

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

May 21 2025

S.C. SUPREME COURT

—————
Certiorari to Anderson County

Honorable Kristi F. Curtis, Circuit Court Judge

—————
JUSTIN A. ARMSTRONG,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000226

—————
APPENDIX
—————

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ATTORNEYS FOR RESPONDENT

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1 State of South Carolina In the Court of General Sessions
 2 County of Anderson

3
 4 STATE OF SOUTH CAROLINA,)
 5) 2018-GS-04-03247
 6 -vs-) 2019-GS-04-01500
 7 JUSTIN A. ARMSTRONG,) June 18, 2019
 8 Defendant.)
 9 -----) Transcript of Record

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B E F O R E:
 The Honorable R. Scott Sprouse, Judge

A P P E A R A N C E S:
 Catherine Huey, Esquire
 Attorney for The State
 Robert J. Opperman, Esquire
 Attorney for Defendant

Diane L. Marcengill, RPR, CRR, CRC
 Circuit Court Reporter

1 MS. HUEY: Before you is Justin Armstrong. He is
2 pleading guilty to shoplifting, third offense,
3 2018-GS-04-3247.

4 He is also pleading guilty on a waiver to
5 possession of meth, 2019-GS-04-1500.

6 The victim has been notified in the shoplifting,
7 your Honor, and there is a recommendation. And there's
8 an order for restitution as well.

9 (The defendant was sworn.)

10 THE COURT: Tell me what the recommendation is.

11 MS. HUEY: Your Honor, the recommendation is ten
12 years provided upon the service of 89 days with five
13 years probation to follow.

14 We would like for him to be held until there is an
15 inpatient bed available at drug rehab.

16 Additionally, he would need to have substance
17 abuse counseling. After that, random drug and alcohol
18 testing, and to be screened for possible mental health
19 treatment.

20 Now, we are fine with PTUP'ing after three years
21 if he is in compliance with all of that, your Honor.

22 THE COURT: You are Justin Allen Armstrong; is
23 that correct?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: You have a possession of

1 methamphetamine charge that carries up to three years
2 and a shoplifting enhancement that carries up to ten
3 years.

4 Do you understand those potential penalties?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Now, you have heard the recommendation
7 from the State. The State is asking for a ten-year
8 sentence suspended to 89 days time served with five
9 years probation with several things attached to the
10 probation: You paying restitution, looks like in the
11 amount of \$479. You're going to inpatient drug
12 treatment. You would be screened, mental health
13 screening. You would also be subject to random drug
14 and alcohol testing. But they also want you to have
15 the opportunity to PTUP your probation after three
16 years if you have successfully completed everything.

17 Other than that recommendation, has anyone
18 promised you anything to get you to plead guilty, or is
19 anyone coercing you into pleading guilty?

20 THE DEFENDANT: No, your Honor.

21 THE COURT: Now, you understand I'm not bound by
22 that recommendation?

23 THE DEFENDANT: Yes, I understand.

24 THE COURT: All right. Knowing that, how do you
25 plead to shoplifting enhancement?

1 THE DEFENDANT: I plead guilty, your Honor.

2 THE COURT: How do you plead to possession of
3 methamphetamine, first offense?

4 THE DEFENDANT: Yes.

5 THE COURT: How do you plead?

6 THE DEFENDANT: Guilty, your Honor.

7 THE COURT: Are you pleading guilty of your own
8 free will?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Are you under the influence of any
11 alcohol, drugs, or anything that might affect your
12 judgment?

13 THE DEFENDANT: No, sir.

14 THE COURT: When you plead guilty, you give up
15 rights that you have. You have a right to a trial by
16 jury with a unanimous jury verdict. You have a right
17 to call witnesses on your behalf. You have a right to
18 confront the witnesses who are against you. You have a
19 right to remain silent. You also would have an
20 opportunity to present any defenses that you might have
21 to the charge.

22 Do you understand those rights?

23 THE DEFENDANT: Yes, sir, I do.

24 THE COURT: You're presumed innocent, and the
25 State would have the burden of proving you guilty

1 beyond a reasonable doubt.

2 Do you understand that right?

3 THE DEFENDANT: Yes, sir, I do.

4 THE COURT: You have been represented by
5 Mr. Opperman. Have you had enough time to talk to him?

6 THE DEFENDANT: Yes, I have.

7 THE COURT: Has he answered your questions?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you have any questions that you'd
10 like to ask him now?

11 THE DEFENDANT: No, sir, I don't.

12 THE COURT: Are you completely satisfied with his
13 representation?

14 THE DEFENDANT: Yes, sir, I am.

15 THE COURT: Now, Mr. Armstrong, this drug charge
16 is a first offense. If you receive subsequent
17 convictions, the penalties get worse.

18 Do you understand that?

19 THE DEFENDANT: Yes, sir, I do.

20 THE COURT: All right, Ms. Huey. Tell me about
21 it.

22 MS. HUEY: Your Honor, as to the shoplifting, that
23 occurred on October 22nd of 2018. The defendant was
24 ID'd on a video leaving the JCPenney here at the mall
25 in Anderson City without having paid for that -- paid

1 for the Kitchen Aid mixer which was valued at around
2 400-and-something dollars, your Honor, which is what he
3 is signing up for restitution for.

4 Also as to the possession of meth, that occurred
5 on March 22, 2019, at [REDACTED] West Whitner Street.
6 Deputies responded due to a disturbance. They found
7 this defendant acting belligerently. They placed him
8 under arrest for breach of peace, and search incident
9 yielded just about a gram of meth, your Honor, in his
10 pocket.

11 THE COURT: Mr. Armstrong, do you agree that those
12 are the facts in your cases?

13 THE DEFENDANT: Yes, sir, they are.

14 THE COURT: Mr. Opperman, are you satisfied your
15 client understands his rights?

16 MR. OPPERMAN: Yes, your Honor.

17 THE COURT: Do you concur in his decision to plead
18 guilty?

19 MR. OPPERMAN: Yes, your Honor.

20 THE COURT: He served 89 days?

21 MR. OPPERMAN: That's my understanding, your
22 Honor.

23 MS. HUEY: Yes, sir.

24 THE COURT: All right. I will accept the plea.
25 Defendant pleads freely, voluntarily, and

1 intelligently. He pleads guilty with the advice of
2 competent counsel with whom he is satisfied.

3 All right -- and there is a factual basis.

4 All right. Mr. Opperman.

5 MR. OPPERMAN: Your Honor, we ask the Court accept
6 the recommendation of the State. One of the factors
7 clearly underlying these issues is a substance issue.
8 I believe part of the recommendation is that
9 Mr. Armstrong get a screening at the Department of
10 Mental Health to determine if they believe counseling
11 is an appropriate part of his probation.

12 We actually had him go to Columbia during the
13 course of the case. They found that he was competent,
14 place-oriented, understood the process. And I think
15 that's accurate, but there are some recurring issues
16 that may be necessary for them to look into.

17 But I'm confident Mr. Armstrong understands the
18 process, wants to be compliant, wants to do the right
19 thing. These are some things we need to put in place
20 in order for him to be helpful.

21 Perhaps we should include in the order that
22 probation may work with Mr. Armstrong's family to
23 locate placement. I know Mr. Armstrong's mother has
24 been working diligently to find an appropriate
25 rehabilitation facility for him. We have had several

1 conversations with her about that.

2 THE COURT: I'm sure probation will be open to any
3 suggestion. Of course, they would have to approve it.

4 MR. OPPERMAN: Certainly.

5 THE COURT: Probation has the ultimate decision in
6 that.

7 Mr. Armstrong, is there anything you would like to
8 tell me?

9 THE DEFENDANT: No, sir. I just want to apologize
10 for my actions.

11 THE COURT: Have you ever tried to get counseling
12 in the past?

13 THE DEFENDANT: Yes, sir, I have. I was
14 successful where I went.

15 THE COURT: How long have you been using
16 methamphetamine?

17 THE DEFENDANT: Honestly, for about the past two
18 years. Basically, I tried to. . .

19 THE COURT: Okay.

20 Mr. Opperman, y'all agree -- they have handed up
21 this restitution order for \$479. You agree that's
22 correct?

23 MR. OPPERMAN: Yes. And I have explained to
24 Mr. Armstrong that he's got a right to a restitution
25 hearing. He's going to waive that, your Honor.

1 THE COURT: Do you agree with that, Mr. Armstrong?

2 THE DEFENDANT: Yes.

3 THE COURT: Okay. If there's nothing further,
4 defendant would be -- on 2018-GS-04-3247, defendant
5 will be confined to the Department of Corrections for a
6 term of ten years. That's suspended on service of
7 89 days time served and probation for five years.

8 Special condition of probation: He is to pay
9 restitution as set forth on the restitution order that
10 the attorneys handed up. He would go to inpatient drug
11 rehabilitation as approved by the Department. He would
12 be held until a bed is available.

13 He will have a mental health screening and be
14 subject to random drug and alcohol testing throughout
15 his probationary period.

16 And then on 2019-GS-04-1500, it would be three
17 years suspended on 89 days time served, five years
18 probation under the same conditions concurrent. I will
19 allow the probation to PTUP after three years if all of
20 his programs are successfully completed, all his monies
21 paid in full, and he's in strict compliance.

22 So good luck to you, Mr. Armstrong.

23 (WHEREUPON, proceedings concluded at 12:20 p.m.)

24 ***END OF REQUESTED TRANSCRIPT OF RECORD***

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Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina at the time of this proceeding, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Anderson County, South Carolina, on the 18th day of June 2019.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

July 29, 2022

Diane L. Marcengill, RPR, CRR, CRC
Circuit Court Reporter

State of South Carolina
County of Anderson

Court of General Sessions

State of South Carolina)
)
)
 v.)
)
 Justin Allan Armstrong)
)
 _____ Defendant.)

Transcript of Record
2018-GS-04-03247
2019-GS-04-01500

June 14, 2021
Anderson, South Carolina

B E F O R E:

The Honorable R. Lawton McIntosh, Judge.

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

Agent Edge, Probation Officer

Matthew Bradley, Esquire
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

I N D E X

WITNESS

PAGE

No Witnesses.

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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No Exhibits.

P R O C E E D I N G S

* * * * *

PROBATION OFFICER: Justin Armstrong, Number 6.

(The defendant was personally present, together with counsel.)

THE CLERK: Sir, if you would, please raise your right hand.

THE DEFENDANT: (Complying.)

THE CLERK: Do you solemnly swear or affirm the testimony you give this Court is the truth, the whole truth, and nothing but the truth?

THE DEFENDANT: Yes, ma'am.

THE CLERK: Thank you.

THE COURT: You're Justin Allan Armstrong?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Mr. Armstrong, have you read or had read to you the reports of your alleged probation violation?

THE DEFENDANT: Yes, sir.

THE COURT: Do you agree or do you disagree that you willfully violated the terms of your probation?

THE DEFENDANT: I don't agree with all of it, but I agree ---

THE COURT: Sir?

1 THE DEFENDANT: I don't agree with all of it,
2 but I do agree I violated.

3 THE COURT: Okay. Tell me what you do agree
4 with and tell me what you don't agree with.

5 THE DEFENDANT: Well, I left the Haven of Rest
6 and violated because I got into it with a fellow who
7 was sitting there. And I left there and went
8 straight to Labor of the Fields. I was there ---

9 THE COURT: Straight to where?

10 THE DEFENDANT: To Labor of the Fields. And I
11 was there through the work phase until my
12 grandmother, she got -- she's in real bad health.
13 She's 95-years old. Ever since I've been locked up,
14 she's in a nursing -- she's in a nursing now --
15 she's in a nursing home now since I've been here --
16 since I've been locked up.

17 But after I left there, I was staying at my
18 grandma's house. Me and my little brother, we were
19 getting into it. I mean, he was doing drugs. I
20 was -- I'm not going to lie and say I wasn't. I was
21 doing drugs too.

22 Since I've been in Anderson County, I've gotten
23 in contact with Solutions Recovery in Greenville.
24 They're supposed to be e-mailing an acceptance
25 letter. I don't know if it -- he hasn't received it

1 yet, but they're supposed to be e-mailing an
2 acceptance letter.

