

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Jun 05 2025

S.C. SUPREME COURT

Certiorari to Spartanburg County

Honorable R. Lawton McIntosh, Circuit Court Judge

JOSHUA WINCHESTER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000327

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

D. RUSSELL BARLOW
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
GUILTY PLEA TRANSCRIPT DATED JANUARY 25, 2023	1
APPLICATION FOR POST-CONVICTION RELIEF	38
RETURN.....	45
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED SEPTEMBER 3, 2024.....	58
ORDER OF DISMISSAL.....	68
INDICTMENTS AND SENTENCE SHEETS.....	108

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

The State,)
-vs-) TRANSCRIPT OF RECORD
) 2021-GS-42-4393;4394;6224
Joshua Robert Winchester,)
) January 25, 2023
) Spartanburg, South Carolina
Defendant.)

B E F O R E:

HONORABLE J. DERHAM COLE, JUDGE

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

LINDSEY HEGER OVERBY, ESQUIRE
Attorney for the State

JAMES ZACHARY FARR, ESQUIRE
Attorney for the Defense

Linda D. Moffitt
Circuit Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

Guilty plea -- page 3.

No sworn testimony; no exhibits entered into evidence.

1 (Proceedings January 25, 2023)

2 THE COURT: Y'all got something for me?

3 MS. OVERY: Yes, sir, Your Honor. May it please the
4 Court.

5 Your Honor, before you is Joshua Winchester. He's
6 here on four indictments.

7 Indictment 21-GS-42-4394 is a true-billed indictment
8 for trafficking methamphetamine 200 to 400 grams. He's
9 pleading to trafficking methamphetamine 28 to 100 grams
10 second offense.

11 21-6224 is a trafficking methamphetamine over
12 400 grams, pleading to another count of trafficking
13 methamphetamine 28 to 100 grams second offense.

14 And 21-4394 is a possession with intent -- or excuse
15 me -- possession of a weapon during the commission of a
16 violent crime. He's pleading to the same.

17 And Indictment 21-GS-42-4393 is an indictment for
18 possession of a controlled substance second or subsequent,
19 pleading to the same.

20 This is being presented as a negotiated sentence of 15
21 years and a mandatory \$50,000 fine on two counts of
22 trafficking, a concurrent five years on the weapons count
23 and a 1-year concurrent sentence on the possession-of-
24 a-controlled-substance charge.

25 He does have a probation matter to address. Agent

1 Revels is present, Your Honor.

2 THE COURT: Is this a case on the trial roster?

3 MS. OVERY: Yes, sir. It's on the trial docket.

4 THE COURT: Well, it should have been negotiated
5 before today then. So I'm not agreeing to the
6 negotiations.

7 We can try it. We can pick a jury at 2:00. I'm not
8 saying I won't go along with it, but it's going to be my
9 decision on the sentence. I'm not agreeing to the
10 negotiations. That should have been done before today.

11 See, that's the thing. Once you get on the trial
12 docket, it's a trial docket. If it wants to be a guilty
13 plea, it needs to be on the guilty-plea docket. And y'all
14 have had plenty of time, I'm guessing, to get this resolved
15 before the week of trial.

16 MS. OVERY: Yes, sir, Your Honor. He -- just for the
17 Court's information, he was on the plea docket. It was a
18 different offer to what's --

19 THE COURT: He was on a plea docket?

20 MS. OVERY: He was. He was first --

21 THE COURT: And he rejected it?

22 MS. OVERY: He did. It was a deferred offer but...

23 THE COURT: So we're on the trial docket then. So he
24 can either plead guilty today in front of me if he wants
25 to, or we can pick a jury at 2:00 o'clock.

1 MR. FARR: Yes, sir.

2 THE COURT: So do you want to talk to him about that?

3 MR. FARR: Yes, sir.

4 THE COURT: Okay.

5 (Whereupon, a recess was taken.)

6 THE COURT: All right. You are Joshua Robert
7 Winchester.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Mr. Farr is your lawyer.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: I have before me three indictments. Those
12 indictments charge you with -- actually four -- four
13 separate and distinct offenses.

14 Indictment 2021-04394 charges you with trafficking in
15 methamphetamine.

16 The state alleges on June the 14th of 2021 you did
17 traffic in more than 200 grams but less than 400 grams of
18 methamphetamine. Trafficking in methamphetamine in that
19 amount carries a sentence of not less than 25 years.

20 Do you understand the charge?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you understand the punishment?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Count two of that indictment charges you
25 with unlawful possession of a firearm during the commission

1 of a violent crime, the violent crime being the trafficking
2 charge.

3 They allege on the same date that you committed the
4 trafficking you had in your possession a firearm or
5 displayed a firearm during the commission of that crime.

6 That carries an additional sentence of five years in
7 jail.

8 Do you understand that charge and the potential
9 punishment?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Indictment 2021-06224 charges you with
12 trafficking in methamphetamine. The state alleges that
13 occurred on September the 16th of 2021.

14 They allege on that date you did traffic in an amount
15 of more than 400 grams of methamphetamine.

16 If convicted of that offense you could receive a
17 sentence of not less than 25 but not more than 30 years in
18 jail.

19 Do you understand that charge and the potential
20 punishment?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Indictment 2021-04393 charges you with
23 possession of buprenorphine and naloxone.

24 Do you know what that is?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: They allege that occurred on
2 June 14th also. That's a Schedule III drug. They allege
3 you possessed it at the same time as the others. And that
4 carries up to a year in jail and a fine of \$2,000.

5 Do you understand that charge and the potential
6 sentence?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: How long has Mr. Farr been representing
9 you?

10 THE DEFENDANT: About 20 months.

11 THE COURT: And have you been in custody that whole
12 time?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Has he been to the jail to see you?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And when he came to see you did y'all talk
17 about your cases?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Did he go over the indictments with you?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Did he explain to you what the state
22 claims you did?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And you understand it?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Did he explain what kind of sentences
2 could be imposed if you were convicted of them?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand it?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Did you -- did he share with you the
7 discovery that the state has that they provided to him? In
8 other words, evidence they have that tends to prove your
9 guilt?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And did y'all discuss that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Did you tell him everything you know about
14 the allegations made against you?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And did y'all discuss that in conjunction
17 with the discovery?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And after you discussed all of that did
20 you and he determine whether or not you have a defense to
21 any one or more of these charges?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you have a defense to any one or more
24 of these charges?

25 THE DEFENDANT: May I speak to my lawyer?

1 THE COURT: Sure.

2 (Pause.)

3 THE DEFENDANT: Yes, sir. We are waiving those
4 defenses.

5 THE COURT: Okay. But you have one?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: As to each of the charges?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And you understand that if you plead
10 guilty you'll be giving up your right to assert any defense
11 that you might have?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: In other words, if you have a defense that
14 might result in you being found not guilty or your case
15 being dismissed based upon some unlawful search, seizure or
16 some violation of law or constitutional right of
17 protection, when you plead guilty you waive all of those
18 defects if there are any.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Is that what you want to do?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And you've had plenty of time to talk to
23 Mr. Farr about that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Did he explain to you that you have the

1 right to remain silent?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And that of course means you don't have to
4 say anything. You don't have to make any statement. You
5 don't have to answer any questions that relate to the
6 charges.

7 You're got a right to require the state to come into
8 court with sufficient evidence to establish your guilt to
9 the satisfaction of a jury beyond a reasonable doubt, and
10 you don't ever have to assist the state in their efforts to
11 prove you guilty by you providing evidence of your own
12 guilt through testimony or otherwise. You can make them
13 prove your guilt before a jury. But if you want to plead
14 guilty you have to give up your right to remain silent
15 because I'm going to ask you about the cases.

16 Likely, you will be providing me with incriminating
17 information, but I have to have that information because I
18 have to decide if you understand what you're doing today
19 and if your decision to plead guilty is freely and
20 voluntarily made.

21 THE DEFENDANT: Yes, sir. It is. We're waiving my
22 right to that too.

23 THE COURT: So you understand you have the right to
24 remain silent.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And you understand you have to give it up
2 if you want to plead guilty.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Is that you want to do?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Did Mr. Farr also explain to you that you
7 have a right to confront and to examine any witness that
8 would provide evidence against you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You could make the state bring their
11 witnesses into court, put them on the witness stand, have
12 them testify in your presence under oath.

13 You could see them; you could hear them; Mr. Farr
14 could cross-examine them in order to test their credibility
15 and the reliability of the information they're providing to
16 the Court.

17 If you plead guilty that process doesn't take place.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand you have that right?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you wish to give it up in order to
22 plead guilty?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Did Mr. Farr also explain to you that you
25 have the right to have a jury trial and to have a jury

1 decide if you're guilty or not?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you know how a jury is selected?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you know who selects them?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you know how many are selected?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you know how many have to vote guilty
10 before you could be found guilty?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: How many?

13 THE DEFENDANT: I would say. No. All of them. So,
14 no, sir. I don't know.

15 THE COURT: Sir?

16 THE DEFENDANT: I don't know, sir. May I speak to my
17 lawyer?

18 THE COURT: Of course.

19 (Pause.)

20 THE DEFENDANT: To be guilty you need them all.

21 THE COURT: You were thinking about a mistrial?

22 THE DEFENDANT: Yeah.

23 THE COURT: In other words, you meant to say you just
24 need one to hang it up?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Okay. You've got to have all 12 to reach
2 a verdict, whether it be guilty or not guilty. All 12 have
3 to agree. Otherwise, it can't be a verdict. So you
4 understand the verdict has to be unanimous?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Now, if you had a jury trial the state has
7 to prove that you're guilty. You don't have to prove that
8 you're not. If you had a jury trial and the solicitor
9 called you to take the witness stand would you have to do
10 it?

11 THE DEFENDANT: May I speak to my lawyer?

12 THE COURT: Sure.

13 (Pause.)

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. So if you had a trial and the
16 jury -- and the solicitor called you to testify, would you
17 have to testify?

18 THE DEFENDANT: No, sir.

19 THE COURT: Why not?

20 THE DEFENDANT: Well, I have the right to remain
21 silent and try the case.

22 THE COURT: Exactly. But you could if you wanted to,
23 or you could call witnesses if you wanted to. That'd be up
24 to you.

25 So you understand your right to have a jury trial?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand if you plead guilty
3 you're giving that right up?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Is that you want to do?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Has anybody offered you anything or
8 promised you anything in return for pleading guilty?

9 THE DEFENDANT: No, sir.

10 THE COURT: They haven't?

11 THE DEFENDANT: May I speak to my lawyer?

12 THE COURT: Of course.

13 (Pause.)

14 THE DEFENDANT: Yes, sir. I do have a recommendation.

15 THE COURT: What is it?

16 THE DEFENDANT: Fifteen. Negotiated 15 years.
17 Recommended.

18 THE COURT: Recommended. Please understand that if
19 you need to talk to Mr. Farr about that you can too, but I
20 thought maybe y'all had already talked about it, but
21 there's a big difference between a negotiation and a
22 recommendation.

23 Do you appreciate the differences?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: What do you perceive the difference to be?

1 THE DEFENDANT: One would be it's a negotiated
2 sentence. The other one is you still have the decision to
3 make yourself.

4 THE COURT: Yeah. Negotiated means if I don't want to
5 do it, I have to let you back out.

6 A recommendation means I may go along with it. I may
7 not. But when I accept your plea, I don't have to let you
8 out. We still go forward with the sentencing.

9 Do you understand it?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. Aside from the recommendation
12 of a 15-year sentence total on all of the charges, have you
13 been offered or promised anything?

14 THE DEFENDANT: No, sir.

15 THE COURT: Now, I understand you're on probation
16 right now.

17 Is that true?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: What are you on probation for?

20 THE DEFENDANT: A PWID second.

21 THE COURT: And what kind of sentence did you receive?

22 THE DEFENDANT: I received a 2-years-home-detention
23 sentence with, I want to say, three years of probation
24 afterwards.

25 THE COURT: What sentence did he get?

1 PROBATION AGENT: It was ten years suspended to two
2 years and five years probation.

3 THE COURT: All right. So you got ten suspended to
4 two and five years probation.

5 Have you completed the two?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: So you got eight years left on that
8 sentence?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you understand if you plead guilty --
11 does he have any violations?

12 PROBATION AGENT: This is the only violation.

13 THE COURT: This would be the only violation?

14 PROBATION AGENT: Yes, Your Honor.

15 THE COURT: All right. So I'm told that you haven't
16 violated the conditions of that sentence, at least yet.
17 But you understand if you plead guilty to a criminal charge
18 that occurs while you're being supervised if you're
19 convicted of it, then that is automatically a violation of
20 that probationary sentence.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And so in addition to any sentence I can
23 impose here -- 25 to 30 -- 25 -- one -- I could also give
24 you eight on the probation violation that would result from
25 these convictions.

1 Do you understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And any sentence that I impose, they could
4 be run concurrently, they could be run consecutively.

5 Do you know what the difference is?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Did Mr. Farr explain that to you?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. Has anyone forced you into pleading
10 guilty?

11 THE DEFENDANT: No, sir.

12 THE COURT: Anybody placed any pressure upon you to
13 cause you to make that decision that you otherwise would
14 not have made if you hadn't been pressured?

15 THE DEFENDANT: No, sir.

16 THE COURT: Are you pleading guilty freely and
17 voluntarily?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: It was your decision?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You're satisfied with it?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You're 24 years old?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: How far did you go in school?

1 THE DEFENDANT: I made to the ninth grade, but I do
2 have my G.E.D.

3 THE COURT: Have you ever been married?

4 THE DEFENDANT: No, sir.

5 THE COURT: Ever had a child?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: How many?

8 THE DEFENDANT: Three.

9 THE COURT: What are their ages?

10 THE DEFENDANT: Five, two, and one was born last
11 year -- last year.

12 THE COURT: Last year?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Well, how old?

15 THE DEFENDANT: '21. 2021. Last year, sir.

16 THE COURT: So the child is over a year old?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And where do those children live?

19 THE DEFENDANT: One was adopted and one stays with
20 their mother, and the other one also stays with her mother
21 in Myrtle Beach.

