

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Dec 13 2022

S.C. SUPREME COURT

Certiorari to Charleston County

Honorable Jennifer B. McCoy, Circuit Court Judge

MARK LORENZO BLAKE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2022-000714

APPENDIX

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Appellate Defender

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Attorney General

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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED JUNE 14-15, 2016.....	1
FINAL BRIEF OF APPELLANT	392
FINAL BRIEF OF RESPONDENT	411
<u>STATE V. BLAKE</u> , 2018-UP-111 (Ct. App. Filed March 4, 2018)	438
PETITION FOR REHEARING.....	440
ORDER DENYING PETITION FOR REHEARING.....	454
PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS	455
RETURN TO PETITION FOR WRIT OF CERTIORARI	474
ORDER DENYING PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS	500
APPLICATION FOR POST-CONVICTION RELIEF	501
RETURN.....	514
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED DECEMBER 9, 2021	521
ORDER OF DISMISSAL.....	569
INDICTMENT.....	600
SENTENCE SHEET.....	602

FORM 5

STATE OF SOUTH CAROLINA)

2019-CP-10-3294
IN THE COURT OF COMMON PLEASCounty of CHARLESTON)MARK L. BLAKE, JR. (948687)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF2019 JUN 18 PM 3:35
JULIE J. ARMSTRONG
CLERK OF COURT
FILEDINSTRUCTIONS - 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 MCCORMICK CORRECTIONAL INSTITUTION
- (CCDC) -
2. Name and location of Court which imposed sentence THE 9TH CIRCUIT COURT
CLARKE COURT, CHARLESTON COUNTY
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2013-65-1002-229

- (b) _____
 (c) _____

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

- (a) JUNE 15, 2016 - SENTENCED TO (12) THREVE YRS
 (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?

YES

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

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

- i. S.P. COURT OF APPEALS
 ii. S.P. SUPREME COURT
 iii. _____

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

- i. SENTENCE AFFIRMED
 ii. APPEAL DENIED
 iii. _____

(c) the date of each such result:

- i. MARCH 14, 2018
 ii. NOVEMBER 9, 2018
 iii. _____

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

- i. 2018-UP-111
 ii. 2018-000967
 iii. _____

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

- (a) _____

- (b) _____
 (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 (a) INEFFECTIVE ASSISTANCE OF COUNSEL
 (b) _____
 (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 (a) (SEE ATTACHED BRIEF IN SUPPORT)
 (b) _____
 (c) _____
12. Prior to this application have you filed with respect to this conviction: N/A
 (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 "yes" to any part of (12), list with respect to each petition, motion or application:
 (a) the specific nature thereof:
 i. _____
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. _____
 ii. _____
 iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

NO

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) NON-APPELLATE REVIEW CLAIM(S)
 (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? NO

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

(a) the name and address of each attorney who represented you:

i. JACOB T. KING - PUBLIC DEFENDER;
101 MEETING ST 8TH FLOOR, CHARLESTON, SC 29401
 ii. KATHLEEN H. HADGINS - APPELLATE DEFENDER;
1330 LADY OF THE LAKE, SUITE 401 COLUMBIA, SC 29201
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. TRIAL
 ii. DIRECT APPEAL
 iii. _____

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

(SEE ATTACHED BRIEF) - CONCLUSION

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of CHARLESTON)

I, MARK N. BLAKE, JR, 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.

0326

SWORN to and subscribed before me this 12
day of June, 2019.

B. O. W. Deman (L.S.)
Notary Public

My Commission Expires: 9.30.26

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

I, MARK L. BLAKE, JR., 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.

Mark L. Blake, Jr.
Applicant

SWORN or affirmed to and subscribed before me this
12 day of June, 2019

B. D. Waldman
Notary Public

My Commission Expires: 9.30.26

Applicant contends that both his conviction and sentence was in violation of both his Federal and State Constitutional rights.

The applicant is asserting his 4th, 5th, 6th, 8th and 14th U.S. Constitution along with his State Const. Art.1, § 10, Art.1, § 11, Art.1, § 3, Art.1, § 14 and Art.1, § 15 were violated which sets forth the prima facie violation of applicant's Constitutional rights.

Grounds are Constitutional diversions. The fundamental defects alleged are standards that require establishment of complete miscarriage of justice and an omission consistent with the rudimentary demand of fair and impartial procedure.

The following acts and omissions by counsel constituted ineffective assistance of counsel.

Law & Argument

10. (A) Applicant was denied the right to effective assistance of counsel guaranteed by both U.S. Constitutional Amendments 6 and 14, S.C. Const. Art. 1, §§ 3, and 14 during both the preparational phase and course of applicant's trial.

11. (A) Supporting fact(s): Trial counsel's performance during both the preparational phase and course of trial was both inadequate and prejudicial; See, Strickland v. Washington; 466 U.S. 668 (1984) counsel's omission to: Arise and challenge both State and Federal Constitutional issues within pretrial. See, Sikes v. State; 448 S.E. 2d 560 (1994).

(1.) Dismiss indictment; pursuant to: S.C. Const. Art. 5, § 4 Supreme court's holding in State v. Langford 400 S.C. 421; 735 S.E. 2d 471 (2012).

When applicant was arrested on the 22ND day of February, 2013 and was then after tried (40) months later; which was an (8) month unreasonable, excessive, and deliberate delay by the State and further breach of applicants said State Constitutional right.

(2.) Suppress evidence pursuant to: U.S. Constitutional Amendment 4, S.C. Const. Art.1, § 10 appellate court's holding in State v. Philpot; 317 S.C. 458 ;454 S.E. 2d 905 (1995).

The veracity of the confidential informant was never established within search warrant affidavit; (see attached Exhibit-A) nor was the confidential informant ever disclosed to the applicant; U.S. Constitutional Amendment 6, S.C. Const. Art.1, § 14 (confrontation clause, right to fair trial). Due to the denial of pretrial motion to disclose confidential informant, dated March 21, 2016.

Furthermore, applicant both briefed and discussed with trial counsel the (2) said pretrial motions to be arisen within applicant's trial for both trial strategy and relief purpose(s) from either the circuit or appellate court.

Subsequently, appellate counsel both specified and confirmed within applicant's Writ of Certiorari that trial council omitted challenging the validity of the search warrant; (See: attached Exhibit-B) Which corroborates applicant's said claim and therefore brought continuing damages to applicant's appellate claim.

Additionally, applicant also went into brief detail informing counsel the detriment of not arising said pretrial motions.

Therefore, counsel's conduct was deliberate gross negligence and misconduct. "beyond a minimum" contrary to S.C. Const. Art. 3, § 27.

Conclusion

As to the conclusion applicant establishes legal standing of ineffective assistance of counsel and it would be a denial of applicant's due process of law; U.S. Constitutional Amendments 5th and 14th, S.C. Const. Art. 1, § 3 to deprive applicants cognizable Constitutional claim(s).

Applicant also reserves the right to amend at a later date prior and after appointed counsel pursuant to: Rule. 15 SCRPC.

"Wherefore." For the foregoing reason(s) the court should reverse both conviction and sentence and remand for a new trial on behalf of the applicant.

Respectfully Submitted;

/s/ 
 Mark L. Blake Jr. #368687
 386 Redemption Way
 McCormick, S.C. 29899

EXHIBIT A

**REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES**

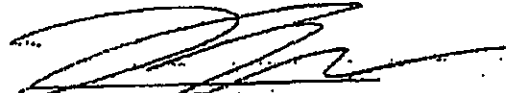
Within the past seventy-two hours, Metro Detectives conducted a controlled purchase of heroin from one Mark Lorenzo BLAKE Jr. utilizing a confidential informant. The confidential informant was searched prior to and after the transaction, given prerecorded metro currency and equipped with a wireless audio transmitter and video recorder. The confidential informant was followed to and from the above described location by Detectives Miller and Moniz who maintained visual contact with the informant throughout the operation. Additionally, affiant Detective Waddell established a point of visual surveillance of the referenced location prior to the controlled purchase being conducted. The confidential informant was observed entering the referenced residence, also confirmed by video recording, at which time the confidential informant purchased a quantity of brown powder substance from Mark Lorenzo BLAKE Jr in the presence of a black female who also resides at the residence, identified as Domonique Renata JETER. The brown powder substance was surrendered to Detectives and subsequently tested presumptive for heroin. It shall be noted, as a result of an ongoing investigation into the distribution of heroin, multiple controlled purchases have been conducted where it was determined that both BLAKE and JETER have distributed heroin to multiple confidential informants from within the residence, and additional locations. Arrest warrants for BLAKE and JETER have been obtained for the distribution of heroin. In addition, continued surveillance has determined this location to be the primary residence for both subjects BLAKE and JETER. It is the affiant's belief as a trained drug investigator that the above sought property is being stored and facilitated at the above mentioned premises.

Sworn to and subscribed before me on
this the 19th day of February, 2013.

Signature of Judge

(L.S.)

1348


Affiant

Address: 3505 Pinehaven Drive
N. Charleston, SC 29405
Phone: (843) 554-4700

EXHIBIT B

2. The Court of Appeals erred in finding that the trial judge did not err in refusing to suppress evidence obtained as a result of an unreasonable search of Petitioner's home.

Prior to trial Petitioner moved to suppress evidence found inside his home during the execution of a search warrant. (R. p. 13, lines 3-25). Petitioner did not challenge the validity of the search warrant. Instead, Petitioner argued that the search was conducted unreasonably. The State called three officers from the Charleston County Sheriff's Office to testify as to how the search warrant was executed. (R. pp. 14-61). Petitioner also testified at the suppression hearing. (R. pp. 69-82). Counsel for Petitioner argued that the excessive force used during the felony traffic stop in connection with the officers' actions during the search of Petitioner's home, including their failure to provide Petitioner with a copy of the search warrant, rendered the execution of the search warrant unreasonable. (R. pp. 83- 86; p. 91, line 11 – p. 92, lines 1-8, line 24 – p. 93, line 1). Petitioner moved to suppress all evidence obtained as a result to the search warrant based on both the United States Constitution and the South Carolina Constitution. (R. p. 85, line 22 – p. 86, lines 1-4).

The judge denied the motion to suppress. (R. pp. 93-98). The judge found that the officers were justified in the manner in which they conducted the felony stop and later search of Petitioner's home. (R. p. 95, line 18 – p. 96, lines 1-7). With regard to the failure to provide Petitioner with a copy of the search warrant the judge stated, "I don't find that the failure to give a warrant – a copy of the warrant to Mr. Blake, put it in his hands when he was handcuffed behind his back as I understand it is enough in and of itself to deem the search unreasonable within the meaning of the Fourth Amendment." (R. p. 96, lines 8-13).

During trial Petitioner objected, based on the pre-trial suppression motion, to photos taken at the home on the day of the search (R. p. 121, line 14; p. 169, lines 4-6; p. 182, lines 9-

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Mark Blake #3868687,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No.: 2019-CP-10-3294

RETURN

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2019 OCT 18 PM 3:08

FILED

The State (Respondent), making its Return to the application for Post-Conviction Relief (PCR) filed on June 18, 2019, would respectfully show this Court:

I. Procedural History

Mark Blake (Applicant) is presently confined pursuant to orders of the Charleston County Clerk of Court. In June 2013, the Charleston County Grand Jury indicted Applicant for Possession With Intent to Distribute Heroin (2013-GS-10-02729).

Jason King and Tamara Van Pala, Esquires, represented Applicant. Assistant Solicitors Stephanie Linger and Lauren Frierson, Esquires, prosecuted the case. On June 14-15, 2016, Applicant proceeded to trial before the Honorable D. Garrison Hill. Judge Hill sentenced Applicant to twelve years imprisonment with credit for time served. Applicant filed his notice of appeal on June 26, 2016. The Remittitur was issued on November 21, 2018.

II. Current Application

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

1. (A) Supporting fact(s): Trial counsel's performance during both the preparational phase and course of trial was both inadequate and prejudicial; See. Strickland v. Washington:

466 U.S. 668 (1984) counsel's omission to: Arise and challenge both State and Federal Constitutional issues within pretrial. See. *Sikes v. State*: 448 S.E. 2d 560 (1994).

2. Dismiss indictment; pursuant to: S.C. Const. Art. 5, § 4 Supreme court's holding in *State v. Laneford* 400 S.C. 421; 735 S.E. 2d 471 (2012). When applicant was arrested on the 22nd day of February, 2013 and was then after tried (40) months later; which was an (8) month unreasonable, excessive, and deliberate delay by the State and further breach of applicants said State Constitutional right.
3. Suppress evidence pursuant to: U.S. Constitutional Amendment 4, S.C. Const. Art. 1, § 10 appellate court's holding in *State v. Philpot* 317 S.C. 458 ;454 S.E. 2d 905 (1995). The veracity of the confidential informant was never established within search warrant affidavit; (see attached Exhibit-A) nor was the confidential informant ever disclosed to the applicant; U.S. Constitutional Amendment 6, S.C. Const. Art. 1, § 14 (confrontation clause, right to fair trial). Due to the denial of pretrial motion to disclose confidential informant, dated March 21, 2016.

In relief sought, Applicant is seeking: "reverse both conviction and sentence and remand for a new trial on behalf of the applicant."

Attached to this Return and incorporated by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, the records from the South Carolina Department of Corrections, the trial transcript, the appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials. Applicant alleges he received ineffective assistance of counsel. Nevertheless, 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).

III. Ineffective Assistance of Counsel

In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in his or her application. See *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. 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, 686 (1984); Butler, 286 S.C. at 442, 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 that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See Strickland, 466 U.S. at 669. Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (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, 466 U.S. at 688). 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 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. See Hill v. Lockhart, 474 U.S. 52, 52 (1985).

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record, a question of fact is raised which can only be resolved by an evidentiary hearing. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983). Because Applicant's claims of ineffective assistance of counsel are

not conclusively refuted by the record, then Respondent would request an evidentiary hearing to fully resolve this issue.

