

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**Sep 11 2024**

S.C. SUPREME COURT

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Certiorari to Richland County

Honorable Maite Murphy, Circuit Court Judge

\_\_\_\_\_  
LONTRE J. WISE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-000514

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

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1 STATE OF SOUTH CAROLINA ) GENERAL SESSIONS  
 2 COUNTY OF RICHLAND ) TRANSCRIPT OF RECORD

3 -----X  
 4 STATE OF SOUTH CAROLINA, )  
 5 vs. ) Case No. 2019-CP-40-02599  
 6 LONTRE J. WISE, )  
 7 Defendant. )  
 -----X

June 24, 2021

B E F O R E:

The Honorable Robert Bonds, Presiding Judge

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

Stephanie Taylor, Esq.  
Assistant Solicitor for the State

Justin Kata, Esq.  
Attorney for the Defendant

Recorded by: Court Monitor/DCRP

Transcribed by: Bobbi Fisher  
SC Official Court Reporter III

1

## I N D E X

2

DESCRIPTION

PAGE

3

Proceedings

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## E X H I B I T S

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(None.)

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## COURT REPORTER LEGEND

20

Dash (--)

Indicates an interruption in speech

21

Ellipses (...)

Indicates trailing off in speech

22

(ph)

Indicates phonetic word

23

[Verbatim]

Indicates the word is said as written

24

(Indiscernible)

[Transcription] Indicates word(s) is  
not known due to audio recording  
quality

25

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

2 (The following proceedings started at 10:50 a.m.):

3 MS. TAYLOR: Your Honor, standing before you is  
4 Lontre Wise, represented by Justin Kata of the private  
5 bar. Mr. Wise is here to reject his plea offer. He was  
6 charged with and indicted with trafficking crack, 10 to 28  
7 grams, third offense, which carries 25 to 30 years  
8 mandatory.

9 The offer that was presented to him was to plead to  
10 a PWID crack second offense with a negotiated ten years,  
11 suspended on three years of probation. His attorney has  
12 informed me that he is rejecting that offer. His case is  
13 on the trial docket. However, he also has another set of  
14 pending charges for a [indiscernible] second offense; PWID  
15 marijuana, first offense; and I believe a possession of  
16 crack, third offense, which could also be called whenever  
17 we call it for trial.

18 THE COURT: All right. Counsel, you represent  
19 Mr. Wise?

20 MR. KATA: Yes, Your Honor.

21 THE COURT: All right. And it's my understanding  
22 that he has been charged with trafficking in crack?

23 MS. TAYLOR: Yes, sir.

24 THE COURT: Third offense?

25 MS. TAYLOR: Yes, sir.

1 THE COURT: Is that your understanding, sir?

2 MR. KATA: Yes, Your Honor.

3 THE COURT: And it's my understanding that there  
4 would be a mandatory minimum of what?

5 MS. TAYLOR: 25 years to 30.

6 THE COURT: Of 25 years?

7 MS. TAYLOR: Yes, sir.

8 THE COURT: Is that your understanding?

9 MR. KATA: Yes, Your Honor.

10 THE COURT: Have you explained the charges -- the  
11 sentence that would have to be imposed in the event of a  
12 conviction to your client?

13 MR. KATA: Yes, Your Honor.

14 THE COURT: And has he understood those talks, in  
15 your opinion?

16 MR. KATA: Yes, Your Honor.

17 THE COURT: And do you believe that he is competent  
18 to render a decision as it relates to the acceptance of  
19 any offer or the rejection of any offer in this matter?

20 MR. KATA: Yes, Your Honor.

21 THE COURT: And it's my understanding, Solicitor,  
22 that the offer in this case is possession with intent to  
23 distribute crack second offense?

24 MS. TAYLOR: Yes, sir.

25 THE COURT: And was there a recommendation as it

1 relates to time?

2 MS. TAYLOR: There was a negotiation or negotiated  
3 ten years suspended to three years' probation.

4 THE COURT: A negotiated ten-year sentence that  
5 would then be suspended to probation?

6 MS. TAYLOR: Yes, sir.

7 THE COURT: So the offer would involve no active  
8 time?

9 MS. TAYLOR: That is correct, Your Honor.

10 THE COURT: All right. Sir, my understanding that  
11 the offer from the State in this matter is that your  
12 client plead to possession with intent to distribute crack  
13 cocaine second offense; that it would be presented to the  
14 judge via a negotiated sentence; that negotiation will be  
15 a ten-year sentence suspended to probation in the judge's  
16 discretion?

17 MS. TAYLOR: It would be three years' probation.

18 THE COURT: Three years' probation.

19 Is that your understanding, sir?

20 MR. KATA: Yes, Your Honor.

21 THE COURT: And have you explained to your client  
22 the offer; the fact that this is a negotiated sentence;  
23 that if the judge accepts the negotiation, that a ten-year  
24 sentence would be imposed but it would then be suspended  
25 to three years' probation? Have you explained that to

1 him?

2 MR. KATA: Yes, Your Honor.

3 THE COURT: And, again, you believe that he  
4 understands that?

5 MR. KATA: Yes, Your Honor.

6 THE COURT: Okay. And it is his intention to reject  
7 that offer; is that correct?

8 MR. KATA: Yes, Your Honor.

9 THE COURT: All right. Solicitor, once this offer  
10 is rejected --

11 MS. TAYLOR: Yes, sir.

12 THE COURT: -- is that offer then to be removed from  
13 the table, so to speak?

14 MS. TAYLOR: Yes, sir. And it would be either  
15 trafficking third offense, which is a mandatory 25 if we  
16 get a conviction, and then -- or he has another set of  
17 charges, which also is a possession of crack third, which  
18 would carry three to ten years -- a mandatory three to ten  
19 years.

20 THE COURT: All right. But that -- as it relates to  
21 the offer on the charge today, that doesn't affect this or  
22 the offer; correct? Or are you dismissing those charges  
23 in the event that the offer is accepted? I'm sorry.

24 MS. TAYLOR: If he had pled today to probation, we  
25 would have dismissed all of his other charges.

1 THE COURT: Counsel, do you represent him in the  
2 other charges?

3 MR. KATA: Yes, Your Honor.

4 THE COURT: Okay. And it's my understanding that  
5 the other charges, the State is willing to dismiss those  
6 charges in the event of his acceptance of the offer today.  
7 Is that your understanding?

8 MR. KATA: Yes, Your Honor.

9 THE COURT: And, again, have you explained that to  
10 your client?

11 MR. KATA: Yes, Your Honor.

12 THE COURT: Okay. All right. Mr. Wise?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Raise your right hand for me.

15 LONTRE WISE,

16 after having been duly sworn, was examined and  
17 testified to as follows:

18 THE COURT: Mr. Wise, all I want to do is ask you:  
19 Have you heard the information that the solicitor has  
20 presented to the Court and the questions that I had asked  
21 your lawyer, sir?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. And have you understood the  
24 information that the solicitor has provided to me and have  
25 you understood your lawyer's responses to the questions

1 that I have asked him?

2 THE DEFENDANT: Yeah, I understand that, Your Honor,  
3 but I have something that troubles me about the offer.

4 THE COURT: Well, sir --

5 THE DEFENDANT: And that's not being --

6 THE COURT: I understand --

7 THE DEFENDANT: -- my lawyer nor the solicitor,  
8 nobody is trying to [indiscernible] and let me know  
9 anything about it.

10 THE COURT: Sir, sir, all I want to know is, have  
11 you understood -- do you understand the offer that is  
12 being made today? That's what I'm asking you.

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Okay. And that offer is an offer that  
15 would present it such that, if you pled guilty to  
16 possession with intent to distribute cocaine second  
17 offense, that there would be a negotiated sentence that a  
18 judge would impose a ten-year sentence suspending that to  
19 three years' probation and that the State would dismiss  
20 other charges against you? That's your understanding,  
21 sir?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And it's your desire -- and you  
24 understand that that would mean no active time unless you  
25 violated probation? Do you understand that?

1           THE DEFENDANT:  And that's my fear, Your Honor.  
2           That's my fear.  Because I have never been able to  
3           complete probation before.  And I have a drug addiction,  
4           and I don't want to mess up and end up going to prison.  
5           You know?

6           THE COURT:  I understand --

7           THE DEFENDANT:  That's why I --

8           THE COURT:  I understand that, sir.  And I'm -- the  
9           purpose today is not for me really to get into  
10          conversations with your lawyer.  What I want to do is, I  
11          want to make sure you understand the offer.  And I think  
12          you do.  I think what you're telling me is your concern  
13          about the offer is the fact that you might not be able to  
14          successfully complete probation.  Is that what you're  
15          telling me?

16          THE DEFENDANT:  Yes, sir.  And I'm already 50 years  
17          old.  I'm fixing to 50.

18          THE COURT:  Sir, let me just ask you, is that -- is  
19          that the reason that you're concerned about entering into  
20          this plea, is your --

21          THE DEFENDANT:  One of them.

22          THE COURT:  Okay.  All right.

23          THE DEFENDANT:  One of them.

24          THE COURT:  And that's fine.  All I know -- all I  
25          want to make sure is that you understand the offer and

1 that it is your intention to reject this offer today.  
2 That's what you want to do? You want to reject this  
3 offer?

4 THE WITNESS: I don't want to. That's the thing.

5 THE COURT: Well, sir...

6 THE WITNESS: I don't want to.

7 THE COURT: Well, sir, either you accept it or you  
8 reject it. There's no in between. And so I'm asking you,  
9 sir -- and I'm not trying to talk you in or out of  
10 anything. I just want to make sure that you are -- that  
11 you want to reject the offer today. Because if you do,  
12 you heard the solicitor --

13 THE DEFENDANT: Mm-hmm.

14 THE COURT: And, sir, I don't know anything about  
15 this case. Okay? That's not my job here today, is not to  
16 try the case or listen to the facts of the case. That's  
17 not what I'm doing right now. All I want to do is make  
18 sure that you want to reject the offer. And if you do,  
19 then you understand that the solicitor informs me that  
20 she's taking the offer off of the table and ready to move  
21 forward with trial.

22 And when is trial supposed to be?

23 MS. TAYLOR: It is on the docket for July 12th, but  
24 Mr. Kata and I are trying to get it continued because of  
25 these issues that have just come up. Sometimes Mr. Wise

1 says he's accepting the offer and then he comes in here  
2 and then flips. So we're asking -- we're trying to get a  
3 continuance, so we'll try to figure that out.

4 THE COURT: All right, sir.

5 THE DEFENDANT: Your Honor, this is the first time I  
6 have been in the courtroom in three years.

7 THE COURT: Woah, woah, woah, I can't hear you, sir.  
8 What are you telling me, sir?

9 THE DEFENDANT: This is the first time I have been  
10 in the courtroom, besides the preliminary hearing, in  
11 three years, so how I keep turning something down?

12 THE COURT: All right, sir -- sir --

13 THE DEFENDANT: This is the first deal really --

14 MS. TAYLOR: We just have a negotiation, Your Honor.

15 THE COURT: You have got to -- sir, address me.

16 THE DEFENDANT: Okay.

17 THE COURT: Okay? Address me.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Are you going to accept the offer --

20 THE DEFENDANT: Yes, sir, I'll accept the offer.

21 THE COURT: -- or reject the offer?

22 THE DEFENDANT: I'll accept the offer. I'll at  
23 least try probation.

24 THE COURT: You need to pull your mask down, sir.  
25 I can't understand you.

1 THE DEFENDANT: I say, I will accept the offer. I  
2 will at least try probation. I'll give it a try, if  
3 you're willing to accept it.

4 THE COURT: All right, sir. So you want to accept  
5 the offer? I'm asking you.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: I'm not forcing you -- no one is forcing  
8 you to do anything today on this.

9 THE DEFENDANT: The pressure of life is, sir.

10 THE COURT: What?

11 THE DEFENDANT: Just the pressure of life, everyday  
12 life. I need to move forward with my life, so I'm going  
13 to go ahead and accept the deal. I want it over with.