22 THE COURT: And where do you stay?

23 THE DEFENDANT: I stay -- at the moment I reside in
24 Greer.

25 THE COURT: Well, at this moment you reside in

1 Spartanburg, but you last lived in Greer?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Who were you living with over there?

4 THE DEFENDANT: I was staying with my father.

5 THE COURT: You were staying with your father?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Why aren't you staying with your children?

8 THE DEFENDANT: I was on home detention at the time,
9 and I was living in Myrtle Beach at first with my child. I
10 was staying with the parents of the baby-mama, and they let
11 me stay there for about a year.

12 But after that I had to find my own place. I couldn't
13 find something I could afford on my own in Myrtle Beach.
14 Me and her mother spoke about getting our own place
15 together, but she was staying in an income-based apartment
16 at the time that she didn't feel comfortable leaving. So I
17 came back to Greer.

18 THE COURT: Well, you got yourself in a very complex
19 life situation, didn't you?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: What kind of work can you do or have you
22 done?

23 THE DEFENDANT: Well, I worked in a deli for the past
24 few years.

25 THE COURT: Worked where?

1 THE DEFENDANT: A deli in Food Lion. I was a deli
2 manager, yes, sir.

3 THE COURT: Which Food Lion?

4 THE DEFENDANT: The one in Lyman.

5 THE COURT: Have you ever been treated for any type of
6 substance abuse or addiction?

7 THE DEFENDANT: As a minor one time, yes, sir.

8 THE COURT: And did you successfully that program?

9 THE DEFENDANT: I did, sir.

10 THE COURT: Are you addicted to any type of drug?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: What?

13 THE DEFENDANT: Methamphetamine.

14 THE COURT: Have you had any since you've been in jail
15 for the 20 months?

16 THE DEFENDANT: No, sir.

17 THE COURT: Is it 20 months you told me you were in
18 jail?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And so you've -- I guess you've been able
21 to overcome it then, haven't you?

22 THE DEFENDANT: In a way, yes, sir, I have.

23 THE COURT: So it doesn't affect your judgment today?

24 THE DEFENDANT: No, sir.

25 THE COURT: Ever been treated for any type of mental

1 illness or emotional disturbance?

2 THE DEFENDANT: No, sir.

3 THE COURT: Do you suffer from any condition like that
4 now?

5 THE DEFENDANT: No, sir.

6 THE COURT: All right. The solicitor is going to tell
7 me about the facts that relate to the case. The probation
8 agent is going to tell me about your probation. And then
9 I'll ask you some more questions. But listen to what they
10 tell me because I'm going to ask you if you agree or
11 disagree with them.

12 MS. OVERY: Thank you, Your Honor.

13 As to Indictments 21-4394 and 4394-A, on June the 14th
14 of 2021 Spartanburg County Home Detention Officers
15 conducted a house check at the defendant's listed address
16 in Third Street in Greer, which is within Spartanburg
17 County.

18 The defendant was on home detention as part of a PWID
19 meth second sentence from February of 2020.

20 The defendant was on scene. He was living in a
21 detached garage from the main residence.

22 There was a bedroom area in that garage. From his
23 bedroom officers recovered a scale with white -- with a
24 white substance which tested as meth, as well as drug
25 paraphernalia.

1 Just outside of the bedroom area there was rubber
2 bands, plastic baggies, those kinds of things.

3 The back door of the garage had two doors that lifted
4 up. One of the window panes back there was broken. The
5 home detention officer saw a duffle bag with a large chunk
6 of meth on the ground out there, as well as a duffle bag
7 with a handgun that was sticking out of it.

8 From that duffle bag officers recovered three
9 handguns, five bags of meth with a combined weight of over
10 375 grams, two packages of the Schedule III substance and
11 scales, as well as two bundles of money and ammunition with
12 various other calibers all in the duffle bag.

13 There was money that was located in the residence over
14 \$20,000. That was some stuffed behind a clock, and then
15 there was a fake book that had a compartment with which
16 money was being hidden.

17 That location occurred within a half mile of the Greer
18 City Park.

19 As to Indictment 21-6224, trafficking meth over 400,
20 on September the 16th of 2021 county narcs were conducting
21 surveillance at the Rodeway Inn on New Cut Road in
22 Spartanburg County.

23 There was a search warrant that had been issued for a
24 room there at the motel. It was based on information that
25 narcotics officers had. The defendant was the target of

1 the investigation.

2 officers observed the defendant arrive at the motel,
3 park the car that they had information that he would be in,
4 and he was walking towards the stairwell. One officer
5 walked up to him, identified herself as police, and this
6 defendant dropped a backpack and fled on foot. He was
7 apprehended some distance from the motel.

8 within that backpack there were two bags of meth which
9 over four -- 571 grams of meth, his license, cigarettes,
10 numerous empty plastic baggies and a scale.

11 THE COURT: And is the previous history only the
12 matter for which he is now on probation?

13 MS. OVERY: No, sir. He has -- he has a history.
14 2017, breaking into motor vehicle, two counts, petit
15 larceny, three counts, a possession of meth, receiving
16 stolen goods and burglary third degree; 2018, possession of
17 meth; and then 2020 is the possession with intent to
18 distribute meth second offense.

19 THE COURT: All right. Mr. Winchester, you heard what
20 the solicitor told me about the facts that relate to each
21 of your cases.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you agree that she has stated it
24 accurately?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You've heard what she has told me about
2 your criminal history.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And are you in agreement with that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. Probation agent is going to
7 tell me about your probation case.

8 PROBATION AGENT: Thank you, Your Honor.

9 We have him on for possession with intent to
10 distribute meth second offense. That's under Indictment
11 2019-GS-42-5826.

12 The sentence was ten years, upon two years and five
13 years of probation. Once he was released from home
14 detention, he was only on probation for about a month
15 before he was apprehended on one of these. So we haven't
16 seen him since he's been jail.

17 THE DEFENDANT: Is that the sentencing sheet?

18 PROBATION AGENT: Yes, Your Honor.

19 THE COURT: May I look at that?

20 (Pause.)

21 THE COURT: Okay. You can have that back.

22 All right. Mr. Winchester, you've heard what the
23 probation agent told me.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you agree with that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: I have before me an order that says you're
3 agreeing to consent to the forfeiture of a handgun that
4 was, I guess, seized at the time of your arrest.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Is that true?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: You agree to forfeit it?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. You still want me accept your
11 pleas of guilty?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. I'll accept them and hear from
14 you and Mr. Farr.

15 MR. FARR: Your Honor, may it please the Court.

16 Zack Farr representing the defendant in this matter.

17 It sounds awful.

18 THE COURT: Yes. It does. It is.

19 MR. FARR: It does. But some background on my client,
20 Your Honor.

21 Since the age of 14 he started smoking marijuana, and
22 then about, I want to say 16, that's when a friend got him
23 started to smoke meth just because it's a different high to
24 keep you up and stuff like that. So at that point in time
25 he was hooked on meth.

1 No selling anything of that with that at that point in
2 time. It wasn't until he got this possession with intent
3 to distribute, went to Myrtle Beach, everything was fine,
4 Your Honor, on home detention.

5 Him and the baby-mama down there couldn't live, so he
6 had no money, came back. Fortunate enough, his dad allowed
7 him to stay in that detached garage.

8 He was trying to make quick money, Your Honor. That's
9 why he had the cash. He already had a place to stay.

10 Your Honor, he knew home detention was coming to the
11 house. He didn't try to hide it, try to get somebody to
12 come and pick it up. It was about an hour from when his
13 mother called home detention and they came. He sat there
14 smoking cigarettes and everything else waiting for them.

15 Judge, he could have hid it. He could have somebody
16 come and pick it up or something like that. He didn't do
17 it. May have been dumb on his part, but he didn't try to
18 hide it or anything because they were there the whole
19 entire time.

20 Judge, I believe there was some issues him and him
21 went over just to let the Court know. I gave him all the
22 case law, let him read it, told him what I was going to
23 file just so he was prepared.

24 I believe there's a -- could have been a
25 search-warrant issue or could have been something, some

1 type of defense in that home detention issue, Judge,
2 because they arrested him, and then they left him on site
3 and continued to do other stuff that I think could have
4 been a violation and stuff like that.

5 I told him that, but he's waiving that defense and
6 stuff like that. He understood what he did. He understood
7 that was his bag and everything else.

8 Judge, the second case, same exact thing. The search
9 warrant is only directed what place can be searched. It's
10 room 208.

11 It didn't have any -- I know Ms. Overby said he was a
12 target. He's nowhere near anywhere in the discovery as the
13 target. It's just said that he's the target, Judge.

14 He's kicking himself. He knew something was wrong.
15 Somebody told him to go to that motel. He was going to
16 make a sell so he could buy that place.

17 Again, Judge, he knew he shouldn't have gone up there
18 because it was more than what that young lady usually asked
19 for. He went up there. As soon as he got out Investigator
20 Hilton and another investigator basically were right there
21 when he was getting out of the vehicle.

22 The only issue in that case, Judge, would have been if
23 we went to trial to determine whether or not that bag was
24 considered abandoned under the case law. I gave him that
25 case law and let him read it. I gave him the United States

1 Supreme Court cases and like stuff, so he was always in
2 detail from the day one when I had the case what the issues
3 were. We always continued to go over that. But he is
4 taking responsibility today and pleading guilty.

5 Judge, I understand that this is a recommendation.
6 I'm hoping this Court goes along with the recommendation
7 with the time he's done in there and everything else.

8 His dad is here, only support he has. Judge, he does
9 have kids. His dad is 52 years old. He's not getting any
10 younger. His dad did help me this week to get him to plead
11 guilty this week.

12 I hope the Court understands that. I was up at the
13 jail Monday, Tuesday and Wednesday with his dad constantly
14 talking to his son, because sometimes when you're 24 you
15 don't think of anything. You just think of reckless stuff
16 to do, Judge.

17 THE COURT: That's why he's here.

18 MR. FARR: Correct. Judge, I hope you don't take that
19 as him defying the Court or anything like that. He is
20 taking responsibility. Fifteen years at 85 percent, Judge
21 is a long time. That is a chance that he's going to be --
22 do 13 on that, Judge, he's going to be 37 or 38.

23 I still believe he has a life after that if the Court
24 goes along with the recommendation, Judge, run them all
25 concurrent.

1 Judge, with the probation I'm asking to revoke the
2 eight years and run that concurrent.

3 I know the Court will probably see that as rewarding
4 him. I'm not seeing that as rewarding him, Judge. He's
5 still got to do 15 years at 85 percent. Judge, I'm asking
6 you to run all of that concurrent with him.

7 Judge, like I said, he'll be 37 years old by the time
8 he gets out of prison if that's what the Court does on a
9 concurrent sentence of 15.

10 Judge, but I'm hoping you go along with the
11 recommendation in this matter.

12 I know his dad would like to talk to the Court as
13 well, Judge. Mr. Winchester is here, Judge.

14 THE COURT: Okay.

15 MR. FARR: Mr. Winchester.

16 GLENN WINCHESTER: Good afternoon, Your Honor.

17 THE COURT: Good afternoon.

18 MR. FARR: Mr. Winchester, state your full name for
19 the record.

20 GLENN WINCHESTER: Glenn Winchester. I am Josh's
21 father.

22 I was kind of prepared to try to make some type of
23 statement, but there was apparently a misunderstanding, and
24 I was -- I'm lost because I got blindsided from where
25 everything was at. And I was okay with what the potentials

1 that were supposed to come out due to recommendations, I
2 guess, you could say.

3 He has got a drug issue. Where that's at, I don't
4 know at this point. He's had it for the longest time.

5 We -- we tried struggling with it. I tried to do the
6 best I could. He got into some trouble before. This is
7 why he's got his probation problem. He got sentenced to
8 that.

9 We had a good deal going that we thought was great
10 when we did it. It was he was going to be down at Myrtle
11 Beach to separate him from fellow people that he knows
12 around here.

13 Unfortunately, things took a bit of a turn and the
14 options were he'd potentially go back to jail because he
15 had nowhere to go or he'd go back to our house.

16 We made accommodations for him at the house with the
17 best that we had so that he wouldn't go back to jail.

18 Unfortunately, we had people coming over to the house,
19 and we've had some disputes to the people that were coming
20 to the house. We allowed him to have friends. We had
21 rules.

22 She got upset -- my girlfriend -- due to the fact that
23 he wasn't abiding by our rules. She called his probation
24 officer to try to explain that he's not abiding by the
25 rules of the people that we want to come around the house.

1 And we were under the impression that they were going to
2 advise him that they need -- he needs to follow our
3 direction on what our wishes are for the house being there,
4 because they have -- he had people coming and going,
5 friends of his and so forth, at the time that we knew of.

6 After this had happened they -- they sent somebody
7 down to speak with him per se. I guess everything went
8 south from there.

9 There was -- I wasn't home at the time. She was
10 blindsided. I'm blindsided. He got himself into a whole
11 bigger mess than, I guess, we perceived. So I'm trying to
12 collect myself here.

13 THE COURT: You're doing fine.

14 GLENN WINCHESTER: When he was in Myrtle Beach he was
15 doing so well. We didn't want him coming back here, and we
16 thought we would keep -- coming back here was the biggest
17 mistake in his life.

18 He'd spent almost over a year up there with his
19 daughter, and beautiful relationship. He -- he just had to
20 get out, and I didn't want to see him go back to jail. He
21 made more wrong decisions, and this is where we're at right
22 now.

23 After that when he got released again he -- we
24 couldn't put him back in the house due to the circumstances
25 that had arised out of what happened.

1 We -- I love him, but we couldn't take a risk of him
2 continuing that in the house, so we couldn't put him there.
3 I couldn't put him anywhere else. Nobody would take a
4 convicted felon. I tried to find some place I could rent
5 for him.

6 So he -- he had no job. He had no nothing. And he
7 ended up just honestly, just falling back on the old stupid
8 thing with this meth. And I don't know how to help him
9 with it but he -- it's -- makes irrational stupid
10 decisions.

11 And we were okay with the recommendations that we
12 thought they were going to get when we were in here. I am
13 scared to death because I'm going to lose my son.