IV. Failure to Investigate

Counsel has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Strickland v. Washington, 466 U.S. 668, 691, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). 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). Moreover, counsel'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). “[A]t a minimum, counsel has the duty to interview potential witnesses and to make an independent **634 investigation of the facts and circumstances of the case.” Ard v. Catoe, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). “[C]ounsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions....” Strickland, 466 U.S. at 691, 104 S.Ct. 2052. “[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct.” Id. at 690, 104 S.Ct. 2052. Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633–34 (Ct. App. 2014). Respondent submits that Applicant cannot meet his burden in regards to any claims that counsel was ineffective for failure to investigate.

V. State's Assertion and Reservation of Rights

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. 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. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

VI. Request for Evidentiary Hearing

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Conclusion

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

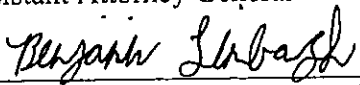
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BENJAMIN HUNTER LIMBAUGH
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

October 16, 2019

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Mark Blake, #368687

Applicant,

v.

State of South Carolina

Respondent,

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2019-CP-10-3294

Affidavit of Service by Mail

BY

JULIE J. ARMSSTRONG
CLERK OF COURT

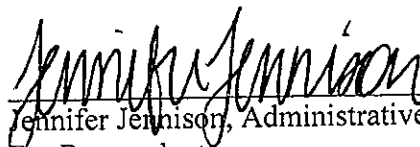
2019 OCT 18 PM 3:09

FILED

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

Christopher L. Murphy, Esquire
Murphy Law Offices, LLC
234 Seven Farms Drive, Suite 128
Charleston, SC 29492

DATED this 16th day of October, 2019.


Jennifer Jennison, Administrative Coordinator
For Respondent

1 STATE OF SOUTH CAROLINA) IN THE COURT
2) OF COMMON PLEAS
3) OF THE NINTH
4) JUDICIAL CIRCUIT
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COUNTY OF CHARLESTON)
MARK LORENZO BLAKE,)
Petitioner,) TRANSCRIPT OF RECORD
vs.) 2019-CP-10-03294
THE STATE OF SOUTH CAROLINA,)
Respondent.)

December 9, 2021
Charleston, South Carolina

B E F O R E:

HONORABLE JENNIFER B. McCOY, Judge.

A P P E A R A N C E S

CHRISTOPHER L. MURPHY, ESQUIRE
For Petitioner

LAUREN T. MIMS, ATTORNEY GENERAL
For Respondent

SAMANTHA J. WEIDAUER, ATTORNEY GENERAL
For Respondent

Proceedings recorded by DCRP,
Digital Courtroom Recorder Project

Transcribed by:
Julie A. Cendroski,
Circuit Court Reporter III
Seventh Judicial Circuit

I N D E X

<u>WITNESS</u>	<u>PAGE</u>
ANNOUNCEMENT OF CASE By Ms. Weidauer	4
<u>MARK LORENZO BLAKE</u>	
DIRECT EXAMINATION By Mr. Murphy	7
CROSS-EXAMINATION By Ms. Weidauer	17
<u>JASON KING</u>	
DIRECT EXAMINATION By Mr. Murphy	20
CROSS-EXAMINATION By Ms. Weidauer	34
<u>MARK LORENZO BLAKE</u>	
REPLY EXAMINATION By Mr. Murphy	41
FINAL SUMMARY By Mr. Murphy	45
FINAL SUMMARY By Ms. Weidauer	45
COURT TAKES UNDER ADVISEMENT	47
CERTIFICATE OF COURT REPORTER	48

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

EXHIBITS

MARKED

ENTERED

NO EXHIBITS PROFFERED

1 MARK LORENZO BLAKE VS. THE STATE OF SOUTH CAROLINA

2 THE COURT: Mr. Blake, welcome.

3 MR. BLAKE: How you doing?

4 THE COURT: All right. I understand we're gonna
5 go forward today on this PCR matter. We have a
6 representative from the solicitor's office -- I mean,
7 excuse me, the AG's office, along with your attorney,
8 Mr. Murphy, with you today. And I'm happy to hear from
9 the AG's office for the background of the case.

10 MS. WEIDAUER: Yes, Your Honor. This is the
11 postconviction relief matter of Blake v. State. For a
12 brief procedural history, in his underlying General
13 Sessions case, Mr. Blake was indicted for possession
14 with intent to distribute Heroin second.

15 On June 14th through 15th of 2016, Applicant
16 proceeded to a jury trial before the Honorable D.
17 Garrison Hill. Applicant was represented by Jason King,
18 who is present in the courtroom today. Applicant was
19 found guilty and Judge Hill sentenced him to 12 years
20 imprisonment.

21 Subsequently, Applicant filed a Notice of Appeal.
22 Appellate defender, Catherine Huggins, perfected the
23 appeal on Applicant's behalf. On March 14th, 2018, the
24 Court of Appeals filed an unpublished opinion of probate
25 applicant's conviction sentence. Applicant's petition

1 for rehearing was denied on April 26th, 2018.

2 Following that, Applicant filed for petition for
3 writ of certiorari on May 25th, 2018. The Supreme Court
4 denied the petition on November 9th of 2018, and
5 Applicant filed his application for postconviction
6 relief on June 18 of 2019, and this hearing follows.

7 THE COURT: All right.

8 MS. WEIDAUER: And at this time, we would just
9 ask Applicant's counsel to place all issues he intends
10 to proceed on, on the record.

11 THE COURT: Perfect.

12 MR. MURPHY: Thank you, Your Honor. May it
13 please the Court? Chris Murphy on behalf of Mark Blake.
14 We are going to be raising five specific issues.

15 THE COURT: All right.

16 MR. MURPHY: The first issue, and it will require
17 testimony from Mr. Blake, is going to be the failure to
18 explain the strike system to him.

19 THE COURT: Okay.

20 MR. MURPHY: The second issue is failure to
21 discuss ramifications for taking the stand or not taking
22 the stand in his defense. And the third issue is the
23 failure to ask for a simple possession charge.

24 The next two issues we are going to rest on the
25 record, and that is the failure to object and move for a

1 mistrial. Specifically, on the record at page 217,
2 lines 11 through 13, one of the witnesses talked about
3 Mr. Blake selling drugs out of the place. There was no
4 objection and no motion for a mistrial.

5 This line of questioning or these comments were
6 previously objected to and sustained at page 143, lines
7 17 to 20. So we're going to rest on that record for
8 failure to object to that, to that comment.

9 The second or the final issue we're gonna rest on
10 the record is that the witnesses discussed Mr. Blake's
11 behavior during the search warrant without objection.
12 Specifically, that goes to the transcript, pages 158,
13 lines 15 to 23, and page 213, line 14 to 20. We think
14 that was improper and prejudicial error. So those final
15 two issues we rest on the record. There will be no
16 testimony from us on that -- on those grounds.

17 THE COURT: All right. Okay. You can call your
18 first witness then.

19 MR. MURPHY: Yeah. We would call Mr. Blake to
20 the stand.

21 (Witness comes forward.)

22 THE COURT: Yeah, he's been sworn.

23 MR. MURPHY: Okay.

24 THE COURT: Yeah, just come around. All right.

25 MR. MURPHY: Just have a seat.

DIRECT EXAMINATION OF MARK BLAKE BY MR. MURPHY

1 THE COURT: Get comfortable and get the
2 microphone close to you. There you go.

3 MARK LORENZO BLAKE,
4 having previously been sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. MURPHY:

7 Q. Mr. Blake, I'm gonna ask you several questions,
8 and I just want you to answer honestly, okay, sir?

9 A. Okay.

10 Q. All right. You were represented in this
11 underlying charge by Mr. Jason King?

12 A. Yes, sir, I was.

13 Q. And this is the charge dealing with Heroin that
14 was found in the refrigerator, correct?

15 A. That's correct.

16 Q. And there was a bowl of Heroin that was found in
17 the refrigerator, correct? A bowl of Heroin, sir?

18 A. Yeah. I believe it was, yeah.

19 Q. Now, at the time of discharge, you had several
20 other serious charges pending, didn't you?

21 A. Can you repeat that?

22 Q. Did you have other serious charges pending or
23 other charges pending?

24 A. At the time I, I did.

25 Q. Now, do you have more than one lawyer or was Mr.

1 King your only attorney?

2 A. At that current time?

3 Q. Yes.

4 A. I think at that current time I was out on bond
5 and I think Jim Smiley was my attorney at the time.

6 Q. All right. Now, we're just talking about the
7 main attorney who represented you in this trial at
8 issue.

9 A. Oh, okay. Yes, that's correct.

10 Q. And did you have any other counsel other than Mr.
11 King at trial?

12 A. No. Maybe, I think, aside, maybe like -- I think
13 it was Van Palin [phonetic], maybe something like that.

14 Q. Now, the first issue I want to talk about is the
15 strike system. And I want you to go back to the time of
16 this trial. Did you understand what the strike system
17 was?

18 A. Thoroughly, no, at the time I didn't.

19 Q. Okay. When you say no thoroughly, what does that
20 mean?

21 A. It's, you know, you hear it, as a lot of people
22 do, but they don't understand, you know, thoroughly
23 understand the terms of the three strikes.

24 Q. Now, did you know that there was a difference
25 with regard to two strikes versus three strikes?

DIRECT EXAMINATION OF MARK BLAKE BY MR. MURPHY

1 A. No, I didn't.

2 Q. Did you talk to Mr. King about the strike system
3 or did he talk to you about the strike system?

4 A. Not that I can recall at that time, no.

5 Q. Now, the reason why this is important is, do you
6 have an understanding or did you have an understanding
7 of whether these current charges constituted a strike?

8 A. Current charges as far as?

9 Q. This Heroin charge that you had that you're here
10 for today.

11 A. Like I said, it was so long ago, I can't even
12 recall.

13 Q. And afterwards, did you have any conversation
14 with Mr. King about the strike system and how it would
15 apply to you?

16 A. Well, yeah. After that, that first conviction,
17 we touched bases after that, dealing with it being a
18 strike. And, I guess, at that point I would have two
19 more. After that, I mean, yeah.

20 Q. But in terms of before you decided to go to
21 trial, did you have any understanding as to whether or
22 not this would be a strike?

23 A. No, not at the time. We was just, you know,
24 discussing a defense a little bit. And, you know, we
25 wasn't really, you know?

1 Q. I don't know exactly, so that's what I'm trying
2 to do.

3 A. Well, I mean, yeah, at the time, like I say, we
4 were just discussing some of this defense. And, you
5 know, we wasn't touching bases on strikes.

6 Q. Now, you mentioned the defenses. What defenses
7 were you discussing with Mr. King?

8 A. Well, Mr. King ran it by me that at the time one
9 of the defenses was gonna be Dominique Jeter at the
10 time. She was gonna be a witness on my behalf. She
11 ended up pleading the Fifth, so that was one defense on
12 my behalf. I think the other one was -- I, I can't
13 really recall all of it.

14 Q. All right. And so, when I read your trial
15 transcript, I don't see any defense that you put up. Do
16 you recall speaking to Mr. King about any defense, or
17 what was your trial strategy?

18 A. Well, I believe, we was going with the -- Mr.
19 King was going with the trial strategy of, you know,
20 just basically the drugs were planted and altered [sic]
21 in my apartment. The reason being that visually watched
22 me leave my apartment, followed me two miles and then
23 they did -- executed, I think, a felony traffic stop.
24 And then he took me back to my house, and they was
25 already searching my house at that time without me even

DIRECT EXAMINATION OF MARK BLAKE BY MR. MURPHY

1 being present. So, that was kind of like ---

2 Q. So your defense was that the drugs were planted?

3 A. Correct.

4 Q. Now, what evidence did you have to show who
5 planted the drugs or how they were planted?

6 A. Well, the only evidence we really had, I think,
7 to kind of, yo know, credibility. Not -- we didn't have
8 direct evidence. We're dealing with credibility. I
9 think it was Frank Waddell, he was the lead detective at
10 the time. At the time he had a civil case going on and
11 it was dealing with a lot of untruthfulness on his
12 behalf.

13 And I think a guy ended up getting shot and he
14 lied and said that the guy shot at them. And then SLED
15 did an investigation, and come to find out that the guy
16 didn't even fire his gun and they shot the guy. So we
17 was really, I guess, banking on the -- that the -- the
18 credibility.

19 Q. Was this credibility or this hearing about the
20 drugs were planted, your idea or was that Mr. King's
21 idea?

22 A. Umm.

23 Q. I guess let me ask you this, did you tell Mr.
24 King they're my drugs or did you say they're not mine at
25 all?

1 A. Right. As far as I'm concerned, when I left the
2 house, man, there was no drugs in my house, man.

3 Q. All right. So you're saying there were no drugs
4 in the house at all?

5 A. Correct.

6 Q. And so you denied any possession or any knowledge
7 of the drugs?

8 A. Correct. And they wanted me to plead guilty to
9 the drugs in order for me to avoid my then co-defendant,
10 for her not to basically catch charges. And they
11 brought her back in my house and she wasn't even on my
12 lease at the time. So, I mean, like it was just like a
13 crazy situation, man.

14 Q. All right. So, you have one witness that we said
15 pled the Fifth.

16 A. Right.

17 Q. And if they weren't your drugs, do you have any
18 idea whose those drugs they were?

19 A. No, I don't.

20 Q. Was Mr. King able to find out whose drugs they
21 were at all?

22 A. No.

23 Q. Now, you also mentioned an offer. What type of
24 offer were you getting?

25 A. Plea offer?

DIRECT EXAMINATION OF MARK BLAKE BY MR. MURPHY

1 Q. An offer to plead guilty.

2 A. I think it was, if I can recall, I think it was
3 Stephanie Linder. I think she wanted to -- I think I
4 had a total of like maybe 10 charges at the time, and I
5 think she wanted me to -- I think she was gonna drop
6 like maybe three, if I'm not mistaken, and pled out to
7 like seven open.

