

**RECEIVED**

**Feb 13 2026**

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Spartanburg County  
Honorable R. Lawton McIntosh, Circuit Court Judge

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MARK S. WINGO,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000935

---

APPENDIX

---

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1 STATE OF SOUTH CAROLINA )  
 2 COUNTY OF SPARTANBURG ) COURT OF GENERAL SESSIONS

3  
 4 STATE OF SOUTH CAROLINA, ) TRANSCRIPT  
 5 PLAINTIFF, ) OF  
 6 vs. ) RECORD  
 7 MARK WINGO, ) 2018-GS-42-4597  
 8 DEFENDANT. )

9  
 10 May 6<sup>th</sup>, 2019  
 11 Spartanburg, South Carolina

12  
 13 B E F O R E:

14 THE HONORABLE J. MARK HAYES, II, Judge.

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

17 SYDNI KALLAM  
 18 ASSISTANT SOLICITOR  
 Attorney for the State

19 ANDREA PRICE  
 20 ASSISTANT PUBLIC DEFENDER  
 Attorney for the Defendant

21  
 22  
 23 PAMELA E. GREEN  
 24 Circuit Court Reporter  
 Seventh Judicial Circuit

25

I N D E X   O F   W I T N E S S E S

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(WHEREUPON, there were no exhibits marked during this hearing.)

## 1 PROCEEDINGS

2

3 THE COURT: All right. When I call your name, if you  
4 would, just raise your hand. Let me eyeball where you are  
5 if you're sitting in the jury box. If, by chance, you're in  
6 the gallery, I'm gonna need for you to come forward, and  
7 have a seat on this side of the courtroom, and probably  
8 we'll need some chairs.

9 We have Walter Barnette.

10 (WHEREUPON, the Defendant raises their hand.)

11 THE COURT: Timothy Deal.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Tashane Dodd.

14 (WHEREUPON, there was no response.)

15 THE COURT: Tashane Dodd.

16 (WHEREUPON, there was no response.)

17 THE COURT: All right. That's a trial.

18 Let's see. Susan Evans-Smith.

19 (WHEREUPON, the Defendant raises their hand.)

20 THE COURT: Calvin Gallman?

21 (WHEREUPON, the Defendant raises their hand.)

22 THE COURT: Andrew Grice.

23 (WHEREUPON, the Defendant raises their hand.)

24 THE COURT: Kelvin Jeter.

25 (WHEREUPON, there was no response.)

1 THE COURT: It's a trial docket.  
2 Odell Kelly.  
3 (WHEREUPON, the Defendant raises their hand.)  
4 THE COURT: Carolyn Manis.  
5 (WHEREUPON, the Defendant raises their hand.)  
6 THE COURT: Tammy Roberts.  
7 THE DEFENDANT: Yes, sir.  
8 THE COURT: Kenneth Sullivan.  
9 THE DEFENDANT: Right here, sir.  
10 THE COURT: Dominick Thompson is a trial docket.  
11 Brandon White.  
12 (WHEREUPON, the Defendant raises their hand.)  
13 THE COURT: Kevin Williams.  
14 (WHEREUPON, the Defendant raises their hand.)  
15 THE COURT: Mark Wingo.  
16 (WHEREUPON, the Defendant raises their hand.)  
17 THE COURT: Carolyn Manis. We've already done her.  
18 Anita -- rather Giuynita Jeter.  
19 (WHEREUPON, the Defendant raises their hand.)  
20 THE COURT: Come on up, ma'am.  
21 Kenneth Gregory Sullivan. I think they're going to  
22 reset that one. Is that the one they picked up that has  
23 other charges with Barry?  
24 THE SOLICITOR: Yes, Your Honor. That's with Mr.  
25 Beasley.

1 THE COURT: Yeah, they're gonna move that one.

2 Levergio Tanner.

3 (WHEREUPON, the Defendant raises their hand.)

4 THE COURT: Come on up. Just have a seat right here.

5 Ryan Hames.

6 (WHEREUPON, there was no response.)

7 THE COURT: Ryan Rashad Hames.

8 (WHEREUPON, there was no response.)

9 THE COURT: Need to get a bench warrant.

10 Jaffer Ahmed.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Terry Lynn Tate.

13 (WHEREUPON, the Defendant raises their hand.)

14 THE COURT: Michael Brandon Gore.

15 (WHEREUPON, the Defendant raises their hand.)

16 THE COURT: James Thompson.

17 (WHEREUPON, the Defendant raises their hand.)

18 THE COURT: Come on up, sir.

19 Odell Kelly.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Walter Barnette.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. Is there anybody sitting on

24 this side of the courtroom whose name I did not call?

25 (WHEREUPON, there was no response.)

1 THE COURT: All right. I need for y'all to please  
2 listen to me for a few moments.

3 I've been told that each one of you has one or more  
4 matters that are presently pending in the Court of General  
5 Sessions. Now, I've also been told that each one of you has  
6 expressed a desire or an intent to enter a plea to those  
7 matters.

8 I need to let you know that, as part of every plea that  
9 is presented in front of me, we make a recording. This lady  
10 who's sitting over right here to my right, she's a court  
11 reporter. She's taking down everything that's said. I tell  
12 you that because, if ever during this process, if, if you  
13 need to speak to me, I need you to speak up loud enough so  
14 that both she and I can hear you because, if we can't hear  
15 you, I can not accept your plea. But, likewise, if ever  
16 during this process, if you can not hear me, immediately let  
17 me know, and I'll speak up as well.

18 Now, in just a few moments I'm gonna ask you a series  
19 of questions. I'm gonna ask you these questions as a group.  
20 But I do not wish for you to think nor conclude that simply  
21 because I'm asking you these questions as a group that, for  
22 some reason, these questions are not important because these  
23 questions are very important. The questions that I ask you  
24 and the answers you give me to these questions help me  
25 decide whether or not I can, in fact, accept your plea. So,

1 please listen to them.

2 Now, if you need to respond to the questions, I'm gonna  
3 ask, if you would, to please stand up and let me call on you  
4 one at a time. Just don't everybody speak out at once, but  
5 let me call on you one at a time.

6 Now, if ever during this process, if you feel the need  
7 to want to speak to your lawyer, just let me know and I'll  
8 allow you to talk to your lawyer in private.

9 I'm now gonna call your names one more time. This  
10 time, when I call your name, I'm gonna ask, if you would, to  
11 please stand and remain standing. After everybody's name's  
12 been called and the court reporter has your names written  
13 down, the, the Clerk of Court, the lady on this side of the  
14 courtroom, is gonna swear you in. So, I'll need for you to  
15 please respond out loud when she asks you to do so.

16 We need -- Ms. Kepley, are you going to stand in for  
17 Mr. Cheek and the other public defenders?

18 MS. KEPLEY: I will, Your Honor.

19 THE COURT: All right. Thank you, ma'am.

20 All right. So we've got Walter Barnette.

21 (WHEREUPON, the Defendant stands.)

22 THE COURT: Timothy Deal.

23 (WHEREUPON, the Defendant stands.)

24 THE COURT: Susan Evans-Smith.

25 (WHEREUPON, the Defendant stands.)

1 THE COURT: Calvin Gallman.  
2 (WHEREUPON, the Defendant stands.)  
3 THE COURT: Andrew Grice.  
4 (WHEREUPON, the Defendant stands.)  
5 THE COURT: Odell Kelly.  
6 (WHEREUPON, the Defendant stands.)  
7 THE COURT: Carolyn Manis.  
8 (WHEREUPON, the Defendant stands.)  
9 THE COURT: Tammy Roberts.  
10 (WHEREUPON, the Defendant stands.)  
11 THE COURT: Kenneth Sullivan.  
12 (WHEREUPON, the Defendant stands.)  
13 THE COURT: Brandon White.  
14 (WHEREUPON the Defendant stands.)  
15 THE COURT: Kevin Williams.  
16 (WHEREUPON, the Defendant stands.)  
17 THE COURT: Mark Wingo.  
18 (WHEREUPON, the Defendant stands.)  
19 THE COURT: Giuynita Ann Jeter.  
20 (WHEREUPON, the Defendant stands.)  
21 THE COURT: Levergio Tanner.  
22 (WHEREUPON, the Defendant stands.)  
23 THE COURT: Jaffer Ahmed.  
24 (WHEREUPON, the Defendant stands.)  
25 THE COURT: Terry Lynn Tate.

1 (WHEREUPON, the Defendant stands.)

2 THE COURT: Michael Gore.

3 (WHEREUPON, the Defendant stands.)

4 THE COURT: James Thompson.

5 (WHEREUPON, the Defendant stands.)

6 THE COURT: All right. I need for y'all to please  
7 raise your right-hand.

8 (WHEREUPON, all Defendants were placed under oath at  
9 this time.)

10 THE CLERK: Thank you. You may be seated.

11 (WHEREUPON, the Defendants comply.)

12 THE COURT: Here are the questions that I need for you  
13 to please listen to.

14 During the last 24-hours, have you consumed any type of  
15 substance that is adversely or negatively affecting your  
16 ability to understand what we're doing today?

17 If you have, please stand at this time.

18 (WHEREUPON, there was no response.)

19 THE COURT: In the past, if you've ever received any  
20 type of substance abuse treatment, that's for a drug or  
21 alcohol problem, then I need for you to please stand at this  
22 time.

23 If you've ever received any substance abuse treatment,  
24 please stand.

25 (WHEREUPON, Defendant Barnette responds.)

1 THE COURT: Yes, sir. Tell me your name again.

2 THE DEFENDANT: Walter Barnette.

3 THE COURT: Mr. Barnette, did you receive treatment for  
4 drugs, alcohol, or both?

5 THE DEFENDANT: Drugs.

6 THE COURT: And where did you receive that last  
7 treatment?

8 THE DEFENDANT: Morris Village.

9 THE COURT: And about how long ago was that?

10 THE DEFENDANT: 2014.

11 THE COURT: And was it successful at the time?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. Thank you, sir. You may be seated.

14 (WHEREUPON, Defendant Barnette complies.)

15 THE COURT: If you are satisfied with the work that  
16 your lawyer has done for you, then I need for you to please  
17 stand at this time.

18 If you're satisfied with the work that your lawyer has  
19 done, please stand.

20 (WHEREUPON, all Defendants stand up.)

21 THE COURT: Let the record reflect that everyone stood.  
22 Thank you very much. You may be seated.

23 (WHEREUPON, the Defendants comply.)

24 THE COURT: If anybody has come to you and threatened  
25 you in any way or if they have made you any promises in

1 order to get you to make the decision to enter the plea,  
2 then I need for you to please stand.

3 If you have been threatened in any way or promised  
4 anything, please stand.

5 (WHEREUPON, there was no response.)

6 THE COURT: If the decision by you to enter the plea is  
7 a free and voluntary decision on your part, then I need for  
8 you to please stand.

9 If this is a free and voluntary decision, please stand.

10 (WHEREUPON, all Defendants stand at this time.)

11 THE COURT: Let the record reflect that everyone stood.  
12 Thank you very much. You may be seated.

13 (WHEREUPON, the Defendants comply.)

14 THE COURT: I need for each of you to understand that,  
15 under the law, you are presumed innocent of each and every  
16 charge that's presently against you, and you are entitled to  
17 have a jury trial on each and every one of those charges.  
18 Now, at any jury trial that would take place, it would be  
19 the State that has the burden of proof, and the State would  
20 have to convince all 12 members of a jury that you are, in  
21 fact, guilty beyond a reasonable doubt of each and every one  
22 of those charges.

23 Now, in order to enter a plea, however, you have to  
24 give up your right to that jury trial. But if you wish to  
25 have a jury trial on any of the charges that are presently

1 against you, that is perfectly fine. We will simply  
2 schedule a jury trial for you.

3 Is there anyone who wishes to have a jury trial on any  
4 of the charges that are presently against them?

5 If you do wish to have a jury trial, please stand at  
6 this time.

7 (WHEREUPON, there was no response.)

8 THE COURT: In addition to giving up your right to that  
9 jury trial, there are other very important Constitutional  
10 rights that you are entitled to, but that you have to give  
11 up in order to enter a plea.

12 You have to give up your right to confront and  
13 cross-examine the State's witnesses. You also have to give  
14 up your right to present evidence which you or your lawyer  
15 might feel would establish a defense, and you have to give  
16 up your right of subpoena as well as your right to remain  
17 silent.

18 Now, if you understand all those rights, and you wish  
19 to give up those rights and go forward with entering the  
20 plea, then I need for you to please stand at this time.

21 (WHEREUPON, all Defendants stand at this time.)

22 THE COURT: Let the record reflect that everyone stood.  
23 Thank you very much. You may be seated.

24 (WHEREUPON, the Defendants comply.)

25 THE COURT: Again, if ever during this process, if you

1 wish to speak to your lawyer, just let me know and I'll  
2 allow you to talk to your lawyer in private.

3 Those of you who joined us from the gallery, you can  
4 return back to the gallery now.

5 Thank you very much.

6 (WHEREUPON, the Defendants comply.)

7 THE COURT: I think we're going to do Mr. Wingo.

8 (Pause.)

9 SOLICITOR KALLAM: Mark Wingo.

10 Thank you, Your Honor.

11 Before you is Mark Wingo. He is here with his  
12 attorney. He is here on True Billed Indictment  
13 2018-GS-42-4597 for the charge of trafficking in  
14 methamphetamine between 200 and 400 grams.

15 Your Honor, he's pleading to the lesser included  
16 offense of trafficking in methamphetamine 28 grams to a  
17 hundred. This is a negotiated sentence of 15 years, Your  
18 Honor.

19 THE COURT: You are Mr. Wingo?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And, sir, it is your intent to enter a plea  
22 to the charge that was just announced?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: How old are you?

25 THE DEFENDANT: Forty-eight.

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

2 THE DEFENDANT: Twelve years.

3 THE COURT: Did you get a diploma?

4 THE DEFENDANT: I got a GED.

5 THE COURT: Presently, married, single, divorced,  
6 widowed?

7 THE DEFENDANT: Divorced.

8 THE COURT: Do you have children?

9 THE DEFENDANT: Yes, I do.

10 THE COURT: How many?

11 THE DEFENDANT: Six.

12 THE COURT: How old is your oldest?

13 THE DEFENDANT: Twenty-eight.

14 THE COURT: And your youngest?

15 THE DEFENDANT: Twelve.

16 THE COURT: And, prior to your arrest, did you have a  
17 job outside of the home?

18 THE DEFENDANT: Yes, I did.

19 THE COURT: What were you doing?

20 THE DEFENDANT: Construction.

21 THE COURT: Ever served in the military?

22 THE DEFENDANT: No, sir.

23 THE COURT: And how long have you been in jail on this  
24 charge?

25 THE DEFENDANT: Five seven -- 517 days.

1 THE COURT: Sir, please listen to the solicitor. She's  
2 gonna provide us with the facts.

3 SOLICITOR KALLAM: Thank you, Your Honor.

4 This occurred on September 28<sup>th</sup>, 2017. Weeks prior  
5 to that, during the month of September, a CI had been  
6 contacted by Mark wingo about setting up a deal to sell  
7 methamphetamine. There were several conversations that were  
8 recorded between the CI and Mark wingo all leading up to the  
9 day of September 28<sup>th</sup>, 2017.

10 On that date, the CI contacted Investigator Swad and  
11 stated that Mark wingo had made contact, and wanted the CI  
12 to go and pick up a quantity of methamphetamine from a  
13 location in Spartanburg County, and take it to a location in  
14 Inman.

15 Your Honor, this -- the CI was supposed to pick up 13  
16 ounces of methamphetamine from a female known as Amy Fowler.  
17 She was at [REDACTED] Myra Street, Roebuck, which was Mark wingo's  
18 ex-mother-in-law's address. The CI went to the address, met  
19 with Amy Fowler, picked up the package that did contain  
20 357.94 grams of methamphetamine.

21 Your Honor, during this time, the CI was in contact  
22 with Mark wingo the -- getting instructions. After he  
23 picked up the methamphetamine from Amy Fowler, he was then  
24 instructed by Mark wingo to meet with Amy Shuler. She was  
25 at her address, and she was to give him the address and tell

1 him were to go next.

2       On the way there Mark Wingo called and told him that  
3 Amy -- that Renee Shuler was going to have scales and  
4 baggies, and that they were going to break up the  
5 methamphetamine. Then he was to take, take it to another  
6 female in Pacolet. The CI met with Renee Shuler who did  
7 have scales and baggies in her purse. She was on the phone  
8 with Mark Wingo as the vehicle was pulled over, Your Honor.  
9 At that time, both the CI and Renee Shuler were -- got out  
10 of the vehicle. The methamphetamine was found in a  
11 pocketbook that Ms. Shuler had.

12       Ms. Shuler stated that Mark Wingo had instructed her to  
13 meet with the CI, that she was to take the methamphetamine,  
14 divide it up, and then distribute it for him.

15       Your Honor, the whole time he was doing this, he was in  
16 the DOC, and we'll get to his prior record when you're  
17 ready, Your Honor.

18       THE COURT: Do you believe that, as she stated the  
19 facts, that the solicitor's substantially correct?

20       THE DEFENDANT: Somewhat. No.

21       THE COURT: You want to speak with your lawyer for a  
22 moment?

23       (Pause.)

24       THE DEFENDANT: Oh, yeah. Yes, sir.

25       THE COURT: All right. And, sir, do you understand

1 that this is being presented to me as a negotiated plea.  
2 Therefore, if I accept the plea, I'll be bound by the  
3 negotiations and will, and will impose the sentence that was  
4 announced by the solicitor?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And that is what you want me to do?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And, sir, do you understand that you're  
9 entering a plea to this charge, and this charge is  
10 classified as both a violent and serious offense under the  
11 law?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And you've been able to talk to your lawyer  
14 as to the consequences and ramification of the offense being  
15 classified as both violent and serious?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And you still wish to enter the plea?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Are you, in fact, guilty of this  
20 trafficking in meth 28 grams to 100?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Have all of your answers to my questions  
23 today been truthful and honest?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Discovery's been shared with the defense?

1 SOLICITOR KALLAM: Yes, Your Honor.

2 THE COURT: Prior record.

3 SOLICITOR KALLAM: Your Honor, his prior record goes  
4 back to 1988. I will just go for the drug offenses in that  
5 time.

6 1988, possession of Xanax.

7 1992, possession with intent to distribute second,  
8 possession of drug paraphernalia.

9 Your Honor, then, in 2000, he got a burglary second  
10 nonviolent.

11 2005, fraud check times two, parole revocation.

12 2006, grand larceny.

13 2007, shoplifting.

14 2009, shoplifting.

15 2010, he got a fraudulent check, and property, a third  
16 offense.

17 Your Honor, in 2014 he received attempt to conspire a  
18 drug law times three, a shoplifting, and then what he is  
19 serving time on now is that as well as caught three charges  
20 of contraband, use of vehicle without permission, violation  
21 of probation, probation, Your Honor, and that was a 10 year  
22 sentence that he received in 2015.

23 THE COURT: Yes, ma'am.

24 MS. PRICE: Thank you, Your Honor.

25 As this is negotiated, I will be very brief. I do

1 believe that it is in Mr. Wingo's best interest to go  
2 forward in this manner. I do -- there's been a lot of going  
3 back and forth between me and the solicitor trying to work  
4 this case out.

5 I sat down with her and we -- I've gone over the videos  
6 and the phone calls in this, this case. I do believe that,  
7 if this went to trial, that Mr. Wingo would be convicted,  
8 and as he is indicted, it would be a 25 year sentence  
9 instead of the 15. So, I believe this truly is in his best  
10 interest to enter this plea at this time.

11 THE COURT: Do you agree with the statements just made  
12 by your lawyer?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Is there anything else that you would like  
15 to say or want me to know or consider?

16 THE DEFENDANT: No, sir.

17 THE COURT: Thank you, Mr. Wingo.

18 MS. PRICE: I'm sorry, Your Honor. I would like to add  
19 one thing.

20 He is in the Department of Corrections on his current  
21 sentence until next August is his max out date. We would,  
22 we would ask that you just consider starting his new  
23 sentence today running that concurrent.

24 Thank you, Judge.

25 THE DEFENDANT: I'm gonna withdraw my plea, Your Honor.

1 MS. PRICE: Sir, you're making a mistake.

2 THE DEFENDANT: Nah, this is---

3 MR. PRICE: You're making a mistake.

4 THE DEFENDANT: That is not what y'all told me Friday.

5 MS. PRICE: Yes, it is.

6 THE DEFENDANT: It's not.

7 (Pause.)

8 THE COURT: Just talk to your lawyer.

9 (Pause.)

10 THE COURT: All right. Do you still want to go ahead  
11 with the plea?

12 THE DEFENDANT: Yes, I do.

13 THE COURT: All right. I'll find that there's a  
14 substantial factual basis for the plea.

15 On this case, it will be a 15 year Sentence at the  
16 State Department of Corrections. I've indicated that it  
17 would run concurrent with his present sentence.

18 Good luck to you, sir.

19 MS. PRICE: Thank you, Your Honor.

20

21 \* \* \*END OF REQUESTED TRANSCRIPT OF RECORD\* \* \*

22

23

24

25

## C E R T I F I C A T E

1  
2  
3 I, Pamela E. Green, Official Court Reporter for the  
4 State of South Carolina, do hereby certify that the  
5 foregoing is a true, accurate and complete Transcript of  
6 Record of the proceedings had and evidence introduced in the  
7 trial of the captioned case, relative to appeal, in the  
8 Court of General Sessions for Spartanburg County, South  
9 Carolina, on the 6<sup>th</sup> day of May, 2019.

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

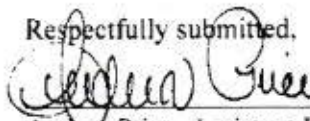
12  
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15 March 2<sup>nd</sup>, 2020

16  
17  
18  
19 \_\_\_\_\_  
20 PAMELA E. GREEN, Court Reporter

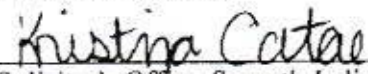
STATE OF SOUTH CAROLINA	)	IN THE GENERAL SESSIONS COURT
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	<b>MOTION FOR RECONSIDERATION OF</b>
	)	<b>SENTENCE</b>
State of South Carolina	)	
	)	Charge: Trafficking in meth. or cocaine base -
Plaintiff	)	200 g or more, but less than 400 g
	)	
v.	)	
	)	Indictment: 2018GS4204597
Mark Stephen Wingo	)	
	)	Date of Arrest: December 11, 2017
Defendant	)	

To: Barry Barnette, Solicitor, Seventh Judicial Circuit

**YOU WILL PLEASE TAKE NOTICE**, that the undersigned attorney for the Seventh Judicial Circuit Public Defender Office, on behalf of the aboved-named Defendant, will move immediately before J. Mark Hayes, II on May 6, 2019, 2019 or as soon thereafter as counsel may be heard, for a reconsideration of the sentence handed down on May 6, 2019 on indictment 2018GS4204597.

Respectfully submitted,  
  
 \_\_\_\_\_  
 Andrea Price, Assistant Public Defender  
 Seventh Judicial Circuit Public Defender Office  
 Spartanburg, South Carolina

Date: 5/6/19

Service Accepted by:  
  
 \_\_\_\_\_  
 Solicitor's Office, Seventh Judicial Circuit

2019 MAY -6 PM 1:43

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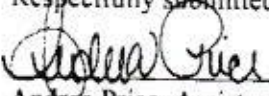
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 )  
 COUNTY OF SPARTANBURG )  
 )  
 State of South Carolina )  
 )  
 Plaintiff )  
 )  
 v. )  
 )  
 Mark Stephen Wingo )  
 )  
 Defendant )

IN THE GENERAL SESSIONS COURT  
 SEVENTH JUDICIAL CIRCUIT  
**MOTION TO WITHDRAW GUILTY PLEA**  
 Charge: Trafficking in meth. or cocaine base -  
 200 g or more, but less than 400 g  
 Indictment: 2018GS4204597  
 Date of Arrest: December 11, 2017

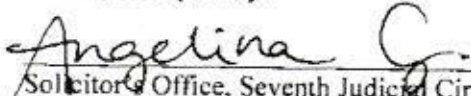
2019 MAY -9 PM 3:58

To: Barry Barnette, Solicitor, Seventh Judicial Circuit

**YOU WILL PLEASE TAKE NOTICE**, that the undersigned attorney for the Seventh Judicial Circuit Public Defender Office, on behalf of the aboved-named Defendant, will move immediately before J. Mark Hayes, II on May 9, 2019 or as soon thereafter as counsel may be heard, for Mr. Wingo to withdraw his plea of guilty entered on May 6, 2019 on indictment 2018GS4204597 and proceed to trial.

Respectfully submitted,  
  
 \_\_\_\_\_  
 Andrea Price, Assistant Public Defender  
 Seventh Judicial Circuit Public Defender Office  
 Spartanburg, South Carolina

Date: 5.9.19

Service Accepted by:  
  
 \_\_\_\_\_  
 Solicitor's Office, Seventh Judicial Circuit

1 STATE OF SOUTH CAROLINA )  
 2 COUNTY OF SPARTANBURG ) COURT OF GENERAL SESSIONS

3  
 4 STATE OF SOUTH CAROLINA, ) TRANSCRIPT  
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 6 ) PLAINTIFF, ) OF  
 7 ) vs. ) RECORD  
 8 ) MARK WINGO, )  
 9 ) 2018-GS-42-4597  
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October 2<sup>nd</sup>, 2019  
 Spartanburg, South Carolina

B E F O R E :

THE HONORABLE J. MARK HAYES, II, JUDGE.

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

SYDNI KALLAM  
 ASSISTANT SOLICITOR  
 Attorney for the State

ANDREA PRICE  
 ASSISTANT PUBLIC DEFENDER  
 Attorney for the Defendant

PAMELA E. GREEN  
 Circuit Court Reporter

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Defendant's Exhibits

D-1	Letter		
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P R O C E E D I N G S

THE COURT: We're on two motions filed on behalf of the defendant

Be more than happy to hear from you.

MS. PRICE: Thank you, Your Honor.

Before the Court is Mr. Mark Stephen Wingo.

As Your Honor will recall, you sentenced him on a drug trafficking charge on May the 6<sup>th</sup> of this year. Mr. Wingo, subsequent to your sentencing, directed me to file two motions, a motion to reconsider his sentence and a motion to withdraw his guilty plea. Those have been timely filed and before the Court. I believe Your, Your Honor does have a copy of those motions.

In which order would you like for us to take those up, sir?

THE COURT: Your preference.

MS. PRICE: We'll go in chronological order, Judge.

On May 6<sup>th</sup> of 2019 Your Honor handed down a sentence to Mr. Wingo of 15 years to run concurrent with his DOC sentence. I filed a motion, at Mr. Wingo's direction, on that same date. Served a copy of it on the State.

Mr. Wingo, after speaking with him today, he is here and present from Perry where he's currently housed. He has indicated that he wishes to withdraw this motion for

1 reconsideration.

2 THE COURT: All right. Mr. Wingo, you were able to  
3 hear Ms. Price when she informed the Court that you wish to  
4 withdraw your motion for reconsideration of the sentence?

5 THE DEFENDANT: That's correct.

6 THE COURT: Is that, is that true?

7 I mean you do wish to withdraw the motion for  
8 reconsideration?

9 THE DEFENDANT: That's correct.

10 THE COURT: All right. And, Mr. Wingo, has anybody  
11 threatened you in any way or promised you anything in order  
12 to you to make the -- request that your motion be withdrawn?

13 THE DEFENDANT: No, sir.

14 THE COURT: Am I correct to include that your decision  
15 to withdraw the motion that it is a free and voluntary  
16 decision by you?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. All right. Mr. Wingo, we will  
19 consider the motion withdrawn. If you have a formal order,  
20 if, or, counsel, prepare one.

21 MS. PRICE: Thank you.

22 THE COURT: Thank you.

23 MS. PRICE: Thank you, Your Honor.

24 The second motion that was filed was filed on May the  
25 9<sup>th</sup>, that same week of court. It is a motion to withdraw

1 Mr. Wingo's guilty plea. Mr. Wingo directed me to  
2 withdraw -- file this motion to withdraw based on two  
3 issues.

4 The first issue is Mr. Wingo is on a couple of  
5 medications that -- for his mental health that help him to  
6 concentrate and to be able to better cope with his  
7 surroundings. He was not given that medication at the time  
8 of his stay here at the Spartanburg County Jail. He  
9 actually spoke with this about a psychiatrist -- with a  
10 psychiatrist and a part of that -- and part of his treatment  
11 plan was that it was important to continue his medication as  
12 prescribed wherever he may be located.

13 As Your Honor knows, I have a copy of this I'd like to  
14 present to the Court and make it a, make it a part of the  
15 proceeding here today. I've given a copy of this and shown  
16 it to Ms. Kallam.

17 THE COURT: All right.

18 MS. PRICE: May I approach please?

19 THE COURT: Is this the only copy you have?

20 MS. PRICE: No, sir. No, sir, that's for the Court.

21 Oh, I'm sorry. Forgive me.

22 THE COURT: I, I can get her to make a copy if you need  
23 to.

24 MS. PRICE: I have another one, sir.

25 THE COURT: Okay.

1 MS. PRICE: I'm sorry about that, Your Honor.

2 THE COURT: We'll have that marked as an exhibit.

3 (WHEREUPON, the letter was marked as Defendant's  
4 Exhibit No. 1 and received into evidence at this time.)

5 MS. PRICE: Thank you, Your Honor.

6 The list of those medications is on the second page.  
7 It's pretty self-explanatory. So I won't go into it today.  
8 But that is for the Court's perusal whenever the court --  
9 inspection and consideration.

10 The second one is that, during the negotiations of this  
11 case, I had several conversations with the solicitor, Ms.  
12 Kallam. One of the things that we talked about was  
13 potential witnesses in this case, and she informed me that  
14 one of Mr. Wingo's family members was to come before the  
15 Court and testify against him as a material witness in this  
16 case.

17 I presented this evidence to Mr. Wingo and Mr. Wingo  
18 decided, the next day, to -- that he wanted to plead and --  
19 in these proceedings.

20 Mr. Wingo now tells me that that person is not gonna  
21 testify and was not gonna testify against him.  
22 Unfortunately, though, Your Honor, that person's not  
23 present. That person's on vacation.

24 So, Your Honor, I would like to, under these  
25 circumstances, move that we continue this hearing at this

1 point so that we can take testimony from that person.

2 THE COURT: Yes, ma'am.

3 SOLICITOR KALLAM: Your Honor, the State's position is  
4 that I did meet with Mr. Randy Hollifield on May 1<sup>st</sup>. We,  
5 in a phone conversation, he came into my office. We sat  
6 down. We listened to some phonecalls that had Mr. Wingo and  
7 a CI on.

8 Mr. Hollifield was able to immediately identify  
9 Mr. Wingo's voice. In that conversation he stated that he  
10 would be testifying for the State. I understand Ms. Price  
11 wanting to call him as a witness. The State's ready to go  
12 forward today. However, we would leave that up to Your  
13 Honor.

14 THE COURT: Any reply?

15 MS. PRICE: No, Your Honor.

16 THE COURT: All right. I'll let you know.

17 MS. PRICE: Thank you, Your Honor.

18 SOLICITOR KALLAM: Thank you, Your Honor.

19 THE COURT: Thank you, Mr. Wingo.

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21 \* \* \*END OF REQUESTED TRANSCRIPT OF RECORD\* \* \*

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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 General Sessions for Spartanburg County, South Carolina, on the 2<sup>nd</sup> day of October, 2019.