3 THE COURT: So tell me what you disagree with.

4 THE DEFENDANT: Just the time that I hadn't --
5 that I hadn't reported and stuff. I've been
6 calling. I've been in contact with them. I've been
7 calling them and stuff.

8 THE COURT: According to this report, you last
9 reported January 2020; is that correct, Officer?

10 PROBATION OFFICER: That is, Your Honor, until
11 this warrant was served, and I've spoken with him
12 since his warrant was served.

13 THE COURT: After the warrant was served?

14 PROBATION OFFICER: Yes, sir.

15 THE COURT: What period of time was he
16 absconded?

17 PROBATION OFFICER: The first warrant was
18 issued on May 6th of 2020, and served on him
19 May 28th. So from his original sentence which
20 began ---

21 THE COURT: --- June 18th of '19?

22 PROBATION OFFICER: Right. Yes, sir. And he
23 had been absconded for five months before the first
24 warrant was served.

25 In addition to that, I'm not going to ---

1 THE DEFENDANT: I was -- that's when I was ---

2 THE COURT: Stop. I'll let you speak.

3 THE DEFENDANT: I'm sorry.

4 PROBATION OFFICER: Your Honor, the amount of
5 charges that he has been arrested all for, between
6 the time he was put on probation and now, is lengthy
7 as you can see in the violation report.

8 Due to all of that contact, we don't think that
9 he is a suitable candidate for probation. I mean,
10 with all the pending charges and the stuff he
11 doesn't let us know about, it's -- I mean, just in
12 the warrants that we have, there's October of 2019;
13 three arrests in November of 2019; two arrests in
14 December of '19; an arrest in March of '20; April of
15 '20; and another one in April of 2020. Since that
16 original warrant was issued and served, he's been
17 arrested an additional 17 times. That's ---

18 THE COURT: Seventeen?

19 PROBATION OFFICER: Yes, sir. I mean, that --
20 that's not a violation, but it goes to -- it speaks
21 toward his -- the criminal history that he has.

22 THE DEFENDANT: Can -- can I -- can I say
23 something?

24 THE COURT: Sir, I'll be glad to hear from you.

25 THE DEFENDANT: I -- I've been to my grandma's

1 house. My mom, like -- like, we -- we were getting
2 along, but, like, it's -- that's what it stems from
3 is her calling the police and me and my brother
4 don't get along and things like that. And I would
5 leave, but my grandmother didn't have no one to stay
6 with her during the daytime. You see what I'm
7 saying?

8 THE COURT: Say it again.

9 THE DEFENDANT: Like, my grandmother is 95 and
10 she didn't have no one to stay with her during the
11 daytime while my mom was at work.

12 My little brother, he's -- he's -- I mean,
13 they're calling them out there because of us. She
14 favors him. I mean, they arrest me because it's
15 just -- it's -- and the police, they get -- I don't
16 know.

17 THE COURT: If that keeps on being a problem,
18 why do you keep going back to it? Why aren't you
19 out there trying to find a job so you can pay for
20 your own place?

21 THE DEFENDANT: Well, I -- I've sent -- like,
22 I've found a place to stay since then. Like I'm
23 saying, like it's -- I got a house -- I got a house
24 I can go stay at right now. You know what I'm
25 saying? Like away from that situation because it's

1 just a real messed up situation is what it is.
2 Like, I mean, because my grandmother needs me there,
3 but my mom and my little brother, I don't get along
4 with them. You know what I'm saying? We're bumping
5 heads all the time. They -- it's -- it's too much,
6 man. My grandma, she's been placed in assisted
7 living since I've been in jail. You know what I'm
8 saying? Since I've been back here, she's been put
9 in a nursing home.

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

11 Mr. Bradley.

12 MR. BRADLEY: May it please the Court, Your
13 Honor?

14 First, speaking to the failing to appear in
15 court on April the 5th. It's my understanding that
16 he was arrested by the city on that day. He was
17 being booked into the city jail on April the 5th is
18 why he was not able to be at the courthouse here.

19 But he's -- he's told you what he's told me
20 about the charges. The majority of which are
21 municipal level, magistrate's level offenses of
22 breach of peace, trespassing, things of that nature
23 due to arguments -- arguments being had at the -- at
24 the home.

25 I asked -- asked the same question about to

1 leave -- leaving that place. And he tells me the
2 reason why he didn't is because his grandmother. He
3 wanted to be there to -- to help her and that was
4 the main thing for -- for his -- for his sake to try
5 to make sure she was taken care of.

6 He has -- he's -- he tells me that he's been
7 accepted into Solutions Recovery. They -- they
8 notified him at the end of this past week. We're
9 going to be ascending an acceptance letter. I have
10 not -- I have not received that, Your Honor. I've
11 not seen that, but Mr. Armstrong tells me that they
12 have accepted him into that program.

13 He's 35-years old. He does have a daughter
14 who's 11 years old and does see -- see her. She --
15 I'm sorry?

16 THE DEFENDANT: Thirteen.

17 MR. BRADLEY: Thirteen. Okay. I had 11 in my
18 notes. I apologize.

19 He -- he does have some college. He went to
20 Tri-County and Greenville Tech.

21 I believe that the drugs, again, has gotten to
22 this point and then those arguments within the
23 family.

24 We'd ask that the Court consider revoking him
25 90 days. He served 41 days here in the county, plus

1 an additional 30 days at the city before he came to
2 the county. He's been incarcerated since April 5th
3 until today. And we'd ask that after serving his
4 revocation time here at the county, to be able to go
5 to Solutions Recovery and complete that program.
6 Thank you.

7 THE COURT: All right. Thank you. I'm going
8 to find that Mr. Armstrong willfully violated the
9 terms of his probation. He failed to report. He
10 failed to complete inpatient substance abuse
11 treatment. It just shows a pattern of having
12 substance abuse related problems and failing to do
13 anything to try to rectify it, and also that he's
14 behind on his rest -- on his restitution.

15 THE DEFENDANT: I can catch that up, Your
16 Honor.

17 THE COURT: I'm going to revoke him in full.
18 I'm going to give him credit for time served. Any
19 monies he owes, reduce to a civil judgement.

20 PROBATION OFFICER: Thank you, Your Honor.

21 (The proceedings concluded at 10:33 a.m.)

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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Anderson County, South Carolina, on the 14th day of June, 2021.

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

August 3, 2021

/s/Lisa Scott

Lisa Scott
Circuit Court Reporter

FORM 5

22 MAY 4 AM 9:07:19
Anderson, SC DOC, CP/GS

STATE OF SOUTH CAROLINA)

County of Anderson)

Justin Armstrong # 327868)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2022 CP 0401024

APPLICATION FOR
POST-CONVICTION RELIEF

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 MacDougall C.I., 1516 Old Gilliard Rd. Ridgerville, S.C. 29472
2. Name and location of Court which imposed sentence Anderson County 10th Circuit Court, PO Box 8002, Anderson SC 29622
3. Name(s) of co-defendant(s) (if any) n/a
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2018 G50403247
 - (b) 2019 G50401500

A TRUE COPY
 MAY - 4 - 2022
Richard M. Kinley
 CLERK OF COURT

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 6/14/21 10 years

(b) 6/14/21 3 years

(c) should say 18

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

yes

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

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

i. SC Court of Appeals

ii. _____

iii. _____

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

i. withdrew appeal in agreement with counsel

ii. _____

iii. _____

(c) the date of each such result:

i. December 3 2021

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) _____

(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 (see Back)
- (b) Probation Arbitrarily and unlawfully Revoked
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) see Back
- (b) see Back
- (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. _____

- 10(a) I was denied the right to an appeal of the underlying convictions because I neither knew I could appeal nor did my attorney properly advise me of my right to an appeal.
- 11(a) I was never informed of my rights to an appeal after my plea agreement.
- 11(b) my Probation was arbitrarily Revoked. I had secured Bedspace in Solutions Recovery in Greenville SC. The Judge should have allowed me to go instead of Revoking my Probation.

(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) ineffective assistance of counsel
- (b) unlawful Ruling
- (c) _____

(see
Back)

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? _____
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
- _____

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. Joseph Opperman, 500 S McDuffie St
Anderson, S.C. 29625
- ii. Matthew Bradley 500 S McDuffie St
Anderson, SC 29625
- iii. Jessica Saxon 1330 Lady St. Suite 401
Columbia SC 29211
- (b) the proceedings at which each such attorney represented you:
- i. Plea agreement
- ii. Probation Revocation
- iii. Direct Appeal
- _____

16(a)(10)

until Probation was violated I didn't
know I was being held unlawfully.

19. State clearly the relief you seek in filing this application:
continue probation, Revoke Prison
sentence

20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)
County of Anderson)

VERIFICATION

I, Justin Armstrong, 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 31st
day of March, 2022

[Signature] Lauren Wolke (L.S.)
Notary Public

My Commission Expires: 04-12-2031



22 MAY 4 AM 9:07:28
Anderson, SC Clk. CP/98

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

I, Justin Armstrong, 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.

Justin Armstrong
Applicant

SWORN or affirmed to and subscribed before me this
31st day of March, 2022.

[Signature]
Notary Public

My Commission Expires: 04-12-2031

A TRUE COPY

MAY - 4 2022

Richard A. Kaley
CLERK OF COURT

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON)	TENTH JUDICIAL CIRCUIT
)	
)	
JUSTIN ARMSTRONG,)	AMENDED APPLICATION
APPLICANT.)	
v.)	
)	
THE STATE OF SOUTH CAROLINA,)	CASE # 2022-CP-04-1024
RESPONDENT.)	
_____)	

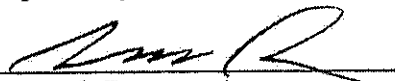
This matter comes before the Court by way of application of post-conviction relief filed May 4, 2022, alleging ineffective assistance of counsel. A Return and Partial Motion to Dismiss was made on February 12, 2024. In addition to the allegations of his initial application the Applicant adds the following allegations.

1. Ineffective assistance of counsel for failure to

(a) object to the probation agent mentioning seventeen arrests, none of which resulted in conviction, during the Applicant's probation revocation hearing; and

(b) failing to clarify at the revocation hearing that the arrests resulted from Applicant's uncle placing him on trespass notice at his grandmother's house.

Respectfully submitted,


 Susannah Ross
 Attorney for the Applicant
 330 E. Coffee St.
 Greenville, SC 29601
 (864) 242-0029

This 29 day of March, 2024

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Justin A. Armstrong, #327868,

Applicant,

v.

State of South Carolina,

Respondent.

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

) CASE NO. 2022-CP-04-01024

**RETURN AND PARTIAL
MOTION TO DISMISS**
(Counsel Appointed)

In response to the post-conviction relief (PCR) action commenced by Justin A. Armstrong (Applicant) on May 04, 2022, the State makes this return¹:

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment from the Anderson County Clerk of Court. During its December 2018 term, the Anderson County Grand Jury indicted Applicant for Shoplifting (2018-GS-04-03247). During its March 2019 term, the Anderson County Grand Jury indicted Applicant for Possession of Methamphetamine (2019-GS-04-01500).

On June 18, 2019, Applicant appeared before the Honorable R. Scott Sprouse and pleaded

¹ Respondent's return was due to be filed within sixty days of receipt of the post-conviction relief application. See Rule 12(a), SCRCPC ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial."). Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

guilty to Possession of Methamphetamine, first offense, and Shoplifting. Robert J. Opperman, Esquire (Plea Counsel), represented Applicant. Assistant Solicitor Catherine Huey prosecuted the case. Judge Sprouse sentenced Applicant to concurrent terms of ten years for Shoplifting and three years for Possession of Methamphetamine, both sentences to be suspended to 89 days' time served and five years' probation.²

Applicant did not appeal his sentences or convictions.

PROBATION REVOCATION AND SUBSEQUENT APPEAL

On June 14, 2021, Applicant appeared before the Honorable R. Lawton McIntosh concerning revocation of his probation for violation of his conditions. Applicant was represented by Timothy Matthew Bradley, Esquire. Agent Edge represented the State. Judge McIntosh revoked Applicant's probation in full for willfully failing to report, failing to complete inpatient substance abuse treatment, and falling behind on his restitution payments. (Prob. Rev. Tr. p. 11). Judge McIntosh gave Applicant credit for time served. (Prob. Rev. Tr. p. 11).