8 Q. Okay. And in terms of how much time, did you
9 accept that?

10 A. No. I, I did not get like -- I mean, it was just
11 open pleas to all individual charges. So, I mean, it
12 was -- I mean, and she even stated to the judge at a
13 hearing, a pretrial hearing that, you know, she didn't
14 really offer me anything. You know, she was just like
15 if you plead guilty to these seven charges, you can
16 avoid federal indictment. That was the only offer.

17 Q. And you're currently incarcerated for other
18 strike system life without parole; is that correct?

19 A. That's correct.

20 Q. Now, during this trial that we're talking about
21 today, one of the allegations is that your lawyer did
22 not ask for a simple possession charge.

23 A. Right, he didn't.

24 Q. Okay. And did you discuss with him that
25 decision, or what was the decision as to why he did not

1 ask for that?

2 A. He mentioned it to me. And, you know, me being,
3 you know, I guess, not thoroughly knowing, you know, I'm
4 not an attorney, so I'm just going off my feelings and
5 emotions at this point. So he mentioned it to me and I
6 was like well, you know, I'm not guilty at all on none
7 of these charges. You know, I don't want to have to
8 plead out to a less included charge. So, I mean like,
9 you know, he mentioned it to me though.

10 Q. Okay. But to be fair, if you were denying the
11 drugs were yours --

12 A. Right.

13 Q. -- a simple possession charge wouldn't have made
14 sense, right?

15 A. It would have made sense?

16 Q. It would not have.

17 A. It would not have made sense, no.

18 Q. So, that gets me back to now, did you take the
19 stand on your behalf?

20 A. I did not.

21 Q. All right. If you're denying the drugs are
22 yours, what evidence did you have to point out that some
23 testimony or something that they were not your drugs?

24 A. I'm sorry, can you, can you repeat that?

25 Q. What evidence did you present to say that these

1 were not your drugs?

2 A. I don't believe we, Mr. King, put up any
3 evidence, if I'm not mistaken.

4 Q. So I don't think so either. And my question is,
5 other than you testifying, getting up on the stand and
6 saying these are not my drugs --

7 A. Yeah.

8 Q. -- it sounds like he didn't have anything else to
9 go forward with.

10 A. Right. He just wanted -- and now I remember, he
11 wanted the -- he didn't want to present evidence
12 because, I think, probably his trial strategy was he
13 wanted to get the closing argument, I believe.

14 Q. Okay.

15 A. The end of it. The last.

16 Q. Is there any time you said I want to plead
17 guilty, I don't want to do a trial on this?

18 A. No. No.

19 Q. Is there any other errors that you allege Mr.
20 King did, other than what I've mentioned?

21 A. Yeah. He admitted prompting countless
22 objections, you know, countless 404's, countless 403's.
23 And then also, he failed to object -- he failed to
24 prompt a contemporaneous objection regarding trial
25 judge's secondary jury charge dealing with constructive

1 possession.

2 MS. WEIDAUER: Objection. This isn't an
3 allegation raised at the beginning of this hearing.

4 THE COURT: Okay.

5 MS. WEIDAUER: For that one charge of simple
6 possession.

7 THE COURT: All right. Is that right? What was
8 the allegations, generally charges or --

9 MR. MURPHY: This was ---

10 THE COURT: -- was it his still?

11 BY MR. MURPHY:]

12 Q. What was that, sir, that you were saying that --
13 because this was not something that I mentioned in the
14 beginning. But you said there was some constructive
15 charge on possession that you disagree with?

16 A. Right. What happened was, I think it was -- I
17 think the jury -- as a matter of fact, the trial judge
18 charged fully the jury on the elements of the charge,
19 the statute and the nature, constructive possession,
20 actual possession, and everything else. And then at
21 that point, I think, Stephanie Linder had objected to
22 the charge. And she said that the judge had left out a
23 particular, a particular specificity and it was dealing
24 with the way how he worded it. And at that time it was
25 already, you know, he already, you know, highlighted all

CROSS-EXAMINATION OF MARK BLAKE BY MS. WEIDAUER

1 the main elements of the ---

2 Q. What you're saying is the charges were read --

3 A. Right.

4 Q. -- and you took exception to the charge?

5 A. Right. She objected to it. And Mr. King did not
6 object that the judge had already charged the jury
7 thoroughly according to the statutes. And there was no
8 need for him to reach out to the jury again.

9 Q. Okay. So there was no need to pull the jury back
10 out?

11 A. Right. And after that it confused the jury to
12 the point that he had to charge them back, bring them
13 back in and charge them in entirety, so, right.

14 Q. All right. Yes, sir. That would be all I have,
15 thank you.

16 CROSS-EXAMINATION

17 BY MS. WEIDAUER:

18 Q. Good morning. I just have a few questions for
19 you, Mr. Blake. Do you remember the Court -- if you're
20 alleging today that Mr. King didn't tell you, you had
21 the right to take the stand, do you remember the Court
22 reading and explaining to you that you had the
23 opportunity to testify in this case if you wanted to?

24 A. Right. I did, but he was my attorney at the
25 time, so I just went with his defense.

1 Q. But the Court did tell you that that was your
2 sole decision; that your attorney could not make that
3 decision for you?

4 A. Right.

5 Q. That was your decision, correct?

6 A. It was my decision, but I went with his decision.

7 Q. Okay. So you understood that it was ultimately
8 your decision?

9 A. I guess. Yeah, I guess so, yeah.

10 Q. Okay. And you said that you had multiple other
11 charges facing you at this time?

12 A. Yes, ma'am, I did.

13 Q. Do you remember Mr. Blake [sic] discussing
14 strategy with you regarding why you may want to go all
15 or nothing on this charge, why you do not want to plead
16 down to a simple possession charge?

17 A. Can you rephrase that?

18 Q. Sure. Do you remember discussing why you may
19 want to go all or nothing on this charge, why pleading
20 down may actually be detrimental to you?

21 A. Well, I mean, I knew I wasn't, I wasn't guilty
22 and I didn't want to -- you know, like I said, that was
23 the whole purpose of me going to trial because...

24 Q. So it would have been your ultimate decision to
25 go all in? You didn't want it to be a simple possession

CROSS-EXAMINATION OF MARK BLAKE BY MS. WEIDAUER

1 charge, you wanted to be found not guilty of this
2 charge?

3 A. Right. When he brought it to my attention
4 dealing with a simple possession charge, I'm thinking,
5 you know, this is still -- you know what I'm saying?
6 This is still on my record. This is still a charge, so
7 right.

8 Q. Right. And you understood at that time that
9 should this be on the record, the charges that were to
10 follow would have been worse, you would have had four
11 strikes?

12 A. I mean...

13 Q. It was ultimately your decision that you pled to
14 this charge?

15 A. I mean, my state of mind at that time, I was,
16 like I said, I was, I was inexperienced and I didn't
17 think things, you know, thoroughly through. And, like I
18 said, I just, you know, went to trial and, you know,
19 with Jason King and, you know, followed his lead.
20 That's pretty much what happened.

21 MS. WEIDAUER: Okay. No further questions of
22 him.

23 THE COURT: Okay. Any redirect?

24 MR. MURPHY: Nothing, Your Honor.

25 THE COURT: All right. You can call your next

1 witness then.

2 MR. MURPHY: Thank you. We call Mr. Jason King.

3 (Witness comes forward.)

4 THE CLERK: Do you swear or affirm the testimony
5 that you give today will be the whole truth, nothing but
6 the truth so help you God?

7 THE WITNESS: I do.

8 THE CLERK: Thank you. Will you please state
9 your name for the record?

10 THE WITNESS: Jason King.

11 JASON KING,
12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. MURPHY:

15 Q. Okay. And, Jason, you're at the Public
16 Defender's Office in Charleston?

17 A. That's right.

18 Q. And you've been there for a long time?

19 A. I have.

20 Q. And you remember Mr. Blake, right?

21 A. I do.

22 Q. And you represented him for a long time, is that
23 true?

24 A. That's true.

25 Q. Now, this is the Heroin case, right? We refer to

1 it as the Heroin case that we're talking about? You
2 recall trying that matter, correct?

3 A. Yes.

4 Q. And did you hear Mr. Blake say that he denied any
5 possession or knowledge of the drugs in his house?

6 A. That's right.

7 Q. And the trial strategy, as he understood it, is
8 that the drugs were planted somehow?

9 A. Right. Right. That's kind of what I was left
10 with, with the evidence in the case.

11 Q. All right. Now, when you -- did you have any
12 evidence to indicate or to insinuate that those drugs
13 were actually planted there?

14 A. I thought I did. I thought I had some points
15 that I could make. I made a point about overzealous
16 police officers, sort of using an analogy of the war on
17 drugs and how the police officers were acting more like
18 soldiers than police officers and being overzealous in
19 their desire to fight the war on drugs.

20 So I argued the way that he was arrested was, was
21 improper. They allowed him to leave the apartment where
22 the drugs were found and drive his car to where his
23 girlfriend worked. They didn't arrest him outside the
24 apartment. They let him drive all the way over there,
25 which in my argument, would have given them an

1 opportunity to go in the house and plant the drugs.

2 They go into the girlfriend's place of business,
3 take her out, which I think was done, I argued, was done
4 to embarrass her in front of all of her employees, in
5 front of where she worked. So they did a felony traffic
6 stop in front of her place of employment and then
7 brought her out while we don't know what was going on
8 back at his apartment.

9 When he was taken back, he -- all he wanted to
10 see was a copy of the search warrant and they wouldn't
11 give it to him, even though there's a statute that says
12 that they're required to do it. I think it's a crime
13 not to give him a copy of the search warrant, and they
14 wouldn't give it to him. They said they left it -- they
15 arrested him, took him to jail, and then left a copy of
16 the search warrant inside the apartment without ever
17 letting him hold it or touch it or have any access to
18 it.

19 There was a photo -- first, they testified that
20 it was a soft entry of the apartment, which means they
21 said they had a key and they just opened the door and
22 went in, but there were photographs showing that the
23 door had been busted open. So I made a big deal about
24 that and argued that somebody must have -- nobody could
25 say who went in the apartment first. Nobody would say

DIRECT EXAMINATION OF JASON KING BY MR. MURPHY

1 I'm the one who went in first. There was some confusion
2 about that. So, I argued somebody could have busted in
3 that door while they were doing the felony stop away
4 from the house and put the drugs in.

5 They overcharged him. He was charged with
6 trafficking 30 grams and it ended up being about 1 1/2
7 grams, when it was all said and done. So, you know, he
8 swore to a magistrate that Mr. Blake had 30 grams of
9 Heroin and that was far off from being true. That was
10 Waddell.

11 I also had -- Mr. Blake mentioned this. There
12 was an incident where the chief detective in this case
13 at one point was working for Coastal Carolina Police
14 Department, their public safety. And I wasn't allowed
15 to go into this, but I was prepared to go into some,
16 what I thought untruthful statements that he had made
17 regarding that.

18 There was an entry into a home suspected of
19 dealing marijuana at Coastal Carolina. That person had
20 surveillance video, so it showed the police's entry into
21 the home. Agent Waddell told the police that they
22 knocked and announced, although the surveillance video
23 did not show them knocking and announcing. They just
24 immediately went in.

25 Agent Waddell told -- said that they were wearing

1 clearly marked police uniforms. They weren't. They
2 were wearing like all black, sort of like ninja outfits.
3 There was, there was no indication they were police.

4 Agent Waddell said that the person inside shot at
5 them, and then they shot him. And after analyzing that
6 other person's gun, it turns out he didn't shoot them.
7 So I thought there were three lies that Agent Waddell
8 told regarding that separate investigation that I tried
9 to get in. I was not allowed to get into that.

10 I guess maybe separate from that, there was a
11 chain of custody issue where a second chemist had come
12 in, tested the drugs, but they never called the first
13 chemist. It's sort of an unrelated issue that I thought
14 I had.

15 But using, you know, with what I had, this was
16 his apartment. He was the only person on the lease.
17 They had a video of him selling Heroin about six days
18 prior from this apartment to a confidential informant.
19 And, I believe, that video was in the kitchen, where the
20 drugs were eventually found inside the refrigerator.

21 So I've got a big bowl of Heroin inside his
22 refrigerator in his apartment and he says that's not
23 mine. So my choices are for the defense, I blame Jeter,
24 his girlfriend, which he didn't want me to do. And I
25 don't know if that would have gone very well either

DIRECT EXAMINATION OF JASON KING BY MR. MURPHY

1 because there was the video evidence to contradict that.
2 So if I had argued that it was simple possession or, you
3 know, anything less than that, then they were prepared
4 to admit the video of him selling Heroin from the
5 apartment, like six days before.

6 So that's another reason why I couldn't go into
7 this is a simple possession, this is not PWID. In
8 addition, him not saying that. He was not gonna testify
9 that these were my drugs and it was only for personal
10 use. So I felt like the only choice I had were to blame
11 Jeter or the cops planted it.

12 He didn't want me blaming Jeter because that's
13 the mother of his, at least, one child. And I don't
14 know that that would have been any better of a case
15 either because of the video evidence.

16 Q. So you ---

17 A. So cops planting it is not my favorite defense,
18 but it's the only thing I was left to go with in this
19 situation, from what I can tell.

20 Q. And when you talk about the cops planting it, if
21 I understand you, were you trying to allege that the
22 police officers planted these drugs or that somebody
23 else that broke into the house earlier planted the
24 drugs?

25 A. No, the police. The overzealous narcotics

1 officers, was my defense.

