

**RECEIVED**

**May 02 2025**

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

CERTIORARI TO FLORENCE COUNTY

D. Craig Brown, Plea Judge  
George E. McFaddin, PCR Judge

---

Appellate Case No. 2024-001625

---

DARRELL GREEN,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

---

**RETURN TO PETITION FOR  
WRIT OF CERTIORARI**

---

ALAN WILSON  
Attorney General

DON ZELENKA  
Deputy Attorney General

D. RUSSELL BARLOW, III  
Senior Assistant Deputy Attorney General

DANIELLE DIXON  
Assistant Attorney General  
S.C. Bar No. 73999

Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3737

ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....i

QUESTIONS PRESENTED.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW.....3

ARGUMENTS.....4

    The PCR Court properly found Petitioner did not prove counsel was ineffective for not obtaining or discussing the GPS tracker documents when (1) Petitioner stipulated he was not challenging the sufficiency of the documents supporting the GPS tracker and thus did not prove deficiency or prejudice from counsel’s failure to further investigate or challenge the legality of the tracker; (2) Petitioner was aware of the existence of the GPS tracker when he pled guilty and thus knowingly waived any challenge to it; and (3) the GPS tracker is a red herring here where Petitioner was stopped for speeding, chose to run down the interstate on foot after being stopped, and told law enforcement he had drugs in the car when he was caught.....4

CONCLUSION.....9

### **Question Presented**

Trial counsel erred in failing to obtain and review documents authorizing the placement of a GPS tracking device on petitioner's vehicle prior to the guilty plea proceeding because a pre-trial challenge to the legality of this attachment via a motion to suppress most likely would have benefitted petitioner during plea negotiations in this case.

### **Counterstatement of Question Presented**

Did the PCR Court properly find Petitioner did not prove counsel was ineffective for not obtaining or discussing the GPS tracker documents when (1) Petitioner stipulated he was not challenging the sufficiency of the documents supporting the GPS tracker and thus did not prove deficiency or prejudice from counsel's failure to further investigate or challenge the legality of the tracker; (2) Petitioner was aware of the existence of the GPS tracker when he pled guilty and thus knowingly waived any challenge to it; and (3) the GPS tracker is a red herring here where Petitioner was stopped for speeding, chose to run down the interstate on foot after being stopped, and told law enforcement he had drugs in the car when he was caught?

## Statement of the Case

Petitioner is presently confined in the South Carolina Department of Corrections serving a twelve-year sentence. In December 2014, the Florence County Grand Jury indicted Petitioner for trafficking cocaine, 200 to 400 grams (2014-GS-21-1453). These charges arose from a traffic stop wherein Petitioner attempted to flee the scene on foot.<sup>1</sup> On October 19, 2015, Petitioner 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 Petitioner, and Solicitor John Charles Jepertinger represented the State. As part of the negotiations, Petitioner was sentenced to eighteen years' imprisonment but could move for a sentence reduction if he assisted the State with further investigations. Petitioner's sentence was subsequently reduced to twelve years. Petitioner did not file an appeal.

On March 30, 2016, Petitioner filed an application for post-conviction relief (PCR) alleging *inter alia* a GPS tracker was placed on his vehicle without a warrant, which violated the Fourth Amendment. Petitioner later amended his application to allege counsel was ineffective for not obtaining the GPS warrant documents or filing a motion to suppress the GPS warrant documents; and alternately, that the State violated Brady by not disclosing the GPS warrant documents.<sup>2</sup> On December 14, 2022, an evidentiary hearing convened before the Honorable George M. McFaddin, Jr. On August 26, 2024, Judge McFaddin issued an Order of Dismissal.

---

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

<sup>2</sup> As part of the investigation, the warrants were sealed.

### Standard of Review

The standard of review for post-conviction relief depends on the specific issue before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the PCR court's factual findings and will uphold them if any probative evidence in the record supports them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40. Further, appellate courts "defer to the PCR court's credibility findings as to witnesses who testified before the PCR court." Thompson v. State, 423 S.C. 235, 247, 814 S.E.2d 487, 493 (2018). "Where matters of credibility are involved, this Court gives great deference to a judge's findings, because this Court lacks the opportunity to directly observe the witnesses." Foye v. State, 335 S.C. 586, 589, 518 S.E.2d 265, 267 (1999). However, pure questions of law are reviewed *de novo* without deference to the PCR court. Id. Appellate courts will reverse the decision of the PCR court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

## Argument

**The PCR Court properly found Petitioner did not prove counsel was ineffective for not obtaining or discussing the GPS tracker documents when (1) Petitioner stipulated he was not challenging the sufficiency of the documents supporting the GPS tracker and thus did not prove deficiency or prejudice from counsel's failure to further investigate or challenge the legality of the tracker; (2) Petitioner was aware of the existence of the GPS tracker when he pled guilty and thus knowingly waived any challenge to it; and (3) the GPS tracker is a red herring here where Petitioner was stopped for speeding, chose to run down the interstate on foot after being stopped, and told law enforcement he had drugs in the car when he was caught.**

Petitioner asserts plea counsel was ineffective for not obtaining or viewing documents filed in support of the order authorizing a GPS tracker to be placed on Petitioner's vehicle prior to the guilty plea. He avers that as a result, counsel did not challenge or discuss with Petitioner the legality of the device prior to the plea. Petitioner further contends that had counsel discussed or challenged the GPS tracker, Petitioner "might not have pled guilty and chosen rather to exercise his right to a jury in the case." However, Petitioner stipulated at the PCR hearing that he was not challenging the sufficiency of the documents supporting the GPS warrant, and thus did not prove any challenge to the GPS warrant would be successful. Further, Petitioner was aware of the existence of the GPS tracker when he pled guilty and waived any challenge to the it by pleading guilty. warrant by pleading guilty. Finally, the GPS tracker is a red herring here where Petitioner was stopped for speeding, chose to flee on foot, and once detained admitted he had drugs in the vehicle. In other words, under these facts, police would have lawfully discovered the drugs without the GPS tracking device. Based on the foregoing, the PCR court properly found counsel was not deficient, and no reasonable probability exists that Petitioner would have rejected the well-negotiated plea and proceeded to trial if counsel had obtained and moved to suppress the GPS-tracking warrant.

