

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

—————  
Certiorari to Horry County

Honorable H. Steven DeBerry IV, Circuit Court Judge

—————  
ANTHONY MORRISON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001088

—————  
APPENDIX  
—————

KATHRINE H. HUDGINS  
Appellate Defender

ALAN WILSON  
Attorney General

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

CHELSEY MARTO  
Assistant Attorney General  
1000 Assembly St.  
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**  
 2 COUNTY OF HORRY ) CASE NO.:2017-GS-26-02047  
 3 PLEA

4 -----

5 June 22, 2019  
 6 **BEFORE:** The Honorable Alford Lee

7 -----

8 STATE OF SOUTH CAROLINA,  
 9 Plaintiff,  
 10 vs.  
 11 ANTHONY T. MORRISON,  
 12 Defendant.



13 -----

14  
 15 APPEARANCES:

16  
 17 David Caraker, Esq.  
 Attorney for the State.

18  
 19 Ralph Wilson, Jr., Esq.  
 Attorneys for the Defendant.

20  
 21 Official Court Reporter  
 Natalie Dahl, RPR

22  
 23  
 24  
 25

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

1  
2 (ANTHONY MORRISON, having been duly sworn,  
3 testified as follows:)

4 MR. CARAKER: This is State of South Carolina  
5 versus Anthony Morrison, True Bill Indictment  
6 2017-GS-26-02047 for trafficking cocaine, 28 to a  
7 hundred grams, first offense; and 2017-GS-26-02051 for  
8 possession with intent to distribute marijuana, first  
9 offense.

10 The State and defense counsel have entered into a  
11 negotiated plea, Your Honor, of ten years on the  
12 trafficking cocaine, and a five-year concurrent  
13 sentence on the marijuana charge. We'll be dismissing  
14 all of the remaining charges on this particular  
15 defendant as a result of this plea.

## EXAMINATION

16  
17 BY THE COURT:

18 Q You are Anthony T. Morrison; is that right?

19 A Yes, Your Honor.

20 Q How old are you?

21 A 27.

22 Q How far did you go in school?

23 A I went and got a GED.

24 Q What do you do for a job or occupation?

25 A Last was Walmart and Better Brands, forklift

1 operator, and stock associate at Walmart.

2 Q Are you married?

3 A No, Your Honor.

4 Q Do you have any children?

5 A No.

6 Q How much time have you served in jail on these  
7 charges?

8 A 145 days.

9 Q Mr. Morrison, you are charged today with two  
10 offenses. You are charged with trafficking in cocaine  
11 in an amount between 28 and 100 grams, first offense  
12 which carries a minimum sentence of seven years, a  
13 maximum sentence of 25 years and a \$50,000 fine; do you  
14 understand that?

15 A Yes, Your Honor.

16 Q You are also charged today with possession with  
17 intent to distribute marijuana, which carries a maximum  
18 punishment of five years and \$5,000; do you understand  
19 that?

20 A Yes, sir.

21 Q Understanding that, how do you wish to plead to  
22 these two charges today: guilty or not guilty?

23 A Guilty.

24 Q You understand by pleading guilty, you give up  
25 your right to remain silent?

1 A Yes, sir.

2 Q You understand by pleading guilty you give up  
3 your right to a trial by jury?

4 A Yes, Your Honor.

5 Q I'll go over that right with you. At trial, you  
6 have the right to confront and cross-examine all  
7 witnesses against you. You would have the right to  
8 present any witnesses and/or evidence in your own  
9 defense. You would have the right to testify in your  
10 own defense, if you wish to do so, but no one could  
11 make you testify in your own trial. If you decided to  
12 go to trial and not testify, the judge would tell the  
13 jury they could not hold your failure to testify  
14 against you; in fact, the jury could not even consider  
15 your failure to testify in their deliberations on your  
16 guilt or innocence. You would be presumed innocent  
17 throughout your trial. The State would have to plead  
18 you guilty beyond a reasonable doubt to a jury of 12  
19 people. All 12 would have to unanimously agree that  
20 you were guilty in order to be convicted. Even if you  
21 were convicted, you still have the right to appeal that  
22 conviction; do you understand your rights with regard a  
23 trial by jury?

24 A I'm not requesting a trial.

25 Q I understand, but do you understand your right to

1 a jury trial?

2 A Oh, yes. Yes, your Honor.

3 Q Understanding that right, do you still want to  
4 plead guilty, or do you want me to set your cases for  
5 trial?

6 A Guilty.

7 Q Now, the State is recommending to the Court on  
8 the trafficking charge a ten-year sentence, and on the  
9 marijuana charge, possession with intent to distribute,  
10 a five-year sentence and that those are to run  
11 concurrent; is that your understanding of the agreement  
12 you have with the Solicitor's office in order to plead  
13 guilty?

14 A A minimum of seven years, correct?

15 Q They are recommending ten.

16 A Ten. Ten years, yes. Then I understand.

17 Q Is that your understanding?

18 A Yes, Your Honor. Is the other charges dismissed?

19 Q You are absolutely right. They also agree to  
20 dismiss the other charges in return for your plea to  
21 these two charges.

22 A Yes, Your Honor.

23 Q Has anyone promised you anything other than that  
24 in order to get you to plead guilty?

25 A No, sir.

1 Q Are you satisfied in the manner which your  
2 attorney has advised and represented you in these  
3 cases?

4 A Absolutely.

5 Q Have you and your attorney fully discussed the  
6 charges against you?

7 A I'm sorry?

8 Q Have you talked with your attorney about these  
9 charges?

10 A Absolutely.

11 Q Has your attorney told you the witnesses and  
12 evidence the State has to present at trial in order to  
13 prove your guilt?

14 A I didn't quite understand that.

15 Q Has your attorney told you the witnesses and  
16 evidence the State has available to present at trial?

17 A Oh, yes. Yes. We went over that.

18 Q Has your attorney discussed with you any possible  
19 legal defenses that might be available to you if you go  
20 to trial?

21 A Yes, Your Honor.

22 Q Have you told your attorney the names of any and  
23 all witnesses you know of that your attorney could  
24 subpoena and bring to trial to assist you in your  
25 defense, if you were to go to trial? You know of any

1 witnesses -- told your attorney about any witnesses you  
2 know of that would be helpful to you in your trial?

3 A No. Just I had drugs.

4 Q Are you under the influence of any mind-altering  
5 substance such as alcohol, drugs or prescription  
6 medications which interfere with your judgment or  
7 ability to understand what you are doing in court?

8 A No, Your Honor.

9 Q Do you have any mental, emotional or nervous  
10 condition that interferes with your judgment or ability  
11 to understand what you are doing in court?

12 A No, Your Honor.

13 Q Are you pleading guilty of your own freewill?

14 A Yes, Your Honor.

15 Q Are you, in fact, guilty of these two charges?

16 A Yes, Your Honor.

17 THE COURT: Please give me the facts.

18 MR. CARAKER: This incident took place January  
19 27, 2017 in the Myrtle Beach section of Horry County.  
20 Officers were watching a hotel room around the area of  
21 The Boulevard. They had a complaint there of narcotic  
22 sales. They also had an active out of that room on a  
23 codefendant. When this defendant and codefendant came  
24 out of the room, sometime during their surveillance,  
25 this defendant had on a backpack. As officers

1 approached him, he turned and ran and discarded the  
2 backpack over a construction fence. They eventually  
3 caught up with him and retrieved the backpack. It did  
4 contain, among other drugs, an amount of cocaine,  
5 approximately 60 grams, and 11 individual packaged  
6 bags of heroin as if it was packaged for sale.

7 THE COURT: Mr. Morrison, you heard the facts  
8 cited to the Court by the Solicitor's Office with  
9 regard to these charges; do you disagree in any way  
10 with what they say happened?

11 MR. MORRISON: No, Your Honor.

12 THE COURT: I find the decision of the defendant,  
13 Anthony T. Morrison, to plead guilty to these two  
14 charges have been made freely, voluntarily and  
15 intelligently. He has had the representation of a  
16 competent attorney, with whom he says he's satisfied.  
17 I find the facts presented to the Court by the  
18 Solicitor's Office, concurred then by the defendant,  
19 are appropriate, and I'll accept the plea.

20 Mr. Morrison, if you disagree with the proceeding  
21 which we're currently involved, you have ten days from  
22 today's date which to file a Notice of Intent to  
23 Appeal; do you understand your right to appeal to  
24 today's proceedings?

25 MR. MORRISON: Yes, sir.

1 THE COURT: Counsel.

2 MR. WILSON: Your Honor, if it pleases the Court.  
3 My client, while incarcerated, we were preparing for  
4 his defense, and we talked about that. But during  
5 that time, he sent a letter -- and I'm doing this for  
6 the record -- forwarded a letter to, I believe, Eric  
7 Fox, who is the lawyer for the codefendant, and that  
8 letter was subsequently turned over to the  
9 Prosecutor's Office, and I received a copy of it,  
10 where he pretty much admitted that these drugs were  
11 his and belonged to him. I'm not saying this because  
12 I want to say it. He asked me to make this clear on  
13 the record that all of the drugs in this particular  
14 case belonged to him, and that he obviously has been  
15 sworn under oath and he takes full responsibility for  
16 this crime and wanted me to say that on the record,  
17 Judge.

18 MR. MORRISON: Can I say one more thing?

19 THE COURT: Yes, sir.

20 MR. MORRISON: Thank you, Solicitor. I do  
21 apologize for misleading the detectives. Basically, I  
22 was trying to allude the fact that I had drugs. I had  
23 drugs and I had discarded them over the fence. And  
24 resisting arrest, I didn't give any officers any  
25 trouble or anything. I just wanted to thank you for

1 this.

