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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from Horry County
Court of Common Pleas

Honorable William H. Seals, Jr., Circuit Court Judge

Case No.: 2016-CP-26-02171

DARRELL GREEN, # 249354 ..…….…… Appellant,

v.

THE STATE …… Respondent.

NOTICE OF APPEAL

Darrell Green, #249354, appeals the order dated April 23, 2020, of the Honorable William H. Seals, Jr. denying his Post-Conviction Relief application. This Notice is filed pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991) as ordered in the October 14, 2024, order granting belated PCR Appeal (2024-CP-26-02140) of the Honorable William H. Seals, Jr.

November 4, 2024

Hervery B. O. Young, SC Bar # 7013
SC Commission on Indigent Defense
Post Office Box 11433
Columbia, South Carolina 29211
(803) 734-1343
Attorney for Appellant

Other Counsel of Record:
Bryan T. Hall
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Attorney for Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT

DARRELL GREEN, #249354,) Case No.: 2024-CP-26-02140

Applicant,)

v.) **CONSENT ORDER GRANTING BELATED APPEAL UNDER AUSTIN V. STATE AND ORDER OF DISMISSAL OF PCR APPLICATION**

STATE OF SOUTH CAROLINA,)

Respondent.)

THIS MATTER comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed by the Applicant on March 26, 2024. The parties, by and through counsel, consents to the issuance of this order granting the Applicant a belated appeal pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395, 396 (1991) from his first PCR action filed March 30, 2016, and dismissing the application herein with prejudice.

PROCEDURAL HISTORY

Applicant is confined in the SC Department of Corrections (SCDC). He was indicted for trafficking cocaine base, 3d offense (2015-GS-26-3541) by a Horry County Grand Jury. He was represented by Jacob L. Parrott, Esq. and the State was represented by Assistant Solicitor Thomas G. Terrell. On October 27, 2015, the Application entered a guilty plea to the lesser included offense of trafficking cocaine base, 1st offense, more than 28 grams but less than 100 grams. Judge Benjamin H. Culbertson accepted the plea and imposed a negotiated sentence of eighteen (18) years of imprisonment. Applicant did not appeal his guilty plea or sentence. His sentence was later reduced to twelve (12) years because of his cooperation with the State in further investigations.

In March 2016, Applicant filed an Application for Post-Conviction Relief. An evidentiary hearing on this application was held on October 10, 2019, before Judge William H. Seals, Jr. James K. Falk, Esq. was appointed by the court to represent the applicant. Judge Seals denied relief and dismissed the application on April 23, 2020. A written order was filed on May 27, 2020. Attorney Falk filed a Notice of Appeal on behalf of the applicant on May 15, 2020. On May 20, 2020, the South Carolina Supreme Court dismissed the appeal without prejudice because the Notice of Appeal was filed prior to the written order on the PCR was issued. Attorney Falk did not re-file the Notice of Appeal after May 27, 2020. Remittitur was sent on July 6, 2020.

In June 2021, Applicant filed a second Application for Post-Conviction Relief. An evidentiary hearing on this application was held on September 9, 2022, before Judge Kristi F. Curtis. One of the issues raised in the application was that the applicant had requested Attorney Falk to appeal the denial of his 2016 Application for Post-Conviction Relief and that Attorney Falk failed to timely file the appeal. Steven Willard Fowler, Esq. was appointed by the court to represent the applicant. Judge Curtis found that the applicant had requested and was denied an opportunity to seek appellate review of his first PCR application and that he had not knowingly and intelligently waived his right to appellate review. The Court found that Applicant was entitled to an Austin appeal in a written order filed on December 15, 2022.

Applicant filed a third Application for Post-Conviction Relief herein on March 26, 2024, alleging that Attorney Fowler failed to file the Notice of Appeal to perfect his granted belated appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant contends that Counsel for his second PCR case was ineffective for failure to timely file a notice of appeal after the Court granted an Austin appeal in the case.

Pursuant to Austin, a post-conviction relief applicant may petition the SC Supreme Court for belated discretionary reviewed of the dismissal of his application in some circumstances. A PCR applicant is entitled to a belated appeal if the PCR judge affirmatively finds that (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived. Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999).

The Court finds that Applicant wants to appeal the denial and dismissal of his initial PCR application and did not waive this right. The applicant and the State agrees that a notice was not filed after the Court issued its order dated December 15, 2022, granting the belated appeal. The parties consent to this order granting the Applicant the right to file a belated appeal, pursuant to Austin v. State, of the denial of his first PCR application and dismissing the March 2024 PCR application.

CONCLUSION

Applicant is entitled to an Austin appeal of the denial and dismissal of his 2016 PCR application. Counsel for the applicant shall file and serve a notice of appeal within thirty (30) days of the date of this Order. If the applicant no longer wishes to pursue the Austin appeal,

Counsel shall file a waiver executed by the applicant.

