and one for post-1990 conduct -- the evidence the State sought to introduce to prove each charge was the same proof of the ongoing conspiracy. Id. at 317-18, 428 S.E.2d at 872. The trial court applied a five-part, "totality of the circumstances" test to determine if the conduct charged in the indictments constituted a single

conspiracy or multiple conspiracies, ultimately dismissing the second indictment on the basis of a double jeopardy violation. Id. at 319-20, 428 S.E.2d at 873. In a similar case, decided the same day, declining to find a double jeopardy violation, then-Justice Toal explained:

Under South Carolina law, the crime of conspiracy is complete when the agreement is reached. No overt act in furtherance of the conspiracy need be proven. . . . It is a completely separate offense from the substantive offenses which are the objects of the conspiracy. . . . *Thus, the conduct to be proven is the agreement. Accordingly...* “in conspiracy cases the plea of former jeopardy will prevail where it can be shown that the subsequent prosecution *rests solely upon the same agreement that was involved in the former prosecution. . . .*”

State v. Wilson, 311 S.C. 382, 390-91, 429 S.E.2d 453, 458 (1993) (Toal, J., concurring), abrogated by on other grounds by State v. Easler, 327 S.C. 121, 489 S.E.2d 617 (1997) (internal citations omitted) (emphasis added).

On the other hand, in Gordon, the defendant was first tried and convicted in 1997 for trafficking crack cocaine on September 21-23, 1996, under section 44-53-375(C). 356 S.C. 143, 146-47, 588 S.E.2d 105, 107 (2003). He was then later indicted in 2000 and tried in 2001, for trafficking crack cocaine on September 27, 1996, also under section 44-53-375(C). Id. Gordon argued double jeopardy prevented the 2001 prosecution under the theory that the events giving rise to the 1997 trafficking conviction were “part of a continuing course of conduct” and a conspiracy that continued through the events alleged in the 2001 prosecution. Id.

However, the South Carolina Supreme Court affirmed the trial judge’s refusal to quash the second indictment on the ground of double jeopardy, finding the 1997 conviction was “clearly a prosecution for the substantive offense of trafficking.” Id. at 150, 588 S.E.2d at 108.

Among other things, the Court pointed to the proof offered at the 1997 trial:

[O]n September 23, 1996, police were investigating Tommy Rhinehart, a suspected drug dealer. Rhinehart left his home and went down an alley toward Gordon’s home, which was 50-75 yards away. When Rhinehart returned, police executed a search warrant on his home and discovered two bags of crack cocaine,

and a pill bottle also containing crack. Rhinehart decided to cooperate with police and told them he had gotten the crack from Gordon. Rhinehart testified Gordon had given him two bags of crack, on Sat. Sept. 21, 1996, in the alley between their homes. Rhinehart sold that crack between Saturday and Monday, and paid Gordon \$500.00 to pay for it on Monday (Sep. 23rd), at which time Gordon gave him two more bags.

Id. at 150, 588 S.E.2d at 108-09.

Gordon's indictment, unlike Applicant's, omitted the "or conspires" phrase included in section 44-53-375(C). Id. at 149-50, 588 S.E.2d at 108. However, the trial judge included the "conspires" language in the jury instructions given at trial, which Gordon argued was proof he was tried for conspiracy. Id. at 150, 588 S.E.2d at 108. The Supreme Court addressed this issue, writing:

Gordon's basic contention is that, because the word "conspires" was included in the judge's charge covering the trafficking statute, § 44-53-375(C), his 1997 trial was essentially rendered a "conspiracy" trial. We disagree. As noted previously, Gordon was not indicted for conspiracy, and the jury was **not** charged on the law of conspiracy at the 1997 trial. Simply because the trial court instructed the jury the language of the trafficking statute did not thereby transform his trafficking trial into one for conspiracy.

Id. at 151, 588 S.E.2d at 109 (emphasis in original).