2 MR. CARAKER: Sounds good. Thank you.

3 MR. WILSON: And, Judge, this was his decision  
4 completely.

5 THE COURT: I understand.

6 Case No. 2017-GS-26-2047, Anthony T. Morrison has  
7 pled guilty to trafficking cocaine in the amount  
8 between 28 and 100 grams, first offense, the sentence  
9 of the Court he will be committed to the State  
10 Department of Corrections for a determinat term of  
11 ten years. He is given credit for 145 days of jail,  
12 and this sentence is concurrent. In Case No.  
13 2017-GS-26-2051, Anthony T. Morrison having pled  
14 guilty to possession with intent to distribute  
15 marijuana, sentence of the Court he will be committed  
16 to the State Department of Corrections for a  
17 determinat term of five years, concurrent, with  
18 credit for time served. Thank you.

19 (Whereupon, the proceedings concluded.)  
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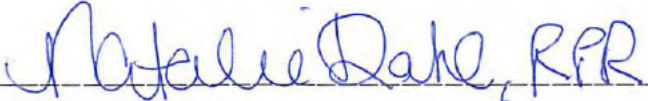
CERTIFICATE OF REPORTER

State of South Carolina)  
County of Horry )

I, Natalie Dahl, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the evidence introduced in the hearing of the above-captioned case, relative to appeal, in the Court of General Sessions for Horry County, South Carolina, on the 22nd day of June, 2019.

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

November 22, 2019



Natalie Dahl, RPR  
Court Reporter

DOCKET NO. 2017-GS-28- 02047

**WITNESSES**

S Donovan Myrtle Beach Police Department

*C*

**The State of South Carolina  
County of Horry**

David P. Caraker, Jr.  
17H01104

**COURT OF GENERAL SESSIONS**

**April, 2017 TERM**

FILED  
HORRY COUNTY

17 APR 28 AM 8:41

RENEE H. ELVIS  
CLERK OF COURT  
HORRY COUNTY, SC

DATE RECEIVED FROM  
GRAND JURY

**ARREST WARRANT NUMBER**

2017A2620600245

CDR: 2359 44-53-0370(e)(2)(b)1

DOA: 1/29/2017

**THE STATE**

vs.

Anthony T Morrison  
B/ M

[REDACTED]

**ATTORNEY: Ralph J. Wilson, Jr.**

**ACTION OF GRAND JURY**

TRUE BILL

*[Signature]*

Foreperson of Grand Jury

Date: APR 20 2017

**VERDICT**

**Indictment for**

**TRAFFICKING COCAINE (28 - 100 GRAMS)**

**Jimmy A. Richardson, II, Solicitor**

**ORIGINAL**

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA    )  
   )  
 COUNTY OF HORRY            )

INDICTMENT

At a Court of General Sessions, convened on April 20, 2017, the Grand Jurors of Horry County present upon their oath:

**TRAFFICKING COCAINE (28 - 100 GRAMS)**

CDR: 2359 44-53-0370(e)(2)(b)(1)

That Anthony T Morrison did in Horry County on or about January 27, 2017, knowingly sell, deliver, purchase or bring in this State, or aid, abet, attempt or conspire to sell, deliver, purchase or bring into this State, or was in actual or constructive possession, or attempted to become in actual or constructive possession of a quantity of Cocaine in an amount of more than twenty-eight (28) grams, but less than one-hundred (100) grams, same being a controlled substance all within the meaning of Section 44-53-370, et seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized, and being in violation of section 44-53-370(e)(2)(b), S. C. Code of Laws, 1976, as amended, for the crime of trafficking.

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

  
 \_\_\_\_\_  
 JIMMY A. RICHARDSON, II  
 FIFTEENTH CIRCUIT SOLICITOR

14  
STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry ✓  
STATE VS.

INDICTMENT/CASE#: 2017GS2602047

Anthony T Morrison

A/W#: 2017A2620600245

AKA: \_\_\_\_\_

Date of Offense: 1/27/2017

Race: BLACK Sex: M Age: 27

S.C. Code § : 44-53-0370(e)(2)(b)1

Address: \_\_\_\_\_

CDR Code #: 2359

City, State, Zip: \_\_\_\_\_

DL#: \_\_\_\_\_ SID#: \_\_\_\_\_

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS TO: Trafficking in cocaine, 28-100 g, 1st offense (7.25 yrs and \$50,000)

in violation of § 44-53-0370(e)(2)(b)1 of the S.C. Code of Laws, bearing CDR Code # 2359

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC)  §17-25-45 w/minor 1st or Lewd Act

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)

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

ATTEST: David P. Caraker, Jr. 100039 SC Bar# Anthony T Morrison Defendant 7/21/17 Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 10 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ 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 Services 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. 145 Days

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered

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

Payment Terms: \_\_\_\_\_

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 61.6 (Public Def/Probation) \$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(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_

3% to County (if paid in installments) \$ 8.25

TOTAL \$ 283.25

Clerk of Court/ Deputy Clerk Renee N. Edwards

Court Reporter: Natalie

SCCA/217 (07/2016)

PTUP \_\_\_\_\_ days/hours Public Service Employment

Obtain 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 \$ 25.00 beginning 07/22/17

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge [Signature]

Judge Code: \_\_\_\_\_

Sentence Date: 6/22/17

FILED  
HORRY COUNTY  
JUL 27 2017  
3:35

15

**WITNESSES**

S Donovan Myrtle Beach Police Department

*edd*

**ARREST WARRANT NUMBER**

2017A2620800249

CDR: 0186 44-53-0370(b)(2)

DOA: 1/29/2017

**ACTION OF GRAND JURY**

*INDICT*

Foreperson of Grand Jury  
Date:

APR 20 2017

**VERDICT**

Foreperson of Petit Jury  
Date:

DOCKET NO. 2017-GS-26- 02051

**The State of South Carolina**

County of Horry

David P. Caraker, Jr.  
17H01104

COURT OF GENERAL SESSIONS

April, 2017 TERM

THE STATE

vs.

Anthony T Morrison  
B/M

ATTORNEY: Ralph J. Wilson, Jr.

Indictment for

POSSESSION OF MARIJUANA WITH INTENT  
TO DISTRIBUTE

Jimmy A. Richardson, II, Solicitor

FILED  
HORRY COUNTY

17 APR 28 AM 8:41

RENEE N. ELVIS  
CLERK OF COURT  
HORRY COUNTY, SC

DATE RECEIVED FROM  
GRAND JURY

ORIGINAL

STATE OF SOUTH CAROLINA     )  
  )  
COUNTY OF HORRY             )

## INDICTMENT


At a Court of General Sessions, convened on April 20, 2017, the Grand Jurors of Horry County present upon their oath:

POSSESSION OF MARIJUANA WITH INTENT TO DISTRIBUTE

CDR: 0186 44-53-0370(b)(2)

That Anthony T Morrison did in Horry County, on or about January 27, 2017, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver, a quantity of Marijuana, a controlled substance under provisions of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized by law, and in violation of Section 44-53-0370(b)(2), S. C. Code of Laws, 1976, as amended.

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

  
\_\_\_\_\_  
JIMMY A. RICHARDSON, II  
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry
STATE VS. Anthony T Morrison
AKA:
Race: BLACK Sex: M Age: 27
DOB:
Address:
City, State, Zip:
DL#: SID#:

INDICTMENT/CASE#: 2017GS2602051
A/W#: 2017A2620600249
Date of Offense: 1/27/2017
S.C. Code § : 44-53-0370(b)(2)
CDR Code #: 0186

SENTENCE SHEET

\*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: PWID/Dist. of Marijuana or other Sch. I,II,III drug, 1st Offense (0.5 yrs \*for up to \$5,000)

in violation of § 44-53-0370(b)(2) of the S.C. Code of Laws, bearing CDR Code # 0186
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
ATTEST: David P. Caraker, Jr., David P. SC Bar# 100039 Defendant Anthony Morrison Attorney for Defendant SC Bar# 70716

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 5 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 Services 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. 145 days
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence ) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

PTUP
days/hours Public Service Employment
Obtain 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
prmts. of \$ 25.00 beginning 07/22/17
\$ paid to Public Defender Fund
Other:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 61.6 (Public Def/Probation) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114(BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments) \$ 8.25. TOTAL \$ 283.25

Clerk of Court/ Deputy Clerk Renee N. Elvin
Court Reporter: Natalie Han
SCCA/217 (07/2016)

Presiding Judge
Judge Code:
Sentence Date: 6/23/17

FILED
Horry County

FORM 5

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF HORRY )  
 )  
Anthony T. Morrison #372965 )  
 Full name and prison number (if any) of Applicant. )  
 )  
 v. )  
 )  
 State of South Carolina )  
 )

IN THE COURT OF COMMON PLEAS  
2019 CP26 7240

APPLICATION FOR  
 POST-CONVICTION RELIEF

FILED  
 HORRY COUNTY  
 NOV 12 A 8:55  
 2019  
 GENE H. ELY  
 CLERK OF COURT  
 HORRY COUNTY

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention J. Rueben Long Detention Center
2. Name and location of Court which imposed sentence General Sessions County SC 29526
3. Name(s) of co-defendant(s) (if any) Benjamin Bright
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2017GS2602047
  - (b) 2017GS2602051
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) 4(a) 6/22/17 10 years cc.
  - (b) 4(b) 6/22/17 5 years cc.

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

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓ \_\_\_\_\_

(b) after a plea of not guilty \_\_\_\_\_

(c) after a plea of nolo contendere \_\_\_\_\_

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

No. \_\_\_\_\_

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

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

i. N/a \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. N/a \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result:

i. N/a \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. N/a \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

(a) I didn't know what to do exactly. \_\_\_\_\_

(b) \_\_\_\_\_

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

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

- (a) Ineffective assistance counsel
- (b) New discovered evidence
- (c) Cruel and unusual punishment

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

- (a) My attorney let me get convicted of drugs that wasn't part of my confession
- (b) Myrtle Beach Police Dept. confessed to not having proper re-certification
- (c) It's unusual for me a tax payer with no criminal history

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

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

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

- (a) the specific nature thereof:
  - i. N/a
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. N/a
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (c) the disposition thereof:
  - i. N/a
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. N/a

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. N/a

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. N/a

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. N/a

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

(a) I lacked the intelligence.