14 THE COURT: So you want to plead guilty today to the  
15 possession with intent to distribute?

16 THE DEFENDANT: Yes.

17 THE COURT: Okay. With a negotiated sentence of ten  
18 years suspended to three years' probation --

19 MS. TAYLOR: And, Your Honor, if he needs --

20 THE COURT: -- and with the other charges being  
21 dropped.

22 Yes, ma'am?

23 MS. TAYLOR: Yes, sir. I mean, if he needs some  
24 kind of substance abuse counseling, if Mr. Kata -- if you  
25 think that needs to be part of the negotiation --

1 MR. KATA: We would have no problem --

2 THE DEFENDANT: No, I take full probation --

3 THE COURT: Well, yeah, we're talking about  
4 probation, sir. What I want to ask you, if it meets with  
5 your counsel's approval --

6 MR. KATA: Yes, Your Honor.

7 THE COURT: You know, one of the things you told me,  
8 sir, is that you're -- one of the things you're concerned  
9 about, sir, is that there's a potential inability to  
10 complete probation because of problems that you have. And  
11 so I guess what I'm asking is, is there anything we can  
12 do -- that Probation can do to try to help you with the  
13 problems that you're confronted with that you think could  
14 set you up not to be successful on probation?

15 THE DEFENDANT: Really, Your Honor, I don't think  
16 so. I don't think so.

17 THE COURT: That's fine.

18 THE DEFENDANT: Because, really, at the end of the  
19 day, it's up to the individual. I'm doing the best I can  
20 on my own, and I think I have done a whole heck of a lot  
21 better.

22 THE COURT: All right.

23 THE DEFENDANT: But I ain't had no charges in two  
24 years. So I think I have done a whole lot better.

25 THE COURT: Well, good. So do you want to go ahead

1 and accept the offer --

2 THE DEFENDANT: Yes, sir.

3 THE COURT: -- and do that today?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you want to call the case?

6 MS. TAYLOR: Yes.

7 Has he signed his paperwork, Mr. Kata?

8 MR. KATA: I need to get him to sign the paperwork.

9 THE COURT: Let me ask you, is there anything else  
10 that you need to talk to him about, sir? Again, I'm not  
11 trying to push anybody forward.

12 MR. KATA: I don't want to force anybody to take a  
13 plea. I mean, it is my position -- I mean, this offer is  
14 absolutely in his best interest, and we have discussed  
15 that over and over. And I have known Mr. Wise -- I have  
16 represented him before. I mean, we have known each other  
17 for almost, what, eight years?

18 THE DEFENDANT: Yeah.

19 MR. KATA: I mean, this case could end in disaster.

20 THE DEFENDANT: Could have been over months ago.

21 MR. KATA: But, Your Honor, if I could talk to him  
22 for just a few minutes.

23 THE COURT: Sure.

24 MR. KATA: I would appreciate it.

25 THE COURT: That's fine. And then -- the only thing

1 I want to do is, I want to do one of two things. If he  
2 decides that he wants to plea, let's plead him this  
3 morning or today. Okay? If he doesn't want to plead,  
4 then I want him to go ahead and just state on the record  
5 that he's rejecting the offer.

6 THE DEFENDANT: I'm pleading.

7 THE COURT: Okay. So y'all can talk and that's  
8 fine. All right?

9 THE DEFENDANT: Don't need to talk, yes. Want me to  
10 sign it?

11 MR. KATA: Let's go talk real quickly.

12 (A recess was taken from 11:05 a.m. to 11:25 a.m.)

13 THE COURT: All right. Mr. Wise?

14 THE DEFENDANT: Yes, sir.

15 THE CLERK: Do you want me to swear him?

16 THE COURT: Yeah, go ahead and swear him in. That's  
17 fine.

18 LONTRE WISE,

19 after having been duly sworn, was examined and  
20 testified to as follows:

21 THE COURT: Mr. Wise, you had an opportunity to take  
22 a few minutes and talk with your lawyer; correct?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Have you understood your talks your  
25 lawyer?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And so, Mr. Wise, what we were  
3 discussing a few moments ago, sir, was whether or not you  
4 wanted to accept the State's offer in this matter or  
5 reject the State's offer. And so have you come to a  
6 conclusion as to what you want to do?

7 THE DEFENDANT: Yes. Your Honor, I'd like to plead  
8 guilty.

9 THE COURT: All right, sir. Well, then what's going  
10 to happen is this, sir: I'm going to have the solicitor  
11 call the case.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And then, basically, I'm going to ask  
14 your lawyer some questions and then ask you some  
15 questions. Okay, sir?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. Great.

18 All right, Solicitor.

19 MS. TAYLOR: Standing before you is Lontre Wise,  
20 represented by Justin Kata of the private bar. He is  
21 pleading guilty to PWID crack second offense and there is  
22 a negotiation for a sentence of ten years, suspended on  
23 three years' probation.

24 THE COURT: All right. Mr. Kata, you just heard the  
25 State. It's my understanding that your client wants to

1 plead guilty to possession with intent to distribute crack  
2 second offense, and this is a negotiated sentence of ten  
3 years suspended upon three years' probation. Is that your  
4 understanding?

5 MR. KATA: Yes, Your Honor.

6 THE COURT: Okay. And Mr. Wise, is that your  
7 understanding, sir? You want to plead guilty today to  
8 possession with intent to distribute crack second offense  
9 and this is a negotiated sentence of ten years suspended  
10 upon three years' probation? Is that your understanding,  
11 sir?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. And you understand, sir, that if  
14 I accept your plea, then, as a result of this being a  
15 negotiated sentence, that I will, in fact, have to impose  
16 a ten-year sentence suspended upon three years' probation.  
17 You understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. Counsel, do you agree with  
20 your client's decision to plead guilty today?

21 MR. KATA: Yes, Your Honor.

22 THE COURT: Okay. And have you explained the nature  
23 of the charges to him, possible penalties, including  
24 collateral consequences and his constitutional rights?

25 MR. KATA: Yes, Your Honor.

1 THE COURT: And has he, in your opinion, understood  
2 those talks?

3 MR. KATA: Yes, Your Honor.

4 THE COURT: And, sir, do you believe that he is, in  
5 fact, competent to enter the plea today?

6 MR. KATA: Yes, Your Honor.

7 THE COURT: Mr. Wise, you told me earlier and I have  
8 forgotten. How old are you, sir?

9 THE DEFENDANT: 49.

10 THE COURT: And, Mr. Wise, are you employed?

11 THE DEFENDANT: Not currently, Your Honor.

12 THE COURT: Tell me about your employment history.  
13 Where have you worked in the past?

14 THE DEFENDANT: We had a collision center called  
15 Dad's [verbatim] that was out by the VA hospital --

16 THE COURT: Sir, pull that mask down for me, if you  
17 don't mind, for the purposes of your testifying here.

18 THE DEFENDANT: I used to work at what was call the  
19 Dad [Verbatim] Center. It was like a collision retrieval  
20 center from, like, 2014, I think, or '15 or the middle of  
21 '15.

22 THE COURT: Yes, sir.

23 THE DEFENDANT: And as you can see in my record, I  
24 had other run-ins with the law in between there. Isle of  
25 Jamaica on the corner of --

1 THE COURT: What did you do there?

2 THE DEFENDANT: I was a cook.

3 THE COURT: Okay.

4 THE DEFENDANT: I worked for Higher (ph) Quest USA,  
5 Higher (ph) Quest Limited off of Laurel Street. Carolina  
6 Landscaping Professionals.

7 THE COURT: All right. Thank you, sir.

8 Are you married, sir?

9 THE DEFENDANT: Regrettably.

10 THE COURT: All right. Do you have any children?

11 THE DEFENDANT: No.

12 THE COURT: Sir, have you ever served in the  
13 military?

14 THE DEFENDANT: No, sir.

15 THE COURT: Sir, are you under the influence of any  
16 alcohol or drugs today?

17 THE DEFENDANT: No, sir.

18 THE COURT: Have you ever been treated for alcohol  
19 or drug abuse?

20 THE DEFENDANT: I have.

21 THE COURT: You have?

22 THE DEFENDANT: Yes.

23 THE COURT: In the past?

24 THE DEFENDANT: In the past.

25 THE COURT: And, sir, have you successfully

1 completed that treatment?

2 THE DEFENDANT: Yes. I don't drink like I used to.

3 THE COURT: All right. Let me ask you this, sir:  
4 Have you ever been treated for any type of mental health  
5 issues?

6 THE DEFENDANT: No, sir.

7 THE COURT: Okay. Sir, are you on any medication  
8 today?

9 THE DEFENDANT: No, sir.

10 THE COURT: Are you supposed to be on any  
11 medication?

12 THE DEFENDANT: No, sir.

13 THE COURT: Is there anything, sir, that would  
14 interfere with your ability to understand my questions  
15 and, assuming you understand them, to then give truthful  
16 answers to them?

17 THE DEFENDANT: No.

18 THE COURT: You need to speak up, sir.

19 THE DEFENDANT: No, sir.

20 THE COURT: Sir, I want to ask you about Mr. Kata.  
21 I want to know, are you completely satisfied with his  
22 services, sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Have you had an opportunity to talk with  
25 him about these charges, sir?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Have you understood your talks with him,  
3 sir?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Has he done everything you have wanted  
6 him to do?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay. You don't need any more time  
9 right now to talk with him before we move forward?

10 THE DEFENDANT: No, sir.

11 THE COURT: All right, sir. When you plead guilty,  
12 you're going to give up your right to a jury trial, and at  
13 the jury trial, a judge is going to instruct the jury,  
14 sir, that you have a right to -- that you have a right,  
15 sir, to remain silent, and if you exercise that right to  
16 remain silent, that the jurors can't hold that against you  
17 in any way, shape, or form.

18 No. 2, the judge is going to tell the jury that  
19 you're presumed innocent and that the State has the burden  
20 of proving your guilt beyond a reasonable doubt.  
21 Mr. Kata, at a trial, would have the opportunity to  
22 cross-examine the State's witnesses, sir. Okay?

23 And, also, sir, in addition to cross-examining the  
24 State's witnesses, he'd be able to call witnesses on your  
25 behalf. Do you understand all that, sir?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. And knowing that, sir, do you  
3 want to waive those rights and plead guilty today?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. And so this has not been  
6 presented to the grand jury?

7 MS. TAYLOR: It has as a trafficking third, but  
8 we're pleading him under the PWID second.

9 THE COURT: Okay. Sir, you have a right to have  
10 this matter presented to a grand jury. And a grand jury  
11 is a group of citizens who are going to listen to the case  
12 that the solicitor has, listen to those facts, listen to  
13 that evidence, and decide whether there's enough  
14 information, enough cause for this matter to move forward  
15 into the court system.

16 THE DEFENDANT: Mm-hmm.

17 THE COURT: Do you want to waive that right today so  
18 we can move forward with this plea?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. All right, sir. Is anybody  
21 making you do this today?

22 THE DEFENDANT: No, sir.

23 THE COURT: Anybody forcing you to do it?

24 THE DEFENDANT: No, sir.

25 THE COURT: Has anybody promised you anything? I

1 know there's a negotiation and I have got to accept that  
2 negotiation. If I accept your sentence, I have to accept  
3 the negotiation. But other than the negotiation, has  
4 anybody promised anything to get you to plead guilty?

5 THE DEFENDANT: No, sir.

6 THE COURT: Sir, are you pleading guilty freely and  
7 voluntarily?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And, sir, do you need any additional  
10 time with your lawyer?

11 THE DEFENDANT: No, sir.

12 THE COURT: Okay. And, sir, are you pleading guilty  
13 because you are, in fact, guilty of possession with intent  
14 to distribute crack cocaine second offense in Richland  
15 County on or about July 3rd, 2018, sir?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. Solicitor, I'm happy to hear  
18 the facts.

19 MS. TAYLOR: Yes, sir. On July 3rd, 2018, police  
20 referenced complaints in reference to narcotics being  
21 distributed from various rooms at the Star Motel at [REDACTED]  
22 Pinebelt Road. A search warrant was executed on various  
23 rooms at the motel. Police raided Room [REDACTED] where they  
24 found the defendant as the sole occupant. Police located  
25 two cigarette boxes with crack rocks in it on a table.

