

FILED

STATE OF SOUTH CAROLINA  
COUNTY OF FLORENCE

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IN THE COURT OF COMMON PLEAS  
OF THE TWELFTH JUDICIAL CIRCUIT

Darrell Green, #249354,

DORIS J. HARRIS  
CLERK OF COURT  
FLORENCE COUNTY, S.C.

Case No.: 2016-CP-21-801

Applicant,

v.

ORDER OF DISMISSAL

RECEIVED

State of South Carolina,

SEP 25 2024

Respondent.

S.C. SUPREME COURT

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Darrell Green. (Applicant) on March 30, 2016. On December 14, 2022, an evidentiary hearing convened before the Honorable Geroge M. McFaddin, Jr. Applicant was present and represented by Joshua Bailey, Esquire. Assistant Attorney General Danielle Dixon represented the State. At the hearing, Applicant testified on his behalf. Respondent called as a witness trial counsel J. Leon Parrott. Following a thorough review of the records before this Court and the testimony and evidence presented at the hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections serving a twelve-year sentence. In December 2014, the Florence County Grand Jury indicted Applicant for trafficking cocaine, 200 to 400 grams (2014-GS-21-1453). These charges arose from a traffic stop wherein Applicant attempted to flee the scene on foot.<sup>1</sup> On October 19, 2015, Applicant appeared before the Honorable D. Craig Brown and pled guilty pursuant to a negotiated plea to the lesser-included offense of trafficking 28 to 100 grams of cocaine. J. Leon Parrott, Esquire, represented Applicant, and Solicitor John Charles Jepertinger represented the State. As part of

<sup>1</sup> Law enforcement had previously been investigating Applicant

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FLORENCE COUNTY, S.C.

the negotiations, Applicant was sentenced to eighteen years' imprisonment but could move for a sentence reduction if he assisted the State with further investigations. Applicant's sentence was subsequently reduced to twelve years. Applicant did not file an appeal.

#### Current Application

On March 30, 2016, Applicant filed this application alleging:

- a. Violation of 4<sup>th</sup> Amendment: GPS tracker placed on vehicle without warrant;
- b. Insufficient representation: Officer never wrote citation for infraction.

At the hearing, Applicant proceeded on the following allegations, as articulated by PCR counsel:

1. Ineffective assistance of counsel: Counsel failed to obtain the GPS warrant documents that led to the traffic stop, which led to the drug charges;
2. Ineffective assistance of counsel: counsel did not file a motion to suppress GPS warrant documents;
3. Brady violation: State did not disclose to Applicant the GPS warrant documents.

Prior to the hearing, the parties stipulated that South Carolina Law Enforcement Division (SLED) does not file documents related to GPS tracking as part of its investigations. Applicant likewise stipulated he was not challenging the sufficiency of the affidavits and other information used to obtain the warrant for the GPS tracker.

#### FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Florence County Clerk of Court records of the underlying convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the records of this PCR action. This

Court has further had the opportunity to observe the witnesses presented at the evidentiary hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code.

### *Ineffective Assistance of Counsel*

In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When the application alleges ineffective assistance of counsel, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness (deficiency) and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Strickland, 466 U.S. at 687-88. "A PCR applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial." Dalton v. State, 376 S.C. 130, 136, 654 S.E.2d 870, 873 (Ct. App. 2007). To prove prejudice following a guilty plea, the applicant "must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 59 (1985).

"To be knowing and voluntary, a plea must be entered with an awareness of its consequences." Holland v. State, 322 S.C. 111, 113, 470 S.E.2d 378, 379 (1996). "To find a

guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.” Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007).

*GPS Warrant Documents*

All of Applicant’s contentions center on his belief that law enforcement violated his constitutional rights by obtaining a warrant to place a GPS tracker on his vehicle and not disclosing to him the fact that a GPS tracker had been placed on his vehicle. Specifically, he alleges counsel was ineffective for not (1) obtaining the GPS warrant documents or (2) moving to suppress the GPS warrant. Alternately, Applicant alleges a Brady violation based on the State’s failure to disclose the GPS warrant. Applicant, however, stipulates he is not raising any issue with the sufficiency of the documents underlying the GPS warrant, which this Court construes as a stipulation that sufficient probable cause supported the GPS warrant.