14 I'm not 52. I'm 58. I still want to see him before I
15 potentially die. I don't know how long I'm going to live.
16 I may make it. But with the sentence he could potentially
17 be, I'll be dead before he gets out. And I can't help him
18 at all. And when he does get out, I will still be there to
19 try to help him as best I can with what I got.

20 I know I failed, obviously. Otherwise we wouldn't be
21 here. He's a good kid. He just makes screwed-up
22 decisions.

23 I'm just asking you. My only good thing I can tell
24 you is what are the recommendations. And it scared the
25 death out of me when we came in here. Had brief discussion

1 that I overheard and I just -- I'm lost now. And anything
2 I was going to say probably got lost too. So all I could
3 do is just plead with you to give him a chance.

4 Again, the drug thing, I don't know how to solve it.
5 He's his own victim, and I'm not trying to put it on that.
6 He made the decision. He messed up. We get it.

7 But I don't think if he had stayed where he was at --
8 it was just bad. He went from nothing, got a deli
9 manager's job, was doing well there.

10 Moved here. We didn't want it, but I didn't see any
11 choices. I didn't see it coming to this. We were in fear
12 of it, and those fears came true, and now we're here.

13 So I don't know what other than to ask you to please
14 try to go along with the recommendations, I guess, as best
15 you can. That's your decision. It's out of my hands, I
16 feel.

17 I wouldn't want to make this decision as his father.
18 As his father I'd be biased, and I understand that. That's
19 why it's your decision, but I think it is dangerous.

20 We know he's got to go to jail. There is no question
21 about that. There's no argument that he should go to jail.
22 It's just a question of time. But not for him. For me. I
23 still want to hopefully see him, you know, get out because
24 he's going to need somebody. And if I'm not there, I can't
25 help him then either. And I might not be able to then. I

1 don't know, but I'm going to try. That's all I can do. I
2 love him.

3 He makes dumb decisions. The meth thing is an
4 absolute mess, what it does to people. But I guess that's
5 about all I can say, you know.

6 Everybody wants to, and I don't mean to disrespect
7 anybody. Everybody wants to play the drug card. I thought
8 it was a joke, but when I see what happened to my son, I'm
9 like it's horrid. He wouldn't have made these decisions.
10 He got back into it somehow and then started doing stupid
11 stuff. And this is just an assumption, because I don't
12 know a whole lot about it except the aftermath of what
13 happened.

14 So please try to go -- the best you can at least with
15 the recommendation. That's all I can say to you.

16 MR. FARR: Thank you, Mr. Winchester. Thank you.

17 GLENN WINCHESTER: I love you. I'm sorry.

18 THE COURT: All right. Joshua Winchester, have you
19 got anything you want to add?

20 THE DEFENDANT: Yes, sir.

21 I am asking you please show mercy on me today in the
22 courtroom. I'm asking you to please show mercy today on me
23 in the courtroom, Your Honor. I know I made some really
24 awful decisions, like my dad said, and I do have a drug
25 problem. Like he said, I used to think it was a drug

1 thing, but, I mean, I do have a drug problem, and it really
2 escalated this time.

3 I wasn't -- I wasn't home maybe five months before it
4 escalated. I just really want to get back to where I was
5 in Myrtle Beach. And I couldn't stay there, like he said.
6 I had a money problem. I was only working a regular job in
7 the deli down there. I couldn't afford to stay.

8 I was just doing my best to get back. I thought maybe
9 that was the way to go. I was wrong. I should have worked
10 harder and maybe been able to do it a different way.

11 But, like he said, I fell back on old ways. And,
12 again, it escalated and I made a mistake. I just want to
13 ask you to please show mercy on me, Your Honor. Thank you.

14 THE COURT: What is that indictment number on the
15 probation?

16 PROBATION AGENT: 2019-42-5826.

17 THE COURT: 2019-05826?

18 PROBATION AGENT: Yes, Your Honor.

19 THE COURT: All right. As to the -- has he been
20 served with a citation or warrant?

21 PROBATION AGENT: No. We haven't done a citation yet.
22 We'll do it with the conviction.

23 THE COURT: Okay. All right. As to the probation
24 matter, I find the defendant has wilfully failed to comply
25 with the conditions of probation.

1 Revoke 30 months. Terminate the balance.

2 Indictment 2021-06224, trafficking, sentence is you be
3 confined to the department of corrections for a period of
4 15 years. He's to be given credit for any time he is
5 entitled to pursuant to 24-13-40.

6 That sentence is consecutive to the
7 probation-revocation sentence imposed on 2019-42-05826.

8 Indictment 2021-04394, trafficking, sentence is you be
9 confined to the department of corrections for a period of
10 15 years. That sentence is concurrent with any other.

11 Count two of the indictment, possession of a weapon
12 during the commission of a violent crime, five years
13 concurrent with any other. Credit for any time he's
14 entitled to.

15 Indictment 2021-04393, possession of Schedule III
16 drug, one year concurrent. Credit for any time he's
17 entitled to.

18 MR. FARR: Thank you.

19 END OF REQUESTED TRANSCRIPT OF RECORD
20
21
22
23
24
25

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh 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 of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 25th day of January 2023.

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

February 23, 2023

s/Linda D. Moffitt

Linda D. Moffitt
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF _____

Full name and prison number (if any) of Applicant _____

v. _____

State of South Carolina

IN THE COURT OF COMMON PLEAS

2023-CP-42- 00600

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 South Carolina Department of Corrections (SCDC)
2. Name and location of Court which imposed sentence Spartanburg County, 180 Magnolia St
Spartanburg SC 29304
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) 2021-GS-42-04394
 - (b) 2021-GS-42-06224
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) January, 25, 2023, 15 Years + 50K Fine, Concurrent
 - (b) January, 25, 2023, 15 Years + 50K Fine, Consecutive

FILED
FEB 15 PM 3:39
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA

Revised 3/2003

1 to sentence on: Probation Revocation
2018-42-05826

- (c) _____
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?
N/A
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Plead Guilty
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

FILED
2023 FEB 15 PM 3:39
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA

(a) Ineffective Assistance of Counsel

(b) _____

(c) _____

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

(a) Counsel was ineffective for not objecting to a offense that was not lesser included offense

(b) _____

(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? N/A

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A

(d) any other petitions, motions or applications in this or any other Court? N/A

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. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

FILED
2023 FEB 15 PM 3:39
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

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. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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) N/A

(b) N/A

(c) N/A

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

FILED
2023 FEB 15 PM 3:49
CLERK OF COURT
SEAFORD COUNTY
NEW DEL
Revised 3/2003

- (a) your arraignment and plea? Yes
- (b) your trial, if any? No trial
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No appeal
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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. Zach Farr, 1725 John B. White, Sr. Blvd. B Spartanburg
South Carolina
29301
- ii. _____
- iii. _____

- (b) the proceedings at which each such attorney represented you:

- i. At the plea hearing
- ii. _____
- iii. _____

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

I seek to have my sentence reversed and Remanded

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

Yes

FILED
2023 FEB 15 PM 3:39
CLERK OF COURT
SPARTANBURG COUNTY
AR 271.07

Revised 3/2003

STATE OF SOUTH CAROLINA

VERIFICATION

County of

I, _____, 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.

Joshua Almonchete

SWORN to and subscribed before me this 10
day of February, 2023.

Melissa D. [Signature] (L.S.)
Notary Public

My Commission Expires: Dec. 1, 2025

FILED
2023 FEB 15 PM 3:39
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA

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

I, _____, 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.

John M. White

Applicant

SWORN or affirmed to and subscribed before me this
10 day of February, 2023.

Melissa Ortiz
Notary Public

My Commission Expires: Dec. 1, 2025

FILED
2023 FEB 15 PM 3:39
CLERK OF COURT
SPRINGFIELD COUNTY
ALABAMA

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Joshua R. Winchester, #373196,

Applicant,

v.

State of South Carolina,

Respondent.

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

) CASE NO. 2023-CP-42-600
)

) RETURN
) (Counsel Appointed)
)

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

2024 JUL -1 PM 12:25

FILED

In response to Joshua Winchester's (Applicant) application for post-conviction relief (PCR) commenced on February 15, 2023, Respondent, the State of South Carolina, makes the following Return:¹

PROCEDURAL HISTORY

Applicant is presently confined with the South Carolina Department of Corrections (SCDC). The Spartanburg County Grand Jury issued four separate indictments charging Applicant for four separate and distinct offenses. Applicant was indicted for trafficking methamphetamine 200-400 grams (2021-GS-42-4394); trafficking methamphetamine over 400 grams (2021-GS-42-6224); possession of a weapon during the commission of a violent crime

¹ Respondent's return was due to be filed within sixty days of receipt of Applicant's instant post-conviction relief application. See Rule 12(a), SCRCP ("[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.).

(2021-GS-42-4394); and possession of a controlled substance second or subsequent (2021-GS-42-4393).² James Zachary Farr, Esquire, represented Applicant. Seventh Circuit Deputy Solicitor Lindsey Heger Overby prosecuted the case.

On January 25, 2023, Applicant appeared before the Honorable J. Derham Cole, circuit court judge and pled guilty as indicted to possession of a weapon during the commission of a violent crime (2021-GS-42-4394) and possession of a controlled substance second or subsequent (2021-GS-42-4393). Applicant also pled guilty to two counts of the lesser included offense of trafficking methamphetamine 28 to 100 grams; second offense (2021-GS-42-4394; -6224).³ Judge Cole sentenced applicant to concurrent terms of fifteen years' imprisonment for trafficking (2021-GS-42-04394) and (2021-GS-42-06224), 5 years' imprisonment for possession of a weapon during the commission of a violent crime (2021-GS-42-4394), and one year for possession of schedule III drug (2021-GS-42-04393).⁴

Applicant did not appeal his convictions or sentences.

FILED
2024 JUL -1 PM 12:25
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

² At the time of his arrest applicant was serving a ten-year sentence for possession with intent to distribute, second offense (2019-GS-42-5826). Applicant's ten-year sentence had been suspended to two years' incarceration and five years of probation. Applicant had completed his two years' of incarceration and had only been released on probation for about a month before he was apprehended on the indictments at issue. (Plea Tr. p. 24). Therefore, Applicant had eight years of his sentence remaining. (Plea Tr. pp. 15-16). Judge Cole found Applicant willfully failed to comply with the conditions of his probation, revoking thirty months and thereby terminating the balance. Applicant's probation-revocation sentence is to run consecutive to his additional sentences. (Plea Tr. pp. 35-36).

³ The State presented Applicant's plea to the court as a negotiated sentence of fifteen years and a mandatory \$50,000.00 fine on two counts of trafficking, a concurrent five-year sentence for the weapons charge, and a one-year concurrent sentence for the possession of a controlled substance charge. (Plea Tr. p. 3).

⁴ Judge Cole declined to agree to the negotiations presented by the State, as Applicant's case had already been rostered for trial. (Plea Tr. p. 4).

FACTS PRESENTED AT THE GUILTY PLEA

The facts were taken from the guilty plea transcript as articulated by the State:

As to Indictments 21-4394 and 4394-A, on June the 14th of 2021 Spartanburg County Home Detention Officers conducted a house check at the defendant's listed address in Third Street in Greer, which is within Spartanburg County. The defendant was on home detention as part of a PWID meth second sentence from February of 2020. The defendant was on scene. He was living in a detached garage from the main residence. There was a bedroom area in that garage. From his bedroom officers recovered a scale with white -- with a white substance which tested as meth, as well as drug paraphernalia. Just outside of the bedroom area there was rubber bands, plastic baggies, those kinds of things. The back door of the garage had two doors that lifted up. One of the window panes back there was broken. The home detention officer saw a duffle bag with a large chunk of meth on the ground out there, as well as a duffle bag with a handgun that was sticking out of it. From that duffle bag officers recovered three handguns, five bags of meth with a combined weight of over 375 grams, two packages of the Schedule III substance and scales, as well as two bundles of money and ammunition with various other calibers all in the duffle bag. There was money that was located in the residence over \$20,000. That was some stuffed behind a clock, and then there was a fake book that had a compartment with which money was being hidden. That location occurred within a half mile of the Greer City Park.

As to Indictment 21-6224, trafficking meth over 400, on September the 16th of 2021 county narcs were conducting surveillance at the Rodeway Inn on New Cut Road in Spartanburg County. There was a search warrant that had been issued for a room there at the motel. It was based on information that narcotics officers had. The defendant was the target of the investigation. Officers observed the defendant arrive at the motel, park the car that they had information that he would be in, and he was walking towards the stairwell. One officer walked up to him, identified herself as police, and this defendant dropped a backpack and fled on foot. He was apprehended some distance from the motel. Within that backpack there were two bags of meth which over four -- 571 grams of meth, his license, cigarettes, numerous empty plastic baggies and a scale.

THE COURT: And is the previous history only the matter for which he is now on probation?

CLERK OF COURT
SPARTANBURG COUNTY
JUL 11 2024

2024 JUL - 1 PM 12:25

FILED

MS. OVERY: No, sir. He has -- he has a history. 2017, breaking into motor vehicle, two counts, petit larceny, three counts, a possession of meth, receiving stolen goods and burglary third degree; 2018, possession of meth; and then 2020 is the possession with intent to distribute meth second offense.

(Plea Tr. pp. 21-23).

CURRENT APPLICATION

In his PCR application, Applicant alleges he is detained unlawfully for the following reasons (excerpts verbatim):

1. Ineffective assistance of counsel:
 - a. "Counsel was ineffective for not objecting to a offense that was not lesser included offense (*sic*)."

Applicant requests relief in the form of having his sentence reversed and remanded.

Attached to this return and incorporated by reference are the Spartanburg County Clerk of Court records regarding the subject's conviction and sentence; Applicant's plea transcript, Applicant's records from the SCDC; and the records of the current PCR action. The State reserves the right to amend this return upon receiving any relevant materials.

RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF PLEA COUNSEL

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant—like all other defendants—the right to "assist[ance] by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." Strickland v. Washington, 466 U.S. 668, 685 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an assertion that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and

raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRCP. The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 466 U.S. at 687. 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 due to counsel's deficient performance. Id. at 687–88; 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)).