1 The defendant claimed ownership of the drugs post Miranda.

2 THE COURT: All right. Prior record?

3 MS. TAYLOR: In the last ten years, he has 2012,  
4 unlawful carrying of a pistol; 2013, possession of crack;  
5 and in 2015, PWID crack second.

6 THE COURT: Sir?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: The solicitor just gave me some facts as  
9 it relates to this case. Were those facts substantially  
10 true?

11 THE DEFENDANT: Not substantially but they are true.

12 THE COURT: Okay. But the facts are true?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You were at that hotel?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And there were drugs found in the room?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And what else did you tell me?

19 MS. TAYLOR: He was the sole occupant and he claimed  
20 ownership of it.

21 THE COURT: And did you claim ownership of the  
22 drugs, sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay. So all that is true? Correct?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: I'm asking.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Sir, the solicitor also gave me some  
4 information concerning your record, sir. Was that  
5 information true?

6 THE DEFENDANT: To the best of my knowledge, sir.

7 THE COURT: Yes, sir, I understand.

8 All right, sir. I'm going to accept your plea. I  
9 find there's a substantial factual basis for the plea. I  
10 find that your decision to plead guilty to be freely,  
11 voluntarily, and intelligently made; that you had the  
12 advice and counsel of an attorney with whom you are  
13 satisfied.

14 I accept the plea, and I'm happy to hear from you,  
15 Mr. Kata.

16 MR. KATA: Thank you, Your Honor. May it please the  
17 Court? We're standing here asking you to accept the  
18 negotiated sentence in this case. This has been a highly  
19 negotiated case over a long span of time, and we're  
20 standing here today asking Your Honor to accept that  
21 negotiation.

22 THE COURT: Sir, you have just heard your attorney  
23 provide me with some information. Do you agree with that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. Anything need to be added to

1 that?

2 THE DEFENDANT: I would like to ask Your Honor to  
3 consider lowering the probation, but that would be  
4 considered...

5 THE COURT: Well, no, sir. I have already accepted  
6 it. I am happy to hear from you. Let me do this: Your  
7 lawyer, you just heard what he told me?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. Do you disagree or does  
10 anything need to be added to what he said? I'm going to  
11 give you an opportunity to talk to me. Anything about  
12 what he said that you disagree with?

13 THE DEFENDANT: No, Your Honor.

14 THE COURT: All right. Now, you can talk to me.  
15 Yes, sir. What you want to tell me?

16 THE DEFENDANT: Basically, I thank you for accepting  
17 my plea.

18 THE COURT: All right, sir.

19 How much time did he serve?

20 MS. TAYLOR: 317 days.

21 THE COURT: 317 days?

22 MS. TAYLOR: Yes, sir.

23 THE COURT: All right, Mr. Wise. I have accepted  
24 the plea and I will also accept the recommendation, and to  
25 that extent, I'm going to commit you to the Department of

1 Corrections for a period of ten years, suspended, however,  
2 upon three years' probation, sir, and I'm also giving you  
3 credit for the 317 days that you served. All right?

4 Anything further?

5 MS. TAYLOR: We will be dismissing the rest of his  
6 charges.

7 THE COURT: Mr. Kata, anything further, sir?

8 MR. KATA: No, Your Honor.

9 THE COURT: All right. That's consistent with my  
10 understanding of the negotiation; correct?

11 MR. KATA: Yes, Your Honor.

12 THE COURT: All right. Good luck, sir. I think you  
13 made the right decision. Okay?

14 MS. TAYLOR: Thank you, Your Honor.

15 (The above matter concluded at 11:37 a.m.)  
16  
17  
18  
19  
20  
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23  
24  
25

## 1 CERTIFICATE OF TRANSCRIBER

2 CASE NAME/NUMBER: State v. Lontre J. Wise

3 2019-CP-40-02599

4 DATE OF HEARING: 6/24/21

5 COURT REPORTER/MONITOR: DCRP

6  
7 I, Bobbi Fisher, do hereby certify that the foregoing  
8 transcript is a true and correct record of the recorded  
9 proceedings; that said proceedings were transcribed to the  
10 best of my ability from the audio recording and supporting  
11 information, and that I am neither counsel for, related  
12 to, nor employed by any of the parties to this case, and I  
13 have no interest, financial or otherwise, in its outcome.

14  
15 16  
17 /s/ Bobbi Fisher

18 Bobbi Fisher, Certified Transcriber

19 Date Prepared: August 6, 2023

20  
21  
22 NOTE: PURSUANT TO RULE 607(h)(1)(B), SCACR, "A COURT  
23 REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR  
24 FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT."  
25 ALL REQUESTS FOR COPIES OF THE ATTACHED TRANSCRIPT (FORM  
800) FROM OPPOSING PARTY OR NON-PARTIES MUST BE SENT TO  
THIS REPORTER AT BFISHER@SCCOURTS.ORG.

Form 16.1, Arrest Warrant  
Form Approved by  
SC Attorney General  
Section 17-13-160  
March 18, 1978

Probation  
**ARREST WARRANT**  
Indictment Number: 19-GS-40-02598  
Warrant Number: W-40-23-0007  
State Identification No. (SID) 00781218

**STATE OF SOUTH CAROLINA**  
COUNTY OF RICHLAND

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF RICHLAND, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that LONTRE J WISE, did on the 12 day of January, 2023 violate the criminal laws of the State of South Carolina as set forth below:

**DESCRIPTION OF OFFENSE:**

The offender has violated conditions 4, 6, 7, 9, 18, Special Conditions of the standard Department conditions associated with Section 24-21-438. The offender has also violated special conditions imposed by the General Sessions Court per order dated June 24, 2021. This warrant or citation is issued pursuant to section 24-21-458 or 389.

Now, therefore, you are empowered and directed to arrest the said defendant and bring LONTRE J WISE before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Done at RICHLAND, S. C. this 12 day of January, 2023.

County of RICHLAND

*Desmond Bradley*  
Signature of Probation and Parole Agent: \_\_\_\_\_ (L.S.)  
2023 MAR 1 P  
RICHLAND COUNTY  
FILED  
JAN 12 2023  
C.C.P. # 18-11-11

STATE OF SOUTH CAROLINA

**AFFIDAVIT**

Personally appeared before me, one Desmond Bradley, who, first being duly sworn, deposes and says that LONTRE J WISE did within this County and State on the 12 day of January, 2023, violate the criminal laws of the State of South Carolina in the following particulars:

**DESCRIPTION OF OFFENSE:**

The offender has violated conditions 4, 6, 7, 9, 18, Special Conditions of the standard Department conditions associated with Section 24-21-438. The offender has also violated special conditions imposed by the General Sessions Court per order dated June 24, 2021. This warrant or citation is issued pursuant to section 24-21-458 or 389.

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

Lontre Wise failed to follow the advise and instructions of his Agent in that he: Failed to refrain from violating Federal, State or local laws. Without conviction there is probable cause to believe that Lontre Wise committed the criminal offense of: Possession of a Firearm by a convicted felon x2, Possession of a weapon during a violent crime x2, Trafficking Crack, and PWID Marijuana as made evident by his arrest on 12/13/2022 by RCSO, case #220936891 on 12/13/22 while on active supervision. Failed to refrain from being in possession of a Firearm by a convicted felon and possession of a weapon during a violent crime as evident by his arrest on 12/13/22 by RCSO. Per incident report by RCSO (Case # 220936891), dated 12/13/2022, "during the search of the residence pursuant to a search warrant, a black Century Arms TP95FX 9mm semi-automatic handgun (S/N: 78472-188C-19538) with (1) 9mm magazine, with (15) 9mm bullets and an empty chamber and a Smith & Wesson .38 caliber revolver (S/N: 667274) with (5) .38 caliber bullets all found in a black backpack on the couch in living room." Failed to pay Supervision Fee by being in arrears \$875.00 with a balance of \$1,775.00 at the issuance of process. Failed to pay Court fine by being in arrears \$100.00 with a balance of \$283.25 at the issuance of process. Failed to pay drug test fee of \$20.00 at the issuance of process. Such actions constitute violation of conditions 4, 6, 7, 9, 18, Special Conditions.

Sworn to and Subscribed before me  
this 12 day of January, 2023.

*Desmond Bradley*  
Affiant

*Justin Sellers*  
Signature of Notary Public (L.S.)  
10/31/2032  
My Commission Expires

Address: PO BOX 808  
STATE PARK  
COLUMBIA, SC 29147  
(803) 734-6320

STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
County of Richland	)	2019-GS-40-02599
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
LONTRE WISE,	)	
	)	
DEFENDANT,	)	

March 31, 2023  
Columbia, South Carolina

BEFORE:

THE HONORABLE ROBERT E. HOOD, JUDGE.

APPEARANCES:

DESMOND BRADLEY, PROBATION AGENT

JENNIE RISCHBIETER, ASSISTANT PUBLIC DEFENDER  
Attorney for the Defendant

KAREN AMBROZIAK  
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1                   LONTRE WISE, after being duly sworn,  
2 testified as follows:

3           THE COURT: All right. Tell me your name.

4           PROBATION AGENT: Yes, Desmond Bradley.

5           THE COURT: All right. Ms. Rischbieter, are you  
6 ready?

7           MS. RISCHBIETER: Yes, Your Honor.

8           THE COURT: Go ahead.

9           PROBATION AGENT: Yes, sir, Your Honor. May it  
10 please the Court. Before you today is Lontre Wise who was  
11 sentenced in Richland County on indictment number  
12 19-GS-40-0259 for manufacturing and distribution of  
13 cocaine base, second offense.

14           He received a sentence of ten years, suspended  
15 sentence, and three-years probation, no prior violations.

16           Mr. Wise is before you today for failing to follow  
17 the advice and instructions of his agent. He failed to  
18 refrain from violating federal, state or local laws.

19           He is in position of a firearm by a convicted felon,  
20 possession of a weapon during a violent crime, possession  
21 of crack cocaine and possession with intent to distribute  
22 marijuana as evidenced by his arrest on 12/13/2022 by the  
23 Richland County Sheriff's Department while on active  
24 supervision.

25           He failed to refrain from being in possession of a

1 firearm by a convicted felon and possession of a weapon  
2 during a violent crime. Prior to this incident report,  
3 the Richland County Sheriff's Department case number  
4 220030891 on December 13, 2022.

5 During a search of the residence pursuant to a search  
6 warrant they found a black Century Arms 9-millimeter  
7 semiautomatic handgun with a 9-millimeter magazine with 15  
8 bullets and an empty chamber and a Smith & Wesson  
9 38-caliber revolver with five 38-caliber bullets all found  
10 in a black backpack on a couch in the living room.

11 He failed to pay supervision fees being in arrears  
12 \$375 which was \$1,775 at the issuance of process, failure  
13 to pay Court fines by being in arrears \$108 with a balance  
14 of \$283.25 at the issuance of process, failure to pay a  
15 drug test fee of \$20 at the issuance of process. Such  
16 actions constitute violations 4, 6, 7, 9 and ten for  
17 special conditions.

18 THE COURT: And what's the status of those charges?

19 MS. RISCHBIETER: They are still pending, Your Honor,  
20 and I do represent him on them.

21 THE COURT: Okay. All right. Ms. Rischbieter?

22 MS. RISCHBIETER: Thank you, Your Honor. May it  
23 please the Court. As you have heard, the recommendation  
24 from Mr. Wise is five years.

25 He has a total of 426 days of credit as he's been in

1 jail since December 13th, along with the initial 317 from  
2 the charges. He is facing an awful lot of time on the new  
3 charges, as I'm sure Your Honor is aware.

4 Mr. Wise does have a lot of complicated health  
5 issues. His foot is -- basically needs to be completely  
6 repaired, and he has this special chair. It's very  
7 difficult for him especially at the jail, as you saw he is  
8 here for court today. He does have a host of complicated  
9 medical issues.

10 He is supported by his sister Jean and the mother of  
11 his children, Charlene. He does have very good support,  
12 Your Honor, and like I said, I am representing him on the  
13 new charges.

14 We had hoped to resolve them together.  
15 Unfortunately, it has not been possible. As you heard,  
16 Mr. Wise was doing well on probation before those charges.  
17 I think he got through about halfway before he did that.