2 Q. All right. Now, is that what Mr. Blake wanted
3 you to do, or is that your theory on the case?

4 A. That was, with what he gave me to work with, you
5 know, he's saying these weren't my drugs, there were no
6 drugs there when I left, you know, he's going to pick up
7 Ms. Jeter then, so based on what he says, it wouldn't
8 have been Ms. Jeter's either. That's what I thought I
9 was left with. I didn't have any -- you would argue
10 somebody else went in there and planted it.

11 I had people that I could blame, who I believed
12 were biased and there was some evidence of bias that I
13 could, I could blame them for planting it. It's not a
14 great defense, but it's all that I had.

15 Q. All right. And that's kind of my next question
16 is, you didn't actually have any evidence in the form of
17 testimony or something to indicate that the cops
18 actually planted these drugs?

19 A. No. I think that the photos of the busted door
20 were -- that's what I made the biggest deal out of, I
21 believe, was there was something going on with that.
22 Somebody busted that door open and they were testifying
23 that nobody busted the door open. And nobody knew who
24 went in first and nobody knew who had the keys.

25 Q. And, of course, was there any type of timeline as

1 to when that door was busted open?

2 A. Right. There -- no. There was no way to really
3 establish. Just that there were photos showing a busted
4 door, and they said they did not bust the door in.

5 Q. And so, I know you've tried a lot of cases. I've
6 tried cases with you. Would it be fair to say that
7 going forward on this defense really had no chance of
8 winning?

9 A. Right. I would not have advised him to go to
10 trial on this charge on that defense. No, this was,
11 this was what I had. I had to take this to trial. I
12 had to defend him at trial. He was not willing to plead
13 guilty. I did the best I could with what I had.

14 Q. Right.

15 A. And it was not a good defense. Agent Waddell is
16 not a fan of Jason King after this trial, I'll tell you
17 that. You know, it's not a good defense. The police
18 officers, I was calling them liars. It's a tough
19 defense. A tough act to steer at a trial to develop.
20 And, you know, he didn't like me.

21 Q. Okay.

22 A. We had an encounter outside the courtroom and he
23 was not at all happy. So, it is not something that I --
24 I don't like that defense. If I can avoid it in any way
25 I will but, you know, I had nothing really to work with.

1 Q. And fair enough. Did you explain that to Mr.
2 Blake, that he had no chance of winning this case, so
3 basically no chance of winning?

4 A. Yes. Yes.

5 Q. And did he understand that?

6 A. I believe so. Mr. Blake, he wanted to fight. He
7 wanted to fight all the way. And this was part of a
8 bigger picture. This one case is part of a bigger
9 picture where he was eventually -- this was the first of
10 three strikes. So he eventually went on. He
11 represented himself in the next trial, and he
12 represented himself in the last trial.

13 So he, Mr. Blake, is headstrong. He's
14 intelligent, but he likes to do things his way. If he
15 didn't like what I was doing, he would have told me. So
16 this -- you know, with what I had to work with in
17 talking to him, this is, this is the only defense that I
18 could come up with, the only thing that I could argue.
19 And I definitely encouraged him to plead guilty.

20 The deal was basically if he pled guilty to
21 everything straight up, the State would not seek life
22 without parole. And the consequence being if he does
23 not plead guilty, the solicitor was, I'm gonna strike
24 him out. And that's what she did, one at a time he got
25 three strikes until he got life without parole.

1 Q. And so that's a good segue into the next topic is
2 the strike system. Did you explain the strike system to
3 Mr. Blake at the time?

4 A. I did.

5 Q. Okay. And how many times did you do that,
6 explain it to him?

7 A. I couldn't tell you the exact number.

8 Q. No, I understand that.

9 A. But there were more than one conversations about,
10 you know, telling him that, you know, the State is --
11 you're going to get life without parole. You know, they
12 were all strong cases really.

13 The -- if I can give you a little bit of
14 background on what he had. There was a 2012 trafficking
15 cocaine. That was the first arrest in chronology. It
16 was tried second. He was arrested driving in a car by a
17 highway patrolman, who believed he was driving under the
18 influence, arrested him and there was trafficking weight
19 cocaine inside the car. So that was the first arrest.

20 He had a prior possession of cocaine from 2009.
21 So these -- any drug offenses would be second offenses.
22 That was a trafficking cocaine second offense.

23 Then when he was arrested for this, there were
24 also three other warrants for distribution. He had a
25 distribution of Heroin on December 4th, 2012.

1 Distribution of Heroin on February 16th, 2013. And a
2 distribution of Heroin on January 22nd, 2013.

3 And then after that -- and then shortly after
4 that they executed the search warrant, which is what
5 this case is about, where they found the Heroin in the
6 refrigerator. After bonding out on that, he was
7 arrested for an attempted murder of a police officer for
8 shooting a police officer. So he had all those pending
9 at the time that we began a trial on PWID Heroin second.
10 All those were pending.

11 So, the conversation, you know, it -- for a while
12 there was a conversation of you need to plead guilty.
13 These are all -- these are strong cases, you're gonna
14 get life. He hired -- he had other attorneys that
15 represented him. He had Jim Smiley at one point. He
16 had Eduardo Curry at one point. He had all of us
17 relieved, and then he was represented on everything by
18 Bill Runyan and Ashley Ameika. And then they were
19 relieved. And then it finally came back to me.

20 He told me, you know, Mr. King, they keep trying
21 to get me to plead guilty, I don't want to plead guilty.
22 So at some point I gotta -- I just, I stopped doing it.
23 And I got on his side and I tried my best to do what he
24 wanted, which is to fight. He wanted to fight every
25 case all the way. And I respected that he wanted to do

DIRECT EXAMINATION OF JASON KING BY MR. MURPHY

1 that. It was not my decision.

2 Definitely gave him -- and I'm sure other
3 attorneys gave him the same advice, that that's not the
4 way to go, you're gonna end up getting life, but that's
5 what he chose to do. It definitely was explained to him
6 that there are -- you can be struck out. You can get
7 three strikes and if you get convicted of three of
8 these, you will get life. Any three of those would have
9 given him life.

10 Q. And, finally, for the trial, the Heroin trial
11 that we're here today, you did not ask for a simple
12 possession charge, did you?

13 A. We did not.

14 Q. And was there any reason why you wouldn't expose
15 -- a lot of juries get on that lesser included charge
16 rather than go for the distribution charge.

17 A. Well, Mr. Blake wanted to go all or none, and
18 that's in the transcript because I got it on the record,
19 just to make sure.

20 On page 325 I told the judge: We're not
21 requesting it based on Mr. Blake's desire.

22 The judge said: That's a matter of trial
23 strategy?

24 I said: Yes, Your Honor, I asked Mr. Blake and
25 he wants to go all or nothing and I'll go with his

1 desire.

2 And the Court said: Mr. Blake, is that correct?

3 And he said: That's correct.

4 So, Mr. Blake, one of the reasons he ended up
5 representing himself in the second and third trial is
6 that we would butt heads sometimes. He wanted to do
7 things his way. And in the first case I'm driving and
8 there are certain decisions he gets to make, but certain
9 ones I get to make, but I tried to accommodate him the
10 best I could because, you know, he wanted to do things
11 his way.

12 Should I have overruled that and asked for a
13 lesser included? I don't know. When you look back at
14 the procedural posture of the case, there were all of
15 these other cases that could be tried that were all
16 strikes. So there were still one, two, three, four --
17 five more separate cases that were strikes with him. If
18 we had asked for the lesser included and he had been
19 convicted of possessing Heroin, that puts another drug
20 conviction on his record.

21 Now all these drug offenses are third offenses.
22 So the trafficking now is a trafficking third. He's
23 looking at 25 to 30. And they can still strike him out
24 by trying the -- they try the trafficking cocaine, that
25 gets him 25 and a strike. Anyone with three

1 distributions that they could try would give him a
2 strike, and the attempted murder would give him a third
3 strike.

4 So he still would have been struck out. The
5 distributions have since been dismissed, so you might
6 not know that looking back at the record. They were
7 dismissed right after this trial. I guess because the
8 solicitor realized I don't need to use this informant.
9 I've got -- all I've got to try to do is try the
10 attempted murder now at this point.

11 So, you know, thinking back on it, all or
12 nothing, I don't know if that was a terrible strategy
13 because if he -- I think he still would have gotten
14 life. And what he wanted to do was fight. And if we
15 had won all or nothing in that first case, you know,
16 maybe that would have shown the solicitor that, hey, you
17 know, your cases aren't as strong as you think. Maybe
18 that would have changed something.

19 I don't know, but that was what he wanted to do.
20 And I couldn't think of a strong enough reason to
21 overrule that based on all the future charges that we
22 would have had to have faced that would have eventually
23 given him life without parole.

24 MR. BLAKE: I mean, I've got to stop, man, because
25 I've got to clean this shit up. This is, I've got to

1 clean this up. This is not the right narrative at all.

2 MR. MURPHY: What do you want me to ask him?

3 MR. BLAKE: I mean, there ain't nothing more to
4 ask him. I mean, you're going forward with the issues
5 that you presented, but I think you kind of get ---

6 MR. MURPHY: I think that's all I have of this
7 witness.

8 THE COURT: All right. Any cross-examination of
9 this witness from the State?

10 CROSS-EXAMINATION

11 BY MS. WEIDAUER:

12 Q. Good morning, Mr. King.

13 A. Good morning.

14 Q. A couple things that I wanted to clear up for the
15 record. You said that Mr. Blake was quite intelligent
16 and he could communicate well with you throughout this
17 trial, correct?

18 A. Yes.

19 Q. Okay. So he appeared to understand everything
20 you said to him in all those sessions you had?

21 A. Yes.

22 Q. Okay. And you did explain that strike system,
23 and as you put on the record procedural posture, you
24 believe that quite a few other attorneys did as well?

25 A. Yes. I explained it. And, like I said, I can't

1 imagine that the other, at least Mr. Runyan, didn't
2 bring that up at some point during -- he represented him
3 for about a year -- that he wouldn't have brought that
4 up, that you can get life, these are strikes.

5 Q. Okay. Did you discuss with him his
6 constitutional rights?

7 A. Yes.

8 Q. Okay. And that he would have had the right to
9 take the stand should he wish to do so?

10 A. Yes.

11 Q. Okay. And you remember the judge reading through
12 that on record?

13 A. Yes.

14 Q. Okay. So, though you believe this strategy
15 wasn't a strong one, you thought it was the only
16 strategy at the time?

17 A. Right. Right. I believe the evidence, I
18 thought, was very strong against us. It was maybe
19 overwhelming wouldn't be -- I'll say unfair to
20 categorize the evidence.

21 Q. And Mr. Blake never indicated he wanted to plead
22 guilty?

23 A. That's right, he did not want to plead guilty.

24 Q. Okay. And actually fought you back on that a
25 little bit, you indicated?

1 A. Right. That's a source of tension between not
2 just him and I, but his other lawyers. And it was, like
3 I said, I got on -- it's something I've done over the
4 years. At some point, you know, if there's an
5 opportunity for a plea you bring it up, but at some
6 point you've got to quit harping about a plea if the
7 client doesn't want it. You get on board and try the
8 case. Otherwise then they're not gonna trust you and if
9 you've got to try it, then you've gotta try it.

10 Q. So it's fair to say that he didn't want to plead
11 to this charge, nor to a lesser included charge?

12 A. No.

13 Q. He didn't want to plead at all?

14 A. And they never offered a lesser included, so I
15 guess that's kind of a moot point. But I don't think
16 that he would have, but that, that was never ---

17 Q. But he never asked for it because he didn't want
18 to plead, so it wouldn't have mattered?

19 A. Right.

20 Q. Okay. You made some pretrial motions to suppress
21 evidence as a result of an unreasonable search, correct?

22 A. That's right.

23 Q. Okay. And do you remember at trial the Court
24 found that the arrest search warrant, both the arrest
25 and search warrants were valid and that there was

1 probable cause for this?

2 A. Yes.

3 Q. Okay. You did make a couple of objections
4 regarding the State bringing up defendant selling drugs
5 at this case, correct?

6 A. I did.

7 Q. Okay. And you actually moved for a mistrial at
8 one point?

9 A. Right. I think they had made a comment about
10 selling drugs. And then another comment about him not
11 providing the code to unlock his phone. So I objected
12 to that, and just sort of made a mistrial based on that
13 in the previous reference to selling drugs, and that was
14 denied.

15 Q. Okay. And it was your understanding at the time
16 of trial that should you have objected to them bringing
17 up him selling drugs, they would have just brought
18 forward that evidence with the CI, with the confidential
19 informant, correct?

20 A. If, if I had -- if I had argued that it was
21 simply possession, then the State was prepared to
22 present evidence of distribution that occurred six days
23 prior. So they had agreed not to bring up that charge
24 of distribution, unless I opened the door and they
25 considered me opening the door arguing that he was --

1 that he wasn't distributing, that it was just simple --
2 that it was just possession.

3 Q. And you would stand by that defense, that part of
4 your defense strategy was that, you know, the
5 defendant's behavior during that search warrant kind of
6 fit with your general theme and your general defense
7 strategy, correct?

8 A. Right. When they were making -- testifying at
9 the trial that he was being belligerent and, yeah, that
10 was part of my defense. Yes, of course, he was
11 belligerent. They didn't -- what they did was wrong.
12 What they did to him was wrong, so that was all part of
13 the story I was telling.

14 Q. And, therefore, it would have made sense for him
15 to have been acting that way --

16 A. Right.

17 Q. -- at the time of arrest?

18 A. Right.

19 Q. So you didn't think that testimony coming in was
20 actually harmful to him, it kind of helped edge towards
21 your defense?