(b) My lawyer lacked the initiative.

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

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

- (a) your arraignment and plea? No
- (b) your trial, if any? N/a
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/a
- (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. Ralph Wilson Jr. Conway, SC 29526
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Sentencing
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

An effective counsel and corrected sentence and conviction.

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

No

STATE OF SOUTH CAROLINA )  
 )  
County of Horry )

VERIFICATION  
20 19 CP26 7240

I, Anthony T. Morrison 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.

Anthony Morrison

SWORN to and subscribed before me this 5th  
day of November, 2019.

J. E. Helber (L.S.)  
Notary Public

My Commission Expires: 8/30/2026

FILED  
HORRY COUNTY  
2019 NOV 12 A 8:10  
RENEE N. ELVIS  
CLERK OF COURT  
HORRY COUNTY, SC.

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

20 19 CP26 7240

I, Anthony T. Morrison, 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.

Anthony Morrison  
Applicant

SWORN or affirmed to and subscribed before me this  
5th day of November, 2019.

Rachel [Signature]  
Notary Public

My Commission Expires: 8/30/2020

FILED  
HORRY COUNTY  
2019 NOV 12 A 8:10  
RENEE N. ELVIS  
CLERK OF COURT  
HORRY COUNTY, SC

10.

(d.) Wrongful conviction

20\_19 CP26 7240

11.

(d.) I thought I was supposed to be convicted of possession of marijuana and suboxon based on the confession letter I sent to the solicitor and also my attorney (Ralph Wilson Jr.).

Anthony Morrison

FILED  
Horry County  
2019 NOV 12 A 8:10  
RENEE N. ELVIS  
CLERK OF COURT  
Horry County, SC

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

Anthony Morrison, SCDC No. 372965 )

Applicant, )

v. )

State of South Carolina )

Respondent. )

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

Case No. 2019-CP-26-7240 )

**RETURN, PARTIAL MOTION TO )  
DISMISS, AND MOTION FOR A )  
MORE DEFINITE STATEMENT** )

FILED  
HORRY COUNTY  
2019 SEP 14 P 1:11  
RENEE N. ELVIS  
CLERK OF COURT  
HORRY COUNTY, SC

NOW COMES Respondent, the State of South Carolina, in response to Applicant

Anthony Morrison's November 12, 2019 application for post-conviction relief. Respondent would respectfully show this Court the following:

**I. PROCEDURAL HISTORY**

Applicant is confined in the South Carolina Department of Corrections. During the April 2017 term, Applicant was indicted by the Horry County Grand Jury for Distribution of Heroin (2017-GS-26-2046); Trafficking of Cocaine in the Amount of 28-100 Grams – First Offense (2017-GS-26-2047); Trafficking in Illegal Drugs (Heroin) (2017-GS-26-0248); Possession with Intent to Distribute (PWID) Cocaine (2017-GS-26-2049); PWID Ecstasy (2017-GS-26-2050); PWID Marijuana – First Offense (2017-GS-26-2051); PWID Schedule I, II, III Drug (Flunitrazepam or a Controlled Substance Analogue) (2017-GS-26-2052); PWID Schedule I, II, III Drug (Oxycodone) (2017-GS-26-2053); PWID Schedule IV Drug (2017-GS-26-2054); Unlawful Possession of Prescription Drug without Prescription (2017-GS-26-2055); and PWID Cocaine and Heroin in Close Proximity to a School or Park (2017-GS-26-2056). Ralph Wilson Jr., Esquire, represented Applicant. Solicitor Jimmy A. Richardson and Assistant Solicitor David Caraker of the Fifteenth Circuit Solicitor's Office, prosecuted the case.

On June 22, 2019, Applicant entered a guilty plea as indicted to the offenses of Trafficking in Cocaine, 28-100 grams, First Offense, and PWID Marijuana, First Offense, before the Honorable Alford Lee. All other charges were dismissed, *nolle prosequi*. Applicant was subsequently sentenced to ten years for trafficking in cocaine and five years for PWID marijuana, to run concurrently. Applicant did not appeal the judgment of conviction or imposition of the sentence.

## II. FACTUAL HISTORY

On January 27, 2017, Myrtle Beach police officers were observing a hotel room where they had received complaints of narcotic sales. (Tr. 7, 18-22). The officers witnessed Applicant and another individual coming out of the room carrying a backpack. (Tr. 7, 23-25). Applicant fled and threw the backpack over a nearby construction fence when the officers approached. (Tr. 7, 25 – Tr. 8, 2). After Applicant was apprehended, the officers retrieved the backpack, searched it incident to his arrest, and found copious amounts of narcotics inside, including cocaine and heroin, packaged for individual sale. (Tr. 8, 2-6).

## III. PRESENT APPLICATION

In his present application for post-conviction relief, Applicant alleges he is being held unlawfully for the following reasons (verbatim):

1. Ineffective Assistance of Counsel
  - a. “My attorney let me get convicted of drugs that wasn’t part of my confession.”
2. Newly Discovered Evidence
  - a. “Myrtle Beach Police Department confessed to not having proper recertification.”
3. Cruel and Unusual Punishment
  - a. “It’s unusual for me a taxpayer with no criminal history.”
4. Wrongful Plea
  - a. “I thought I was supposed to be convicted of possession of marijuana and suboxon based on the confession letter I sent to the solicitor and also to my attorney (Ralph Wilson Jr.).”

In his prayer for relief, Applicant requests the following (verbatim):

- An effective counsel and corrected sentence and conviction.

Attached and incorporated herein are the Horry County Clerk of Court Records regarding the subject convictions, Applicant's South Carolina Department of Corrections Records, the plea transcript and pleadings, Applicant's present PCR application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

#### IV. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL AND INVOLUNTARY GUILTY PLEA

Respondent submits Applicant's allegations of ineffective assistance of counsel and involuntary guilty plea are so interrelated they can be addressed together. The allegations are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Id.* at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided

representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 117-18, 386 S.E.2d at 625. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. Statements made during a guilty plea should be considered conclusive, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th

Cir. 1975)).

Respondent interprets Applicant's allegation regarding "wrongful conviction" to be a claim of an involuntary guilty plea because he believed he was pleading guilty to different charges than those for which was actually convicted. An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his [or her] guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." *Hill*, 474 U.S. at 56. Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." *McMann v. Richardson*, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." *Id.* at 771.

The record must establish the defendant had a full understanding of the consequences of his or her plea and the charges against him. *Dalton v. State*, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Boykin v. Alabama*, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea

hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing.” *Id.* at 138-39, 654 S.E.2d at 874 (citing *Wolfe v. State*, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

In this case, the record refutes Applicant’s allegations that he did not knowingly and voluntarily enter a guilty plea, that he did was unaware of the terms of the plea agreement, or that he was unaware of the charges to which he was pleading guilty. At the guilty plea hearing, Judge Lee conducted a thorough colloquy with Applicant. (Tr. 3 – Tr. 8). Judge Lee clearly stated the charges to which Applicant was pleading guilty, and Applicant demonstrated his understanding by responding appropriately to the judge’s questions and participating in a back-and-forth exchange with the judge about the terms of the plea agreement. (Tr. 3, 9 – Tr. 7, 16). Further, Judge Lee fully described to Applicant by pleading guilty he gives up his right to remain silent, right to a jury trial, right to confront and cross-examine all witnesses against him, the right to present his own witnesses and evidence in his defense, the right to testify in his own defense, and his presumption of innocence. (Tr. 3, 24 – Tr. 4, 23). Applicant stated that he understood and still wanted to plead guilty. (Tr. 5, 2-6). Likewise, Judge Lee explained the State’s recommended negotiated sentence, including the minimum sentences, and the other charges dismissed in return for Applicant’s guilty plea. (Tr. 5, 7-22).

Applicant asserted he understood the plea-negotiation conversations with his attorney and was satisfied with his attorney’s representation. (Tr. 6, 1-4). He stated his attorney discussed the charges, possible legal defenses, and the available witnesses to testify at trial. (Tr. 6, 1-21). Furthermore, Applicant testified he was not threatened or promised anything in exchange for his guilty plea. (Tr. 5, 23-25). Applicant confirmed he was not under the influence of drugs or alcohol during his guilty plea hearing, nor did he have any mental, emotional, or nervous conditions that

would interfere with his ability to understand the guilty plea. (Tr. 7, 4-12). Finally, Applicant stated that he was pleading guilty of his own freewill and was, in fact, guilty of the two charges. (Tr. 7, 13-16).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, Applicant's allegations point to a letter directed to the Solicitor and his plea counsel. Applicant's plea counsel also referenced a letter at the plea hearing containing a confession. (Tr. 9, 4-17). This letter does not appear with his application and is not included in the Horry County Clerk of Court's records. Without more, Respondent is unable to effectively respond to the allegations, and moves later herein for a more definite statement.

**V. MOTION TO DISMISS ALLEGATIONS OF NEWLY DISCOVERED  
EVIDENCE**

Applicant also alleges that he is in possession of newly discovered evidence relevant to his guilty plea and convictions. The Uniform Post-Conviction Relief Act states a person may institute a post-conviction relief action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20 (A)(4). If the applicant contends there is evidence of material fact not previously presented, the post-conviction relief application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C). The granting of a new trial based on after-discovered evidence is disfavored. *State v. Harris*, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011).