AND IT IS SO ORDERED.

William H. Seals, Jr.
Chief Administrative Judge – Common Pleas
Fifteenth Judicial Circuit

Florence, South Carolina
Oct 14, 2024

I CONSENT:

Bryan T. Hall, SC Bar # 106039
Assistant Attorney General

I CONSENT:

Hervery B. O. Young, SC Bar # 7013
Attorney for Applicant

ALAN WILSON
ATTORNEY GENERAL

May 1, 2020

The Honorable Renee N. Elvis
Clerk of Court, Horry County
Post Office Box 677
Conway, SC 29528-0677

Re: Darrell Green, #249354 v. State of South Carolina
2016-CP-26-02171

Dear Ms. Elvis:

Enclosed please find the original **Order of Dismissal** signed by the Honorable William H. Seals, Jr., in the above-captioned case, for filing in your office.

Should you have any questions, please do not hesitate to contact me at (803) 734-3737.

Sincerely,

/s Chelsey F. Marto
Chelsey F. Marto
Assistant Attorney General

CFM/ec

Enclosure

Cc: James K. Falk, Esquire

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH fJUDICIAL CIRCUIT

CASE NO: **2016-CP-02171**

Darrell Green, #249354
Plaintiff,
vs.
STATE OF SOUTH CAROLINA
Defendant.

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney:	Defendant's Attorney:
James K. Falk Falk Law Firm, LLC Post Office Box 1058 Charleston, South Carolina 29402 Phone: ____Fax ____ E-mail: ____Other: ____	Johnny E. James Jr., Esquire Address: South Carolina Attorney General's Office PO Box 11549 Columbia, SC 29211 Phone: ____ Fax____ E-mail: ____Other: ____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: ____
Estimated Time Needed: ____ Court Reporter Needed: ☐ **YES/**☒ **NO**

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff /☒ Defendant — April 3, 2020 Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $____

EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: ____
☐ Other: ____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: ____

JUDGE CODE ____
Date: ____

FILED
2020 MAY 27 PM 1:38
CLERK OF COURT
HORRY COUNTY, SC

CLERK'S VERIFICATION

Collected by: ____ Date Filed: ____
☐ MOTION FEE COLLECTED: $ ____
☐ CONTESTED – AMOUNT DUE: $ ____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
Darrell Green, S.C.D.C. No. 249354, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2016-CP-26-02171 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief filed by Darrell Green ("Applicant") on March 30, 2016. Respondent made its return on or about Feburayr 17, 2017. The Court convened an evidentiary hearing into the matter on October 10, 2019, at the Horry County Government & Justice Center in Conway, South Carolina. Applicant was present at the hearing and represented by James K. Falk, Esq. Johnny Ellis James Jr., Esq., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Jacob Leon Parrott, Esq. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Horry County Clerk of Court regarding the subject convictions, the pleadings, and the exhibit introduced at the evidentiary hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the September 2015 term of the Horry County Grand Jury for trafficking cocaine base, third offense (2015-GS-

26-03541). Jacob Leon Parrott, Esq. represented Applicant, and Thomas Groom Terrell, III, Esq., of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On October 27, 2015, Applicant pled guilty to the lesser-included offense of trafficking in cocaine base, first offense, 28-100 grams. Accepting terms negotiated between Applicant and the State, the Honorable Benjamin H. Culbertson sentenced Applicant to imprisonment for a term of eighteen years. Applicant did not appeal his plea or sentence.

Present Application

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

1. "Violation of fourth Amendment"
    a. "SLED placed GPS on car that did not belong to Applicant to monitor movements without warrant."
2. "Insufficient Representation"

Applicant requests relief as follows:

- "release from incarceration"

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of

counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel's performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough, 540 U.S. at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir.

2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between Strickland's prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" Harrington, 562 U.S. at 111-12 (quoting Strickland, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." Id. at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he/she would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to

depart from the truth of his statements. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975)).

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

1. Failure to Move to Suppress Evidence

Applicant alleges Counsel was ineffective in failing to move to suppress evidence which was the fruit of an allegedly improper GPS tracking device attached to the vehicle used by Applicant. Under South Carolina law, "[t]he Attorney General or any solicitor may make application to a judge of competent jurisdiction for an order authorizing or approving the installation and use of a mobile tracking device by the South Carolina Law Enforcement Division or any law enforcement entity of a political subdivision of this State." S.C. Code Ann. § 17-30-140(A). An application for a GPS tracker must include: (1) a statement of the identity of the applicant; (2) a certification by the applicant that probable cause exists to believe that the information likely to be obtained is relevant to an ongoing criminal investigation; (3) a statement of the offense to which the information likely to be obtained relates; and (4) a statement whether it may be necessary to use and monitor the tracking device beyond the jurisdiction of the court from which authorization is sought. S.C. Code Ann. § 17-30-140(B). Upon finding of probable cause, and that the necessary certifications and statements have been made, the court "must enter

an ex parte order authorizing the installation and use of a mobile tracking device." S.C. Code Ann. §17-30-140(C).