22 A. Right. Well, it fit in with my defense and the
23 story I was trying to tell.

24 Q. Okay. And to clarify, he did not want to pin
25 this on his girlfriend that lived there at the time?

CROSS-EXAMINATION OF JASON KING BY MS. WEIDAUER

1 A. Right.

2 Q. And you believe that that most likely wasn't
3 possible with the timeline and facts of the case and
4 what we do?

5 A. Right.

6 Q. Because she was at work?

7 A. Right. I don't know if that would have been any
8 better of a defense, and it would have gotten -- I think
9 it would have gotten ugly with going after the mother of
10 his children. I think at one point in the trial
11 transcript I have her on the stand, she's taking the
12 Fifth, and Mr. Blake just said let's just stop this,
13 which I completely understand. He didn't want to put
14 her through all that.

15 MS. WEIDAUER: Beg the Court's indulgence for
16 one moment.

17 BY MS. WEIDAUER:

18 Q. Do you have a transcript up there with you?

19 A. I do.

20 Q. Okay. Can you turn to page 217 for me?

21 A. Yes, I have it.

22 Q. Lines 11 through 15, would you agree that this
23 testimony you elicit through Ms. Leonard, they are not
24 specifically referring to a specific sale or a specific
25 residence, correct?

1 A. Right. He says sort of in general, in my
2 training experience, this is how they would, especially
3 with the drugs that he was selling, how they would keep
4 those together. He was describing the packaging of the
5 drugs.

6 Q. And Applicant has alleged that you failed to
7 object at that time. Did you have any strategic reason
8 for not objecting at that time or did you feel that your
9 prior objection was sufficient?

10 A. I honestly, I can't, I can't speculate honestly
11 as to why I didn't object. I can't speculate as to why.
12 I honestly don't remember why.

13 MS. WEIDAUER: Okay. Thank you, Your Honor.

14 THE COURT: Uh-huh.

15 MR. MURPHY: Nothing further, Your Honor, of this
16 witness.

17 THE COURT: All right. Any objection to him
18 being released for the remainder of the proceedings?

19 MR. MURPHY: None, Your Honor.

20 MS. WEIDAUER: No, Your Honor.

21 THE COURT: Thank you very much, Mr. King.

22 THE WITNESS: Thank you.

23 MR. MURPHY: And, Your Honor, we would recall Mr.
24 Blake.

25 THE COURT: All right.

REDIRECT OF MARK BLAKE BY MR. MURPHY

1 (Witness comes forward.)

2 MARK LORENZO BLAKE,

3 having been recalled to the stand and previously
4 sworn, testified as follows:

5 REDIRECT EXAMINATION

6 BY MR. MURPHY:

7 Q. Mr. Blake, you're still under oath, sir.

8 A. Okay.

9 Q. You just heard testimony of your attorney, Mr.
10 King?

11 A. I did.

12 Q. And is there anything that is untrue with that
13 testimony?

14 A. I mean, a lot of it's not true. I don't even
15 know where to start. I guess going into the three
16 alleged distribution charges that I've had, I've never,
17 on none of the video, I was not recorded on no video of
18 distributions. I just wanted to clear that up for the
19 record. And that's the main reason why they did not go
20 forward with those charges.

21 Q. All right. So we're here on the Heroin charge?

22 A. Right.

23 Q. But you're saying there was no video of the other
24 charges?

25 A. No. That led up to the search, there was no me

1 in no videos distributing Heroin whatsoever, so I just
2 wanted to clear that up for the record.

3 Dealing with Mr. King's trial strategy of why he
4 didn't object, I guess, to my character, it was kind of
5 like, I guess, a double-edged sword, but I think it -- I
6 think for the most part it was more prejudice came out
7 of that because ---

8 MS. WEIDAUER: Objection; that calls into
9 question his opinion.

10 THE COURT: I'll allow it. It's not giving a
11 legal opinion, it's just stating his opinion. Go ahead.

12 THE WITNESS: Being there at that time, I mean,
13 I'm already, you know, going to trial for drugs. And
14 now it looks like I'm kind of like a, you know, hostile
15 individual. And that's just my every day attitude. So
16 that really damaged me more than it helped.

17 Dealing with, I guess, dealing with the, what is
18 it, the 11(a), 11(a)(7) right there?

19 Q. You're talking about the objection to this
20 bringing the jury back and recharging them?

21 A. Right.

22 Q. Failing to object to a charge.

23 A. Right. Like I said, the judge already
24 sufficiently charged the jury on all charges and the
25 solicitor wanted him to specify specificity, I guess, on

1 her end. And then he did do so, and my lawyer basically
2 consented to it. And it ultimately confused the jury at
3 that point, to the point that they had to come back and
4 they had to come back and he had to recharge the
5 entirety. So I think that definitely played a part in
6 the outcome of my trial.

7 Q. Okay. And so that is the sum of the errors that
8 you allege your attorney did?

9 A. Right. Him not mentioning it and him not
10 objecting to object to, I think it's 404, dealing with,
11 I think it was -- not Frank Waddell, it was another
12 officer, referring that the drugs that was selling,
13 indicating that I'm a drug dealer at this point.

14 Q. Okay. And we've already raised that issue and --

15 A. Right.

16 Q. -- your protected. And the record is clear that
17 he did not object to it.

18 A. Right. Now, in dealing with my past attorneys, I
19 want to clear up an issue on that, Jim Smiley was my
20 initial attorney that I had for my trafficking charge.
21 And actually I seen him three hours before the rest of
22 the PWID. And I had a receipt of payment. It was three
23 hours before that incident. And after I got into this
24 situation, Jim Smiley was hard to get in touch with. I
25 mean, he just went ghost on me. And at that point --

1 Q. And ---

2 A. -- I had to relieve him because I couldn't get in
3 touch with him.

4 Q. No one's questioning --

5 A. Okay.

6 Q. -- about your decision to relieve counsel.

7 A. Right.

8 Q. That's not an issue here.

9 A. Right.

10 Q. You're well within your right to do that.

11 A. Right. Now, Bill Runyan and Ashley Ameika, we
12 never discussed anything dealing with strikes. I just
13 want to put that up.

14 Q. That's fair enough.

15 A. Okay.

16 MR. MURPHY: All right. Thank you. That's all
17 we have.

18 THE COURT: Okay. Any other questions?

19 MS. WEIDAUER: I think we're done.

20 THE COURT: Okay. Do you have any other
21 witnesses, Mr. Murphy?

22 MR. MURPHY: No, we would rest, Your Honor.

23 THE COURT: All right. Does the State have any
24 witnesses it wishes to call?

25 MS. WEIDAUER: No, Your Honor.

1 THE COURT: Okay. Are you all gonna send me
2 proposed orders or do you want to go ahead and sum it up
3 right here?

4 MR. MURPHY: We can just sum it up right here,
5 Your Honor.

6 THE COURT: Yeah. It's fine with me. Happy to
7 hear from the petitioner first.

8 MR. MURPHY: Thank you, Your Honor. Again, we
9 would move for -- well, we would ask that the
10 application be granted, based on Mr. Blake's testimony
11 that he failed to understand the strike sytem. That he
12 presented a defense. It was not a defense, which it
13 seems to me that he really didn't understand the whole
14 consequences of what was going on.

15 And so -- and then the next part would be that
16 that's failures to object that is on the record with
17 regard to defendant references the defendant selling
18 drugs without a motion for a mistrial. Also, there was
19 testimony about his behavior during the search warrant
20 without objection. And, again, the failure to move to
21 mistrial constitute prejudice to him that would entitle
22 him to a new trial.

23 THE COURT: Okay. Anything from the State?

24 MR. WEIDAUER: Mr. King gave testimony today. He
25 testified that he did thoroughly explain the strikes to

1 Mr. Blake. It's on the record, and Mr. King confirms
2 that he did have conversations with Mr. Blake regarding
3 his right to take the stand. And then that that
4 decision was his and his alone.

5 Mr. Blake gave strategic reasons where they're
6 not asking for a simple possession charge, and also
7 noted that -- excuse me, Mr. King gave strategic reasons
8 for not asking for a simple possession charge. He also
9 noted that that was never a conversation that Mr. Blake
10 would have allowed. He never wanted to plead guilty and
11 that the best job he had was to go all or nothing.

12 As to the failure to object and move for a
13 mistrial, the State would say that Mr. King was not
14 ineffective. Should this Court find Mr. King
15 ineffective based on the record, the State would just
16 note that to prove prejudice, which is necessary to
17 grant relief, there's -- to prove prejudice resulting
18 from counsel's failure to affirm his trial, Applicant
19 must demonstrate that had counsel moved for a mistrial,
20 the trial goes to denial of the motion amounted to use
21 of discretion and the State would say that that burden
22 has not been met today and that the decision to grant or
23 deny a mistrial is in the sole discretion of the trial
24 judge.

25 Mr. King did ask for a mistrial, a couple

1 different times of the trial. The State will rely on
2 the record for that.

3 And then Mr. King also gave testimony that there
4 was and that he actually moved i. They coaxed Mr. Blake
5 to have that testimony elicited from our learned
6 behavior during the search. So we would ask that you
7 deny his application for postconviction relief.

8 THE COURT: All right. Okay. Well, I still have
9 to review the record. I appreciate your arguments, and
10 I will issue an order in the next couple weeks. And if
11 I need a proposal, I'll indicate that in the initial
12 order, okay?

13 MR. MURPHY: Thank you, Your Honor.

14 THE COURT: All right. Thank you very much.

15 (Hearing concluded at 10:42 a.m.)

16

17 --- THIS ENDS REQUESTED TRANSCRIPT ---

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COURT REPORTER CERTIFICATE

I, the undersigned Julie A. Cendroski, Court Reporter for the Seventh Judicial Circuit Court of the State of South Carolina, do hereby certify that to the best of my ability from the Digital Court Reporter Program, the foregoing is a true, accurate, and complete transcript of record of all the proceedings and evidence introduced in the hearing and/or trial of the captioned case, relative to appeal, in the court of Common Pleas for Charleston County, South Carolina, on the 9th day of December, 2021.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto. This was transcribed from the Digital Court Reporter Program.

s/Julie A Ceendroski
Julie A. Cendroski
Circuit Court Reporter III
Seventh Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Mark Lorenzo Blake, SCDC #368687,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2019-CP-10-03294

ORDER OF DISMISSAL

FILED

JULIE J. ARMSTRONG
CLERK OF COURT

2022 MAY 10 AM 7:55

The matter before this Court is an action for post-conviction relief (PCR) commenced by Applicant Mark Lorenzo Blake on June 18, 2019. The State requested an evidentiary hearing through its return filed on October 18, 2019. A hearing into the matter convened before the undersigned on December 9, 2021, at the Charleston County Courthouse. Applicant was present and represented by Christopher L. Murphy, Esquire. Assistant Attorney General Samantha J. Weidauer represented the State. Applicant testified on his own behalf at the hearing. Applicant's trial counsel, Jason T. King, Esquire, also testified.

In addition to the pleadings in this action, this Court had before it a copy of the Charleston County Clerk of Court records regarding the subject conviction; Applicant's records from the South Carolina Department of Corrections; and records from Applicant's direct appeal, including the trial transcript.

After hearing the testimony at the PCR hearing and upon full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of trial counsel are without merit. For the reasons discussed below, this Court finds Applicant has failed to meet his requisite burden of proof, denies relief, and dismisses this action with prejudice.

JBM/1

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. During its June 2013 term, the Charleston County Grand Jury indicted Applicant for possession with intent to distribute heroin (2013-GS-10-02729). On June 14-15, 2016, Applicant proceeded to a jury trial before the Honorable D. Garrison Hill. Applicant was represented by Jason T. King and Tamara Van Pala, Esquires. Stephanie Linder and Lauren Frierson of the Ninth Circuit Solicitor's Office prosecuted the case. On June 15, 2016, the jury found Applicant guilty as indicted. Judge Hill sentenced Applicant to twelve years' imprisonment with credit for time served for the possession with intent to distribute heroin charge.

Applicant filed a timely notice of appeal and an appeal was perfected on his behalf. Appellate Defender Kathrine H. Hudgins (Appellate Counsel) of South Carolina Commission on Indigent Defense – Division of Appellate Defense represented Applicant who argued the following issues:

1. Did the trial judge err admitting the second chemist's report, testimony and drug evidence when the State failed to establish an adequate chain of custody for the substance tested?
2. Did the trial judge err in refusing to suppress evidence obtained as a result of an unreasonable search of [Applicant's] home?

Following briefing, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence in an unpublished opinion without oral argument. *State v. Mark Lorenzo Blake, Jr.*, Op. No. 2018-UP-111 (Ct. App. filed March 14, 2018). Thereafter, Applicant filed a petition for rehearing on March 29, 2018. The Court of Appeals issued an order denying the petition for rehearing on April 26, 2018.

On May 25, 2018, Applicant, through Appellate Counsel, filed a Petition for Writ of Certiorari in the Supreme Court of South Carolina. The State filed its Return to the Petition for

Writ of Certiorari on June 25, 2018. On November 9, 2018, the Supreme Court denied certiorari. The Remittitur was issued on November 21, 2018. Applicant timely commenced this PCR action on June 18, 2019.

In his *pro se* application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on:

1. "Applicant was denied the right to effective assistance of counsel guaranteed by both U.S. Constitutional Amendments 6 and 14, S.C. Const. Art. 1, §§ 3, and 14 during both the preparational phase and course of applicant's trial".
 - a. "Trial counsel's performance during both the preparational phase and course of trial was both inadequate and prejudicial; See. Strickland v. Washington; 466 U.S. 668 counsel's omission to: Arise and challenge both State and Federal Constitutional issues within pretrial. See. Sikes v. State; 448 S.E. 2d 560 (1994)";
 - b. "Dismiss indictment; pursuant to: S.C. Art. 5, § 4 Supreme court's holding in State v. Langford 400 S.C. 421; 735 S.E. 2d 471 (2012). When applicant was arrested on the 22nd day of February, 2013 and was then after tried (40) months later, which was an (8) month unreasonable, excessive, and deliberate delay by the State and further breach of applicants said State Constitutional right"; and
 - c. "Suppress evidence pursuant to: U.S. Constitutional Amendment 4, S.C. Const. Art. 1, § 10 appellate court's holding in State v. Philpot, 317 S.C. 458; 454 S.E. 2d 905 (1995). The veracity of the confidential informant was never established within search warrant affidavit; (see attached Exhibit – A) nor was the confidential informant ever disclosed to the applicant; U.S. Constitutional Amendment 6, S.C. Const. Art.1 § 14 (confrontation clause, right to fair trial). Due to the denial of pretrial motion to disclose confidential informant, dated March 21, 2016."