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

March 21<sup>st</sup>, 2022

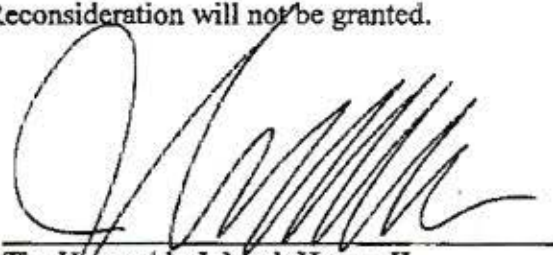
\_\_\_\_\_  
PAMELA E. GREEN, Court Reporter



This Court's opinion is that an insufficient factual foundation was presented to support either assertion. Even though a medical record was presented which established that Mr. Wingo has mental health issues, this record does not indicate his mental health issues interfered with the plea. Additionally, the assertion concerning Mr. Wingo's brother-in-law is unclear as to how his testimony would have helped or hurt Mr. Wingo.

Based on the above, the Motion for Reconsideration will not be granted.

IT IS SO ORDERED.

  
\_\_\_\_\_  
The Honorable J. Mark Hayes, II

Spartanburg, South Carolina  
October 28, 2019

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CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

FORM 5

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

County of Spartanburg )

Mark Stephen Wingo )

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

2019-CP-42-03767

v. )

APPLICATION FOR

State of South Carolina )

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 Perry Correctional Institution, 430 Oaklawn Rd, Pelzer, SC, 29669
2. Name and location of Court which imposed sentence General Sessions
3. Name(s) of co-defendant(s) (if any) Amy Fowler, Renee West Schuler
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2018-GS-420-4597 (Drug Trafficking)
  - (b) \_\_\_\_\_

(c) \_\_\_\_\_

5. The date upon which sentence was imposed and the terms of the sentence:  
 (a) May 6, 19 and (15 year sentence)  
 (b) \_\_\_\_\_  
 (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. \_\_\_\_\_  
 iii. \_\_\_\_\_  
 (b) the result in each such Court to which you appealed:  
 i. N/A  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_  
 (c) the date of each such result:  
 i. N/A  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_  
 (d) if known, citations of any written opinion or orders entered pursuant to such results:  
 i. N/A  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_

9. If you answered "no" to (7), state your reasons for not so appealing:  
 (a) N/A  
 (b) \_\_\_\_\_

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 CLERK OF COURT  
 STATE OF NEW YORK  
 COUNTY OF ALBANY

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(c) \_\_\_\_\_

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) See Attachments

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

(a) See Attachments

(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 or motion or application:

(a) the specific nature thereof:

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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SOUTH CAROLINA COUNTY

(c) the disposition thereof:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court State or Federal, in any petition, motion or application which you have filed

N/A

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 ST. JOHN BAPTIST COUNTY  
 ALABAMA

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15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) See Attachment
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? N/A
- (c) your sentencing? N/A
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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 CLERK OF SUPERIOR COURT  
 STATE OF CONNECTICUT  
 JUDICIAL CENTER  
 100 STATE STREET  
 HARTFORD, CT 06103

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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. Price, Andrea Lea
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Guilty Plea
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

Reverse and Remand

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

N/A

STATE OF SOUTH CAROLINA

County of Spartanburg

VERIFICATION

I, Mark Wingo, 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.

X Mark Wingo

SWORN to and subscribed before me this 21st day of October 2019.

Tamara Conwell (L.S.)  
Notary Public

My Commission Expires: My Commission Expires  
September 25, 2023

2019 OCT 25 AM 9:47  
CLERK OF COURT  
SPARTANBURG COUNTY  
SOUTH CAROLINA

FILED

**RECEIVED**

OCT 21 2019

PG.I. MAILROOM

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

I, Mark Wingo, 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.

Mark Wingo  
Applicant

SWORN or affirmed to and subscribed before me this

21st day of October, 2019.

Tamara Conwell  
Notary Public

My Commission Expires

My Commission Expires: September 25, 2020

RECEIVED

OCT 21 2019

P.C.I. MAILROOM

CLERK OF COURT  
STAFFORD COUNTY  
700 N. 100th St  
STAFFORD, VA 22459

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STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

Mark S. Wingo, #269107,  
Applicant,

v.

State of South Carolina,  
Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2019-CP-42-03767

**RETURN AND MOTION FOR A  
MORE DEFINITE STATEMENT**

NOW COMES Respondent, moving for a more definite statement and making its return to the post-conviction relief (hereafter "PCR") application filed on October 25, 2019, by Mark S. Wingo (hereafter "Applicant"). Respondent offers the following in support of its Return:

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SPARTANBURG COUNTY  
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**I. Procedural History**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During its August 2018 term, the Spartanburg County Grand Jury indicted Applicant for Trafficking Methamphetamine (2018-GS-42-4597). Applicant was represented by Andrea Price, Esquire. Assistant Solicitor Sydni Kallam of the Seventh Circuit Solicitor's Office prosecuted the case. On May 6, 2019, Applicant appeared before the J. Mark Hayes, II, circuit court judge, and pled to the lesser included offense of trafficking twenty-eight to one-hundred grams of methamphetamine and to a negotiated sentence of fifteen years. Judge Hayes sentenced Applicant to fifteen years' imprisonment, running concurrently with his previous sentence. Applicant did not pursue a direct appeal.

**II. Statement of Facts**

Several weeks before the incident, a confidential informant was contacted by Applicant

about setting up a drug buy. (Tr. 15). Thereafter, several conversations between the confidential informant and Applicant occurred leading up to the incident. (Tr. 15).

On September 28, 2017, the confidential informant contacted an investigator and stated that Applicant made contact with him and wanted the informant to pick up a quantity of methamphetamine from a location in Spartanburg County, and to take it to a location in Inman. (Tr. 15). The informant was supposed to pick up thirteen ounces of methamphetamine from a female, Amy Fowler, in Spartanburg County and was instructed by Applicant to meet with Renee Shuler, who was at her address. (Tr. 15). Shuler was supposed to tell him where to go next. (Tr. 15-16).

While traveling to meet Shuler, Applicant called the informant and told him that Shuler would have scales and baggies and that they would break up the methamphetamine. (Tr. 16). The informant was supposed to take it to another female in Pacolet. (Tr. 16). The confidential informant met with Shuler, who had the baggies and scales in her purse. (Tr. 16). Shuler was on the phone with Applicant when she was pulled over. (Tr. 16). Both the informant and Shuler got out of the vehicle. (Tr. 16). Methamphetamine was found in Shuler's purse. (Tr. 16).

Shuler stated that Applicant instructed her to meet with the confidential informant and that she was supposed to take the methamphetamine, divide it up, and distribute it for him. (Tr. 16). Applicant was in the Department of Corrections the entire time he was organizing and directing the drug sale. (Tr. 16).

### III. Current Action before the Court

In his *pro se* PCR application, Applicant alleges he is detained unlawfully. However, in response to questions on the application asking what grounds he bases this allegation on, Applicant states "see attachment." This attachment was not submitted to the Court nor

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SPARTANBURG COUNTY  
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Respondent. Thus, this attachment either does not exist or was not attached to the application.

Regarding relief, Applicant requests: "reverse and remand."

Attached to and incorporated herein are Applicant's Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, and the current PCR application. Respondent reserves the right to amend this Return upon receipt of additional relevant information.

#### IV. Motion for a More Definite Statement

Respondent moves for a more definite statement regarding the Applicant's allegations. Applicant has failed to state any grounds on which the allegation is based whatsoever. In the application, it remains clear that Applicant wants a PCR hearing regarding issues he believes merit relief, but has failed to attach these reasons to his application. Additionally, this application cannot otherwise be dismissed as untimely or successive. *See* S.C. Code Ann. § 17-27-45(A) (stating that a timely application must be filed within one year after the entry of judgement of conviction or one year after sending the remittitur to the lower court from an appeal); S.C. Code Ann. § 17-27-90(A) (requiring all PCR-related allegations to be raised in the original, supplemental, or amended application, absent a sufficient reason for why the allegation was not raised initially).

The Uniform Post-Conviction Procedure Act requires that applicants must "specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In a PCR application, it is incumbent upon applicants to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965).

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SPARTANBURG COUNTY  
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Furthermore, Rule 8(a), SCRCF, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Respondent moves pursuant to Rule 12(e), SCRCF, to require Applicant, through Counsel, to provide a more definite statement of his claims. Additionally, Respondent moves to require Applicant, through Counsel, to file an additional amended application well in advance of any evidentiary hearing concerning this matter. If Applicant, through Counsel, fails to file a timely and responsive amended application setting forth specific allegations for relief within forty-five days of receipt, Respondent reserves the right to move to dismiss the allegation for failure to state a claim.

**V. Other Allegations Denied**

Each and every other allegation in the Applicant’s PCR application not explicitly admitted, qualified, or explain in this Return is hereby denied by the Respondent.

**VI. Assertion of Rights to Notice of Amendments, Experts**

Applicant should raise any claims he intends to raise at the PCR evidentiary hearing well in advance of the hearing. Here, Applicant’s court-appointed attorney is the only individual authorized to file amendments to this application, given his representative capacity, Rule 11(a), SCRCF and *pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing is a nullity where person was represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) (“Since there is no right to ‘hybrid representation’ that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.”).

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent or, in the alternative, continue the

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SPARTANBURG COUNTY  
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matter to permit adequate time to investigate and address the claims. *See Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017) (“In most PCR cases . . . we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases.”); *Love v. State*, 428 S.C. 231, 242, 834 S.E.2d 196, 201 (2019) (“When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record.”); *see also* Rules 15(a)-(b), SCRPC (explaining how to amend a pleading). Pursuant to Section 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless the Court grants leave upon good cause shown. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits withheld until the last minute resulting in undue prejudice to Respondent.

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[conclusion and signature line on following page]

**VII. Conclusion**

WHEREFORE, Respondent respectfully requests that the Court require Applicant to provide a more definite statement and then hold an evidentiary hearing regarding Applicant's allegations.

Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

CHELSEY F. MARTO  
Assistant Attorney General

By: *Chelsey Marto*  
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
Telephone: (803) 734-3737

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SPARTANBURG COUNTY  
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April 29, 2020

STATE OF SOUTH CAROLINA )  
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 COUNTY OF SPARTANBURG )  
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 MARK S. WINGO, #269107 )  
 )  
 ) Applicant, )  
 )  
 ) vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 ) Respondent, )  
 )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 2019-CP-42-03767

AFFIDAVIT OF SERVICE BY MAIL

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 SPARTANBURG COUNTY  
 2019 APR 30 AM 9:36

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 in the above-captioned matter on the following person via electronic mail:

Rodney W. Richey, Esquire  
 richeyandrichey@yahoo.com

DATED this 29th day of April, 2020.

*Chelsey Marto*  
 Chelsey F. Marto,  
 Attorney For Respondent

STATE OF SOUTH CAROLINA )  
 COUNTY OF SPARTANBURG )  
 MARK S. WINGO, #269107 )  
 Applicant, )  
 v. )  
 State of South Carolina )  
 Respondent, )

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IN THE COURT OF COMMON PLEAS  
 FOR THE SEVENTH JUDICIAL  
 CIRCUIT

Case No.: 2019-CP-42-03767

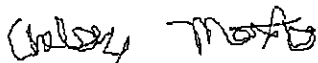
Certificate of Service

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 SPARTANBURG COUNTY  
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1. Undersigned is counsel of record for the Respondent in the above-captioned action.
2. Pursuant to the South Carolina Supreme Court’s Order “RE: Operation of the Trial Courts During the Coronavirus Emergency” (Appellate Case No. 2020-000447), dated April 3, 2020), “a lawyer admitted to practice law in this state may serve a document on another lawyer admitted to practice law in this state using the lawyer’s primary email address listed in the Attorney Information System (AIS).”
3. Undersigned has served a copy of the Return in the above-captioned matter on opposing counsel by emailing a copy to the email address as listed in the AIS:

**Rodney W. Richey, Esquire**  
**richeyandrichey@yahoo.com**

DATED this 29th day of April, 2020.



CHELSEY F. MARTO  
 Assistant Attorney General

Office of the Attorney General  
 Post Office Box 11549  
 Columbia, SC 29211  
 (803) 734-3737  
 ChelseyMarto@scag.gov

STATE OF SOUTH CAROLINA )	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG )	SEVENTH JUDICIAL CIRCUIT
Mark S. Wingo, 269107, )	2019-CP-42-03767
Applicant, )	
v. )	
State of South Carolina, )	<b>AMENDMENT TO APPLICATION</b>
<u>Respondent.</u> )	<b>FOR POST CONVICTION RELIEF</b>

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on October 25, 2019. Respondent submitted a Return and Motion for More Definite Statement on April 27, 2020. Via Order dated May 5, 2022, undersigned was substituted in as counsel for Applicant.

Applicant through counsel filed a Motion for Discovery on September 27, 2022. An Order Authorizing Discovery and Granting Continuance was issued by the Honorable R. Keith Kelly on November 2, 2022, which was filed on November 17, 2022.

Applicant filed his original application *pro-se* and before the receipt of discovery. Following the receipt of discovery, receiving advice of counsel and engaging a private investigator and expert, Applicant would move to amend his original Application for Post Conviction Relief. In general, Applicant would allege that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as pursuant to Article I, Section 14 of the South Carolina Constitution, were violated prior to, during and following his guilty plea. Applicant would further amend his Application for Post Conviction Relief to contain the following specific allegations of ineffective assistance of

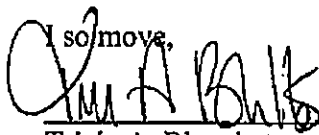
counsel:

AMY W. COX  
 SPARTANBURG COUNTY  
 CLERK OF COURT  
 Counsel provided ineffective assistance of counsel that rendered his guilty plea involuntary, due to but not limited to the following:

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- a. Counsel failed to properly review the evidence with Applicant and conduct an independent investigation prior to the entry of the guilty plea.
  - b. Counsel failed to prepare for trial and properly advise Applicant regarding possible defenses.
  - c. Counsel misadvised Applicant prior to the entry of the plea agreement regarding the evidence against him and credit for time served, which induced his guilty plea. Additionally, counsel failed to ensure that he had a full and complete understanding at the time of the guilty plea.
  - d. Counsel failed to properly address Applicant's mental health, specifically but not limited to his medications, prior to and during his guilty plea.
2. Counsel provided ineffective assistance of counsel in preparation for and during the post-plea motion hearing, to include failure to utilize a mental health expert, failure to address Applicant's understanding regarding time credit, failure to ensure availability of a witness, and failure to properly advise Applicant before the withdrawal of the motion to reconsider.
  3. Applicant did not knowingly and voluntarily waive a direct appeal and requests a belated appeal under *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974).
  4. Pursuant to Rule 15(b), SCRPC, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

I so move.  
  
 \_\_\_\_\_  
 Tricia A. Blanchette  
 Attorney for Applicant  
 PO Box 2147  
 Leesville, SC 29070

August 1, 2024

AMY W. COX  
 SPARTANBURG COUNTY  
 CLERK OF COURT  
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STATE OF SOUTH CAROLINA )  
 COUNTY OF SPARTANBURG )  
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 Mark S. Wingo, 269107, )  
 Applicant, )  
 v. )  
 State of South Carolina, )  
 Respondent. )

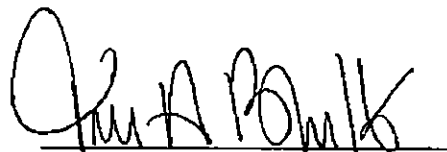
IN THE COURT OF COMMON PLEAS  
 SEVENTH JUDICIAL CIRCUIT

2019-CP-42-03767

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that pursuant to the Order issued by the South Carolina Supreme Court "RE: Service by E-Mail in the Trial Courts," issued on May 6, 2022, that a true copy of an Amendment to Application for Post Conviction Relief has been served on opposing counsel this 1<sup>st</sup> day of August 2024 by sending an email to her following registered email address:

Shayla J. Flores, Assistant Attorney General  
 ShaylaFlores@scag.gov



Tricia A. Blanchette  
 PO Box 2147  
 Leesville, SC 29070  
 (803) 908-3266

August 1, 2024

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 SPARTANBURG COUNTY  
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STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

COURT OF COMMON PLEAS NONJURY

MARK S. WINGO, )  
APPLICANT, )  
vs. )  
STATE OF SOUTH CAROLINA, )  
RESPONDENT. )

TRANSCRIPT  
OF  
RECORD  
2019-CP-42-3767

September 3<sup>rd</sup>, 2024

B E F O R E:

THE HONORABLE R. LAWTON MCINTOSH, Judge.

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

TRICIA A. BLANCHETTE  
ESQ.  
Attorney for the Applicant

BRYAN T. HALL  
ASSISTANT ATTORNEY GENERAL  
Attorney for the Respondent

Pamela E. Green  
Circuit Court Reporter

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E X H I B I T S

<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>Applicant's Exhibits</u>		
A-1	CV of Doctor Maddox		14
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## P R O C E E D I N G S

1  
2  
3 THE COURT: All right, sir.

4 MR. HALL: May it please the Court?

5 THE COURT: Yes, sir.

6 MR. HALL: Assistant Attorney General Bryan Hall for  
7 the State, Your Honor.

8 This is the case of Mark Wingo versus State of South  
9 Carolina. Docket Number 2019-CP-42-03767.

10 In August of 2018 the Spartanburg County Grand Jury  
11 indicted Mr. Wingo for trafficking meth, Indictment Number  
12 2018-GS-42-4597. Mr. Wingo pled guilty on May 6<sup>th</sup> of 2019  
13 before the Honorable J. Mark Hayes, II. Sydni Kallam  
14 represented the State and Mr. Wingo was represented by  
15 Andrea Price.

16 He pled guilty to the lesser included offense of  
17 trafficking meth 28 to 100 grams and he was sentenced to a  
18 negotiated sentence of 15 years and that was ordered to  
19 run concurrent to a 10 year sentence for shoplifting  
20 enhanced and two counts of prison contraband that he was  
21 convicted of in March, 2015. Mr. Wingo did not appeal.

22 But on May 6<sup>th</sup> of 2019, a motion to reconsider the  
23 sentence was filed and, on May 9<sup>th</sup> of 2019, a motion to  
24 withdraw his guilty plea was filed.

25 On October 25<sup>th</sup> of 2019, this PCR was filed. The

1 state filed its return on April 27<sup>th</sup> of 2020 and moved  
2 for a more definite statement. Counsel was substituted on  
3 May 5<sup>th</sup> of 2022 and a -- an amendment to his application  
4 was filed on August 6<sup>th</sup> of 2024.

5 I'll let Ms. Blanchette clarify for the record Mr. --  
6 what the allegations are. Excuse me. But Mr. Wingo is  
7 present and represented by Tricia Blanchette. Ms.  
8 Blanchette can put on the record what allegations she's  
9 ready to proceed on. But the State is ready to proceed.

10 Your Honor, before we actually proceed with the  
11 evidentiary hearing, I would just ask the Court to  
12 question Mr. Wingo about whether he understands the  
13 consequences of, of the PCR. It's my understanding that  
14 he was indicted for trafficking 200 to 400 grams, which,  
15 which carries a mandatory 25 years to life and he's  
16 convicted of, of the lesser included and received 15  
17 years.

18 The State is ready to proceed.

19 THE COURT: Ms. Blanchette, I assume that you've been  
20 over all that with Mr. Wingo?

21 MS. BLANCHETTE: I have, Your Honor.

22 In some of our claims today, as you'll see in the  
23 amendment, deal directly with his mental health and his  
24 mental health diagnoses. So, I have Doctor Donna Maddox  
25 here in the courtroom. She has just done a brief

1 evaluation of him this morning just to evaluate him and  
2 make sure that he's in the mental state to go forward.

3 I have discussed the risks with him. I'm not opposed  
4 to what the State has asked. But I believe, and if Doctor  
5 Maddox wants to affirm, she has found that he is in the  
6 condition to go forward today as far as his mental health.

7 THE COURT: Are you gonna call Doctor Maddox now and  
8 let her testifying (sic)?

9 Is that what I'm hearing?

10 MR. HALL: Yes, sir, and I'll, I'll actually withdraw  
11 the State's request. We're ready to go forward.

12 THE COURT: All right.

13 MS. BLANCHETTE: Thank you, Your Honor. Then I'll  
14 move to the other request that I clarified on what we're  
15 going forward.

16 Your Honor, we are going forward on the amendment  
17 that the State referenced that was filed in August. Set  
18 forth in that amendment are specific claims. I'm happy to  
19 read those into the record. But Your Honor, I assume, has  
20 a copy. If not, I can provide a copy.

21 THE COURT: I, I think I do.

22 MS. BLANCHETTE: Okay. And those are the claims on  
23 which we're going forward, and as I do in all my  
24 amendments, I've included the pursuant to Rule 15(b).  
25 we'd move to amend to conform to evidence and testimony

1 presented today. That's just if something comes out we  
2 weren't anticipating. I always file this ahead of time to  
3 give the State notice. But we may need to move to amend  
4 to conform to any testimony or evidence presented today.

5 THE COURT: All right.

6 MS. BLANCHETTE: Your Honor, also I may have not been  
7 listening. But I did not hear that the State mentioned  
8 that a motion to reconsider hearing was actually held in  
9 this case on October 2<sup>nd</sup> of 2019 in front of -- in front  
10 of the Honorable J. Mark Hayes. And he was represented by  
11 counsel at that hearing as well.

12 I did him -- mention him saying that the motion was  
13 filed. But there was a hearing and then Judge Hayes ruled  
14 on that via a written order on October 29<sup>th</sup>, 2019, and  
15 then was, was amended I believe just in the title. There  
16 was a typo. So, it was refiled on October 31<sup>st</sup>, 2019.

17 So, I just wanted to make sure the record was  
18 complete on that.

19 THE COURT: And I'm somehow a little bit unclear.

20 AS far as Doctor Maddox is concerned, do you need her  
21 to come forward first or you just gon' go forward with  
22 your --?

23 MS. BLANCHETTE: Your Honor, I was just responding to  
24 the state asking if he understood the risks. She is my  
25 first witness though---

1 THE COURT: Okay.

2 MS. BLANCHETTE: ---in the case.

3 THE COURT: All right.

4 MS. BLANCHETTE: So I will call her---

5 THE COURT: well, that answers that anyway.

6 All right.

7 MS. BLANCHETTE: Yes.

8 And, Your Honor, in prior discussions with Bryan  
9 Hall, the assistant attorney general, about this case, and  
10 in communication with the Office of General Counsel with  
11 SCDC, it's my understanding that the State agrees to a  
12 stipulation and/or if the Court wanted to take judicial  
13 notice. I'll explain the issue and then hear from the  
14 Court as to how you want me to address it.

15 In the packet before Your Honor, you should have a  
16 copy of the sentencing sheet as well as what I call the  
17 SCDC release date screen. If not, I can hand up a copy of  
18 each for your quick reference.

19 THE COURT: Go ahead. I just was handed---

20 MS. BLANCHETTE: Okay.

21 THE COURT: ---this. So that will be good.

22 MS. BLANCHETTE: Okay. And, Your Honor, like I said,  
23 these are both in the packets. So, I didn't intend to  
24 mark these.

25 But what has been discussed with the State is, on the

1 sentencing sheet, you will see where a judge typically  
2 makes an X if they want to give credit for time served  
3 under 24-13-40. There's some scribbles and then what  
4 appears to be Judge Hayes' initials.

5 If you look at the release date screen, it reflects  
6 that Mr. Wingo is not getting any credit for time served.  
7 And, in this case, he had served 517 days and he informs  
8 Judge Hayes of that during the hearing.

9 what I'm asking the Court either to take judicial  
10 notice, or the State's willing to stipulate to, is under  
11 24-13-40, specifically subsection 1 believe it is 2, it  
12 states when the prisoner is serving a sentence for one  
13 offense and is awaiting trial and sentence for a second  
14 offense in which case he shall not receive credit for time  
15 served prior to trial and a reduction of his sentence for  
16 the second offense.

17 what I'm asking the Court to take notice of and the  
18 State's willing to stipulate to, is that, under this  
19 statute, because he was already serving time for a  
20 separate offense, he would not have received credit for  
21 time served if that box was checked and I didn't want to  
22 be misleading to the Court as we go into this today and  
23 there be any confusion.

24 So, I thought it would just be important to address  
25 the statute at the outset, that if that box was checked

1 because he was serving a sentence on an unrelated offense,  
2 he would not have been given credit. That would have to  
3 be something that Judge Hayes specifically ordered. SCDC  
4 would not have applied it just by that box being checked.

5 THE COURT: You're stipulating to that?

6 MR. HALL: Yes, Your Honor. The stipulation is just  
7 that the statute -- under the statute, he's not -- he's --  
8 can't get credit for time served cause he was already  
9 serving --.

10 THE COURT: All right.

11 MS. BLANCHETTE: And, Your Honor, just to clarify.

12 He could get credit. It would just have to be  
13 specifically ordered. 24-13-40 doesn't allow just for  
14 that box to be checked and credit to be applied. It has  
15 to be something that the, the Court specifically orders.  
16 Our sentencing sheets just don't have a line for it right  
17 now. So, it's typically something the judges would have  
18 to write it.

19 MR. HALL: Judge, Judge, my understanding is that  
20 even if the judge---

21 THE COURT: If y'all gon' stipulate, stipulate.

22 MR. HALL: Yes, sir.

23 THE COURT: If you're gon' argue, argue.

24 MR. HALL: We'll take a moment.

25 MS. BLANCHETTE: Okay.

1 (Pause.)

2 THE COURT: Y'all good?

3 MR. HALL: Judge, we're --.

4 MS. BLANCHETTE: Yes.

5 Your Honor, what I believe the State's trying to say  
6 is, under the statute, he doesn't get it. What I was  
7 trying to add and what SCDC had explained, and I provided  
8 to the State ahead of time, a judge would have to order  
9 that outside of the statute.

10 THE COURT: All right. And you stipulate to that?

11 MR. HALL: No. No, Your Honor. Our contention is  
12 that statute doesn't allow for it at all regardless of  
13 whether or not the judge had, had ordered it.

14 THE COURT: All right. Fine.

15 All right. Call your witness.

16 MS. BLANCHETTE: Your Honor, I call Doctor Donna  
17 Maddox to the stand.

18 DONNA MADDOX, being first duly  
19 sworn, testified as follows:

20 THE COURT: All right. Come around please.

21 would you pull that microphone close to you please?

22 THE WITNESS: Yes, sir.

23 THE COURT: All right.

24 DIRECT EXAMINATION

25 BY MS. BLANCHETTE:

Donna Maddox - Direct examination  
By Ms. Blanchette

1 Q. Could you please state your name for the record?

2 A. Donna, middle name, Schwartz, S-C-H-W-A-R-T-Z, last  
3 name Maddox, M-A-D-D-O-X.

4 Q. And Doctor Donna Maddox, have you been qualified in  
5 Circuit Court in South Carolina before?

6 A. I have.

7 Q. Do you know approximately how many times?

8 A. Close to 900.

9 Q. And what is the area of your qualification?

10 A. Forensic psychiatry.

11 MS. BLANCHETTE: Your Honor, it's my understanding  
12 that the State does not oppose Doctor Maddox's  
13 qualifications and is in agreeance to me providing her CV  
14 to the Court as Applicant's No. 1 in lieu of doing an  
15 extensive voir dire.

16 MR. HALL: No objection, Your Honor.

17 THE COURT: All right.

18 MS. BLANCHETTE: Your Honor, I would move her  
19 curriculum vitae in as Applicant's No. 1.

20 THE COURT: All right. Admitted.

21 No objection to that coming in?

22 MR. HALL: No, Your Honor.

23 THE COURT: And you're stipulating to her expertise  
24 in the field of forensic psychiatry?

25 MR. HALL: Yes, Your Honor.

Donna Maddox - Direct examination  
By Ms. Blanchette

1 THE COURT: Very good.

2 (WHEREUPON, the CV of Doctor Maddox was marked as  
3 Applicant's Exhibit No. 1 and received into evidence at  
4 this time.)

5 Q. Doctor Maddox, can you please explain for us how you  
6 became involved in this PCR application of Mr. Wingo?

7 A. Yes.

8 You contacted me and asked me to evaluate him. I  
9 believe he was at Perry at the time. It may of been  
10 during the period of COVID though. So, when I did examine  
11 him, it was virtually.

12 Q. Okay. And you did have the opportunity you said to  
13 evaluate him.

14 Is that correct?

15 A. I did.

16 Q. Okay. And do you recall the materials or anything  
17 you were able to review as part of your work in this case  
18 as well?

19 A. Yes.

20 Prior to evaluating him, you had sent me the  
21 discovery that was related to this case and I believe I  
22 may of had already the Court packet where -- that had the,  
23 the transcripts regarding his guilty plea and also his  
24 motion to reconsider and motion to withdraw the plea.

25 After I evaluated him, I requested that you get his

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1 medical records from the Spartanburg County Detention  
2 Center and I believe you supplied me with those a --  
3 around January of 2024.

4 Q. I'm gonna show you a document and see if you can  
5 identify this as something that you reviewed.

6 Your Honor, may I approach the witness?

7 THE COURT: Yes, ma'am.

8 MS. BLANCHETTE: Should I continue to ask the rest of  
9 the morning about approaching?

10 THE COURT: You don't need to.

11 Q. Okay. Can you review that and identify what it  
12 appears to be for the record?

13 A. Yes.

14 Your Honor, this is a letter from Doctor Megan  
15 Howard, a psychiatrist. I'm very familiar with her. We  
16 worked together in Columbia, South Carolina for a number  
17 of years. She is one of the contract psychiatrists that  
18 works for the Department of Corrections.

19 As you know, they had a lawsuit regarding mental  
20 healthcare. And so it's been very common that many  
21 doctors within the communities have been hired to come in  
22 and run a clinic. They're not necessarily SCDC employees.  
23 But they're contract physicians. So, I'm very familiar  
24 with Doctor Howard.

25 She had written a note stating that this was one of

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1 his medical follow-ups. It was dated March 21<sup>st</sup>, 2019.  
2 So about six weeks before his guilty plea.

3 In this report she noted that he had been going to  
4 the jail in Spartanburg County and that, when he has been  
5 there, his -- he was not being given his psychiatric  
6 medications and she noted that this was not, not good for  
7 him.

8 She stated that his mood begins to worsen. He is  
9 unable to focus and participate with his attorney due to  
10 the effect of abrupt cessation of his medicine. And then  
11 she stated it also takes a few weeks, once he gets back on  
12 his medication, for him to get stable again.

13 So, she had -- was making it very clear that if he  
14 were to go to court, to Spartanburg jail, he needed his  
15 medications. She diagnosed him with major depressive  
16 disorder recurrent and attention deficit disorder.

17 The medications he was on at the time, he was on a, a  
18 medicine for seasonal allergies, a medicine for blood  
19 pressure. He was on a medication for ADHD known as  
20 Strattera. He was on an anti -- two antidepressants,  
21 Prozac and Remeron, and he was also receiving -- and that,  
22 that would of been his medications at the time.

23 When she saw him six weeks prior to his hearing, she  
24 increased his Prozac to 80 milligrams at night, which is  
25 the maximum dose of that medication. And then, again, she

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1 stated wherever he was located, it was important that he  
2 receive his meds.

3 Her plan was explained that the sudden sensation of  
4 these medicines -- medications at these doses could lead  
5 to worsening impulse control, difficulty with focus,  
6 physical withdrawal symptoms, and potential for  
7 significant worsening of depression. He will need to have  
8 access to his medications as prescribed when at the county  
9 jail for these reasons.