This Court finds these arguments lack merit. Initially, as part of this negotiated guilty plea, Applicant waived the right to challenge any issue with the GPS warrant or raise any defense. Further, this court finds counsel’s failure to obtain these warrant documents or move to suppress the warrant was reasonable under prevailing professional norms and not deficient. This court finds credible counsel’s PCR testimony that he was aware law enforcement used a GPS tracking device and would have moved to suppress the GPS information had he proceeded to trial. Ultimately, however, Applicant chose to plead guilty.

This Court further agrees with trial counsel’s assessment that even if the GPS data had been suppressed, the outcome would have been the same. Specifically, the traffic stop was initiated after Applicant was observed speeding and hitting the white line. Law enforcement initiated a valid stop; once the vehicle stopped, Applicant chose to flee on foot and run down the

middle of the interstate. Once detained, Applicant told police he ran because he had drugs in the car. Although the State may have used GPS data to track Applicant, Applicant's violation of traffic laws justified the stop, and his decision to run down the interstate and subsequent statement to police that he had drugs in his car provided probable cause for an arrest. Thus, even if counsel had obtained the warrant and somehow successfully suppressed data from the GPS tracker,<sup>2</sup> the State *still* could have tried the case based on the aforementioned facts. Counsel negotiated for Applicant a negotiated plea to the lesser-included offense,<sup>3</sup> with an agreement from the State that Applicant could move for a sentence reduction if he cooperated. This Court finds counsel's performance here was reasonable under prevailing professional norms and not deficient.

As to Applicant's claim of a Brady violation, it strains credibility to suggest that law enforcement conducting an undercover investigation should file as a public record the warrant utilized to further their undercover investigation. Further, this Court finds credible trial counsel's testimony that he was aware law enforcement used a GPS tracker because it was in the SLED agent's report. At the PCR hearing, Applicant himself testified he first learned about the GPS tracking device from the discovery materials. Based on the foregoing, this Court finds Applicant did not prove a Brady violation.

Finally, this Court finds Applicant pled guilty freely and voluntarily, and there is no reasonable probability he would have proceeded to trial had counsel obtained the GPS warrant documents and successfully suppressed the GPS data. Critically, the remaining facts remained: Applicant was stopped for violating traffic laws, Applicant chose to flee on foot, and once

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<sup>2</sup> Based on Applicant's stipulation that he was not challenging the sufficiency of the documents supporting the GPS warrant, Applicant has not shown a challenge would even be successful, and thus has not met his burden of proving deficiency or prejudice based on counsel's failure to obtain these documents or move to suppress this evidence.

<sup>3</sup> Counsel credibly testified the plea was a global plea that included having charges in Horry County run concurrent to the Florence County charges.

detained, Applicant told law enforcement he had drugs in the vehicle. In light of the foregoing, there is no reasonable probability that Applicant would have rejected the well-negotiated plea and proceeded to trial if counsel had obtained and successfully suppressed GPS data.<sup>4</sup>

**CONCLUSION**

Based on the foregoing, this Court concludes Applicant has not established any constitutional violations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice. Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRPC. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 14<sup>th</sup> day of August, ~~2023~~ 2024.

GEORGE M. MCFADDIN, JR.  
Presiding Judge  
Twelfth Judicial Circuit

Sumter, South Carolina

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FLORENCE COUNTY, S.C.

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<sup>4</sup> Again, based on Applicant's stipulation that he was not challenging the supporting documents for the GPS warrant, Applicant did not prove any challenge to the warrant itself would even be successful.

FILED

STATE OF SOUTH CAROLINA  
COUNTY OF FLORENCE  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2016CP2100801

Darrell Green

2024 AUG 26 PM 2:51

South Carolina State Of

DORIS POULOS O'HARA

PLAINTIFF(S)

CCCP & GS  
FLORENCE COUNTY, SC  
DEFENDANT(S)

Submitted by:

Attorney for:  Plaintiff  Defendant  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order; (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.  
Additional Information for the Clerk: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

8/26/2024

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on August 26th, 2024, and a copy mailed first class or placed in the appropriate attorney's box on August 27th, 2024, to attorneys of record or to parties (when appearing pro se) as follows:

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CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

Joshua A. Bailey PO Box 555 Florence, SC 29503

D. Russell Barlow II PO Box 11549 Columbia, SC 29211

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ATTORNEY(S) FOR THE PLAINTIFF(S)

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ATTORNEY(S) FOR THE DEFENDANT(S)

*Doris P O'Hara*

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Court Reporter

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Doris Poulos O'Hara - Clerk of Court

**Court Reporter:**

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.**

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**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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