On June 18, 2021, Timothy Matthew Bradley, Esquire, filed a notice of appeal on behalf of Applicant concerning his probation revocation. Appellate Defender Jessica M. Saxon represented Applicant on his appeal. On November 17, 2021, Applicant notified the Court of Appeals of his intention to withdraw his appeal, signing an affidavit stating he freely, voluntarily, and knowingly waived his right to appeal and wished to proceed with PCR. The Court of Appeals returned the Remittitur on December 29, 2021.

² Judge Sprouse ordered special conditions of probation under the same conditions concurrent herein: (a) Applicant to pay restitution in the amount of \$479.00, (b) Applicant to attend inpatient drug treatment, subject to a mental health screening, random drug and alcohol testing, and (c) opportunity to PTUP Applicant's probation after three years upon successful completion of the above-listed conditions.

FACTS ADDUCED AT THE GUILTY PLEA HEARING

The facts giving rise to Applicant's conviction were articulated by the State at Applicant's plea hearing, as follows:

Your honor, as to the shoplifting, that occurred on October 22nd of 2018. The defendant was ID'd on a video leaving the JCPenney here at the mall in Anderson City without having paid for that – paid for the Kitchen Aid mixer which was valued at around 400-and-something dollars, your Honor, which is what he is signing up for restitution for. Also, as to the possession of meth, that occurred on March 22, 2019, at [REDACTED] West Whitner Street. Deputies responded due to a disturbance. They found this defendant acting belligerently. They placed him under arrest for breach of peace, and search incident yielded just about a gram of meth, your Honor, in his pocket.

(Plea Tr. pp. 5, ll. 22-25 – 6, ll. 1-10).

CURRENT APPLICATION

In his original application, Applicant alleges he is being held in custody unlawfully based on the following:

1. Ineffective Assistance of Counsel; Attorney of Record Mr. Robert Joseph Opperman.³
 - a. Applicant claims he was "denied the right to an appeal of the underlying convictions because [he] neither knew could appeal nor did [his] attorney properly advise [him] of the right to an appeal."
 - b. Applicant claims, counsel "never informed [him] of his right to an appeal after plea agreement."
2. Probation Arbitrarily and Unlawfully Revoked.
 - a. Applicant claims, "probation was arbitrary revoked [because] he had secured Bedspace in Solutions recovery in Greenville, SC [and] Judge should have allowed [him] to go instead of revoking probation."
 - b. Applicant claims, "until probation was violated [he] did not know was being held unlawfully."

³ Respondent interprets this allegation as a request for belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

Applicant requests relief as follows:

"Continue probation and revoke prison sentence."

Attached to this return and incorporated by reference are the Anderson County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the plea transcript, records from Applicant's direct appeal, and records from this Post-Conviction Relief action. Respondent reserves the right to amend this return upon receipt of any relevant materials.

ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF PLEA COUNSEL SHOULD BE BARRED BY THE STATUTE OF LIMITATIONS

Respondent submits that Applicant's allegations regarding ineffective assistance of Plea Counsel should be summarily dismissed as *untimely*, barred by the statute of limitations, and for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45 requires as follows:

- (A). An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.
- (B). When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.
- (C). If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

S.C. Code Ann. § 17-27-45.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). In the present case, Applicant pled guilty on June 18, 2019. Based on § 17-27-45(A), Applicant needed to file an application for post-conviction relief based on claims that he knew or should have known within one year of his guilty plea. The Applicant was therefore required to file his application on or before June 19, 2020. This application was filed on May 4, 2022, *over one year, ten months, and eighteen days* after the expiration of the statutory filing period.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss Applicant's allegations regarding ineffective assistance of Plea Counsel for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

ALLEGATION THAT APPLICANT IS ENTITLED TO BELATED APPELLATE REVIEW PURSUANT TO WHITE V. STATE⁴

Applicant alleges Plea Counsel failed to inform him of his right to appeal his guilty plea and he did not know he could appeal it. Respondent submits this allegation is without merit.

"Following a trial, counsel must make certain the defendant is made fully aware of the right to appeal." Simuel v. State, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010). "However, the

⁴ White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974)

standard for a guilty plea differs." Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). "Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea." Id.; Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000); Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995) ("bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief").

Even if the PCR court finds the applicant never voluntarily and intelligently abandoned his appeal, the PCR court has no jurisdiction to grant a belated appeal. White v. State, 263 S.C. 110, 119, 108 S.E.2d 35, 39 (1974). However, when an applicant establishes that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the PCR decision, will review the record and pass upon all issues properly raised and argued as if the direct appeal had been perfected. Id. at 119, 108 S.E.2d at 39-40.

Respondent submits Applicant cannot meet his burden showing he is entitled to a belated appeal pursuant to White. Applicant failed to present any facts that would show he inquired of Plea Counsel about filing an appeal, communicated to Plea Counsel his desire to appeal, or instructed Plea Counsel to file an appeal. However, 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.

UNLAWFUL REVOCATION OF PROBATION

In his application, Applicant alleges that his probation was arbitrarily revoked because he had secured a bedspace in Solutions Recovery in Greenville, South Carolina, (Solutions Recovery)

and was awaiting an acceptance letter. Applicant contends that Judge McIntosh should have allowed him to take the bedspace at Solutions Recovery instead of revoking his probation. Respondent asserts that the record refutes Applicant's allegations.

Post-conviction relief "is a proper avenue of relief only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence." Al-Shabazz v. State, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000). An applicant may seek post-conviction relief on the following grounds:

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;
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). Thus, the only non-collateral matters that are reviewable through post-conviction relief are (1) a claim that the applicant's sentence has expired and (2) a claim that the applicant's probation, parole, or conditional release has been unlawfully revoked. Al-Shabazz v. State, 338 S.C. at 367, 527 S.E.2d at 749.

The revocation of probation is not a stage of criminal prosecution. However, a probationer "has a constitutionally protected liberty interest and cannot be denied due process simply because probation has been described as an act of grace." State v. Allen, 370 S.C. 88, 634 S.E.2d 653 (2006); Morrissey v. Brewer, 408 U.S. 471, 480-90 (1972) (holding that minimum requirements

of due process in parole revocation proceeding include "(a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.")). Revocation of probation is within the discretion of the court, but it may not be revoked arbitrarily. In re Whitney, 421 F.2d 337 (1st Cir. 1970); State v. Hamilton, 333 S.C. 642, 511 S.E.2d 94 (Ct. App. 1999) ("before revoking probation, the circuit judge must determine if there is sufficient evidence to establish that the probationer has violated his probation conditions.")).

At Applicant's revocation hearing, Applicant agreed with the court he violated his probation by failing to report. (Prob. Rev. Tr. pp. 4-5). The probation officer testified Applicant had been absconded for five months. Moreover, since Applicant's original sentence on June 18, 2019, Applicant had been arrested seventeen times, and though not a violation of his probation, evidenced Applicant was not a good candidate for probation. (Prob Rev. Tr. pp. 6-7). During the hearing, Applicant stated he had been doing drugs and applied for a bedspace at Solutions Recovery, but no evidence was presented of Applicant's acceptance into the program. (Prob Rev. Tr. pp. 5-6; 10). Judge McIntosh revoked Applicant's probation because he failed to report, failed to complete inpatient substance abuse, and he had fallen behind on restitution payments. (Prob Rev. Tr. p. 11).

Respondent submits Applicant's probation was not arbitrarily revoked. However, because the allegations that probation was arbitrarily and unlawfully revoked probably raise questions of

fact that the record does not conclusively refute, Respondent requests an evidentiary hearing on this issue. See Clayton v. State, 278 S.C. 655, 301 S.E.2d 133 (1983) (A hearing is necessary where factual allegations that lead to a constitutional deprivation are not conclusively refuted by the record).

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 been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. The State 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. 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.").

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRPC. See also Rules 15(a)–(b), SCRPC. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. See Rule 15(a), SCRPC.

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. 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.

CONCLUSION

WHEREFORE, having made its Return, the State respectfully requests that an evidentiary hearing is held solely on the issues of Applicant's request for belated review and unlawful probation revocation.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

TALIDA BALAJ
Assistant Attorney General

By: 

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

February 12, 2024

STATE OF SOUTH CAROLINA)
 COUNTY OF ANDERSON)
 JUSTIN A. ARMSTRONG, # 327868)
 Applicant,)
 v.)
 STATE OF SOUTH CAROLINA)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE TENTH JUDICIAL CIRCUIT

2022-CP-04-01024

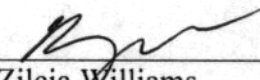
CERTIFICATE OF SERVICE BY MAIL

24 FEB 15 PM 2:43:43
 Anderson, SC COC, CP/68

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Partial Motion to Dismiss in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Susannah C. Ross, Esquire
Ross & Enderlin, PA
330 East Coffee Street
Greenville, SC 29601

DATED this 12th day of February, 2024



 Zilcia Williams
 Legal Assistant for Respondent

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

TENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS

Justin A. Armstrong,)
Applicant,)
)
V)
)
State of South Carolina,)
Respondent.)
_____)

2022-CP-04-01024
TRANSCRIPT OF RECORD

September 16, 2024
Anderson, South Carolina

B E F O R E:
The Honorable Kristi F. Curtis, Judge

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

ATTORNEY FOR APPLICANT:
Susannah C. Ross, Esquire

ATTORNEY FOR RESPONDENT:
Ryan T. Kowalski, Assistant Attorney General

Tara T. Scott, CVR
Official Court Reporter

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(NO EXHIBITS INTRODUCED DURING THIS HEARING)

1 MR. KOWALSKI: May it please the Court? Ryan Kowalski
2 on behalf of the State of South Carolina. This is the case
3 of *Justin A. Armstrong v State of South Carolina*, case
4 number 2022-CP-04-01024. On May 4, 2022, the Applicant
5 commenced this PCR action. Applicant is presently confined
6 in the South Carolina Department of Corrections pursuant to
7 an Order of Commitment from the Anderson County Clerk of
8 Court. During its December 2018 term, the Anderson County
9 Grand Jury indicted the Applicant for shoplifting. During
10 its March 2019 term, the Anderson County Grand Jury indicted
11 Applicant for possession of methamphetamine.

12 On June 18, 2019, Applicant appeared before the
13 Honorable R. Scott Sprouse and pled guilty to possession of
14 methamphetamine first offense and shoplifting. Robert J.
15 Opperman, Esquire, represented Applicant. Assistant
16 Solicitor Katherine Huey prosecuted the case. Judge Sprouse
17 sentenced Applicant to a current terms of ten years for
18 shoplifting and three years for possession of
19 methamphetamine, those sentences to be suspended to 89 days
20 time served and five years probation. Applicant did not
21 appeal the sentences or convictions.

22 On June 14, 2021, Applicant appeared before The
23 Honorable R. Lawton McIntosh concerning revocation of his
24 probation for violation of his conditions. Applicant was
25 represented by Timothy Matthew Bradley, Esquire. Agent Edge

1 representing the State. Judge McIntosh revoked Applicant's
2 probation in full for willfully failing to report, failing
3 to complete inpatient substance abuse treatment, and falling
4 behind on his restitution payments. Judge McIntosh gave
5 Applicant credit for time served.

6 On June 18, 2021, Timothy Matthew Bradley filed a
7 Notice of Appeal on behalf of the Applicant concerning his
8 probation revocation. Appellate Defender, Jessica M. Saxon,
9 represented Applicant on his appeal. On November 17, 2021,
10 Applicant notified the Court of Appeals of his intention to
11 withdraw his appeal, signing an affidavit stating that he
12 freely, voluntarily, and knowingly waived his right to
13 appeal and wished to proceed with PCR. The Court of Appeals
14 returned the remittitur on December 29, 2021.