10 MS. BLANCHETTE: Your Honor, at this time I would  
11 move the report from Doctor Howard that was introduced as  
12 Defendant's Exhibit 1 at the motion to reconsider hearing  
13 in front of Judge Hayes as Applicant's No. 3.

14 THE COURT: Any objection?

15 MR. HALL: No objection, Your Honor.

16 THE COURT: Admitted No. 2.

17 (WHEREUPON, the letter from Doctor Howard was marked  
18 as Applicant's Exhibit No. 2 and received into evidence at  
19 this time.)

20 MS. BLANCHETTE: And I'm sorry.

21 Did I misspeak?

22 Is this No. 2 and I made it -- I said three?

23 THE COURT: I'm sorry?

24 MS. BLANCHETTE: I said, I said three. But I believe  
25 it's No. 2.

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1 Q. Now, Doctor Maddox, I'm gonna ask you a little bit  
2 about when this letter was provided to Judge Hayes. But I  
3 want to kind of start at the beginning as far as what you  
4 did with Mr. Wingo.

5 You said you had an opportunity to do a virtual  
6 evaluation of him, correct?

7 A. Yes.

8 Q. Okay. And you issued a report.

9 Is that correct?

10 A. Yes.

11 Q. And that report was provided to my office and  
12 provided to the attorney general?

13 A. Yes.

14 Q. And prior to today's hearing, did you have the  
15 opportunity to also speak with Bryan Hall from the  
16 Attorney General's Office?

17 A. I did. We talked last week.

18 Q. Okay. Now, if you could just go through and explain  
19 to me the results of your examination from when you did  
20 your virtual examination?

21 A. Yes.

22 Your Honor, it looks like, since the time that he  
23 pled guilty in 2019, he has also now been diagnosed with  
24 a, a disorder of psychosis probably due to his substance  
25 abuse when he was in the community. But he also had some

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1 posttraumatic stress disorder, which I'll explain. So, he  
2 has also a newer diagnosis now of psychosis and he's on  
3 antipsychotic medication, Zyprexa.

4 He actually has Tardive Dyskinesia, which is a  
5 movement disorder that comes from longterm use of these  
6 medications. So, he's been on them for five years now.  
7 So, I've, just based on his movement disorder, would  
8 suspect he's been compliant with his medication because  
9 you can't get that movement disorder unless you've been on  
10 these medications for a long time.

11 So, after I evaluated him and spoke with him, I came  
12 up with some diagnoses and his diagnoses were unspecified  
13 schizophrenia stacking disorder and all that means, Your  
14 Honor, is called attenuated psychosis.

15 what it means is there's periods of time when he can  
16 become acutely paranoid. He's not psychotic all of the  
17 time. He, he -- if he's under intense stress, he can  
18 become acutely paranoid and agitated, which is similar to  
19 what happened to him in court during his plea in my  
20 opinion.

21 I also diagnosed him with posttraumatic stress  
22 disorder. when he was 12 years old, his brother had just  
23 gotten his driver's license and was driving a truck and he  
24 and his friend were in the back bed of the truck and then  
25 there was a car accident and his best friend died. And he

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1 felt guilty because his brother was driving recklessly.

2 At that point is when he began his drug abuse and he  
3 had an extensive history, Your Honor. He had used crack  
4 cocaine for a number of years and then stopped that and  
5 then began using some meth. He also had some head  
6 injuries.

7 So, his substance abuse made sense. He, he had PTSD.  
8 He was self-medicating. Had some probably ADHD type  
9 symptoms.

10 And so the, the fact that he was using  
11 methamphetamine had actually probably would of helped his  
12 concentration and cognition. But, unfortunately, it made  
13 him permanently psychotic and paranoid.

14 So that's why I diagnosed him with the attenuated  
15 psychosis. He's used stimulants. He has ADHD according  
16 to Doctor Howard and he -- I also diagnosed him with the  
17 Tardive Dyskinesia, which is a chronic movement disorder.

18 Q. Doctor Maddox, before I move into your findings, is  
19 there anything further you'd like to explain regarding  
20 your evaluation and/or what you reviewed?

21 A. No, he was cooperative and he was compliant. I think  
22 the, Your Honor, the host helpful source of information  
23 was actually looking at the guilty plea transcript.

24 My understanding of what transpired -- I mean it was  
25 a group plea and I, I, I can't recall what order. I don't

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1 believe he was first. But there was a group plea.

2 And, in the middle of the plea, he stopped and had  
3 some questions and I'll -- I will -- I can tell you  
4 exactly what he said. But, in the middle of the plea, he  
5 had stopped. He wanted to withdraw.

6 This is exactly what he said. The transcript  
7 indicated his attorney told him he was not making -- he  
8 was making a mistake and he replied she was making a  
9 mistake. He stated this is not what y'all told me Friday.  
10 His attorney replied on the record yes, it is.

11 So, there was a colloquy between he and his attorney  
12 where he accused her of not being forthcoming during,  
13 during that plea. And so that also is helpful in  
14 formulating my opinions along with his diagnoses and my  
15 examination.

16 Q. And, Doctor Maddox, if you would, please go on to  
17 your findings in this case.

18 A. Sure.

19 Your Honor, I requested the records from the  
20 detention center. They were provided to me I believe in  
21 January and then I wrote my report.

22 The detention center records, what happened is Doctor  
23 Howard, I guess it was Doctor Howard or whoever was at  
24 Tyger River, when he went back to Spartanburg for this  
25 plea, he was sent there a week early. So, he was sent

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1 there on May 2<sup>nd</sup> and I believe he was returned on  
2 May 9<sup>th</sup> back to the prison. His plea was May 6<sup>th</sup>. So,  
3 in the middle of that week.

4 The re -- it looks like, according to the medication  
5 administration records from the jail, the nurse's notes,  
6 that he had a supply of medications with him. But it  
7 looks like, on the medication administration record, they  
8 don't treat attention deficit disorder. So they withheld  
9 his Strattera.

10 THE COURT: Say that again.

11 THE WITNESS: They -- the jail records said they  
12 don't treat attention deficit disorder. So, they  
13 withheld -- it appears that they withheld the Strattera.

14 Strattera is a, a medication indicated for ADHD. But  
15 it's not a stimulant, Your Honor. It's not a Scheduled II  
16 drug. It's -- it, it has very low addictive powers and,  
17 and SCDC does use that medication because it really  
18 doesn't have street value. But it does help attention  
19 deficit disorder. But it appears that he did not receive  
20 his medications.

21 Now, the, the record was a little not clear. I  
22 talked with Mr. Hall about this also. It, it looks like  
23 the medications -- it said in the record there's a five  
24 day supply. But then, if you look at the medication  
25 administration records, it looks like he was not

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1 administered that medication.

2 Also, Mr. Lingo (sic) told me that he didn't get any  
3 of his medications that week including his two  
4 antidepressants. So, there was ample evidence that he was  
5 not medicated at the time of his plea.

6 We have Doctor Howard's report that he would be --  
7 have an exacerbation of symptoms, not focused, be  
8 impulsive, and then, in my opinion, he became acutely  
9 paranoid with his lawyer during that plea.

10 Q. Now, as far as being in -- and it appears he's in a  
11 group of maybe 15 to 16. It was a group plea and then  
12 they broke each out and did a, a separate proceeding as  
13 necessary. But a majority of the plea, as reflected in  
14 the transcript, was a group plea.

15 How would being in a group like that, with his  
16 diagnoses, affect Mr. Wingo at his plea proceeding?

17 A. Well, that would not be the best scenario. Of  
18 course, the judge couldn't know that. But in that kind of  
19 setting, if you already have difficulty focusing, and  
20 you're paranoid, and easily impulsive, being in a group  
21 like that would be more difficult for him to attend.

22 Q. And you testified, and it's reflected, Your Honor, on  
23 page 19 of the plea transcript where Mr. Wingo, during the  
24 plea itself, said he wanted to withdraw.

25 A. Correct.

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1 Q. And you discussed that with him.

2 Is that correct?

3 A. Yes.

4 Q. And what were your findings or what came from your  
5 discussion of that with him and reviewing the transcript?

6 A. Well, in my opinion, he's very paranoid about his  
7 former attorney, Ms. Price. He still is. He still does  
8 not trust her. He stated, at that time, he felt she had  
9 misrepresented that with they had talked about before the  
10 plea. When he was on medication, he was very different  
11 than, in his opinion, what transpired during the plea when  
12 he was not being medicated.

13 Q. And you've also reviewed the note -- the transcript  
14 from October 2<sup>nd</sup>, 2019, where there were motions  
15 subsequently heard by Judge Hayes.

16 Is that correct?

17 A. Yes.

18 Q. And during that hearing specifically, I'm starting on  
19 Page 5, his attorney, Ms. Price, indicates that he was on  
20 some medications at the time and provided the letter up  
21 and indicated to the Court that it was self-explanatory.  
22 So, she would not address it.

23 Do you find the letter to be self-explanatory as to  
24 what the issue is here for Mr. Wingo?

25 A. No, the, the issue was he wasn't being medicated at

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1 the time of the plea and this record -- letter was  
2 available that talked about what happened to him were he  
3 not to be medicated. The -- not only his condition would  
4 not be treated, but he would be experiencing withdrawal  
5 from these medications, which could -- which, which was  
6 another layer of, of problems.

7 Q. And if you had been contacted, would you have been  
8 willing to come to a motion to reconsider hearing to  
9 explain that to Judge Hayes instead of him just being  
10 handed the letter?

11 A. Absolutely.

12 Q. And do you think explain -- explanation was necessary  
13 beyond the letter?

14 A. Yes.

15 Q. Okay.

16 A. And, and if I can add, Doctor Howard was working at  
17 Tyger River, which is very close to here, and, knowing her  
18 like I do, if somebody would of asked her, I'm sure she  
19 would of come as well.

20 MR. HALL: Objection. Speculation.

21 THE COURT: Sustained.

22 Q. Doctor Maddox, I want to go a bit backwards. He pled  
23 on May 6<sup>th</sup>.

24 If you had been contacted prior to that, would you  
25 have been willing to evaluate him and come along side the

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1 defense team in properly preparing him either for a plea  
2 or trial?

3 A. Yes.

4 Q. And what would that have looked like?

5 A. Again, just knowing -- making sure he was medicated,  
6 that he had some mitigation. I would of been able to  
7 explain the use of stimulants over his lifetime based on  
8 the trauma that he had been through and also probably as a  
9 form of self-medication. I would also been able to  
10 testify that he is someone that has traditionally been  
11 compliant with his medication.

12 Q. Okay. And then, in the time leading up to the motion  
13 to reconsider hearing, what would of been the steps that  
14 you would of taken then?

15 A. I probably would of contacted Doctor Howard, if  
16 necessary, or -- there -- there's one question I had  
17 looking at the medication administration records from the  
18 jail. I probably would of further clarified that.

19 Q. Okay. But you would of been willing to come and  
20 testify or offer testimony to Judge Hayes on this mental  
21 health issue at the motion to reconsider?

22 A. Sure.

23 And had I been there at the, at the day of the plea,  
24 had this happened, I would of -- I would of asked the  
25 attorney to stop the plea and I would of evaluated him to

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By Ms. Blanchette

1 make sure that he was competent to stand trial.

2 Q. Okay. And as far as you can see from the records,  
3 there was nobody evaluating him that day or ensuring his  
4 competency?

5 A. Not that I'm aware of.

6 Q. Okay. And I did mention this at the beginning.

7 But you had the opportunity to meet with Mr. Wingo  
8 today?

9 A. Yes.

10 Q. And you find that he's competent to go forward with  
11 these proceeding?

12 A. Yes, he's anxious and nervous. But he had his  
13 medications, Your Honor, and he's been compliant with them  
14 as far as I can tell.

15 Q. And you've given me instructions and cues to watch  
16 for just to ensure that he is able to continue with this  
17 hearing.

18 Is that correct?

19 A. Yes, I instructed him, if he didn't understand  
20 something or began to lose focus, to let you know and I  
21 also instructed him to write down key words if there  
22 was -- what, what he tells me, Your Honor, is that  
23 sometimes you can ask him a question and he knows you're  
24 asking him a question but he's not processing it and it  
25 has to be repeated. But that's the most that needs to be

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1 done at this point.

2 Q. So, in this proceeding, if he's asking us to repeat  
3 questions, that's something that you've actually  
4 instructed him?

5 A. Yes.

6 Q. Doctor Maddox, before I sit down, is there anything  
7 further you would like to add regarding your work in this  
8 case and your findings?

9 A. No, ma'am.

10 MS. BLANCHETTE: Thank you, Your Honor.

11 THE COURT: Cross-examination.

12 MR. HALL: Beg the Court's indulgence.

13 (Pause.)

14 CROSS-EXAMINATION

15 BY MR. HALL:

16 Q. Doctor Maddox, how are you?

17 A. Wonderful. Thank you.

18 Q. Doctor Maddox, when did you evaluate Mr. Wingo?

19 A. April 14<sup>th</sup>, 2023.

20 Q. Okay. And when did you write your report?

21 A. January 24<sup>th</sup>, '24.

22 Q. Okay. Can you describe Mr. Wingo's demeanor during  
23 that evaluation?

24 A. Yes. He was pleasant. He was cooperative. He  
25 seemed to pay attention.

Donna Maddox - Cross-examination  
By Mr. Hall

1           At the time that I evaluated him, Mr. Hall, he was  
2 taking his medication. He was able to answer questions  
3 appropriately. He was able -- even though he reported a  
4 history of some closed head injuries in the past, he --  
5 his memory was good. He was able to pay attention.

6           So, I, I felt that, cognitively, he was in tact.

7 Q.   And you said that he had no difficulty answering  
8 questions?

9 A.   No, not at all.

10 Q.   And did he have any trouble communicating with you  
11 during that evaluation?

12 A.   No.

13 Q.   Okay. Did he have any trouble understanding anything  
14 that you explained to him?

15 A.   No.

16 Q.   Okay. And you said that he had, during that  
17 evaluation, you observed that he had paranoid ideations  
18 towards his attorney.

19           Is that right?

20 A.   Yes. He still does, yes.

21 Q.   Okay. And as a part of those paranoid ideations, he  
22 had a mistrust of his attorney.

23           Is that correct?

24 A.   Yes.

25 Q.   Okay. And was he medicated during the time that you

Donna Maddox - Cross-examination  
By Mr. Hall

1 evaluated him?

2 A. Yes.

3 Q. Okay.

4 A. And, I'm sorry, Mr. Hall. I did look at my mental  
5 status.

6 The only thing I did notice is that he was a little  
7 distracted at times during the evaluation. I apologize.  
8 It was only because there was stimuli behind him.

9 So, what would happen, it wasn't that he was not  
10 attending to me. But if he asked a question and somebody  
11 walked by the door, he, of course, he was in a prison and  
12 it was noisy, he would turn around and look. But it did  
13 not affect his ability to answer questions or understand  
14 what I was asking him.

15 Q. Okay. And you said that he was diagnosed with ADHD,  
16 right?

17 A. That's correct. By Doctor Howard, yes.

18 Q. And PTSD, right?

19 A. By me, yes.

20 Q. By you.

21 Okay. And did you mention -- you mentioned -- I'm  
22 not sure if you mentioned it but he was also diagnosed  
23 with tar -- Tardive Dyskinesia?

24 A. Tardive Dyskinesia, yes. I diagnosed that. That's  
25 the movement disorder that comes from him being on the

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By Mr. Hall

1 Zyprexa for six years.

2 Like you'll notice his mouth, he has mouth movements.

3 And if you see him unstructured, he has some trumple

4 (phonetic) movements of his body and his hand. They're

5 involuntary movements and they're associated with long

6 term use of antipsychotic medications.

7 Q. Okay. And you said that's a movement disorder,

8 right?

9 A. Yes, sir.

10 MR. HALL: Okay. Beg the Court's indulgence.

11 (Pause.)

12 Q. Doctor Maddox, you mentioned that Mr. Wingo hadn't

13 taken his medication around the time of his guilty plea,

14 right?

15 A. Correct.

16 Q. Can you tell the Court what medication he, he wasn't

17 taking during that time?

18 A. Yes.

19 He, he told me all of them, which, at that time,

20 would of been the Zyrtec, which was the antihistamine, and

21 that shouldn't cause any problems. Had he not been on

22 that for a week, he might have maybe a little congestion.

23 He was on a blood pressure medicine, Amlodipine. He

24 stated he did not get that medication.

25 He was on the Strattera, which is called Atomoxetine,

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By Mr. Hall

1 and he was suppose to take that twice a day. He stated --  
2 and that's the medicine for ADHD.

3 He also was on Prozac 80 milligrams at night for  
4 depression. That would of caused him withdrawal symptoms.  
5 He probably would of had some GI symptoms, some diarrhea,  
6 upset stomach, that sort of thing.

7 He was also prescribed Remeron, 15 milli -- 30  
8 milligrams at night, which is an antidepressant, and it  
9 would of caused similar symptoms. He may of had some  
10 difficulty sleeping that week. He may of had some upset  
11 stomach. That -- they do cause some withdrawal symptoms.

12 Q. Okay. And it's your testimony that he was not taking  
13 all of those medications at the time he pled guilty?

14 A. Well, I can't say. He said he was not receiving any  
15 of them. I know he was not getting the Strattera --

16 Q. Okay.

17 A. -- which is what Doctor Howard wrote about. I looked  
18 on the medication administration record. It's a little  
19 bit confusing.

20 The -- Your Honor, it says, again, on May 2<sup>nd</sup> when  
21 came in with five days worth of medication, there's a note  
22 in the records that stated that they don't treat attention  
23 deficit disorder. There's a medication administration  
24 that it looks like -- I know for sure, after May 5<sup>th</sup>, he  
25 was not getting Strattera.

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By Mr. Hall

1 Q. Okay.

2 A. So he would not of had it on the date of the plea.

3 So, it's a little confusing because they're very detailed.

4 But I, I can say, to a reasonable degree of medical

5 certainty, he did not receive the Strattera on the day of

6 the plea.

7 Q. Okay. And Strattera is prescribed to treat ADHD,

8 right?

9 A. Yes.

10 Q. Okay. And ADHD is related to attention?

11 It affects attention span or---

12 A. Yes.

13 Q. Okay.

14 A. Ability to pay attention, impulse control, being free

15 from distractions.

16 Q. Okay. And so if he was not taking Strattera, some of

17 the side effects of that would be that he would have

18 difficulty focus -- focusing and impulse control, right?

19 A. Yes.

20 Q. Okay. And I want to ask you, Doctor Maddox, you

21 weren't present at the guilty plea, were you?

22 A. No.

23 Q. Okay. And, Doctor Maddox, would -- you agree that

24 the guilty plea is the best -- the transcript from the

25 guilty plea is the best representation of what occurred

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By Mr. Hall

1 during the guilty plea?

2 A. Absolutely. what -- or hear -- or hearing from the  
3 people, if they testified, that were at the plea.

4 Absolutely.

5 Q. Okay.

6 A. That's -- so I certainly relied upon it.

7 Q. Okay. And just one, one final question.

8 The medication that you're alleging would of affected  
9 his ability at the guilt plea was the Strattera, right?

10 A. Yes.

11 MR. HALL: Okay. No further questions, Your Honor.

12 THE COURT: Thank you.

13 Redirect.

14 MS. BLANCHETTE: Very briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MS. BLANCHETTE:

17 Q. The State has asked you about the effects of him not  
18 being on the Strattera.

19 But from what you can see in the record, was there  
20 anyone there to evaluate him that day and check his mental  
21 health?

22 A. No.

23 Q. And then -- as an expert in forensic psychiatry, do  
24 you think that was necessary?

25 A. Yes.

1 MS. BLANCHETTE: Objection, Your Honor. Leading.

2 THE COURT: What is your objection?

3 MR. HALL: Leading.

4 THE COURT: Overruled.

5 MR. HALL: Thank you.

6 MS. BLANCHETTE: I have no further questions if that  
7 questions stands, Your Honor.

8 THE COURT: May this witness be excused?

9 MR. HALL: Your Honor, we'll keep her around.

10 THE COURT: You gon' keep her around?

11 MR. HALL: Yes, sir.

12 THE COURT: All right. Maddox, if you don't mind?

13 THE WITNESS: No. No, sir.

14 MS. BLANCHETTE: Your Honor, I would call Brian  
15 Setree to the stand.

16 THE COURT: Other way.

17 BRIAN SETREE, being first duly  
18 sworn, testified as follows:

19 THE COURT: Come around please, sir, and state your  
20 name for the record and spell your last name.

21 THE WITNESS: It's Brian Setree. S-E-T-R-E-E.

22 DIRECT EXAMINATION

23 BY MS. BLANCHETTE:

24 Q. And, Mr. Setree, what's your current employment?

25 A. I am a criminal invest -- criminal defense

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1 investigator for the AJG Law Firm and I also own my own  
2 private investigation company.

3 Q. Okay. And do you carry a private investigator's  
4 license in this state?

5 A. I do.

6 Q. Okay. And what is the agency that you're licensed  
7 through?

8 A. It's called Setree Investigate LLC.

9 Q. Okay. And how long have you been a licensed private  
10 investigator in the State of South Carolina?

11 A. Since 2012.

12 Q. Prior to 2012, what was your investigative  
13 experience?

14 A. I was a -- I retired as a narcotic's agent for  
15 Lexington County Sheriff's Department.

16 Q. Okay. And while at Lexington County Sheriff's  
17 Department, do you know approximately how many cases that  
18 you handled?

19 A. Well, over a period of years in my law enforcement  
20 career, I started in '89 and for -- from 1989 till late  
21 '91 was, was completely undercover officer or did  
22 undercover buys. Went on patrol and then, through the  
23 years, worked narcotics different times. So, I would say  
24 into the thousands.

25 Q. Okay. Can you explain how it is that you became

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1 involved in the PCR application of Mr. Wingo here today?

2 A. Yes.

3 I was contacted by your office and I ultimately was  
4 retained by Mr. Wingo to review the file and come up with  
5 some findings.

6 Q. Okay. Did you also have the opportunity to meet with  
7 Mr. Wingo in person?

8 A. Yes, ma'am.

9 Q. Okay. And just to be clear because part of the  
10 record is -- was not turned over to myself and was  
11 retained by the Attorney General's Office, you've not had  
12 the opportunity to review the calls or the videos in this  
13 case.

14 Is that correct?

15 A. That's correct. I -- you, you told me that what you  
16 were able to review was consistent with what was written  
17 in the investigative report.

18 Q. Okay.

19 (Pause.)

20 MS. BLANCHETTE: We're ready to proceed, Your Honor.

21 THE COURT: All right.

22 MS. BLANCHETTE: I apologize.

23 Now, in looking into this case from an investigative  
24 standpoint, would you have been willing to assist in this  
25 case if the attorney would have reached out to you, prior to

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1 the plea, in preparation either for a trial or a plea?

2 A. Yes, ma'am.

3 Q. Okay. And can you just go through what you had an  
4 opportunity to review again just because the State would  
5 have questions. So, I wanted to make sure we're clear.

6 You reviewed all the discovery that was available and  
7 wasn't -- a portion of the discovery was not available to  
8 you.

9 Is that correct?

10 A. That's my understanding, yes, ma'am.

11 Q. Okay. Now, based upon the review of that discovery,  
12 did you put together kind of a factual background that  
13 you've worked off of in this case?

14 A. Yes, ma'am, I did.

15 Q. Okay. And it's your understanding that I provided  
16 that to the State as well, correct?

17 A. Yes, ma'am.

18 Q. Okay. Could you just kind of take us through that to  
19 give us some background information before we get into the  
20 investigative concerns in this case?

21 A. Yes, ma'am.

22 So, what I receive, as far as the investigative  
23 report, was Pages 4 through 8 and I made some notes based  
24 off of the entries that the detectives made in the case.  
25 So, I noted, on September the 27<sup>th</sup>, that investigator---

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1 MR. HALL: Objection.

2 A. Huh?

3 MR. HALL: Hearsay.

4 THE COURT: What's your objection?

5 MR. HALL: Hearsay, Your Honor.

6 THE COURT: Let them go forward and let me hear it  
7 first.

8 okay. And restate it if you think you need to.

9 Q. You can go ahead, Mr. Setree.

10 A. Okay. So, I noted that there was a confidential  
11 informant that contacted the Sheriff's Office, Office and  
12 said -- and stated that Mark Wingo had been in contact  
13 with him with a contraband cellphone on an unrelated  
14 matter. That was the first entry that I noted.

15 THE COURT: Do you renew your objection?

16 MR. HALL: I'll withdraw, Your Honor.

17 THE COURT: All right. Thank you.

18 Q. You can continue, Mr. Setree, as to the factual  
19 information you developed before going into your  
20 investigative findings.

21 A. Yes, ma'am.

22 Okay. So, on September the 18<sup>th</sup> of 2017, Swad and  
23 Davis was in -- stated they met with a CI to call-in  
24 through using this contraband phone but the attempt was  
25 not successful. So, they gave the CI a recording device

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1 to made contact with wingo at a later time. And then  
2 apparently, on the same date, there was a phonecall that  
3 the CI was able to partially record.

4 And then on September the 21<sup>st</sup>, 2017, Investigator  
5 Swad had made contact with the CI and they alleged that  
6 Mr. Wingo had called from a different cellphone. So they  
7 were not able to get this phonecall recorded and then on  
8 September the 21<sup>st</sup>, 2017, Swad met with the CI and the  
9 CI stated he was in contact---

10 MR. HALL: Objection. Hearsay.

11 MS. BLANCHETTE: Your Honor, we are alleging that  
12 trial counsel or plea counsel was ineffective for not  
13 properly preparing prior to a trial and conducting an  
14 independent investigation. I've called an investigator  
15 today to help meet our burden. He's merely going through,  
16 as a private investigator, the information he ascertained  
17 and then what the next steps he would of taken.

18 I, I would submit that this is not hearsay. He's  
19 testifying to what he found as an investigator and then  
20 he's gonna discuss what he would have done. I think, to  
21 meet our burden, he has -- you know, this is proper  
22 testimony in a PCR case. We don't have a jury here where  
23 he's referencing this in front of a jury as truth of the  
24 matter asserted. He's telling the court the information  
25 that he obtained from the discovery that's also been

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1 provided to the State.

2 MR. HALL: Judge, he can testify about what he found.  
3 But he's getting into, into testimony regarding what the  
4 CI said. That's hearsay. He's offering it for the  
5 truth -- for its truthfulness and the CI's not here to  
6 testify. That -- that's an out-of-court statement.

7 THE COURT: All right. Note your objection.  
8 Overruled.

9 Q. You can continue, Mr. Setree.

10 A. Okay. I believe I was on the 21<sup>st</sup>.

11 Anyway, the phonecall was not recorded. There was  
12 another incident on September the 26<sup>th</sup>, 2017.  
13 Investigator Swad again spoke with the CI and they had a  
14 conversation to broker a 4-ounce meth deal and the CI was  
15 going to utilize or I guess introduce an undercover police  
16 officer for those 4-ounces. It looks like this phonecall  
17 was made outside the presence of law enforcement and it  
18 was -- it was recorded by the CI and later listened to by  
19 law enforcement.

20 So, on seven -- on September the 12<sup>th</sup> -- 27<sup>th</sup>,  
21 2017, Investigator Swad reported that there was no contact  
22 made.

23 On the 28<sup>th</sup> of 2017, Investigator Swad reported the  
24 CI contacted him after he had spoken to Wingo and that the  
25 CI was to go to a location in Spartanburg and pick up a

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1 quantity of meth and take it to another location in Inman,  
2 South Carolina, and it says that the -- stated it was  
3 insistent that the CI do this so they could complete a  
4 deal from September the 26<sup>th</sup>, 2018. But, however, this  
5 phonecall was not recorded.

6 Swad reported that investigators met with the CI at  
7 approximately 17:30, which would be 5:30PM, to talk about  
8 the CI picking up 13-ounces of meth -- methamphetamine.  
9 Swad stated in his report the CI was in -- instructed by  
10 Wingo to go to an address, [REDACTED] Myers Street, Roebuck,  
11 South Carolina, to meet with a person that they referred  
12 to as Famous to pick up methamphetamine.

13 Apparently one of the investigators and Mr. Swad  
14 equipped the CI's vehicle and rode in the vehicle to the  
15 location in an undercover capacity where Swad stated, upon  
16 arrival, the CI knocked on the door of a single wide  
17 mobile home. Swad reported that, within a short amount of  
18 time, Famous opened the door and gave the CI a  
19 multicolored and black container.

20 Swad stated that the CI himself drove to a location  
21 to meet with other investigators to weigh and field test  
22 the methamphetamine. Swad stated that the methamphetamine  
23 weighed approximately 376 grams. Swad stated that several  
24 phonecalls from Wingo came in and were recorded.

25 Swad stated that the CI was instructed to transport

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1 the meth to a person named Renee in Inman, South Carolina.  
2 Swad stated wingo provided the CI's phone number to Renee.  
3 It was identified as Barbara Renee Shuler.

4 The CI was to meet with her and take her to another  
5 location to [REDACTED] -- [REDACTED] Southfield Street and they were to  
6 break down the methamphetamine for resale. And, after  
7 that, there was a traffic stop made where I believe the  
8 female in the vehicle was arrested.

9 Q. Now, Mr. Setree, based upon the review of the  
10 discovery materials available, your interaction with Mr.  
11 wingo, and the information obtained from my office, what  
12 are the investigative concerns that you would of raised  
13 prior to this plea and/or in preparation for a trial or  
14 that you have here today?

15 Specifically let's start regarding the predisposition  
16 of Mr. wingo.

17 A. Yeah, it would of been the first thing I would of  
18 advised defense counsel to look into.

19 Mr. wingo has a, a history of what, in my experience,  
20 would be a person that abused of used narcotics over a  
21 period of a long time. The crimes that he's been  
22 convicted of are indicative of, of people that have a drug  
23 problem such as, you know, shoplifting and things of that  
24 nature. I did not notice any drug trafficking or even  
25 possession with intent to distribute that, that I

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1 reviewed.

2       So, knowing that, then I would of wanted to know what  
3 was the informant's motivation for being involved in this  
4 case, and based on a conversation I had with Mr. Wingo, he  
5 did state that the informant and he were longterm friends  
6 and that they communicated all the time via the prison  
7 phone and the contraband phone. So, they talked on a  
8 regular basis.

9       So -- and it's documented in the investigative report  
10 that the first phonecall that the investigators were  
11 talking about was on an unrelated matter. I'm, I'm not  
12 sure what that means. But I guess they were not talking  
13 about drugs at the time.

14       So, I would have wanted to know what the motivation  
15 of this informant was. I mean -- and, and the history as  
16 well with the informant.

17 Q.   Okay. And regarding the informant, do, do the  
18 reports that were made available through discovery, do  
19 they detail exactly how all of this came into play or is  
20 that an investigative concern?

21 A.   well, it is to me because, once again, I've got Page  
22 4 and -- to 8 and it just all of a sudden introduces this  
23 informant talking about Mr. Wingo and the two of them  
24 making contact.

25       And one of the things that stands out to me is the

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1 lack of control of these recorded phonecalls because, you  
2 know, you've got a partially recorded call and then, on  
3 some of the more pertinent times, especially September the  
4 28<sup>th</sup>, it noticed -- noted that the call was not, was not  
5 recorded, and, therefore, we don't know, going back into  
6 Mr. Wingo's pre -- disposition at, at what position he  
7 could of possibly been put into by this, by the informant  
8 and I think that's something I would of advised defense  
9 counsel to look strongly at.

10 Q. And, overall, is there an issue of completeness then  
11 with the -- some being recorded, some not being recorded?