The State made its return on October 18, 2019.

II. Summary of Trial Testimony

As part of an ongoing drug investigation, officers from the Charleston County Sheriff's Office conducted surveillance on Applicant after receiving information through a confidential informant that involved controlled purchases. (Trial Tr. 44-45). As a result of the investigation, the officers obtained a search warrant for Applicant's residence. (Trial Tr. 45). After taking into consideration Applicant's criminal history, which included drug and weapon charges, a tip that a

child may be in the home, and the nexus between drugs and weapons¹, law enforcement decided to take Applicant into custody by way of a felony traffic stop. (Trial Tr. 46).

On February 22, 2013, officers followed Applicant from his residence to the workplace of his girlfriend, where they conducted the felony traffic stop. (Trial Tr. 44, 48). The officers pinched in Applicant's vehicle, exited with their guns drawn, and ordered him to show his hands and exit his vehicle. (Trial Tr. 48-49). Applicant did not comply, so the officers removed him from his vehicle and took him to the ground. (Trial Tr. 49). He was placed under arrest for drug distribution charges, handcuffed, and secured in an officer's vehicle. (Trial Tr. 49-50). The officers had obtained a lawful search warrant for Applicant's residence; they drove him to his residence following the arrest and used his keys to gain access. (Trial Tr. 51-52). In the kitchen, officers found a bowl containing rice and drugs, a whisk, a mixing bowl, and scales. (Trial Tr. 201).

Pretrial, Applicant moved to suppress the evidence found during the search, claiming the search was conducted unreasonably. (Trial Tr. 39). Applicant challenged the constitutionality of the search and asked that the State demonstrate the search was executed in a reasonable manner. (Trial Tr. 39). The State called Detective Frank Waddell of the Charleston County Sheriff's Office to testify regarding the felony traffic stop and arrest. (Trial Tr. 40). Detective Waddell testified that following Applicant's arrest, the officers had also arrested his girlfriend and then headed to Applicant's residence to conduct a search. (Trial Tr. 50-51). Detective Waddell advised Applicant he had a lawful search warrant signed by a judge to search his residence. (Trial Tr. 51). Waddell explained they did not use a ram to get into the apartment but used Applicant's keys. (Trial Tr. 51-52).

¹ *State v. Banda*, 371 S.C. 245, 253-54, 639 S.E.2d 36, 40-41 (2006).

Applicant was detained on the front stoop while officers conducted the search, and was agitated, speaking loudly and repeatedly in an aggressive manner. (Trial Tr. 53-54). Detective Waddell testified he even had to put his hands on Applicant when he continued to stand up after being ordered to sit down; testifying he placed his left hand on Applicant's right shoulder and pushed him back into the seat. (Trial Tr. 64-65). Detective Waddell further stated that after being taken into custody, Applicant was not cooperative; rather, he indicated Applicant was kept in the presence of law enforcement personnel instead of leaving him unattended because it was a safety issue. (Trial Tr. 61). Detective Waddell testified he tried to explain to Applicant the reason for the search. (Trial Tr. 54). On cross-examination, trial counsel asked whether Detective Waddell gave Applicant a copy of the search warrant, to which he replied that he left a copy at the residence. (Trial Tr. 62). He testified that Applicant "made vague inquiries as to what's going on, I haven't done anything, this is private property, what are y'all doing, general inquiries of that nature," but did not say that Applicant asked to see the search warrant. (Trial Tr. 62). He further explained Applicant was handcuffed behind his back sitting in a chair so he was not handed a copy as he would not have been able to hold it and read it behind his back, but he was advised of his warrants and the nature of the search warrant and what led to it. (Trial Tr. 63-64).

Trial counsel introduced a copy of the search warrant statute, section 17-13-150 of the S.C. Code, as Defendant's Exhibit #1 and asked Detective Waddell to read it. (Trial Tr. 65). The statute provided in part: "When any person is served with a search warrant such person shall be furnished with a copy of the warrant along with the affidavit upon which such warrant was issued." (Trial Tr. 65). He also introduced a copy of the search warrant as Defendant's Exhibit #2. (Trial Tr. 66). Defense counsel pointed out that the search warrant contained a phrase that read: "copy of this search warrant shall be delivered to the person in charge of the premises

searched at the time of search if practical.” (Trial Tr. 66). Sergeant Mark Bryant also testified regarding his involvement in the felony traffic stop and search warrant. (Trial Tr. 71). He testified Applicant had “a bit of an attitude,” was talking back and raising his voice, and was not calm while the search was in progress. (Trial Tr. 75). On cross-examination, he admitted he did not give Applicant a copy of the search warrant. (Trial Tr. 80).

Next, Deputy Andrew Miller testified that while the officers were conducting the search, Applicant asked repeatedly why he was being arrested even though Deputy Miller said it was explained to him at the time. (Trial Tr. 84). On cross-examination, he testified he did not give Applicant a copy of the search warrant and did not recall him asking for one. (Trial Tr. 86). The defense then called Applicant, who offered a slightly different version of the felony traffic stop and the events that transpired. He claimed he stepped out of the car and was tackled. (Trial Tr. 96). He also testified that he asked for the search warrant but the detectives told him, “Don’t worry about that.” (Trial Tr. 97). On cross-examination, the State presented Applicant with his statement and asked him to read a portion that stated: “Up the stairs and told us we were both under arrest for distribution of heroin and we sold over two ounces” (Trial Tr. 104). Applicant confirmed Detective Waddell told him why he was under arrest and why the search was happening. (Trial Tr. 107).

After the testimony of the witnesses, trial counsel argued based on *United States v. Thompson*, 667 F. Supp. 2d 758, 763 (2009), that the search was unreasonable because officers did not “give” Applicant a copy of the search warrant, and he moved to suppress all the evidence. (Trial Tr. 109). He argued the statute requires officers to serve a copy on the defendant, not just leave a copy at the residence. He claimed they could only leave a copy at the residence if no one was there, which was not the case here. (Trial Tr. 110). He further argued the

takedown that was part of the felony traffic stop was a factor in the unreasonableness of the execution of the search. (Trial Tr. 111).

The State then argued the circumstances in *Thompson* were different because a woman who was not part of the investigation was left outside in the heat for five hours with only a shirt on, and law enforcement did not identify themselves or explain what they were doing. (Trial Tr. 112). The solicitor argued that here, the felony traffic stop was necessary—based on the information officers had about Applicant's prior conviction and pending charges for guns and drugs—to minimize danger upon taking Applicant into custody. (Trial Tr. 113). She referred to the testimony by officers that Applicant was informed why he was being arrested and that a search was going to be executed at his residence. (Trial Tr. 113). She further argued that a copy of the search warrant could not be handed to him because he was belligerent and had his hands cuffed behind his back such that it would have been impossible for him to hold the copy. (Trial Tr. 116). Finally, she pointed out that the rationale behind suppressing evidence is to deter unlawful government behavior and because the government behaved lawfully and reasonably here while taking into consideration the safety of the community, suppression would not deter unlawful behavior. (Trial Tr. 116).

The trial judge distinguished the *Thompson* case and ultimately found this was not an unreasonable search. He based his ruling on the testimony of the officers that established justifiable reasons for the way the arrest and search were conducted. (Trial Tr. 121). He took into consideration the risk to officer safety based on Applicant's criminal history and found that the failure to give a copy of the search warrant to Applicant when he was handcuffed behind his back was not "enough in and of itself to deem the search unreasonable within the meaning of the Fourth Amendment." (Trial Tr. 122). He therefore denied the motion to suppress. (Trial Tr. 124).

At trial, Detective Frank Waddell testified similarly to his pretrial testimony. Afterward, the State called Philip Roberson, who was a narcotics sergeant with the Charleston County Sheriff's Office and was involved in executing the search warrant at Applicant's residence. (Trial Tr. 197-199). His role was to search the kitchen and part of the bedroom. (Trial Tr. 200). He testified that he found a bowl in the refrigerator in the kitchen that contained rice and drugs; he also found a whisk, mixing bowl, and scales. (Trial Tr. 201). He explained that the drugs he found were in bindles, which he said were packaged similar to a headache powder, and ten of them make up a bundle. (Trial Tr. 201). On cross-examination, Roberson testified that he recalled getting into the apartment not by forced entry but by using a key. (Trial Tr. 201).

Deputy Andrew Miller testified next regarding his role in the search as evidence custodian. (Trial Tr. 212). He collected all evidence found on the scene, took photographs of it, and transported it back to headquarters. (Trial Tr. 212-213, 222). He verified at trial that the bowls the drugs were found in were in the same condition as the day of the search except for the addition of fingerprint powder. (Trial Tr. 222-223). On cross-examination, trial counsel questioned him about a photograph of the door, and Deputy Miller testified he did not remember whether a key was used for entry. (Trial Tr. 233). He admitted the door looked like it had been busted open, but on redirect, he said it did not look like the door had been rammed because there was no large round mark on the door and the handle was not broken. (Trial Tr. 233, 237). When trial counsel asked him on re-cross, "Isn't this just a photograph of the door before it was busted open?" he answered that he would not take a photograph before entry because it would put him at risk. (Trial Tr. 238).

Jason Riley then testified as a forensic technician for the sheriff's department and went through the evidence storage process and explained chain of custody. (Trial Tr. 245-283). He

recalled that Deputy Miller submitted Evidence ID No. 135986, eleven bundles and one bindle of a brown substance, into evidence to him. (Trial Tr. 250-251). He testified he would not have accepted them into evidence if they had been tampered with. (Trial Tr. 253). He transported the evidence on several occasions, taking it to the City of Charleston's drug lab, and testified that it appeared to be in the same condition as when he first saw it. (Trial Tr. 254). He named two other people in his unit who also touched the evidence: Investigators Mark Watson and Aaron Meyer. (Trial Tr. 255). On cross-examination, he went over the dates the evidence was signed in and out and testified it was outside of his control three times. (Trial Tr. 256).

Next, Susan Payne testified as the evidence custodian in the forensic services division of the City of Charleston Police Department. (Trial Tr. 259). She handled the evidence in Applicant's case and testified she would not have transported it if it had been tampered with. (Trial Tr. 260-261). She testified it looked like it was in the same condition as when she first saw it and that she received it from Jason Riley and transported it to Renee Hilton. (Trial Tr. 262). On cross-examination, she testified in more detail that after receiving the evidence from Riley on March 1, 2013, she placed it in a safe and then it went to Elizabeth Mitchell before coming back to her on June 1, 2015. (Trial Tr. 263-264). It then went to Renee Hilton and stayed at the Charleston Police Department for seven days, from June 1-8, 2015, before going back to the sheriff's office. (Trial Tr. 264). Payne received it again on November 23, 2015, before it went to Hilton again. (Trial Tr. 264). She admitted that when she received it back from Mitchell on June 1, 2015, the bag had been cut open. (Trial Tr. 265).

Renee Hilton, a criminalist at the City of Charleston Police Department, testified next. (Trial Tr. 266). The trial court qualified her as an expert in drug analysis without *voir dire* or objection by the defense. (Trial Tr. 269). Hilton testified she analyzed the substances in this case and that

they were previously tested by her lab two years before. She had to look over the previous analyst's work to see if she came to the same conclusion; she did and was able to pass the review and release the report. (Trial Tr. 270-271). She testified that the reason the drugs were retested was because the previous analyst was no longer employed there and was not available to testify. (Trial Tr. 272). She testified each time a substance is tested there is an amount removed for testing that changes the weight and that temperature can also affect weight. (Trial Tr. 272-273). She testified that she prepared a lab report on December 1, 2015. (Trial Tr. 273-274). When the State tried to admit the report, trial counsel objected and the jury took a recess. (Trial Tr. 274).

Applicant objected to the chain of custody based on the fact that the State did not call Elizabeth Mitchell to testify, citing *State v. Joseph*, 328 S.C. 352, 491 S.E.2d 275 (Ct. App. 1997). (Trial Tr. 275). He also complained that Ashley Carr Earl and Mark E. Watson did not testify. (Trial Tr. 275-276). Applicant moved to exclude the drugs based on the chain of custody, claiming Mitchell was a crucial element. (Trial Tr. 276). The State argued that case law including *State v. Hatcher*, *State v. Taylor*, *State v. Pope*, and *Fleming v. United States* supported its argument that for fungible evidence such as drugs, the chain of custody must be established as far as practicable, that not every person was required to testify, and that the State presented a sufficient chain of custody. (Trial Tr. 276-279). After thorough arguments from both parties, the trial judge ruled the chain of custody had been sufficiently established, noting that the purpose of a chain of custody is to ensure the item is what it is purported to be. (Trial Tr. 299-300). He found the chain had been established as far as practicable, the identity of all people who handled the evidence had been established, and there was no evidence of tampering. (Trial Tr. 300). Finally, he determined that any discrepancies were certainly grounds the defense could pursue on

cross-examination regarding credibility but did not change his ruling on admissibility. (Trial Tr. 300).

After the State rested, the trial judge clarified his ruling after realizing he had misnamed the case he was relying on. He explained he was relying on *State v. Hatcher* and *State v. Taylor*. He noted “[t]here was expert testimony by Ms. Hilton that the State presented that demonstrates the likely and probable manner in which Ms. Mitchell tested and resealed this fungible item. And the identity of the people who transported it and had control at various times was established as far as practicable.” (Trial Tr. 319). Defense counsel renewed his motions to suppress based on the search and also based on the chain of custody and moved for a directed verdict. The trial judge denied all the motions. (Trial Tr. 319-320).