As aforementioned, the applicant has the burden of establishing both deficiency and prejudice in order to be entitled to relief. Hughes v. State, 346 S.C. 554, 558, 552 S.E.2d 311, 317 (2001); Rule 71.1(e), SCRCP. To prove deficient performance, the applicant must establish that "in light of all the circumstances, the identified acts or omissions [complained of] were outside the wide range of" competence demanded of attorneys in criminal cases. Strickland, 466 U.S. at 690. To prove prejudice, the applicant must establish that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694.

FILED
2024 JUL 1 PM 12:35
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. SOX

A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Id.* However, "the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Id.* at 696.

Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. "The burden of rebutting this presumption 'rests squarely' on the defendant," and "[i]t should go without saying that the absence of evidence cannot overcome [i]t." *Dunn v. Reeves*, 594 U.S. 731, 739 (2021) (alteration in original) (quoting *Burt v. Titlow*, 571 U.S. 12, 22–23 (2013)). In fact, "even if there is reason to think that counsel's conduct 'was far from exemplary,' a court still may not grant relief if '[t]he record does not reveal' that counsel took an approach that *no competent lawyer would have chosen*." *Id.* (alteration in original) (emphasis added) (quoting *Titlow*, 571 U.S. at 23–24). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686; 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").

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). When reviewing a guilty plea, the analysis of counsel's performance under the first prong of *Strickland* remains

FILED
2024 JUL -1 PM 12:25
CLERK OF COURT
SPARTANBURG COUNTY
ANY WEBX

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 decision making" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 367 (2017). However, the 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. Judges must "look to contemporaneous evidence to substantiate a defendant's expressed preferences." Lee, 582 U.S. at 369. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. Harros v. Peeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

Surmounting the Strickland high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." Lee, 582 U.S. at

FILED
CLERK OF COURT
PARANBURG COUNTY
AMY K. COX
2024 JUL - 1
PH 12:23

368-369 1967 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.'"). Reviewing "[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies." Lee, 582 U.S. at 369. 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).

Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Strickland, 466 U.S. at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." Id. If it is easier to dispose of an ineffectiveness claim on the grounds of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

In the present case, Applicant has asserted Plea Counsel provided ineffective assistance of counsel. 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. Accordingly, Respondent requests an evidentiary hearing to resolve this issue fully. Sharper v. State, 282 S.C. 264, 305 S.E.2d 247 (1983) ("Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary

FILED
2021 JUL -1 PM 5:25
CLERK OF COURT
Spartanburg County
JAY W. COX

hearing.").

RESPONSE TO ALLEGATION OF FAILURE TO OBJECT TO LESSER INCLUDED OFFENSES.

Applicant alleges Plea Counsel was ineffective for failing to object to Applicant pleading to an offense that was not a lesser included offense of the charges against him. The record reflects Applicant was indicted for two counts of trafficking methamphetamine 200-400 grams (2021-GS-42-4394) and (2021-GS-42-6224), and Applicant subsequently pled to the lesser included offense of trafficking methamphetamine 28 to 100 grams—second offense on both of those indictments.

In Rollinson v. State, 346 S.C. 506, 552 S.E.2d 290 (2001), the South Carolina Supreme Court reversed the circuit court's grant of relief on the grounds that counsel was ineffective for allowing Rollinson to plead guilty to two drug charges as a first and second offense when he had no prior drug convictions. The Supreme Court held in Rollinson that a defendant may, as part of a plea bargain, plead guilty to an offense for which he is not guilty. Id., 346 S.C. at 510. 552 S.E.2d at 292. The Rollinson Court noted that in Anderson v. State, 342 S.C. 54. 535 S.E.2d 649 (2000), "we held that an individual could plead guilty to voluntary manslaughter under an indictment charging him with murder even though the acts would not support such a lesser charge." Id. 346 S.C. at 511, 552 S.E.2d at 292.

As in Anderson, Applicant was offered and agreed to plead guilty to a reduced charge so as to reduce his exposure. Under Anderson, Applicant's plea is not rendered involuntary merely because the acts and evidence would not support the lesser weight range as opposed to the higher weight range of methamphetamine. Counsel is not ineffective for failing to object since there was a bargained-for advantage that the Applicant received in order to avoid a harsher minimum sentence in the event of a conviction. See State v. Stahlnecker, 386 S.C. 609, 617, 690 S.E.2d

FILED
2024 JUL 1 PM 12:35
CLERK OF COURT
SPARTANBURG COUNTY
AMSW, COX

565, 570 (2010) (citing State v. Nichols, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997)) ("[a]n objection must be made on a specific ground."). Applicant knowingly and intelligently chose this alternative to trial and the risk of a mandatory twenty-five-year sentence. S.C. Code Ann. § 44-53-375(c)(5).

Accordingly, while Respondent maintains the record refutes this allegation, Respondent requests an evidentiary hearing to fully resolve the issues. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. 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 these allegations or

FILED
2023 JUL -1 PM 12:25
CLERK OF COURT
SPARTANBURG COUNTY
ANGIE W. COX

claims. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCP; see also Rules 15(a)-(b), SCRCP. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice against the State. See Rule 15(a), SCRCP.

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 against the State.

|Conclusion Page Follows|

FILED
2024 JUL -1 PM 12:25
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

CONCLUSION AND ACTION REQUESTED

Respondent submits Applicant cannot satisfy the requirements of Strickland or Hill. However, the record likely does not refute or disprove all of Applicant's allegations. Therefore, Respondent requests an evidentiary hearing to resolve the issues fully. See Sharper, 279 S.C. at 265, 305 S.E.2d at 248 (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

SHAYLA J. FLORES
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

June 25, 2024

FILED
2024 JUL -1 PM 12:25
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Joshua R. Winchester, #373196

Applicant,

vs

State of South Carolina,

Respondent,

IN THE COURT OF COMMON PLEAS

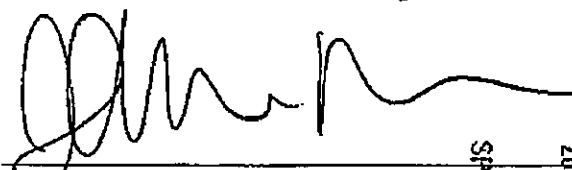
2023-CP-42-600

CERTIFICATE OF SERVICE BY MAIL

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:

Ms. Susannah Conyers Ross
 Ross & Enderlin, PA
 330 East Coffee St.
 Greenville, SC 29601

DATED this 25th day of June, 2024.



 Jordan Hickman, Legal Assistant
 For Respondent

2024 JUL -1 PM 12:25
 CLERK OF COURT
 SPARTANBURG COUNTY
 AMY W. COX

FILED

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY

3
4 JOSHUA R. WINCHESTER,)
5 APPLICANT,) TRANSCRIPT
6 VS.) OF
7 STATE OF SOUTH CAROLINA,) RECORD
8 RESPONDENT.) 2023-CP-42-600

9
10 September 3rd, 2024

11
12 B E F O R E:

13 THE HONORABLE R. LAWTON MCINTOSH, Judge.
14

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

16 SUSANNAH C. ROSS
17 ESQ.
Attorney for the Applicant

18 SHAYLA FLORES
19 ASSISTANT ATTORNEY GENERAL
20 Attorney for the Respondent

21
22
23
24 Pamela E. Green
Circuit Court Reporter

25

I N D E XWITNESSESPAGE

JOSHUA WINCHESTER

Direct examination by Ms. Ross

6

Cross-examination by Ms. Flores

12

ZACH FARR

Direct examination by Ms. Flores

16

Cross-examination by Ms. Ross

23

Closing by Ms. Ross

26

Closing by Ms. Flores

26

Certificate

28

P R O C E E D I N G S

MS. FLORES: May it please the Court?

Shayla---

THE COURT: Yes, ma'am.

MS. FLORES: ---Flores on behalf of the State of South Carolina.

This is the post-conviction relief matter of Joshua R. Winchester versus the State of South Carolina. Case Number 2023-CP-42-0600 out of Spartanburg County.

The Spartanburg County Grand Jury indicted applicant for trafficking methamphetamine 200 to 400 grams, Case Number 2021-GS-42-4394, trafficking methamphetamine over 400 grams, 2021-GS-42-6224, possession of a weapon during the commission of a violent crime, 2021-GS-42-4394, and possession of a controlled substance, second or subsequent, 2021-GS-42-4393.

Applicant was represented by James Zachary Farr, esquire. Seventh Circuit Solicitor Lindsey Heger Overby prosecuted the case.

On January 25th, 2023, applicant appeared before the Honorable J. Derham Cole, circuit court judge, and pled guilty as indicted to possession of a weapon during the commission of a violent crime, 2021-GS-42-4394, possession of a controlled substance second or subsequent,

1 2021-GS-42-4393. Applicant also pled guilty to two counts
2 of a lesser included offense of trafficking
3 methamphetamine 28 to 100 grams second offense,
4 2021-GS-42-4394 and 6224.

5 Judge Cole sentenced applicant to concurrent terms of
6 15 years imprisonment for trafficking, 2021-GS-42-03 --
7 04394 and 2021-GS-42-06224, five years imprisonment for
8 possession of the -- of a weapon during the commission of
9 a violent crime, and one year for, for possession of a
10 Scheduled III drug. Applicant didn't appeal his
11 convictions or sentences.

12 Applicant timely commenced his PCR action on
13 February 15th, 2023, raising allegations of ineffective
14 assistance of counsel. Applicant requests relief in the
15 form -- relief in the form of having his sentence reversed
16 and remanded. And before this Court are the Spartanburg
17 County Clerk of Court records, the plea transcript,
18 transcript, applicant's records from SCDC, the records of
19 the current PCR acts -- and the, and the records of the
20 current PCR action.

21 At this time we would ask Ms. Ross to state for the
22 record which allegations applicant intends to move forward
23 on.

24 MS. ROSS: Judge, I just start by moving to conform
25 the pleadings to the evidence pursuant to Love v. State.

1 And so I'm letting---

2 THE COURT: That's granted by the way.

3 Go ahead.

4 MS. ROSS: I'd let Mr. Winchester testify, and if
5 something additional comes up, we can address that at the
6 time.

7 But, in my review of the, the pleadings, I've alleged
8 failure to investigate and review discovery, advising the
9 applicant that if it was a negotiated plea, and that the
10 plea he faced 15 years, which it was, and failure to file
11 pretrial motions to suppress and a -- due process
12 violations just -- pursuant to Pittman. But the plea
13 wasn't knowingly and voluntarily made.

14 What happened is Mr. Winchester ended up on the trial
15 docket. He didn't nec -- I think one case was gonna go to
16 trial and then the solicitor pulled that case and said no,
17 the other case is gonna go to trial, the much stronger
18 case. At that point, because they were trafficking, Mr.
19 Winchester was facing a substantial amount of time.

20 So, he chose to plea. His attorney told him he
21 negotiated a 15 year plea. So, we went in front of Judge
22 Cole with that negotiation and you can see in the plea
23 transcript Judge Cole just declined to follow the
24 negotiation and said either it's a trial or we're just
25 going forward and that's what happened.

1 So, instead of -- he took the 15 year negotiated on
2 one charge but then ran another one consecutive. So, Mr.
3 winchester didn't get what he was expecting and that's why
4 we're here today.

5 So, at this point, I'd call Mr. winchester to the
6 stand---

7 THE COURT: Come around.

8 MS. ROSS: ---to testify.

9 THE COURT: Pull up to the microphone please, sir. I
10 need you to pull that microphone to you if you can.

11 (WHEREUPON, the witness complies.)

12 THE COURT: There you go. State your name for the
13 record and spell it.

14 THE WITNESS: Joshua Robert Winchester. J-O-S-H-U-A.
15 R-O-B-E-R-T. W-I-N-C-H-E-S-T-E-R.

16 THE COURT: Okay, sir.

17 JOSHUA WINCHESTER, being first duly
18 sworn, testified as follows:

19 THE COURT: All right. Your witness, Ms. Ross.

20 MS. ROSS: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MS. ROSS:

23 Q. Mr. Winchester, first I have to -- you understand, if
24 you win at PCR, your remedy is to start all over with
25 these charges?

Joshua Winchester - Direct examination
By MS. ROSS

1 A. Yes, ma'am.

2 Q. And how do you want to proceed?

3 A. I, I would like to continue.

4 Q. All right. Now let's go over your allegations of
5 ineffective assistance of counsel against Mr. Farr.

6 A. Okay.

7 Q. Can you briefly speak?

8 THE COURT: If you have an objection, you need to
9 state it.

10 MS. FLORES: Your Honor, we would just ask that he
11 would speak up a little bit. We couldn't hear him.

12 THE COURT: Okay.

13 MS. FLORES: Sorry.

14 Q. Just briefly, what were your allegations against Mr.
15 Farr?

16 what could he have done better or how do you feel he
17 was ineffective?

18 A. I feel like I had a couple of motions that I did try
19 to file that we possibly could of pushed maybe a little
20 bit farther and/or, you know, maybe gave me a little bit
21 more insight of exactly what was going on. And then also,
22 you know, when, when I did make the plea for that 15
23 years, I was, I was under the impression that that's what
24 we were going to court for and I was gonna get exactly
25 that day. That's exactly why I signed that plea.

Joshua Winchester - Direct examination
By Ms. Ross

1 I was not gon' -- I was going in there to expect to
2 just, I, I guess, to go to trial or just take whatever the
3 judge would have given me.

4 Q. All right. So, at -- if, if it had been different,
5 would you have insisted on going to trial versus taking
6 the plea?

7 A. Possibly.

8 I did ask also that day if I could get a continuance
9 cause it didn't really give me too much time to think
10 about it standing in the courtroom that day. But, yes, I
11 probably would of went to trial instead.

12 Q. Instead.

13 Okay. Now, when you talk about -- are you talking
14 about pretrial suppression motions in your drug cases?

15 A. Yes, ma'am.

16 I did write up two motions while I was sitting in the
17 county myself. I was looking at some case laws and it, it
18 actually was the two reasons we did have to fight the case
19 in general, one for each case, and I did turn them into my
20 lawyer prior to actually going to court and I never really
21 heard much also about those as well.