"Traditionally, in South Carolina, to obtain a new trial based on after discovered evidence, the party must show that the evidence: (1) would probably change the result if a new trial is had;

(2) has been discovered since trial; (3) could not have been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching.” *Jamison v. State*, 410 S.C. 456, 467, 765 S.E.2d 123, 128 (2014) (internal citations and quotations omitted); *see also Hayden v. State*, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing *State v. Caskey*, 273 S.C. 325, 256 S.E.2d 737 (1979) (setting forth the five factors to be analyzed when considering a newly discovered evidence claim). When a PCR applicant seeks relief on the basis of newly discovered evidence following a guilty plea, relief is appropriate only where the applicant presents evidence showing that (1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the “interest of justice” requires the applicant’s guilty plea to be vacated. *Id.* at 467, 765 S.E.2d at 128. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions.

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). In this case, Applicant has failed to demonstrate any reason whatsoever why the alleged newly discovered information could not have been discovered prior to the entry of his plea or why in the interest of justice this plea must be vacated. Applicant merely alleges that the “Myrtle Beach Police Department confessed to not having proper recertification.” Applicant did not articulate any supporting facts to make any showing such evidence actually exists, or explain how it relates to his decision to plead guilty.

Applicant has failed to make a *prima facie* showing of newly discovered evidence based on the information set forth in his application, and, therefore, Respondent submits he is not entitled to an evidentiary hearing on this issue. Respondent respectfully requests this Court summarily dismiss all allegations regarding newly discovered evidence.

#### **VI. MOTION TO DISMISS ALLEGATION OF CRUEL AND UNUSUAL PUNISHMENT**

Applicant alleges the punishment he received is cruel and unusual to him “as a taxpayer with no record.” Applicant’s claim should be summarily dismissed because it raises a direct appeal issue that is procedurally barred by S.C. Code Ann. Section 17-27-20(b). Post-conviction relief is not a substitute for an appeal. *Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). PCR relief is only proper when the application collaterally attacks the validity of the conviction or sentence. *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). “In a direct appeal, the focus generally is upon the propriety of rulings made by the circuit court in response to a party’s motions or objections. In PCR, the focus usually is upon alleged errors made by trial or plea counsel. Therefore, when asserting the erroneous admission of evidence, a violation of a constitutional right, or other errors in a proceeding, the applicant generally must frame the issue as one of ineffective assistance of counsel.” *Id.* at 363-64, 527 S.E.2d at 747. A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. *Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal, and his failure to do so has waived this allegation as grounds for relief. Therefore, Respondent respectfully requests that this Court summarily dismiss Applicant’s allegations of cruel and unusual punishment.

#### **VII. MOTION FOR A MORE DEFINITE STATEMENT**

Respondent moves for a more definite statement of Applicant's allegations of ineffective assistance of counsel and involuntary guilty plea. Applicant has failed to set forth sufficient facts to "support each ground" or to explain with any specificity whatsoever the facts upon which this claim is based. The Uniform Post-Conviction Procedure Act requires Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (2015) (emphasis added). Respondent respectfully submits it is incumbent upon Applicant, through counsel, to amend his application to set forth the specific facts upon which his allegation is based so Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which each of his allegations are based prior to any evidentiary hearing being held.

#### VIII. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY

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

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent, or in the alternative continue the matter to permit adequate time to investigate and address the claims. *See Mangal v. State*, 421 S.C. 85, 805

S.E.2d 568 (2017) (“In most PCR cases, . . . we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases.”); *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019) (“When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record.”); *see also* Rules 15(a)-(b), SCRPC (explaining how to amend a pleading).

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

#### **IX. OTHER ALLEGATIONS DENIED**

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

#### **X. CONCLUSION**

WHEREFORE, having made its Return, Respondent respectfully requests that the Court summarily dismiss Applicant’s allegations of cruel and unusual punishment and newly discovered evidence, and that this Court not hold an evidentiary hearing until Applicant amends his application to set forth additional facts to support his claims of ineffective assistance of counsel.

and involuntary guilty plea, or pleads additional, cognizable claims.

Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

WILLIAM H. RAY  
Assistant Attorney General

By: s/William H. Ray \_\_\_\_\_  
ATTORNEYS FOR RESPONDENT

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

September 10, 2020

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY ) 2019-CP-26-07240

|                          |   |                             |
|--------------------------|---|-----------------------------|
| Anthony Morrison,        | ) |                             |
|                          | ) |                             |
| Plaintiff,               | ) | <b>Transcript of Record</b> |
|                          | ) |                             |
| vs.                      | ) |                             |
|                          | ) | JUNE 2, 2022                |
| State of South Carolina, | ) |                             |
|                          | ) |                             |
| Defendant.               | ) |                             |
|                          | ) |                             |

**B E F O R E:**

Honorable H. Steven DeBerry, IV  
Horry County Courthouse  
Conway, South Carolina

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

James K. Falk, Esquire  
**Attorney for Plaintiff**

Chelsey F. Marto, Esquire  
**Attorney for State**

Sallie Beth Todd  
**Circuit Court Reporter**



1           **THE COURT:** Ms. Marto.

2           **MS. MARTO:** Yes, Your Honor. May it please the Court?

3           We're here today in the case of Anthony Morrison versus  
4 the State of South Carolina, docket number 2019-CP-26-7240.  
5 He was indicted for Distribution of Heroin; Trafficking of  
6 Cocaine between 28 and 100 grams; Trafficking in Illegal  
7 Drugs, which is Heroin; Possession with Intent to Distribute  
8 Cocaine; Possession with Intent to Distribute Ecstasy;  
9 Possession with Intent to Distribute Marijuana - first  
10 offense; Possession with Intent to Distribute Flunitrazepam or  
11 Controlled Substance Analogue; Possession with Intent to  
12 Distribute Oxycodone; Possession with Intent to Distribute  
13 Schedule IV Drug; Unlawful Possession of Prescription Drug  
14 without Prescription; Possession with Intent to Distribute  
15 Cocaine and Heroin in Close Proximity to a School or Park.

16           He was represented by Mr. Ralph Wilson, Jr. He entered  
17 his guilty plea as indicted to the offenses of Trafficking  
18 Cocaine between 28 and 100 grams, Possession with Intent to  
19 Distribute Marijuana - First Offense before the Honorable  
20 Alford Lee. All other charges were dismissed.

21           June 22, 2019 he was subsequently sentenced pursuant to  
22 the negotiated sentence of ten years for Trafficking Cocaine,  
23 five years for Possession with Intent to Distribute Marijuana  
24 to run concurrently. He did not appeal the judgment of  
25 conviction or imposition of the sentence.



1 start where the problem began at. He didn't give me a game  
2 plan on what I should do as far as going through with this.  
3 And I'm not trying to lie my way out of the situation. So I'm  
4 not -- I didn't need him for a game plan to lie to anyone.  
5 But I did need him to tell me what I should expect, and he  
6 didn't give me any answers to that.

7       And Myrtle Beach Police Department, a year later, sent me  
8 -- sent him information pertaining to some type of officer who  
9 testes the marijuana and he wasn't recertified at the time of  
10 my arrest, but they went ahead and recertified him, and it  
11 still came back positive.

12       But what I'm arguing is that if Ralph Wilson, Jr. had  
13 checked the credentials of all of the testing officers, I  
14 would have made it to a second plea. And all of the drug  
15 dealers that I've met, every single one of them that has went  
16 to a second plea, no matter what they should have gotten, it's  
17 always been less than the first plea.

18 Q: All right. Let me just clarify something. You said that  
19 one of the arresting officers, or whoever when you got  
20 arrested with the marijuana, he was -- they decertified him?

21 A: They recertified him.

22 Q: Okay. So what was -- if he was recertified, what was  
23 your issue there?

24 A: The issue was if I'd known that when I went to court, I  
25 would have -- as a matter of fact I would have never even went

1 to court, I would have denied the first plea knowing that he  
2 wasn't recertified. And matter of fact, he wouldn't have been  
3 able to recertify himself before that court date because if  
4 Ralph Wilson, Jr. had known that information it would have  
5 been between me and him.

6 Q: Well just to clarify your testimony, so it was your  
7 understanding that the police officer who -- one of the police  
8 officers responsible on your arrest, and who apparently made  
9 the -- did some of the testing on the marijuana, that he was  
10 not certified at the time?

11 A: Yeah, he wasn't certified.

12 Q: That's your understanding, he was not certified.

13 A: That's my understanding from Ralph Wilson, Jr. who got  
14 the information from Myrtle Beach Police Department a year  
15 later.

16 Q: Okay.

17 A: I was already in prison.

18 Q: Okay. All right. I just want to make sure that you  
19 understand that the only remedy that this Judge can grant you  
20 today is to allow you to withdraw your plea. Is that correct?

21 A: I understand that.

22 Q: And that you had several charges that were dismissed in  
23 exchange for this plea. Is that correct?

24 A: All I've gotten was a first -- a plea for the cocaine and  
25 the marijuana, ten years, drug trafficking.

1 Q: I just have to make this so the record is clear. So but  
2 you were indicted for Distribution of Heroin. Is that  
3 correct?

4 A: Yes.

5 Q: And you were indicted for Trafficking in Cocaine, 28 -  
6 100 grams - first offense.

7 A: Yes.

8 Q: Trafficking in Heroin. Is that correct?

9 A: Yes.

10 Q: Possession with Intent (PWID) Cocaine.

11 A: Yes.

12 Q: PWID Ecstasy.

13 A: Yes.

14 Q: PWID Oxycodone and then another PWID for Schedule IV  
15 Drug.

16 A: Yes.

17 Q: You also had a PWID for Cocaine and Heroin and you had a  
18 proximity charge on the cocaine and heroin regarding a school.  
19 Is that correct?

20 A: Yes.

21 Q: So I mean you understand that if your plea is withdrawn,  
22 all of those charges go back on, they come back. You  
23 understand that, right?