Ultimately, the jury found Applicant guilty and Judge Hill sentenced him to twelve years’ imprisonment with credit for time served. (Trial Tr. 381, 389).

III. Issues Before This Court

Applicant filed the instant post-conviction relief action on June 18, 2019. Though not specifically pled in his application or by formal amendment, Applicant, through Counsel, informed this Court at the beginning of the evidentiary hearing he intended to argue the following:

1. Trial counsel failed to explain the strike system to Applicant;
2. Trial counsel failed to explain Applicant’s right to take the stand during trial or call Applicant to testify during trial;
3. Trial counsel failed to request a lesser-included charge of simple possession;
4. Trial counsel failed to object to witness comments and move for a mistrial; and
5. Trial counsel failed to object to a witness discussing Applicant’s behavior when search warrant was executed.

To the extent the allegations set forth in Applicant’s original application can be construed as separate grounds for relief from the grounds stated at the PCR hearing, the Court finds those

claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

IV. Standard of Review

An applicant may seek post-conviction relief upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. 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. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRPC. 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. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). 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" demanded of attorneys in criminal cases. *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 reasonably professional assistance." *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. "The burden of rebutting this presumption 'rests squarely on the defendant,' and '[i]t should go without saying that the absence of evidence cannot overcome [i]t.'" *Dunn v. Reeves*, 594 U.S. ___, ___, 141 S. Ct. 2405, 2410 (2021) (alteration in original) (quoting *Burt v. Titlow*, 571 U.S. 12, 22–23

(2013)). 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 ‘[t]he record does not reveal’ that counsel took an approach that *no competent lawyer would have chosen*.” *Id.* (alteration in original) (emphasis added) (quoting *Titlow*, 571 U.S. at 23–24).

“When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Review of counsel’s actions is hallmarked by deference, 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. No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688–89; *see id.* at 691 (“Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.”). “Defense lawyers have ‘limited’ time and resources, and so must choose from among ‘countless’ strategic options.” *Dunn*, 594 U.S. ___, 141 S. Ct. at 2410

(quoting *Harrington*, 562 U.S. at 106–107). “Such decisions are particularly difficult because certain tactics carry the risk of ‘harm[ing] the defense’ by undermining credibility with the jury or distracting from more important issues.” *Id.* (quoting *Harrington*, 562 U.S. at 108). 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. *Strickland*, 466 U.S. at 689. The ultimate question is not whether counsel’s actions were reasonable, but whether there is any reasonable argument counsel satisfied *Strickland*’s deferential standard.

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; *see id.* at 695 (explaining that, where a defendant challenges his conviction, he must show that there exists “a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt”).

In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695. It is not sufficient “to show [counsel’s] 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). “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal

proceeding if the error had no effect on the judgment.” *Id.* at 691. 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). A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

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 689–90. Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant’s burden of proving both *Strickland* components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. 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. *Id.* at 686; see *Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”); cf. *United States v. Morrow*, 977 F.2d 222, 229 (6th Cir. 1992) (“[T]he threshold issue is not whether [the applicant’s] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.”).

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V. Findings of Fact & Conclusions of Law

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State's return, this Court proceeds to the claims raised and finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

Allegation Counsel Failed to Explain the Strike System to Applicant

Applicant contends Counsel was ineffective for failing to explain the strike system to him. This Court finds this allegation is without merit. During the evidentiary hearing, Applicant testified he knew he had several other serious charges pending at the time of his trial. Applicant testified Counsel briefly discussed the strike system with him; however, Applicant states he did not understand how he would be effected should he receive a strike, nor could Applicant recall whether he understood that if he were found guilty, he would receive a strike for this charge. Applicant stated that prior to trial, Counsel primarily discussed Applicant's defense and trial strategy with him. Applicant testified the basis of Counsel's trial strategy was to show law enforcement had planted the heroin in his apartment following a felony traffic stop. Applicant opined that the only evidence the State had against him relied on the credibility of Detective Frank Waddell, one of the arresting officers, who Applicant testified he was suing for civil charges at the time of his trial². Applicant further testified he believed Counsel wanted him to

² Counsel argued, *in limine*, that Applicant's lawsuit was a 1983 civil rights violation regarding how the search was conducted. The trial court ruled Applicant's pending lawsuit against Detective Waddell was admissible and trial counsel could question Detective Waddell whether he was being sued by Applicant. (Trial Tr. 35-36).

plead guilty to the instant charge instead of proceeding to trial. When asked about plea offers, Applicant testified that prior to trial, the State offered to drop three of his pending charges in exchange for a plea. However, Applicant adamantly testified at the evidentiary hearing he did not consider, nor did he wish to plead guilty.

Trial counsel, Jason T. King (Counsel), also testified at the evidentiary hearing. Counsel credibly testified he had been appointed to represent Applicant in this case and that he recalled trying this matter. Counsel testified his general impression of Applicant was that he was intelligent, but also a headstrong individual – wanting things to go “his way”. Counsel testified he believed Applicant understood all conversations they had, that he had discussed Applicant’s constitutional rights with him prior to trial, and stated Applicant was aware of the penalties and strike the charge carried. Counsel agreed that at the time of trial, Applicant had multiple other charges pending and stated Applicant did not want to plead guilty despite Counsel’s belief that pleading guilty would have been in Applicant’s best interest given the State’s evidence. Counsel noted Applicant’s decision to proceed to trial instead of plead guilty was a source of contention between Applicant and multiple counsels who represented Applicant prior to Counsel’s appointment to the case.

Regarding Applicant’s defense, Counsel testified his overall trial strategy was to show that the drugs in Applicant’s apartment were planted by law enforcement. Counsel stated he believed this to be Applicant’s best defense as it would allow Counsel to argue overzealous policing occurred and discuss the war on drugs with the jury. Counsel believed this defense was supported by how law enforcement enacted Applicant’s felony traffic stop – law enforcement allowed Applicant to drive to his girlfriend’s work place before stopping him. Counsel further testified this defense allowed him to present to the jury evidence that law enforcement refused to

give Applicant a copy of the search warrant during the search³. While Counsel admitted he did not favor the defense, he felt it was the best and only defense Applicant had based on the strength of the State's case. In support of this defense, Counsel reasoned that looking forward in time to when Applicant would be tried for his other pending charges, Applicant's acquittal for this matter may have made the Solicitor reconsider the strength of those other charges. Counsel stated he believed Applicant could have received a better plea deal for charges to follow. Counsel further stated he believed Applicant to be in an impossible situation and discussed with Applicant the possibility he would be struck out eventually.

This Court finds Applicant has failed to establish any deficiency on the part of Counsel regarding this allegation. Applicant testified he discussed the strike system with Counsel in some capacity, but maintained he did not fully understand the ramifications of receiving a strike. This Court finds Applicant received complete and well-founded advice by counsel in advance of his trial. Specifically, this Court finds Counsel was credible in stating he felt Applicant understood their conversations prior to trial, that Counsel was credible when he stated he had discussed Applicant's constitutional rights with him, and that Counsel was credible when he testified Applicant was aware of the penalties and strike the charge carried. Thus, this Court finds that Applicant was informed of the strike system in relation to the charge and, consequently, relief is denied on this ground.

As to prejudice, a trial court has broad discretion in imposing criminal sentences within the limits prescribed by law. *State v. Franklin*, 267 S.C. 240, 226 S.E.2d 896 (1976); *Clark v. State*, 259 S.C. 378, 192 S.E.2d 209 (1972). The courts normally have no discretion to correct a

³ Pretrial, Counsel made a motion to suppress the search warrant arguing the search was conducted unreasonably. (Tr. Transcript 39). Following testimony from multiple witnesses, the trial court found the search reasonable within the means of the Fourth Amendment and denied the motion to suppress. (Tr. Transcript 124).

sentence given within statutory limits. To be entitled to relief, Applicant must prove the alleged excessive sentence was the result of partiality, prejudice, oppression or corrupt motive, or that the sentence constitutes cruel and unusual punishment *per se*. *Clark*, 259 S.C. 378, 192 S.E.2d 209; *State v. Cogdell*, 273 S.C. 563, 257 S.E.2d 748 (1979). Applicant cannot prove, nor does he allege, any of these types of deficiencies in the sentence issued.

Accordingly, Applicant's ineffective assistance claim for Counsel's alleged failure to explain the strike system to him is **DENIED**.

***Allegation Counsel Failed to Adequately Advise Applicant
Regarding His Right to Testify at Trial***

Applicant contends Counsel was ineffective for failing to advise him of his right to take the stand during trial and/or call Applicant to testify during trial. This Court disagrees and denies and dismisses this allegation.

At the PCR hearing, Applicant testified he remembered the Court apprising him of his right to testify. Applicant stated that though he remembered the Court's discussion with him regarding this right, he went along with the decision of the trial court. On cross-examination, when questioned whether he understood it was solely his decision whether or not to testify at trial, Applicant testified he understood it was his decision, and his decision alone.

Counsel testified at the PCR hearing that he discussed Applicant's constitutional rights with him and further noted that the trial court entered into a colloquy with Applicant regarding these rights on the record. Specifically, the following exchange took place between the trial court and Applicant:

THE COURT: Sir, you have the opportunity to testify in this case. You also have the opportunity and the right not to testify. I want to make sure you understand your options and consequences of your choice about whether you are going to testify. If I ask you a question or if I say something that doesn't make sense, just ask me to repeat it or try to clear it up. Is that okay with you, sir?

THE DEFENDANT: Yes, sir.

THE COURT: All right. You can testify in this case and take the stand and tell your side of the story, present evidence that's relevant to this trial. If you do that, though, you need to understand the State can cross-examine you on the stand just as your lawyer has cross-examined their witnesses, okay? And that means that they can ask you anything that might bear on your credibility, that might be relevant to the issues in this case. I don't know, is there any prior record the State would seek to impeach him with if he testified?

MS. LINDER: Your Honor, there is nothing to impeach him with unless he would open the door to some of the other items.

THE COURT: Okay. So do you understand that you would have the right to take the stand and testify, sir?

THE DEFENDANT: Yes, sir.

THE COURT: And you also have the right not to testify, the right to remain silent. I have already told the jury repeatedly you don't have the burden of proof in this case, and you don't have to offer any evidence or explanation. I will tell them if you choose not to testify that they can't hold that against you or even discuss the fact that you didn't testify during their deliberations. It would not be keeping with their oath to talk about or discuss the fact that you didn't take the stand because everyone has a right to remain silent guaranteed by the Constitution. Do you understand that, sir?

THE DEFENDANT: I do.

THE COURT: All right. I do not know, has the defense presented any evidence at this point?

MR. KING: No, Your Honor.

THE COURT: I know there was some exhibits. There is also a consideration that you need to know about which you probably already discussed with your lawyer. If you do present evidence in this trial, the State will then get the final closing argument for the jury. That means they get the last word so to speak before the jury. If you don't present evidence your lawyer would have the final closing argument in the sequence of the closing arguments. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Okay. Now, do you have any questions of me about your right to testify or not to testify and the consequences of the choice?

THE DEFENDANT: No sir.

THE COURT: Thank you for your attention. Do you know how many witnesses you may be having?

MR. KING: At this point unless Mr. Blake changes his mind I don't intend to put up a case. I intend to get the last closing argument. I have advised Mr. Blake of that. He was in agreement unless he has changed his mind.

THE COURT: Okay. Is that your decision, sir?

THE DEFENDANT: Can me and my lawyer have a brief moment?

THE COURT: You may take as long as you need to talk to him about that.

(Trial Tr. 320-323).

TRM/21

A short luncheon recess was taken by the Court and parties to allow Counsel and Applicant to confer, where after the trial court asked Applicant the following:

THE COURT: Sure. Have you made a decision about Mr. Blake?

MR. KING: He has indicated he does not wish to testify, Your Honor.
Defense is not putting up any evidence.

(Trial Tr. 324).

This Court finds Counsel's testimony concerning his discussions with Applicant regarding his constitutional rights to be credible and further finds Applicant was informed of his constitutional right to testify, as well as his right to remain silent by the trial judge. (Trial Tr. 320-324). It is ultimately solely Petitioner's decision whether to testify on his own behalf. *See* U.S. Const. Amend. V ("[n]o person ... shall be compelled in any criminal case to be a witness against himself"); *See generally Brown v. State*, 340 S.C. 590, 533 S.E.2d 308 (2000). "The right to testify on one's own behalf at a criminal trial is guaranteed by the Fifth, Sixth, and Fourteenth Amendments." *State v. Wright*, 416 S.C. 353, 372, 785 S.E.2d 479, 489 (Ct. App. 2016) (citing *Rock v. Arkansas*, 483 U.S. 44, 51-52 (1987)). However, the right to present testimony is not without limitation. *Rivera*, 402 S.C. at 242, 741 S.E.2d at 703; *Rock*, 483 U.S. at 55. This right may be waived, and all that is necessary for a defendant to waive the right is to know that a right to testify exists. *United States v. McMeans*, 927 F.2d 162, 163 (4th Cir. 1991).

This Court finds Applicant's decision not to testify was his and his alone, and was made freely, knowingly, and voluntarily after being informed of his rights by the Court and after being allowed an opportunity to discuss this right with Counsel and weigh the pros and cons. Applicant has therefore failed to establish deficiency or prejudice.

Accordingly, Applicant's claim pertaining to Counsel's failure to advise him of his right to testify is **DENIED**.

Allegation Counsel Failed to Request a Lesser-Included Jury Charge

Applicant contends Counsel was ineffective for failing to request a jury charge on the lesser-included offense – “simple possession”. Applicant further contends and testified at the evidentiary hearing that Counsel did not discuss with him the possibility of requesting a lesser-included offense. This Court disagrees and finds Applicant failed to present any evidence or testimony indicating he was entitled to a lesser-included charge or any evidence that the trial court would have agreed to a lesser-included offense. Additionally, this Court finds this allegation is without merit because Counsel presented a well-reasoned strategic decision for not requesting a lesser-included jury charge and Applicant represented to the trial court he did not wish to request a lesser-included charge.