18 So respectfully, Your Honor, we would ask for a  
19 three-year revocation instead of the five just because we  
20 know that he is looking at quite a lot of time. He would  
21 like to get sort of his health and everything in order  
22 before he faces that.

23 THE COURT: All right. Mr. Wise, is there anything  
24 you'd like to say?

25 THE DEFENDANT: Yes, sir. I completely regret the

1 situations that I did before the Court and all, and as  
2 agent Bradley can attest, I had no problem while out on  
3 probation. I was actually --

4 THE COURT: You were doing good until you picked up  
5 these charges.

6 THE DEFENDANT: Yes, sir. I have other issues that  
7 I've been dealing with before this, you know. I failed to  
8 get any kind of help or anything on it because of my own  
9 stupidity and stuff.

10 THE COURT: Okay.

11 THE DEFENDANT: But I would ask that Your Honor  
12 please take into consideration Ms. Rischbieter's  
13 recommendation and revoke me no more than three years and  
14 give me time for good credit, please, Your Honor.

15 THE COURT: All right. I find there's sufficient  
16 evidence to go forward with the violation. I think that  
17 according the incident report, the crack cocaine was found  
18 in his underwear. So even though they are still pending  
19 charges, I think there's sufficient evidence that's been  
20 presented to go forward with the revocation.

21 I'm going to revoke five years, terminate and  
22 convert. He's going to get credit for 426 days and best  
23 of luck to you try. You need to try to get it wrapped up  
24 sooner rather than later.

25 THE DEFENDANT: Okay.

1           THE COURT:  You're going to get credit for over a  
2 year, right?

3           MS. RISCHBIETER:  Yes.

4           THE COURT:  And then what you and Ms. Rischbieter  
5 need to try to work on getting that other set of charges  
6 worked up while you can.  They're going to be easier to  
7 deal with when you're in prison than when you're out on  
8 bond.

9           (Whereupon, the proceedings were concluded.)

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STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

County of Richland  
STATE VS

Indictment Number: 2019 - GS - 40 - 02599  
Probation CW#s & issuance dates: W-40-23-0007  
January 12, 2023

AKA: \_\_\_\_\_  
Race: Black Sex: M  
DOB: \_\_\_\_\_  
SSN: \_\_\_\_\_  
SID#: \_\_\_\_\_

Name of Original Offense: Pass. with intent to dis. Cocaine 2nd off.  
Original AWW#: 2018A-4010202524  
Date of Original Offense: 7/3/2018  
Conviction S.C. Code §: 44-53-0375(B)(2)  
Conviction CDR Code #: 3 1 0 1 1 5  
Original Sentence: 10 yrs SS & 3 yrs Prob

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 6 / 24 / 21 in the Court of General Sessions of Richland County, and/or the additional conditions ordered by the Court in probation continuation order(s) issued on \_\_\_\_\_, as set forth in the attached warrant(s) or citation(s). After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit)

4, 6, 7, 9, 10, Special Conditions

Therefore, IT IS ORDERED that:

- the suspended sentence be revoked and the above named defendant be required to serve the remainder of the original sentence.
- the suspended sentence be partially revoked and the above named defendant be required to serve \_\_\_\_\_ days/months/years of the original sentence; and
  - Terminate the balance of probation.
  - Continue/reinstate probation, subject to the conditions set forth in the original sentence and not inconsistent with this order.
- the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- the above named defendant is placed on electronic monitoring pursuant to §23-3-540.
- Financial Obligations: Order satisfies:
  - Department fees (average)
  - Fines and other fees (average / balance)
  - Restitution (and 20%) (average / balance)
 Civil Judgment:  Department fees  
 Fines and other fees  
 Restitution (and 20%)
- Additional Conditions ordered by the Court (Jail time credits should not be reported in this section):

Revoke 5 years & terminate probation. Time Satisfies department fees. Civil Judgment for court fines. NO AM

FILED  
MAR 31 PM 1:41  
RICHLAND COUNTY  
CLERK OF COURT  
COLUMBIA, S.C.

- The defendant is given credit for \_\_\_\_\_ days/months/years of pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.
- The defendant is to be given credit for \_\_\_\_\_ days/months/years of Hayes credit (N/A if defendant has served prior SCDC time).
- No pre-revocation hearing detention time to be awarded because a citation was issued.
- The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This 31 day of MARCH 23, SC  
Columbia

Presiding Judge 5th SHOOD Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature  
Signed this 31 day of MARCH 23 at \_\_\_\_\_ SC  
Day Month Year

Witnessed by  
[Signature]  
Columbia SC  
City

STATE OF SOUTH CAROLINA

COUNTY OF

Richland

STATE

V.

DEFENDANT

Lontre J. Wise

Hearing Date:

3, 31, 23

IN THE COURT OF GENERAL SESSIONS

NO. 19 -GS- 40 - 02599

A/W: 2018A4010202524

CIVIL JUDGMENT

This matter came before me on the above mentioned date, pursuant to a motion to require the defendant to show cause why the defendant's default in paying fines and ~~restitution~~ (strike inapplicable) should not be treated as a civil judgment and a judgment lien attached. After hearing the evidence, I find that no cause was shown why judgment should not be entered for the unpaid balance of fines and ~~restitution~~ (strike inapplicable). I find the unpaid balance of the fine and ~~restitution~~ (Strike inapplicable) due and the payee to be as stated below.

It is therefore ordered adjudged and decreed that the payee, shall have judgment against the defendant in the sum stated below. It is further ordered that the clerk of court enter this judgment in the civil judgment records of the court. All of which is ordered pursuant to S. C. Code Ann. 17-25-323.

Payee's Name Clerk of Court		
Payee's Address P. O. Box: 2766		
Street Columbia	SC	29202
City	State	Zip

The Defendant is ordered to pay to the Payee the sum of

\$ 283.25

Presiding Judge's Signature <i>R. Hood</i>	Date 3/31/23
Judge's Name Printed HOOD	Columbia, S.C.

FORM 5

2023CP400 3256

STATE OF SOUTH CAROLINA )

County of Richland )

Lontee Jason Wise #237314 )  
Full name and prison number (if any) of Applicant )

v. )

State of South Carolina )

IN THE COURT OF COMMON PLEAS

APPLICATION FOR  
POST-CONVICTION REVIEW

2023 JUN 23 AM 11:30  
JEANETTE MCGRIBBLE  
Clerk of Court

RICHLAND COUNTY  
FILED

**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention SC Dept of Corr. (K.I.R. REC Center) Kirkland Recpt. & Eval. Cen. F3 B145/4344 Broad River Rd. Columbia SC. 29210
2. Name and location of Court which imposed sentence Rich. Coun. Judic. Center 5<sup>th</sup> Circuit Courthouse / 1701 Main St. Columbia SC. 29201
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) Ind. No. 19GS4002599 / Violation of Prob. Commun. Sup. Prog. (CSD)
  - (b) \_\_\_\_\_

- (c) \_\_\_\_\_
- 5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) March 31, 2023, Revoke 5yrs. (317 days credit + 109 days Jail time)
  - (b) Allow Probation to Expire
  - (c) \_\_\_\_\_

- 6. Check whether a finding of guilty was made:
  - (a) after a plea of guilty \_\_\_\_\_
  - (b) after a plea of not guilty yes
  - (c) after a plea of nolo contendere \_\_\_\_\_

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

- 8. If you answered "yes" to (7), list:
  - (a) the name of each Court to which you appealed:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (b) the result in each such Court to which you appealed:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (c) the date of each such result:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (d) if known, citations of any written opinion or orders entered pursuant to such results:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_

- 9. If you answered "no" to (7), state your reasons for not so appealing:
  - (a) Counsel Did not advise that I could appeal this judgement
  - (b) \_\_\_\_\_

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

(a) ineffective assistance of counsel

(b) ineffective assistance of counsel

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

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

(a) Violation was done without conviction for reasons listed!

(b) Counsel failed to advise me of my rights of Appeal!

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

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

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

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

(a) the specific nature thereof:

i. \_\_\_\_\_

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

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

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

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

i. \_\_\_\_\_

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

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

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

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

*No*

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

(a) which grounds have been presented:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- (a) P.C.R. Application is the proper avenue
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
- (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. Jennie L. Rischbieter
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Arraignment and plea of not Guilty, trial, and sentencing
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

reverse

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

No

2023 JUN 23 AM 11:30  
LAURETTE W. MCBRIDE  
C. OF P. & G. S.  
RICHLAND COUNTY  
FILED

STATE OF SOUTH CAROLINA )  
County of Richland )

VERIFICATION

I, Lontre Jason Wise #237314, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

[Signature]

SWORN to and subscribed before me this 24 day of April, 2023.

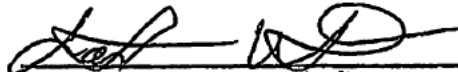
[Signature] (L.S.)  
Notary Public

My Commission Expires: 12-01-2025

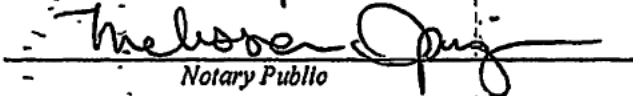
APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF

I, Lontra Jason Wise #237314, 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.

  
Applicant

SWORN or affirmed to and subscribed before me this  
24 day of April, 2023.

  
Notary Public

My Commission Expires: 12-01-2025

RICHLAND COUNTY  
 FILED  
 2023 JUN 23 AM 11:30  
 JEANETTE W. MCBRIDE  
 C. C. P. & G. S.

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Lontre J. Wise, #237314,

Applicant,

v.

State of South Carolina,

Respondent.

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

) CASE NO. 2023-CP-40-3256

RETURN  
(Counsel Appointed)

2023 AUG 22 PM 12:00  
JEANETTE W. McBRIDE  
C.M.P. & C.S.  
RICHLAND COUNTY  
FILED

In response to Lontre J. Wise's (Applicant) action for post-conviction relief (PCR) filed on June 23, 2023, Respondent makes this Return.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections. During its May 2019 term, the Richland County Grand Jury indicted Applicant for Trafficking Crack Cocaine—28g-100g—3<sup>rd</sup> Offense (2019-CP-40-2599) and Possession with Intent to Distribute (PWID) Marijuana—1<sup>st</sup> Offense (2019-CP-40-2594). During its June 2020 term, the Richland County Grand Jury indicted Applicant for Possession of 28g or Less of Marijuana—2<sup>nd</sup> Offense (2020-CP-40-1109), PWID THC—1<sup>st</sup> Offense (2020-CP-40-1110), PWID Schedule IV—Alprazolam—1<sup>st</sup> Offense (2020-CP-40-1113), Possession of Controlled Substance—THC—1<sup>st</sup> Offense (2020-CP-40-1115), PWID Crack Cocaine—3<sup>rd</sup> Offense (2020-CP-40-1116), Driving Under Suspension—1<sup>st</sup> Offense (2020-CP-40-1117), and PWID Schedule II—Oxycodone (2020-CP-40-1119). Justin M. Kata, Esquire, represented Applicant. Fifth Circuit Assistant Solicitor Stephanie M. Taylor prosecuted the case.

On June 24, 2021, Applicant appeared before the Honorable Robert J. Bonds and pled guilty to the lesser offense of PWID Crack Cocaine—2<sup>nd</sup> Offense. As part of the negotiations,

the State nolle pross'd all other charges. Judge Bonds accepted the negotiated plea and sentenced Applicant to ten years imprisonment suspended on the service of three years probation.

On March 31, 2023, Applicant appeared before the Honorable Robert E. Hood for a probation revocation hearing. Applicant was represented by Fifth Circuit Assistant Public Defender Jennie L. Rischbieter (Probation Counsel). Probation Agent Desmond Bradley (Agent Bradley) represented the State. Judge Hood found there was sufficient evidence to revoke Applicant's probation. Judge Hood revoked Applicant's probation and sentenced Applicant to five years imprisonment.

Applicant did not appeal his sentence or conviction.