15 In his original application, Applicant alleged he was
16 being held in custody unlawfully based on ineffective
17 assistance of counsel by attorney of record, Mr. Robert
18 Joseph Opperman, claiming that he was denied the right to an
19 appeal of the underlying convictions because he neither knew
20 he could appeal nor did his attorney properly advise him of
21 the right to an appeal. He also claimed that counsel never
22 informed him of his right to an appeal after the plea
23 hearing. Applicant also alleges his probation was
24 arbitrarily and unlawfully revoked, claiming that his
25 probation was arbitrarily revoked because he had secured a

1 bed space at Solutions Recovery in Greenville, and the Judge
2 should have allowed him to go there instead of revoking
3 probation. He also claims that until probation was
4 violated, he did not know that he was being held unlawfully.
5 For relief, Applicant requests continuance of probation and
6 revocation of his prison sentence. The State made its
7 return and partial motion to dismiss on February 12, 2024.

8 On April 1, 2024, Applicant submitted an amended
9 application which added allegations of ineffective
10 assistance of counsel for failure to object to the probation
11 agent mentioning 17 arrests, none of which resulted in
12 conviction, during the Applicant's probation revocation
13 hearing. Failure to clarify the revocation hearing of his
14 arrest resulted from his uncle placing him on trespass
15 notice at his grandmother's house.

16 Before this Court are the Anderson County Clerk of
17 Court records, Applicant's records from the South Carolina
18 Department of Corrections, the plea transcript, records from
19 Applicant's direct appeal, and records from his post-
20 conviction relief action. At this time, the State is
21 prepared to proceed on the issues as listed in the original
22 and amended applications, and I would also like to make a
23 partial motion to dismiss any other allegations the
24 Applicant may make regarding ineffective assistance of plea
25 counsel as barred by the statute of limitations as his

1 application was filed over one year, ten months, and 18 days
2 after the statutory filing period expired.

3 THE COURT: Thank you. Ms. Ross?

4 MS. ROSS: Thank you, Your Honor. May it please the
5 Court. Susannah Ross appearing on behalf of the Applicant.
6 We intend to go forward under the allegations as presented.
7 However, we would move pursuant to Love v State to conform
8 the pleadings to the evidence if an additional issue comes
9 up. I don't envision it to, and we can probably address
10 that at that time.

11 THE COURT: We'll address that at that time.

12 MS. ROSS: All right, thank you. We'd call Justin
13 Armstrong at this time.

14 (WHEREUPON, Justin Armstrong takes the stand.)

15 DIRECT EXAMINATION

16 BY MS. ROSS:

17 Q Mr. Armstrong, you filed for post conviction relief.
18 We have discussed that. Do you understand what that means?

19 A Yes, ma'am.

20 Q Do you understand what the relief you would get if you
21 prevail in a PCR action is?

22 A Yes, ma'am.

23 Q What is that relief?

24 A I'd start over, starting probation.

25 MR. Kowalski: Your Honor, I don't mean to interrupt.

Justin Armstrong-Direct Examination

7

1 He was not sworn in.

2 THE COURT: I think he was sworn in. Did we swear
3 him in?

4 MS. ROSS: I thought so, but I can't remember.

5 THE COURT: Mr. Armstrong, raise your right hand,
6 sir.

7 WHEREUPON, Justin Armstrong, having first
8 been duly sworn, testified as follows:

9 Q And in understanding that relief, what do you wish to
10 do today?

11 A Proceed with it.

12 Q Now, let's talk about your guilty plea. You had an
13 earlier guilty plea that led to a probation revocation
14 that's led to you being in prison today. Did you appeal
15 that guilty plea?

16 A I didn't. I didn't know I could. I'm sure it would
17 be a good idea. I didn't I didn't know I could.

18 Q So, you didn't know you had a right to appeal?

19 A No, I did not.

20 Q And did you talk to -- did your lawyer say anything
21 about a right to appeal?

22 A No. Not at that time.

23 Q And had you known that you had that right, would you
24 have wanted to?

25 A Yes, ma'am.

1 Q But that appeal never happened?

2 A No, ma'am.

3 Q Then later you were put on probation from that plea.

4 Let's discuss a little bit what happened with your probation

5 revocation. Did you meet with your lawyer who represented

6 you during that revocation?

7 A No, I did not. And I hadn't met with a probation

8 officer either. I mean, this is the first time I ever met

9 him when we went to court. He said -- he was saying, oh,

10 you didn't -- I didn't report in. Well, nobody was

11 reporting in, because it was during COVID. You know what I'm

12 saying? They said call in. I was calling in every month

13 like I was supposed to. That's what the other probation

14 officer -- the probation officer ---

15 Q So clarify that, this is what your other probation

16 officer told you?

17 A The probation officer I had prior to Agent Edge.

18 Q Which officer got you drug treatment, an inpatient

19 drug treatment program?

20 A I think it was the one before that. I can't remember

21 his name. It was prior Agent Edge though.

22 Q Did you feel like you were doing what you needed to do

23 on probation? Just discuss a little bit about that.

24 A Yeah. I mean, I was. I mean, for the most part.

25 Q How do you think your lawyer at your probation

1 revocation did for you?

2 A He hardly did anything. You know what I'm saying? He
3 probably said two words the whole time.

4 Q How many times did y'all meet to discuss your case?

5 A None. I met him when I walked in the courtroom.

6 Q Now, you've also alleged at the probation revocation
7 hearing. Can you just discuss a bit about the arrests that
8 were mentioned by your probation agent?

9 A I was in Anderson City. I was staying at my grandma's
10 house, taking care of her. She was 90 years old, and she
11 didn't have nobody to take care of her in the daytime.
12 Nobody there. So I would go there and I would take care of
13 her in the daytime when my mom was at work. My uncle, he
14 was stealing her retirement and my grandfather's retirement.
15 But I didn't know this at the time. I found out after the
16 fact. He was -- that's what he was so concerned about. He
17 was so concerned about not being able to get her retirement
18 every month. Like, he would come over here once a month and
19 pick up a check. Basically, that's what he was doing. And
20 every time he'd see me, he would call the police, because I
21 was telling her -- you know what I'm saying? I was helping
22 her. I was helping around the house. I wasn't working at
23 the time neither. You know what I'm saying?

24 Q So, just to clarify, your uncle was taking your
25 grandmother's check?

1 A Yeah, like, her check would be deposited, and then she
2 would pay for her little bills she had. She had her power
3 bill, water bill, and then he would come over and take the
4 remainder out of it ever month.

5 Q And then when your uncle found you over there -

6 A He would call the police. He would call the police.
7 Because -- my grandma didn't mind me drinking beer, you know
8 what I'm saying? I cut the grass or something like that. I
9 mean, he'd make a big deal out of everything. You know what
10 I'm saying?

11 Q And as far as what happened with any of those arrests,
12 were you ever convicted?

13 A Never. Not once.

14 Q Did your grandmother ever -

15 A My grandmother, she never pressed charges. She always
16 told them no, I don't want him to go to jail. I don't even
17 know why he's calling them out here. Then it got to be in
18 the confusion they'd take me to jail just to stop all the
19 confusion.

20 Q Okay, so when your agent, who was not your initial
21 agent, but this new agent, how long had you had the new
22 agent who testified at the hearing?

23 A That was the first time I ever met him.

24 Q So, when he mentioned 17 arrests, were there -- were
25 these arrests all involving your grandmother and being at

1 her house?

2 A Yeah.

3 Q And none of them led to any convictions?

4 A No. Didn't lead to anything.

5 Q And you had a placement at an inpatient treatment
6 facility?

7 A I've still got bed space available. They told me
8 whenever I get out, if I still want to come, I'm more
9 welcome to come.

10 Q Now, do you think the agent mentioning the 17 arrests
11 to the Judge hurt your chances, as far as your probation
12 revocation hearing?

13 A Well, I know they did. That was the deciding factor,
14 the reason I got so much time. Like I said, none of them.
15 I was never convicted of any of them. It should never even
16 been brought up until I was convicted of them. You know
17 what I mean?

18 Q Did your lawyer say anything about those 17 arrests or
19 object to them coming in?

20 A Not really, no. I mean, not really no. I don't
21 believe they did.

22 MS. ROSS: I've got no further questions. Please
23 answer any questions from the Assistant Attorney General.

24 CROSS-EXAMINATION

25 BY MR. KOWALSKI:

1 Q Good morning, Mr. Armstrong. How many times did you
2 meet with Mr. Opperman?

3 A Twice. Maybe once or twice.

4 Q Do you remember what you guys talked about at those
5 meetings?

6 A Not really, no.

7 Q At your guilty plea, you told the Court, under oath,
8 that you had had enough time to speak with Mr. Opperman. Is
9 that right?

10 A Yeah.

11 THE COURT: And can you speak up for me please, sir?
12 My Court Reporter has got to be able to hear everything that
13 you say.

14 WITNESS: Okay, I'm sorry.

15 Q You also told the Court that he had answered all your
16 questions. Isn't that right?

17 A I didn't know I needed to bring up the questions about
18 the appeal. I didn't know that was a factor at the time.

19 Q And you also said that you did not have any more
20 questions for him.

21 A I didn't have anymore questions, because I didn't know
22 the questions I needed to be asking, if that makes sense. I
23 don't know the law. You know what I'm saying? I've got him
24 to advise me of it.

25 Q And also at your guilty plea, you told the Court that

1 you were satisfied with Mr. Opperman's representation, did
2 you not?

3 A Yes, sir.

4 Q All right. So, for your probation revocation hearing,
5 how many times did you meet with Mr. Bradley?

6 A Bradley? The lawyer I had for my probation. I didn't
7 meet with him. I only met him one time in the courtroom.
8 That's the only time I ever met him.

9 Q When you met him, what did you two discuss?

10 A Nothing really, I mean. Well, it don't look too good
11 for you. You've got all these arrests. Nothing really. I
12 mean, he just went over the main points, I guess.

13 Q At your probation revocation hearing, do you recall
14 telling the Judge at the hearing about your 17 arrests and
15 how they stemmed from not getting along with your uncle?

16 A Do what now?

17 Q Do you recall telling the Judge at your probation
18 revocation hearing about those arrests ---

19 A Yes, sir.

20 Q --- and explaining them?

21 A Yes, sir. Like she was saying, it should have never
22 happened to begin with. It should have never even been
23 mentioned.

24 Q At the end of the probation revocation hearing, do you
25 recall the judge listing his reasons for revoking your

1 probation?

2 A I do.

3 Q And do you recall those reasons being specifically
4 failing to report, failing to complete substance abuse
5 treatment, and being behind on restitution?

6 A Yeah, I mean, that's what he said. I mean, the main
7 reason I was violated and given so much time was because of
8 those 17 arrests. Once he said that I could see his entire
9 demeanor change, the Judge's. I could just tell he was more
10 leaning towards letting me go to rehab, but then once they
11 said 17 arrests it was the end of that.

12 MR. KOWALSKI: Beg the Court's indulgence. Nothing
13 further from the witness.

14 EXAMINATION

15 BY THE COURT:

16 Q Sir, what happened to rehab at Haven of rest?

17 A Haven of Rest?

18 Q I'm showing that you were held for bed space. You
19 were supposed to go to this inpatient treatment. You were
20 sentenced in June of 2019, and then this report says that
21 you were dismissed from that program a few months later for
22 insubordination to staff, disruptive behavior, not getting
23 along with other residents, et cetera.

24 A Well, I left there and went to Labor of the Fields.

25 Q You went to where?

1 A Labor of the Fields.

2 Q And did you complete that program?

3 A I was two weeks away from completing it, and then I
4 got ---

5 Q Was that an inpatient program?

6 A Yes, that is an inpatient program. I was in a work
7 phase there, and I then had some things going on, like with
8 my daughter. They were trying to get custody away from me,
9 and I remember a lot of things, like with my child. They
10 were trying to take custody away from me, and take away my
11 visitation rights, and I was already in rehab. There's a
12 bunch of things compiled. I just -- I left, because I
13 already had a job, and I was in the work phase. I left
14 there, and I had job. I thought I was okay. You know what
15 I'm saying? I left, and I started drinking again.