To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel's

performance fell below an objective standard of reasonableness and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Strickland v. Washington, 466 U.S. 668, 687-88 (1984). A PCR applicant bears the burden of proving the allegations. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." Watson v. State, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption to received relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

"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).

***1. Petitioner stipulated he was not challenging the sufficiency of the documents supporting the GPS tracker and thus did not prove deficiency or prejudice from counsel's failure to further investigate or challenge the legality of the tracker.***

At the PCR hearing, Petitioner's allegations centered 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 alleged counsel was ineffective for not (1) obtaining the GPS warrant documents or (2) moving to suppress the GPS warrant. ***Petitioner, however, stipulated he was not raising any issue with the***

*sufficiency of the affidavit supporting the GPS-tracker warrant.* (App. 47). The PCR court properly construed that stipulation as a stipulation that sufficient probable cause supported the GPS warrant. In the absence of showing any challenge would have been successful, Petitioner has not shown any advice by counsel to accept the plea offer was deficient. Further, in the absence of showing any challenge would have been successful, Petitioner has not shown any reasonable probability he would have proceeded to trial rather than plead guilty had counsel further challenged this issue. Petitioner has thus failed to meet his burden of proving deficiency or prejudice.

***2. Petitioner was aware of the existence of the tracker when he pled guilty and thus knowingly waived any challenge to it by pleading guilty.***

The PCR court properly found Petitioner knowingly and voluntarily pled guilty. Initially, it is incredulous for Petitioner to assert he was not aware of the GPS tracker when he pled when *the solicitor mentioned the GPS tracker at the plea hearing.* (App. 10). By entering into this negotiated plea, Petitioner knowingly waived the right raise any defense—which included a challenge to the legality if the GPS tracker. (App. 6-7). Further, the PCR court properly found Petitioner pled guilty freely and voluntarily, and there is no reasonable probability he would have proceeded to trial had counsel obtained the GPS warrant documents or successfully suppressed the GPS data. Critically, the remaining facts remained: Petitioner was stopped for violating traffic laws, Petitioner chose to flee on foot, and once detained, Petitioner told law enforcement he had drugs in the vehicle. In light of the foregoing, there is no reasonable probability that Petitioner would have rejected the well-negotiated plea and proceeded to trial if counsel had obtained and/or successfully suppressed GPS data.<sup>3</sup>

---

<sup>3</sup> Again, based on Petitioner's stipulation that he was not challenging the supporting documents for the GPS warrant, Petitioner did not prove any challenge to the warrant would be successful.

**3. The GPS tracker is a red herring here where Petitioner was stopped for violating traffic laws, chose to run down the interstate on foot after being stopped, and told law enforcement he had drugs in the car when he was caught.**

The PCR court properly found that under these facts, counsel's failure to obtain the GPS tracker warrant documents or move to suppress the warrant was reasonable under prevailing professional norms and not deficient. Plea counsel testified he was aware law enforcement used a GPS tracking device and would have moved to suppress the GPS information had he proceeded to trial. However, plea counsel averred it was unlikely they would have won the motion to suppress based on his review of the file. (App. 74-75). He further stated that even if the GPS data had been suppressed, the outcome would have been the same. (App. 83). Counsel's assessment was reasonable under these facts. Specifically, the traffic stop was initiated after Petitioner was observed speeding and hitting the white line. Law enforcement initiated a valid stop; once the vehicle stopped, Petitioner chose to flee on foot and run down the middle of the interstate. Once detained, Petitioner told police he ran because he had drugs in the car. (App. 10-11). Although the State may have used GPS data to track Petitioner, Petitioner'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. Based on the foregoing, the PCR court properly found that even if counsel had obtained the GPS-tracker warrant and somehow successfully suppressed data from the GPS tracker,<sup>4</sup> the State *still* could have tried the case based on the aforementioned facts. Counsel negotiated a plea to the lesser-included offense,<sup>5</sup> with an

---

<sup>4</sup> As noted, Petitioner stipulated he was not challenging the sufficiency of the documents supporting the GPS warrant and thus failed to show a challenge would be successful.

<sup>5</sup> Counsel credibly testified the plea was a global plea that included having charges in Horry County run concurrent to the Florence County charges.

agreement from the State that Petitioner could move for a sentence reduction if he cooperated. Based on the foregoing, the PCR court properly found counsel's performance was reasonable under prevailing professional norms and not deficient. Likewise, there is no reasonable probability Petitioner would have proceeded to trial had counsel further investigated or moved to suppress GSP tracker data.

**Conclusion**

Based on the foregoing, this Court should deny Petitioner's Petition for a Writ of Certiorari.

Respectfully Submitted,

ALAN WILSON  
Attorney General

DON ZELENKA  
Deputy Attorney General

D. RUSSELL BARLOW, III  
Senior Assistant Deputy Attorney General

DANIELLE DIXON  
Assistant Attorney General



---

Danielle Dixon, 73999  
Assistant Attorney General

ATTORNEYS FOR RESPONDENT

This 2<sup>nd</sup> day of May, 2025