12 A. Correct.

13 I, I -- again, I think that that is exactly how I  
14 would state it that there is a issue with things not being  
15 complete in this situation, that you got a person that's  
16 across state and you have an informant, and I'm not sure  
17 that crime ever happens without this informant being  
18 involved. And you have drugs that are in the County of  
19 Aiken. But, once again, they make it to the County of  
20 Spartanburg.

21 I have an opinion on, on that situation and how I  
22 would of handled that information. But I guess I'm not  
23 here for -- to give opinions. But I don't see that making  
24 a lot of sense to me as an investigator. That's something  
25 I would of told defense counsel to look into.

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1 Q. And on the information that you were able to review,  
2 were there also investigative concerns regarding the  
3 handling of the drug evidence itself?

4 A. Yes.

5 Once they had taken that -- the drugs into custody,  
6 and went to the location to field test them, at some point  
7 driving to the next location, the agent gets out of the  
8 vehicle and leaves it in the control of the informant and  
9 then the next person, Renee, gets into the vehicle and the  
10 drugs have been moved around. That certainly could of  
11 been a chain of custody issue to, to look into.

12 Q. Mr. Setree, before I ask you about a matter that came  
13 up regarding a witness in the motion to reconsider  
14 hearing, is there anything else regarding your review of  
15 the discovery and investigative concerns that you would of  
16 raised to counsel and/or you are raising now?

17 A. No.

18 Other than, again, the whole overall motivation with  
19 the informant in the first place of how did all this get  
20 off the ground.

21 Q. Now, I want to ask -- you've had opportunity to  
22 review both the plea and post-plea transcripts.

23 Is that correct?

24 A. Yes, ma'am.

25 Q. Okay. And I want to direct your attention -- do you

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1 have a copy of the October 2<sup>nd</sup> proceeding?

2 If not, I can provide you a copy.

3 A. I'm sure I do. But that'd be more efficient with the  
4 Court's time if you could provide that for me and I'd be  
5 very---

6 Q. Well, let's see if I can be more efficient here.

7 Mr. Setree, I'm gonna hand you a copy of the -- if I  
8 don't trip first -- the October 2<sup>nd</sup> --

9 A. Okay.

10 Q. -- transcript.

11 If I could just direct your attention please to, it's  
12 towards the end here, Page 6 beginning on Line 10. There  
13 the -- Ms. Price informs the Court that the second ground  
14 for the withdrawal of the guilty plea deals with a family  
15 member that was gonna come and testify against him as a  
16 material witness. On the following page, the State,  
17 Solicitor Kallam, goes on to say that that witness was  
18 Randy Hollifield and gives some explanation there on Page  
19 7.

20 You've had a chance to review Pages 6 and 7, correct?

21 A. Yes, ma'am.

22 Q. And essentially the -- Ms. Price is asking for more  
23 time because they weren't about to get Mr. Hollifield to  
24 Court.

25 Is that your understanding?

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1 A. Yes, ma'am.

2 Q. As part of your work in this case, did you locate and  
3 speak to Mr. Hollifield as a result of what it says here  
4 in this transcript?

5 A. Yes, ma'am, I did.

6 Q. Okay. And what was the investigation that you did  
7 regarding Mr. Hollifield?

8 A. Mr. Hollifield ad -- admitted that he did meet---

9 MR. HALL: Objection. Hearsay.

10 THE COURT: Sustained.

11 Q. Mr. Setree, as part of your work in this case as the  
12 investigator, did you have the opportunity to go out and  
13 meet with Mr. Hollifield?

14 A. I did.

15 Q. And was it your understanding as to whether or not he  
16 intended to testify on behalf of the state?

17 A. It was my understanding that he was not going to  
18 testify.

19 MR. HALL: Objection. Hearsay.

20 MS. BLANCHETTE: Your Honor, my only response would  
21 be I'm trying to establish that an investigator should  
22 have talked to Mr. Hollifield and the information that  
23 would of been ascertained if defense counsel would of done  
24 the same. I think this is unique in a PCR case for---

25 THE COURT: what's the exception to it being hearsay?

Brian Setree - Direct examination  
By Ms. Blanchette

1           Clearly it is.

2           MS. BLANCHETTE: Your Honor, I'm asking him what his  
3 understanding---

4           THE COURT: I know what you're asking him.

5           MS. BLANCHETTE: ---was that then he would of  
6 informed---

7           THE COURT: what would be---

8           MS. BLANCHETTE: ---counsel.

9           THE COURT: ---your exception please, Ms. Blanchette?

10          MS. BLANCHETTE: Your Honor, I'm not asking him to  
11 state -- I'm asking him what he would have told counsel as  
12 a basis -- as a result of his investigation.

13          THE COURT: So you're not offering it for the truth  
14 of the matter asserted?

15          MS. BLANCHETTE: Correct, Your Honor. I'm sorry. I  
16 could of just said that.

17          THE COURT: All right. Go ahead.

18 Q.       And what is the---

19          THE COURT: Note your objection.

20 Q.       ---information that you would of been able to give  
21 based upon your investigation and location of Mr.  
22 Hollifield?

23 A.       It was my understanding that he did not intend on  
24 testifying.

25 Q.       Okay. And based upon the investigation you conducted

Brian Setree - Direct examination  
By Ms. Blanchette

1 prior to this PCR, what was your understanding as to  
2 whether anyone from defense counsel contacted  
3 Mr. Hollifield prior to this hearing on October 2<sup>nd</sup>?

4 MR. HALL: Objection. Speculation, Your Honor.

5 MS. BLANCHETTE: And I don't think there's any  
6 speculation there. He's an investigator. He went out,  
7 asked the question. I think he can provide the answer.

8 THE COURT: Yeah, I, I overrule. I don't think it's  
9 speculation.

10 Go ahead.

11 A. No, that he was not contacted prior to me by anybody  
12 from the defense.

13 Q. Mr. Setree, you've worked on this case for a long  
14 time.

15 Is there anything further regarding your  
16 investigative findings and works in this case that I  
17 failed to ask you about today?

18 A. No. No, ma'am.

19 MS. BLANCHETTE: Your Honor, I have no further  
20 questions.

21 THE COURT: All right. Cross-examination.

22 MR. HALL: Briefly, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. HALL:

25 Q. Mr. Setree, when did you conduct an investigation in

Brian Setree - Cross-examination  
By Mr. Hall

1 this case?

2 A. I'm not exactly sure. But it would go into last  
3 year---

4 Q. Last year.

5 A. ---through this year. I'm not exactly sure what date  
6 that I took the case on. I don't have it written in my  
7 notes.

8 Q. But you would say it's between -- it's 2023/2024?

9 A. Yes, sir.

10 Q. Okay. And, Mr. Setree, you're not an attorney, are  
11 you?

12 A. No, sir.

13 Q. Okay. And you were not Mr. Wingo's attorney, were  
14 you?

15 A. No, sir.

16 Q. You're also not a prosecutor, right?

17 A. No, sir.

18 Q. And you're also not the prosecutor on this case,  
19 right?

20 A. That's correct.

21 Q. And wouldn't you agree that the prosecutor on this  
22 case has a better understanding of the factual background  
23 of this case, right?

24 MS. BLANCHETTE: Speculation, Your Honor.

25 THE COURT: what's your response?

Brian Setree - Cross-examination  
By Mr. Hall

1 MR. HALL: I'll withdraw, Your Honor.

2 THE COURT: Okay.

3 MR. HALL: Beg the Court's indulgence.

4 (Pause.)

5 Q. Mr. Setree, I believe you testified on direct that  
6 you were unaware of any prior drug distribution charges  
7 that Mr. Wingo had, right?

8 A. That's my recollection.

9 Q. Okay.

10 A. Definitely no trafficking.

11 Q. Okay. But are you aware that he was convicted of  
12 possessing contraband in March of 2015?

13 A. I am. But I, I wasn't aware of what the contraband  
14 was.

15 Q. Okay. And were you also aware that he was convicted  
16 of possession with intent to distribute back in September  
17 of 1992?

18 A. No. No, sir.

19 Q. Okay. And you conducted an investigation in these --  
20 in this case and you were unaware of those convictions,  
21 right?

22 A. I looked at his criminal history and apparently I  
23 don't remember seeing that.

24 Q. Well, doesn't it seem like you didn't conduct a  
25 thorough -- a thorough investigation in this case?

Brian Setree - Cross-examination  
By Mr. Hall

1 A. No, I'd say missing something from 1992, no, sir.

2 MR. HALL: No further questions, Your Honor.

3 THE COURT: Redirect.

4 MS. BLANCHETTE: I have nothing, Your Honor.

5 THE COURT: Thank you, sir. You're excused.

6 THE WITNESS: Thank you, Your Honor.

7 MS. BLANCHETTE: Your Honor, my next witness will be  
8 Mr. Wingo. He's probably gonna be my longest witness. I  
9 just wanted to make sure no one needed a break, break in  
10 the---

11 THE COURT: Let's take about a 10 minute break then.

12 MS. BLANCHETTE: Okay. Thank you, Your Honor.

13 THE COURT: All right. Thank you, ma'am.

14 MR. HALL: And, Your Honor, we're, we're gonna excuse

15 Ms. -- Doctor, Doctor Maddox. I'm sorry.

16 THE WITNESS: Thank you.

17 MR. HALL: That's okay.

18 THE COURT: You're gon' release her?

19 MR. HALL: Yes, sir. Yes, Your Honor.

20 THE COURT: All right. Doctor Maddox, thank you.

21 THE WITNESS: Thank you.

22 (WHEREUPON, a short recess was taken at this time.)

23 THE COURT: All right.

24 MS. BLANCHETTE: Yes, sir, Your Honor. We're ready  
25 to proceed.

1           During the break I discussed with the attorney  
2 general and he wanted me to put on the record a matter to  
3 make it clear regarding the discovery.

4           In this case, there was a discovery order issued and  
5 I was provided paper discovery and a CD containing some  
6 phone records. But the actual CDs containing the  
7 recordings and videos, those were turned over by solicitor  
8 Barry Barnette to then Chelsea Marto who was the assistant  
9 attorney general and I had to go review those at their  
10 office. Those have never been in my possession or were  
11 made available to Mr. Setree.

12           Is that what you wanted me to state for the record?

13           MR. HALL: Yes, judge.

14           Just to clarify, the CDs and videos that were  
15 referenced by Mr. Setree weren't available for the mere  
16 fact they involve a confidential informant and it's our  
17 understanding that those can't be disclosed because of a  
18 need to protect the CI.

19           And so we just wanted to make that clear for the  
20 record.

21           THE COURT: Anything further?

22           MS. BLANCHETTE: No, Your Honor.

23           THE COURT: All right. Call your next witness.

24           MS. BLANCHETTE: Your Honor, I would call Mark Wingo  
25 to the stand.

Mark Wingo - Direct examination  
By Ms. Blanchette

1 THE COURT: Come around please, sir.

2 Raise your right-hand.

3 MARK WINGO, being first duly  
4 sworn, testified as follows:

5 THE COURT: Okay. Have a seat. State your name for  
6 the record and spell your last name please, sir.

7 THE WITNESS: Okay. State, state my name, Mark  
8 Wingo.

9 what else?

10 THE COURT: Spell your last name.

11 THE WITNESS: W-I-N-G-O.

12 THE COURT: Thank you.

13 Your witness.

14 DIRECT EXAMINATION

15 BY MS. BLANCHETTE:

16 Q. Mr. Wingo, can you hear me okay if I stay back here  
17 at the table?

18 A. Yeah.

19 Q. Okay.

20 THE COURT: Please speak into the microphone.

21 THE WITNESS: I'm sorry.

22 Q. And please let me know at anytime if I'm going too  
23 fast, I tend to talk pretty fast, or if you need me to  
24 repeat anything.

25 okay?

Mark Wingo - Direct examination  
By Ms. Blanchette

1 A. Okay.

2 Q. All right. Now, we're here today about a PCR  
3 application that you filed in 2019.

4 Do you recall filing that application?

5 A. I do.

6 Q. Okay. And you were originally appointed Mr. Rodney  
7 Richey.

8 Is that correct?

9 A. That's correct.

10 Q. Okay. And then some time thereafter I substituted in  
11 as your counsel in May of 2022?

12 A. About that, yep.

13 Q. Okay. And just make sure you always answer with a  
14 yes or no. I see you nodding your head---

15 A. Okay.

16 Q. ---but --.

17 A. I'm sorry.

18 Q. That's fine. The court reporter can't take that down  
19 or if we talk over each other and I have a tendency to do  
20 that as well. So, let's do our best with that.

21 Now, you're also aware of the amendment that I worked  
22 with you on and filed on your behalf in August of this  
23 year.

24 Is that correct?

25 A. Yes.

Mark Wingo - Direct examination  
By Ms. Blanchette

1 Q. And those are the allegations that you want to go  
2 forward on today?

3 A. Yes, ma'am.

4 Q. Okay. Now, at the beginning of the hearing there was  
5 some discussion about you being asked by the judge about  
6 understanding your risks associated with PCR. So I'm  
7 gonna ask you some questions about that.

8 okay?

9 A. Okay.

10 Q. Do you understand that the only relief, by statute,  
11 that the Court can give you essentially is that your  
12 current guilty plea conviction set aside and your sentence  
13 and you would face the original charge all over again with  
14 no guarantee of less time?

15 You understand that?

16 A. I do.

17 Q. Okay. And we've discussed that prior to today?

18 A. We have.

19 Q. And you also understand that, at your plea, your  
20 charges were dropped down from trafficking and you  
21 received a negotiated sentence. If this were set aside,  
22 the lesser included offense and the negotiated sentence  
23 don't have to be reoffered to you.

24 Do understand that?

25 A. I do.

Mark Wingo - Direct examination  
By Ms. Blanchette

1 Q. So you'd be facing the original trafficking charge?

2 A. Okay.

3 Q. Okay. And knowing all of that and the discussions  
4 we've had leading up to today, you want to go forward with  
5 your PCR application?

6 A. I do.

7 Q. Okay. Now, let's kind of talk about what, what got  
8 you up to being here today.

9 When did you receive the charges that we're here  
10 about today?

11 A. September 27<sup>th</sup> of 2017.

12 Q. Okay. And, at that time, were you appointed an  
13 attorney or did you retain an attorney?

14 A. At, at some point I was appointed one.

15 Q. Okay. And who were you appointed?

16 A. Ms. Price.

17 Q. Okay. And where were you located when you received  
18 the charges that we're here about today?

19 A. I was at Evans Correctional.

20 Q. Okay. And were you serving a sentence on other  
21 charges at that time?

22 A. I was.

23 Q. Okay. Did you ever meet with Ms. Price when you were  
24 at Evans Correctional?

25 A. No.

Mark Wingo - Direct examination  
By Ms. Blanchette

1 Q. When was the first time that you met with Ms. Price?

2 A. I don't know exactly the date. But I got transferred  
3 up to Tyger River, and when I was at Tyger River, she come  
4 there one time --

5 Q. Okay.

6 A. -- and that's the first time I met her.

7 Q. Do you remember about approximately how long from the  
8 time you got the charge till when you met with her?

9 A. A year maybe.

10 Q. Okay. And at the time that you met with her at Tyger  
11 River, what all did you discuss?

12 A. Well, not a whole lot. She, she told me they wanted  
13 me to take 15 years and I told her then that nah, I'd -- I  
14 wasn't doing that. I'd, I'd take a, a jury trial and she,  
15 she gave me some dis -- discovery. She, she provided that  
16 for me.

17 Q. Okay. And did she leave that with you to go over  
18 yourself?

19 A. She did.

20 Q. Okay. Did she go over it with you while she was  
21 there?

22 A. No.

23 Q. Okay. Now, after that meeting, did you make some  
24 subsequent trips to Spartanburg County Detention Center?

25 A. I did.

Mark Wingo - Direct examination  
By Ms. Blanchette

1 Q. How many times did you come to Spartanburg County  
2 before your plea?

3 A. Before the actual plea?

4 Q. Yes.

5 A. Two, two times prior to that.

6 Q. Okay. During those two trips, did you have the  
7 opportunity to meet with Ms. Price?

8 A. I mean I was at the jail. But no, I -- she, she -- I  
9 didn't meet with her any time -- either of those two  
10 times.

11 Q. Okay. As a result of those trips, were there issues  
12 with your mental health medications when you came to  
13 Spartanburg those two times?

14 A. Yes.

15 Q. Okay. And what happened?

16 A. They just wouldn't give them to me. They said that I  
17 had to get see -- get medicine from---

18 MR. HALL: Objection.

19 A. ---their doctor.

20 MR. HALL: Hearsay.

21 THE COURT: Sustained.

22 Go -- rephrase your question please.

23 Q. Mr. Wingo, were you provided your mental health  
24 medication when you were at Spartanburg County on the two  
25 prior trips?

Mark Wingo - Direct examination  
By Ms. Blanchette

1 A. No.

2 Q. Did you convey that information or tell that to Ms.  
3 Price?

4 A. I did.

5 Q. Okay. And why did you raise that with Ms. Price?

6 A. Be -- because really I hated the way it -- the  
7 withdrawal symptoms I go through physically and mentally.  
8 I mean I stayed 14 days one time and 12 days the second  
9 time and then I didn't get none of the medicines then and  
10 I mean I'd be in such a down spiral. I didn't want to  
11 keep going through that.

12 So, the first thing I did is went to the psychiatrist  
13 at the prison and told her about it.

14 Q. Okay. And, as a result of that, did you get a letter  
15 from --

16 A. I --.

17 Q. -- SCDC?

18 A. I did.

19 Q. Okay. And I'm gonna show you an exhibit we've  
20 previously marked.

21 Your Honor, the Department of Corrections letter if I  
22 could just show the witness.

23 Thank you.

24 THE COURT: Uh-huh. (Affirmative).

25 Q. Mr. Wingo, I'm gonna show you what's been already

Mark Wingo - Direct examination  
By Ms. Blanchette

1 admitted as Applicant's Number 2.

2 Can you identify that?

3 A. I can.

4 Q. And what is that?

5 A. That's the letter she printed up for me.

6 Q. Okay. And you provided that to your attorney prior  
7 to the entry of your plea.

8 Is that correct?

9 A. Yes, after the second trip to Spartanburg when -- and  
10 then I, I seen this, this lady and she came to see me.  
11 That's when I give it to her.

12 Q. Okay.

13 A. Correct.

14 Q. When you saw Ms. Price---

15 A. Uh-huh. (Affirmative).

16 Q. ---you gave her this letter?

17 A. That's when I first met her.

18 Q. And what was your understanding from Ms. Price as to,  
19 as to what was gonna happen in the future regarding your  
20 mental health medications at the county?

21 A. She hoped it wouldn't happen again and she'd pass on  
22 the information to the medical facility.

23 Q. Okay. Now, you mentioned that she provided you some  
24 discovery to review on your own.

25 Is that correct?

Mark Wingo - Direct examination  
By Ms. Blanchette

1 A. Yes, ma'am.

2 Q. Were you ever afforded the opportunity to review the  
3 videos or calls in this case that the State and I just  
4 were discussing that was in the discovery?

5 A. No.

6 Q. Okay. Did she discuss with you the contents of those  
7 videos or calls?

8 A. Right, right toward -- right before I -- we agreed to  
9 plead. She told me she listened to them and that -- cause  
10 I kept asking her about listening to the stuff and, and  
11 she said that the, that the solicitor didn't have to let  
12 me listen to them as long as she listened to them. So, I  
13 mean I just had to take her as what she said.

14 Q. Okay. Were you aware of her conducting an  
15 independent investigation or hiring an investigator to  
16 look into the facts and circumstances of the case?

17 A. No.

18 Q. Is that something that you wanted her to do?

19 A. I definitely would of wanted her to, yeah.

20 Q. Now we touched on this letter.

21 But you did try to address your mental health  
22 concerns with her leading up to the time of your plea?

23 A. That's correct.

24 Q. Did she ever talk with you about being evaluated or  
25 utilizing Doctor Howard or another doctor to address your

Mark Wingo - Direct examination  
By Ms. Blanchette

1 mental health?

2 A. No.

3 Q. Now, as far as -- you stated earlier that you wanted  
4 a trial.

5 A. Uh-huh. (Affirmative).

6 Q. So what all did you do to prepare for trial?  
7 Did she discuss defenses with you?

8 A. No.

9 we didn't -- we never really -- we never really  
10 discussed the -- any kind of defense. It was the -- the,  
11 the little that I did meet with her, she -- again, she  
12 just told me -- she advised me to take 15 years, that was,  
13 that was the best it's gon' get, and she, she stuck with  
14 that. She --.

15 Q. Did she ever discuss with you the defense of  
16 entrapment?

17 A. No.

18 Q. Did you raise concerns with her regarding the  
19 confidential informant and what the State was alleging?

20 A. I did.

21 Q. And what were those concerns?

22 A. Well, they were numerous. I mean I know he had  
23 gotten in a bunch of trouble and I didn't know what, what  
24 all and I, I --.

25 Q. Do you need a break, Mr. Wingo?

Mark Wingo - Direct examination  
By Ms. Blanchette

1 Are you okay?

2 A. No. Yeah, all I -- can you repeat the question?

3 Q. Yes.

4 what concerns did you bring up with her about the  
5 confidential informant?

6 A. Okay. I -- that -- I -- he -- a life long drug  
7 addict hisself. I've known him 35 years. I thought he  
8 was one of my bestest friends in the world and I knew -- I  
9 didn't know what was going on. I just was concerned that  
10 it wasn't right.

11 I had -- the whole process of how, how it went  
12 down -- he -- they was trying to say or they made the  
13 statement that I called him wanting him to sell  
14 methamphetamines for me and that's not what happened. He  
15 pursued me and asked me to find him somebody to get some  
16 methamphetamines from. I put him off for two or three  
17 weeks and then finally he just persisted and --.

18 Q. And---

19 A. I---

20 Q. And you raised those concerns with her?

21 A. Yeah.

22 Q. Because you wanted to go to trial.

23 Is that correct?

24 A. That's correct.

25 MR. HALL: Objection. Leading.

Mark Wingo - Direct examination  
By Ms. Blanchette

1 THE COURT: Overruled.

2 Go ahead.

3 MS. BLANCHETTE: I'll just let the record stand since  
4 he answered it, Your Honor.

5 THE COURT: All right.

6 Q. Did she ever discuss with you issues regarding  
7 possible suppression of the evidence or how the evidence  
8 was handled --

9 A. No.

10 Q. -- in this case?

11 A. No.

12 Q. And did she ever discuss with you why the charges  
13 were brought in Spartanburg when the drugs were allegedly  
14 brought across state lines and in multiple jurisdictions?

15 A. No.

16 Q. Okay. Was that a concern that you had as well?

17 A. Well, yeah. I -- none we discussed. But I -- I was,  
18 I was wondering how, how Spartanburg got involved with me  
19 and being somewhere else. I, I really just didn't  
20 understand the process.

21 Q. And, Mr. Wingo, you've alluded to this.

22 But based on the information you were provided, even  
23 though the Solicitor's Office wouldn't release this -- the  
24 actual recordings, you became aware of who the CI was in  
25 this case.

Mark Wingo - Direct examination  
By Ms. Blanchette

1 Is that correct?

2 A. Yeah, it's on my discovery and, and it says Joel  
3 Adams where they astracted (phonetic) from his phone and  
4 it's all in my discovery and his name's Joel -- right  
5 there on the -- on, on the discovery.

6 Q. And is that someone you know?

7 A. Yeah, that was my so called bestest buddy.

8 Q. Okay. So, in all, you did not have the opportunity  
9 to address concerns with her that you had about the  
10 discovery before you ended up entering your plea.

11 Is that correct?

12 A. Right.

13 Q. Now, the original plea offer communicated to you at  
14 Tyger River was 15 years.

15 Is that correct?

16 A. That's correct.

17 Q. And what was her advice regarding that plea?

18 A. Just to take it.

19 Q. Okay. Now, I want to talk with you about your time  
20 in Spartanburg leading up to the day you entered the plea.

21 How far in advance do you recall coming to  
22 Spartanburg?

23 A. A year -- almost a little less than a year.

24 I recall coming in the end of 2018 for the first  
25 time. I stayed two weeks and, and I didn't go to court or

Mark Wingo - Direct examination  
By Ms. Blanchette

1 anything and they sent me back to Tyger River. And then  
2 they come around and got me again the first of the year.  
3 Like January or February I went back up there for 12 days.  
4 I didn't go to court or anything again. They sent me  
5 back.

6 That's when I addressed the mental health stuff with  
7 Doctor Howard after I done done that. That's what --  
8 that's the first time I, I think I met Ms. Price prior to  
9 the May 6<sup>th</sup>.

10 So it -- some time first part of 2019, yeah, '19,  
11 from when I, I, I met with her.

12 Q. Now, we talked about those two trips. Let's talk  
13 about your third trip, the trip right before you end up  
14 entering a guilty plea.

15 A. Okay.

16 Q. And you arrived at Spartanburg.

17 Do you remember how many days approximately you were  
18 there before you saw Ms. Price or when you saw Ms. Price?

19 A. Well, I got there in my -- I thought it was the 1<sup>st</sup>.  
20 Somebody said the 2<sup>nd</sup>. I heard that earlier. But I'm,  
21 I'm pretty sure it's the 1<sup>st</sup>.

22 But I didn't see Ms. Price till a day or two later  
23 for the first time and she come to the jail and asked me  
24 again if I'd take the 15 years. I told her no and she  
25 said well, I needed to and I told her no, I wasn't taking

Mark Wingo - Direct examination  
By Ms. Blanchette

1 the 15 years. I'll take a jury trial.

2 She said are you -- okay. Are you sure. We're going  
3 Monday. This is -- I said yeah, I'm sure.

4 So, the following evening, somebody from the Public  
5 Defender's Office come and measured me out for, you know,  
6 clothes to wear to jury trial, okay, and then -- I mean  
7 what else you want to know?

8 Q. Okay. So that first time you met with her was most  
9 likely Thursday you said and you let her know that you  
10 still wanted to go forward with a trial.

11 Is that correct?

12 A. That's correct.

13 Q. Then Friday, the next morning, which would of been  
14 the last business day before you entered your guilty plea,  
15 what happened that Friday?

16 A. Okay. That Thursday night is when they come jerk --  
17 measured me and that Friday morning her and James Cheeks  
18 come to the county jail and put me in this little room and  
19 asked me again -- it was basically you got a -- you got to  
20 tell me now. Are you gon' plead to the 15 or not. I --  
21 again I told her no. I'm, I'm sticking with jury trial.

22 And then she tells me well, you don't need to do that  
23 because your brother-in-law is gonna testify for the State  
24 that them were your voices on the recording with Joe  
25 Adams.

Mark Wingo - Direct examination  
By Ms. Blanchette

1 Q. And who's your brother-in-law?

2 A. Randy Hollifield.

3 Q. And what was -- what is his occupation?

4 A. He's a captain at the Sheriff's Department.

5 Q. Okay. And what, what was kind of your reaction to  
6 getting that information?

7 A. I mean I was, I was flabbergasted. I was like -- I  
8 was really confused. I was, I was already struggling with  
9 what, what was going on and then they told me that and I,  
10 I just -- I mean I had a moment of clarity.

11 I thought well, he's been working for the Sheriff's  
12 Office for 40 years. So, anything he says a jury's gon'  
13 believe him and I'm -- I don't have a chance. I mean I  
14 don't -- I can't go to trial if he's testifying and that's  
15 what I believed.

16 So, even at that point they throwing this thing about  
17 the jail credit. Oh, you gon' get, you know, your jail  
18 credit and all that.

19 Q. And what was your understanding, based upon the  
20 advice you received that day, regarding the jail credits?

21 A. That I would get it.

22 Q. And when you say get it, how many days -- I mean what  
23 was the advice given to you?

24 A. Okay. They, they pulled the calendar out and they  
25 counted forward 517 days, and they told me when the judge

Mark Wingo - Direct examination  
By Ms. Blanchette

1 asked me how long I been in jail, tell them I been there  
2 517 days and I said okay. And so that's what I did.

3 Q. And why was it important to you to not get a fresher  
4 start that day 15 years if you did enter the guilty plea?

5 A. At the time I was at Tyger River, which is a Level 2,  
6 medium, not, not too bad of a place basically. Anything  
7 over 10 years to do, you gon' go to Level 3 where there's  
8 a whole lot you got to worry about. You got to worry  
9 about your life every day, you know, and I didn't want to  
10 have -- I don' lived through them ordeal and I didn't want  
11 to have to go back through that.

12 So, if they would of gave me the jail credit, I would  
13 of been under those 10 years and, you know, I didn't think  
14 I had a choice. I, I was -- with the jail credit for --  
15 the best I'm gon' do and my brother-in-law was testifying  
16 against me. So, that's better than 30. That's what she  
17 was saying.

18 Q. So, prior to that meeting though, you did not want to  
19 enter a guilty plea. You wanted to go to trial.

20 Is that correct?

21 A. Absolutely.

22 Q. But based upon the advice of your attorney regarding  
23 your brother-in-law and the jail credit issue, you agreed  
24 to enter a guilty plea?

25 A. That's right.

Mark Wingo - Direct examination  
By Ms. Blanchette

1 Q. Okay. Now, as you're having these discussions with  
2 her, did you have the opportunity to meet with any mental  
3 health professionals at Spartanburg County?

4 A. No.

5 Q. And it's your testimony today that you weren't  
6 properly receiving your medication?

7 A. That's correct. I even wrote on the kiosk to medical  
8 abide -- about it again thinking that, you know, they  
9 would start giving it to me any day but they, they didn't.  
10 I didn't get no pills but -- there I didn't get anything  
11 the entire time I was there. The Department of  
12 Corrections was sending them. What they did with them I  
13 don't know. They didn't give them to me.

14 Q. Now, let's jump forward to May 6<sup>th</sup>, 2019, the day of  
15 your guilty plea proceeding.

16 Did Ms. Price, before you go into the proceeding,  
17 address your mental health, ask if you had medications, or  
18 have anybody there to meet with you to evaluate you?

19 A. No.

20 Q. Are you alleging today that's something that should  
21 have been done?

22 A. Yeah, considering the state I had been wound up to.

23 Q. Can you describe your state to us?

24 A. Well, after a day or two of not taking my medication,  
25 it's not that dramatic. But when you get into day three,

Mark Wingo - Direct examination  
By Ms. Blanchette

1 four, and five, it gets very dramatic and it gets or  
2 it's -- I'm -- withdrawals physically and mentally. I, I  
3 mean I don't want to be around nobody. I don't want to  
4 talk.

5 I, I just -- it's just a, it's just a, a -- awful  
6 thing to experience and I just experienced it twice prior  
7 to coming there the two times I went back and didn't make  
8 it into court. I didn't want -- I didn't want to go  
9 through that again and I was in the middle of going  
10 through it again.

11 Q. Now, Mr. Wingo, I'm gonna ask you some specific  
12 questions about the two transcripts in this case.

13 Do you have a copy up there with you or do you need  
14 me to provide---

15 A. No, I got---

16 Q. ---you a copy?

17 A. I got a copy.

18 Q. Okay. If you could pull out your copy of the May  
19 6<sup>th</sup> transcript please.

20 Now, beginning on lines -- on Pages 4 through 5 and  
21 then continuing in seven through nine, the judge is asking  
22 a series of questions and he specifically says, on Page 6,  
23 Line 18, he's gonna be asking these questions as a group  
24 and they go through everybody that's present.

25 Can you kind of take us through how many people were

Mark Wingo - Direct examination  
By Ms. Blanchette

1 in the courtroom, how you were situated, what was going on  
2 there?