24 A: Yes. I understand that, but my first plea is no  
25 different than any other person's first plea.

1 Q: No, I understand that. I just want to make sure that you  
2 understand the situation and I just need it on the record that  
3 if your relief is granted today that these charges that were  
4 dismissed are no longer dismissed and you'll still have to  
5 resolve those charges as well.

6 A: Yes.

7 Q: Okay. And it's your -- and your expectation is that if  
8 you're able to withdraw your plea, you'll possibly be able to  
9 get a better plea deal?

10 A: Because if the solicitor felt as though I should, I  
11 should be offered ten years on a first offense, first plea  
12 then that's where we're starting at, everyone starts  
13 somewhere. All them drug dealers I've met in prison, no  
14 matter what amount of drugs they had, they were offered a  
15 first plea and then every single time they went to a second  
16 plea it's always been less.

17 Q: Okay.

18 A: So I made a mistake on my own going through with a first  
19 plea knowing that I have no priors, I have a work history, I  
20 pay taxes. I was homeless prior to -- the police department  
21 has my social security number. They know I was homeless. I  
22 did something very, very foolish. But if I had known that  
23 that officer was not recertified, that would have been enough  
24 information for myself to go to a second plea. And just for  
25 the sake of the years of my time, I would have made it to

1 maybe seven years, okay. Ralph Wilson, Jr. didn't give me any  
2 information or knowledge of how the system works to go to a  
3 second plea.

4 Q: No, I understand that.

5 A: So if I had known that the officer wasn't recertified,  
6 between me and the police department would have been enough  
7 for me to go to a second plea.

8 Q: Yeah, Mr. Morrison, I'll get to all of that. I am on  
9 your side.

10 A: Okay.

11 Q: I just need to make sure we make a record here that it's  
12 clear that you understand the risk that you're taking going  
13 forward.

14 A: Oh, I'm sorry. I'm sorry. I got carried away.

15 Q: No, no, you're fine. You're fine. But there's just a  
16 couple other points that I just want to make the record.

17 You understand that if your case goes back to the  
18 solicitor's office, they may just take it to trial. They  
19 don't have to make you a plea offer. You understand that?

20 A: Yes, and I respect that.

21 Q: Okay.

22 A: I did everything I can to show them that whatever they  
23 decide I respect, but just understand me.

24 Q: All right. So let me just -- you kind of illuded to some  
25 of that, so why do you think the ten years was an

1 exceptionally harsh plea under your circumstances?

2 A: I feel it was harsh because I needed rehabilitation.

3 Q: Drug and alcohol rehabilitation?

4 A: Yes.

5 Q: Okay.

6 A: I did. And not a rehab, but I just needed time for  
7 myself to rehabilitate, no matter where it's at, prison or  
8 wherever. I feel as though it was harsh because I'm a first-  
9 time offender. I don't lead a life of crime, and I didn't  
10 need ten years. I knew in my inside, to myself, I knew when I  
11 felt better. I knew, I knew when it was. I knew I've got  
12 time to figure out what I was doing wrong and how much it  
13 affected others. I wasn't taking care of myself. And I was  
14 busy helping the wrong people, the wrong person.

15 Q: You said a little bit about being homeless. Where were  
16 you residing; where were you sleeping during this time?

17 A: I was at Street Reach.

18 Q: Okay.

19 A: And then I got kicked out of Street Reach for alcohol,  
20 and I was on the streets for about six months.

21 Q: So Street Reach is a shelter?

22 A: Yes.

23 Q: Okay.

24 A: And I do day labor at Labor Ready or Trojan Labor, and I  
25 make my money there. I buy my alcohol, all my weed, and

1 that's how I came across the drugs that I'm arrested for now.

2 Q: Okay.

3 A: I was still on drugs and alcohol. So when I went to get  
4 my weed and occasionally cocaine, that day in particular they  
5 made an arrest. They were coming there to arrest a drug  
6 dealer, and I didn't -- you know, I had drugs in my  
7 possession. I knew the one bag -- I seen the weed and the  
8 suboxone, the prescription. The Crown Royal bag I didn't see  
9 what was in it, but I knew it was drugs, I just didn't know  
10 how much it was.

11 Q: So it is your -- so were these somebody else's drugs?

12 A: Yes.

13 Q: So the Crown Royal bag was never yours, was never in your  
14 possession?

15 A: It was in my possession at the time of the arrest, but it  
16 was never mine. I never paid for it. I had no one in  
17 particular to take it to.

18 Q: And all of the drugs were found in the Crown Royal bag?

19 A: Yes. I'm assuming it was the Crown Royal bag because all  
20 I seen was the weed and the suboxones in the Ziplock bag.

21 Q: Okay. And what was your criminal record prior to this?

22 A: Nothing.

23 Q: So you had no arrests prior to this?

24 A: I once was, I once was arrested for smoking. I had a ---

25 Q: Weed or cigarettes?

1 A: Weed. I had a paper rolled with weed in an alley in  
2 Myrtle Beach.

3 Q: So was that simple possession?

4 A: Yeah. I had a fine for \$78.

5 Q: And that was your only arrest prior to this?

6 A: Yeah.

7 Q: When did you review the -- were you in custody or out of  
8 custody going into the plea?

9 A: I was in custody.

10 Q: You never bonded out on these charges?

11 A: No. No. I would never, I would have never been able to  
12 afford that. I drive a forklift; I drive a forklift. I'm a  
13 stock associate at supermarkets. I don't do anything that  
14 would have been able to help me afford that.

15 Q: Would you have wanted to go to trial on any of these  
16 charges?

17 A: I just wanted to go to a second plea and maybe a third  
18 one.

19 Q: But if your lawyer told you that you had a good chance to  
20 go to trial, would you have gone to trial?

21 A: Isn't trial for people who's trying to say they're not  
22 guilty?

23 Q: Yes.

24 A: No. I was guilty. I knew I had those drugs. I'm just  
25 saying that I couldn't imagine having to go to trial.

1 Q: All right. So what kind of preparation had you gone to  
2 prior to this plea? Had you reviewed all of the discovery in  
3 this case? Did Mr. Wilson bring you the discovery?

4 A: Yes.

5 Q: He brought it to you while you were in the detention  
6 center?

7 A: A correction officer brung me the manilla.

8 Q: Okay. So you had a chance to look at your discovery?

9 A: Yes.

10 Q: And prior to this you really didn't have any experience  
11 in the criminal justice system?

12 A: Not at all.

13 Q: So going into when you plead guilty, did you think that  
14 was going to be the only plea you would ever get? I mean  
15 there's a lot of talk now about a second plea and a third plea  
16 and all of that.

17 A: But I'm learning about the second and third ones from  
18 other inmates. I'm -- at the time I think I did know about  
19 seconds and third pleas, but I was -- when they offered me ten  
20 years I didn't know what to expect for a second plea.

21 Q: Uh-huh. (Affirmative response.)

22 A: Neither did I know that every single drug dealer that  
23 I've ever met my entire time from facility to facility has  
24 always been offered less time on the second plea. Guys with  
25 way more drugs who really are drug dealers.

1 Q: So are you sort of saying that Mr. Wilson has more  
2 experience in this area than you do, he should have told you  
3 that the next plea would be better?

4 A: Yes.

5 Q: Okay.

6 **MR. FALK:** Your Honor, I have no further questions.

7 **THE COURT:** All right. Thank you.

8 **CROSS EXAMINATION OF MR. MORRISON BY MS. MARTO:**

9 Q: Good morning, sir.

10 A: Good morning.

11 Q: Just to confirm, you don't want to go to trial, right?  
12 You just want a better deal? You want to serve less time?

13 A: I wanted, I wanted seven years, but I didn't -- when I  
14 was first going through the court process I didn't know what  
15 to do or how to go about the situation. I didn't really know  
16 how to think about a second or a third plea. If, If I can  
17 bring back up the first plea and go back through that process  
18 and deny the first plea, I'm assuming that the second plea  
19 would have been less, just like everyone else's and that I  
20 would have probably ended up with seven years.

21 Q: Or you could have been required to go trial at that  
22 point, correct?

23 A: If that's how the system works, but I don't know anyone,  
24 I have not met anyone who has had to go to trial with that  
25 amount of drugs, even with more drugs, kilos, who's had to go

1 to trial after a first plea without being offered a second and  
2 a third.

3 Q: And you have knowledge that the backpack you had on was  
4 full of drugs, right?

5 A: I wrote a confession letter. I wrote a confession letter  
6 that -- I was brought to court two weeks before my original  
7 court date, and that's because I wrote a confession letter  
8 saying that I seen the marijuana and suboxones, but I wrote  
9 the code for it. I figured maybe y'all would understand it  
10 better, the solicitor, so I wrote the two codes for the  
11 marijuana and the suboxones saying that I seen that, them are  
12 the drugs I did see. I just wanted to go to court for that so  
13 that I could get that out of the way, get that in the air and  
14 make sure that everyone understand this is truth that I had.

15 Q: Were all of the drugs in the same backpack?

16 A: Yeah. It was a clear Ziplock bag and a Crown Royal bag.  
17 I didn't know what the Crown Royal bag had in it.

18 Q: But you were the one carrying it, right?

19 A: Yeah.

20 Q: Okay.

21 **MS. MARTO:** No further questions, Your Honor.

22 **THE COURT:** All right. Anything further, Mr. Falk?

23 **MR. FALK:** No, Your Honor.

24 **THE COURT:** All right. Mr. Morrison, you can step down.

25 Thank you.



1 user. So we were going to try to distance him and maybe blame  
2 it on somebody else, if I'm being frank. And that's something  
3 that he and I discussed about who the bag belonged to and all  
4 of that good stuff.

5 Q: You said you discussed that, was there a conversation  
6 that he would possibly cooperate?

7 A: Cooperate with the state?

8 Q: Yes.

9 A: No, sir. No, there was never a conversation about  
10 cooperating with the state. No. What I'm saying is, is that  
11 again because there were multiple defendants we were going to  
12 try to put the bag on someone else, just that he had it, but  
13 that the bag didn't necessarily belong to him.