#### **SUMMARY OF FACTS FROM PLEA HEARING<sup>1</sup>**

The facts for this indictment were articulated by the State at Applicant's plea hearing as follows:

On July 3rd, 2018, police referenced complaints in reference to narcotics being distributed from various rooms at the Star Motel at 3727 Pinebelt Road. A search warrant was executed on various rooms at the motel. Police raided Room 114 where they found the defendant as the sole occupant. Police located two cigarette boxes with crack rocks in it on a table. The defendant claimed ownership of the drugs post Miranda.

(Plea Tr. pp. 23 – 24).

#### **SUMMARY OF FACTS FROM PROBATION REVOCATION HEARING<sup>2</sup>**

The facts for this indictment were articulated by the State at Applicant's probation revocation hearing as follows:

Before you today is Lontre Wise who was sentenced in Richland County on indictment number 19-GS-40-0259 for manufacturing and distribution of cocaine base, second offense. He received a

---

<sup>1</sup> The facts are taken from the sentencing transcript as provided by the Solicitor.

<sup>2</sup> The facts are taken from the probation revocation transcript as provided by Agent Bradley.

sentence of ten years, suspended sentence, and three-years probation, no prior violations. Mr. Wise is before you today for failing to follow the advice and instructions of his agent. He failed to refrain from violating federal, state or local laws. He is in position of a firearm by a convicted felon, possession of a weapon during a violent crime, possession of crack cocaine and possession with intent to distribute marijuana as evidenced by his arrest on 12/13/2022 by the Richland County Sheriff's Department while on active supervision. He failed to refrain from being in possession of a firearm by a convicted felon and possession of a weapon during a violent crime. Prior to this incident report, the Richland County Sheriff's Department case number 220030891 on December 13, 2022. During a search of the residence pursuant to a search warrant they found a black Century Arms 9-millimeter semiautomatic handgun with a 9-millimeter magazine with 15 bullets and an empty chamber and a Smith & Wesson 38-caliber revolver with five 38-caliber bullets all found in a black backpack on a couch in the living room. He failed to pay supervision fees being in arrears \$375 which was \$1,775 at the issuance of process, failure to pay Court fines by being in arrears \$108 with a balance of \$283.25 at the issuance of process, failure to pay a drug test fee of \$20 at the issuance of process. Such actions constitute violations 4, 6, 7, 9 and ten for special conditions.

(Probation Revocation Tr. pp. 3 – 4).

#### CURRENT APPLICATION

Applicant timely commenced this PCR action on June 23, 2023. In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following reasons:

1. Ineffective Assistance of Counsel
  - a. "Violation was done without conviction for reasons listed!"
  - b. "Counsel failed to advise me of my rights of appeal!"

Applicant requests relief in the form of "reverse."

Attached to this return and incorporated by reference are the Richland County Clerk of Court records regarding the subject conviction; Applicant's records from the South Carolina Department of Corrections; the plea transcript; the probation revocation transcript; and the

records of this current PCR action. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

**Response to Allegation of Ineffective Assistance of Probation Counsel**

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

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

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order

to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

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

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most

common custom. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

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

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

whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial." Id. at 687 (emphasis added).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel." Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel's performance was deficient; and second, evidence that counsel's deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

The analysis of counsel's performance under the first prong of Strickland remains unchanged—the applicant must show counsel's representation fell below the objective standard

of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56.

The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Id. at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59. This inquiry "focuses on a defendant's decision making" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. \_\_\_, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

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

of post hoc assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Lee, 582 U.S. \_\_\_, 137 S. Ct. at 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences. Id. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harres, 282 S.C. at 134, 318 S.E.2d at 361.

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

A probationer's right to counsel arises as a matter of due process rather than under the Sixth Amendment, but "the same analysis for [violations of the Sixth Amendment right to counsel] ... appl[ies] in PCR proceedings involving claims against probation counsel." Turner v. State, 384 S.C. 451, 454-55, 682 S.E.2d 792, 793-94 (2009). Under this analysis, the PCR applicant must prove "(1) counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) counsel's deficient performance prejudiced the applicant's case." Speaks v. State, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008).

***Failure to Communicate Right to Appeal***

Applicant alleges Probation Counsel was ineffective for failing to advise him of his right to appeal. Respondent submits this allegation is without merit.

Generally, there is no constitutional deprivation in not being advised of the right to appeal from a guilty plea absent extraordinary circumstances, such as when there is a reason to think a rational defendant would want to appeal—where a nonfrivolous ground exists to appeal—or defendant reasonably demonstrated an interest in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000); Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995). Like a guilty plea, there is no requirement of probation counsel "to inform a probationer of his right to an appeal absent extraordinary circumstances." Turner v. State, 384 S.C. 451, 456–57, 682 S.E.2d 792, 795 (2009) (finding "probation counsel is not held to a higher performance standard than that imposed upon plea counsel.").

In the present application, Applicant alleges Probation Counsel was ineffective for failing to advise him of his right to appeal. Because this allegation likely raises questions of fact not conclusively refuted by the record, the State requests an evidentiary hearing to fully resolve the issues. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

**ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS**

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has retained an attorney, the attorney, not Applicant, is the only individual authorized to file

amendments to this application. See Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to Love v. State, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. Id., 428 S.C. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last-minute resulting in undue prejudice to the State. See Love, 428 S.C. 231, 834 S.E.2d 196.

**|CONCLUSION PAGE FOLLOWS|**

CONCLUSION

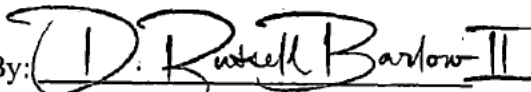
WHEREFORE, Respondent respectfully requests an evidentiary hearing be held on the claims of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

D. RUSSELL BARLOW, II  
Assistant Attorney General

By: 

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

August 18, 2023

STATE OF SOUTH CAROLINA ) In The Court of Common Pleas  
 ) Fifth Judicial Circuit  
COUNTY OF RICHLAND ) 2023-CP-40-03256

LONTRE J. WISE, )  
 )  
Plaintiff, )  
 )  
vs. )  
 ) Transcript of Record  
THE STATE, )  
 )  
Defendant. )  
 )  
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 )  
 )

Columbia, South Carolina  
January 11, 2024

B E F O R E:

The Honorable Maite Murphy

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

Mr. Timothy L. Griffith, Esquire  
Attorney for the Plaintiff

Ms. Talida Balaj, Esquire  
Attorney for the Defendant

Lisa Carter  
Circuit Court Reporter

I N D E X

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<u>WITNESSES</u>	<u>PAGE</u>
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Direct Examination by Mr. Griffith.....	7
Jennie Rischbieter:	
Direct Examination by Ms. Balaj.....	15
Cross-Examination by Mr. Griffith.....	18

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

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THE COURT: Which case will this be?

MS. BALAJ: Lontre Wise. Case number 2023-CP-40-3256.

THE COURT: All right. Yes, ma'am?

MS. BALAJ: May it please, the Court?

THE COURT: Yes, ma'am.

MS. BALAJ: Talida Balaj on behalf of the South Carolina. This is post-conviction relief of Lontre J. Wise versus the State. Case number 2023-CP-40-3256 out of Richland County. During the May, 2019 term the Richland County Grand Jury indicted Mr. Wise for trafficking crack cocaine 28 grams to 100 grams third offense; indictment number 2019-GS-40-2599, in possession with intent to distribute marijuana, first offense; 2019-GS-40-2594.

During the June, 2020 term the Richland County Grand Jury indicted applicant for possession of 28 grams or less of marijuana, second offense, 2020-GS-40-1109; possession with the intent to distribute THC, first offense, 2020-GS-40-1110; possession of with intent to distribute schedule for alprazolam, first offense, 2020-GS-40-1113; possession of a controlled substance THC, first offense, 2020-GS-40-1115; possession with intent to distribute distribute

1 crack cocaine, third offense, 2020-GS-40-1116;  
2 driving under suspension, first defense, 2020-GS-40-  
3 1117, and; possession with intent to distribute a  
4 schedule II oxycodone, 2020-GS-40-1119. Justin M.  
5 Kata represented applicant at his plea hearing and  
6 Fifth Circuit Assistant Solicitor Stephanie M. Taylor  
7 prosecuted the case.

8 On June 24, 2021 Mr. Wise appeared before the  
9 Honorable Robert J. Bonds and pled guilty to the  
10 lesser offense of possession with intent to  
11 distribute crack cocaine, second offense. As far  
12 part of negotiations the State nolle prossed all  
13 other charges. Judge Bonds accepted the negotiated  
14 plea and sentence Mr. Weiss to ten years imprisonment  
15 suspended on the service of three years probation.

16 On December 13, 2022 while on active supervision  
17 Mr. Wise was arrested for possession of a firearm by  
18 a convicted felon, possession of a weapon during the  
19 commission of a violent crime, possession of crack  
20 cocaine, and possession with intent to distribute  
21 marijuana. Your Honor, these charges against Mr.  
22 Wise have not been disposed of and they are currently  
23 pending. Additionally, Mr. Wise failed to pay his  
24 supervision fee, his court fees, and his drug test  
25 fee.

1           On March 31, 2023, Mr. Wise appeared before the  
2           Honorable Robert E. Hood for a probation revocation  
3           hearing. Mr. Wise was represented by Fifth Circuit  
4           Assistant Public Defender Jennie L. Rischbieter.  
5           Probation Agent Desmond Bradley representing the  
6           State. And the judge had found that there was  
7           sufficient evidence to revoke Mr. Wise's probation  
8           and he revoked probation and sentenced to him to five  
9           years imprisonment. Mr. Wise timely commenced his  
10          PCR action on June 23, 2023. Mr. Wise is asserting  
11          that he is being held in custody unlawfully and  
12          allege ineffective assistance of counsel, and that  
13          the violation was done without conviction for reasons  
14          listed, and ineffective assistance of counsel because  
15          counsel failed to advise me of my rights of appeal.

16           The State made its return filed on August 22,  
17          2023. Your Honor, it's the State's position that the  
18          only issues before the Court today are those  
19          concerning Ms. Rischbieter's representation of Mr.  
20          Wise for his probation revocation hearing. And at  
21          this time we request opposing counsel to specifically  
22          state for the record the allegations he intends to  
23          proceed on today.

24           THE COURT: Good morning.

25           MR. GRIFFITH: Good morning, Your Honor. I thank

1 you.

2 THE COURT: All right, sir. Are you ready to  
3 proceed?

4 MR. GRIFFITH: Yes, Your Honor. If it please, the  
5 Court? I would call Mr. Wise.

6 THE COURT: All right. Sir, would you place on  
7 the record the basis on which you're proceeding?

8 MR. GRIFFITH: I'm sorry.

9 THE COURT: Would you put on the record the basis  
10 on which you are proceeding here ---

11 MR. GRIFFITH: Oh, certainly ---

12 THE COURT: --- it's actually this afternoon?

13 MR. GRIFFITH: Your Honor, Mr. Wise, contends that  
14 he is being held unlawfully in that he was never  
15 convicted, in his opinion, of a crime and so cannot  
16 be jailed because of his probation violation. And he  
17 would like to present that to the Court as a matter  
18 of, for his PCR.

19 THE COURT: All right. Yes, sir. Come on up,  
20 sir.

21 COURT REPORTER: I'm sorry, ma'am, what's your  
22 name again.

23 MS. BALAJ: Talida Balaj.

24 COURT REPORTER: Okay. Spell that for me.

25 MS. BALAJ: First name T-a-l-i-d-a. Last name B-

L. Wise- Direct Examination by Mr. Griffith

7

1 a-l-a-j.

2 COURT REPORTER: Thank you so much.

3 THE COURT: Do you swear or affirm the testimony  
4 you're about to give is the truth, the whole truth,  
5 and nothing but the truth so help you God?

6 MR. WISE: Yes, Your Honor.

7 THE COURT: All right. Sir, you have a seat  
8 please. Your witness?

9 MR. GRIFFITH: May it please, the Court?

10 LONTRE WISE, first being  
11 duly sworn, testified as follows:

12 **Direct Examination by Mr. Griffith:**

13 Q. Mr. Wise, your contention and the grounds for  
14 your PCR that you have filed specified, are  
15 specifically involving only the violation of parole,  
16 is that correct?