Similarly, in this case, Applicant was never tried on the conspiracy charge specifically because the State did not have any evidence of an agreement or cooperation between Applicant and another person.⁶ Although the language of section 44-53-375(C) allows proof of the

⁶ Applicant argues the investigator's reports supports Applicant's contention that this was a conspiracy charge, essentially asserting Applicant's uncle, who goes by the nickname Peanut, was an unindicted co-conspirator as all of the transactions took place at his house, and he introduced the informant to Applicant. However, as both the solicitor and Counsel repeatedly and credibly testified, all three controlled buys were video recorded, and Peanut was never present for the actual exchange of drugs for money. Moreover, both testified text messages between Applicant and the informant show Peanut was not included in arranging about the buys.

substantive offense by presenting evidence of a conspiracy, that was not done in Applicant's case; the State's theory in the May 3 charge to which Applicant pleaded guilty was based entirely on the weight of the drugs sold to the informant.⁷ Moreover, this Court finds the evidence in both of Applicant's cases as described by both Counsel and Hogge – namely, recordings of two separate controlled drug buys – is, as in Gordon, proof of separate and distinct acts which each constituted the substantive offense of trafficking.

Because Applicant was not charged with nor tried for two conspiracy offenses, but rather with substantive trafficking offenses, this Court finds Amerson does not apply to his case. For this exact reason, the Supreme Court in Gordon explicitly distinguished Amerson from the facts of Gordon's case, calling Gordon's reliance on Amerson "misplaced." Id. at 151 n.7, 588 S.E.2d at 109 n.7. Under Applicant's reasoning, so long as Applicant agreed with Peanut or any other person to deal drugs, and Applicant continued to make sales without a substantial break, only the first sale could be prosecuted because the remaining sales would simply be part of the ongoing conspiracy. The Court agrees with Respondent that this is clearly not the intent of Amerson. Rather, it is meant to be applied in the narrow circumstance where the State seeks to prove an agreement as the completed crime of conspiracy. In that instance, if the State pursues multiple

Mere association with another who committed a crime does not make that person an accomplice or a co-conspirator to the guilty perpetrator, nor does mere presence at the scene of the crime make a person an accomplice or a co-conspirator. State v. Kelsey, 331 S.C. 50, 76, 502 S.E.2d 63, 77 (1998). While the State might have initially investigated Applicant and Peanut for a conspiracy, ultimately the State was unable to prove such a conspiracy existed, dismissed that charge, and instead prosecuted Applicant for two counts of the substantive offense of trafficking by weight.

⁷ Similarly, the Court finds the solicitor credibly testified his theory on the June 2 count, which went to trial, was also based solely on weight, and he argued to the jury they should convict Applicant of trafficking because he possessed "a lot of drugs." The solicitor also testified the judge in that case did not charge the jury on the law of conspiracy in that case. Regardless, because Applicant's conviction on the May 3 indictment at issue here was clearly for the substantive offense, Amerson still would not apply, no matter the basis for the June 2 conviction obtained at trial.

counts, the State must prove separate and distinct agreements, as it did in Wilson, discussed above, wherein the defendants were convicted of two separate conspiracy offenses -- one for trafficking cocaine and one for trafficking marijuana. 311 S.C. at 385, 429 S.E.2d at 455 (finding the State did not “seek to prove the same conduct in both cases since a different controlled substance was the subject of the prosecution in each case”).

In any event, the Court finds the factual basis of the plea at issue here was based solely on the weight of the drugs Applicant sold in the May 3 transaction. GP Tr. p. 5. There was no evidence of a conspiracy or agreement between Applicant and any other person in connection with the May 3 sale resulting in Applicant’s guilty plea; thus, it is not a conspiracy conviction. Because Applicant was never charged with nor convicted of even a single conspiracy offense, let alone more than one, this Court finds Amerson is wholly inapplicable to this case. Accordingly, the Court further finds double jeopardy does not apply to these facts because Applicant’s convictions are for separate violations of the substantive offense of trafficking in crack cocaine.

Therefore, Applicant’s constitutional rights were not violated by the plea to the May 3 count, nor was plea counsel ineffective for failing to raise double jeopardy as a defense. This Court therefore denies relief as to this allegation and dismisses it with prejudice.