14 Q: I understand.

15 A: Yes, sir.

16 Q: So were you always looking to get a plea in this case?

17 A: No. No. We were actually, when I looked back at the  
18 file, it's been some time, but we actually had a trial  
19 envelope or folder inside our server so I knew then that we  
20 were preparing. And when I opened it we had put down  
21 different witnesses, co-defendants, we had put down the drugs  
22 obviously. I also had wrote notes in there regarding  
23 constructive possession, possession, whether or not they would  
24 be successful arguments. So we were preparing possibly for a  
25 trial. The prosecutor at the time was being -- there was a

1 hard line taken on this case. I don't know why he took a hard  
2 line, but he did. And you know that's kind of what my plan  
3 was again.

4 Now, when I did talk to my client he told me that he  
5 didn't want to necessarily go to trial, I do recall him saying  
6 that. And I have notes in there saying he didn't want to go  
7 to trial. He was afraid because he was found in possession,  
8 and I explained the different obviously of constructive  
9 possession and then possession.

10 Q: But you were prepared to go to trial?

11 A: If necessary, always prepared to go to trial.

12 Q: In your -- I know you've been practicing for a long time.  
13 Have you done a lot of drug cases?

14 A: I have done hundreds if not more than that. Yes. Yes.

15 Q: Okay. Isn't it your understanding that typically in drug  
16 cases there can be multiple offers?

17 A: Absolutely, there can be multiple offers. What happened  
18 in this case, we were stalled by my client. I actually was  
19 talking with the prosecutor, he said look I've got to send you  
20 something. And I said, what's going on? He sent me then the  
21 letter that my client wrote on May 21<sup>st</sup>, 2017 and he signed it  
22 and then took responsibility for all of the drugs. He said  
23 that Benjamin allegedly was I guess being claimed that  
24 Benjamin had, who was a co-defendant, and said that he was  
25 responsible for those drugs. At that point in time the

1 strategy became he had to plea because I knew then that this  
2 was a letter that was intended by him to take responsibility  
3 for the drugs and that it was producible at trial. That they  
4 would be admissible also because there's no attorney/client  
5 privilege, he didn't write the letter to me. The letter was  
6 written to the prosecutor, copied to the prosecutor and then  
7 sent to me.

8 Q: But that letter only covered the suboxone and the  
9 cocaine?

10 A: I'm not sure what -- he wrote the warrants inside the, in  
11 the actual letter, 2017A2620600253 and then the other is 237.  
12 My concern at that point in time though was that again the  
13 strategy of trying to distance himself from the other drugs  
14 was going to be more difficult. Having him charged with so  
15 many offenses was going to make it almost impossible for me to  
16 go to trial at that point in time. And then the prosecutor  
17 obviously knew at that point in time that they had a locked  
18 case and there was no way that I could threaten trial.  
19 Obviously, the leverage in drug cases I to be able to threaten  
20 to go to trial and we lost that leverage based on the letter.

21 Q: If you could, again, could you tell me the last four  
22 numbers of the indictments?

23 A: Absolutely. Yes, sir. 0233 and 0237 were the warrant  
24 numbers.

25 Q: Okay. So you -- it's not mentioning any of the others

1 because there's probably about eight different indictments  
2 that he was facing at the time, correct?

3 A: That's correct, yes.

4 Q: But he's only referencing two in that letter.

5 A: That's correct, yes.

6 Q: Would you agree that -- all right, so at the time he had  
7 no criminal record or very little criminal record?

8 A: At the time I don't think I thought he had a criminal  
9 record. I mean you know ---

10 Q: He said he might have a simple possession going into  
11 this.

12 A: Possibly, yes, but I don't recall that to be honest with  
13 you.

14 Q: But you would agree that ten years is a severe or harsh  
15 penalty for a first-time offender?

16 A: I would agree that ten years is harsh if -- again this  
17 would have played out differently had the letter not been  
18 written. I think that I would have maybe waited for the plea,  
19 but once they told me look, you know, we no longer have to  
20 worry about having him there with the drugs and then he admits  
21 to the other drugs, suboxone or whatever he admitted to,  
22 they're all in the same bag. So the prosecutor, I didn't  
23 believe, was going to offer anything else. They were going to  
24 take him to trial and that was my understanding. And I didn't  
25 want him obviously facing all of the time that he'd be facing

1 on all of those charges. That was just too much in my  
2 opinion.

3 Q: Do you have a rough idea of how much he could have been  
4 facing?

5 A: Oh, Lord. I mean I think it was, consecutive obviously,  
6 over 50 - 60 years and probably more than that.

7 Q: Okay. You did receive -- did you receive some  
8 communication with the Myrtle Beach Police force?

9 A: I did.

10 Q: And can you tell me what was your recollection of that?

11 A: Vaguely I remember getting just something saying that the  
12 officer was recertified. I don't recall him being uncertified  
13 at the time. If that was the case I don't recall that, but it  
14 wouldn't have changed my opinion of the case. The marijuana  
15 was again not the most important drug that he had on him.

16 Q: Okay. Was it your understanding that the certification  
17 only went to the marijuana, not to any of the other?

18 A: That's my understanding.

19 Q: And so you just were advised that he was recertified?

20 A: That's correct.

21 Q: Okay.

22 A: Yes.

23 Q: And that could have been either a gap in certification or  
24 just a renewal of certification?

25 A: It could have been. Again, it's unusual to receive those

1 letters after the fact, so it would have been a gap. I'm not  
2 sure. I'm not sure.

3 Q: So what advice did you give him about what to do with  
4 this case?

5 A: I advised my client to plead. Once the prosecutor told  
6 me he had a hard line, he said look, you know we've got his  
7 confession, I don't need anything else. I advised him to take  
8 the plea, that was my advice. Again, we had this conversation  
9 and he was reluctant, obviously, to take the ten years. I  
10 told him that they were going to run the five years  
11 concurrent, which is what they ended up doing. And then to  
12 protect him further, I wanted to do a negotiated plea so  
13 that's why I did the plea negotiated. My concern was because  
14 he had so many other charges, I didn't want the Court to  
15 increase his time when I had promised him that, you know look,  
16 we're looking at hopefully a ten-year plea.

17 Q: All different Circuit Court's I think do this  
18 differently, but when you do a negotiated plea in Horry  
19 County, does the defendant sign off on the offer prior to  
20 signing off on the sentencing sheet?

21 A: I don't recall if he signed off on it. There are times  
22 when they'll send me a sheet and say, you know look, have your  
23 client sign up. I don't recall that happening in this case.  
24 I believe that the only he signed would have been the actual  
25 sentencing sheet.

1 Q: Okay.

2 A: Yes, sir.

3 Q: All right. I have no further questions.

4 A: Yes, sir.

5 **THE COURT:** Ms. Marto.

6 **CROSS EXAMINATION OF MR. WILSON BY MS. MARTO:**

7 Q: Good morning, sir.

8 A: Good morning.

9 Q: So in your professional opinion, did you get him the best  
10 plea offer you were able to?

11 A: After the letter came out, yes. I didn't think that we  
12 would get any better, and I was concerned about trial looming  
13 over us.

14 Q: And he confessed to possession of some of the crimes,  
15 right?

16 A: He confessed to some of the drugs that were in the bag.  
17 And again, the strategy would have been to try to distance him  
18 from those drugs, but I couldn't do that in light of the fact  
19 that he issued a confession.

20 Q: Okay.

21 A: That was hard.

22 Q: And all of the drugs were located in the same backpack,  
23 correct?

24 A: Yes, ma'am. Yes, ma'am.

25 Q: And it was your understanding that he understood what he

1 was pleading to?

2 A: Absolutely. Yeah. I mean he's a smart kid and I  
3 understood his issues at the time, but he's a smart guy. We  
4 talked, had good fruitful conversations.

5 Q: And he understood all of the rights he was waiving by  
6 pleading?

7 A: Yes, ma'am.

8 Q: Do you think that the plea was in your client's best  
9 interest?

10 A: I do.

11 Q: How strong do you think the state's case was against him  
12 once the confession came out?

13 A: With the co-defendants in the beginning of the case I  
14 would say I would have given them probably a 60 percent chance of  
15 conviction at trial, 65. After the letter, 95 to 100 percent.

16 **MS. MARTO:** No further questions, Your Honor.

17 **THE COURT:** All right. Anything further, Mr. Falk?

18 **MR. FALK:** No redirect.

19 **THE COURT:** All right. Thank you, Mr. Wilson.

20 **MR. WILSON:** Thank you, Your Honor.

21 **THE COURT:** Any further witnesses, Mr. Falk?

22 **MR. FALK:** We have no additional witnesses.

23 **MS. MARTO:** No witnesses, Your Honor.

24 **THE COURT:** All right. Will either side like to make a  
25 closing argument, I'd be happy to hear from you.

1           **MR. FALK:** Thank you, Your Honor.

2           My client testified that going into this he had very  
3 little experience with the criminal justice system. He didn't  
4 really understand how the plea offers work. He had some  
5 understanding that sometimes there's more than one offer. He  
6 had no understanding that plea offers in drugs cases usually  
7 the second and third offers are usually considerably better.

8           You heard him testify that had he known that there was a  
9 possible issue with the certification of the one officer  
10 regarding the marijuana that he never would have walked into  
11 court that day to take that plea, and he would have held back  
12 and tried to get you know maybe possibly a better deal. He  
13 didn't have that information; he didn't have the information  
14 about the recertification until way after this case was over.  
15 And you know, it's his belief that had Mr. Wilson done his job  
16 as far as investigating the certification of the arresting  
17 officer, Mr. Wilson would have come to that fact on his own.