17 A. Yes.

18 Q. Okay. And you do know that you have other  
19 charges pending that have not been disposed of ---

20 A. Yes, sir.

21 Q. --- that would still be there ---

22 A. Yes.

23 Q. --- if you were win this? And so -- and you and  
24 I have talked about this on the phone, if you were to  
25 win, prevail in your PCR, then you are back in the

1 position you would have been in if you have not been  
2 convicted of the violation of parole, remember ---

3 A. Yes, sir.

4 Q. --- us talking about that? Okay. So your  
5 contention is that you were never convicted of a  
6 crime, is that correct?

7 A. Still yet till today I haven't been convicted of  
8 a crime alleged against.

9 Q. I'm sorry, can you speak into that microphone a  
10 little louder?

11 A. Yes, sir. I have not been convicted of crime as  
12 of yet and I'm being held at the South Carolina  
13 Department of Correction for violating based upon  
14 these charges or specifically one instance where the  
15 judge stated that regardless of what the probation  
16 officers say they were wanting to validate me for, he  
17 violated me because I also said something which I've  
18 never been charged by that officer for supposedly to  
19 having drugs on me. That was why I was violated.  
20 Not specifically for the charges that I got, but for  
21 what the officer said and that's against the law.  
22 That's against the letter of the law. I don't even  
23 have a charge for what this officer said. And the  
24 officer that said it did not charge me.

25 Q. Okay. And so you do understand that when you

L. Wise- Direct Examination by Mr. Griffith

9

1 initially pled guilty that you were pleading guilty  
2 to a crime and initially you pled guilty to  
3 possession which was a lesser crime and you initially  
4 were convicted and sentenced to ten years but  
5 suspended to probation, you understand?

6 A. Yes. I was coerced into plead guilty and I plead  
7 guilty.

8 Q. Okay. And -- but that's not what your ---

9 A. That's right.

10 Q. --- PCR is about. Your PCR is about your  
11 violation of probation.

12 A. Yes, sir.

13 Q. But you do understand, you and I, I'm trying to  
14 help you to see this too that you did have a  
15 conviction when you pled guilty. That's the same as  
16 if you've gone to trial and been convicted ---

17 A. Yes, sir.

18 Q. --- you remember us talking about that? Okay.  
19 So -- but now to help the Court to see what you're  
20 talking about, when you, then, were brought in for  
21 your violation of probation ---

22 A. Yes, sir.

23 Q. --- was there -- were you brought in before the  
24 judge and was there a hearing that took place?

25 A. What do you mean before I was brought -- was

1 brought to the judge -- was the hearing like as to  
2 what, what I was going up for, the violation for?

3 Q. Yeah ---

4 A. After ---

5 Q. Tell us about it.

6 A. Yes. I went to a parole revocation hearing and  
7 they, they said they were basing it on the charge  
8 that I had got on December 13, 2022. And like I, I  
9 went to them and talked to them and we, basically, it  
10 was like regardless they wanted to violate me because  
11 at the time I was on the news and it was bad look for  
12 them. And I had criminal charges that I was facing.  
13 So, okay, I understand that point I was facing charge  
14 but I'm not found guilty of anything. And we got  
15 before the judge and I tried to confer with Ms.  
16 Rischbieter but, you know, time is limited at Alvin  
17 S. Glenn and Ms. Rischbieter working for the public  
18 defender's office, she's a little overworked and  
19 underpaid and, you know, she has a life too. So I  
20 understand her position. She can only give me so  
21 much of her time and dedication. I understand that  
22 but....and the fact of me not being convicted of  
23 anything, how can it be found that I'm in error of  
24 any law if I haven't been found guilty? If I'm not  
25 found guilty of anything that could be alleged.

L. Wise- Direct Examination by Mr. Griffith

11

1 Anything can be alleged against the person but to  
2 prove that fact in a court of law and say, okay,  
3 you've been found guilty, this is what has happened.  
4 This what has happened. There's no denying it.  
5 There's no escaping it. This is what has happened.  
6 That becomes the violation. Just because the officer  
7 says something, I say it's 3 o'clock, but we look at  
8 the clock and see something different that don't make  
9 it true. That's my whole contingent with the case.  
10 And if you look at the transcript it will idly say  
11 anything else. Anything else that the probation  
12 officer brought for the violation the judge threw all  
13 that out the window and said, okay, based on what the  
14 officer said, this officer name is Gibb (sic) that  
15 allege that he found 4 grams of crack on me. I don't  
16 have any charges from an Officer Gibb (sic). So if  
17 he's saying he found crack on me, why didn't he  
18 charge me with that crack. So that that could be an  
19 issue of contention.

20 Q. Well, I understand that there are pending charges  
21 against you, isn't that correct?

22 A. Yes, sir.

23 Q. Okay.

24 A. And my violation was not had, I was not violated  
25 for those charges by the judge. I was I landed on

1 the instance of what an officer said.

2 Q. Okay.

3 A. That is specifically said in my transcript.

4 Q. Okay.

5 A. That's what the judge say. He say he didn't say  
6 about the charges that got. He didn't say about  
7 anything else. He said based on what this officer  
8 said I find that enough to violate you.

9 Q. Okay. And when you and I were talking about  
10 this, you, you specifically, wanted to let the Court  
11 know exactly how you came to understand this?

12 A. In reading South Carolina Rules of Court and  
13 South Carolina Rules of Regulation 17-20, 17-10-25  
14 where it states "that not person shall be punished  
15 except upon the finding of guilt." I feel that that  
16 strictly states that, okay, under the letter of the  
17 law if you haven't been found guilty of anything you  
18 cannot receive a punishment. So I don't understand  
19 and it's not -- knowledgeable to myself, I'm not a  
20 lawyer, I'm just a strict, I'm a layman, how is it  
21 that I can be found guilty because a person just says  
22 something? A person can say some, but that don't  
23 make it a law. That don't make it be a violation of  
24 a law. But for the judge to come and say, well,  
25 okay, because this person said it, that's enough for

1 me.

2 Q. Did your attorney talk to you about how the  
3 probation hearing would go? How they worked?

4 A. We -- we didn't have really like too big of a  
5 discussion on the probation and the dynamics of  
6 probation hearing. We -- we talked about like, um,  
7 she gave instances of like because I got these new  
8 charges that I could be violating, forgetting those  
9 new charges.

10 Q. She ---

11 A. That was up to ---

12 Q. She explained to you the fact that you got  
13 arrested for those charges could it be enough to  
14 violate your probation, did she explain that?

15 A. Yes. I'd say that much. Yes, sir.

16 Q. And so when you went before the judge you don't  
17 feel that the judge actually found you guilty of  
18 anything?

19 A. No. I don't feel he found me guilty of anything  
20 as far as the charge of that, yeah, I was in error of  
21 the violation. But more or less he wanted to go  
22 ahead because I was facing criminal charges to say,  
23 okay, we gone go ahead and send you back on this  
24 probation. Just for simple fact that, okay, we see  
25 they bring you up here. They done already got

1 together and said, okay, we feel it's enough to gone  
2 ahead forward. I'm gonna go ahead and grant their  
3 motion.

4 Q. Okay. Is there anything else you can tell the  
5 Court that would help them in their decision as to  
6 whether you should have a new trial or a new  
7 probation violation hearing?

8 A. No. I think I've basically stated.

9 Q. You think so?

10 A. Yes, sir.

11 Q. Okay.

12 MR. GRIFFITH: I have no further question.  
13 Please answer any questions that the Attorney  
14 General's Office may have?

15 MS. BALAJ: Your Honor, I have no questions for  
16 Mr. Wise.

17 THE COURT: All right. Thank you. You may step  
18 down, sir. Thank you. Anything from the State? Oh,  
19 I'm sorry.

20 MR. GRIFFITH: That's all -- any questions from  
21 me, I mean, witness from me.

22 THE COURT: I apologize. Anything from the State?

23 MS. BALAJ: Yes. I would like to call Ms.  
24 Rischbieter.

25 THE COURT: Do you swear or affirm the testimony

J. Rischbieter- Direct Examination by Ms. Balaj

15

1 you're about to give is the truth, the whole truth,  
2 and nothing but the truth so help you God?

3 Ms. RISCHBIETER: I do.

4 THE COURT: Thank you. Please have a seat. Your  
5 witness?

6 JENNIE RISCHBIETER, first being  
7 duly sworn, testified as follows:

8 **Direct Examination by Ms. Balaj:**

9 Q. Good afternoon, Ms. Rischbieter.

10 A. Good afternoon.

11 Q. Just a couple of brief questions for you.

12 Starting with, how long have you been practicing law?

13 A. Seven years.

14 Q. Seven years. And how long -- how much of that  
15 has been in criminal law?

16 A. All of it.

17 Q. All of it. And have you done many probation  
18 revocation hearings? How many?

19 A. I couldn't even begin to give you a ballpark.  
20 It's quite a lot.

21 Q. Okay. And were you appointed to Mr. Wise's  
22 case?

23 A. Yes. Because I work at the public defender's  
24 office we don't choose our own clients, they are  
25 appointed to us.

1 Q. Okay. And how long before his probation  
2 revocation hearing were you appointed and what kind  
3 of discussions did you guys have before?

4 A. So he was arrested in December of 2022. The  
5 probation hearing was in March of 2023. So I would  
6 have been appointed at his arrest time because that's  
7 when he was served with both the new arrest warrants  
8 as well as the probation warrant.

9 Q. And what were your discussions like? What did  
10 you advise him before the probation revocation  
11 hearing?

12 A. I would have told him kind of about how the  
13 hearing would go. We did have an administrative  
14 hearing that we went to together where we kind of got  
15 a sense of what the agent was going to say at the  
16 hearing. So we were able to prepare for the hearing  
17 further. Unfortunately, as I explained to him even  
18 new arrests can, can be considered a violation of  
19 probation which is unfortunate but is, is the way  
20 that probation works.

21 Q. And going on to one of the other allegations that  
22 Mr. Wise had, um, he alleged that you did not advise  
23 him about his right to appeal. Did he ever asked you  
24 to appeal on his behalf, his probation revocation?

25 A. I did not tell him that he had the right to

1 appeal. I didn't know that you had the right to  
2 appeal a probation hearing. So I would not have been  
3 able to advise him one way or the other and certainly  
4 would not have even been able to tell him that that  
5 was a possibility.

6 Q. But did he ask you to appeal?

7 A. He did not. But I didn't tell him that that was  
8 something he could do.

9 Q. Okay. And were there any non-frivolous issues  
10 that he could have appealed from his probation  
11 revocation?

12 A. I, because I didn't know that you have the right  
13 to appeal a probation violation hearing, I'm not  
14 familiar with the case law, so I, I genuinely don't  
15 know.

16 Q. And do you recall that at his probation hearing  
17 he actually made a statement of guilty or he said,  
18 said to the Court, I regret the situations that I did  
19 before the Court?

20 A. I -- he did say I regret the situations. But my,  
21 my interpretation of that was that he was sorry that  
22 he had violated, may have violated probation because  
23 he had been doing well before that point, and I think  
24 wanted to continue probation and so was sad that he  
25 was not able to do so.

1 MS. BALAJ: No further questions.

2 THE COURT: Any cross?

3 MS. RISCHBIETER: I can spell my name if you need  
4 me to.

5 COURT REPORTER: Thank you.

6 MR. GRIFFITH: If it please, the Court, Your  
7 Honor?

8 THE COURT: Yes, sir.

9 **Cross-Examination by Mr. Griffith:**

10 Q. I'm sorry, I missed your name?

11 A. Jennie Rischbieter.

12 Q. Jennie Rischbieter.

13 MR. GRIFFITH: And one of his contentions which I  
14 failed to inform the Court to begin with was that he  
15 was not informed of his right to appeal, Your Honor,  
16 I'm sorry. But that was also one of his grounds that  
17 he's asking for PCR relief.