16 Q So, you failed to complete the inpatient substance
17 abuse treatment?

18 A Labor of the Fields. Yeah.

19 Q And also the Haven of Rest.

20 A When I left Haven of Rest I went to Labor of the
21 Fields. I went directly from Haven of Rest.

22 Q But I'm saying you didn't complete either program.

23 A I didn't complete it. No, I did not.

24 Q And in addition to trespassing, you were also arrested
25 for assault and battery third degree in 2019. I'm showing

1 several trespassings, but also public disorderly conduct,
2 malicious injury to personal property. So, it wasn't just
3 trespassing that you were arrested for.

4 A It was about 95 percent of it was. It was all at my
5 grandma's house. It was pretty much almost all at my
6 grandma's house. The City police, every time they'd see me,
7 they'd arrest me, no matter what.

8 Q And were you put on trespass notice? I'm showing that
9 they charged you with trespass after notice, in addition to
10 the assault and battery, the public disorderly conduct,
11 possession of other controlled substance, malicious injury
12 to personal property.

13 A The possession of controlled substance was
14 prescription medicine.

15 Q But I understand you were arrested for all those
16 things.

17 A Yeah.

18 Q And did you not come to court the first time in April?
19 Looks like there was a failure to appear on April 5, 2021,
20 when your first probation violation hearing was scheduled?

21 A I was in the city. I was in the city when I was
22 supposed to be there. I was actually ---

23 Q You were incarcerated?

24 A Yeah, I was in the city, and they didn't take me.
25 That's why I didn't make the court date.

1 Q And the probation agent says that you last reported in
2 January of 2020, failed to report on March 3, 2020, or
3 anytime thereafter.

4 A I was reporting to another agent.

5 Q Who are you reporting to?

6 A The agent before that. Whoever I was assigned to
7 report to before him. I can't remember. I don't recall his
8 name, because there were so many different ones. They
9 switched me back and forth about three times.

10 Q So I guess what my question is, when you say that you
11 thought you were in compliance with probation, in what
12 manner were you in compliance? So, part of your probation
13 is ---

14 A Where I was working. I was abstaining.

15 Q You were behind in your fees and fines. Correct?

16 A Yeah.

17 Q You had been rearrested 17 times. Correct?

18 A (NON-VERBAL RESPONSE)

19 Q I need you to say it out loud.

20 A Yes, ma'am.

21 Q You had started drinking again. Is that correct?

22 A Yes, ma'am.

23 Q You failed to complete any rehab program?

24 A I've been accepted into Solutions in Greenville, and
25 that's where I intend to go.

1 Q But that was the third treatment program, correct?

2 A This will be the third one, yeah. I mean, shoplifting?

3 I mean...

4 Q I understand. But prior to you getting on probation
5 for shoplifting, had you ever been convicted of any other
6 crimes?

7 A I don't see how that's relevant. I mean, yes. I have.

8 Q Well, it's relevant because you're now on a
9 shoplifting enhancement. It looks to me like you had a
10 pretty long criminal history. When the judge gave you the
11 opportunity to be out on probation for this offense and to
12 serve no time. If you successfully completed that
13 probation, you could terminate, that substance abuse. You
14 could terminate your probation, correct? All you had to do
15 was make it through the substance abuse program, stay out of
16 trouble for that period of time, and your probation could be
17 terminated. Correct?

18 A Yes, ma'am.

19 Q I'm showing PTUP after three years if all programs
20 successfully complete. Had you ever been on probation
21 before this time that you were put on probation?

22 A Yes, ma'am.

23 Q How many times had you been on probation before this?

24 A Two, three? Two or three times.

25 Q I'm looking at your records from SCDC. I see a

1 burglary third degree conviction in 2015, breaking into
2 motor vehicles in 2015, habitual traffic offender in 2015,
3 possession of methamphetamine first offense in 2015, a
4 breaking into motor vehicles in, looks like, maybe 2009.
5 It's hard to tell what the date is, but I'm seeing another
6 habitual traffic offender, a grand larceny, making a false
7 police report, driving under suspension, looks like a public
8 drunkenness, and then two burglary second degree
9 nonviolents, in maybe 2007, and a grand larceny in 2007.
10 Does that sound like it's correct?

11 A Yes, ma'am. For the most part.

12 Q And it looks like, on most of these, you got a nine
13 month sentence on the oldest charges. Looks like you got
14 one year on the 2009 charges, two years on the 2015 charges,
15 and presumably some probation on all those. Okay. Any
16 redirect?

17 MS. ROSS: No, Your Honor.

18 THE COURT: Anything further from the State?

19 MR. KOWALSKI: Yes. Oh, sorry, not for this witness,
20 Your Honor.

21 THE COURT: Anything else that you want to tell me,
22 sir?

23 THE APPLICANT: No.

24 THE COURT: Okay, thank you. You may step down.

25 MR. KOWALSKI: The State calls Robert Joseph Opperman.

1 THE COURT: Ms. Ross, you're resting?

2 MS. ROSS: Yes, Your Honor.

3 THE COURT: Mr. Opperman, if you would raise your right
4 hand for me, please.

5 WHEREUPON, Robert Opperman, having first
6 been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. KOWALSKI:

9 Q And again, your full name is Robert J. Opperman?

10 A Correct.

11 Q Good morning, Mr. Opperman.

12 A Good morning.

13 Q How long have you been practicing law?

14 A Since May 26, 2009.

15 Q And of that time, how much of it has been criminal
16 law?

17 A Most of it. I was briefly in private practice from
18 2011 to 2013, and I did a little bit of criminal work. But
19 from 2013 to present, most of that time I've been employed
20 as a public defender, except for about nine months when I
21 was working for Department of Social Services.

22 Q Okay. How did you come to represent Mr. Armstrong?

23 A This was a case in Anderson county. At the time, I
24 was working in the Anderson County office of the Tenth
25 Circuit Public Defender. He qualified, and I was assigned a

1 case for our office.

2 Q So, in that time you represented him, did you have
3 enough time to meet and speak with him?

4 A Yes.

5 Q Did you explain to him his options?

6 A Yes, I did.

7 Q Did he appear to understand everything that you
8 explained to him?

9 A Yes, but I'll give a caveat to that. So, during that
10 period of time, my observation was that Mr. Armstrong seemed
11 to be struggling with some mental health conditions. One of
12 the things that we did during the course of his case was ask
13 for an evaluation at the Department of Mental Health. He
14 was evaluated, and the Department determined that he was
15 competent, but I tried to take into account my
16 representation. Some stuff, he didn't have symptoms. He may
17 have been competent, but he did have symptoms. I'm not a
18 mental health professional. I can't diagnose him myself,
19 but I tried to take extra care to be sure that he understood
20 what I was saying.

21 Q Right, and you said the Department of Mental Health
22 found him competent?

23 A That's correct.

24 Q So did you, for Mr. Armstrong's case, did you see any
25 non-frivolous crimes for an appeal?

1 A I did not.

2 Q And did Mr. Armstrong ever require an appeal?

3 A Not that I recall.

4 Q Did he ever ask you to file an appeal?

5 A No.

6 MR. KOWALSKI: Beg the Court's indulgence. Thank you.

7 No further questions.

8 THE COURT: Ms. Ross?

9 MS. ROSS: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MS. ROSS:

12 Q Mr. Opperman, do you recall specifically advising Mr.
13 Armstrong that he could appeal that guilty plea?

14 A I don't recall that, but I think I probably didn't.

15 Reason for that is my memory is somewhat dim of that day

16 because it was five years ago. I remember we were moving

17 fast, and I don't believe I spoke to him after court, so if

18 I had to guess, I'd say that I didn't tell him that he had

19 that right.

20 MS. ROSS: All right, thank you. No further question.

21 THE COURT: Anything further from the State?

22 MR. KOWALSKI: No, Your Honor.

23 THE COURT: Thank you, sir. You may step down.

24 THE WITNESS: May I be excused, Your Honor?

25 THE COURT: Sure. Any objection to excusing this

1 witness?

2 MR. KOWALSKI: No.

3 MS. ROSS: No objection.

4 MR. KOWALSKI: The State now calls Timothy Matthew
5 Bradley.

6 THE COURT: Mr. Bradley, if you'll raise your right
7 hand for me, please.

8 WHEREUPON, Timothy Matthew Bradley,
9 having first been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. KOWALSKI:

12 Q Good morning, Mr. Bradley.

13 A Good morning.

14 Q How long have you been practicing law?

15 A Since November 2005.

16 Q And since November 2005, how much of that time has
17 been practicing criminal law?

18 A For the first six years I was an Assistant Solicitor,
19 and since 2011 I've been in private practice doing defense
20 work.

21 Q And what kind of experience do you have with
22 representing for probation revocation hearings?

23 A I have the contract with the Public Defender's Office
24 to handle all the probation revocation cases in Anderson
25 County that qualified for the Public Defender, and I've had

1 that contract. I began in January 2020, so going on a
2 complete four years now. So a lot.

3 Q How did you come to represent Mr. Armstrong for this
4 probation hearing?

5 A He was incarcerated, and so he automatically qualified
6 for the Public Defender's Office to represent him for
7 probation revocation. So, since I have the contract, I was
8 assigned this case.

9 Q So, in that time you represented him, did you have
10 enough time to meet and speak with them before his hearing?

11 A I did speak with him. When Covid started, they set up
12 an attorney client confidential phone line at the jail so we
13 could call in and speak to our clients that way instead of
14 meeting with them in person. So, I had a phone conversation
15 with him prior to the date of court, and then I spoke to him
16 again on the day of court.

17 Q So did you explain to the Applicant his options?

18 A What I did was I explained to him what to expect at
19 the hearing, how probation revocation hearings work, and
20 that it was up to the Judge to decide whether or not he
21 would be revoked or continued on probation. We discussed --
22 I read to him the 1106 violation report for him to
23 understand all the allegations against him. And then we
24 discussed what we would be seeking and discussed what we
25 would be asking for from the Judge, which included a short

1 period of 90 days for him to go to Solutions Recovery, so
2 that's what we did.

3 Q And he appeared to understand everything you explained
4 to him?

5 A He did.

6 Q At the probation revocation hearing, did you mention
7 to the Judge that the Applicant had applied for a bed space
8 at Solutions Recovery?

9 A I did. He said it, and I also said it when Judge
10 McIntosh gave me an opportunity to speak on his behalf. We
11 asked that he be allowed to -- he already had some time
12 built up. We asked that he be revoked only 90 days and for
13 him to be allowed to go to Solutions Recovery and complete
14 that program there.

15 Q So about Applicant's 17 arrests, do you think that
16 objecting to those being mentioned at the probation
17 revocation hearing would have altered the outcome of the
18 hearing?

19 A I do not. Because the arrests were already laid out
20 in the violation report and the Judge already had the
21 violation report. They get those beforehand for them to
22 read. Judge McIntosh had that in his hand. And the way it
23 was couched in the actual violation report was that it was
24 he failed to notify agent of these arrests. And so that was
25 read to Mr. Armstrong, and he knew that was what they were

1 talking about. That was the violations that he failed to
2 notify the agent, not the actual arrest. But Judge McIntosh
3 already knew about it. It was in the report. I believe that
4 at the hearing Agent Edge even said, after mentioning the
5 arrest, he said it's not a violation, because it's not. In
6 having done this so much, and knowing Judge McIntosh, I know
7 that he does not consider any charges as a violation. And
8 when he read his sentence, when he spoke his sentence, what
9 he was violating Mr. Armstrong for, he did not mention those
10 arrests. It was just failure to report, failure to complete
11 substance abuse counseling, and failing to pay restitution.

12 Q Okay. And lastly, do you think that clarifying that
13 the arrests resulted from Applicant's uncle placing him on
14 trespass notice would have changed that outcome?

15 A I don't believe I was aware about the uncle being the
16 one that -- I don't believe Mr. Armstrong told me about his
17 uncle placing him on trespass notice beforehand. But I did
18 mention -- during the hearing, Mr. Armstrong told Judge
19 McIntosh, explained to Judge McIntosh what the charges
20 stemmed from. When I was given the opportunity to speak, I
21 said the same thing, that it was mostly magistrate level and
22 below offenses coming from arguments there. So I did speak
23 about that and Mr. Armstrong had already spoken to Judge
24 McIntosh about what the charges stemmed from. So, as far as
25 specifically saying that the uncle had placed him on

1 trespass notice, I don't know if I was aware of the uncle.
2 But Mr. Armstrong and I had discussed about the arguments
3 being at the home. That's what the majority of the charges
4 stemmed from.