3 A. We was all in a jury box and it was full. I mean  
4 there was 15, 16 people maybe.

5 Q. And when you were asked the questions at the  
6 beginning of your plea, you were all being asked those as  
7 a group.

8 Is that correct?

9 A. That's correct.

10 Q. And specifically on Pages 9 through 10, the judge  
11 asks about anybody having -- if you've ever received any  
12 substance abuse treatment or have any drug or alcohol  
13 problems and there is one defendant that stands. But the  
14 record does not reflect that you stood up at that time.

15 why did you not stand up at that time and bring these  
16 concerns to the Court's attention?

17 A. I mean I just didn't really want to go through the  
18 embarrassment of it really.

19 Q. Did you understand the question and believe you had  
20 the opportunity to respond there?

21 A. I didn't know what to do. I mean I'll say that,  
22 didn't know want to do.

23 Q. Okay. And had your attorney talked you through how  
24 this was gonna be done in a group and you would need to  
25 stand up if you wanted to tell the judge something?

Mark Wingo - Direct examination  
By Ms. Blanchette

1 A. Nah, the judge told us that when it was going on.

2 Q. And then, specifically, on Page 10, if you look at

3 Line 15, if you are satisfied with the work that your

4 lawyer has done, then I need for you to please stand up at

5 this time and everyone stands.

6 Were you satisfied, at that point, with the work of

7 your attorney?

8 A. No, not really. But based on what she was telling

9 me, I -- you know, I didn't feel like I was in a

10 bargaining position.

11 Q. And, Mr. Wingo, if it had just been you, like it is

12 today, doing a guilty plea and you weren't with, you know,

13 15 to 16 others, would you have felt more free to

14 communicate to the Court?

15 MR. HALL: Objection. Leading.

16 THE COURT: Overruled.

17 Go ahead.

18 Q. You can answer my question.

19 A. I definitely would.

20 Q. Okay. And going into it, Ms. Price did not advise

21 you that you would be doing this as a group?

22 A. No.

23 Q. Did the group setting factor into how you were

24 already feeling with your mental health condition?

25 A. well, it, it -- I was, you know, withdrawing and, and

Mark Wingo - Direct examination  
By Ms. Blanchette

1 I didn't particularly want to be there that's for sure and  
2 I didn't want to be in a large group on top of that.

3 Q. Now, it appears, on Page 13, they -- the -- Judge  
4 Hayes begins just addressing your charge. So, at that  
5 point he's just addressing your plea.

6 Is that what you recall?

7 A. On, on 13?

8 Q. Yeah, beginning on Page 13.

9 A. Okay.

10 Q. Beginning on Line 7. The Court says I think we're  
11 going to do Mr. Wingo.

12 A. Okay.

13 Q. And from there forward, it's just regarding your  
14 plea, correct?

15 A. Parts, yes.

16 Q. Okay.

17 A. That's correct.

18 Q. Now, if you could look at Page 14 at the very bottom  
19 beginning on Line 23. The judge asked you, this is just  
20 you by yourself, and how long have you been in jail on  
21 this charge and what's your response?

22 A. Five hundred seventeen days.

23 Q. And you came up with that number pretty quick. I  
24 know you've already testified about it today.

25 But why were you prepared to give that number that

Mark Wingo - Direct examination  
By Ms. Blanchette

1 quickly?

2 A. Cause that's the -- that's the number they told me  
3 to -- that they calculated from the time charged was  
4 caught until then.

5 Q. And part of your---

6 A. Well---

7 Q. And one of your primary reasons in going forward with  
8 the guilty plea was it was your understanding that your  
9 counsel was gonna ask for those 517 days credit?

10 A. Yeah.

11 Q. Did she ever express to you any concern in getting  
12 those 517 days?

13 A. Not that day, no.

14 Q. Okay. Now, the next page is 15 and 16. The State  
15 goes through the facts, and if you could look at Line 18  
16 of Page 16?

17 The Court asks essentially if you agree with the  
18 facts and you say somewhat, no, and then you're given an  
19 opportunity to speak with your lawyer.

20 Can you take us through what was happening there and  
21 why you responded in that way?

22 A. Cause I didn't agree with what the lady just said,  
23 her opening statement about him -- me calling pursuing him  
24 to sell meth for me. That, that never took place.

25 He -- it's the other way around and I just didn't

Mark Wingo - Direct examination  
By Ms. Blanchette

1 think -- you know, they was other things in there too  
2 that, that I didn't agree with that they, they didn't go  
3 into and I, I, I just -- I didn't think it was right. I  
4 didn't.

5 Q. And so what did you---

6 A. I didn't agree to that. I didn't, I didn't -- I'm  
7 not -- I wasn't saying and I'm still not gon' say I didn't  
8 pursue him nothing. He pursued me. He asked me to do  
9 this for him. I put him off, tried to, but he, he just  
10 wouldn't go away.

11 Q. And when the record reflects there was a break, did  
12 you say that to Ms. Price?

13 A. Did I what now?

14 Q. Did you get to tell Ms. Price what you're telling us  
15 today?

16 A. Yeah.

17 Q. Okay. And what was her response?

18 A. That I just -- that -- it'd be all right. It'd be  
19 all right.

20 Q. Okay. And so you agreed to go forward at that point?

21 A. Yeah.

22 Q. Okay. Now, I want to ask you about -- if you could  
23 turn to Page 18 beginning on -- I apologize -- Line 24.  
24 where Ms. Price essentially does her presentation on your  
25 behalf and she tells the Court that it's negotiated. So

Mark Wingo - Direct examination  
By Ms. Blanchette

1 she's gonna be brief and she goes on to say that she sat  
2 down with the solicitor and gone over the videos and  
3 phonecalls in this case and she believes that you'd be  
4 convicted based upon those. But you never had the  
5 opportunity to review those.

6 Is that correct?

7 A. That's correct.

8 Q. And is that something you asked her to be able to do?

9 A. Several times.

10 Q. And then if you could look on Page 19 beginning at  
11 Line 20 and I'm gonna read it. I'll try to read it  
12 slowly. She adds this after she's given her presentation.

13 He's in the Department of Corrections on his current  
14 sentence until next August is his max out date. He  
15 would -- we would ask that you just consider starting his  
16 new sentence today running that concurrent. Thank you,  
17 judge. Then you immediately say I'm gonna withdraw my  
18 plea.

19 why did you immediately say that, Mr. wingo?

20 A. Because she just -- she -- they just told me to do  
21 one thing and tell the judge I've been there 517 days  
22 credit and then she turns right around and tells the judge  
23 well no, Your Honor, I, I want you to start his time from  
24 today and I -- and that's not what we agreed on. That's  
25 not what they told me as part of my -- when I signed that

Mark Wingo - Direct examination  
By Ms. Blanchette

1 negotiated plea, it was marked that I was gonna get it.

2 They told me I was gonna get it.

3 So, I wanted to withdraw my plea cause I wasn't  
4 getting it.

5 Q. And what was the response you received from her at  
6 that time?

7 A. That I was making a mistake, calm down, it'd be all  
8 right, and that it'd be on my sentencing paper. I told  
9 her in the courtroom, if it's not, I want you to appeal it  
10 and do whatever you have to do. But I withdraw my plea or  
11 whatever -- however you do it. I didn't know the  
12 technical, legal term to say it.

13 I just knew I wanted out of it and I also said I  
14 wasn't gonna leave the courtroom until I get a copy of the  
15 sentencing paper. Well, we sat there a few minutes and  
16 finally I got a copy of the sentencing paper and it wasn't  
17 on there. I didn't get nothing and it said May 6<sup>th</sup> of,  
18 of, of '19. 2019.

19 I said no. I said I need you to file a, a, a motion  
20 to reconsider, withdraw, or whatever you need to do.

21 Q. And, Mr. Wingo, before we get into those motions, I  
22 want to show you the sentencing sheet that's part of the  
23 record that the Court already has in front of him.

24 A. Uh-huh. (Affirmative).

25 Q. You mentioned that, when you originally saw it, it

Mark Wingo - Direct examination  
By Ms. Blanchette

1 was marked.

2 Are you referencing the box there that's checked that  
3 then has some scribbles and what appears to be the Court's  
4 initials on it?

5 A. Yeah.

6 Q. About the middle of the page?

7 A. Yep.

8 Q. Okay. That's --.

9 A. And they even -- they even told me that the judge  
10 would write down the days that I told him. That's how  
11 many days he was writing out and such and what amount of  
12 time, that it was suppose to backdate basically.

13 Q. Okay. But then when you saw it after the hearing,  
14 were the scribbles on that?

15 was it no longer clearly checked?

16 A. No, when I signed the paper, it was all good. But  
17 when I got a copy of the paper with the sentence on it, it  
18 done been scratched out, scribbled out, or whatever  
19 that -- we call it that right there.

20 Q. Okay. I just wanted to be clear.

21 Now, you said immediately after the plea you told her  
22 you wanted her to file to reconsider or withdraw?

23 A. That's correct.

24 Q. Okay. Did you meet with her right after the plea?

25 A. Not other than that exchange we had and asked her to

Mark Wingo - Direct examination  
By Ms. Blanchette

1 do that for me and then they sent me back to the jail.

2 Q. Okay.

3 A. I was very upset. I was upset with her and I, I  
4 mean -- I didn't -- I couldn't, I couldn't wrap my head  
5 around why they tell me to go up there and tell this judge  
6 I been this long in jail and then you turn around and tell  
7 him well, no, that what I want you to do. The lawyer  
8 asking for something different than I'm asking for.

9 I don't understand it, judge.

10 Q. Now, did you have the opportunity to meet with her  
11 before you left the county detention center?

12 A. Yes.

13 Q. Okay. And what occurred during that meeting?

14 A. After the weekend was over, she come over there  
15 Monday and told me about the motion she had filed and I  
16 asked her why did you do that, why did you do this -- that  
17 to me. why, why would you do that speaking of why would  
18 you tell me to tell the judge this and then you tell him  
19 no, don't give me that.

20 She tells me, at that time, well, prior to your  
21 hearing, me and the solicitor met with Judge Hayes and he  
22 said he wasn't inclined to give it to you and that's when  
23 I told her to file a motion to withdraw I said because you  
24 should of told me that before I got up there and pled  
25 guilty. I wouldn't of been up there to start with. I

Mark Wingo - Direct examination  
By Ms. Blanchette

1 mean -- and she did -- she said -- she got upset and said  
2 okay, she'd do it and left.

3 Q. So, Mr. Wingo, I'm gonna ask the obvious.

4 If you knew that you weren't gonna get the 517 days,  
5 would you have pled guilty or would you proceed to trial  
6 as you planned?

7 A. Okay. One more time.

8 Q. You -- you've talked about it a little bit. But I'm  
9 gonna kind of ask you a clear question.

10 If she had told you Judge Hayes is not inclined to  
11 give you the 517 days, would you have pled guilty or would  
12 you have proceeded to trial?

13 A. I'd of went to trial.

14 Q. Now, I'm gonna show you -- you indicated that you  
15 asked her to file motions, correct?

16 A. That's correct.

17 Q. Okay. And I'm gonna show you two records from the  
18 Clerk's Office.

19 Can you just state what that is for the record there,  
20 what the title of it is?

21 A. Where's the title at?

22 Oh, motion for reconsideration.

23 Q. Okay. And then if you could look at this document  
24 that's time stamped from the Clerk's Office and tell us  
25 what it appears to be.

Mark Wingo - Direct examination  
By Ms. Blanchette

1 A. Motion to withdraw guilty plea.

2 MS. BLANCHETTE: Your Honor, just to have a more  
3 concise record, I was gonna move these in as Applicant's  
4 No. 3. I obtained them from the Clerk's Office. I don't  
5 know that they're in your packet. If they are in your  
6 packet and you prefer that I don't mark them --.

7 THE COURT: I, I don't know if they are.

8 So if -- do you have an objection to them being  
9 admitted just in case?

10 MR. HALL: No objection, Your Honor. I believe  
11 they're already a part of your Court packet.

12 THE COURT: They are?

13 MR. HALL: They would of been part of the --.

14 THE COURT: Go ahead just in case.

15 MS. BLANCHETTE: Okay.

16 THE COURT: Okay.

17 MS. BLANCHETTE: Your Honor, at this time I'll mark  
18 the motion for reconsideration of sentence and motion to  
19 withdraw guilty plea all together as Applicant's No. 3.

20 THE COURT: Thank you.

21 THE WITNESS: I would like to add that---

22 MS. BLANCHETTE: Just wait one moment---

23 THE WITNESS: Okay.

24 MS. BLANCHETTE: ---while Madam Court Reporter is  
25 working.

Mark Wingo - Direct examination  
By Ms. Blanchette

1 THE WITNESS: Okay, ma'am.

2 (WHEREUPON, the motions were marked as Applicant's  
3 Exhibit No. 3 and received into evidence at this time.)

4 Q. Mr. Wingo, is there something you'd like to add?

5 A. Yeah.

6 That same Monday that she come and told me, she --  
7 the information I just got through telling you, I, I --  
8 and I was upset and asked her why she'd do that and also I  
9 asked her, cause I just spoke to my mother earlier that  
10 day, and told her what kind of time I got, and the reason  
11 I, I said -- well, I had to plead cause Randy's gon'  
12 testify against me, mama. I, I can't beat that no matter  
13 if I's guilty or not. That's not something you can get  
14 around.

15 And I was addressing that with her and she tells me  
16 that well, that's what he told -- the solicitor told me.  
17 That's what she told me and then she got upset and we  
18 left.

19 Q. And let me ask you this about your brother-in-law,  
20 Randy Hollifield.

21 Do you know if she ever sent an investigator to speak  
22 to him or anybody on your behalf speak to him about that  
23 issue?

24 A. No.

25 Q. Do you know if he was actually under subpoena to come

Mark Wingo - Direct examination  
By Ms. Blanchette

1 testify against you?

2 A. No.

3 Q. All right. But you asked her about that and is that  
4 one of the grounds that you wanted her to raise at the  
5 post-plea hearing in front of Judge Hayes?

6 A. That's right.

7 Q. Okay. So, in the time leading up to the hearing on  
8 October 2<sup>nd</sup>, did you ask her specifically about this issue  
9 with your brother-in-law and to look into it?

10 A. Yeah.

11 Q. Okay.

12 A. Cause I -- yeah.

13 Q. And when she let you know the date of the hearing,  
14 did you raise a concern to her about your brother-in-law's  
15 availability?

16 A. Yeah, I told her that -- I told her -- I told her  
17 that he was -- they were on vacation.

18 Q. Okay. And she actually raises that, as the  
19 transcript reflects, but it doesn't appear that the judge  
20 allows more time for him to come and testify.

21 Is that correct?

22 A. That's correct.

23 Q. All right. But you don't know of any efforts that  
24 she made to secure his testimony and/or to speak to him in  
25 any way?

Mark Wingo - Direct examination  
By Ms. Blanchette

1 A. I don't know of anything.

2 Q. Now, as far as mental health, was that something else  
3 you raised with her and thought she was going to address  
4 at the post-plea hearing?

5 A. Yeah, I, I mean -- I thought she would give a little  
6 better present -- presentation and explain or let me  
7 explain, you know, what went on and what, what I -- you  
8 know, that the, the withdrawal and the downspin from not  
9 taking the medicine you been on -- I've been on 20 years  
10 almost.

11 Q. Did she, did she have you speak with a mental health  
12 professional or do anything regarding your mental health  
13 from the time that you pled until October 2<sup>nd</sup>?

14 A. No.

15 Q. That you're aware of?

16 A. Not that I'm aware of.

17 Q. Okay. Now, at the outset -- and if you have the  
18 transcript there in front of you of the October 2<sup>nd</sup>  
19 proceedings in front of Judge Hayes, at the bottom of Page  
20 3 she indicates that you have indicated that you wished to  
21 withdraw your motion for reconsideration and the judge  
22 allows you, after questioning, to withdraw that motion.

23 where -- how did that come to be?

24 Just explain that to us if you could.

25 A. Basically her, her advice to just withdraw one and go

Mark Wingo - Direct examination  
By Ms. Blanchette

1 and -- which one I'm gon' go with and I said well, I want,  
2 you know, my brother-in-law wasn't gon' testify against  
3 me. That was not true. They -- that's what they saying  
4 to me anyway and I didn't get them days. I didn't get the  
5 days that y'all promised me on top of the mental health.

6 So, I -- but she didn't, she didn't, she didn't go  
7 over that too well.

8 Q. Did she advise you that the best mechanism to request  
9 that the judge give you credit and specifically order  
10 credit for the 517 days would be the motion to reconsider  
11 your sentence?

12 A. No. No. I didn't, I didn't know it was like that.  
13 She didn't tell me either way.

14 Q. So, it was your understanding you needed to pick one  
15 or the other?

16 A. Yeah, I need to pick one or the other, dismiss the  
17 other, and let's just go with this one.

18 Q. So you, you went forward with the motion to withdraw?

19 A. That's right.

20 Q. Okay. And as the transcript re -- reflects,  
21 specifically on Page 5, she said that you directed her to  
22 file this motion to withdraw and the first issue is your  
23 medication and she presents the letter to the Court.

24 Did you think she was going to do more regarding that  
25 issue than just hand up the letter?

Mark Wingo - Direct examination  
By Ms. Blanchette

1 A. Yeah, I thought she would ex -- explain it more and  
2 to the -- it's not like it's Tylenol or, or, or, or  
3 Ibuprofen or something.

4 This is -- this is medications that mentally affect  
5 you and they mentally affect you in a bad way if you been  
6 on them for a while and then you abruptly took off of  
7 them. I mean it -- it's, it's, it's like any other drug.  
8 It's a rough thing to withdraw from and go through, the  
9 mental part of it.

10 Q. And she never discussed with you having Doctor Howard  
11 there or another mental health professional to address the  
12 issue?

13 A. No.

14 Q. And then the second issue she raises on Page 6 at the  
15 bottom beginning on Line 17, that's where she begins  
16 discussing. She says, on Line 17, that a material or, I'm  
17 sorry, before that, a material witness was going to  
18 testify against you and then she says I presented this  
19 evidence to Mr. Wingo and Mr. Wingo decided the next day  
20 that he wanted to plead in these proceedings. So there  
21 she agrees that that was one of the primary reasons you  
22 decided to plead guilty.

23 Is that correct?

24 A. That's correct.

25 Q. But she goes on to say that family member's on

Mark Wingo - Direct examination  
By Ms. Blanchette

- 1 vacation and she's asking for it to be continued.
- 2 Was this proceeding continued?
- 3 A. No.
- 4 Q. And as far as you know, did she ever reach out to Mr.
- 5 Hollifield?
- 6 A. No, not that I know of.
- 7 Q. At any point in this proceeding did she reference the
- 8 517 days?
- 9 A. No, she didn't even bring it up.
- 10 Q. Did you anticipate or understand that she was going
- 11 to?
- 12 A. Well, I thought she would of and -- but it went so
- 13 fast and she -- when she finished, he didn't give me a
- 14 chance to say nothing. So, he said we'll let you know. I
- 15 didn't get a chance to speak or, or I'd of brought it up.
- 16 Q. What was your interaction with her after the motion
- 17 hearing?
- 18 A. It wasn't none.
- 19 Q. Did she provide you with any advice or, at the end of
- 20 this hearing, did you get any advice on how to file a
- 21 guilty plea?
- 22 A. No.
- 23 Q. Were you aware that a guilty plea could be filed
- 24 within 10 days if you wanted even though it was a guilty
- 25 plea case?

Mark Wingo - Direct examination  
By Ms. Blanchette

1 Let me restate that. That was a bad question.

2 were you -- did you have an understanding that a  
3 guilty plea could be filed -- I'm sorry.

4 Did you have an understanding that a direct appeal  
5 could be filed following your guilty plea?

6 A. No, I, I didn't know. At the time I didn't know it.

7 Q. If you would have known, would you have wanted a  
8 direct appeal filed on your behalf?

9 A. I did. Absolutely would of.

10 Q. Okay. And because you did not have that advice, you  
11 went ahead and filed the PCR application very quickly  
12 thereafter, correct?

13 A. That's, that's correct.

14 Q. Okay. And if the guilty plea -- or I'm sorry. I can  
15 not get this right.

16 If a direct appeal had been filed, filed following  
17 your guilty plea, did she ever advise you that the rulings  
18 of Judge Hayes in that subsequent motion hearing could be  
19 raised?

20 A. No.

21 MS. BLANCHETTE: Your Honor, if I could beg the  
22 Court's indulgence one moment?

23 THE COURT: Yes, ma'am.

24 (Pause.)

25 Q. Mr. Wingo, you filed this PCR application a, a long

Mark Wingo - Direct examination  
By Ms. Blanchette

1 time ago. We, we waited through the COVID era and we  
2 finally are here today. But this has been pending since  
3 2019.

4 Is there anything further that I have failed to ask  
5 you about that you would like to testify to in support of  
6 the allegations set forth in your amendment?

7 A. Not that I can think.

8 MS. BLANCHETTE: Your Honor, I have no further  
9 questions.

10 THE COURT: All right. Cross-examination.

11 MR. HALL: Briefly, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. HALL:

14 Q. Mr. Wingo, how old are you?

15 A. I'm okay.

16 Q. How old are you, Mr. Wingo?

17 A. I'm okay.

18 Q. How old are you?

19 A. How old am I?

20 Q. Yes.

21 A. Oh, 54.

22 Q. And how far'd you go in school?

23 A. Twelfth grade.

24 Q. Okay. But you got a GE -- GED, didn't you?

25 A. Yeah, I didn't---

Mark Wingo - Cross-examination  
By Mr. Hall

1 Q. Okay.

2 A. I didn't, I didn't get it. I went to my twelfth  
3 grade year. I didn't get a diploma though. I got a GED  
4 in here --

5 Q. Okay.

6 A. -- in prison.

7 Q. And isn't it true that you pled guilty before, before  
8 this charge?

9 A. Yes.

10 Q. Okay. And isn't it true that you actually pled  
11 guilty several times --

12 A. Yeah.

13 Q. -- before this charge, right?

14 A. That's correct.

15 Q. All right. And isn't it true that the judge told  
16 you, at your guilty plea hearing, you and all the other  
17 defendants, that if you needed time to speak to your  
18 lawyer, to stand up and let him know and he would do so,  
19 right?

20 A. Yeah.

21 Q. Okay. And isn't it true that he told you that twice,  
22 right?

23 A. I'll take you at your word.

24 Q. Okay. And isn't it true that, after him telling you  
25 that twice, you didn't stand up to tell him, at any point

Mark Wingo - Cross-examination  
By Mr. Hall

1 during, during that guilty plea, that you needed more time  
2 to speak to your, to your attorney outside of the  
3 conversations that you had on the record?

4 A. Oh, no, I -- at the time he asked those questions, I  
5 didn't feel compelled to have to say anything cause I was  
6 under the impression my brother-in-law's pleading against  
7 me -- testifying against me and I'm getting the -- at  
8 least the time credit. So I, I -- at the time, it didn't  
9 really look like nothing left to talk about.

10 Q. Okay. And isn't it true that both -- that during the  
11 guilty plea hearing, the judge explained to you and the  
12 other defendants that, when he asked a question, if the  
13 question applied to you, that you were to stand up or not  
14 stand up, right?

15 A. (WHEREUPON, the witness nods affirmatively.)

16 Q. Okay. You have to state---

17 A. Oh, yes, sir.

18 Q. ---yes or no.

19 A. Yes, sir.

20 Q. Okay. And isn't it true that, when the judge asked  
21 you whether you were forced or threatened or promised  
22 anything to plead guilty, you didn't respond to that  
23 question, right?

24 A. That's correct.

25 Q. Okay. And the judge asked you if you wanted a jury

Mark Wingo - Cross-examination  
By Mr. Hall

1 trial and you also didn't stand up to that question,  
2 right?

3 A. I -- no.

4 Q. Okay. And the judge also informed you that you had a  
5 right to confront witnesses. So, if there were any  
6 witnesses that were called against you, you had a right  
7 to, to cross-examine them.

8 Isn't it true that you didn't re -- that you didn't  
9 respond to that question?

10 A. I didn't stand up for no questions. So --.

11 Q. Well, hold on. I'm gonna correct you there cause  
12 isn't it true that you stood up when the judge asked if  
13 you were pleading guilty freely and voluntarily?

14 A. Well, that might be the only one I stood up for.

15 Q. Okay. And isn't it true that the judge asked you  
16 about your education and how far you got in school, right?

17 A. I can't really remember. I, I think he did. I don't  
18 know.

19 MR. HALL: Beg the Court's indulgence.

20 (Pause.)

21 Q. If I told you that the judge asked you how far you  
22 went in school and you told him that you got a GED, would  
23 you refute that -- the transcript says that?

24 A. No.

25 MR. HALL: Okay. And that's on Transcript Page 14

Mark Wingo - Cross-examination  
By Mr. Hall

1 for the record?

2 THE WITNESS: Okay.

3 Q. And isn't it true that the judge also asked you about  
4 your family?

5 He asked if you were married, or single, or divorced,  
6 right?

7 A. Yeah.

8 Q. And you told him that you were divorced?

9 A. That's correct.

10 Q. Okay. And he asked you how many children you had,  
11 didn't he?

12 A. Yes.

13 Q. Okay. And you told him you had six children, right?

14 A. Yes.

15 Q. And he even asked you how old was your oldest?

16 A. Uh-huh. (Affirmative).

17 Q. And---

18 A. Yes.

19 Q. And you told him at the time it was 28, right?

20 A. Yes, sir.

21 Q. And he asked you---

22 A. Right.

23 Q. ---how old was your youngest and you told him 12 at  
24 the time?

25 A. That's right.

Mark Wingo - Cross-examination  
By Mr. Hall

1 Q. Okay. And he even asked you what you do for a living  
2 and you told him that it was construction, right?

3 A. That's correct.

4 Q. Okay. And I believe you testified on direct.

5 But after the, after the solicitor stated their  
6 rendition of the facts, you told the judge that it was  
7 somewhat correct, right?

8 A. That's correct.

9 Q. Okay. And after you told that -- after you indicated  
10 that to the judge, there was a brief moment when you  
11 talked to your attorney, right?

12 A. (WHEREUPON, the witness nods affirmatively.)

13 Q. Okay. Yes or no.

14 A. Yes.

15 Q. Okay. And isn't it true that you told the judge that  
16 you agreed that your attorney had reviewed the evidence in  
17 this case with you?

18 A. I agree with what?

19 Q. That, that, that your attorney had reviewed the  
20 evidence in this case with you, right?

21 A. I, I guess I did. I can't remember.

22 Q. If I told you that's what you told the judge, would  
23 you disagree with that?

24 A. Yeah. Yeah, I -- no, I believe you.

25 Q. Okay. And one last question.

Mark Wingo - Cross-examination  
By Mr. Hall

1 A. She had give me the, give me the discovery.

2 Q. well, hold on, Mr. Wingo.

3 A. Okay.

4 Q. At some point during that guilty plea you told the  
5 judge that you wanted to withdraw, right?

6 A. That's correct.

7 Q. And there was disagreement about credit for time  
8 served, right?

9 A. Yeah, the---

10 Q. Between you and your attorney, right?

11 A. Yes.

12 Q. Okay. And then, after speaking to her, you told her  
13 that you wanted to proceed with the guilty plea, right, or  
14 you told the court?

15 I'm sorry.

16 A. Yeah, after speaking with her, she a -- she said I  
17 was making a mistake, that everything will be all right,  
18 and we need to keep going. So, at her advice, I did --

19 Q. Okay.

20 A. -- because I thought the time would be on there.

21 MR. HALL: Okay. No further questions, Your Honor.

22 THE COURT: Redirect.

23 MS. BLANCHETTE: Just one question, Your Honor.

24 REDIRECT EXAMINATION

25 BY MS. BLANCHETTE:

Mark Wingo - Redirect examination  
By Ms. Blanchette

1 Q. Mr. Wingo, when the State was asking you about the  
2 questions whereby you gave a verbal response regarding how  
3 many children you had, your education, those type of  
4 things, that's when the judge was just dealing with you  
5 directly. You were no longer with the group.

6 Is that correct?

7 A. Yes.

8 Q. Okay. So, did you feel that you could give those  
9 verbal responses at that time because you were no longer  
10 being questioned with the group?

11 A. Yeah, he was directly talking to me then.

12 MS. BLANCHETTE: Okay. Your Honor, I have no further  
13 questions.

14 THE COURT: All right. Thank you, sir. You can step  
15 down.

16 MS. BLANCHETTE: Your Honor, as our final witness,  
17 the applicant would call Attorney Andrea Price.

18 THE COURT: Raise your right-hand for me please.

19 THE WITNESS: Yes, sir.

20 ANDREA PRICE, being first duly  
21 sworn, testified as follows:

22 THE COURT: Thank you. State your name and spell  
23 your last name for the record please, ma'am.

24 THE WITNESS: My name's Andrea Price. P-R-I-C-E.

25 DIRECT EXAMINATION

Andrea Price - Direct examination  
By Ms. Blanchette

1 BY MS. BLANCHETTE:

2 Q. And, Ms. Price, what is your current occupation?

3 A. I am an attorney in Greenville. I left the Public  
4 Defender's Office a little over a year ago. I do estate  
5 planning, probate, and Medicaid planning.

6 Q. And how long have you been an attorney in the State  
7 of South Carolina?

8 A. I was licensed in 2006.

9 Q. And I know you said you left the Public Defender's  
10 office just over a year ago.

11 Is that correct?

12 A. That's right.

13 Q. So, during your time in the Public Defender's Office,  
14 I assume you handled primarily criminal cases.

15 Is that correct?

16 A. That's all I handled.

17 Q. Okay. And if I -- explain how many cases do you  
18 think you handled in the Public Defender's Office?

19 A. Thousands.

20 Q. Okay. And when did you start your employment there?

21 A. February the 19<sup>th</sup> of 2007.

22 Q. Okay. So, during your employment there, you were  
23 assigned the case that we're here about today, Mr. Wingo's  
24 case?

25 A. That's correct.

Andrea Price - Direct examination  
By Ms. Blanchette

1 Q. Is that correct?

2 Okay. And do you recall when you first met with him?

3 A. Yes, I do. It was on March the 8<sup>th</sup> of 2018.

4 Q. Okay. And do you recall where that took place?

5 A. It was. It was in the old courthouse downstairs in  
6 the Magistrate's Court. He had been transported for his  
7 preliminary hearing.

8 Q. Okay. And did you have the opportunity to go over  
9 anything with him at that time?

10 A. I had, I'm sure at that point, at least the police  
11 report. The prosecutor who handled preliminary hearings  
12 was very amenable to at least providing us with that if we  
13 didn't have -- if -- in the event we didn't have full  
14 discovery yet.

15 Q. Okay. Subsequent to that -- and he was incarcerated  
16 at SCDC at the time that you were representing him.

17 Is that correct?

18 A. He was.

19 Q. Subsequent to that, did you have the opportunity to  
20 meet with him in the Department of Corrections?

21 A. Yes.

22 Q. Okay. And where did that meeting take place?

23 A. Tyger River.

24 Q. Okay. And do you recall what was discussed at that  
25 meeting and approximately when that meeting took place?

Andrea Price - Direct examination  
By Ms. Blanchette

1 A. Yes, the -- there -- I had three meetings with him at  
2 Tyger River according to my notes for -- that was in  
3 October the 3<sup>rd</sup> of 2018.

4 Q. Okay. And he testified that, during that meeting,  
5 you conveyed to him the 15 year plea offer.

6 Do your notes reflect that or your recollection?

7 A. It does -- it does not.

8 Q. Okay. Do you recall communicating the 15 year plea  
9 offer to him during the course of your meetings?

10 A. Yes.

11 Q. Okay. Do you recall when you first did that?

12 A. According -- I don't. According to my notes, I do  
13 know -- I can tell you that it was -- the first offer was  
14 a 15 years consecutive to what he's already serving.