18           Mr. Wilson testified that, you know, this was a harsh  
19 offer. He testified that it's common to have multiple offers  
20 in drug cases. He believes that this information -- that that  
21 information was not shared with my client. And he believes  
22 that had Mr. Wilson done a better job in this case that he  
23 would have gotten a better plea offer than the ten years that  
24 he got.

25           **THE COURT:** All right. Ms. Marto.

1           **MS. MARTO:** Yes, Your Honor.

2           It's the state's contention that applicant is not  
3 constitutionally entitled to a plea offer, and he is certainly  
4 not entitled to multiple plea offers. I believe counsel  
5 credibly testified that he got him the best deal he was able  
6 to get him. And Mr. Morrison understanding his rights and  
7 understanding what he was pleading to decided to plead. And  
8 also that the evidence against him was so overwhelming,  
9 especially in light of the confession he gave concerning some  
10 of the drugs that were located in the backpack he was wearing.  
11 He likely would have been convicted at trial.

12           Mr. Morrison indicated he had no intention of going to  
13 trail and that he was in fact guilty. And so he cannot prove  
14 prejudice as required by Hill vs Lockhart, which requires the  
15 individual that plead to -- in order to establish prejudice,  
16 say but for counsels deficiency it would have proceeded to  
17 trial. So for these reasons we would request you deny relief  
18 in this case.

19           **THE COURT:** All right.

20           **MR. FALK:** Your Honor, if I could? My client want to  
21 clarify a point that I maybe could have done better on the  
22 testimony.

23           **THE COURT:** Sure.

24           **MR. FALK:** My client reminded me that the ten years was  
25 the offer that was in this case from the get go. That his

1 real complaint with Mr. Wilson is that he never went and got  
2 another offer. The ten-year offer was on the plate from the  
3 very beginning and he believes that Mr. Wilson should have,  
4 had he been doing his job, would have gotten a second and  
5 better offer.

6 **THE COURT:** I understand.

7 All right. Mr. Morrison, I think it's important for you  
8 to understand that certainly there's testimony in this record  
9 as to what happened during the time that this situation was  
10 going on. That your case got more difficult to defend based  
11 on your letter that you wrote. And oftentimes when that's the  
12 case and there's multiple defendants in a drug case then  
13 offers don't tend to get any better.

14 And I haven't heard anything in this record that would  
15 indicate that Mr. Wilson's representation of you was deficient  
16 in any way or that you suffered from the ineffective  
17 assistance of counsel on Mr. Wilson's behalf.

18 Again, the fact that the marijuana whether -- just if the  
19 officer wasn't certified at all, there's ways to correct that.  
20 Also, it's very telling that the multiple indictments that you  
21 found yourself defending yourself against, of them the  
22 marijuana is probably not the most significant as far as the  
23 amount of time that you could be incarcerated. So I don't  
24 find that that's ineffective assistance of counsel, certainly  
25 not even -- there's not evidence here to prove that the

1 officer wasn't certified, just that maybe he was recertified  
2 at a certain time.

3 And I also reviewed the plea colloquy and you certainly  
4 seemed to understand what you were doing and seemed to have  
5 entered your plea voluntarily. And for those reasons I'll  
6 deny your motion or your application for PCR.

7 **MR. MORRISON:** Can I say something?

8 **THE COURT:** Yes, sir.

9 **MR. MORRISON:** I'm not, I'm not trying to say that  
10 they're wrong for not being recertified or whatever. I'm just  
11 saying that if I had known that -- well let me start over. My  
12 co-defendant was charged with the same drugs that I was. He  
13 never had the drugs, that's why I sent the letter saying that  
14 I seen the weed and the suboxones. He didn't have the drugs.  
15 I didn't need him to be my co-defendant. I barely know this  
16 dude.

17 **THE COURT:** I understand.

18 **MR. MORRISON:** Why would I not be offered a second plea  
19 when guys who has kilos of all types of drugs, meth and  
20 everything, who don't -- who get offered a second plea and  
21 it's always less.

22 **THE COURT:** I understand, Mr. Morrison. And the fact of  
23 the matter is that the state, the solicitor's office in your  
24 case, has the absolute right to trial their case, to handle  
25 their case the way they see fit.



Morrison vs State

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2019-CP-26-07240

## C E R T I F I C A T E

1  
2  
3 I, the undersigned, Sallie Beth Todd, Official Court  
4 Reporter for the State of South Carolina, do hereby certify  
5 that the foregoing is a true, accurate and complete transcript  
6 of the Transcript of Record of the hearing held in the  
7 interest of Anthony Morrison versus State of South Carolina in  
8 the Court of Common Pleas for Horry County, Horry County  
9 Courthouse, Conway, South Carolina, on June 2, 2022.

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

12  
13 

14 Sallie Beth Todd, CVR

15 Official Reporter

16  
17  
18 October 11, 2022.

STATE OF SOUTH CAROLINA )  
 COUNTY OF HORRY )  
 )  
 )  
 Anthony Morrison, #372965, )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-26-07240

**ORDER OF DISMISSAL**

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This matter comes before this Court by way of Applicant’s post-conviction relief application filed November 12, 2019. Respondent made its return on September 10, 2020, requesting an evidentiary hearing be convened. An evidentiary hearing was held on June 2, 2022, at the Horry County Courthouse. James K. Falk, Esquire, represented Applicant. Assistant Attorney General Chelsey F. Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel Ralph Wilson, Jr. also testified. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

**Procedural History**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. During the April 2017 term, Applicant was indicted by the Horry County Grand Jury for Distribution of Heroin (2017-GS-26-2046); Trafficking of Cocaine in the Amount of 28-100 Grams – First Offense (2017-GS-26-2047); Trafficking in Illegal Drugs (Heroin) (2017-GS-26-0248); Possession with Intent to Distribute (PWID) Cocaine (2017-GS-26-2049); PWID Ecstasy (2017-GS-26-2050); PWID

*NSD*

Marijuana – First Offense (2017-GS-26-2051); PWID Schedule I, II, III Drug (Flunitrazepam or a Controlled Substance Analogue) (2017-GS-26-2052); PWID Schedule I, II, III Drug (Oxycodone) (2017-GS-26-2053); PWID Schedule IV Drug (2017-GS-26-2054); Unlawful Possession of Prescription Drug without Prescription (2017-GS-26-2055); and PWID Cocaine and Heroin in Close Proximity to a School or Park (2017-GS-26-2056).

Ralph Wilson, Jr., Esquire represented Applicant. Assistant Solicitor David Caraker of the Fifteenth Circuit Solicitor’s Office prosecuted the case. On June 22, 2017, Applicant pled guilty as indicted to the offenses of Trafficking in Cocaine, 28-100 grams, First Offense, and PWID Marijuana, First Offense, before the Honorable Alford Lee, circuit court judge. All other charges were dismissed, *nolle prosequi*. Applicant was subsequently sentenced to ten years for trafficking in cocaine and five years for PWID marijuana, to run concurrently. Applicant did not appeal the judgment of conviction or imposition of the sentence.

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HONORABLE ALFORD LEE, JUDGE  
PLED GUILTY AS INDICTED

**Summary of Relevant Facts**

On January 27, 2017, officers were watching a hotel room in Myrtle Beach because they had a complaint about narcotic sales in that location. (Tr. 7). Officers also had an active warrant out on a co-defendant in the room. (Tr. 7). When Applicant and his co-defendant left the room, Applicant had on a backpack. (Tr. 7). They left while still under surveillance. (Tr. 7). As officers approached Applicant, he turned and ran and threw his backpack over a construction fence. (Tr. 7-8). The backpack contained, among other drugs, about sixty grams of cocaine and eleven individual packaged bags of heroin as if it were packaged for same. (Tr. 8). Applicant stated he heard the facts as recited by the State and did not disagree with what was stated. (Tr. 8).

**Current Action Before this Court**

In his current PCR application, Applicant alleges he is being held in custody unlawfully

because of ineffective assistance of counsel in that:

1. Ineffective Assistance of Counsel
  - a. "My attorney let me get convicted of drugs that wasn't part of my confession."
2. Newly Discovered Evidence
  - a. "Myrtle Beach Police Department confessed to not having proper recertification."
3. Cruel and Unusual Punishment
  - a. "It's unusual for me a taxpayer with no criminal history."
4. Wrongful Plea
  - a. "I thought I was supposed to be convicted of possession of marijuana and suboxon based on the confession letter I sent to the solicitor and also to my attorney (Ralph Wilson Jr.)."

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

1. Ineffective Assistance of Counsel
  - a. Failure to secure a more favorable plea offer.
  - b. Failure to properly communicate with Applicant.
  - c. Failure to investigate officer that was not properly certified.
  - d. Failure to pursue defense that some of the drugs were not his.

All other allegations raised in his initial application and amendments are deemed waived

and abandoned and, accordingly, will not be addressed in this order.

### Summary of the Testimony

#### *Applicant Testimony*

Applicant testified that he understood the only remedy available to him in the PCR matter was that he could withdraw his plea. Applicant stated he faced a plethora drug charges. He stated he understood that if relief was granted that he could face all the charges again. He stated that if he was granted relief, that he would receive a better sentence the second time because he thought ten years' is a harsh sentence and all the drug-dealers he knows receive less time.

Applicant testified that initially when he met Counsel, he did not have a strategy in place concerning how to handle the case. He stated that Counsel did not tell him what to expect and provided no answers to him concerning his questions about the process. Applicant stated that the police department provided him with information a year later pertaining to someone who tested

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the marijuana who was not certified to test the substance. He stated this person then recertified. He stated that if Counsel checked the certifications, he would have been offered a more lenient plea. He stated that all the drug dealers he knows get a second plea offer that is more favorable than the first. Applicant testified that he would not have gone to court if he knew the officer was not certified. Applicant testified he did not have a criminal record prior to this incident. He stated he was arrested before for smoking marijuana in Myrtle Beach, but that it was a fine only charge. Applicant testified that he never bonded out of jail prior to the plea.