5 MR. KOWALSKI: Beg the Court's indulgence. No further
6 questions from the witness.

7 THE COURT: Ms. Ross?

8 CROSS-EXAMINATION

9 BY MS. ROSS:

10 Q Good morning.

11 A Good morning.

12 Q Did you ever reach out to Solutions Recovery directly
13 to see whether Mr. Armstrong had been accepted in the
14 program or try to get some verification of that?

15 A I did not ask. Agent -- excuse me. Mr. Armstrong had
16 told me that he had been accepted. We did mention that to
17 the Judge. In my practice, the judges do not require them
18 to have an acceptance letter in hand at the time of the
19 hearing. In fact, there's a lot of times that we reach
20 agreements that the probationer will be held for bed space
21 until they are found a bed space somewhere. So a lot of
22 times that's what judges end up sentencing a probationer,
23 even if they're not even accepted anywhere yet. But we did
24 mention -- I did mention to Judge McIntosh that he had been
25 accepted.

1 Q All right. But hadn't -- just spoken to them.

2 A I had not. Mr. Armstrong told me that he had been
3 accepted, I believe, right at the end of the week prior to
4 this hearing. I believe it was on a Monday, if I recall
5 correctly.

6 Q All right. And as far as these other arrests, did
7 you do any independent investigation of those arrests or to
8 talk to the uncle or grandmother about the situation going
9 on?

10 A I did not speak to uncle, no, or grandmother. I've
11 spoken with Mr. Armstrong at length about it, and it's in my
12 notes from our conversation about the arguments with the
13 family. And he stayed there because he wanted to be with
14 his grandmother, to help his grandmother. I did look up in
15 the system, in the public index, to verify that they were
16 still pending. And they all were still pending. I did do
17 that. But just as far as what they stemmed from and what
18 they were, looking at it on the public index and then
19 talking to Mr. Armstrong is what I did.

20 MS. ROSS: Thank you. I've got no further questions.

21 THE COURT: Anything further from the State?

22 MR. KOWALSKI: Nothing further.

23 THE COURT: Thank you. You can step down.

24 THE WITNESS: May I be excused?

25 THE COURT: Any objections to excusing Mr. Bradley?

1 MS. ROSS: No objection.

2 THE COURT: You may be excused. Thank you.

3 MR. KOWALSKI: The State has no further witnesses.

4 THE COURT: Okay. Anything further from Mr.

5 Armstrong?

6 MS. ROSS: No, Your Honor. Just a brief argument. It
7 doesn't appear there's evidence that he was advised of his
8 right to appeal that original shoplifting. Then going -

9 THE COURT: So, the appeal was after he was revoked? Is
10 that the appeal that I see that was withdrawn?

11 MS. ROSS: Yes, but there was no -- the argument --
12 this is the situation where Mr. Armstrong received the max
13 in this case. His argument would be that with the plea to
14 shoplifting with Mr. Opperman, he was not given advice of
15 his right to appeal, and therefore did not know that he
16 could have appealed. And I believe he said he would have
17 wanted to appeal that ten-year sentence hanging over his
18 head from his original plea.

19 THE COURT: So what would his issue be on appeal from
20 the plea?

21 MS. ROSS: Well, that's a valid point, Judge. And as
22 far as the case law, in all transparency, my understanding
23 is for it to be ineffective, an attorney has to not appeal
24 once he's been requested to put in an appeal. I believe
25 that's the standard. So, I recognize that and I understand

1 that.

2 THE COURT: And I guess what I'm asking is, it was a
3 guilty plea. It looks like he was thoroughly questioned on
4 the record. Judge McIntosh covered all the areas. So, if
5 he was appealing, what would the issue be that he would
6 raise to the Appellate Court?

7 MS. ROSS: I'm unsure, but given that he got the
8 maximum sentence on the probation revocation, the Appellate
9 issue is the only argument open to him. So, he is making
10 that argument. But I did not see -- in fact, I'm not sure
11 that I got the transcript of the actual plea to shoplifting.
12 But generally, and I would advise Mr. Armstrong, it is very
13 difficult to have a strong appeal from the guilty plea
14 unless the Judge makes an egregious error during the plea
15 colloquy, or something like that. But I can't speak to
16 that. I don't have that. But that belated appeal is a
17 possibility from that original guilty plea for PCR.

18 As far as the probation violation, probation agents do
19 this quite often in attempts to say that there were other
20 arrests that are out there. Those should not be considered
21 by the Judge, and I argue, even mentioned, unless they
22 resulted in conviction or involved the use of a weapon or
23 domestic violence. I believe there are exceptions for that.
24 So we would argue that the probation lawyer who did the
25 probation revocation hearing should have mentioned to the

1 Judge, or attempted mentioned to the Agent prior to the
2 Judge hearing about all these arrests, that that's not
3 something that should be considered during probation
4 revocation.

5 I grant you there are many other issues to consider,
6 but they may not have resulted in the full revocation of ten
7 years when there was an option of drug treatment out there.
8 Especially in a client who did have mental health issues,
9 and obviously drug issues, that could have been addressed by
10 inpatient drug treatment. And that would be our argument.

11 THE COURT: Mr. Kowalski, anything you want to say,
12 sir?

13 MR. KOWALSKI: So, firstly, concerning the allegations
14 of ineffective assistance of plea counsel, so absent
15 extraordinary circumstances, plea counsel has a
16 constitutional duty to consult the Defendant about an appeal
17 only when there is a reason to think that a rational
18 Defendant would want to appeal, or that the Defendant
19 reasonably demonstrated to counsel that he was interested in
20 appealing. Mr. Opperman's credible testimony today
21 establishes that following the guilty plea, counsel did not
22 believe that there were any non-frivolous grounds for an
23 appeal, and that Mr. Armstrong did not reasonably
24 demonstrate an interest in appealing. So, no extraordinary
25 circumstances as far as plea counsel's representation.

1 Concerning the allegations of ineffective assistance of
2 counsel at the probation revocation hearing, Mr. Bradley
3 today credibly testified that if he had objected to the
4 mention of Applicant's arrests or clarified that they
5 resulted from the trespass notice, the outcome of the
6 hearing would not have changed. So, since the Judge had
7 access to the violation report and also revoked his
8 probation on other grounds that he lists specifically in the
9 transcript. So that establishes that no prejudice was done
10 at the hearing as a result of Mr. Bradley not doing what
11 Applicant now alleges he should have done. Further, Mr.
12 Bradley did make the Court aware of the Applicant having
13 applied for a bed space at Solutions Recovery and informed
14 the Court that the Applicant had told him that he had been
15 accepted.

16 So, for all the reasons I've just stated, the State
17 asks that the Court dismiss Mr. Armstrong's application.

18 THE COURT: I'm going to take a close look at it. I
19 do see in the record that before the Judge at the probation
20 violation hearing, Mr. Armstrong does say that he had been
21 doing drugs. He never mentioned anything about his
22 grandfather having an issue with him. What he said was that
23 his mom and his little brother, that he did not get along
24 with them, that we're, "Bumping heads all the time." He
25 makes no mention of the grandfather, or uncle, anybody else

1 being upset with him at the hearing. But again, I'm going
2 to take a close look at this before I give you all my
3 ruling.

4 MR. KOWALSKI: Thank you, Your Honor.

5 MS. ROSS: Thank you, Your Honor.

6 ***END OF REQUESTED TRANSCRIPT OF RECORD)***

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Certificate of Reporter

I, the undersigned, Tara T. Scott, CVR, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Anderson County, South Carolina, on the 16th day of September, 2024.

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

Tara T. Scott, CVR
Official Court Reporter
November 5, 2024

25 FEB 3 PM 2:29:49
Anderson, SC Dist. CP/88

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Justin A. Armstrong, #327868,

Applicant,

v.

State of South Carolina,

Respondent.

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

) CASE NO. 2022-CP-04-01024

) **ORDER OF DISMISSAL**
) **WITH PREJUDICE**

A TRUE COPY

FEB - 3 2025

Presiding Judge:	Hon. Kristi F. Curtis
Applicant's Attorney:	Susannah C. Ross, Esq.
Respondent's Attorney:	Ryan T. Kowalski, Esq.
Plea Counsel:	Robert J. Opperman, Esq.
Probation Counsel:	Timothy Matthew Bradley, Esq.
Date of Hearing:	September 16, 2024
Court Reporter:	Tara T. Scott

Beena Thomason
CLERK OF COURT

This matter comes before the Court by way of Justin A. Armstrong's application for post-conviction relief (PCR) filed on May 4, 2022, challenging his conviction for Possession of Methamphetamine, first offense, and Shoplifting. Respondent, the State of South Carolina, made its Return and partial motion to dismiss on February 15, 2024, requesting an evidentiary hearing to resolve the claims as set forth in the application. On April 1, 2024, Applicant, through counsel, filed an Amended Post-Conviction Relief Application asserting additional claims of ineffective assistance of counsel.

An evidentiary hearing was convened on September 16, 2024, at the Anderson County Courthouse before the Honorable Kristi F. Curtis. Applicant was present and represented by Susannah C. Ross, Esquire. Assistant Attorney General Ryan T. Kowalski represented Respondent. At the hearing, Applicant proceeded on the claims set forth in his original and amended applications. In support of these claims, Applicant testified on his own behalf, and

Respondent presented testimony from Robert J. Opperman, Esquire (Plea Counsel) and Timothy Matthew Bradley, Esquire (Probation Counsel).

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 (SCDC). During its December 2018 term, the Anderson County Grand Jury indicted Applicant for Shoplifting (2018-GS-04-03247). During its March 2019 term, the Anderson County Grand Jury indicted Applicant for Possession of Methamphetamine (2019-GS-04-01500).

On June 18, 2019, Applicant appeared before the Honorable R. Scott Sprouse and pleaded guilty to Possession of Methamphetamine, first offense, and Shoplifting. Robert J. Opperman, Esquire (Plea Counsel), represented Applicant. Assistant Solicitor Catherine T. Huey prosecuted the case. Judge Sprouse sentenced Applicant to concurrent terms of ten years for Shoplifting and three years for Possession of Methamphetamine, both sentences to be suspended to 89 days' time served and five years' probation.¹

Applicant did not appeal his sentences or convictions.

¹ Judge Sprouse ordered special conditions of probation under the same conditions concurrent herein: (a) Applicant to pay restitution in the amount of \$479.00, (b) Applicant to attend inpatient drug treatment, subject to a mental health screening, random drug and alcohol testing, and (c) opportunity to PTUP Applicant's probation after three years upon successful completion of the above-listed conditions.

PROBATION REVOCATION AND SUBSEQUENT APPEAL

On June 14, 2021, Applicant appeared before the Honorable R. Lawton McIntosh concerning revocation of his probation for violation of his conditions. Applicant was represented by Timothy Matthew Bradley, Esquire. Agent Edge represented the State. Judge McIntosh revoked Applicant's probation in full for willfully failing to report, failing to complete inpatient substance abuse treatment, and falling behind on his restitution payments. (Prob. Rev. Tr. p. 11). Judge McIntosh gave Applicant credit for time served. (Prob. Rev. Tr. p. 11).

On June 18, 2021, Timothy Matthew Bradley, Esquire, filed a notice of appeal on behalf of Applicant concerning his probation revocation. Appellate Defender Jessica M. Saxon represented Applicant on his appeal. On November 17, 2021, Applicant notified the Court of Appeals of his intention to withdraw his appeal, signing an affidavit stating he freely, voluntarily, and knowingly waived his right to appeal and wished to proceed with PCR. The Court of Appeals returned the Remittitur on December 29, 2021.

FACTS ADDUCED AT THE GUILTY PLEA HEARING

The facts giving rise to Applicant's conviction were articulated by the State at Applicant's plea hearing, as follows:

Your honor, as to the shoplifting, that occurred on October 22nd of 2018. The defendant was ID'd on a video leaving the JC Penney here at the mall in Anderson City without having paid for that – paid for the Kitchen Aid mixer which was valued at around 400-and-something dollars, your Honor, which is what he is signing up for restitution for. Also, as to the possession of meth, that occurred on March 22, 2019, at [REDACTED] West Whitner Street. Deputies responded due to a disturbance. They found this defendant acting belligerently. They placed him under arrest for breach of peace, and search incident yielded just about a gram of meth, your Honor, in his pocket.