22 Q. Did he ever review those motions with you or discuss
23 the law with you in your case?

24 A. He did discuss it with me one time and he gave me a
25 reason why we couldn't do the, the first one. I never did

Joshua Winchester - Direct examination
By Ms. Ross

1 hear anything about the second one. I mailed them both to
2 him. So, again, I'm, I'm not even really a hundred
3 percent sure.

4 Q. Now, do you know if your lawyer filed any pretrial
5 motions in your case?

6 A. Again, I'm not even sure.

7 Q. Are you aware of what kind of preparation for trial
8 he had done in your case?

9 A. No, ma'am.

10 I don't even know if we were actually prepared to go
11 to trial that day. I know we -- I know -- I did read my
12 transcripts after I did get them and, again, we did two
13 reasons we were -- two good reasons we were gonna -- we
14 had to fight the case. But I mean we never too much
15 discussed any.

16 Q. Okay. What were those two reasons?

17 A. On the first case, they did not -- the -- my home
18 detention case, the -- I want to say it was the 200 to
19 400, they did not have a warrant to seize anything out of
20 the house when they did come and search the residence I
21 was residing in at the time. So, I'm pretty sure that
22 violated my Fourth Amendment right.

23 They did have the right to come in but not seize
24 anything and they went -- got a warrant to actually seize
25 anything from the household.

Joshua Winchester - Direct examination
By MS. ROSS

1 The second case, I believe it was an illegal stop.
2 The way when I had showed up to my hotel room, they just
3 kind of surrounded me and they didn't have any good
4 reason.

5 They did have a warrant for the hotel room I was
6 suppose to be in and I was the target of that case. But
7 the, the warrant they did have, it wasn't for me
8 specifically. It was just for the hotel room and I wasn't
9 in the hotel room. I was in the parking lot.

10 Q. All right. And---

11 A. Yes, ma'am.

12 Q. ---there were no pretrial motions filed or made
13 regarding those search?

14 A. As far as I know, no.

15 Q. Did you have any witnesses that you wanted to have
16 available for your trial?

17 A. No, none that I can think of.

18 Q. Did your lawyer review testimony or your testimony
19 pertaining to your potential trial?

20 A. I'm not sure.

21 Q. How much time do you think your lawyer spent with you
22 in preparation for your---

23 A. He did---

24 Q. ---trial?

25 A. He did come and see me a couple of times and we did

Joshua Winchester - Direct examination
By Ms. Ross

1 discuss a little bit. But I just wasn't really too clear
2 of how good of a case we had to fight or not.

3 Q. Now, you had an opportunity to plea before, before
4 Judge Knie prior to.

5 why didn't you plea at that point?

6 A. well, at that point, we did discuss that, and, and
7 when we did speak about it, he did tell me it was a 10 to
8 20, 10 to 20 open plea and I was told that -- I mean they
9 probably would of just gave me the 20. So, that is --
10 that's why I didn't go in there that day. That's why I
11 decided to well, if they're just gonna give me 20, there's
12 no reason to plea out to it.

13 Q. All right. And---

14 A. Yes, ma'am.

15 Q. And did, did he warn you that you would be placed on
16 the trial docket if you didn't plea at that time?

17 A. I don't know if he told me I was gonna be on a trial
18 docket. But I mean I did know that we were going to
19 trial.

20 Q. Okay. And then, once you were on the trial docket
21 and you had some decent suppression motions you felt, why
22 did you decide to plea at that point?

23 A. I felt like that -- I mean, you know, I, I spoke --
24 honestly, I spoke with my dad and my dad, you know, when
25 they -- when he did come to me the night before and he

Joshua Winchester - Direct examination
By Ms. Ross

1 told me about the 15 year plea, I did ask him if it was a,
2 you know, some -- everybody knew what was going on, and if
3 I take that, would I just get the 15 years. He said yes
4 and my dad kind of talked me into it. So, I just took it.

5 Q. All right. And what -- did they say anything -- what
6 did they tell you would happen if you went to trial and
7 lost?

8 A. That I could possibly get up to 30.

9 Q. Okay. Okay. All right. I have no further
10 questions. Please answer any questions from the A.G.

11 THE COURT: Cross-examination.

12 CROSS-EXAMINATION

13 BY MS. FLORES:

14 Q. Good morning, Mr. Winchester.

15 How are you doing today?

16 A. Good.

17 How are you?

18 Q. Good. Thank you.

19 Now, your, your attorney advised you that this was
20 going to be a negotiated plea?

21 A. Yes, ma'am.

22 Q. And did your attorney advise you that this would be a
23 potential sentence of 15 years?

24 A. Yes. Yes, ma'am.

25 Q. Do you recall the State telling the Court that your

Joshua Winchester - Cross-examination
By Ms. Flores

1 guilty plea was being prevent -- presented as a negotiated
2 sentence?

3 A. It's -- I'm -- I want to say yes.

4 Q. Okay. And do you recall the judge telling everyone
5 that they would not agree to that -- those negotiations?

6 A. Yes, ma'am.

7 Q. And do you recall telling the judge that you
8 understood that the charge you were facing carried a
9 sentence of up to 25 years?

10 A. Yes, ma'am.

11 Q. And do you recall telling the judge that you wanted
12 to plead guilty?

13 A. Yes, ma'am.

14 Q. And telling the judge that you did not want to
15 proceed to a trial?

16 A. Yes, ma'am.

17 Q. So, why did you inform the Court of those things at
18 that time?

19 A. Inform them of what?

20 Q. I'm sorry?

21 A. I'm, I'm sorry. I didn't hear you.

22 Q. Why did you tell the -- that to the Court?

23 A. I'm -- I kind of just felt like I was stuck
24 in-between a rock and a hard place, and, honest --
25 honestly, when I went in, again I was expecting just to go

Joshua Winchester - Cross-examination
By Ms. Flores

1 in. I did ask my lawyer, when we went in, you know,
2 everybody knew I was getting the 15 and if that's what I
3 was gonna get. That's why I did sign the plea.

4 But, again, I just felt like I was stuck between a
5 rock and a hard place and not much time to make an option.
6 And I decided to go with the plea anyway because I was
7 really worried if, you know, if I just went to trial, at
8 that moment, I was scared we weren't prepared for it. And
9 I -- you know what I mean?

10 I'd rather just get whatever he was gon' give me
11 rather than go to trial and not be prepared and then just
12 get the maximum sentence.

13 Q. Did your attorney do anything that made you think
14 that he wasn't prepared to go to trial?

15 A. Not specifically. But we didn't really speak too
16 much about what we were doing when we did go to trial.
17 Like, if we did, we didn't spec -- say anything of like,
18 you know, what they might ask me or how we would proceeded
19 in trial or anything like that.

20 Q. Okay.

21 A. I just didn't feel like we were prepared.

22 Q. Okay. And pivoting a little bit to the motions
23 presented to you -- you presented to your attorney.

24 A. Yes, ma'am.

25 Q. You said that he explained why he wasn't going to

Joshua Winchester - Cross-examination
By Ms. Flores

1 move forward with those.

2 A. I believe one of them he did. The other one I did
3 ask him if he got in the mail. He said he never did
4 receive it.

5 So, I'm not sure if it got there in time before the
6 court date and/or if it got there at all. But I, I did
7 ask him about both of them. One of them he did explain to
8 me why it might not work, and then the other one, I
9 didn't -- again, I don't know if it actually got to him.

10 Q. And what was the explanation that he gave you?

11 A. About that one, we didn't really to speak anything
12 else about it. We were already kind of there for court.

13 Q. Okay. Did you request that your attorney file any
14 pretrial motions?

15 A. Yes, I did ask him if he could file the two that I
16 did write up and send to him, yes, ma'am.

17 Q. Okay. And do you recall informing the Court that you
18 wished to waive any defenses you might of had at trial?

19 A. Yes, ma'am.

20 Q. And do you recall telling the Court that nobody
21 forced you to plead guilty?

22 A. Yes, ma'am.

23 MS. FLORES: Beg the Court's indulgence, Your Honor.

24 (Pause.)

25 Q. Just briefly. Just briefly. Sorry about that.

Joshua Winchester - Cross-examination
By Ms. Flores

1 And do you recall your -- you informed the Court here
2 today that your attorney, attorney informed you that you
3 could of received a sentence, a sentence of up to 50 years
4 if you went to trial?

5 A. Fifty?

6 Q. Up to 30. I apologize.

7 A. Yeah.

8 Q. I misspoke.

9 A. Yes, ma'am. Yes, ma'am.

10 MS. FLORES: Okay. No further questions, Your Honor.

11 THE COURT: All right. Redirect?

12 MS. ROSS: Nothing further.

13 THE COURT: All right. Thank you, sir. You may step
14 down.

15 THE WITNESS: Yes, sir.

16 THE COURT: Anything further, Ms. Ross?

17 MS. ROSS: No, Your Honor.

18 MS. FLORES: Your Honor, at this time the State would
19 call plea counsel, Mr. Zach, James Zachary Farr.

20 THE COURT: Come around please, sir.

21 ZACHARY FARR, being not placed
22 under oath, gave the following information:

23 DIRECT EXAMINATION

24 BY MS. FLORES:

25 Q. Good morning, Mr. Farr.

Zachary Farr - Direct examination
By Ms. Flores

1 How are you?

2 A. Doing well.

3 How about yourself?

4 Q. Good. Good. Thank you.

5 How long have you been practicing?

6 A. Since 2013.

7 Q. Okay. And about how much of that time has been spent
8 practicing criminal law?

9 A. All of it.

10 Q. And were you appointed or retained to represent the
11 applicant?

12 A. Retained.

13 Q. Retained.

14 And did you, during the time of your representation,
15 receive all of the Brady and Rule 5 discovery?

16 A. I did.

17 Q. And did you review that discovery with the applicant?

18 A. I did.

19 Q. And can you give us a brief overview just of your
20 recollection of what the State's case against applicant
21 looked like?

22 A. The first one was the home detention violation where
23 they went to his house, searched his house, and found some
24 drugs.

25 Q. Okay.

Zachary Farr - Direct examination
By Ms. Flores

1 A. And then the second one was a hotel. At that time
2 all they had was -- they said he was in a hotel.
3 Nobody -- they said somebody ID'd him. But the only way
4 they ID'd him is through a vehicle. That's it.

5 Q. And did you discuss all of this with the applicant
6 and prepare some kind of defense strategy?

7 A. I have and I did. He is correct. He did mail me one
8 motion. That motion was about the hotel issue and the
9 second one he mailed me about the home detention
10 violation.

11 There was an issue with the contract that Mr.
12 Winchester signed and I was asking Ms. Overby about those
13 issues and that was one of our defenses. And also we went
14 over pretty clear about the defense at the hotel.

15 Q. And so noting those discussions, did you feel that
16 you were prepared to proceed to trial if the applicant had
17 decided to do so?

18 A. We were prepared for both of the cases.

19 Q. And so about how many times did you meet with Mr.
20 Winchester?

21 A. Both cases, at least over 10 times because we had a
22 home detention issue on one of them and then he was back
23 in the county and my rule is usually I go down there at
24 least twice a month to see, see my clients. I don't have
25 many in there but usually twice a month.

Zachary Farr - Direct examination
By Ms. Flores

1 Q. And pivoting back to those motions, were you in the
2 courtroom for the testimony of applicant today?

3 A. I am. I have.

4 Q. So you heard everything that he said on the stand?

5 A. I have.

6 Q. Do you recall him saying that you gave him an
7 explanation of why you wouldn't move forward with one of
8 the motions --

9 A. I'm --

10 Q. -- that he sent you?

11 A. I never said I wouldn't move forward with the
12 motions. I just told him if they were weak or strong --

13 Q. Okay.

14 A. -- cause he still -- he's still facing up to 30 years
15 in prison.

16 Q. And do you recall that explanation you gave him for
17 why they were weak?

18 A. The one for the home detention -- because it's a
19 contract issue, in the contract the main concern in that
20 is it talks about other law enforcement individuals coming
21 onto the property to help home detention.

22 In this situation, it wasn't home detention that
23 arrived first. It was law enforcement. They waited and
24 called home detention so they could search the property.
25 That was an issue that I was gonna raise because, the way

Zachary Farr - Direct examination
By Ms. Flores

1 the contract is read, it states that home detention may
2 call for backup.

3 So, the way I read that is home detention has to be
4 there first and then they can call law enforcement.

5 In this case, law enforcement came to the property
6 and wanted to do a home detention check. So, they called
7 home detention. So, that was one of the issues that I was
8 gonna argue for him.

9 Whether that's weak or strong, that was one of the
10 discussions we had about getting information about how and
11 why law enforcement was there on scene and why home
12 detention wasn't since, in the contract, it says home
13 detention can do home checks.

14 That's still an argument for him to say whether
15 that's strong or not just to see if he wants to take it
16 and face 30 years in prison.

17 The other one was the illegal search and seizure.
18 So, in the facts of that case is law enforcement saw my
19 client walking up the stairs. They didn't have a search
20 warrant at that time. They grabbed my client and he took
21 off running and then they started searching everything at
22 that time.

23 It was still arguments, case law, and everything else
24 that talked about whether or not that's illegal search or
25 seizure with the case law that we had. But that's pretty

Zachary Farr - Direct examination
By Ms. Flores

1 much what I explained just to sum it up.

2 Q. And pivoting back to the day of the plea, did you
3 inform the applicant that this plea was gonna be
4 negotiated?

5 A. At the time that he signed from Ms. Overby, the
6 solicitor, it was negotiated on the sentencing sheets and
7 it was in open court the judge called and said he was not
8 gonna take the negotiation but said that he would follow
9 the 15 years.

10 Q. And so at what point in your representation did the
11 discussion of entering into a plea come up?

12 A. The day before. We were on the trial docket. We
13 were suppose to try, from my understanding, was the hotel
14 first. There was an issue of one of the officers that
15 could not come. But we were both -- the home detention
16 issue was also on the trial docket.