The installation of a GPS device on person's vehicle, and the use of that device to monitor the vehicle's movements, constitutes a "search" under the United States Constitution. United States v. Jones, 565 U.S. 400, 404 (2012). However, before a criminal defendant can challenge the propriety of a search or seizure, the defendant seeking to raise such a challenge must establish that his own personal Fourth Amendment rights were violated by that search or seizure in order to be entitled to the benefits of the exclusionary rule. State v. McKnight, 291 S.C. 110, 114, 352 S.E.2d 471, 473 (1987); See also Rakas v. Illinois, 439 U.S. 128, 132 n.1 (1978) ("The proponent of a motion to suppress has the burden of establishing his own Fourth Amendment rights were violated by the challenged search or seizure."). Rights protected by the Fourth Amendment are personal rights and cannot be vicariously asserted. Alderman v. United States, 394 U.S. 165, 174 (1969).

"The substantial social costs exacted by the exclusionary rule for the vindication of Fourth Amendment rights have long been a source of concern." United States v. Leon, 468 U.S. 897, 907 (1984). The United States Supreme Court's cases "have consistently recognized that unbending application of the exclusionary sanction to enforce ideals of governmental rectitude would impede unacceptably the truth-finding functions of judge and jury." Id. (quoting United States v. Payner, 447 U.S. 727, 734 (1980)). "An objectionable collateral consequence of this interference with the criminal justice system's truth-finding function is that some guilty defendants may go free or receive reduced sentences as a result of favorable plea bargains. Particularly when law enforcement officers have acted in objective good faith or their transgressions have been minor, the magnitude of the benefit conferred on such guilty defendants

offense basic concepts of the criminal justice system." Id. at 907-08 (citing Stone v. Powell, 428 U.S. 465, 490 (1976)); see also State v. Moore, Op. No. 27948 (S.C. Sup. Ct. filed Feb. 19, 2020) (Shearouse Adv. Sh. No. 8 at 31) (quoting Leon and emphasizing the language of "Particularly..." forward). Accordingly, in the absence of an allegation that the magistrate abandoned his detached and neutral role, suppression of evidence resulting from a deficient warrant is appropriate only if the officers were dishonest or reckless in preparing their affidavit or could not have harbored an objectively reasonable belief in the existence of probable cause. Id. at 926; see also Hamrick v. State, 426 S.C. 638, 654, 828 S.E.2d 596, 604 (2019) (quoting Davis v. United States, 564 U.S. 229, 238 (2011)) (The exclusionary rule does not apply when the police act with an objectively reasonable good-faith belief that their conduct is lawful.).

At the evidentiary hearing, Applicant testified he retained Axelrod and Associates, who assigned Counsel to represent him. Applicant testified he was provided his materials disclosed pursuant to Rule 5, SCCrimP, but never reviewed discovery with Counsel. Applicant asked for his discovery after his plea and Counsel's office sent a copy. Applicant testified that he only then learned of the tracking device. Applicant testified he was unable to find a copy of the warrant authorizing the tracking device in his discovery materials, so he wrote to the Horry County Clerk of Court and the Florence County Clerk of Court seeking a copy of any such warrant—none was provided. Applicant followed up with Axelrod and Associates, who also could not produce such a warrant. Applicant testified he did not see the warrant until after receiving discovery in a 42 U.S.C. § 1983 action in federal court. Applicant explained he knew a confidential informant was involved, and that multiple confidential informant purchases were set forth in the warrant. Applicant asserted that if he had seen the warrant, he would have sought to

challenge it because there was no "seal" on it. Applicant testified he had believed he was arrested for a traffic stop.

On cross-examination, Applicant clarified that by "seal" he meant "an imprint. . ." Applicant testified he first met with Axelrod and Associates right after his bond hearing, but that they did not call him back until two weeks before trial, and that only met Counsel once. Applicant testified his discovery was provided to Counsel, but not to him. Applicant recalled that he told Counsel to closely review the warrants and that Counsel replied he saw no issues. One day, Applicant checked his mailbox and discovered a subpoena. When Applicant visited Counsel regarding the subpoena, he learned there was an offer to plead guilty in exchange for eighteen years. Applicant testified he had intended to reject the offer, and that Counsel agreed with him it was a bad offer, but ultimately Applicant accepted the offer and pled guilty.

On redirect examination, Applicant asserted he pled guilty without full knowledge of the facts of his case.