(Plea Tr. pp. 5, ll. 22-25 – 6, ll. 1-10).

CURRENT APPLICATION

In his original application, Applicant alleges he is being held in custody unlawfully based on the following:

1. Ineffective Assistance of Counsel; Attorney of Record Mr. Robert Joseph Opperman.²
 - a. Applicant claims he was “denied the right to an appeal of the underlying convictions because [he] neither knew could appeal nor did [his] attorney properly advise [him] of the right to an appeal.”
 - b. Applicant claims, counsel “never informed [him] of his right to an appeal after plea agreement.”
2. Probation Arbitrarily and Unlawfully Revoked.
 - a. Applicant claims, “probation was arbitrary revoked [because] he had secured Bedspace in Solutions recovery in Greenville, SC [and] Judge should have allowed [him] to go instead of revoking probation.”
 - b. Applicant claims, “until probation was violated [he] did not know was being held unlawfully.”

Applicant requested relief as follows:

“Continue probation and revoke prison sentence.”

On April 1, 2024, Applicant, through PCR Counsel, filed an amended application alleging the following:

1. Ineffective assistance of counsel for failure to:
 - a. Object to the probation agent mentioning seventeen arrests, none of which resulted in conviction, during the Applicant’s probation revocation hearing; and
 - b. Failing to clarify at the revocation hearing that the arrests resulted from Applicant’s uncle placing him on trespass notice at his grandmother’s house.

Before this Court are the Anderson County Clerk of Court records, Applicant’s records from the South Carolina Department of Corrections, the plea transcript, the probation revocation

² Respondent interprets this allegation as a request for belated review of direct appeal issues pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974).

hearing transcript, records from Applicant's direct appeal, and records from this Post-Conviction Relief action.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act³ (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;
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. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a

³ S.C. Code Ann. §§ 17-27-10 to -160.

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 v. Washington* to determine whether counsel’s conduct “was so [ineffective] as to require reversal” of the applicant’s conviction. 466 U.S. 668, 687 (1984). To obtain relief, 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. *Id.* at 687–88; *accord. Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that “[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable.” (citation and internal quotation marks omitted)).

Regarding the deficiency prong of the *Strickland* analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel’s performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption “by proving that his attorney’s representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy.” *Kimmelman v. Morrison*, 477 U.S. 365, 384 (1986);

cf. Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize counsel's performance in a highly deferential manner, make every effort "to eliminate the distorting effects of hindsight," and "evaluate the conduct from counsel's perspective at the time" in light of then-existing circumstances. *Strickland*, 466 U.S. at 689. In order to establish counsel's performance was deficient, the applicant must demonstrate "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* at 687. Accordingly, counsel's performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply "deviated from best practices or most common custom." *Harrington v. Richter*, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Strickland*, 466 U.S. at 691. To meet this burden, counsel's deficient performance must have prejudiced the applicant to such an extent, there is a reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625; *see Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) ("To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different."). Importantly, "[t]he likelihood of a different result

must be *substantial*, not just conceivable.” *Richter*, 562 U.S. at 112.

Finally, 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 689–90. Courts must be wary of second-guessing counsel’s trial tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant’s burden of proving both *Strickland* components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. 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. *Id.* at 686; *see Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”); *cf. United States v. Morrow*, 977 F.2d 222, 229 (6th Cir. 1992) (“[T]he threshold issue is not whether [the applicant’s] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.”).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea. *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel. *See Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel’s performance under the first prong of *Strickland* remains unchanged, the applicant must show that counsel’s representation fell below an 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 guilty 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 decisionmaking" 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, 367 (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).

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).

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

This Court finds applicable the strong presumption that at all stages of Plea Counsel and Probation Counsel's representation of Applicant, they rendered adequate assistance and exercised reasonable professional judgment in their 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; see *Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL

Allegation: Plea Counsel Failed to Advise Applicant of his Right to Appeal

Applicant alleged Plea Counsel was ineffective for failing to advise him of his right to appeal his guilty plea, denying Applicant his right to appeal. This Court finds this allegation to be 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 non-frivolous ground exists to appeal—or defendant reasonably demonstrated an interest in appealing. *Roe v. Flores-Ortega*, 528 U.S. 470 (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

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.”).

At the evidentiary hearing, on direct examination, Applicant testified that he did not know he had the right to appeal his guilty plea, and that he would have wanted to appeal if he had known about his right to an appeal. (PCR Tr. p. 7).

On cross-examination, Applicant testified that he did not know he had to ask Plea Counsel to file an appeal on his behalf. (PCR Tr. p. 12). Applicant testified he did not know what questions to ask because he did not know the law, and Plea Counsel should have advised him of his right. *Id.*

On direct examination, Plea Counsel testified that he had enough time to meet and speak with the Applicant and that he explained his options to him (PCR Tr. p. 21). Plea Counsel also testified that he did not see any non-frivolous grounds for an appeal, and that Applicant never asked him to file an appeal. (PCR Tr. p. 22).

On cross-examination, Plea Counsel testified that he probably did not advise Applicant that he could appeal his guilty plea and that he did not believe that they spoke after court. (PCR Tr. p. 22).

This Court finds Applicant has failed to meet his burden to show extraordinary circumstances existed that would have required Plea Counsel to appeal on his behalf, and thus, Plea Counsel was not deficient, and Applicant suffered no prejudice. Plea Counsel **credibly** testified Applicant did not advise him he wished to appeal his guilty plea. Notably, Applicant testified on direct and cross that he did not request Plea Counsel file an appeal on his behalf. Additionally, Plea Counsel **credibly** testified that there were no non-frivolous issues that would

have prompted Plea Counsel to appeal on Applicant's behalf. Therefore, this allegation is **DENIED** and **DISMISSED WITH PREJUDICE**.

INEFFECTIVE ASSISTANCE OF PROBATION COUNSEL

Allegation: Probation Counsel Failed to Object to Mention of Arrests

Applicant alleged that Probation Counsel was ineffective for not objecting to the mention of Applicant's recent arrests during his probation revocation hearing. This Court finds this allegation to be without merit.

Ultimately, the "use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney, and will very seldom constitute objectively deficient representation." *United States v. Nguyen*, 379 F. App'x 177, 181 (3d Cir. 2010); *see Humphries v. Ozmint*, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) ("[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under *Strickland*."); *cf. Bergmann v. McCaughtry*, 65 F.3d 1372, 1380 (7th Cir.1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot.).

When analyzing counsel's performance, the reviewing court will "strong[ly] presume[e] that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. *Yarborough v. Gentry*, 540 U.S. 1, 8 (2003) (internal quotation marks omitted); *cf. Sallie v. State of N.C.*, 587 F.2d 636, 640 (4th Cir. 1978) (*Strickland* standard was not "intended to promote judicial second-guessing on questions of strategy as basic as the handling of a witness"). Accordingly, when counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *see Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992) ("Courts must be

wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel).

At the evidentiary hearing, on direct examination, Applicant testified that the seventeen arrests involving Applicant being present at his grandmother's house did not result in any convictions, and that the mention of the arrests was the deciding factor at his revocation hearing. (PCR Tr. pp. 10-11). Applicant testified that Probation Counsel did not object to the mention of these arrests. (PCR Tr. p. 11). Applicant testified that his uncle would call the police each time Applicant would go to his Grandmother's house, and that none of the arrests resulted in convictions and his Grandmother never pressed charges. (PCR Tr. p. 10). Applicant testified that those prior arrests should not have been mentioned at his probation revocation hearing unless he was convicted of the charges. (PCR Tr. pp. 11, 13).

On direct examination, Probation Counsel testified that if he had objected to the mention of Applicant's seventeen arrests, the outcome of the probation revocation hearing would not have changed, since the arrests were already before Judge McIntosh in the violation report. (PCR Tr. p. 25). Probation Counsel also testified that the way the arrests were couched in the violation report was that Applicant had failed to notify his agent of the arrests. (PCR Tr. p. 25). Probation Counsel testified that he told Judge McIntosh that the charges were mostly magistrate and lower-level offenses. (PCR Tr. pp. 26-27).

On cross-examination, Probation Counsel testified that, at the time of the probation revocation hearing, the charges stemming from the seventeen arrests were still pending. (PCR Tr. p. 28).

This Court finds Applicant has failed to articulate a basis for a valid objection to the mention of his seventeen arrests. *See State v. Hutchinson*, 215 W. Va. 313, 323, 599 S.E.2d 736,

746 (2004) (citing *Clark v. Collins*, 19 F.3d 959, 966 (5th Cir.1994) (“Failure to raise meritless objections is not ineffective lawyering; it is the very opposite.”). First, the arrests were properly before the probation revocation court, as arrests—even which have not resulted in convictions—are a violation of the conditions of Applicant's probation.

Further, Probation Counsel **credibly** testified that the outcome of Applicant's probation revocation hearing would not have changed had he objected to the mention of the arrests, as they were in the record before the probation revocation court. When counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel. *Caprood v. State*, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000). The Applicant has failed to articulate a basis for a valid objection to the mention of his arrests. *See Miller v. Keeney*, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both *Strickland* prongs); *U.S. ex rel. Link v. Lane*, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). Notably, the transcript of the probation revocation hearing shows that Judge McIntosh listed his reasons for revoking Applicant's probation, specifically, for failing to report, failing to complete substance abuse treatment, and being behind on restitution. (Prob. Rev. Tr. p. 11). Therefore, Applicant has failed to show that Probation Counsel's performance was deficient and or that his conduct prejudiced Applicant. Accordingly, this allegation is **DENIED** and **DISMISSED WITH PREJUDICE**.

Allegation: Failure to Meet Prior to Probation Revocation

Applicant alleged Probation Counsel was ineffective for failing to meet with him prior to his revocation hearing. Applicant testified that he met with Probation Counsel for the first time on the day of his revocation hearing. (PCR Tr. p. 8). Applicant testified that Probation Counsel

“hardly did anything” and that he “probably said two words the whole time”. (PCR Tr. pp. 8-9).

This Court finds this allegation to be without merit.

Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy competency. *Campbell v. Polk*, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); *United States v. Olson*, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte). "Brevity of time spent in consultation, without more, does not establish that counsel was ineffective." *Easter v. Estelle*, 609 F.2d 756, 759 (5th Cir. 1980) (holding it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to insure an adequate defense and to become thoroughly familiar with the facts of the case and the law applicable to the case, and holding the record revealed that counsel was so prepared.).

South Carolina case law has established that even if counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. *See Harris v. State*, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing *Easter*) ("First, there is no question that counsel met with [Applicant] on several occasions prior to the first trial. Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation."). Mere speculation and conjecture are not insufficient to substantiate an allegation that counsel's deficient performance was prejudicial. *See Harris v. State*, 377 S.C. 66, 659 S.E.2d 140 (2008), *abrogated by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018).

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all

significant decisions in [his] case." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*). Probation Counsel's **credible** testimony indicates he had a phone conversation with the Applicant and met with him the day of the probation revocation hearing, and that he explained to Applicant how the hearing worked, the allegations against him, and what he would be asking for. (PCR Tr. p. 24). Applicant failed to present "any evidence of how additional preparation or communication would have resulted in a different outcome." *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012); see *Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (explaining that, where an applicant failed to present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial, applicant failed to show his counsel's lack of preparation prejudiced him); *Harris v. State*, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (finding that, when there is evidence counsel met with a defendant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018).

This Court further finds Applicant has failed to meet his burden of showing Probation Counsel was constitutionally ineffective for failing to meet with Applicant a sufficient number of times. See *Campbell, Olson, and Easter, supra*.

Accordingly, Applicant's claims pertaining to Probation Counsel's failure to meet with him a sufficient number of times are **DENIED** and **DISMISSED**.

PROBATION UNLAWFULLY REVOKED

Allegation: Applicant's Probation was Arbitrarily Revoked Where Applicant Did Not Violate the Terms of His Probation and He Had Secured a Bed Space at Solutions Recovery.