Prior to being arrested, Applicant testified that he was staying at Street Beach before getting kicked out for drinking. He stated he became homeless and dealt drugs stay afloat. Applicant testified that the crown royal bag was in the backpack and, therefore, in his possession, but that the drugs were not his.

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Applicant testified that he did not want to go to trial but wanted a more favorable plea. He stated that he did not want to go to trial because he was guilty of the crime, he just did not want to face the time imposed at the plea. Applicant stated that Counsel brought him his discovery. He testified that he did not think he would receive an additional offer but learned this is commonplace once he started talking to other inmates at the prisons. He stated that additional offers generally are more favorable than the initial plea offer. Applicant testified that he thought Counsel should have recognized this, given his experience.

On cross-examination, Applicant testified that he wanted a seven-year plea offer but did not realize leading up to the plea that he would receive a more favorable plea offer later. Applicant stated he did not think he would have to go to trial after the first plea offer was rejected because he is unaware of anyone in similar circumstances who had to go to trial after rejecting the first offer. Applicant testified that he wrote a confession, but only wanted to go to

court for the suboxone and cocaine. He testified that he did not know what the crown royal bag contained.

### *Counsel Testimony*

Counsel stated that he thought he was appointed to this case. Counsel testified he had handled hundreds of drug cases before. Counsel stated that his strategy during plea negotiations and if they proceeded to trial was to distance Applicant from the contents of the backpack and how he was unaware of the contents of the Crown Royal bag. Counsel also stated that one of their arguments was that Applicant was a drug user, not a drug dealer. Counsel testified that there were no discussions about cooperating with the State. Counsel testified he was prepared to go to trial, but that Applicant was afraid to go to trial because he was in possession of the drugs.

Counsel testified that all discussions regarding plea offers were stalled by Applicant when he sent a letter to the prosecutor taking responsibility for some of the drugs in the bag. Counsel testified that distancing Applicant from the other drugs in the backpack was difficult once he sent the confession letter admitting that some of the drugs were his. He stated that he thought Applicant could have received a more favorable plea offer if he did not write the letter. Counsel stated he did not think Applicant had a prior record. Based on all his charges, Counsel stated that Applicant could have been sentenced to at least fifty- or sixty-years' imprisonment total. Counsel testified that he remembered discussion about an officer being recertified but did not recall him not being recertified. Regardless, Counsel testified that this would not have changed his strategy and that this officer only dealt with the marijuana charge. Counsel testified that the prosecutor took a hardline regarding plea offers, especially after his confession. Counsel testified he advised Applicant to plea. He testified that he wanted a negotiated plea offer because he did not want the Court to increase the time, so Applicant ultimately received ten years'

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imprisonment by pleading. Counsel testified that he did not remember if Applicant signed off on the order.

On cross-examination, Counsel testified that Applicant confessed to some of the drugs in his backpack. He testified that Applicant knew what he was pleading to and understood all rights waived. Counsel testified that the State had a ninety-five to one-hundred percent chance of conviction at trial after the confession.

### Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the Horry County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

### *Ineffective Assistance of Counsel*

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

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Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRCP. The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence. Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant, and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters "only in the rarest case" because "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

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The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies, if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

For a plea to be valid, the applicant must have been aware of the nature and crucial elements of the offense the maximum and minimum penalties, and the rights he is waiving by accepting the plea. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 29 (2000). A plea is not knowing or voluntary if a defendant "lacks knowledge of material evidence in the prosecution's possession." *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999).

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A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. at 34, 528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." *Dalton v. State*, 376 S.C. at 157, 654 S.E.2d at 874 (quoting *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). Further, "guilty pleas, freely and voluntarily entered, act as a waiver of all non-judicial defects and defenses, including claims of a violation of a constitutional right prior to the plea." *Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

The plea transcript and testimonies at the PCR hearing reflects the plea was entered freely, knowingly, intelligently, and voluntarily. At the plea hearing, the Court conducted a thorough colloquy with Applicant. (Tr. 3-8). The Court clearly stated the charges to which Applicant was pleading guilty, and Applicant demonstrated his understanding by responding appropriately to the questions posed and participating in a back-and-forth exchange with the judge about the terms of the plea agreement. (Tr. 3-7). Further, the Court fully described to Applicant by pleading guilty he gives up his right to remain silent, right to a jury trial, right to confront and cross-examine all witnesses against him, the right to present his own witnesses and evidence in his defense, the right to testify in his own defense, and his presumption of innocence. (Tr. 3-4). Applicant stated that he understood and still wanted to plead guilty. (Tr. 5). Likewise, the Court explained the State's recommended negotiated sentence, including the minimum sentences, and the other charges dismissed in return for Applicant's guilty plea. (Tr. 5).

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Applicant asserted he understood the plea-negotiation conversations with his attorney and was satisfied with his attorney's representation. (Tr. 6). He stated his attorney discussed the charges, possible legal defenses, and the available witnesses to testify at trial. (Tr. 6).

Furthermore, Applicant testified he was not threatened or promised anything in exchange for his guilty plea. (Tr. 5). Applicant confirmed he was not under the influence of drugs or alcohol during his guilty plea hearing, nor did he have any mental, emotional, or nervous conditions that would interfere with his ability to understand the guilty plea. (Tr. 7). Finally, Applicant stated that he was pleading guilty of his own freewill and was, in fact, guilty of the two charges. (Tr. 8).

This was substantiated by testimonies of both Applicant and Counsel at the PCR hearing. Applicant testified that he did not want to go to trial but wanted a more favorable plea because he was guilty of the crime. Counsel stated that he discussed the decision to plead with Applicant in detail. Thus, this plea was entered freely, knowingly, intelligently, and voluntarily and cannot be withdrawn now.

#### ***Failure to Secure More Favorable Plea Offer***

Applicant's allegation that Counsel was ineffective for failure to obtain a more favorable plea offer is without merit. "[A] defendant has no constitutional right to plea bargain." *Reed v. Becka*, 333 S.C. 676, 684, 511 S.E.2d 396, 400-01 (Ct. App. 1999). (citing *State v. Easter*, 322 S.C. 333, 471 S.E.2d 745 (Ct. App. 1996), *aff'd as modified*, 327 S.C. 121, 489 S.E.2d 617 (1997)). "Prosecutors have broad powers in the plea bargain process[.]" *Id.* Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety." *Id.*, 333 S.C. at 684, 511 S.E.2d at 400-01. "The Judicial Branch is not empowered to infringe on the exercise of this prosecutorial discretion; however, on occasion, it is necessary to review and interpret the results of the

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prosecutor's actions." *Id.* Yet, plea offers must be analyzed within the bounds of judicial restraint. *Id.*

Applicant is not entitled to a more favorable plea offer as a matter of law. Regardless, Counsel credibly testified that all further plea negotiations halted once Applicant sent a letter to the Solicitor's Office admitting to possession of some of the drugs. He stated that the prosecutor took a hard lined stance on the offer and was not willing to offer a more favorable offer. Thus, Applicant's desire for a more favorable offer was seemingly born out of his own actions, not the deficiencies of Counsel. Thus, because Applicant was not entitled to a better deal and the prosecutor made clear he was not going to be offered one, relief is denied on this ground.

***Failure to Properly Communicate with Applicant***

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

Counsel credibly testified that he discussed the decision to plead with Applicant, advising him of negotiations, offers, and trial strategy. Further, there has been no showing that had

Counsel met with Applicant more that the results of the trial would have been different. Accordingly, this Court find Counsel acted reasonably and was not deficient. Further, Applicant was not prejudiced by any alleged deficiency on the part of Counsel. Thus, relief is denied on this ground.

**Failure to Investigate Certification of Officer**

Applicant claims Counsel was ineffective for failure to investigate the certification of the officer. *Strickland* makes clear that defense counsel “has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” 466 U.S. at 691. When highlighting failure to investigate as a ground for a larger ineffective assistance of counsel claim, judicial determination of this claim’s validity is evaluated for “reasonableness [under] all the circumstances” with “a heavy measure of deference to counsel’s judgments” applied. *Id.* At the PCR hearing, Applicant is required to present evidence or witnesses he alleges Counsel did not properly investigate. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Additionally, whether Applicant was prejudiced by Counsel’s failure to investigate is contingent on whether the evidence presented would have led Counsel to change his recommendation regarding the plea. *Stalk v. State*, 383 S.C. 559, 562, 681 S.E.2d 592, 594 (2009).

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Counsel credibly testified that he remembered discussion about an officer being recertified but did not recall him not being recertified. Counsel also credibly testified that this would not have changed his strategy and that this officer only dealt with the marijuana charge. Thus, this Court finds that Counsel seemingly investigated this issue and was not deficient. Additionally, because this issue did not impact the recommendation as to the plea, no prejudice is found. Accordingly, relief is denied on this ground.

***Failure to Pursue Defense of Drug Possession***

Applicant claims Counsel was ineffective for failure to pursue the defense that some of the drugs were not his. The right to assert a defense was waived with entry of the plea. (Tr. 3-4). Regarding use of this defense in plea negotiations, Counsel credibly testified that the option of separating Applicant from the drugs in the backpack he was wearing fell apart when Applicant claimed ownership over some of the drugs in the bag. He stated separating Applicant from some of the drugs was difficult because they were all in the same bag. Additionally, Counsel credibly testified that plea negotiations stalled when Applicant offered his confession. Accordingly, because Applicant waived his right to assert a defense and because Counsel credibly testified that this defense was implausible after Applicant entered his confession, relief is denied on this ground.

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**Conclusion**

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

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR 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 PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

**AND IT IS SO ORDERED** this 25 day of July, 2022.

*HSD DeBerry*

H. STEVEN DEBERRY, IV  
Presiding Judge  
Fifteenth Judicial Circuit

Florence, South Carolina.

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