15 Q. And then, from there, it -- do you know when it  
16 changed to what he actually pled to?

17 A. I believe it was the week before he was on the  
18 docket.

19 Q. Okay. Now, while he was on the stand, he discussed  
20 prior trips that he took to Spartanburg County Detention  
21 Center and raising the issue to you about his concern  
22 about his medications.

23 Do you recall him discussing that with you?

24 A. I don't have any mention of any medications until a  
25 trip that he made to Spartanburg in early 2019. He said

Andrea Price - Direct examination  
By Ms. Blanchette

1 that they wouldn't give him his Strattera and he said he  
2 couldn't concentrate as a result. But he seemed pretty  
3 normal to me. He did -- nothing in his presentation  
4 indicated that there would be any problem with him going  
5 to Court or communicating with me or anything of that  
6 nature.

7 Q. Okay. And I've already marked a letter from Doctor  
8 Howard that Mr. Wingo said he provided to you.

9 Do you recall receiving that letter?

10 A. I don't.

11 MS. BLANCHETTE: Okay. Your Honor, if I could  
12 approach just to get that letter?

13 THE COURT: Yes, ma'am.

14 Q. And you can see in here it is marked as Defendant's  
15 Exhibit 1, and if the record from the post-plea hearing in  
16 front of Judge Hayes reflects that you handed that up, do  
17 you know when you got it that you were able then to  
18 provide it to the Court?

19 A. I don't have that in my notes and I don't have any  
20 independent recollection of that.

21 Q. Okay. Do you recall seeing that letter before?

22 A. Before you -- before it was provided me by you in the  
23 last week, actually I don't.

24 Q. Okay.

25 A. And not, not that without -- I, I did a lot of cases.

Andrea Price - Direct examination  
By Ms. Blanchette

1 So, I don't remember every single detail on every one of  
2 them.

3 Q. Now, as far as the discovery, can you just explain  
4 how you received it and what you reviewed?

5 A. Yes, I received it from the solicitor's office as a  
6 result of a Rule 5 inquiry. I received a flash drive with  
7 a lot, a lot of phone records and paper discovery as well  
8 and I reviewed that. Provided Mr. Wingo a copy of it.

9 Q. All right. And there is discussion in the, in the  
10 transcript that you had to go review the videos and calls  
11 at the solicitor's office.

12 Is that what you recall?

13 A. That's correct.

14 Q. Okay. And when, approximately, do you remember doing  
15 that --

16 A. I---

17 Q. -- or if you have a notice to exactly when.

18 A. I went up to Sydney's office on May the 1<sup>st</sup> of 2019,  
19 which is my -- actually my father's birthday, and listened  
20 to the calls and the video in this matter.

21 Q. So that would be five days prior to the plea and that  
22 would include weekends as well if the plea was on---

23 A. Right.

24 Q. ---May 6<sup>th</sup>?

25 A. Yes.

Andrea Price - Direct examination  
By Ms. Blanchette

1 Q. Okay.

2 A. That'd be right.

3 Q. Then did you have the opportunity to go over what you  
4 reviewed with Mr. Wingo prior to the entry of his plea?

5 A. Yes.

6 Q. Okay. Mr. Wingo has testified that he wanted a  
7 trial.

8 Was that conveyed to you?

9 A. Mr. Wingo wanted a lot of things. From the outset,  
10 he wanted to negotiate. He gave me several offers to  
11 convey, which I did.

12 Q. Okay.

13 A. At one point though he did, he did say that he wanted  
14 a trial. Let's see. I can -- he said -- he did not say  
15 anything about a trial until the 2<sup>nd</sup> of May. May 2<sup>nd</sup>.

16 Q. Okay. And prior to that, had you conducted -- you  
17 said you've reviewed the discovery. You just reviewed the  
18 videos and calls on May 1<sup>st</sup>.

19 Had you conducted an independent investigation or  
20 utilized a private investigator through your office in  
21 this case?

22 A. No, we do not use our investigators to do that sort  
23 of thing unless they're red flags that are raised as a  
24 result of the review of discovery. There were a lot of  
25 problems in Mr. Wingo's case as far as his behavior for

Andrea Price - Direct examination  
By Ms. Blanchette

1 lack of a better term.

2 The first problem is, is that he had a burner phone  
3 in the DOC. That -- that's -- that was gonna be a hard  
4 thing to overcome and I explained that.

5 Second is, is that this person reached out to him and  
6 that he got involved, unfortunately, in this deal that has  
7 led to his criminal charges.

8 Q. But as his defense attorney, did you discuss with him  
9 any possible defenses and the viability of those at a  
10 trial?

11 A. I did not see any defenses that he had.

12 Q. Did you look through the evidence and how that was  
13 handled and discussed that with him?

14 A. I went through everything that I thought might be  
15 pertinent. But as far as saying I think this is a good  
16 thing for you, I think this is a good thing for you, I  
17 think this is a good thing for you, I didn't see any good  
18 things for him.

19 Q. And did you convey that to him?

20 A. Yes.

21 Q. All right.

22 A. I thought it was in his best interest to getting  
23 all -- everything and that he enter a plea in this case.

24 Q. So -- and please correct me if I'm wrong if it's not  
25 an office policy or if it's just your policy, that upon

Andrea Price - Direct examination  
By Ms. Blanchette

1 your review, if you don't see any red flags, then no  
2 further investigation's done and no investigators are  
3 utilized?

4 Is that correct?

5 A. That is surface correct but---

6 Q. Okay.

7 A. ---this is also an issue when -- from the outset, Mr.  
8 wingo was talking concurrent sentence and talking deal and  
9 talking I don't want a trial. So, that gives me a pretty  
10 good indication of where this case is gonna go.

11 Q. But if he had changed his mind, and you've indicated  
12 that he did tell you at one point he wanted a trial, were  
13 you prepared to proceed with that trial?

14 A. We could of had a trial. But it was -- I did not  
15 think it was a good idea.

16 Q. Okay. And he was going to be going to trial May 6<sup>th</sup>  
17 if he didn't plead.

18 Is that correct?

19 A. The week, the week of the next term of court as I  
20 recall.

21 Q. Okay. Did you ever discuss with him how the drug  
22 deal, for lack of a better word in this case, and the  
23 drugs went across county lines and why he was being charged  
24 in Spartanburg?

25 A. Yes.

Andrea Price - Direct examination  
By Ms. Blanchette

1 Q. Okay. And what discussion did you have regarding  
2 that?

3 A. Choice of venue in that matter.

4 Q. Okay. And can you explain.

5 A. Well, the---

6 Q. I mean did you just tell him choice of venue or did  
7 you explain more than that?

8 A. The, the phonecall that originated this whole  
9 transaction originated here in Spartanburg County. These,  
10 these -- and then he set up some other contacts on the  
11 outside to bring it here to Spartanburg County.

12 So, a lot of the activity that resulted and the  
13 result of this did happen here in Spartanburg County.

14 Q. And you had mentioned in your testimony that one of  
15 the real issues was the burner phone inside the Department  
16 of Corrections.

17 In review of the discovery, did you see where they  
18 took that phone into evidence or were you able to see that  
19 phone yourself?

20 A. I never went and saw any phone and I never -- I never  
21 went down to, to evidence or wherever this -- that  
22 happened to see.

23 Q. Okay. Do you know if they took that phone into  
24 custody though was an issue in this case?

25 A. I think they did because I think they dumped it if

Andrea Price - Direct examination  
By Ms. Blanchette

1 I'm recalling correctly.

2 Q. Now, in the time leading up to his plea, do you  
3 recall him being transported several days prior?

4 A. Yes.

5 Q. Okay. And did you recall when you first met with  
6 him?

7 A. That would be on May the -- of that week. May the  
8 1<sup>st</sup> I think.

9 Q. Okay. And how many times did you meet with him that  
10 week leading up to the plea on the subsequent Monday?

11 A. Let's see.

12 Okay. I, I -- it looks like I didn't meet with him  
13 at first. I met with the solicitor that day. So pardon  
14 me for that. He came up here the 2<sup>nd</sup>.

15 So I met with him the 2<sup>nd</sup>, 3<sup>rd</sup> -- 2<sup>nd</sup> and the 3<sup>rd</sup> and  
16 then I would have met with him to get him to sign his  
17 paperwork. But I'm not sure what date that was.

18 Q. Okay. And do you know what day he communicated to  
19 you that he wanted the trial?

20 A. He wanted a trial on the -- oh, he wanted a trial on  
21 the 2<sup>nd</sup>. But he gave me an authorization to counteroffer  
22 and I did that.

23 Q. Okay. Do you recall having him dressed out for  
24 fitting for trial clothing?

25 A. Yes.

Andrea Price - Direct examination  
By Ms. Blanchette

1 Q. Okay.

2 A. I think Mr. Jones did that, who is with the Public  
3 Defender's Office.

4 Q. And as he's being fitted for clothing, did you ever  
5 have the opportunity to -- then to come and meet with him  
6 and go over what trial strategy would be and what would be  
7 happening at that trial?

8 A. Well, at this point he was still waffling as far as  
9 wanting to negotiate. So, if -- the minute, the minute he  
10 told me he definitely wanted a trial, we would of shifted  
11 into trial mode.

12 Q. And when did the waffling end?

13 what was the conversation you had that turned this  
14 into a plea?

15 A. Let's see. According to my notes, that was on the  
16 3<sup>rd</sup>.

17 Q. Okay. And what was the information or discussion you  
18 had with him that turned this into a plea?

19 Do you recall?

20 A. It says that -- I, I explained to him that he was  
21 served in December of 2017 with his warrant while he was  
22 on -- in the Department of Corrections. I told him he was  
23 not entitled to any time credits under the statute.

24 Q. Did you assist him though in calculating the 517  
25 days?

Andrea Price - Direct examination  
By Ms. Blanchette

1 A. Well, I counted up the time that he had served in the  
2 jail total since the time of that service cause Judge  
3 Hayes, when he does it, wants to know how long everybody  
4 has spent in jail since that time. That's just something  
5 that he does. But I did tell him he was not entitled to  
6 that under the statute.

7 Q. So, you never gave him the advice that you would ask  
8 for or try to seek the 517 days?

9 A. I told him we could ask. But he's not entitled to it  
10 and that's not something I do as a matter of course. I --  
11 as, as an officer of the Court, I don't think that I  
12 really, in good faith, can do that.

13 Q. Have you ever asked the Court to give credit for time  
14 served on other charges that wouldn't fall under the  
15 checkmark on the sentencing sheet?

16 A. I don't think so --

17 Q. Okay.

18 A. -- in my practice cause I don't think that's ethical.

19 Q. Now, did you give him any advice regarding his  
20 brother-in-law and information you had received regarding  
21 that?

22 A. Yes, the solicitor who was handling this case, Ms.  
23 Kallam, who's no longer with the office, she's also in a  
24 private practice, advised me that Mr. Hollifield was going  
25 to testify that it was Mr. Wingo's voice on the

Andrea Price - Direct examination  
By Ms. Blanchette

1 recordings.

2 Q. And what, if anything, did you do to verify that or  
3 look into that matter?

4 A. Well, I've worked with Ms. Kallam, Sydney, for a  
5 number of years and, as an officer of the Court, she has  
6 an obligation to tell me the truth just like you do, just  
7 like I do, and I had no reason to think she'd be lying to  
8 me.

9 Q. And did you, yourself, make any contact with Mr.  
10 Hollifield?

11 A. No, I didn't have his contact information.

12 Q. Okay. Did you look into having an investigator speak  
13 to him?

14 A. No.

15 Q. And is it typical, in all these cases that you'd  
16 handled in you said your, you know, your course of working  
17 with the solicitor's office, that they would call a family  
18 member who also happens to be in law enforcement to do a  
19 voice authentication or ID?

20 A. I don't ask why, why the solicitor's Office does some  
21 of the things they does cause -- do cause I don't  
22 understand it all the time. But I had -- again, I had no  
23 reason to doubt her honesty with me.

24 Q. Did you see any basis there, if that's how they  
25 decided to proceed at trial if you were going on what she

Andrea Price - Direct examination  
By Ms. Blanchette

1 was saying that they were gonna call him as a witness at  
2 trial, did you see any basis for objection from calling a  
3 law enforcement officer to essentially bolster the  
4 credibility of the State's case?

5 A. And that's exactly what it would be is bolstering and  
6 that was something for -- that was something for trial.

7 Q. But there would of been a possible objection there  
8 or---

9 A. There would of been---

10 Q. ---there to be made?

11 A. ---a possible objection there, yes.

12 Q. Do you also see how they could potentially be using  
13 that family member, who is law enforcement, because there  
14 may be issues of credibility with the CI in this case?

15 A. That's always a possibility.

16 Q. Is that something you looked into or discussed with  
17 Mr. Wingo?

18 A. That is something you can always discuss at trial,  
19 yes.

20 Q. No.

21 Did you discuss it with Mr. Wingo before---

22 A. I had---

23 Q. ---he decided?

24 A. I have no independent recollection of specifically  
25 talking to that with him.

Andrea Price - Direct examination  
By Ms. Blanchette

1 Q. So, what exactly did you tell him about his  
2 brother-in-law and his testimony before he decided to  
3 plead guilty and forgo a trial?

4 A. I told him that Ms. Kallam had told me that he was  
5 willing to come in and testify that it was his voice on  
6 the recordings.

7 Q. But you did not discuss with him any potential  
8 objections to that or arguments that could be made when he  
9 was evaluating whether or not he should go to trial?

10 A. I don't recall having any other discussion with him  
11 about that.

12 Q. And you did not do any independent investigation as  
13 to whether or not Mr. Hollifield was going to come testify  
14 against his family member?

15 A. No.

16 Q. Now, let's look at the plea hearing.  
17 Do you have a copy of the transcript?

18 A. I do.

19 Q. If not, I can give you a copy.

20 A. I do.

21 Q. You've already indicated that you didn't have any  
22 concerns about his mental health in time leading up to the  
23 plea hearing.

24 But the day of the plea hearing, was there any  
25 concerns that you had?

Andrea Price - Direct examination  
By Ms. Blanchette

1 A. No, I didn't rec -- I don't recall recognizing  
2 anything that made me question that he could not go  
3 through with the plea.

4 Q. And it appears from the record that the defendants  
5 were polled in the jury box. All the names were listed.  
6 They were quite a few defendants that Judge Hayes  
7 questioned as a group.

8 was that typical practice and is that something that  
9 you prepared Mr. Wingo for?

10 A. That is typical practice for Mr. -- Judge Hayes and,  
11 no, I did not have any specific conver -- conversation  
12 with Mr. Wingo except to say that the judge will be asking  
13 some questions and he needed to answer truthfully and  
14 honestly.

15 Q. Okay. Now, after the State gives the facts on Pages  
16 15 and 16, Mr. Wingo, on Page 16, says he's somewhat does  
17 not agree with the facts and there was a pause there.

18 Do you recall or have a specific recollection of what  
19 you discussed with Mr. Wingo at that point?

20 A. I don't.

21 MS. BLANCHETTE: And then beg the Court's indulgence  
22 just one moment.

23 (Pause.)

24 Q. If you could look at Page 19 and that is where you're  
25 giving your presentation to the Court and you asked to add

Andrea Price - Direct examination  
By Ms. Blanchette

1 one more thing. And that's where you asked to start his  
2 sentence, sentence today running that concurrent.

3 A. Yes.

4 Q. Is that something you had discussed with Mr. Wingo  
5 that it would be starting that day concurrent and he would  
6 get no credit for the time he had served?

7 A. Yes.

8 Q. Now, immediately after that he says I want to  
9 withdraw my plea and communicates that that was not his  
10 understanding, that's not what y'all told me Friday, and  
11 y'all have a discussion.

12 Do you remember what was discussed off-the-record  
13 there?

14 A. I don't.

15 Q. Were you concerned that he was trying to withdraw his  
16 plea at that point and saying that that's not what you had  
17 advised him?

18 A. I was concerned that he was gonna back himself into a  
19 corner and go to trial and get 25 years flat when he had  
20 the opportunity to get 15.

21 Q. Now, after the hearing, you filed a motion to  
22 reconsider and motion to withdraw?

23 A. Yes.

24 Q. What was your reasoning for doing so?

25 THE WITNESS: Your Honor, can I -- do you want me to

Andrea Price - Direct examination  
By Ms. Blanchette

1 be honest with what he -- do -- can I be blunt with what  
2 he said to me?

3 THE COURT: You have a right -- he made a claim. You  
4 have a right to -- he wavier the privilege when he does  
5 that.

6 THE WITNESS: He told me that I wasn't worth shit and  
7 I was going to do what he told me to do. So I filed  
8 those.

9 Q. And so you filed those at his direction after---

10 A. Yes, sir.

11 Q. ---some harsh words---

12 A. Yes, I did.

13 Q. -- were said to you?

14 A. I'm not -- yes.

15 Q. Okay. Understandable.

16 Now, leading up to the hearing that you had on  
17 October 2<sup>nd</sup> with Judge Hayes, do you recall any  
18 interaction you had with him beyond those instructions or  
19 preparation you did with him --

20 A. I---

21 Q. -- before the hearing?

22 A. I went to the DOC to see him again --

23 Q. And---

24 A. -- on the 20<sup>th</sup> of September.

25 Q. And was that at Perry Correctional?

Andrea Price - Direct examination  
By Ms. Blanchette

1 A. It, it was.

2 Q. Okay. And what did you discuss with him at that  
3 time?

4 A. He did, he did a lot of talking that day according to  
5 this. He actually showed some remorse for getting up --  
6 his codefendants involved. He said that Randy says that  
7 he's not testifying and that the solicitor asked Josh, his  
8 nephew, to testify and that Karen, who is his sister, went  
9 to Randy and Randy changed his mind and said that it's --  
10 the solicitor is "hell bent on getting him 15 years at 85  
11 precent and he wants to withdraw his plea cause Randy's  
12 not testifying against him."

13 Q. And so did he ask you to look into the issue of Mr.  
14 Hollifield and/or to address that at the hearing in front  
15 of Judge Hayes?

16 A. That was, as I recall, all that was in front of Judge  
17 Hayes that day.

18 Q. Okay. Do you recall if the transcript reflects --  
19 and I can direct you to it.

20 A. I've never seen the transcript. So --.

21 Q. would you like a copy of---

22 A. Please.

23 Q. ---the transcript?

24 A. Thank you. Thank you.

25 Q. would you like a couple moments to review that---

Andrea Price - Direct examination  
By Ms. Blanchette

1 A. No.

2 Q. ---or I can just direct you?

3 A. No. Go ahead.

4 Q. Okay.

5 A. Go ahead.

6 Q. Looking at the transcript beginning on -- just a  
7 second. I left it up there. Page 3 at the bottom.

8 You'd -- you say that he's indicated that he with --  
9 wishes to withdraw the motion for reconsideration. That  
10 goes over on page or Line 1 of Page 4.

11 A. Okay.

12 Q. I know you say you're withdrawing cause he wishes to.

13 But what was the discussion had there and the  
14 reasoning for withdrawing that?

15 A. Well, I met with him on the 2<sup>nd</sup>. It says I spoke  
16 with him in the jail room. He said he wanted to withdraw  
17 his motion for reconsideration and go forward on his  
18 motion to withdraw based on, number one, no meds and,  
19 number two, Randy not testifying.

20 Q. Okay. Did you have any recollection or did you plan  
21 to address the 517 days jail credit?

22 A. That 517 days jail credit was never discussed after  
23 his plea.

24 Q. So, you don't recall him asking you questions about  
25 the sentencing sheet immediately after the plea?

Andrea Price - Direct examination  
By Ms. Blanchette

1 A. I don't.

2 Q. Okay. I also direct your attention in the transcript  
3 that you have in front of you to Page 5 and Line 4. You  
4 say the first issue is Mr. Wingo's on a couple of  
5 medications. I'll give you a chance to review that, four  
6 to 16.

7 A. Okay.

8 Q. And that's when you actually then proceed to hand up  
9 the letter that I showed you earlier.

10 A. Okay.

11 Q. What did you do in preparation to address that mental  
12 health issue to the Court?

13 A. I read through that document apparently and handed it  
14 up to the Court.

15 Q. Okay. Do you recall reaching out to Doctor Howard,  
16 Howard or any other mental health professionals?

17 A. No.

18 Q. Okay. And then beginning on Line 10 of Page 6, you  
19 address the second point.

20 A. Okay.

21 Q. And you say that the solicitor informed you that one  
22 of Mr. Wingo's family members was to come before the Court  
23 and testify against him as a material witness in this case  
24 cause you presented it to him and he decided to plead  
25 guilty. But you go on to explain that he's on vacation.

Andrea Price - Direct examination  
By Ms. Blanchette

1 And so, therefore, you would like to continue the hearing.  
2 But, thereafter, Judge Hayes ruled later in October in  
3 denying it.

4 Did you do anything subsequent to that to secure Mr.  
5 Hollifield or follow-up on that?

6 A. No.

7 Q. And did you bring that to the attention of the Court  
8 before the October 2<sup>nd</sup> hearing that Mr. Hollifield was  
9 unavailable?

10 A. I'm not sure that I knew that to bring it to the  
11 Court's attention.

12 Q. Now the -- if you can look at Page 7. The transcript  
13 ends with the judge essentially saying -- everybody says  
14 thank you.

15 Did you ever advise Mr. Wingo of his rights to a  
16 direct appeal?

17 A. I don't remember if I did. But I know that's  
18 something Judge Hayes typically does in his, in his  
19 plea -- in his plea colloquy.

20 Q. And if the transcript reflects that he did not do  
21 that at the end of the plea in May, would you agree that  
22 Judge Hayes didn't do that in May or in October?

23 A. That's -- he normally does it in the group  
24 qualification.

25 Q. But even if he had advised him in May that he had 10

Andrea Price - Direct examination  
By Ms. Blanchette

1 days to appeal, that time would have lapsed?

2 A. That's correct.

3 Q. And he would of needed to be advised about his right  
4 to appeal at the end of the October hearing?

5 Is that correct?

6 A. That's correct.

7 Q. Okay. But you do not have an independent  
8 recollection of advising him of that or determining if he  
9 wanted you to file a notice of appeal?

10 A. I do not.

11 Q. Okay. And are you familiar with having to provide a  
12 basis on which there's an appellate issue if it's a guilty  
13 plea case?

14 A. Yes, that's correct, yes.

15 Q. Okay. And having a hearing on a motion to withdraw  
16 whereby you made argument, would that be a basis for an  
17 appeal?

18 A. I don't know cause I've never done one of those  
19 before.

20 MS. BLANCHETTE: Okay. Your Honor, if I could beg  
21 the Court's indulgence one moment just to confer with my  
22 client?

23 (Pause.)

24 MS. BLANCHETTE: Your Honor, I have no further  
25 question of this witness.

Andrea Price - Cross-examination  
By Mr. Hall

1 CROSS-EXAMINATION

2 BY MR. HALL:

3 Q. How you doing, Ms. Price?

4 A. I've had better days.

5 Q. Ms. Price, how many times did you meet with Mr. Wingo  
6 during the course of your representation?

7 A. Beg the court's in -- I can count them up for you.

8 Q. Okay.

9 A. Approximately a dozen.

10 Q. Okay. And during those meetings -- hold on.

11 Did you receive discovery from the State in this  
12 case?

13 A. I did receive discovery from the State.

14 Q. And during the course of those meetings, did you  
15 review that discovery with Mr. Wingo?

16 A. I gave Mr. Wingo a copy of it and, according to my  
17 notes, we went over the discovery at the preliminary  
18 hearing.

19 Q. Okay. And the only thing that wouldn't have been  
20 provided to Mr. Wingo would of been the phonecalls and the  
21 videos from the CI, right?

22 A. That's correct. I had to go up to the solicitor's  
23 office and review those.

24 Q. Okay. Can you tell us what evidence the State had  
25 against Mr. Wingo?

Andrea Price - Cross-examination  
By Mr. Hall

1 A. To the best of my recollection, and the State --  
2 the -- Mr. Wingo had a burner phone in the DOC. Was  
3 serving another sentence. This burn -- the CI made  
4 contact with him. I can't remember if he talked -- if the  
5 CI talked about doing a deal or Mr. Wingo talked about  
6 doing a deal.

7 But apparent -- but, at some point, they agreed that  
8 they were gonna do a deal.

9 Q. All right.

10 A. He reached out -- Mr. Wingo reached out to a  
11 character that he referred to as Country. Country I  
12 understand was actually caught up in State Grand Jury at  
13 one point later.

14 He then contacted these two young ladies that were  
15 outside that he actually made -- Amy and Renee -- he  
16 actually expressed some remorse for getting them involved  
17 later on. And so they -- he arranged for them to go pick  
18 up some methamphetamine and bring it back into, into  
19 Spartanburg County.

20 Q. Okay. I want to ask about this while we're here.  
21 You agree -- I mean -- I'm sorry. I'll rephrase.

22 You testified that Mr. Wingo and the CI had agreed to  
23 do a deal, right?

24 A. Yes.

25 Q. Okay. Do you believe that that defense of, of

Andrea Price - Cross-examination  
By Mr. Hall

1 entrapment was available to him because of that?

2 A. No.

3 Q. Okay. I want to ask you did he ask you to  
4 investigate anything in this case?

5 A. No, he actually never did.

6 Q. Okay. And if he had asked you to investigate  
7 anything in this case, would you have?

8 A. Certainly.

9 Q. Okay.

10 A. Of course, it -- that depends on your -- what your  
11 definition of investigation is.

12 Q. Okay. Well, let me ask you this.

13 Did you have any concerns with the discovery in this  
14 case?

15 A. I, I did not.

16 Q. Did you have any concerns about the chain of custody  
17 in this case?

18 A. No.

19 Q. Okay. Did you have any concerns about a burner phone  
20 in this case?

21 A. I had a lot of concerns about the burner phone. The  
22 fact that it even existed is a problem.

23 Q. Uh-huh. (Affirmative).

24 But not a -- but, again, he never asked you to  
25 investigate that, did he?

Andrea Price - Cross-examination  
By Mr. Hall

1 A. Could you clarify what you mean by investigate?

2 Q. I'll withdraw. I'll move on.

3 And you testified that you didn't have an opportunity  
4 to speak to Mr. Hollifield, right?

5 A. I never spoke to Randy, no.

6 Q. And you -- but it's your understanding that the State  
7 would of used him to authenticate Mr. Wingo's voice on the  
8 recordings?

9 A. That's correct. And Ms. Kallam even said that at the  
10 October hearing.

11 Q. Okay. And do you believe that if Mr. Hollifield had  
12 chosen not to testify that that would of changed anything  
13 in this case, the outcome in this case?

14 A. No, because he was still looking at 25 years.

15 Q. Okay. And if Mr. Hollifield had chosen not to  
16 testify, couldn't the State have gotten another family,  
17 family member to testify against him?

18 A. Sure.

19 Q. Okay. Or I'm sorry.

20 To testify to authenticate the voice, right?

21 A. Sure. There were other ways to authenticate as well.

22 Q. Okay. I want to ask you about the plea negotiations  
23 in this case.

24 You testified that, from the offset, Mr. Wingo was  
25 interested in negotiating a plea deal, right?

Andrea Price - Cross-examination  
By Mr. Hall

- 1 A. That's correct.
- 2 Q. Okay. And you engaged in, in negotiations --
- 3 negotiations with the State, right?
- 4 A. I did.
- 5 Q. Okay. And, ultimately, you received the offer of the
- 6 negotiated 15 year --?
- 7 A. Yes, I, I got them to come off the connective.
- 8 Q. Okay. And whose decision was it to, to accept that
- 9 plea deal?
- 10 A. Ultimately it's always the clients.
- 11 Q. Okay. And Mr. Wingo made that decision in this case?
- 12 A. Yes, he did.
- 13 Q. Okay. And before he pled guilty, did you advise him
- 14 of his right to a jury trial?
- 15 A. Yes.
- 16 Q. Okay. Did he want a jury trial in this case?
- 17 A. Like I said, he waffled -- he waffled back and forth.
- 18 But, ultimately, he decided to plead.
- 19 Q. Okay. And you advise -- did you advise him of his
- 20 right to confront witnesses?
- 21 A. I always do with all my clients.
- 22 Q. Okay. And so if Randy Hollifield had testified, he
- 23 could of cross-examined him at trial, right?
- 24 A. Certainly.
- 25 Q. Okay. And you advised him of his right to remain

Andrea Price - Cross-examination  
By Mr. Hall

1 silent before he pled guilty?

2 A. Always.

3 Q. Okay. And the judge did so as well, didn't he?

4 A. Yes.

5 Q. Okay. I want to ask you about his competency.

6 During the course of your representation, you testified  
7 that you met with him dozens of times.

8 During those meetings, did you have any concerns  
9 about his competency?

10 A. None whatsoever.

11 Q. Okay. Can you describe his demeanor and his behavior  
12 during those client meetings?

13 A. Well, the first time I ever met him, he was actually  
14 pretty calm. He was able to tell me exactly what happened  
15 and he said he was interested in a -- doing a concurrent  
16 sentence because he still was -- had some time to serve  
17 and that he was very sorry, very sorry that Renee was  
18 caught up in all this.

19 As it got closer, he had a lot of questions. I did  
20 my best to answer those questions. I went to the DOC to  
21 see him.

22 The closer though -- when, when it got time for him  
23 to go on the docket, and he got on the docket, he got a  
24 little antsy and he wanted me to offer a seven year  
25 sentence, which I told him to write down, and I took it to

Andrea Price - Cross-examination  
By Mr. Hall

1 the solicitor. She, she did not -- was not amenable to  
2 that.

3 But the closer it got, the more nervous he got, which  
4 that's not unusual for any of my clients. But I never saw  
5 anything in his behavior that indicated that he -- hey, he  
6 might not make it through a plea or a trial cause, if you  
7 can't make it through a plea, he certainly can't make it  
8 through a trial.

9 Q. Do you recall him ever mentioning to you that he had  
10 mental health issues during the course of your, of your  
11 representation?

12 A. The, the first time he had mentioned any medication  
13 was in January of 2019. He said that they wouldn't give  
14 him his medicine and he couldn't concentrate as a result.  
15 But I never saw anything in my interaction with him to  
16 indicate that that was a problem to the point where he  
17 could not go to court.

18 Q. Okay. And if you had any concerns about that, what  
19 would you have done?

20 A. If I had any concerns about that, I would have  
21 addressed them with the solicitor first to see if we could  
22 agree on some sort of court date or agree to put this off.  
23 I've done that before in the past.

24 I've had clients that have been mentally, mentally  
25 ill and we were able to work with the solicitor or I would

Andrea Price - Cross-examination  
By Mr. Hall

1 of had him privately evaluated or we do a state evaluation  
2 down in Columbia. But I -- you never saw anything from  
3 Mr. Wingo that indicated that that was a problem.

4 Q. Okay. And on the day that he pled guilty, do you  
5 observe anything out of the ordinary in terms of his  
6 behavior or his ability to communicate with you?

7 A. No.

8 Q. Okay. Did he seem confused?

9 A. No, he didn't.

10 Q. Okay. Did he seem incoherent at all?

11 A. No, he didn't.

12 Q. Okay. Did he indicate -- did he, did he indicate --  
13 excuse me.

14 Did he indicate to you, on the day of the plea, that  
15 he was having any mental health issues at -- on that day?

16 A. No.

17 Q. Did he indicate -- did he indicate to you, on the day  
18 of the plea, that he was not undertaking his medications  
19 at that time?