18 Q. And you have just stated that you did not tell  
19 him that he had a right to an appeal?

20 A. That's correct.

21 Q. Did the judge tell him he had a right to an  
22 appeal?

23 A. Not to my knowledge.

24 MR. GRIFFITH: I have no further questions.

25 THE COURT: Thank you. Anything else?

1 MS. BALAJ: I have no further questions, Your  
2 Honor.

3 THE COURT: You may step down, ma'am. Thank you.

4 MS. RISCHBIETER: Thank you.

5 THE COURT: Next witness?

6 MS. BALAJ: I have no other witnesses.

7 THE COURT: Anything further?

8 MR. GRIFFITH: Just a statement, Your Honor.

9 THE COURT: All right. Yes, sir?

10 MR. GRIFFITH: You want to go first?

11 MS. BALAJ: I can go first. Just briefly, we  
12 request that the Court deny Mr. Wise's application.  
13 Firstly, Judge Hood properly considered Mr. Wise's  
14 arrest in determining whether or not to revoke his  
15 probation. And there were also other violations of  
16 his probation like not paying his fees that were  
17 additionally considered. And there was an admission  
18 in the probation transcript from Mr. Wise that he  
19 regretted the action that he had taken. It was on  
20 the probation transcript. The ending of Page 5  
21 beginning of Page 6. Additionally, as to failing to  
22 advise about his right to appeal, in Turner v. State  
23 the Supreme Court held that probation counsel is not  
24 required to inform a probationer of their right to  
25 appeal absent extraordinary circumstances. Here,

1           there were no extraordinary circumstances. Mr. Wise  
2           neither asked Ms. Rischbieter to appeal on his behalf  
3           and additionally, there were no non-frivolous claims  
4           that he could have appealed on. So we would just  
5           request the Court deny his application based on these  
6           reasons.

7           THE COURT: Thank you, ma'am. Counsel?

8           MR. GRIFFITH: Thank you, Your Honor. Mr. Wise  
9           does ask the Court if they would grant his PCR in  
10          that he was not given the opportunity to appeal in  
11          that he didn't know he could appeal, Your Honor, and  
12          counsel admitted that she didn't tell him that. But  
13          as counsel has also pointed out she's not required  
14          too. But, Your Honor, he would like the Court to  
15          consider that.

16          THE COURT: All right. Thank you, counsel. I'll  
17          take the time to review the transcript and I'll  
18          provide you with an opinion.

19          MR. GRIFFITH: Thank you, Your Honor

20          MS. BALAJ: Thank you, Your Honor.

21          (CONCLUSION OF HEARING HELD ON MARCH 5, 2019)

22

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25



STATE OF SOUTH CAROLINA  
COUNTY RICHLAND

Lontre J. Wise, #382266,

Applicant,

v.

State of South Carolina,

Respondent.

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

) CASE NO. 2023-CP-40-03256  
)  
)

) **ORDER OF DISMISSAL**  
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Presiding Judge: Hon. Maite Murphy  
Applicant's Attorney: Timothy L. Griffith, Esq.  
Respondent's Attorney: Talida Balaj, Esq.  
Probation Counsel: Jennie L. Rischbieter  
Date of Hearing: January 11, 2024  
Court Reporter: Lisa Carter

RICHLAND COUNTY  
FILED  
2024 MAR 18 PM 3:43  
JEANETTE W. McBRIDE  
Clerk, S.C., & P.C.

This matter comes before the Court by way of Lontre J. Wise's (Applicant) application for post-conviction relief (PCR) filed on June 23, 2023. Respondent, the State of South Carolina, filed its Return on August 22, 2023, requesting an evidentiary hearing to resolve the claims set forth in the application. On January 11, 2024, an evidentiary hearing convened at the Richland County Courthouse before the Honorable Maite Murphy. Assistant Attorney General Talida Balaj represented Respondent. Applicant was present and represented by Timothy L. Griffith, Esquire. At the hearing, Applicant proceeded forward on the claims set forth in his original application. In support of these claims, Applicant testified on his own behalf, and Respondent presented testimony from Fifth Circuit Public Defender Jennie L. Rischbieter, Esquire.

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

### PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections. During its May 2019 term, the Richland County Grand Jury indicted Applicant for Trafficking Crack Cocaine—28g–100g—3<sup>rd</sup> Offense (2019–CP–40–2599) and Possession with Intent to Distribute (PWID) Marijuana—1<sup>st</sup> Offense (2019–CP–40–2594). During its June 2020 term, the Richland County Grand Jury indicted Applicant for Possession of 28g or Less of Marijuana—2<sup>nd</sup> Offense (2020–CP–40–1109), PWID THC—1<sup>st</sup> Offense (2020–CP–40–1110), PWID Schedule IV—Alprazolam—1<sup>st</sup> Offense (2020–CP–40–1113), Possession of Controlled Substance—THC—1<sup>st</sup> Offense (2020–CP–40–1115), PWID Crack Cocaine—3<sup>rd</sup> Offense (2020–CP–40–1116), Driving Under Suspension—1<sup>st</sup> Offense (2020–CP–40–1117), and PWID Schedule II—Oxycodone (2020–CP–40–1119). Justin M. Kata, Esquire, represented Applicant. Fifth Circuit Assistant Solicitor Stephanie M. Taylor prosecuted the case.

On June 24, 2021, Applicant appeared before the Honorable Robert J. Bonds and pled guilty to the lesser offense of PWID Crack Cocaine—2<sup>nd</sup> Offense. As part of the negotiations, the State *nolle prossed* all other charges. Judge Bonds accepted the negotiated plea and sentenced Applicant to ten years imprisonment suspended on the service of three years' probation.

On March 31, 2023, Applicant appeared before the Honorable Robert E. Hood for a probation revocation hearing. Applicant was represented by Fifth Circuit Assistant Public Defender Jennie L. Rischbieter (Probation Counsel). Probation Agent Desmond Bradley (Agent Bradley) represented the State. Judge Hood found there was sufficient evidence to revoke Applicant's probation. Judge Hood revoked Applicant's probation and sentenced Applicant to five years imprisonment. Applicant did not appeal his sentence or conviction.

**FACTS GIVING RISE TO THE CONVICTION**

The incident giving rise to the facts in support of the plea were articulated by the State at

Applicant's plea hearing as follows:

On July 3rd, 2018, police referenced complaints in reference to narcotics being distributed from various rooms at the Star Motel at [REDACTED] Pinebelt Road. A search warrant was executed on various rooms at the motel. Police raided Room [REDACTED] where they found the defendant as the sole occupant. Police located two cigarette boxes with crack rocks in it on a table. The defendant claimed ownership of the drugs post Miranda.

(Plea Tr. pp. 23 – 24).

**SUMMARY OF FACTS FROM PROBATION REVOCATION HEARING<sup>1</sup>**

The facts for this indictment were articulated by the State at Applicant's probation revocation hearing as follows:

Before you today is Lontre Wise who was sentenced in Richland County on indictment number 19-GS-40-0259 for manufacturing and distribution of cocaine base, second offense. He received a sentence of ten years, suspended sentence, and three-years probation, no prior violations. Mr. Wise is before you today for failing to follow the advice and instructions of his agent. He failed to refrain from violating federal, state or local laws. He is in possession of a firearm by a convicted felon, possession of a weapon during a violent crime, possession of crack cocaine and possession with intent to distribute marijuana as evidenced by his arrest on 12/13/2022 by the Richland County Sheriff's Department while on active supervision. He failed to refrain from being in possession of a firearm by a convicted felon and possession of a weapon during a violent crime. Prior to this incident report, the Richland County Sheriff's Department case number 220030891 on December 13, 2022. During a search of the residence pursuant to a search warrant they found a black Century Arms 9-millimeter semiautomatic handgun with a 9-millimeter magazine with 15 bullets and an empty chamber and a Smith & Wesson 38-caliber revolver with five 38-caliber bullets all found in a black backpack on a couch in the living room. He failed to pay supervision fees being in arrears \$375 which

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<sup>1</sup> The facts are taken from the probation revocation transcript as provided by Agent Bradley.

was \$1,775 at the issuance of process, failure to pay Court fines by being in arrears \$108 with a balance of \$283.25 at the issuance of process, failure to pay a drug test fee of \$20 at the issuance of process. Such actions constitute violations 4, 6, 7, 9 and ten for special conditions.

(Probation Revocation Tr. pp. 3 – 4).

### **CURRENT ACTION BEFORE THIS COURT**

Applicant timely commenced this PCR action on June 23, 2023, in which he alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
  - a. "Violation was done without conviction for reasons listed!"
  - b. "Counsel failed to advise me of my rights of appeal!"

Before this Court are Richland County Clerk of Court records regarding the subject conviction; Applicant's records from the South Carolina Department of Corrections; the plea transcript; the probation revocation transcript; and the records of this current PCR action.

### **STANDARD OF REVIEW**

The Uniform Post-Conviction Procedure Act<sup>2</sup> (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

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<sup>2</sup> S.C. Code Ann. §§ 17-27-10 to -160.

5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

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

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

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

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

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential[, as] it is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 8 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge.

Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

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

The Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and

interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," **not** whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. Thus, it is not enough "to show that the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial." Id. at 687 (emphasis added).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel. 474 U.S. 52 (1985); cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel's performance was deficient; and second, evidence that counsel's deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

The analysis of counsel's performance under the first prong of Strickland remains

unchanged—the applicant must show counsel's representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the range of competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56.

The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Id. at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59. This inquiry "focuses on a defendant's decision making" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting Strickland's high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." Lee, 582 U.S. at 368–369 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 358 ("[R]equiring a showing of 'prejudice' from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality

of guilty pleas.""). Reviewing "[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney's deficiencies." Lee, 582 U.S. at 369. "Rather, [judges] should instead look to contemporaneous evidence to substantiate a defendant's expressed preferences." Id. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harres v. Leek, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

The performance and prejudice standards, however, "do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Strickland, 466 U.S. at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Id. at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." Id. "If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice," the court may evaluate the prejudice prong only. Id.

A probationer's right to counsel arises as a matter of due process rather than under the Sixth Amendment, but "the same analysis for [violations of the Sixth Amendment right to counsel] ... appl[ies] in PCR proceedings involving claims against probation counsel." Turner v. State, 384 S.C. 451, 455, 682 S.E.2d 792, 794 (2009). Under this analysis, the PCR applicant must prove "(1) counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) counsel's deficient performance prejudiced the applicant's case." Speaks v. State, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008).

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRPC (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code:

***INITIAL FINDINGS***

As a matter of general impression, this Court finds Probation Counsel's testimony at the evidentiary hearing credible and persuasive, where she presented well-recalled testimony of relevant background, facts, and discussions leading up to and during the plea hearing. This Court finds Applicant's testimony at the evidentiary hearing generally not credible and not persuasive. This Court further finds applicable the strong presumption that at all stages of Plea Counsel's

representation of Applicant, she rendered adequate assistance and exercised reasonable professional judgment in her representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689, 104 S.Ct. 2052; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

This Court makes the following findings from the record: 1. Applicant swore under oath to testify truthfully (Probation Revocation Tr. p. 3); 2. Agent Bradley, in the presence of Applicant, informed the probation court of each of Applicant's probation violations (Probation Revocation p. 3); 3. A recommendation of five years imprisonment was made (Probation Revocation p. 4); 4. Probation Counsel requested a sentence of three years be imposed (Probation Revocation p. 5); 5. Probation Counsel presented mitigating facts in support of Applicant's request for three years imprisonment (Probation Revocation p. 5); 6. Applicant made an admission of guilt before the probation court (Probation Revocation pp. 5, ll. 25 – 6, ll. 1-9); 7. Applicant did not contest he violated the conditions of his probation (Probation Revocation. p. 6); 8. The probation court found there was sufficient evidence Applicant violated his probation (Probation Revocation p. 6).

***INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS***

**Allegation 1: Probation Counsel Was Ineffective Because Applicant's Probation Was Unlawfully Revoked Based on Charges Applicant Had Not Been Convicted of**

Applicant alleges Probation Counsel was ineffective because his probation was revoked based on charges he had not been convicted of. This Court finds these allegations are without merit.