17 At that time they had a CD that they entered. Judge
18 Cole was gon' give me 24 hour continuance basically to
19 come back the next day to go over that edited version
20 because there's some stuff that was on the body cam that
21 needed to be redacted. He was gon' give me 24 hours with
22 Mr. Winchester.

23 But then that's when Ms. Overby came back with a 15
24 year negotiated plea and he had 24 hours for me and him to
25 discuss.

Zachary Farr - Direct examination
By Ms. Flores

1 Q. And so whose decision was it ultimately to enter into
2 this guilty plea?

3 A. I told every client, once they sign, it's up to them.
4 I can't force them into entering in. Once they sign that
5 and they go in front of the judge, they got to tell the
6 judge that they are the ones pleading, pleading guilty.
7 Not me.

8 So, that's usually how I interpret it to my clients.
9 They're the ones that -- if they're gon' plea, they got to
10 tell the judge they want to plead guilty.

11 Q. And did the applicant seem to understand all of the
12 conversations you had with him about this?

13 A. I do. He also wanted to talk to I believe his dad as
14 he stated earlier. He wanted -- that was one of the big
15 things is his dad.

16 Q. And did the applicant ever inform you that he wanted
17 to appeal his sentence, in any way he was unhappy with the
18 guilty plea?

19 A. He did not. But I did instruct him about appeal and
20 PCR. I instructed him both about that right after the
21 plea.

22 MS. FLORES: Just briefly, Your Honor. Beg the
23 Court's indulgence.

24 (Pause.)

25 Q. And do you feel that you adequately explained all of

Zachary Farr - Direct examination
By Ms. Flores

1 the constitutional rights that applicant was waiving in
2 entering his guilty plea to him?

3 A. I did.

4 Q. And do you stand by the representation that you gave
5 to the applicant?

6 A. I do.

7 MS. FLORES: No further questions, Your Honor.

8 CROSS-EXAMINATION

9 BY MS. ROSS:

10 Q. Hey there.

11 Just going back, you said the sol -- the solicitor --
12 there was a law enforcement officer missing and they flip
13 flopped which case was gonna go to trial 24 hours prior to
14 the trial?

15 A. That -- that's what I was told from Ms. Overby at the
16 time and I did alert Judge Cole that, that I would ask for
17 a continuance. But he gave me 24 hours because she wanted
18 to go on the home detention one which had to be -- a body
19 cam had to be redacted because they -- those agents were
20 there talking about other stuff with Mr. Winchester. So
21 those has to be redacted.

22 Q. So you were given approximately 24 hours to prepare
23 for trial for a whole different case than you were on the
24 docket for?

25 A. Once they're on the trial docket, I prepared for both

Zachary Farr - Direct examination
By Ms. Flores

1 of them. But my focus was on the hotel cause we did have
2 pretrial motions that me and Mr. Winchester had, which I
3 think was a stronger case. Possibly get that dismissed
4 over the home detention. But I was prepared for---

5 Q. So---

6 A. ---the home detention.

7 Q. So you're saying both, both different incidents were
8 on the trial docket?

9 A. Yes, ma'am, they were number two and number three on
10 the trial docket.

11 Q. I see.

12 Okay. Now, did you file any pretrial motions
13 regarding the suppression motions?

14 A. I don't file them. Usually that's going into court
15 right before pretrial when we go back in chambers and tell
16 the judges what we have. But I had those ready to go and
17 Mr. Winchester understands -- stood that as I was ready to
18 go with those pretrial motions.

19 Q. All right. So just oral motions---

20 A. Yes.

21 Q. ---given at a pretrial hearing, hearing.

22 So you hadn't done a written motion or anything like
23 that?

24 A. No, ma'am.

25 Q. Okay. And when -- you said something about, during

Zachary Farr - Direct examination
By MS. Flores

1 the plea, Judge Cole said he wasn't gonna take the
2 negotiation but he was gonna take -- follow the 15 years.

3 what did you say about that?

4 A. For, for the charges that we were -- he was pleading
5 guilty to, he was gonna go along with the 15 years.

6 Q. Right.

7 A. That had nothing to do with the probation area --
8 issue and I did discuss that with Mr. Winchester as well
9 in, in the little jail cell at the old courthouse. That
10 was a separate issue.

11 Q. Okay. But when you told him it was a negotiated
12 sentence, the understanding was the 15 years would be
13 negotiated for everything?

14 A. No, ma'am, just for the charges that he was pleading
15 guilty to.

16 Q. All right. All right. Thank you.

17 I have no further questions.

18 THE COURT: Redirect?

19 MS. FLORES: None from the State, Your Honor.

20 THE COURT: May this witness be excused?

21 MS. FLORES: Yes, Your Honor.

22 MS. ROSS: No objection.

23 THE COURT: Okay.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: Yes, sir.

1 MS. FLORES: The State has no further witnesses, Your
2 Honor.

3 THE COURT: Very good.
4 Any reply?

5 MS. ROSS: Judge, only the -- just this situation is,
6 is so hard for someone to go in with a negotiated plea and
7 feel they were gonna get a negotiated sentence and that
8 was the only reason he pled and that, that failed to occur
9 and, and counsel didn't make any objection to that
10 contemporaneously when it was happening.

11 THE COURT: All right.

12 MS. FLORES: Your Honor, we just ask that this
13 application be dismissed as the testimony today makes
14 clear that it was -- applicant pled of his own volition
15 and that his plea counsel represented him to the best of
16 his ability. If you look to the transcript, it further
17 supports those statements that I've just made.

18 So, we just ask that this application be dismissed.

19 THE COURT: All right. Thank you. I'm gon' read
20 through your submissions and I'll give you an order as
21 soon as we can.

22 Thank you.

23 MS. ROSS: Thank you, Your Honor.

24 MS. FLORES: Thank you, Your Honor.

25 THE COURT: Take care.

1

2

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

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

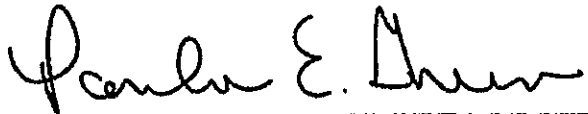
25

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 3rd day of September, 2024.

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

December 13th, 2024

A handwritten signature in cursive script, reading "Pamela E. Green", is written over a horizontal line.

PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Joshua R. Winchester, #373196,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

CASE NO. 2023-CP-42-0600

**ORDER OF DISMISSAL
WITH PREJUDICE**

CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA

2024 DEC 19 PM 2:43

FILED

Presiding Judge: Hon. R. Lawton McIntosh
Applicant's Attorney: Susannah C. Ross, Esq.
Respondent's Attorney: Shayla J. Flores, Esq.
Plea Counsel: James Z. Farr, Esq.
Date of Hearing: September 3, 2024

This matter comes before the Court by way of Joshua Winchester's (Applicant) application for post-conviction relief (PCR) filed on February 15, 2023. Respondent, the State of South Carolina, filed its Return and Partial Motion to Dismiss, and Motion for a More Definite Statement on or around July 1, 2024.

On September 3, 2024, an evidentiary hearing was held at the Spartanburg County Courthouse before the Honorable R. Lawton McIntosh. Assistant Attorney General Shayla Joan Flores represented Respondent. Applicant was present and represented by Susannah C. Ross, Esquire (PCR Counsel). At the hearing, Applicant, through counsel, stated for the record which allegations he intended to proceed on. In support of these claims, Applicant testified on his own behalf, and presented testimony from James Zachary Farr, Esq. (Plea 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 incarcerated according to an order of commitment of the Spartanburg County Clerk of Court. The Spartanburg County Grand Jury issued four separate indictments charging Applicant for four separate and distinct offenses. Applicant was indicted for trafficking methamphetamine 200-400 grams (2021-GS-42-4394); trafficking methamphetamine over 400 grams (2021-GS-42-6224); possession of a weapon during the commission of a violent crime (2021-GS-42-4394); and possession of a controlled substance second or subsequent (2021-GS-42-4393).¹ James Zachary Farr, Esquire, represented Applicant. Seventh Circuit Deputy Solicitor Lindsey Heger Overby prosecuted the case.

On January 25, 2023, Applicant appeared before the Honorable J. Derham Cole, circuit court judge and pled guilty as indicted to possession of a weapon during the commission of a violent crime (2021-GS-42-4394) and possession of a controlled substance second or subsequent (2021-GS-42-4393). Applicant also pled guilty to two counts of the lesser included offense of trafficking methamphetamine 28 to 100 grams; second offense (2021-GS-42-4394; -6224).² Judge

¹ At the time of his arrest applicant was serving a ten-year sentence for possession with intent to distribute, second offense (2019-GS-42-5826). Applicant's ten-year sentence had been suspended to two years' incarceration and five years of probation. Applicant had completed his two years' of incarceration and had only been released on probation for about a month before he was apprehended on the indictments at issue. (Plea Tr. p. 24, ll. 8-16). Therefore, Applicant had eight years of his sentence remaining. (Plea Tr. pp. 15, l. 15-16, l. 9). Judge Cole found Applicant willfully failed to comply with the conditions of his probation, revoking thirty months and thereby terminating the balance. Applicant's probation-revocation sentence is to run consecutive to his additional sentences. (Plea Tr. pp. 35, l. 14-36, l. 18).

² The State presented Applicant's plea to the court as a negotiated sentence of fifteen years and a mandatory \$50,000.00 fine on two counts of trafficking, a concurrent five-year sentence for the weapons charge, and a one-year concurrent sentence for the possession of a controlled substance charge. (Plea Tr. p. 3, ll. 20-24).

Cole sentenced applicant to concurrent terms of fifteen years' imprisonment for trafficking (2021-GS-42-04394) and (2021-GS-42-06224), 5 years' imprisonment for possession of a weapon during the commission of a violent crime (2021-GS-42-4394), and one year for possession of schedule III drug (2021-GS-42-04393).³

Applicant did not appeal his convictions or sentences.

FACTS GIVING RISE TO THE CONVICTION

The facts giving rise to the convictions were articulated by the Solicitor at Applicant's plea hearing as follows:

As to Indictments 21-4394 and 4394-A, on June the 14th of 2021 Spartanburg County Home Detention Officers conducted a house check at the defendant's listed address in Third Street in Greer, which is within Spartanburg County. The defendant was on home detention as part of a PWID meth second sentence from February of 2020. The defendant was on scene. He was living in a detached garage from the main residence. There was a bedroom area in that garage. From his bedroom officers recovered a scale with white -- with a white substance which tested as meth, as well as drug paraphernalia. Just outside of the bedroom area there was rubber bands, plastic baggies, those kinds of things. The back door of the garage had two doors that lifted up. One of the window panes back there was broken. The home detention officer saw a duffle bag with a large chunk of meth on the ground out there, as well as a duffle bag with a handgun that was sticking out of it. From that duffle bag officers recovered three handguns, five bags of meth with a combined weight of over 375 grams, two packages of the Schedule III substance and scales, as well as two bundles of money and ammunition with various other calibers all in the duffle bag. There was money that was located in the residence over \$20,000. That was some stuffed behind a clock, and then there was a fake book that had a compartment with which money was being hidden. That location occurred within a half mile of the Greer City Park.

As to Indictment 21-6224, trafficking meth over 400, on September the 16th of 2021 county narcs were conducting surveillance at the Rodeway Inn on New Cut Road in Spartanburg County. There was a search warrant that had been issued for a room there at the motel.

³ Judge Cole declined to agree to the negotiations presented by the State, as Applicant's case had already been rostered for trial. (Plea Tr. p. 4, ll. 2-25).

2024 DEC 19 PM 2:43

FILED

CLERK OF COURT
SPARTANBURG COUNTY

It was based on information that narcotics officers had. The defendant was the target of the investigation. Officers observed the defendant arrive at the motel, park the car that they had information that he would be in, and he was walking towards the stairwell. One officer walked up to him, identified herself as police, and this defendant dropped a backpack and fled on foot. He was apprehended some distance from the motel. Within that backpack there were two bags of meth which over four -- 571 grams of meth, his license, cigarettes, numerous empty plastic baggies and a scale.

THE COURT: And is the previous history only the matter for which he is now on probation?

MS. OVERY: No, sir. He has -- he has a history. 2017, breaking into motor vehicle, two counts, petit larceny, three counts, a possession of meth, receiving stolen goods and burglary third degree; 2018, possession of meth; and then 2020 is the possession with intent to distribute meth second offense.

(Plea Tr. pp. 21, l. 12-23, l. 10).

CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief filed February 15, 2023, Applicant claimed he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel:
 - a. Counsel was ineffective for not objecting to a offense that was not lesser included offense (*sic*)."

On August 26, 2024, Applicant, through PCR Counsel, amended his application for post-conviction relief to include the following allegations:

2. Ineffective assistance of Counsel:
 - a. Failure to investigate and review discovery with the Applicant;
 - b. Advising the Applicant that the plea would be negotiated and that he faced a potential sentence of fifteen years; and
 - c. Failure to file a pretrial motion to suppress.
3. Involuntary Guilty Plea:
 - a. Due process violations because the plea was not knowingly and voluntarily made.

Applicant requests relief in the form of this Court reversing and remanding his sentence.

FILED
2024 DEC 19 PM 2:43
CLERK OF COURT
COURT REPORTING COUNTY

Before this Court is the Spartanburg County Clerk of Court records regarding the subject convictions and sentences, Applicant's records from the South Carolina Department of Corrections, Applicant's guilty plea transcript, and the records of the current PCR action.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act⁴ (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based on 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).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 289 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

⁴ S.C. Code Ann. §§ 17-27-10 to -160.

FILED
2023 DEC 19 PM 2:43
CLERK OF COURT
SPARTANBURG COUNTY
J. R. WINCHESTER

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. Strickland v. Washington, 466 U.S. 668 at 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; 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 "[without 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)).

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. 115, 531 S.E.2d 294, 296 (2000).