Applicant’s Guilty Plea Was Freely and Voluntarily Entered

Applicant argues his guilty plea was not freely and voluntarily entered because Counsel “erroneously informed Applicant that a conviction under indictment 2017-gs-46-1958 constituted a third serious or most serious conviction, and that the State would seek life imprisonment if he was convicted at trial,” on the basis that the conviction would count only as a single strike if it arose from a single continuing conspiracy. As discussed above, this Court finds Applicant’s conviction at issue here was a conviction for the substantive offense of trafficking,

not conspiracy, and therefore, the Court also finds Counsel's advice regarding the number of strikes and Applicant's potential sentencing liability was not deficient. Since Counsel's advice was not deficient, that cannot be a basis for finding Applicant's guilty plea was involuntarily entered. Because Counsel gave the correct advice, and in conjunction with this Court's review of the plea hearing record, this Court finds Applicant's guilty plea was freely and voluntarily entered, and this allegation shall be dismissed with prejudice.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." Dalton, 376 S.C. at 138, 654 S.E.2d at 874 (quoting Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)).

"In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Id. at 138-39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)). Respondent submits the transcript reflects that the guilty plea was knowingly and voluntarily

entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, [an Applicant's] right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Statements made during a guilty plea should be considered conclusive, unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975), overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir. 1985).

To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. Brady v. United States, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. Id. at 755. However, "[i]t is also well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment." United States v. Cox, 464 F.2d 937, 942 (6th Cir. 1972) (citing Brady, 397 U.S. 742). Many factors other than the facts may legitimately influence a decision to plead guilty, such as reduction of stress on a defendant and his or her family, the removal of uncertain consequences, and reduction of actual sentencing exposure. See McMann v. Richardson, 397 U.S. 759, 768-69 (1970) (acknowledging the validity of guilty pleas in "cases where the defendant has his own reasons for pleading guilty wholly aside from the strength of the case against him"); Wicker v. State, 310 S.C. 8, 425 S.E.2d 25 (1992) ("[A]lthough petitioner pled guilty to avoid a possible death sentence, the plea was entered with knowledge of the sentences attendant to the guilty plea and so was knowing and voluntary."); Cf. Bordenkircher v. Hayes, 434 U.S. 357, 364 (1978) (pointing out that the imposition of the difficult choice between going

to trial and pleading guilty is an inevitable—and permissible—attribute of any legitimate system which tolerates and encourages the negotiation of pleas).

This Court finds Applicant has presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing. Counsel explained to the plea court that she had reviewed all of the evidence and discovery with Applicant, including the videos of the controlled sales. She also informed the plea court she had discussed with Applicant the applicability of the strike system and the fact that this is considered a violent and serious offense. Counsel relayed to the plea court her discussions with Applicant concerning the solicitor's expressed intent to seek life without parole had Applicant elected to pursue a trial on this charge. Counsel stated the potential for life without parole was a significant factor in her discussions with Applicant about how to resolve this case, and she informed the plea court of her belief Applicant understood their discussions and the seriousness of the charges. GP Tr. pp. 7-8.

Applicant agreed he and Counsel had discussed these issues, and he told the plea court he understood their discussions. He also stated Counsel had answered all of his questions, and he was satisfied with her representation. GP Tr. pp. 10-11. More importantly, Applicant told the plea court he was pleading guilty freely and voluntarily, without any promises, threats, or coercion, because he believed doing so was in his best interest. GP Tr. p. 12.

Accordingly, this Court finds Applicant's guilty plea was freely and voluntarily entered after appropriate consultation with Counsel, who gave Applicant the correct advice regarding available defenses, the strike system as applied to Applicant, and Applicant's sentencing exposure at trial. Relief is therefore denied, and this allegation is dismissed with prejudice.

CONCLUSION


Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations which would require this Court to grant relief. Counsel was not deficient in any manner, nor was Applicant prejudiced by her representation. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR (providing the appropriate procedure to perfect an appeal). Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Further, Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for the appropriate procedures for appealing a judgment in a PCR action.

IT IS THEREFORE ORDERED:

1. the Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall be remanded to the custody of the Respondent.

AND IT IS SO ORDERED.



R. LAWTON MCINTOSH
Presiding Judge
Sixteenth Judicial Circuit

9-22, 2021