Counsel testified he represented Applicant through his employment with Axelrod and Associates. Counsel asserted he met with Applicant more than five times, and more than twice in Counsel's office. Counsel further noted that Applicant met additional times with Axelrod and Associates staff. Counsel testified he received materials responsive to motions pursuant to Rule 5, SCCrimP, and Brady,[1] that he discussed the materials with Applicant, and that he provided copies of the materials to Applicant prior to the plea. Counsel recalled that Applicant faced four counts of distribution as a result of purchases made with a confidential informant, and then additional charges from the execution of a search warrant.

Counsel testified that he was aware of the use of the GPS device. Counsel explained that all of the confidential informant purchases were made before the GPS tracker, but was unable to

[1] Brady v. Maryland, 373 U.S. 83 (1963)

firmly recall whether the search warrant was executed before or after the GPS tracker was installed. Counsel testified he and Applicant spoke about the tracker on a couple of occasions.

Counsel confirmed that Applicant was not happy with the State's offer, and felt that eighteen years was too harsh. Applicant remained unsure regarding the offer until his trial date for charges in Florence County. Counsel opined that eighteen years was not "out of bounds" and that he told Applicant the alternative was that the State was seeking in all practical terms to imprison Applicant for the remainder of his life. Counsel testified he had been prepared for trial, and that the Florence charges would be tried first. Counsel explained he intended to attack the GPS warrant, the recordings, and the statements.

On cross-examination, Counsel made clear that he knew there was a warrant to justify the use of the GPS tracker, but that he had not seen the warrant at the time of Applicant's guilty plea. Counsel recalled that Applicant was pulled over for a traffic violation, fled, was captured by law enforcement, and then made incriminating statements.

On redirect examination, Counsel testified he intended to preserve the GPS tracker issue for appeal, but that he did not believe attacking the validity of the use of the GPS tracker was the strongest defense available to Applicant. On recross examination, Counsel testified he would have raised the issue pre-trial, after the jury was seated.

Applicant testified in reply that he first learned of the GPS tracker after he pled, and that he pled guilty because he believed the video of his arrest was very damaging.

During the evidentiary hearing, the application for and order authorizing the GPS tracker was introduced as Applicant's Exhibit #1, with certain information tending to identify the confidential informant redacted. The materials set forth the statutorily required information, and further explain in some detail precisely why the GPS tracker was necessary to the investigation:

> 9.) The CI informed agents that the locations he/she met GREEN to purchase crack cocaine would vary and were always determined by GREEN. The CI would contact GREEN via cellular phone when he/she wanted to purchase crack cocaine and provide GREEN with his/her current location. GREEN would then provide the CI with a road name that GREEN wanted the CI to drive on. The CI would then contact GREEN once on the specific road. GREEN would then meet the CI at random places along each particular road and conduct a rapid handoff and drive away making mobile surveillance difficult.

(Applicant's Exhibit #1). The affidavit in support of the application further explained that mobile surveillance had been unable to continuously track Applicant's vehicle from the scene of a controlled buy to the address where Applicant's vehicle was often subsequently found. Id. The Honorable Larry B. Hyman, Jr. authorized the use of the GPS tracker on July 28, 2014. Id.

The Court finds no ineffectiveness on the part of Counsel. First, this Court does not find credible Applicant's testimony that he did not learn of the GPS tracker until after his guilty plea. The Court does find credible Counsel's testimony that he was aware of the tracker and that it was supported by a sealed warrant, and that he and Applicant discussed the matter on multiple occasions. Counsel and Applicant discussed all of the materials turned over through discovery. Counsel was prepared to attempt a challenge to the fruits of the GPS tracker if the case proceeded to trial, but Applicant instead opted to plead guilty. Second, no compelling arguments are presented to this Court to justify the exclusion of evidence resulting from the use of the GPS tracking device. To the contrary, upon review of Applicant's Exhibit #1, the application and affidavit in support of the GPS tracker appear to provide ample basis for its use. Even if Applicant did identify some fatal deficiency in the GPS warrant, he does not assert any falsehood or misrepresentation in its contents, nor is there any argument (or basis on which to argue) that it is wholly devoid of the necessary probable cause. Thus, application of the exclusionary rule would be inappropriate and evidence resulting from its use would be admissible under the exception for law enforcement's objective good faith. Altogether, Applicant has failed to show

any deficiency on the part of Counsel, or that but for the deficiency alleged the outcome of the proceedings would have been different, so his claim for relief is **DENIED**.

III. 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), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. 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 23 **day of** April, **2020.**

WILLIAM H. SEALS, JR.
Presiding Judge
Fifteenth Judicial Circuit

Marion, South Carolina

FILED
2020 MAY 27 PM 1:38
RENEE H. ELVIS
CLERK OF COURT
HORRY COUNTY, SC