FILED
2024 DEC 11 PM 2:43
CLERK OF COURT
JACKSON COUNTY

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) (emphasis added).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

FILED
2024 DEC 16 PM 2:43
CLERK OF COURT
HARRIS COUNTY
TX

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

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

INITIAL FINDINGS

This Court finds applicable the strong presumption that at all stages of Plea Counsel's representation of Applicant, he rendered adequate assistance and exercised reasonable professional judgment in his 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). See, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment."); Clemons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J., concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire").

FILED
2023 DEC 19 AM 2:43
CLERK OF COURT
JOSHUA R. WINCHESTER
703-244-1100

This Court makes the following findings from the record: 1. Applicant understood the charges and sentences he faced at his plea hearing (Plea Tr. pp. 5, l. 11-7, l. 7); 2. Applicant indicated Plea Counsel visited him at the jail (Plea Tr. p. 7, ll. 14-15); 3. Applicant indicated Plea Counsel discussed his cases with him during those visits (Plea Tr. p. 7, ll. 16-18); 4. Applicant indicated during those visits Plea Counsel went over his indictments with him, explained the State's accusations against him, explained the sentences that could be imposed if he were convicted, and Applicant understood those conversations (Plea Tr. pp. 7, l. 19-8, l. 5); 5. Applicant indicated Plea Counsel shared the discovery provided by the State with him, discussed that discovery with him, and discussed Applicant's version of the events in conjunction with the discovery with him (Plea Tr. p. 8, ll. 6-18); 6. Applicant indicated Plea Counsel discussed with him the defenses he had to each of the charges against him (Plea Tr. pp. 8, l. 19-9, l. 8); 7. Applicant indicated he had enough time with Plea Counsel (Plea Tr. p. 9, ll. 22-24); 8. Applicant affirmed his understanding that he would be giving up his right to assert any defense he may have by pleading guilty and indicated his desire to waive that right (Plea Tr. p. 9, ll. 3-21); 9. Applicant understood his right to a jury trial and that he waived those rights by pleading guilty (Plea Tr. pp. 9, l. 25-14, l. 6); 10. Applicant indicated no one offered him or promised him anything in return for his decision to plead guilty (Plea Tr. pp. 14, l. 7-15, l. 14); 11. Applicant indicated no one was forcing him to plead guilty, his decision to plead guilty was voluntary and he was satisfied with his decision (Plea Tr. p. 17, ll. 9-22); 12. Applicant understood the difference between a negotiated sentence and a recommended sentence (Plea Tr. pp. 14, l. 14-15, l. 10); 13. Applicant understood he was violating the terms of his probation by entering his guilty plea and the consequences of doing so (Plea Tr. pp. 16, l. 15-17, l. 18); 14. Applicant understood the difference between sentences that run concurrently and sentences that run consecutively (Plea Tr. p. 17, ll. 8-15, l. 15).

FILED
 2024 DEC 16 PM 2:43
 CLERK OF COURT
 VICTIM SERVICES
 COUNTY

Applicant agreed with the facts surrounding the State's case against him (Plea Tr. p. 23, ll. 19-25); 16. Applicant agreed with the State's recitation of his criminal history (Plea Tr. p. 24, ll. 1-5); 17. Applicant agreed with the State's recitation of his probation history (Plea Tr. pp. 24, l. 22-25, l. 9).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS

Allegation 1: Plea Counsel Failed to Object to Lesser Included Offense

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to his plea to a lesser included offense. Specifically, Applicant contends Plea Counsel was ineffective for allowing him to plead guilty to two counts of trafficking methamphetamine 28 to 100 grams; second offense, which he contends is not a lesser included offense of the charge against him. 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 developed to was not "intended to promote judicial second-guessing on questions of strategy as basic as the

FILED
 2024 DEC 19 PM 2:43
 CLERK OF COURT
 PARRAMOUNT COUNTY

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).

Here, the record reflects that Applicant was indicted for two counts of trafficking methamphetamine 200-400 grams (2021-GS-42-4394) and (2021-GS-42-6224), and Applicant subsequently pled to the lesser included offense of trafficking methamphetamine 28 to 100 grams—second offense on both of those indictments. In Rollinson v. State, 346 S.C. 506, 552 S.E.2d 290 (2001), the South Carolina Supreme Court reversed the circuit court's grant of relief on the grounds that counsel was ineffective for allowing Rollinson to plead guilty to two drug charges as a first and second offense when he had no prior drug convictions. The Supreme Court held in Rollinson that a defendant may, as part of a plea bargain, plead guilty to an offense for which he is not guilty. Id., 346 S.C. at 510, 552 S.E.2d at 292. The Rollinson Court noted that in Anderson v. State, 342 S.C. 54, 535 S.E.2d 649 (2000), "we held that an individual could plead guilty to voluntary manslaughter under an indictment charging him with murder even though the acts would not support such a lesser charge." Id., 346 S.C. at 511, 552 S.E.2d at 292.

As in Anderson, Applicant was offered and agreed to plead guilty to a reduced charge so as to reduce his exposure. Under Anderson, Applicant's plea is not rendered involuntary merely because the acts and evidence would not support the lesser weight range as opposed to the higher weight range of methamphetamine.

FILED
2024 DEC 19 PM 2:43
CLERK OF COURT
SPARTANBURG COUNTY
ALAN W. COX

Findings

Accordingly, this Court finds the combination of the record, and Plea Counsel's credible testimony that Applicant has failed to meet the burden of showing Plea Counsel was constitutionally ineffective. This Court further finds Plea Counsel's representation of Applicant was not deficient, as this was a bargained-for advantage that the Applicant received in order to avoid a harsher minimum sentence in the event of a conviction. See State v. Stahlnecker, 386 S.C. 609, 617, 690 S.E.2d 565, 570 (2010) (citing State v. Nichols, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997)) ("[a]n objection must be made on a specific ground."). Applicant knowingly and intelligently chose this alternative to trial and the risk of a mandatory twenty-five-year sentence. S.C. Code Ann. § 44-53-375(c)(5). Therefore, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

Allegation 2: Plea Counsel Failed to Properly Investigate and Review Discovery with Applicant.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to investigate and review discovery with him. This Court disagrees and finds this allegation to be without merit.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). Likewise, in order to prevail on a claim that counsel did not review discovery with applicant, the applicant must demonstrate prejudice by showing what evidence could have been discovered or what other defenses could have been pursued. Id.

Furthermore, an applicant must also present evidence to show how the discoverable matters

FILED
2024 DEC 19 PM 3:43
CLERK OF COURT
SHERMAN COUNTY
JOSHUA R. WINCHESTER

or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is insufficient to support a relief grant. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Findings

This Court finds the combination of the record, and Plea Counsel's credible testimony that Applicant has failed to meet the burden of showing Plea Counsel was constitutionally ineffective. See Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) 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).

Moreover, to whatever extent Applicant was not entirely satisfied with the amount of time to review discovery and investigate the charges, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to proceed with his guilty plea. The record reflects via Applicant's admission, Plea Counsel shared the discovery

FILED
2024 DEC 19 PM 2:43
CLERK OF COURT
SARASOTA COUNTY
FLORIDA

provided by the State with Applicant, discussed that discovery with him, and discussed Applicant's version of the events in conjunction with the discovery with him. (Plea Tr. p. 8, ll. 6-18).

This Court finds Applicant has offered no valid reason to be allowed to depart from the truth of the statements made under oath during his guilty plea. See Crawford v. United States, 519 F.2d 347 (4th Cir.1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976) (Statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements.). Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation 3: Plea Counsel Erroneously Advised Applicant that His Plea Would be Negotiated and that He Faced a Potential Sentence of Fifteen Years

Applicant alleges Plea Counsel was constitutionally ineffective for erroneously advising him regarding his guilty plea. Specifically, Applicant alleges Plea Counsel was constitutionally ineffective for advising him that his plea would be negotiated and that he faced a potential sentence of fifteen years. This Court finds this allegation to be without merit.

In considering an allegation on post-conviction relief (PCR) that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. Stalk v. State, 375 S.C. 289, 652 S.E.2d 402 (Ct. App. 2007), aff'd as modified, 383 S.C. 559, 681 S.E.2d 592 (2009); Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984) ("[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing."); Roddy v. State, 339

FILED
2024 DEC 19 PM 2:43
CLERK OF COURT
SPARTANBURG COUNTY
VALENTINE, CLERK

S.C. at 33, 528 S.E.2d at 420 (holding when determining issues relating to guilty pleas, the Court will consider the entire record, including the transcript of the guilty pleas and the evidence presented at the PCR hearing.).

The transcript of the guilty plea directly refutes Applicant's claims that he was unaware that his plea would not be to a negotiated sentence or that he believed he faced a potential sentence of fifteen years. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977) ("A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed."); Edmonds v. Lewis, 546 F.2d 566 (4th Cir.1976) (holding statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements.); Boykin v. Alabama, 395 U.S. 238, 242, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969) (to find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.); Pittman v. State, 337 S.C. 597, 600, 524 S.E.2d 623, 625 (1999) ("A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both.").

Findings

Based on the credible testimony of Plea Counsel, as well as the information reflected in the record, this Court finds Applicant's testimony not credible and not persuasive. Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him); Moorehead v. State, 329

FILED
DEC 19 PM 2:43
CLERK OF COURT
SPARTANBURG COUNTY
ALABAMA

S.C. 329, 333, 496 S.E.2d 415, 417 (1998) ("Respondent's explanation that he answered the trial court affirmatively on counsel's alleged advice that the questions were meaningless does not support the grant of PCR.").

The record indicates Applicant was fully informed of his constitutional rights, understood the crimes with which he was charged, and was cognizant of the maximum sentences he might receive. The record further reflects that Applicant understood the difference between a negotiated sentence and a recommended sentence and that the State had recommended a sentence of fifteen years in his case. (Plea Tr. pp. 14, l. 14-15, l. 10). Any possible misconceptions concerning his constitutional rights, the charges, or potential sentences on Applicant's part were cured by the colloquy during the plea proceeding conducted by the judge. See Pittman, 337 S.C. at 601, 524 S.E.2d at 625; Wolfe, 326 S.C. at 165, 485 S.E.2d at 370.

This Court finds Applicant has 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); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (holding an applicant may attack the voluntary, knowing, and intelligent character of a guilty plea entered on the advice of counsel by demonstrating that counsel's representation was below an objective standard of reasonableness.).

Additionally, this Court finds Applicant has failed to meet his burden proving Plea Counsel's alleged deficiency prejudiced him. Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985) (The "prejudice," requirement focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process.); Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007) (The applicant must prove prejudice by showing that, but for

FILED
CLERK OF COURT
JAN 16 2024
P. 2:43
HARRIS COUNTY

counsel's inadequacy, there is a reasonable probability he would not have pleaded guilty and, instead, would have insisted on going to trial.).

Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation 4: Plea Counsel Failed to File a Pretrial Motion to Suppress

Applicant alleges Plea Counsel was constitutionally ineffective for failing to file a pretrial motion to suppress on his behalf. This Court finds this allegation to be without merit.

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 developed to 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).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). Additionally, Applicant failed to present "any evidence of how additional

2023 DEC 9 PM 2:43
FILED
CLERK OF COURT
SPARTANBURG COUNTY

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).

Moreover, to whatever extent Applicant was not entirely satisfied with Plea Counsel's actions, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to proceed with his guilty plea. Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation 5: Involuntary Guilty Plea

Applicant alleges Plea Counsel was constitutionally ineffective rendering his guilty plea involuntarily made. Specifically, Applicant alleges due process violations where his plea was not knowingly and voluntarily made. This Court finds this allegation to be without merit.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a complete understanding of the consequences of the plea and the charges against him or her. Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); see also Boykin v. Alabama, 395 U.S. 238, 244 (1969) (Courts must make sure defendants have "a full understanding of

FILED
2023 DEC 19 PM 2:43
CLERK OF COURT
STANTON COUNTY
ALABAMA

of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought and forestalls the spin-off of collateral proceedings that seek to probe murky memories."'). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harres v. Lecke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984) (finding the voluntariness of a guilty plea "is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing."').

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); Richardson v. State, 310 S.C. 360, 363, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

Findings

As an initial matter, this Court finds the record refutes Applicant's allegations and reflects that Applicant's guilty plea was knowingly and voluntarily entered with a complete understanding of the charges and consequences of the plea. This Court further finds Applicant was fully aware of the minimum and maximum sentencing ranges on all charges that he pleaded guilty to. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed.

FILED
024 DEC 13 PM 2:43
CLERK OF COURT
PARSONS COUNTY
TX

See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)).

Furthermore, this Court finds Applicant has failed to show that Plea Counsel's representation fell below an objective standard of reasonableness, and that but for Plea Counsel's alleged errors, Applicant would not have pled guilty and proceeded to trial. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993). This Court finds the combination of the record and Plea Counsel's credible testimony at the evidentiary hearing provides Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty pursuant to the requirements of Boykin v. Alabama, 395 U.S. 238 (1969) and Roddy v. State, 339 S.C. 29 (2000).

Moreover, the plea colloquy cured any alleged deficiency regarding Plea Counsel's advice. The plea transcript reflects that Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the plea court's questions. Applicant has presented no valid reason why he should be able to depart from the statements made during his guilty plea as provided *supra*. See Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975), overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so).

Thus, based on the evidence presented at the plea proceeding and the evidentiary hearing,

FILED
2023 DEC 19 PM 2:43
CLERK OF COURT
SPARTANBURG COUNTY
AND VICINITY

this Court finds Applicant freely, knowingly, and voluntarily pled guilty. This Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Accordingly, this allegation must be **DENIED** and **DISMISSED**.

|CONCLUSION PAGE FOLLOWS|

FILED

2024 DEC 19 PM 2:43

**CLERK OF COURT
SPARTANBURG COUNTY
AMY V. COX**

CONCLUSION

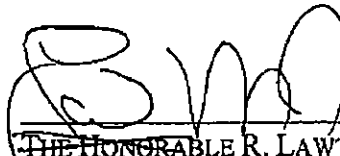
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED WITH PREJUDICE.**

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 13 day of December, 2024.