On direct examination, Applicant testified that he is being held in SCDC despite not being convicted of a crime. (PCR Tr. p. 8). Applicant testified that the judge determined he violated probation based on what the officer said at his probation hearing and not based on the charges that he received. (PCR Tr. p. 8). Applicant testified there were no charges against him, only the officer's statement that he committed a crime. (PCR Tr. p. 8). Applicant testified he understood when he pled guilty, he was convicted of a crime. (PCR Tr. p. 9). Applicant testified that at his probation revocation hearing, the court informed him the hearing was based on the charges he received on December 12, 2022. (PCR Tr. p. 10). Applicant testified he understood he was facing criminal charges but that he was not found guilty of the charges, and the court merely wanted to revoke his probation regardless. (PCR Tr. p. 10).

Applicant testified he attempted to speak with Probation Counsel during the probation revocation hearing, but time was limited, and Probation Counsel is overworked and underpaid as a public defender and can only give so much of her time. (PCR Tr. p. 10). Applicant testified the judge revoked his probation based on the officer's word that Applicant had cocaine in his possession, but the officer never charged him with anything. (PCR Tr. p. 11). Applicant testified he understood that there are pending charges against him, but the judge specifically stated in the probation revocation transcript that he was revoking Applicant's probation based on the officer's word and not the pending charges. (PCR Tr. pp. 11 – 12). Applicant testified that he could not be punished if there was no finding of guilt, citing the South Carolina Rules of Court and South Carolina Rules of Regulation Section 17-10-25<sup>3</sup>. (PCR Tr. p. 12). Applicant testified Probation

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<sup>3</sup> This Court notes Applicant is citing the South Carolina Code of Laws Unannotated Section 17-25-10, which states: "No person shall be punished until legally convicted." See S.C. Code § 17-25-10.

Counsel did not discuss the dynamics of his probation hearing in detail, but Probation Counsel explained to Applicant his new charges could be enough to violate his probation. (PCR Tr. p. 13).

On direct examination, Probation Counsel testified she has been practicing law for seven years, all in criminal, and had participated in many probation revocation hearings. (PCR Tr. p. 15). Probation Counsel testified that she was appointed to Applicant's case approximately three months before his probation revocation hearing. (PCR Tr. p. 16). Probation Counsel testified that prior to Applicant's probation revocation hearing, Applicant had an administrative hearing where Applicant learned what Agent Bradley would say at his probation revocation hearing. (PCR Tr. p. 16). Probation Counsel testified that based on what she and Applicant learned from the administrative hearing, they prepared for his probation revocation hearing. (PCR Tr. p. 16). Probation Counsel testified she explained to Applicant new arrests can be considered a violation of probation. (PCR Tr. p. 16).

At the probation revocation hearing, Agent Bradley presented Applicant's violations to the court, stating the following:

Mr. Wise is before you today for failing to follow the advice and instructions of his agent. He failed to refrain from violating federal, state or local laws. He is in possession of a firearm by a convicted felon, possession of a weapon during a violent crime, possession of crack cocaine and possession with intent to distribute marijuana as evidenced by his arrest on 12/13/2022 by the Richland County Sheriff's Department while on active supervision. He failed to refrain from being in possession of a firearm by a convicted felon and possession of a weapon during a violent crime. Prior to this incident report, the Richland County Sheriff's Department case number 220030891 on December 13, 2022. During a search of the residence pursuant to a search warrant they found a black Century Arms 9-millimeter semiautomatic handgun with a 9-millimeter magazine with 15 bullets and an empty chamber and a Smith & Wesson 38-caliber revolver with five 38-caliber bullets all found in a black backpack on a couch in the living room. He failed to pay supervision fees being in arrears \$375 which was \$1,775 at the issuance of process, failure to pay Court fines by being in arrears

\$108 with a balance of \$283.25 at the issuance of process, failure to pay a drug test fee of \$20 at the issuance of process. Such actions constitute violations 4, 6, 7, 9 and ten for special conditions.

(Probation Revocation Tr. pp. 3, ll. 16-25 – 4, ll. 1-17). In response, Applicant did not deny he violated probation, nor requested his probation not be revoked, but requested three years imprisonment rather than the recommended term of five years. (Probation Revocation Tr. pp. 4 – 6).

Importantly, Applicant made the following statements to the court:

The Court: All right. Mr. Wise, is there anything you'd like to say?

The Defendant: Yes, sir. I completely regret the situations that I did before the Court and all, and as agent Bradley can attest, I had no problem while out on probation. I was actually --

The Court: You were doing good until you picked up these charges.

The Defendant: Yes, sir. I have other issues that I've been dealing with before this, you know. I failed to get any kind of help or anything on it because of my own stupidity and stuff.

The Court: Okay.

The Defendant: But I would ask that Your Honor please take into consideration Ms. Rischbieter's recommendation and revoke me no more than three years and give me time for good credit, please, Your Honor

(Probation Revocation Tr. pp. 5, ll. 23-25 – 6, ll. 1-14).

This Court finds Probation Counsel was not deficient, and Applicant did not suffer any prejudice from Probation Counsel's performance. Applicant avers the court improperly considered his impending charges in determining Applicant violated his probation, completely disregarding the prior conviction that his probation stemmed from and other violations that led to his probation revocation hearing. Additionally, Applicant erroneously understands his probation revocation hearing as an adjudication of his pending charges, claiming he is being unlawfully imprisoned on

those charges even though he was never found guilty. State v. Hill, 368 S.C. 649, 630 S.E.2d 274 (2006) (While underlying probation violations may be criminal offenses, the probation-revocation proceeding is not a criminal trial of those charges.)). A probationer may be arrested for violating *any* conditions of their probation, and upon arrest, the court may institute proceedings and revoke their probation. See S.C. Code Ann. § 24-21-450 and -460. Probation Counsel cannot be deficient for Applicant's erroneous understanding, especially where Probation Counsel credibly testified that she advised Applicant his pending charges were considered violations of his probation conditions. Therefore, this allegation is **DENIED** and **DISMISSED WITH PREJUDICE**.

**Allegation 2: Probation Counsel Failed to Advise Applicant of his Right to Appeal**

Applicant alleged Probation Counsel was ineffective for failing to advise him of his right to appeal the revocation of his probation, denying Applicant his right to appeal. This Court finds these allegations are without merit.

At the evidentiary hearing, on direct examination, Probation Counsel testified she did not advise Applicant he had the right to appeal his probation revocation, but that Applicant did not advise her he wished to appeal. (PCR Tr. pp. 16 – 17). Probation Counsel testified she was not aware that appealing a probation revocation hearing was possible, and therefore, was unaware of any non-frivolous issues arising from Applicant's probation revocation. (PCR Tr. p. 17).

On cross-examination, Probation Counsel testified she failed to inform Applicant about his right to appeal, and the probation judge did not advise Applicant of his right to appeal. (PCR Tr. p. 18).

Generally, there is no constitutional deprivation in not being advised of the right to appeal from a guilty plea absent extraordinary circumstances, such as when there is a reason to think a rational defendant would want to appeal—where a non-frivolous ground exists to appeal—or

defendant reasonably demonstrated an interest in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000); Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995). Like a guilty plea, probation counsel is not required "to inform a probationer of his right to an appeal absent extraordinary circumstances." Turner v. State, 384 S.C. 451, 456–57, 682 S.E.2d 792, 795 (2009) (finding "probation counsel is not held to a higher performance standard than that imposed upon plea counsel.").

This Court finds Applicant has failed to meet his burden to show extraordinary circumstances existed that would have required Probation Counsel to appeal on his behalf, and thus, Probation Counsel was not deficient, and Applicant suffered no prejudice. Probation Counsel credibly testified Applicant did not advise her he wished to appeal his probation revocation. Additionally, a review of the record shows Applicant did not contest the revocation of his probation (Probation Revocation Tr. pp. 4-6), and there were no non-frivolous issues that would have prompted Probation Counsel to appeal on Applicant's behalf. Therefore, this allegation is **DENIED** and **DISMISSED WITH PREJUDICE**.

#### 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 application for post-conviction relief must be **DENIED** and **DISMISSED with PREJUDICE**.


This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the 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 a right to an appellate counsel's assistance in seeking

review of the denial of PCR. Rule 71.1(g), SCRPC, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 6 day of March, 2024.

  
 THE HONORABLE MAITE MURPHY  
 Presiding Judge  
 Fifth Judicial Circuit

Summerville, South Carolina

**WITNESSES**

**(S) Gabriel D Ramos**  
**- Richland County Sheriff Dept**

**ARREST WARRANT NUMBER**

**2018A4010202524**

**ACTION OF GRAND JURY**

**TRUE BILL**

*Kerrie Powell*

Foreperson of Grand Jury

Date:

**MAY 16 2019**

**VERDICT**

Foreperson of Petit Jury

Date:

**DOCKET NO. 2019GS4002599**

**The State of South Carolina**

**County of**

**Richland**

**COURT OF GENERAL SESSIONS**

**MAY TERM 2019**

**143**

**THE STATE**

**vs.**

**Lontre J Wise**

**Indictment for**  
**DRUGS / TRAFFICKING IN METH. OR**  
**COCAINE BASE - 10 G OR MORE, BUT**  
**LESS THAN 28 G - 3RD OFFENSE**

SC Code: 44-53-0375(C)(1)(c)

CDR Code: 0452

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )

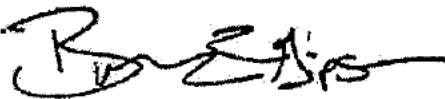
**INDICTMENT**

At a Court of General Sessions, convened on MAY 14, 2019, the  
 Grand Jurors of Richland County present upon their oath:

**TRAFFICKING CRACK COCAINE MORE THAT 28 GRAMS, LESS  
 THAN 100 GRAMS - 3<sup>RD</sup> & SUBSEQUENT OFFENSE**

That Lontre J Wise did in Richland County on or about July 3, 2018,  
 knowingly, sell, deliver, purchase, or bring into this State; or did aid, abet,  
 attempt or conspire to sell, deliver, purchase or bring into this State, or was  
 in actual or constructive possession or attempted to become in actual or  
 constructive possession of a quantity of Crack Cocaine in an amount of  
 more than twenty-eight grams but less than one-hundred grams, same  
 being a controlled substance all within the meaning of Section 44-53-110,  
et seq., S. C. Code of Laws, 1976, as amended, such possession not  
 having been authorized [and such being the defendant's third or  
 subsequent offense] and in violation of Section 44-53-375(c)(2), 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.



BYRON E. GIPSON, SOLICITOR

STATE OF SOUTH CAROLINA

5-30 yr (Suspendable) IN THE COURT OF GENERAL SESSIONS  
+102 JO-SDK

COUNTY OF Richland  
STATE VS.  
Lontre J Wise

INDICTMENT/CASE#: 2019GS4002599  
A/W#: 2018A4010202524  
Date of Offense: 7/3/2018  
S.C. Code § : 44-53-0375(C)(1)(a)  
CDR Code #: 0450

AKA: \_\_\_\_\_  
Race: BLACK Sex: M Age: 48  
DOB: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, Sta: \_\_\_\_\_  
DL#: \_\_\_\_\_

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No   
In disposition of the said indictment comes now the Defendant who was  
TO: Possession with intent to distribute cocaine base, 2nd offense

CONVICTED OF or  PLEADS

in violation of § 44-53-0375(B)(2) of the S.C. Code of Laws, bearing CDR Code # 3015  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC  \$17-25-45  
w/minor 1st or Lowd 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.

Stephanie Taylor SC Bar# 101876 Defendant  
Justin Kata SC Bar# \_\_\_\_\_ Attorney for Defendant

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 3  
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 SCDoc. 317 days  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. TS

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 PTUP

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

*Fine:		\$
§14-1-206 (Assessments 107.5 %)		\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$ <u>150.00</u>
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
3% to County (if paid in installments)		\$ <u>8.25</u>
<b>TOTAL</b>		\$ <u>283.25</u>

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 \$ \_\_\_\_\_ beginning \_\_\_\_\_  
\$ \_\_\_\_\_ paid to Public Defender Fund  
Other: \_\_\_\_\_

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

Clerk of Court/ Deputy Clerk  
Court Reporter: \_\_\_\_\_

Jeanette McBride  
DURP

Presiding Judge [Signature]  
Judge Code: 2110  
Sentence Date: 6/24/19