20 A. No.

21 Q. Okay.

22 A. Not that I recall.

23 Q. And the letter that you received from him, I believe  
24 you mentioned a letter on your direct examination, that  
25 you received from him regarding his, his mental health.

Andrea Price - Cross-examination  
By Mr. Hall

1           when was that letter -- when did you receive that  
2 letter?

3 A.   I'm, I'm sorry. You're gonna have to repeat that.

4 Q.   Okay. Sorry.

5 A.   Do you have an -- do you have an approximate date?

6 Q.   I believe you testified on direct that you received a  
7 letter in 2019, that he didn't mention anything about his  
8 medicine until 2019.

9           Do you have -- do you recall the month that he would  
10 of mentioned that?

11 A.   I think I just referenced it, and if, if I'm wrong,  
12 please -- I'm sorry. But the first mention of any  
13 medication was in January of 2019 --

14 Q.   Okay.

15 A.   -- or it may be. I'm, I'm sorry. I think I know  
16 what you're referencing, and please correct me if I'm  
17 wrong, is that the motion for reconsideration was based  
18 upon the medication issue?

19 Q.   Yes.

20 A.   Okay.

21 Q.   But that -- but, again, he would of -- he would of  
22 mentioned the motion to reconsider after he pled, right?

23 A.   Right.

24 Q.   Okay. And you filed those motions, the motion to  
25 reconsider and the motion to withdraw the plea, at his

Andrea Price - Cross-examination  
By Mr. Hall

1 direction, right?

2 A. That's correct.

3 MR. HALL: Okay. Beg the Court's indulgence.

4 (Pause.)

5 Q. Do you recall Mr. Wingo ever indicating to you that  
6 he wished to appeal this plea?

7 A. No.

8 Q. Okay. And you're aware that Mr. Wingo has pled  
9 guilty several times, hasn't he?

10 A. More than several.

11 MR. HALL: Okay. Beg the Court's indulgence.

12 (Pause.)

13 Q. I want to ask you one last question, Ms. Price.

14 If Mr. Wingo had informed you that he wanted to  
15 appeal his guilty plea, what would you have done?

16 A. I would have filed the appropriate paperwork and sent  
17 it down to ODC in Columbia, in Columbia to appellate  
18 division for them to handle it.

19 Q. Okay. And, in your experience, you've had clients  
20 that have asked you to appeal their guilty pleas, right?

21 A. Yes.

22 Q. Okay. And in, and in those instances, you filed  
23 notice of appeal for those clients, right?

24 A. Yes.

25 MR. HALL: Okay. No further questions, Your Honor.

1 MS. BLANCHETTE: Nothing.

2 THE COURT: All right.

3 THE WITNESS: Thank you.

4 THE COURT: Thank you, ma'am. You're excused.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: All right, guys.

7 MS. BLANCHETTE: I have no further witnesses if you  
8 wanted me to say that.

9 THE COURT: That's good.

10 MR. HALL: And no further -- no witnesses from the  
11 State, Your Honor. I would like to make closing arguments  
12 at the appropriate time.

13 If you want to break for lunch and do that or hear  
14 them now?

15 THE COURT: Let's do it quickly.

16 MR. HALL: All right. I'll let Ms. Blanchette go  
17 since it's her burden.

18 THE COURT: All right, sir.

19 MS. BLANCHETTE: Your Honor, I've had the opportunity  
20 to appear in front of you for a number of years. I know  
21 that, if you have questions, you'll ask me.

22 THE COURT: Uh-huh. (Affirmative).

23 MS. BLANCHETTE: So what I did is I prepared a  
24 memorandum of law that I provided to the State ahead of  
25 time that I think goes through, you know, the fundamental,

1 which I know you probably know all of the guilty plea  
2 cases.

3 But just to keep my argument at a minimum today, I  
4 prepared this in advance for you to review afterwards.

5 I also have *State versus Brown*, which is just I would  
6 say one of our leading cases that sets out the entrapment  
7 defense. Since I mentioned it today, I thought I should  
8 provide the Court a copy of that.

9 I'm happy to give a summary and a legal argument if  
10 you so choose. But I know that you have a bit to review,  
11 and in my past experience with you, if you have any  
12 questions, you will let me know. We've put in exhibits.  
13 We've offered the testimony.

14 We've -- I don't see any reason to further amend our  
15 allegations and I hope that you find those to be clear.  
16 But unless the Court would like to hear more from me, I  
17 have a memo of law prepared and then I a copy of *State*  
18 *versus Brown*.

19 THE COURT: I'll be glad to accept your memo. Thank  
20 you, ma'am.

21 MS. BLANCHETTE: Your Honor, would you like me to  
22 mark this a Court Exhibit, just hand it up to you, mark it  
23 as an Applicant---

24 THE COURT: If you'd like it to be considered a Court  
25 Exhibit, that'd be fine.

1 MS. BLANCHETTE: Okay.

2 THE COURT: And the same for the State. If you have  
3 one you want me to consider a Court Exhibit, that will be  
4 fine.

5 MR. HALL: Yes, judge. I would just request that we  
6 be given an opportunity to respond in writing---

7 THE COURT: Okay.

8 MR. HALL: ---to this memorandum with a memorandum of  
9 our own --

10 THE COURT: If you---

11 MR. HALL: -- and provide you with that.

12 THE COURT: How long you gon' need?

13 MR. HALL: Well, Your Honor, I can get it -- I can  
14 get it to you in a few days. So --.

15 THE COURT: All right. Just further away we get from  
16 here, the less chance I'm gon' look at it very hard.

17 Okay?

18 MR. HALL: Yes, sir.

19 How does---

20 THE COURT: I mean it---

21 MR. HALL: How does a week sound?

22 THE COURT: Thank you.

23 (WHEREUPON, the memorandum was marked as Court's  
24 Exhibit No. 1 and received into evidence at this time.)

25 MS. BLANCHETTE: And, Your Honor, with the State

1 doing a responsive memo, I want to be clear. This is just  
2 general case law that I didn't want to sit here, and, you  
3 know, tell you all the cases. I did not apply the facts  
4 to the law or make findings as to this case.

5 If Your Honor wants anything further regarding a  
6 proposed order or something of that nature, I'm happy to  
7 do this. I'm just submitting this in lieu of making the  
8 arguments regarding the cases that are relevant.

9 THE COURT: All right. Thank you, ma'am.

10 MS. BLANCHETTE: Uh-huh. (Affirmative).

11 THE COURT: All right. So, be glad to hear from you.

12 MR. HALL: Judge, briefly.

13 As you know, Mr. Wingo has the burden of proof in  
14 this, in this case.

15 Your Honor, one of the main things that they raise in  
16 this case is his competency at the time of, of his guilty  
17 plea.

18 We would cite to *Garren versus State*. I have a copy  
19 of that case if you could -- if Your Honor would like --

20 THE COURT: Sure.

21 MR. HALL: -- as well as *McLaughlin versus State*. I  
22 have a copy of that as well.

23 May I approach?

24 THE COURT: Sure.

25 MR. HALL: *McLaughlin* -- *Garren, Garren versus State*

1 is 423 SC 1 and that is a 2018 Supreme Court case and  
2 *McLaughlin v. State* is 352 SC 476. That's a 2003 Supreme  
3 Court case.

4 May I approach?

5 THE COURT: Yes, sir.

6 MR. HALL: Your Honor, just a, a brief rundown of the  
7 Court's ruling in those cases.

8 In the *Garren* case, the Court -- that -- that's a PCR  
9 case as well. The Court stated that the test for  
10 competency is whether the defendant, the defendant has the  
11 present ability to consult with his, with his attorney  
12 with a reasonable degree of rational understanding and  
13 have a rational and factual understanding of the pleadings  
14 against him.

15 A rational understanding the Court defined as, as  
16 focus -- the focus as to whether he has the ability to  
17 understand the pleadings. Where a PCR applicant alleges  
18 that a plea was involuntary due to the influence of  
19 medication, he must show that the medication or the  
20 lack -- must show that he led -- that the medication or  
21 lack thereof affected his rationality by showing mental  
22 faculties that were so impaired that he was incapable of  
23 understanding and appreciating the charges, his  
24 constitutional rights, and the consequences of his guilty  
25 plea.

1           In the *Garren* case, the Court held that the guilty  
2 plea -- that that applicant's guilty plea was made  
3 voluntarily and the defendant was competent at the time of  
4 that plea where there was no evidence that the defendant's  
5 ability to understand the plea was diminished by the  
6 medications that he was taking that day.

7           Your Honor, we would make the argument that, in Mr.  
8 Wingo's case, his ability, his ability to understand was  
9 not affected by the fact that he may or may not have been  
10 taking his medications at that time.

11           You heard testimony from -- Doctor Maddox testified  
12 that the medication would of, would of affected his  
13 attention span. Attention span does not affect  
14 competency.

15           The plea transcript for itself -- speaks for itself  
16 in that you see that the -- that Mr. Wingo was able to  
17 communicate not only with the Court, but with his  
18 attorney, and he had the understanding of, of what was  
19 going on. He had the understanding of the potential --  
20 the possible sentences and the charges that he was facing  
21 as well as his constitutional rights.

22           If you -- as you -- if you read the transcript, he  
23 also responded to the judge's questions by standing or  
24 sitting. This shows that he was competent at the time of  
25 his guilty plea and I'll also direct the Court's attention

1 to the *McLaughlin* case.

2 In that case, the Court held that none of the  
3 physical side effects of medication in, in that  
4 applicant's case affected his ability to understanding.  
5 And so we would just ask you to make that ruling here as  
6 well.

7 Your Honor, regarding the defense of entrapment, you  
8 heard testimony from his counsel that Mr. Wingo and the CI  
9 agreed to commit the crime.

10 Your Honor, the defense of entrapment is not  
11 available where Mr. Wingo was a, was a principal in the,  
12 in the case. He participated in the actual crime.

13 And also, under the defense of entrapment, I believe  
14 this is, this is in the *Brown* case that Ms. Blanchette  
15 cited, the burden is on him to prove government inducement  
16 and lack of predis -- predisposition. You heard testimony  
17 here that he engaged in that crime without the  
18 government's influence.

19 Your Honor, we would just ask that you consider all  
20 of the evidence and deny Mr. Wingo's PCR.

21 THE COURT: All right. Thank you.

22 I will go through the application and materials and  
23 briefs and I'll give you my decision.

24 All right.

25 MS. BLANCHETTE: Thank you, Your Honor.

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MR. HALL: Thank you, Your Honor.

THE COURT: Have a good day.

MR. HALL: Thank you.

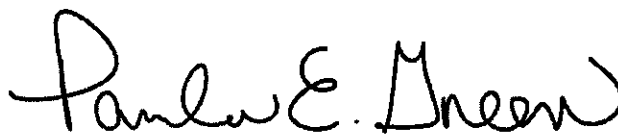
\* \* \*END OF REQUESTED TRANSCRIPT OF RECORD\* \* \*

## 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 3<sup>rd</sup> day of September, 2024.

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

October 9<sup>th</sup>, 2025

A handwritten signature in cursive script that reads "Pamela E. Green". The signature is written in black ink and is positioned above a horizontal line.

PAMELA E. GREEN, Court Reporter

**Curriculum Vitae**  
**DONNA SCHWARTZ MADDOX, M.D.**  
donnamaddoxmd@gmail.com  
 [REDACTED] 9953

**POSITIONS:** Owner, Donna S. Maddox, MD LLC

**Affiliate Professor of Psychiatry**  
 Medical University of South Carolina  
 Department of Psychiatry and Behavioral Sciences

**Clinical Associate Professor of Psychiatry**  
 University of South Carolina School of Medicine  
 Greenville  
 Department of Psychiatry

**Professor of Psychiatry**  
 Edward Via College of Osteopathic Medicine  
 Carolinas Campus

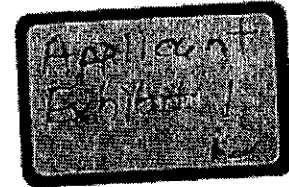
**PROFESSIONAL LICENSURE:**

South Carolina Medical License # 16574

**EDUCATION:**

1981 - 1985      B.A. Psychology  
 Furman University  
 Greenville, South Carolina

1985 - 1989      Doctor of Medicine  
 University of South Carolina School of Medicine  
 Columbia, South Carolina



**BOARD CERTIFICATIONS:**

Diplomate, Psychiatry, (Board Certification #40726), January 1995,  
 recertified 7/2005- 12/2015  
 Added Qualifications in Forensic Psychiatry, July 1996 #471,  
 recertified 7/2006-12/2016

**POSTGRADUATE FELLOWSHIPS AND RESIDENCY POSITIONS:**

- 1989 - 1993            Resident in General Psychiatry  
William S. Hall Psychiatric Institute  
Columbia, South Carolina
- 1993 - 1994            Fellowship in Forensic Psychiatry  
William S. Hall Psychiatric Institute  
Columbia, South Carolina

**ACADEMIC POSITIONS/EMPLOYMENT/UNIVERSITY APPOINTMENTS:**

- 8/2016-4/2018            Contract Psychiatrist  
Harris Psychiatric Hospital
- 8/2013-8/2016            Psychiatric Service Director(certified)  
Harris Psychiatric Hospital
- 7/2010-8/2013            Senior Psychiatrist  
Bryan Psychiatric Hospital
- 4/24/2013 to present      Clinical Professor of Forensic Psychiatry  
Medical University of South Carolina  
Department of Psychiatry and Behavioral Sciences
- 7/2010 to 2015            DMH Professor of Psychiatry  
University of South Carolina School of Medicine  
Department of Neuropsychiatry
- 7/2006 to 7/2010            Professor of Clinical Psychiatry  
Director, Forensic Psychiatry Services  
University of South Carolina School of Medicine  
Department of Neuropsychiatry and Behavioral Science  
3555 Harden Street Extension, Suite 102  
Columbia, South Carolina 29203  
(803) 434-4698    (803) 434-2367 (fax)
- Consulting and Treating Forensic Psychiatrist  
South Carolina Department of Juvenile Justice
- Consulting and Treating Forensic Psychiatrist  
South Carolina Department of Corrections

Donna Schwartz Maddox, MD  
Curriculum Vitae

- 11/98-6/2009 Consulting and Treating Forensic Psychiatrist  
Behavioral Disorders Treatment Program  
(Sexually Violent Predator Program: SC 44-48-110)  
South Carolina Department of Mental Health
- 6/1997- 7/2006 Associate Professor  
Director, Forensic Services  
Department of Neuropsychiatry  
University of South Carolina School of Medicine
- 1/2004-7/2004 Acting Assistant Director, Psychiatry Residency Program  
University of South Carolina School of Medicine  
Department of Neuropsychiatry and Behavioral Science
- 9/1995-5/1997 Forensic Residency Training Director  
University of South Carolina School of Medicine
- 7/1996 – 6/1997 Psychiatrist C William S. Hall Psychiatric Institute  
Residential Treatment Director of NGRI Unit
- 1/1995 – 6/1996 Teaching Psychiatrist II William S. Hall Psychiatric Institute  
Outpatient Forensic Psychiatrist
- 1/1995 – 12/1997 Assistant Professor University of South Carolina School of Medicine  
Department of Neuropsychiatry
- 7/1994 –6/1995 Instructor University of South Carolina School of Medicine  
Department of Neuropsychiatry
- 7/1994 – 12/1994 Teaching Psychiatrist I William S. Hall Psychiatric Institute  
Inpatient and Outpatient Forensic Psychiatrist

**UNIVERSITY/ MEDICAL STAFF COMMITTEES:**

- 2015-2016 Vice-President, Medical Staff Harris Psychiatric Hospital
- 2007-2010 Member, Appointments and Promotions Committee, USC
- 2002-2009 Member, Alumni Committee, USC School of Medicine
- 1996- 2010 Member, Residency Selection Committee
- 1995- 2010 Member, Residency Training Committee
- 2002- 2003 Member, Search Committee, Chairman of Neuropsychiatry

Donna Schwartz Maddox, MD  
Curriculum Vitae

2000-2001	Member, Committee on Women USC
1997	Member, Traditions Committee USCSM
1997	Member, Search Committee, Director Rehabilitation Counseling
1997	Physician Advisor, Environment of Care
1996	Member, Search Committee Chair of Department of Neuropsychiatry and Director of Hall Institute
1996	Member, Finance Committee, University Specialty Clinics
1994-1996	Member, Infection Control Committee
1993-1994	Member, Research Committee

#### HONORS AND AWARDS:

2017	Gold Humanism Award Greenville Hospital System
2016	Clinical Mentor Award, University of South Carolina School of Medicine, Greenville, South Carolina
2007	Outstanding Female Physician Mentor Award
2004-2005	Outstanding Forensic Teaching Award Presented by the USC SOM Forensic Fellowship Training Program
1992	Rappeport Scholarship in Forensic Psychiatry Presented by the American Academy of Psychiatry and the Law
1989	Neurology Award, School of Medicine
1985	Cum Laude Graduate, Furman University Phi Beta Kappa, Furman University Alpha Epsilon Delta, Furman University

#### MEMBERSHIPS AND OFFICES IN PROFESSIONAL ORGANIZATIONS:

2019-present	University of South Carolina Board of Visitors
2002-2009	American Board of Psychiatry and Neurology Forensic Certification Committee
1999-2009	American Board of Psychiatry and Neurology 1999-2010 Board Examiner
1997-2003	Group for the Advancement of Psychiatry (GAP), General Member 1999 Chair
1992- 2014	American Academy of Psychiatry and the Law (AAPL) 1995-2000 Rappeport Committee (President appointed) 1995-2000 Education Committee (President appointed) 1998-2000 Program Committee (President appointed) 1999 Program Chair 1995-97 Mentor to Rappeport Fellow

Donna Schwartz Maddox, MD  
Curriculum Vitae

- 1989-1998 American Psychiatric Association, General Member
- 1989-1998 South Carolina Psychiatric Association  
1995-1998 Federal Legislative Representative (President appointed)  
1995-1999 Executive Council  
1996-1998 Secretary-Treasurer
- 1997 NAMI Advisory Board Physician Representative

#### PUBLICATIONS:

Dehart, D., Dwyer, G., Seto, M., Letourneau E., Schwartz-Watts, D. Internet solicitation of children. A proposed typology of offenders based on their chats, E-mails and social network posts. Journal of Sexual Aggression, 2016

Schwartz-Watts DM: "Commentary: Stalking Risk Profile." The Journal of the American Academy of Psychiatry and the Law, 34:455-457, 2006.

Schwartz-Watts DM, Frierson RL: "Crisis Stabilization in Correctional Settings." in Clinical Practice in Correctional Medicine, Second Edition, edited by Michael Puisis, D.O., S.C. Mosby, Inc affiliate of Elsevier, Inc 2005.

Schwartz-Watts DM. "Asperger's Disorder and Murder." Analysis & Commentary The Journal of the American Academy of Psychiatry and the Law 33:390-3, 2005.

Schwartz-Watts DM, Rowell CN. "Commentary: Update on Assessing Risk for Violence Among Stalkers." The Journal of the American Academy of Psychiatry and the Law 31:440-3, 2003.

Giorgi-Guarnieri D, Zonana HV, Schwartz-Watts DM. "Practice Guideline: Forensic Psychiatric Evaluation of Defendants Raising the Insanity Defense." Supplement to The Journal of the American Academy of Psychiatry and the Law 30:2, 2002.

Frierson R, Schwartz-Watts D, Malone T, Morgan D. "Capital Versus Noncapital Murderers" in revision The Journal of the American Academy of Psychiatry and the Law, 1998.

Schwartz-Watts D, Morgan D. "Violent Versus Nonviolent Stalkers," accepted, The Journal of the American Academy of Psychiatry and the Law, 1998.

Schwartz-Watts D, Morgan D, Barnes C. "Stalkers: The South Carolina Experience," The Journal of the American Academy of Psychiatry and the Law, 1997, 24:541-545.

Schwartz-Watts D, Montgomery L, Morgan D. "Seroprevalence of Human Immunodeficiency Virus Among Pre-Trial Detainees," The Bulletin of the American Academy of Psychiatry and the Law, 1995, 23:285-289.

**POSTERS:**

Internet Chat Rooms: Who Solicits Children? R. Gregg Dwyer, MD, Ed. D, Donna Schwartz-Watts MD, William Burke, PhD, American Academy of Psychiatry and the Law 39<sup>th</sup> Annual Meeting, Seattle, WA. October, 2008

**PRESENTATIONS:**

Mental Health and Substance Abuse for SC Summary Court Judges Conference, Myrtle Beach, March 14, 2024.

"Death Penalty in Forensic Psychiatry" MUSC Forensic Fellowship Webinar, March 6, 2024.

"Mental Health and Substance Abuse," South Carolina Attorney General's Ethics and Mental Health/Substance Abuse CLE Webinar, December 10, 2023.

"Mental Health and Substance Abuse", Attorney General's Ethics and Mental Health/Substance Abuse CLE Webinar, December 11, 2022.

"Mental Health Issues In Our Community Panelist" Carolina Center for Behavioral Health, September 20, 2022 Anderson University.

"Death Penalty and Competence to Be Executed" Medical University of South Carolina Department of Forensics, March 10, 2021

"Substance Abuse and Mental Health," South Carolina House of Representatives CLE Webinar, January 28, 2021.

"Mental Health and Substance Abuse", Attorney General's Ethics and Mental Health/Substance Abuse CLE Webinar, December 11, 2020

"What Experts Want Lawyers to Know" Columbia 2020 SC Bar Convention, Criminal Law part I, Columbia Metropolitan Convention Center, January 24, 2020

"Attorneys and Stress: Reactions and Healthy Ethical Coping" Attorney General's Ethics and Mental Health/Substance Abuse CLE, Blatt Building, Columbia SC December 13, 2019

"Handling Pressures of Judging", South Carolina Judicial Conference, Columbia, South Carolina, September 17, 2019.

"Mass Murderers", South Carolina Circuit Judges Conference, Spartanburg, South Carolina, May 2, 2019.

"PPG Testing in South Carolina Courts," South Carolina Circuit Court Judges Conference, Spartanburg South Carolina, May 2, 2019.

Donna Schwartz Maddox, MD  
Curriculum Vitae

"Attorneys and Stress: Reactions and Healthy Ethical Coping" Attorney General's Ethics and Mental Health/Substance Abuse CLE, Blatt Building, Columbia SC December 7, 2018

"Mass Murderers and Mental Illness" Southeastern Symposium Mental Health, Greenville, South Carolina, May 18, 2018

"How To Make Your Expert Shine" Deep South Capital Defense Conference, Bay St. Louis Mississippi, February 7, 2018

"Communicating with Clients: Deep South Capital Defense Conference, Bat St. Louis , Mississippi, February 7, 2018

"Truths and Myths About Mass Murder" Department of Mental Health Day Long CME, Columbia South Carolina September 5, 2017

"How To Make Your Expert Shine" South Carolina Attorney General CLE, January 20, 2017 Columbia, SC

"Expert Testimony" Lecture to Medical University of South Carolina Forensic Residents, Charleston, SC 1/13/16

"Death Penalty and South Carolina" Lecture to Medical University of South Carolina Forensic Residents, Charleston, South Carolina, February 6, 2013

"Autistic Spectrum Disorders; What Capital Lawyers Should Know." Death Penalty 2013, Sheraton Four Seasons, Greensboro January 25, 2013

"Predators Among Us" University of South Carolina 2012 Mini Med School, October 2, 2012, Columbia, South Carolina

"How Death is Different-Using ABA Guidelines to Meet the Standard of Care in Death Penalty Cases and Social History Investigations: The team Approach" with Joe VonKallist, Capital Case Workshop, September 19, 2012, Wilmington, North Carolina

"Protecting Mental Health" South Carolina Attorney General's Continuing Legal Education Ethics Seminar, Blatt Building, Columbia, SC 12/2/11

"Autistic Spectrum Disorders and the Legal System ", DMH Annual CME, William S Hall Psychiatric Institute 9/11

"Issues of Mental Competency" South Carolina Circuit Court Judges Conference, Spartanburg, South Carolina, May 4-6, 2011

"Stalking in the New Millennium": Department of Mental Health Day Long CME, Columbia SC, October 2009

Donna Schwartz Maddox, MD  
Curriculum Vitae

"Internet Predators": South Carolina Psychiatric Association Annual Meeting, Myrtle Beach, South Carolina, 1/2009

"Internet Predators": Panel Speaker, South Carolina Bar Association Annual Meeting, Myrtle Beach South Carolina, 1/2009

Internet Predators: ICAC Quarterly Meeting, Columbia, South Carolina 11/21/2008

Project Safe Childhood, Advanced Online Child Exploitation Seminar, National Advocacy Center Columbia, SC; July 29, 2008

"Violent Crimes and the Commitment of Sexually Violent Predators, MUSC Judges and Attorneys Substance Abuse and Ethics Seminar, Charleston, South Carolina, December 7, 2007

"Autistic Spectrum Disorders and Corrections" South Carolina Department of Corrections Mental Health Seminar, Columbia, South Carolina, December, 2007

"Pitfalls in Sex offender Commitment Hearings" Panel Speaker, American Academy of Psychiatry and the Law 38<sup>th</sup> Annual meeting, Miami, Florida, October 22, 2007

"Treating the Untreatable" Panel Speaker, American Academy of Psychiatry and the Law 38<sup>th</sup> Annual Meeting, Miami, Florida, October 19, 2007

"Risk Assessment in General Psychiatry: Department of Mental Health Annual Day Long CME, Columbia, SC September 21, 2007

"Mitigation in Noncapital Cases" SC Public Defender's Conference, Myrtle Beach, SC October 2007.

"Nuts and Bolts of Sexually Violent Predator Proceedings" SC Bar CLE, Columbia, South Carolina July 27, 2007

University of South Carolina School of Medicine Founder's Day Speaker for Woman in Medicine, Columbia, South Carolina, April 2007.

"Autistic Spectrum Disorders and Mitigation," Washington DC March 2007

"Sex Crimes and their Aftermath II" Panel Discussion and Presentation, Jack Swerling Moderator, South Carolina Bar Association Conference, Charleston, SC, January 25, 2007

"Psychiatry for the Brilliant Fact Finders" Invited Speaker, South Carolina Judges Conference, Greenville, SC, May 12, 2006.

"Sex Crimes and their Aftermath" Panel Discussion and Presentation, Jack Swerling Moderator, South Carolina Bar Association Conference, Charleston, SC January 27, 2006.

Donna Schwartz Maddox, MD  
Curriculum Vitae

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice  
National Institute of Trial Advocacy, Atlanta Georgia , June 4-5, 2005

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice  
National Institute of Trial Advocacy, Atlanta Georgia , June 5-6, 2004

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice  
National Institute of Trial Advocacy, New York, New York, June 20-21,2003

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice, New  
York, New York. June 20-22,2002.

South Carolina Probation, Paroles and Pardons Annual Conference. "A State of Mind". Myrtle  
Beach, SC. November 11, 2002.

American Academy of Psychiatry and the Law, "Difficult Case? Consult your Colleagues."  
Newport Beach, California. October 26, 2002

South Carolina Public Defender's Conference, "Issues and Concerns Regarding the Sexually Violent  
Predator Statute" Litchfield Beach, South Carolina, September 30, 2002

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice, New  
York, New York, June 28-30-2002.

American Academy of Psychiatry and the Law, "Death Penalty" Boston, MA, October 28, 2001

American Academy of Psychiatry and the Law, "Ask the Expert" and "The Difficult Case" Panel  
Discussions. Boston, MA, October 28, 2001

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice, New  
York, New York, June 14-17-2001.

Annual Capital Defense Training Seminar, "The Importance of Timing in the Presentation of Your  
Client's Story: Frontloading Mitigation" with John Blum, Attorney, Jekyll Island, Georgia,  
February 9, 2001

University of Texas, Department of Psychiatry Grand Rounds "Profile of a Stalker" San Antonio,  
Texas, December 19, 2000

Willford Hall Medical Center, Lackland Air Force Base, Texas, "Death Penalty Evaluations,"  
December 18, 2000.

Willford Hall Medical Center, Lackland Air Force Base, Texas, "Texas Sexually Violent Predator  
Statute," December 18, 2000

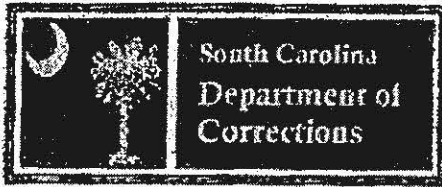
Donna Schwartz Maddox, MD  
Curriculum Vitae

- American Academy of Psychiatry and the Law, "Juveniles Who Carry Weapons on School Grounds" Baltimore, Maryland, October 15, 1999
- American Academy of Forensic Science, Workshop Presenter, San Francisco, 1998 "Classification and Typology of Stalkers."
- Kansas City, Western Missouri Forensic Department, 1997 "Evaluation of Stalking."
- University of South Carolina School of Medicine Women's Month Featured Presenter, 1997 "Stalkers: The South Carolina Experience."
- American Academy of Psychiatry and the Law, Denver, CO, 1997 "Psychotic versus Nonpsychotic Stalkers."
- American Academy of Psychiatry and the Law, Denver, CO, 1997 "Harassing Telephone Callers."
- American Academy of Psychiatry and the Law, Denver, CO, 1997 Panel on Maintaining Competence sponsored by Education Committee
- American Academy of Psychiatry and the Law, Puerto Rico, 1996 "Violent Versus Nonviolent Stalkers",
- American Academy of Psychiatry and the Law, Puerto Rico, 1996 "Capital Versus Noncapital Murderers"
- American Academy of Psychiatry and the Law, Puerto Rico, 1996 "Treatment of Insanity Acquittes Across the United States."
- William S. Hall Psychiatric Institute Forensic Forum, 1996 "Evaluation and Treatment of Sexual Offenders."
- Georgia Regional Forensic Forum, 1996 "Evaluation and Treatment of Sexual Offenders."
- American Academy of Psychiatry and the Law, Seattle, Washington, 1995 "Stalkers: The South Carolina Experience"
- South Carolina Psychiatric Association, Hilton Head Symposium, 1995 "What General Psychiatrists Need to Know About Forensic Psychiatry."
- American Academy of Psychiatry and the Law Annual Conference, San Antonio, Texas 1993 "Seroprevalence of HIV Among Inpatient Pre-trial Detainees"
- American Medical Association, North Carolina 1990 "Tertiary Metastases Presenting As Panhypopituitarism"

Donna Schwartz Maddox, MD  
Curriculum Vitae

**Grants:**

Internet Chat Room Solicitation of Children: A Study of Psychosocial and Criminal Justice Factors as They Relate to Public Safety Risk; American Academy of Psychiatry and the Law Institute for Education and Research (AIER) Grant; Principal Investigator: RG Dwyer; Co-investigators: D DeHart, DM Schwartz-Watts, W Burke & R Moran; 2009 - 2010  
(Revised 8/28/24)



SCDC ID: 269107 00000269107

PATIENT: MARK STEPHEN WINGO  
 DATE OF BIRTH: 07/30/1970  
 DOC #: 25483  
 DATE: 03/21/2019 10:09 AM  
 VISIT TYPE: Psychiatric Clinic  
 Visit Location: Confidential Setting

**Psychopharm**

Start Time: 10:09 AM  
 Stop Time: 10:25 AM  
 Duration: 00 hours, 16 minutes

**Individuals Present**

Contact type: Telemedicine

Individual present

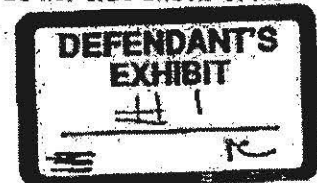
**Others present:**

G. Mason QHMP

**Prescriber's Evaluation**

48 yo male at Tyger River who was last seen in psychiatry clinic by me on 1/3/2019. Dx at this visit was MDD, ADHD. Plan was to continue Remeron 30 mg q evening, Atomoxetine 80 mg q evening, and Fluoxetine 60 mg po q evening x 180 days with 3 month follow up.