Applicant alleged that his probation was arbitrarily revoked where he had secured a bedspace at Solutions Recovery, and the judge should have permitted him to enter Solutions Recovery for rehabilitation rather revoking his probation. Applicant also testified that he was calling in every month and that he felt like he was doing what he needed to do on probation "for the most part." (PCR Tr. p. 8). This Court finds this allegation to be without merit.

The revocation of probation is not a stage of criminal prosecution. However, a probationer "has a constitutionally protected liberty interest and cannot be denied due process simply because probation has been described as an act of grace." *State v. Allen*, 370 S.C. 88, 634 S.E.2d 653 (2006); *Morrissey v. Brewer*, 408 U.S. 471, 480–90 (1972) (holding that minimum requirements of due process in parole revocation proceeding include "(a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.")). Revocation of probation is within the discretion of the court, but it may not be revoked arbitrarily. *In re Whitney*, 421 F.2d 337 (1st Cir. 1970); *State v. Hamilton*, 333 S.C. 642, 511 S.E.2d 94 (Ct. App. 1999)

("before revoking probation, the circuit judge must determine if there is sufficient evidence to establish that the probationer has violated his probation conditions.")).

The transcript of the probation revocation hearing shows that Applicant agreed with the probation revocation court that he violated his probation by failing to report. (Prob. Rev. Tr. pp. 4-5). Since Applicant's original sentence on June 18, 2019, Applicant had been arrested seventeen times, and though not a violation of his probation on its own, evidenced that Applicant was not a good candidate for probation. (Prob Rev. Tr. pp. 6-7). Probation Counsel informed Judge McIntosh that Applicant had been accepted into Solutions Recovery and asked that Applicant be allowed to complete that program. (Prov. Rev. Tr. pp. 10-11). Judge McIntosh listed his reasons for revoking Applicant's probation, specifically, for failing to report, failing to complete substance abuse treatment, and being behind on restitution. (Prob. Rev. Tr. p. 11).

On direct examination, Applicant testified that he was calling in every month. (PCR Tr. p. 8). Applicant testified he felt like he did what he needed to do on probation. (PCT Tr. p. 8). Applicant testified he was arrested seventeen times because his uncle would call the police when he saw Applicant at his grandmother's house helping her. (PCR Tr. pp. 9-10). Applicant testified that he still has a bed space available for him at an inpatient treatment facility after he gets out. (PCR Tr. p. 11). Applicant testified that the deciding factor for his probation revocation was the mention of the seventeen arrests. (PCR Tr. p. 11).

During *sua sponte* questioning by this Court, Applicant testified that he left rehabilitation at Haven of Rest to go to Labor of the Fields, an inpatient program. (PCR Tr. pp. 14-15). Applicant testified he began drinking again during his time at Labor of the Fields and did not complete any rehab program. (PCR Tr. pp. 15, 17). Applicant testified that he was also arrested for assault and battery in the third degree, public disorderly conduct, possession of a controlled substance,

malicious injury to personal property, and charged with trespass after notice in addition to his arrests for trespassing. (PCR Tr. pp. 15-16). Applicant testified he failed to appear for his first probation violation hearing on April 5, 2021, because he was incarcerated, and they did not transport him. (PCR Tr. p. 16). Applicant testified that his newer probation agent said he failed to report beginning on March 3, 2020, because he was reporting to the older probation agent at the time, and that they switched his probation agents about three times. (PCR Tr. p. 17). Applicant testified that he was behind on his fees and fines and had been rearrested seventeen times. (PCR Tr. p. 17).

On cross-examination, Probation Counsel testified that Applicant told him he had been accepted into Solutions Recovery, and that in his experience practicing, an acceptance letter was not required at the hearing. (PCR Tr. p. 27).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove that his probation was revoked arbitrarily. *See In re Whitney, Hamilton, supra.* The fact Applicant had a bedspace at Solutions Recovery does not prohibit the probation revocation court from revoking his probation. Further, Applicant's contention he did not violate probation is **not credible**. The probation court had sufficient evidence before it to revoke Applicant's probation, including Applicant's own admission that he had violated the conditions of his probation. Further, when questioned by this Court, Applicant admitted he had violated his probation. Therefore, this allegation is **DENIED** and **DISMISSED WITH PREJUDICE**.

CONCLUSION AND SIGNATURE ON FOLLOWING PAGE

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations which would require this Court to grant his application for post-conviction relief. This Court finds that neither Plea Counsel nor Probation Counsel were deficient in any manner, Applicant was not prejudiced by their representation, and Applicant's probation was not arbitrarily revoked. Therefore, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to 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). Rule 71.1(g), SCRCP, provides if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This Court denies relief and dismisses the action with prejudice;
and
2. Applicant shall be remanded to the custody of the State.

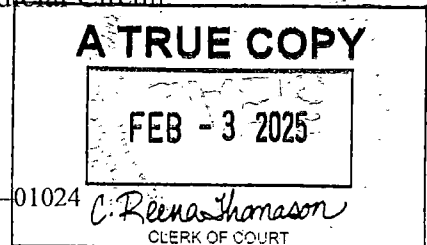
AND IT IS SO ORDERED this 24 day of Jan., 2025.

25 FEB 3 PM 2:30:00
Anderson, SC CDC, CP/GS

Kristi Curtis

KRISTI F. CURTIS
Presiding Judge
Tenth Judicial Circuit

Sumter, South Carolina



2019

DOCKET NO. -GS-04- 01500

WITNESSES

69

Anderson Co. Sheriff's Office
Charles F Wohlleb, IV

ARREST WARRANT NUMBER

2019A0410100588

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Grand Jury
Date:

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS

_____, TERM

THE STATE

VS.

JUSTIN ALLAN ARMSTRONG

COMMITMENT

INDICTMENT FOR

POSSESSION OF METHAMPHETAMINE

SC Code: § 44-53-375(A)
CDR Code: 3009

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

INDICTMENT

COURT REPORTER

At a Court of General Sessions, convened on _____, the
Grand Jurors of Anderson County present upon their oath:

POSSESSION OF METHAMPHETAMINE

The defendant, Justin Allan Armstrong, did on or about March 22, 2019, in Anderson County, South Carolina, knowingly or intentionally possess Methamphetamine, a Schedule II controlled substance as defined in Section 44-53-110. All in violation of 44-53-375(A) of the South Carolina Code of Laws (1976) as amended.

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



CATHERINE T. HUEY
DEPUTY SOLICITOR

WITNESSES

Anderson Police Dept.
Michael Barnes

ARREST WARRANT NUMBER

2018A0420700992

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

DEC 18 2018

William Garick
Foreperson

VERDICT

Foreperson of Grand Jury
Date:

DOCKET NO. 2018-GS-04-03247

**The State of South Carolina
County of Anderson**

COURT OF GENERAL SESSIONS

DEC 18 2018

_____, TERM

THE STATE

VS.

JUSTIN ALLAN ARMSTRONG

INDICTMENT FOR

SHOPLIFTING- ENHANCEMENT

SC Code: § 16-13-0110(A) and 16-1-57
CDR Code: 2877

COMMITMENT

101

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

INDICTMENT

DEC 18 2018

At a Court of General Sessions, convened on _____, the
Grand Jurors of Anderson County present upon their oath:

SHOPLIFTING- ENHANCEMENT

The defendant, Justin Allan Armstrong, did on or about October 22, 2018, in Anderson County, South Carolina, take possession of, carry away, transfer from one person to another or from one area of a store or other retail mercantile establishment to another area, or cause to be carried away or transferred any merchandise valued at less than Two Thousand (\$2,000.00) Dollars displayed, held, stored or offered for sale by J. C. Penny with intent to deprive J. C. Penny of the possession, use, or benefit of the merchandise without paying full retail value. Said Defendant has two or more prior convictions in which the term of imprisonment is contingent upon the value of the property involved. All in violation of 16-13-0110(A) and 16-1-57 of the South Carolina Code of Laws (1976) as amended.

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



CATHERINE T. HUEY
DEPUTY SOLICITOR

COUNTY OF ANDERSON

STATE VS.

JUSTIN ALLAN ARMSTRONG

AKA: _____
Race: White Sex: M Age: 33
DOB: 1986 SS#: _____
Address: _____
City, State, Zip: Anderson, SC 29621-3211
DL# _____ SID# _____

INDICTMENT/CASE#: 2019-GS-04-01500
AW: 2019A0410100588
Date of Offense: 03/22/2019
S.C. Code §: 44-53-375(B)
CDR Code #: 3198 3009

SENTENCE SHEET



*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Dist/PWID Meth 1st - Ross Meth (3)

In violation of § 44-53-375(B) of the S.C. Code of Laws, bearing CDR Code # 3198 3009

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, (def.'s initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Catherine T. Huey 68416 Defendant
[Signature] Attorney for Defendant SC Bar # 77943

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of 3 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 89 days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service 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 SC
Department of Corrections 89 Days T/S
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP all programs successfully completed all previous pd in will + strict compliance.
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED

Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____
Recipient: _____ May serve W/E beginning _____
Substance Abuse Counseling

*Fine: _____ \$ _____ Random Drug/Alcohol Testing
§14-1-206 (Assessments 107.5%) \$ _____ Fine may be pd. in equal consecutive weekly/monthly
§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00 pmts. of \$ _____ Beginning _____
§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____ \$ _____ Paid to Public Defender Fund

§56-5-2995 (DUI Assessment) \$12 \$ _____ Other: in-patient drug rehabilitation. Will until bed available.
§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso (Public Def/Prob) \$500 \$ _____
§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ 150.00
§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ 8.25
TOTAL \$ 283.25

Clerk of Court/Deputy Clerk: Richard A. Shirley Presiding Judge: [Signature]
Court Reporter: D. Marcengill Judge Code: #2752
SCCA/217 (04/2018) Sentence Date: 6/18/19

JUSTIN ALLAN ARMSTRONG

AKA: _____
Race: White Sex: M Age: 32
DOB: [redacted] 1986 SS#: [redacted]
Address: [redacted]
City, State, Zip: Anderson, SC 29621-3211
DL# [redacted] SID# [redacted]

*CDL Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []

In disposition of the said indictment comes now the Defendant who was [] CONVICTED OF or [x] PLEADS

TO: Shoplifting- Enhancement (10)

In violation of § 16-13-0110(A) and 16-1-57 of the S.C. Code of Laws, bearing CDR Code # 2877

[x] NON-VIOLENT [] VIOLENT [] SERIOUS [] MOST SERIOUS [] Mandatory GPS [] §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: [x] As indicted, [] Lesser Included Offense, [] Defendant Waives Presentment to Grand Jury, _____ (def.'s initials)

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

ATTEST:

Catherine T. Huey, Deputy Solicitor SC Bar # 68416 Defendant

[Signature] Attorney for Defendant SC Bar # 77943

WHEREFORE, the Defendant is committed to the [x] 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 89 days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

[x] CONCURRENT or [] CONSECUTIVE to sentence on: _____

[x] The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SC
Department of Corrections 89 Days T/S

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

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

SPECIAL CONDITIONS:

[x] RESTITUTION: [] Deferred [] Def. Waives Hearing [] Ordered PTUP 3
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: see Order Obtain GED []

[] Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso (Public Def/Prob) \$500 \$ 500.00

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 18.75

TOTAL \$ 643.75

Clerk of Court/Deputy Clerk: Richard S. Hiley

Court Reporter: D. Marcenqill

SCCA/217 (04/2018)

Victim notified

INDICTMENT/CASE#: 2018-GS-04-03247
AW: 2018A0420700992
Date of Offense: 10/22/2018
S.C. Code §: 16-13-0110(A) and 16-1-57
CDR Code #: 2877

SENTENCE SHEET



1055 to 89 T.S
w/ 5 pros
Hold for bed;
FOAT
SAC;
MH;
if needed
PTUP after
3
+ strict compliance.

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling [x]

Random Drug/Alcohol Testing [x]

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: in-patient drug rehabilitation -

held until bed available. Mental Health

Screening.

[x] Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before any

other fees.

Presiding Judge: [Signature]

Judge Code: #2752

Sentence Date: 6/18/19