 THE HONORABLE R. LAWTON MCINTOSH
 Presiding Judge
 Seventh Judicial Circuit

2024 DEC 19 PM 2:43
 CLERK OF COURT
 SPARTANBURG COUNTY
 J. W. COX

FILED

Anderson, South Carolina

WITNESSES
SCSO
<i>[Signature]</i>
ARREST WARRANT NUMBER
2021A4210203132
ACTION OF GRAND JURY
AUG 18 2021
<i>[Signature]</i>
Foreperson of Grand Jury
Date:
VERDICT
Foreperson of Petit Jury
Date:

DOCKET NO. **21-CS-42-4393**

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 23 2021

TERM

THE STATE
vs.

JOSHUA ROBERT WINCHESTER

Indictment for
POSSESSION OF BUPRENORPHINE AND
NALOXONE

SC Code: 44-53-370

10/25/21 11:11:00
 10/25/21 11:11:00
 10/25/21 11:11:00
 10/25/21 11:11:00

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

AUG 18 2021

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

POSSESSION OF BUPRENORPHINE AND NALOXONE

That the Defendant, Joshua Robert Winchester did in Spartanburg County on or about June 14, 2021, knowingly or intentionally possess a quantity of Buprenorphine and Naloxone, a schedule III controlled substance, in violation of § 44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.*

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

Lindsey H. Auel
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE

VS.

Joshua Robert Winchester

AKA:

Race: WHITE Sex: M Age: 24DOB: -1996 SS#: Address: 3Rd StCity, State, Zip: Greer, SC 296513162DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2021 - GS - 42 - 04393A/W#: 2021A4210203132Date of Offense: 6/14/2021S.C. Code § 44-53-0370(d)(2)CDR Code #: 0180

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADSTO: Drugs / Poss. of other controlled sub. in Sched. I to V (Buprenorphine & Naloxone) - 2nd or sub. offense (0-1 yr and/or 0-2k fine)In violation of § 44-53-0370(d)(2) of the S.C. Code of Laws, bearing CDR Code # 0180
☒ 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:

Lindsey H. Overby

SCB79869

OVERBY, LINDSEY H.

SC Bar #

Defendant

Farr, Zachary

SCB100925

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction, ☐ County Detention Center,for a determinate term of 1 days/months/years/Time Served ☐ Youthful Offender Act not to exceed 1 yearsand/or to pay a fine of \$ 0; provided that upon the service of 0 days/months/years/Time Served and or paymentof \$ 0; plus costs and assessments as applicable; the balance is suspended with probation for 0

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC, _____ days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 18-25-30 It is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Joshua Robert Winchester INDICTMENT/CASE#: 2021 - GS - 42 - 04393

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____ \$ _____

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

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

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

\$56-5-2995 (DUI Assessment)

\$56-1-286 (DUI Breath Test)

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

\$14-1-213 (Drug Court Surcharge)

\$34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)

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

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

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

☐ \$ 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund

\$100

\$100

\$12

\$25

\$25

\$150

\$41

\$50

\$40/ea

TBD

\$500

TBD

TOTAL \$ 283³⁵

Clerk of Court/ Deputy Clerk:
Court Reporter:

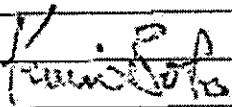
Camp Moffitt

Presiding Judge:
Judge Code:
Sentence Date:

2021
25
2023

WITNESSES

SCSO



ARREST WARRANT NUMBER

2021A4210203125 (Count I: Trafficking Meth)

2021A4210203128 (Count II: Weapon)

ACTION OF GRAND JURY

AUG 18 2021



Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. -

21-GS-42-4394

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 18 2021

TERM

THE STATE
vs.

JOSHUA ROBERT WINCHESTER

Indictment for

TRAFFICKING METHAMPHETAMINE AND
POSSESSION OF A FIREARM DURING
COMMISSION OF OR ATTEMPT TO
COMMIT A VIOLENT CRIME

SC Code: 44-53-376; 16-23-490

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on AUG 18 2021 the

Grand Jurors of Spartanburg County present upon their oath:

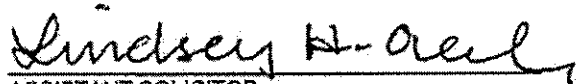
COUNT ONE – TRAFFICKING IN METHAMPHETAMINE

That the Defendant, Joshua Robert Winchester, did in Spartanburg County on or about June 14, 2021, knowingly sell, manufacture, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or did knowingly attempt to actually or constructively possess, more than two hundred (200) grams, but less than four hundred (400) grams of Methamphetamine, a schedule II controlled substance, in violation of § 44-53-375, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

**COUNT TWO - POSSESSION OF FIREARM DURING
 COMMISSION OF OR ATTEMPT TO COMMIT A VIOLENT CRIME**

That the Defendant, Joshua Robert Winchester, did in Spartanburg County on or about June 14, 2021, possess a firearm or visibly display what appeared to be a firearm during the commission or attempted commission of a violent crime, to-wit: Trafficking in Methamphetamine, in violation of Code § 16-23-490, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE

VS.

Joshua Robert Winchester

AKA:

Race: WHITE Sex: M Age: 24DOB: -1998 SS#: Address: 3Rd StCity, State, Zip: Greer, SC 296513162DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2021 - GS - 42 - 04394A/W#: 2021A4210203125Date of Offense: 6/14/2021S.C. Code § 44-53-0375(C)(4)CDR Code #: 0389

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐15 years + \$50k fine

In disposition of the above indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADSTO: Drugs / Trafficking in Meth - 25 to 100 grams - 2nd offense (7-30 years & 50k fine)In Violation of § 44-53-0375(C)(2)(b) of the S.C. Code of Laws, bearing CDR Code #0389
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (GSC 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:

Lindsey H. Overby

SCB79869

OVERBY, LINDSEY H.

SC Bar #

Defendant

SCB100925

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction, ☐ County Detention Center,for a determinate term of 15 days/months/years/Time Served ☐ Youthful Offender Act not to exceed 15 yearsand/or to pay a fine of \$ 50,000; provided that upon the service of 15 days/months/years/Time Served and/or paymentof \$ 50,000; plus costs and assessments as applicable; the balance is suspended with probation for 15

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ 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 SCDOP, _____ days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-45 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Joshua Robert Winchester INDICTMENT/CASE#: 2021 - GS - 42 - 04394

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal, consecutive weekly/monthly pmts. of	\$ _____	Beginning	\$ _____
§14-1-208 (Assessments 107.5 %)			\$ _____
§14-1-211(A)(1) (Conv. Surcharge)			\$ _____
§14-1-211(A)(2) (DUI Surcharge)		\$100	\$ _____
§56-5-2995 (DUI Assessment)		\$100	\$ _____
§56-1-286 (DUI Breath Test)		\$12	\$ _____
§14-1-212 (Law Enforce. Funding)		\$25	\$ _____
§14-1-213 (Drug Court Surcharge)		\$25	\$ _____
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)		\$150	\$ _____
§50-21-114(BUI Breath Test Fee)		\$41	\$ _____
§56-5-2942(J) (Vehicle Assessment)		\$50	\$ _____
3% to County (if paid in installments)		\$40/ea	\$ _____
☐ Appointed PD or appointed other counsel, Provviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.		TBD	\$ _____
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund.		\$500	\$ _____
		TBD	\$ _____
		TOTAL	\$ <u>283.25</u>

Clerk of Court/ Deputy Clerk:
Court Reporter:

Camp Moffitt

Presiding Judge:
Judge Code:
Sentence Date:

2059
25, 2023

WITNESSES

SCSO



ARREST WARRANT NUMBER

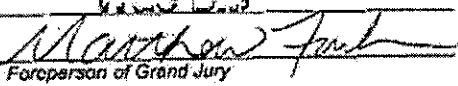
2021A4210203125 (Count I: Trafficking Meth)

2021A4210203128 (Count II: Weapon)

ACTION OF GRAND JURY

AUG 18 2021

[Two DM]


 Foreperson of Grand Jury
 Date:

VERDICT

 Foreperson of Petit Jury
 Date:

DOCKET NO. -

21-GS-42-4394

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 23 2021

TERM

THE STATE

vs.

JOSHUA ROBERT WINCHESTER

Indictment for

 TRAFFICKING METHAMPHETAMINE AND
 POSSESSION OF A FIREARM DURING
 COMMISSION OF OR ATTEMPT TO
 COMMIT A VIOLENT CRIME

SC Code: 44-53-375; 16-23-490

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on AUG 18 2021, the
 Grand Jurors of Spartanburg County present upon their oath:

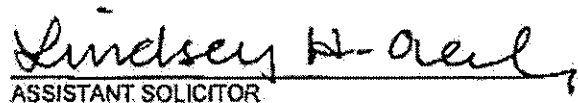
COUNT ONE – TRAFFICKING IN METHAMPHETAMINE

That the Defendant, Joshua Robert Winchester, did in Spartanburg County on or about June 14, 2021, knowingly sell, manufacture, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or did knowingly attempt to actually or constructively possess, more than two hundred (200) grams, but less than four hundred (400) grams of Methamphetamine, a schedule II controlled substance, in violation of § 44-53-375, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

**COUNT TWO - POSSESSION OF FIREARM DURING
 COMMISSION OF OR ATTEMPT TO COMMIT A VIOLENT CRIME**

That the Defendant, Joshua Robert Winchester, did in Spartanburg County on or about June 14, 2021, possess a firearm or visibly display what appeared to be a firearm during the commission or attempted commission of a violent crime, to-wit: Trafficking in Methamphetamine, in violation of Code § 16-23-490, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE

VS.

Joshua Robert Winchester

AKA:

Race: WHITE Sex: M Age: 24DOB: [REDACTED] SS#: [REDACTED]Address: 3Rd StCity, State, Zip: Greer, SC 296513182DL#: [REDACTED] SID#: [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2021 - GS - 42 - 4394AAW#: 2021A4210203126Date of Offense: 6/14/2021S.C. Code § 16-23-0490CDR Code #: 0549

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADSTO: Weapons / Poss. weapon during Commission of Violent Crime (5 years)In violation of § 16-23-0490

of the S.C. Code of Laws, bearing CDR Code #

0549☒ 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:

Lindsey H. Overby
OVERBY, LINDSEY H.SCB79869
SC Bar #

Defendant

J. Zachary
Jury, J ZacharySCB100925
SC Bar #

WHEREFORE, the Defendant is committed to the

☒ State Department of Correction,☐ County Detention Center,for a determinate term of 5 days/months/years/Time Served.☐ Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or paymentof \$; plus costs and assessments as applicable; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ 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 SCDOP. days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-45 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Joshua Robert Winchester INDICTMENT/CASE#: 2021 - GS - 42 - 4394A

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. or Job Corp. ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135,
- ☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____

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

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

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

\$56-5-2995 (DUI Assessment)

\$56-1-286 (DUI Breath Test)

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

\$14-1-213 (Drug Court Surcharge)

\$34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)

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

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

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

☐ \$ 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund

	\$
	\$
\$100	\$
\$100	\$
\$12	\$
\$25	\$
\$25	\$
\$150	\$
\$41	\$
\$50	\$
\$40/ea	\$
TBD	\$
\$500	\$
TBD	\$

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk:
Court Reporter:

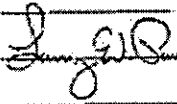
Camp Moffitt

Presiding Judge:
Judge Code:
Sentence Date:

2053
January 25, 2023

WITNESSES

SCSO



ARREST WARRANT NUMBER

2021A4210204975

ACTION OF GRAND JURY

NOV 19 2021

True Bill

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. -

21-GS-42-6224
 The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

NOV 25 2021

TERM

THE STATE
vs.

JOSHUA ROBERT WINCHESTER

Indictment for
TRAFFICKING IN METHAMPHETAMINE

SC Code: 44-53-375

FILED

NOV 29 2021 8:19

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on NOV 19 2021 the

Grand Jurors of Spartanburg County present upon their oath:

TRAFFICKING IN METHAMPHETAMINE

That the Defendant, Joshua Robert Winchester, did in Spartanburg County on or about September 16, 2021, knowingly sell, manufacture, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or did knowingly actually or constructively possess, or did knowingly attempt to actually or constructively possess, more than four hundred (400) grams of Methamphetamine, a schedule II controlled substance, in violation of § 44-53-375, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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

Lindsey H. Aech
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE

VS.

Joshua Robert Winchester

AKA:

Race: WHITE Sex: M Age: 24DOB: -1998 SS#: Address: New Cut RoadCity, State, Zip: Spartanburg, SC 29303DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2021 - GS - 42 - 06224A/W#: 2021A4210204975Date of Offense: 8/16/2021S.C. Code § 44-53-0375(C)(5)CDR Code #: 0370

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐*15 years + \$50k fine*

In disposition of the above Indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADSTO: Drugs / Trafficking in Meth - 25 to 100 grams - 2nd offense (7-30 years & 50k fine)In violation of § 44-53-0375(C)(2)(b) of the S.C. Code of Laws, bearing CDR Code # 0389☐ 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:

Lindsey H. Overby

OVERBY, LINDSEY H.

SCB79869

SC Bar #

Defendant

Joshua R. Winchester

Earl, J Zachary

SCB100925

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction, ☐ County Detention Center,for a determinate term of 19 days/months/years/Time Served ☐ Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: probation revocation 2019-42-05826☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC, days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Joshua Robert Winchester INDICTMENT/CASE#: 2021 - GS - 42 - 06224

SPECIAL CONDITIONS:

- ☐ PTUP after _____ months/years
- And Other Terms Listed Below:
- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

***Fine:**

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____	\$ _____
§14-1-206 (Assessments 107.5 %)	\$ _____
§14-1-211(A)(1) (Conv. Surcharge)	\$100
§14-1-211(A)(2) (DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§56-1-286 (DUI Breath Test)	\$25
§14-1-212 (Law Enforce. Funding)	\$25
§14-1-213 (Drug Court Surcharge)	\$150
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41
§50-21-114(BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	TBD
☐ Appointed PD or appointed other counsel. Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.	\$500
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD
TOTAL	\$ 283.25

Clerk of Court/ Deputy Clerk:
Court Reporter:

Camp Moffitt

Presiding Judge:
Judge Code:
Sentence Date:

2093
January 25, 2023