At the evidentiary hearing, Counsel credibly testified he did not request a lesser-included charge because it would have been counterintuitive to his trial strategy. Counsel testified his defense strategy was to argue that the subject heroin had been planted in Applicant’s apartment and that Applicant was not the perpetrator. Counsel testified he believed trying this case “all or nothing” – not requesting a lesser-included offense – gave Applicant the best chance for acquittal. Counsel additionally noted Applicant was facing numerous other charges to be tried following this trial and he believed that if Applicant was found not guilty of this charge, it would indicate to the State that their pending cases were not as strong as they believed they were, possibly allowing Applicant to receive a more favorable deal on those pending charges in the future. Significantly, Counsel testified Applicant was not willing to plead to any charge, lesser-included or not and wanted to be found not guilty of the charge as indicted.

Counsel further testified that at trial, the following colloquy took place between the trial court and Applicant regarding whether the defense would request a jury charge for the lesser-included offense:

THE COURT: Do y'all have any request for a lesser included offense?
(Attorney confers with client).

MR. KING: I just discussed with him any lesser included and we are not – I thought about asking for possession or a lesser included, but we are not requesting it unless you amend the charges based on Mr. Blake's desire.

THE COURT: That's a matter of strategy?

MR. KING: Yes, Your Honor. I have asked Mr. Blake and he wants to go all or nothing and I'll go with his desire.

THE COURT: So, Mr. Blake, is that correct?

THE DEFENDANT: That's correct.

THE COURT: And maybe the evidence would support a charge of possession which the jury would have the option of considering if they found the State had not proven all elements of possession to distribute. But you're saying you don't want the jury to have that option. You would rather them say guilty or not guilty as to the greater offense of possession with intent to distribute?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. Do you have any questions of me about that?

THE DEFENDANT: No.

(Trial Tr. 324).

This Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard*, 372 S.C. at 331, 642 S.E.2d at 596. When counsel articulates a strategy, it is measured under an objective standard of reasonableness. *Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002). "The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." *Strickland*, 466 U.S. at 691. "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." *Id.*

Here, Counsel's credible testimony indicates he did not request a lesser-included charge of simple possession because: (1) Applicant was unwilling to plead guilty to any charge including a lesser-included charge and insisted on proceeding to trial; (2) arguing simple possession would have been inconsistent with his trial strategy—that Applicant was not the perpetrator; (3) Counsel believed an "all or nothing" strategy was Applicant's best chance at acquittal; and (4) arguing for a jury charge of simple possession would have gone against Applicant's wishes as established when Applicant testified on the record at trial that he did not wish to request a lesser-included charge. Counsel's strategy was objectively reasonable in this regard, particularly in light of his and Applicant's agreed upon "all or nothing" strategy. Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992); *also see Abney v. State*, 408 S.C. 41, 48, 757 S.E.2d 544, 547 (Ct. App. 2014) (finding trial counsel articulated a valid reason for failing to request an instruction on the lesser-included offense of strong arm robbery where trial counsel felt the trial was going well and believed his client would be acquitted of armed robbery).

Accordingly, Applicant's claim pertaining to Counsel's failure to request a lesser-included jury charge is **DENIED**.

Failure to Object to Witness Testimony and Move for a Mistrial

Applicant next contends Counsel was ineffective for failing to object to specific testimony from State's witness, Andrew Miller, and for failing to move for a mistrial following the below-referenced testimony. Applicant's PCR Counsel directed the Court to the following testimony in support of this allegation:

min 105

A. In my training and experiencing this is how they would in -- especially with the drugs that he was selling, how they would keep those together. They would wrap it up so they wouldn't lose any of the drugs that were inside.

(Trial Tr. 217, 11-13).

Though Applicant's PCR counsel placed this allegation on the record at the beginning of the evidentiary hearing, PCR counsel informed this Court Applicant would rest on the record and would not present testimony or argument for this allegation⁴. This Court finds Applicant's allegation is without merit as Applicant failed to present any evidence to suggest that Counsel's performance was deficient, nor did Counsel present any evidence that Applicant was prejudiced by Counsel's failure to object to support the allegation.

Leaving an issue unpreserved does not automatically constitute ineffective assistance of counsel. *See Millidge v. State*, 422 S.C. 366, 374, 811 S.E.2d 769, 800-01 (2018) (stating an applicant must prove both deficiency and prejudice to establish ineffective assistance of counsel for failing to preserve an issue); *see also id.* at 380, 811 S.E.2d at 804 ("[T]he proper inquiry for determining prejudice . . . is whether there is evidence in the record to support the trial court's finding If so, an appellate court would necessarily have affirmed the trial court's [ruling] . . .").

Similarly, "[a]n ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." *Hough v. Anderson*, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the *Strickland* test: failing to object to admissible evidence cannot be a professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was admitted." *Id.*; *see Miller v. Keeney*, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting

⁴ On cross-examination, Respondent asked Counsel about the referenced testimony. Counsel agreed that while he did not believe witness, Deputy Miller, was referring to a specific sell or specific residence, he could not speculate to why he not did not contemporaneously object to the testimony.

that if a petitioner challenges a futile objection, he fails both *Strickland* prongs); *U.S. ex rel. Link v. Lane*, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from failure to object unless there is a legally supportable argument for exclusion of the evidence).

Trial counsel's strategy is reviewed under "an objective standard of reasonableness." *Magazine v. State*, 361 S.C. 610, 617, 606 S.E.2d 761, 764 (2004). Moreover, "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Strickland*, 466 U.S. at 691, 104. To establish prejudice, Applicant is required to show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694. Therefore, Applicant must also prove he was prejudiced by counsel's allegedly deficient performance.

Applicant further contends Counsel was ineffective for failing to move for a mistrial as a result of the elicited testimony. The decision to grant or deny a mistrial is within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of discretion amounting to an error of law. *State v. Cooper*, 334 S.C. 540, 551, 514 S.E.2d 584, 590 (1999). The granting of a motion for mistrial is an extreme measure that should be taken only when the incident is so grievous the prejudicial effect can be removed in no other way. *State v. Beckham*, 334 S.C. 302, 310, 513 S.E.2d 606, 610 (1999), *abrogated on other grounds by State v. Wright*, 391 S.C. 436, 706 S.E.2d 324 (2011). A mistrial should be granted only when absolutely necessary and a defendant must show both error and resulting prejudice to be entitled to a mistrial. *State v. Harris*, 340 S.C. 59, 63, 530 S.E.2d 626, 628 (2000). "A mistrial should only be granted in cases of manifest necessity and with the greatest caution for very plain and obvious

Tom 107

reasons.” *State v. Patterson*, 337 S.C. 215, 227, 522 S.E.2d 845, 851 (Ct.App.1999). “Whether a mistrial is manifestly necessary is a fact specific inquiry. ‘It is not a mechanically applied standard, but rather is a determination that must be made in the context of the specific difficulty facing the trial judge.’” *State v. Rowlands*, 343 S.C. 454, 457-58, 539 S.E.2d 717, 719 (Ct.App.2000) (quoting *Gilliam v. Foster*, 75 F.3d 881, 895 (4th Cir.1996)). The trial court should exhaust other methods to cure possible prejudice before aborting a trial. *State v. Council*, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999).

This Court finds that Applicant has failed to prove that he was prejudiced by Counsel’s failure to object to the witness’s statement and Applicant has failed to show that the comments infected the trial with unfairness as to make his conviction a denial of due process. *See e.g. State v. Durden*, 264 S.C. 86, 92, 212 S.E.2d 587, 590 (1975); *Brown v. State*, 383 S.C. 506, 515, 680 S.E.2d 909, 914 (2009). Moreover, Applicant has failed to show that a mistrial would have been granted if Counsel had moved for a mistrial. This Court finds this statement does not rise to the level of manifest necessity required to warrant a mistrial, even if this testimony were improper. Therefore, Counsel cannot be deemed deficient for failing to object to the statements or move for a mistrial. Further, Applicant did not present any testimony suggesting that Counsel’s failure to object prejudiced Applicant, or had an effect on the outcome of Applicant’s trial.

Accordingly, Applicant has failed to meet the burden imposed upon him, and therefore, Applicant’s claim Counsel failed to object and move for a mistrial is **DENIED**.

***Allegation Counsel Failed to Object to Testimony Regarding
Applicant’s Behavior During the Execution of the Search Warrant***

Applicant lastly contends Counsel was ineffective for failing to object to testimony of Applicant’s behavior during the search. Though Applicant’s PCR counsel placed this allegation on the record at the beginning of the evidentiary hearing, PCR counsel informed this Court

Applicant would rest on the record. This Court finds Applicant's allegation is without merit as Applicant failed to present any evidence to suggest that Counsel's performance was deficient, nor did Counsel present any evidence that Applicant was prejudiced by Counsel's failure to object to support the allegation.

"If evidence admitted without objection was admissible, then the complained of action fails both prongs of the *Strickland* test: failing to object to admissible evidence cannot be a professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was admitted." *Id.*; see *Miller v. Keeney*, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both *Strickland* prongs); *U.S. ex rel. Link v. Lane*, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from failure to object unless there is a legally supportable argument for exclusion of the evidence).

Additionally, 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 reasonably professional assistance." *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. "The burden of rebutting this presumption 'rests squarely on the defendant,' and '[i]t should go without saying that the absence of evidence cannot overcome [i]t.'" *Dunn v. Reeves*, 594 U.S. ___, ___, 141 S. Ct. 2405, 2410 (2021) (alteration in original) (quoting *Burt v. Titlow*, 571 U.S. 12, 22–23 (2013)). 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 '[t]he record does not reveal' that counsel took an approach that *no competent lawyer would have chosen*." *Id.* (alteration in original) (emphasis added) (quoting *Titlow*, 571 U.S. at 23–24).

This Court finds testimony relating to Applicant's behavior during the execution of the search warrant was not harmful to Applicant's case. Counsel's testimony regarding his trial

strategy further supports this finding as Counsel credibly testified Applicant's defense centered around the notion that the heroin was planted by law enforcement. Additionally, this Court finds Counsel was able to adequately cross-examine witnesses regarding the execution of the search warrant, execution of the search warrant, and Applicant's behavior, and argue to the jury a plausible explanation for Applicant's behavior that related to the defense's trial strategy. Therefore, after a review of the record, this Court finds testimony relating to Applicant's behavior during the search was not harmful to his case and did not conflict with the defense's theory of the case.

Accordingly, Applicant has failed to meet the burden imposed upon him, and therefore, Applicant's claim Counsel failed to object to testimony regarding his behavior during the execution of the search warrant is **DENIED**.

VI. Conclusion

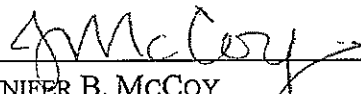
Based on the evidence presented at the PCR hearing and a thorough review of the record before this Court, this Court finds that Applicant has not proven any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application is denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. *See* Rule 203 SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 9 day of May, 2022.


JENNIFER B. MCCOY
Presiding Circuit Court Judge
Ninth Judicial Circuit

Charleston, South Carolina

SLB20130201393

WITNESSES

Charleston County Sheriff

AGENCY CASE NUMBER

2012018602BB

ARREST WARRANT NUMBER

2013A1010201000

DATE OF ARREST

February 23, 2013

ACTION OF GRAND JURY

TRUE BILLForeperson of Grand Jury
Date:

JUN 3 2013

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS1002729

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

June Term 2013

THE STATE

vs.

MARK LORENZO BLAKE JR

DOB: [REDACTED]
B/M

Indictment for

Possession With Intent to Distribute Heroin

FILED6/13/2013 3:16:27 PM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

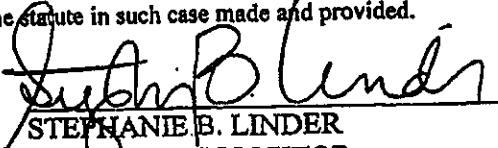
INDICTMENT

At a Court of General Sessions, convened on June 3, 2013 the Grand Jurors of Charleston County present upon their oath:

Possession With Intent to Distribute Heroin

That in Charleston County, South Carolina, on or about February 22, 2013, the Defendant, MARK LORENZO BLAKE JR, did manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possess with the intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance or a controlled substance analogue, to wit: heroin; 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.


STEPHANIE B. LINDER
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

MARK LORENZO BLAKE, JR

AKA: Mark Blake, ROMAN, MARK LORENZO JR.

Race: Black/African American Sex: M

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] Charleston, SC

City, State, Zip: Charleston, SC 29414-5623

DL# [REDACTED] SID# SC01602790

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: PWID Heroin 2nd

in violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0184

☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lowd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,The plea is: ☒ Without Negotiations or Recommendation,

ATTEST:

Stephanie B. Linder, Assistant Solicitor 72656 SC Bar #

Defendant

Attorney for Defendant

68630 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 12 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 1,156 days. GH☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Ordered PTUP _____ days/hours Public Service EmploymentObtain GED ☐☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(I) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ \$ 8.40TOTAL \$ 288.40Clerk of Court/Deputy Clerk: Don MichelCourt Reporter: Ruth Weese

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS1002729

A/W: 2013A1010201000

Date of Offense: 12/04/2012

S.C. Code §: 44-53-0370(e)(3)(c)

CDR Code #: 0149

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lowd Act)☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)☐ Negotiated Sentence, ☐ Recommendation by the State.☐ Ordered PTUP _____ days/hours Public Service EmploymentObtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §47.12 requires \$500 be paid to Clerk during probation. Man li

Presiding Judge: _____

Judge Code: 2138Sentence Date: 6/15/16