He presents for follow up a few weeks early today due to wanting to discuss a concern. He reports that he is participating in a legal proceeding currently and that when he goes to the jail in Spartanburg his medication is sent with him. However, once he arrives, he is not given his psychiatric medication at the jail. He reports that his mood begins to worsen and he is unable to focus and participate with his attorney due to effect of abrupt cessation of his medication. Additionally, it takes a few weeks once he resumes his medication for his mood and focus to improve. He denies SI. He does report that prior to missing his medications, he planned to inquire about a trial of increase in the Prozac to address some residual anxiety and low mood. He denies SI, HI. He denies side effects of his medication.



Patient Name: WINGO, MARK STEPHEN  
 ID: 25483 Date of Birth: [REDACTED]

Page 1 of 4  
 Encounter Date: 03/21/2019 10:09 AM

He continues with his job where he operates complex heavy machinery that compacts debris from yard work. He has started classes for a HVAC job. He continues to feel safe and comfortable in his current dorm and gets along well with his current roommate.

MSE- Well groomed, cooperative, no abnormal involuntary movements, fair eye contact. Oriented to person, place and time. Speech- regular rate, tone and rhythm. Thought process linear. Mood dysthymic, affect congruent. Denies SI, HI, AH, VH and paranoia.

**Risk Assessment**

Current Encounter

Risk Assessments

Patient denies suicidal ideation, plan, intent, and/or attempt.  
 Patient denies property damage ideation, plan, intent, and/or attempt.  
 Patient denies homicidal ideation, plan, intent, and/or attempt.

Risk Assessment History

Risk	Current	Past	Documented	Event Date	Approximate Date	Ideation	Plan	Intent	Scale
Suicide	Denies		03/21/2019	03/21/2019	No				
Property	Denies		03/21/2019	03/21/2019	No				
Homicide	Denies		03/21/2019	03/21/2019	No				
Attempt	Planned/ Impulsive	Drug/Alcohol Influenced	Medically Treated	Plan	Attempt	Description			

**Medication Information**

**ASSESSMENT/DIAGNOSIS**

Behavioral Health Diagnoses

#	Description	Severity	Impression/Differential Dx	Specifiers
1	Major depressive disorder, recurrent, unspecified (F33.9)			
2	ADHD (F90.9)			

Physical Health Diagnoses

Reported Diagnosis  
 Hypertension

**Active Medication**

Medication	Sig Desc	PRN Status	PRN Reason	Start Date	Stop Date
Zyrtec 10 mg tablet	take 1 tablet by oral route	N		11/09/2018	05/07/2019

amlodipine 5 mg tablet	every day take 1 tablet by oral route	N	11/09/2018	11/04/2019
atomoxetine 80 mg capsule	every day wash 1 capsule by oral route every evening	N	01/03/2019	03/21/2019
fluoxetine 20 mg capsule	take 3 capsule by oral route every day in the evening	N	01/03/2019	03/21/2019
mirtazapine 30 mg tablet	take 1 tablet by oral route every day before bedtime	N	01/03/2019	03/21/2019
fluoxetine 20 mg capsule	take 1 capsule by oral route every day in the evening	N	03/21/2019	03/21/2019
fluoxetine 20 mg capsule	take 1 capsule by oral route 4 times every day in the evening	N	03/21/2019	03/21/2019
fluoxetine 20 mg capsule	take 4 capsule by oral route every day in the evening	N	03/21/2019	09/16/2019
mirtazapine 30 mg tablet	take 1 tablet by oral route every day before bedtime	N	03/21/2019	09/16/2019
Strattera 40 mg capsule	take 1 capsule by oral route every day in the morning and late afternoon or early evening	N	03/21/2019	09/16/2019

Diagnosis since last visit:

#### Plan

1. Change Strattera to 40 mg po BID x 180 days.
2. Increase Prozac to 80 mg po qhs x 180 days.
3. Renew Remeron 30 mg qhs x 180 days.
4. Discussed that it is very important to continue on his medication as prescribed wherever he maybe located. Explained that the sudden cessation of these medications at these doses could lead to worsening impulse control, difficulty with focus, physical withdraw symptom, and potential for significant worsening of depression. He will need to have access to his medication as prescribed when at the county jail for these reasons.
5. Follow up 3 months.

#### SIGNATURES

Psychiatrist: Signed by Megan Howard MD, on 03/21/2019

Document generated by: Megan Howard MD 03/21/2019 02:19 PM

2017A4210104935

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )  
 )  
 State of South Carolina )  
 Plaintiff )  
 v. )  
 Mark Stephen Wingo )  
 Defendant )

IN THE GENERAL SESSIONS COURT  
 SEVENTH JUDICIAL CIRCUIT

MOTION FOR RECONSIDERATION OF  
 SENTENCE

Charge: Trafficking in meth. or cocaine base -  
 200 g or more, but less than 400 g

Indictment: 2018GS4204597

Date of Arrest: December 11, 2017

To: Barry Barnette, Solicitor, Seventh Judicial Circuit

**YOU WILL PLEASE TAKE NOTICE** that the undersigned attorney for the Seventh Judicial Circuit Public Defender Office, on behalf of the aboved-named Defendant, will move immediately before J. Mark Hayes, II on May 6, 2019, 2019 or as soon thereafter as counsel may be heard, for a reconsideration of the sentence handed down on May 6, 2019 on indictment 2018GS4204597.



Respectfully submitted,

*Andres Price*

Andres Price, Assistant Public Defender  
 Seventh Judicial Circuit Public Defender Office  
 Spartanburg, South Carolina

Date: 5/6/19

Service Accepted by:

*Kristina Carter*  
 Solicitor's Office, Seventh Judicial Circuit

2019 MAY -6 PM 1:43

SCAN

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )  
 )  
 State of South Carolina )  
 )  
 Plaintiff )  
 )  
 v. )  
 )  
 Mark Stephen Wingo )  
 )  
 Defendant )

IN THE GENERAL SESSIONS COURT  
 SEVENTH JUDICIAL CIRCUIT  
 MOTION TO WITHDRAW GUILTY PLEA  
 Charge: Trafficking in meth. or cocaine base -  
 200 g or more, but less than 400 g  
 Indictment: 2018GS4204597  
 Date of Arrest: December 11, 2017

2019 Mar -9 PM

To: Barry Barnette, Solicitor, Seventh Judicial Circuit

YOU WILL PLEASE TAKE NOTICE, that the undersigned attorney for the Seventh Judicial Circuit Public Defender Office, on behalf of the aboved-named Defendant, will move immediately before J. Mark Hayes, II on May 9, 2019, 2019 or as soon thereafter as counsel may be heard, for Mr. Wingo to withdraw his plea of guilty entered on May 6, 2019 on indictment 2018GS4204597 and proceed to trial.

Respectfully submitted,

*Andrea Price*  
 \_\_\_\_\_  
 Andrea Price, Assistant Public Defender  
 Seventh Judicial Circuit Public Defender Office  
 Spartanburg, South Carolina

Date: 5.9.19

Service Accepted by:  
*Angelina G.*  
 \_\_\_\_\_  
 Solicitor's Office, Seventh Judicial Circuit

STATE OF SOUTH CAROLINA )  
 COUNTY OF SPARTANBURG )  
 )  
 Mark S. Wingo, SCDC #269107, )  
 )  
 Applicant, )  
 v. )  
 State of South Carolina, )  
 )  
 Respondent. )

---

IN THE COURT OF COMMON PLEAS  
 FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2019-CP-42-03767

ORDER OF DISMISSAL

2024 DEC -2 PM 3:53  
 CLERK OF COURT  
 SPARTANBURG COUNTY  
 JUDICIAL CIRCUIT

FILED

This matter is before the Court pursuant to an application for post-conviction relief (“PCR”) filed by Mark Wingo (“Applicant”) on October 25, 2019. On September 3, 2024, an evidentiary hearing convened before the Honorable R. Lawton McIntosh. Applicant was present and represented by Tricia A. Blanchette, Esquire. Assistant Attorney General Bryan T. Hall represented Respondent. At the hearing, Applicant testified on his own behalf and called as witnesses Dr. Donna Maddox, Brian Setree, and Andrea Price, Esquire. Respondent did not call any witnesses. Following a thorough review of the plea transcript and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections (“SCDC”) serving a fifteen (15) year sentence. In its August 2018 term, the Spartanburg County Grand Jury indicted Applicant for trafficking methamphetamine 200g-400g (2018-GS-42-4597). This charge arose from a September 2017 incident in which Applicant used a burner cellphone while incarcerated in prison to contact a confidential informant to set up a drug transaction.

On May 6, 2019, Applicant pled guilty to the lesser-included offense of trafficking methamphetamine, 28g-100g before the Honorable J. Mark Hayes, II. Andrea L. Price, Esquire,

represented Applicant. Assistant Solicitor Sydni Kallam represented the State. Pursuant to a negotiated sentence, Judge Hayes sentenced Applicant to fifteen (15) years imprisonment to run concurrent to Applicant's existing ten (10) year sentence for shoplifting enhanced and two (2) counts of contraband (convictions from March 27, 2015 – pled guilty).

Applicant did not appeal. On May 6, 2019, Applicant filed a motion to reconsider the sentence. On May 9, 2019, Applicant filed a motion to withdraw his guilty plea. On October 2, 2019, a hearing convened on Applicant's motions. At the hearing, Applicant voluntarily withdrew his motion to reconsider the sentence and proceeded solely on the motion to withdraw the guilty plea. On October 28, 2019, Judge Hayes denied Applicant's motion to withdraw.

#### CURRENT APPLICATION

Applicant commenced this PCR action on October 25, 2019, alleging he is being held in custody unlawfully for the following reasons (summarized for brevity and clarity):

##### **Ineffective Assistance of Counsel**

- a. Failure to investigate the evidence, the confidential informant, and law enforcement communications.
- b. Failure to request a mental health evaluation.

##### **Involuntary Plea**

Counsel provided erroneous and incorrect advice to plead guilty.

On April 30, 2019, Respondent filed a Return requesting a more-definite statement on Applicant's claims. On August 6, 2024, Applicant filed an amendment to his application, in which he raised the following allegations (verbatim):

##### **Ineffective Assistance of Counsel**

1. Counsel provided ineffective assistance of counsel that rendered his guilty plea involuntary, due to but not limited to the following:
  - a. Counsel failed to properly review the evidence with Applicant and conduct an independent investigation prior to the entry of the guilty plea.
  - b. Counsel failed to prepare for trial and properly advise Applicant regarding possible defenses.

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- c. Counsel misadvised Applicant prior to the entry of the plea agreement regarding the evidence against him and credit for time served, which induced his guilty plea. Additionally, Counsel failed to ensure that he had a full and complete understanding at the time of the guilty plea.
  - d. Counsel failed to properly address Applicant’s mental health, specifically but not limited to his medications, prior to and during his guilty plea.
2. Counsel provided ineffective assistance of counsel in preparation for and during the post-plea motion hearing, to include failure to utilize a mental health expert, failure to address Applicant’s understanding regarding time credit, failure to ensure availability of a witness, and failure to properly advise Applicant before the withdrawal of the motion to reconsider.
  3. Applicant did not knowingly and voluntarily waive a direct appeal and requests a belated appeal under *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974).

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At the evidentiary hearing, Applicant proceeded *solely* on the allegations contained in the amended application. Before this Court are the Spartanburg County Clerk of Court records of the subject conviction; Applicant’s records from SCDC; the plea transcript; and the records of the current PCR action.

**TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING**

***Applicant’s Testimony***

At the evidentiary hearing, Applicant testified that he learned of the charges in September 2017 and was appointed Andrea Price (“Counsel”) to represent him. Applicant testified that he met with Counsel a year after the charge and did not discuss a lot with her. Applicant testified that Counsel discussed evidence such as the phone calls and videos with him but did not hire a private investigator. Applicant testified he told Counsel that he did not want fifteen (15) years, and Counsel told him that fifteen (15) years is better than receiving thirty (30) years for the charge. Applicant testified that Counsel did not go over the plea with Applicant or discuss defenses such

as the defense of entrapment. Applicant testified that he told Counsel he wanted a jury trial. Applicant testified that Counsel told him the State was intending to call his brother-in-law, Randy Holified, to testify against him, which would hurt Applicant. Applicant testified that he told his mother that he was pleading guilty because his brother-in-law would testify against him.

Applicant testified that the confidential informant ("CI") was his best friend of thirty-five (35) years, CI is a drug addict, and Applicant expressed concerns to Counsel about the CI. Applicant testified that he tried to address mental health concerns with Counsel. Applicant testified that Counsel did not speak to mental health officials. Applicant testified that in the plea hearing, at which he pled with a group of other defendants, he did not stand up when the Judge asked him about mental health and substance abuse and did not know what to do. Applicant averred he believed that he could get time served credit for the five hundred seventeen (517) days he spent incarcerated and expressed concerns to Counsel about credit for time served. Applicant testified that Counsel did not advise him on the motion to reconsider, Applicant did not communicate with Counsel after the motion hearing, and Applicant did not know an appeal could be filed after a guilty plea.

*Dr. Donna Maddox's Testimony*

Dr. Donna Maddox, qualified as an expert in forensic psychology, testified that she examined Applicant virtually on April 14, 2023. Dr. Maddox testified that in preparing for the evaluation, she reviewed the discovery in the case, the court packet, the guilty plea transcript, and asked PCR counsel about mental health records. Dr. Maddox testified that she is familiar with Dr. Megan Howard, who wrote a report indicating that if Applicant had not been given his psychiatric medications, it may take a few weeks for Applicant to become stable.

Dr. Maddox testified that Applicant suffers from Depressive Disorder and Attention-

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Deficit/Hyperactivity Disorder (“ADHD”). Dr. Maddox testified that after examining Applicant, she issued a report diagnosing him with psychosis, Post-Traumatic Stress Disorder (“PTSD”), and tardive dyskinesia (a movement disorder that is probably due to a history of drug use), unspecified schizophrenia, and paranoia. Dr. Maddox testified that during the evaluation, Applicant was cooperative, compliant, pleasant, cooperative, had a good memory, was able to pay attention, had no trouble understanding, had paranoid ideations against his attorney, and was a little distracted. Dr. Maddox testified that she reviewed records from the detention center which showed that Applicant had not been given Strattera, a medication to treat ADHD. Dr. Maddox testified that Applicant was medicated during the evaluation and was paranoid and impulsive at times during the evaluation and still believes that his attorney misrepresented him.

Dr. Maddox testified that the guilty plea transcript is the best source of what occurred at the guilty plea hearing, but Applicant pled in a group of around 16 people which could affect his ability to focus. Dr. Maddox testified that she believes a report could have been helpful and was willing to testify if called to do so.

***Brian Setree’s Testimony***

Brian Setree, a licensed private investigator, testified that he reviewed the defense file and met with Applicant. Setree testified that he would have been willing to assist in the investigation of the case. Setree testified that a portion of the discovery was not available to Applicant.<sup>1</sup> Setree testified that in investigating, he would have advised Counsel to look into Applicant’s history of narcotics and drug abuse because he was unaware of any prior distribution charges. On cross-examination, Setree testified that he was unaware that Applicant had prior convictions for possession with intent to distribute (September 1992) and contraband (March 2015). Setree

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<sup>1</sup> Certain items were reviewed by Applicant’s Counsel but not given over directly to Applicant to protect the CI.

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testified that there was a lack of control over the recorded phone calls and had concerns about chain of custody and how the drugs were handled. Setree also testified that he had concerns about the motivation of the CI. Setree testified that he located and spoke to Randy Holified, Applicant's brother-in-law, and Holified did not intend on testifying at Applicant's trial and was not contacted by Counsel.

### *Counsel's Testimony*

Andrea Price ("Counsel") testified that she was licensed in 2006 and has handled thousands of criminal cases. Counsel testified that she was appointed on Applicant's case and met with him approximately twelve (12) times at the courthouse and the prison. Counsel testified that reviewed the phone calls and videos at the solicitor's office around five (5) days before Applicant pled guilty. Counsel testified that Petitioner had a burner phone in SCDC, and she did not see any viable defenses to the charge and does not believe the defense of entrapment was available to Applicant. Counsel testified that from the beginning of her representation, Applicant wanted to negotiate a plea and did not mention a trial until May 2, 2019. Counsel testified that although Applicant mentioned trial, he gave her authorization to continue to pursue a counteroffer to the solicitor's offer. Counsel testified that she could have tried the case but did not think it was a good idea. Counsel testified that while Applicant was being fitted for clothing for trial, he was still talking about plea negotiations. Counsel testified that she communicated to Applicant the State's offer of fifteen (15) years consecutive. Counsel testified that in response, she asked for a concurrent sentence and was concerned that Applicant would back himself into a corner and receive twenty-five (25) years if convicted at trial. Counsel testified that she informed Applicant that while she could ask for credit for time served, she did not believe Applicant was entitled to time served credit under the statute.

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Regarding investigations, Counsel testified that it was the public defender’s office policy not to hire a private investigator unless there were red flags or issues with the discovery. Counsel testified that she did not have any concerns about the discovery. Counsel testified that she had concerns about the burner phone, she did not see the phone but believed it was taken into custody. Regarding Randy Holifield, Applicant’s brother-in-law, Counsel testified that the solicitor informed her that the State intended to call Holifield to authenticate Applicant’s voice in the recordings with the CI. Counsel testified that she had worked with the solicitor previously and had no reason to doubt the solicitor’s honesty regarding Holifield’s willingness to testify. Counsel testified that she told Applicant that Holifield would testify at trial to authenticate his voice. Counsel also testified that even if Holifield did not testify at Applicant’s trial, there were other ways for the State to authenticate his voice in the recordings.

Regarding Applicant’s competency, Counsel testified that Applicant did not mention his medications until 2019. Counsel testified that she had no concerns about Applicant’s competency, and Applicant seemed normal and had no problems. Counsel testified that during client meetings, Applicant was calm and, in the first meeting, told her exactly what happened in the case and asked lots of questions. Counsel testified that if she had any concerns about Applicant’s competency, she would have had him evaluated. Counsel testified that Applicant did not indicate to her that he was having any mental health issues or was not given his medications on the day of his plea hearing. Counsel testified that there was nothing that made her believe Applicant could not go forward with his plea on the day of the plea hearing. Counsel testified that Applicant did not seem confused or incoherent on the day he pled guilty. Counsel testified that she did not recall the letter from Dr. Megan Howard.

After the plea, Counsel testified that, at Applicant’s direction, she filed the motions to

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reconsider sentence and withdraw the plea based on issues that happened after his hearing. Counsel testified that she visited Applicant at the prison in September, and Applicant showed remorse for getting his co-defendants involved. Regarding an appeal, Counsel testified that she does not recall whether she mentioned the right to a direct appeal to Applicant but would have filed an appeal if requested.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the plea transcript in its entirety and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony. After a careful review based on the *Strickland* standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

**Ineffective Assistance of Counsel**

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. at 441, 334 S.E.2d

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at 813. An applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland*, 466 U.S. at 687–88; *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. Applicant must prove prejudice by showing “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

“A PCR applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial.” *Dalton v. State*, 376 S.C. 130, 136, 654 S.E.2d 870, 873 (Ct. App. 2007). To prove prejudice following a guilty plea, the applicant “must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.” *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

***Failure to Conduct an Independent Investigation Prior to the Guilty Plea***

***Failure to Properly Review Evidence with Applicant***

***Failure to Ensure the Availability of a Witness***

This Court finds Applicant failed to prove Counsel was ineffective for failing to conduct an independent investigation, failing to properly review the evidence with Applicant, and failing to ensure the availability of a witness. “A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State

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*McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). “The scope of a reasonable investigation depends on a number of issues, but at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.” *Ard v. Catoe*, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007). Counsel’s duty to investigate is limited to reasonable investigations or a reasonable decision that makes particular investigations unnecessary. *Ard*, 372 S.C. at 331, 642 S.E.2d at 597; *Strickland*, 466 U.S. at 691. In applying the *Strickland* standard to a claim of failure to investigate, the court should evaluate counsel’s decision not to undertake a particular investigation for reasonableness under all circumstances with heavy deference to counsel’s judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633 (Ct. App. 2014).

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 if counsel had more fully prepared. *Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result. *Moorehead v. State*, 329 S.C. 329, 496 S.E.2d 415 (1998). The applicant must further present evidence demonstrating how additional preparation, and the discoverable matters or defenses would have resulted in a different outcome. *Harris v. State*, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018)).

This Court finds Counsel’s preparation in Applicant’s case was reasonable under prevailing professional norms. This Court finds *credible* Counsel’s testimony that she met with Applicant several times. This Court finds *credible* Counsel’s testimony that she reviewed discovery which

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included reviewing the recordings.

This Court finds Counsel articulated a reasonable strategic decision in not conducting an independent investigation that she believed to be unreasonable because drugs were seized as a result of the confidential informant, who is Applicant’s best friend of thirty-five (35) years, informing law enforcement that Applicant reached out to conduct drug transaction while in prison. This Court finds *credible* Counsel’s testimony that she did not hire a private investigator because it was the public defender’s office policy not to hire a private investigator unless there were red flags in discovery, and this Court finds *credible* Counsel’s testimony that she had no concerns about the discovery in Applicant’s case. This Court finds *credible* Counsel’s testimony that although she had concerns about the burner phone that was taken into custody, she did not see any viable defenses available to Applicant. In accordance with *Strickland*, this Court gives heavy deference to Counsel’s decision not to undertake additional investigations at the time she represented Applicant based on her experience in criminal practice and the circumstances of Applicant’s case. Thus, Applicant failed to meet his burden.

Additionally, this Court finds Applicant failed to prove he was prejudiced by Counsel’s decision not to conduct an independent investigation because Applicant failed to prove the information uncovered by Investigator Setree would have resulted in a different outcome. Setree testified that he had concerns about the CI’s motivations. However, Applicant testified that the CI was his best friend of thirty-five (35) years, which supports a finding that the CI was reliable regardless of his motivations. Setree testified that he had concerns about the handling of the drugs and chain of custody. However, Applicant failed to present evidence to prove the evidence seized was either mishandled or had issues with the chain of custody. Setree testified that he spoke to Randy Holfield, who said that he would not have testified in Applicant’s trial. This Court finds

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*credible* Counsel's testimony that, based on her experience working with the solicitor, she had no concerns about the truthfulness of the State's intent to call Holifield to authenticate Applicant's voice in the recordings. This Court also finds *credible* Counsel's testimony that even if the State did not call Holifield, there were other ways for the State to authenticate Applicant's voice in the recordings.

Additionally, Setree testified that he investigated Applicant's case around 2023-2024, nearly four to five (4-5) years *after* Applicant pled guilty, and this Court is to evaluate Counsel's decision to investigate at the time the decision was made. *See Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (quoting *Strickland*, 466 U.S. at 689) (stating the court is to evaluate counsel's decisions at the time they were made and "every effort be made to eliminate the distorting effects of hindsight").

This Court finds Applicant failed to prove Counsel was ineffective for failing to "ensure the availability of a witness." This Court finds Applicant failed to specify a witness that Counsel should have ensured the availability of. To the extent that Applicant alleges Counsel should have ensured the availability of a mental health expert, this Court does not find Counsel was ineffective in that regard (see analysis below). To the extent that Applicant alleges Counsel should have ensured the availability of another witness, this Court finds Applicant failed to prove prejudice by failing to call that witness at the PCR hearing to prove the result of the proceeding would have been different based on their testimony. *See Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995) ("applicant's mere speculation to what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice"). Thus, Applicant failed to meet his burden.

***Failure to Prepare for Trial***

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***Failure to Properly Advise Applicant Regarding Possible Defenses,  
Including the Defense of Entrapment***

This Court finds Applicant failed to prove Counsel was ineffective for failing to prepare for trial and failing to properly advise Applicant regarding possible defenses including the defense of entrapment. To prevail upon a claim that counsel did not adequately prepare a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop if counsel had more fully prepared. *Jackson*, 329 S.C. at 353-54, 495 S.E.2d at 772. This Court finds *credible* Counsel’s testimony that she was prepared for trial and could have tried the case. This Court finds *credible* Counsel’s testimony that she met with Applicant several times. This Court finds *credible* Counsel’s testimony that she reviewed discovery, which included reviewing the recordings. This Court finds Counsel’s preparation in Applicant’s case was reasonable under prevailing professional norms.

This Court finds Applicant failed to prove prejudice by failing to prove what other defenses Counsel could have developed if she had more fully prepared. This Court finds *credible* Counsel’s testimony that because Applicant had a burner phone in the prison, and she did not believe Applicant had a viable defense to the charge. This Court also finds *credible* Counsel’s testimony that the defense of entrapment was unavailable to Applicant. This Court finds the entrapment was unavailable to Applicant because his use of a contraband cellphone in the prison is not government inducement and his prior drug convictions support a finding that he did not have a lack of predisposition to commit the crime of trafficking. *See State v. Brown*, 362 S.C. 258, 262, 607 S.E.2d 93, 95 (Ct. App. 2004) (defense of entrapment requires two elements: (1) government inducement, and (2) lack of predisposition). Thus, Applicant failed to meet his burden.

***Failure to Address Applicant’s Mental Health Issues, Including Medications***

***Failure to Request a Competency Evaluation***

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***Failure to Ensure Applicant had a Full and Complete Understanding***

***Failure to Utilize a Mental Health Expert***

***Failure to Properly Advise Applicant Before the Withdrawal of the Motion to Reconsider***

This Court finds Applicant failed to prove Counsel was ineffective for failing to address his mental health issues before, during, and after the guilty plea; failing to request a competency evaluation; failing to ensure Applicant had a full and complete understanding at the time of the plea; failing to utilize a mental health expert; and failing to properly advise Applicant before the withdrawal of the motion to reconsider. In a PCR action, to show prejudice for counsel's failure to fully investigate an applicant's mental capacity, the applicant must show a reasonable probability, by a preponderance of the evidence, that he was incompetent at the time of his guilty plea. *Lee v. State*, 396 S.C. 314, 320, 721 S.E.2d 442, 445-46 (Ct. App. 2011) (citing *Matthews v. State*, 358 S.C. 456, 458-59, 596 S.E.2d 49, 50-51 (2004) (stating to find trial counsel ineffective for failing to request a competency hearing, the applicant must show that counsel was deficient and prejudiced the outcome of applicant's proceeding)). The test of competence to enter the plea is the same as is required to stand trial: "the accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him." *Id.*

This Court finds Applicant failed to prove Counsel was ineffective for failing to address Applicant's mental health concerns before, during, and after the guilty plea; failing to request a competency evaluation; and failing to ensure Applicant had a full and complete understanding at the time of the plea. This Court finds *credible* Counsel's testimony that she had no concerns about Applicant's competency, and Applicant seemed normal and had no problems. This Court finds *credible* Counsel's testimony that during client meetings, Applicant told her exactly what

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happened in the case and asked lots of questions. This Court also finds *credible* Counsel's testimony that in her experience, she has had clients who suffer from mental health issues and has had them evaluated for competency. This Court finds *credible* Counsel's testimony that if she had concerns about Applicant's competency or mental health, she would have had him evaluated. This Court finds *credible* Counsel's testimony that Applicant did not mention he was taking medication until 2019. This Court finds *credible* Counsel's testimony that Applicant did not indicate to her that he was having any mental health issues or was not given his medications on the day of his plea hearing. This Court finds *credible* Counsel's testimony that there was nothing that made her believe Applicant could not go forward with his plea on the day of the plea hearing. This Court finds Counsel cannot be deficient for failing to investigate Applicant's mental health or request an evaluation where Counsel credibly testified that she had no indication or concerns about Applicant's mental health status. *See Lee*, 396 S.C. at 322, 721 S.E.2d at 447 ("Plea counsel could not be deficient if she had no indication of [applicant's] mental status"). Further, this Court finds Applicant failed to prove he was prejudiced by Counsel's conduct because Applicant failed to prove he was incompetent at the time he pled guilty (see analysis of this issue below).

This Court also finds Applicant failed to prove Counsel was ineffective for failing to utilize a mental health expert at either Applicant's guilty plea or post-plea motion hearing. Applicant alleges Counsel should have hired a mental health expert to assist with Applicant's guilty plea and post-plea motion hearing. This Court finds Applicant failed to prove he was prejudiced by Counsel's failure to call a mental health expert by not proving a reasonable probability the result of the proceedings would have been different if a mental health expert was called.

This Court finds Applicant failed to prove Counsel was ineffective for failing to properly advise him before the withdrawal of the motion to reconsider. This Court finds *credible* Counsel's

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testimony that the motion to reconsider and motion to withdraw the plea were based on issues that occurred after Applicant pled guilty. This Court also finds Applicant failed to prove he was prejudiced by Counsel's advice before withdrawal of the motion to reconsider because Applicant failed to prove there's a reasonable probability the result would have been different. Thus, Applicant failed to meet his burden.

***Failure to File a Direct Appeal***

This Court finds Applicant failed to prove he did not knowingly and voluntarily waive this right. There is no constitutional requirement that a defendant be informed of the right to direct appeal from a guilty plea. *Turner v. State*, 380 S.C. 223, 670 S.E.2d 373 (2008). Counsel does not have a duty to initiate an appeal after a guilty plea "absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing." *Id.* at 224, 670 S.E.2d at 374. This Court finds *credible* Counsel's testimony that while she does not recall whether she mentioned to Applicant his right to a direct appeal, based on her experience, she would have filed a direct appeal if Applicant requested. This Court also finds *credible* Counsel's testimony that she does not know if there were grounds for Applicant to appeal his guilty plea. Thus, Applicant failed to meet his burden.

**Involuntary Plea**

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71(e), SCRPC; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). "To be knowing and voluntary, a plea must be entered with an awareness of its consequences." *Holland v. State*, 322 S.C. 111, 470 S.E.2d 378, 379 (1996). "To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and

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the charges against him.” *Dalton v. State*, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007). Statements made during a guilty plea should be considered conclusive unless the applicant presents valid reasons why he should be allowed to depart from the truthfulness of his statements. *Id.*, 376 S.C. at 137-38, 654 S.E.2d at 874.

***Failure to Properly Review the Evidence with Applicant***

***Misadvising Applicant on the Evidence***

***Misadvising Applicant on Credit for Time Served***

Applicant alleges that prior to the entry of the plea agreement, Counsel failed to properly review the evidence with him, misadvised him on the evidence against him, and misadvised him on credit for time served, all of which induced his decision to plead guilty. This Court finds Applicant failed to prove Counsel was ineffective for misadvising him and finds Applicant failed to prove there is a reasonable probability that but for Counsel’s advice and performance, he would have insisted on going to trial.

A PCR applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel’s errors, the applicant would not have plead guilty but would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985); *Dalton*, 376 S.C. at 136, 654 S.E.2d at 873. Counsel is presumed to have rendered competent advice at the time their clients considered pleading guilty. *Padilla v. Kentucky*, 559 U.S. 356, 372 (2010). Additionally, the burden is on the applicant to convince the court that rejecting a plea or plea bargain would have been rational under the circumstances. *Id.*

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This Court finds Applicant failed to overcome the presumption that Counsel rendered competent advice regarding credit for time served. Regarding credit for time served, the relevant statutory provision states as follows:

Provided, however, that credit for time served prior to trial and sentencing shall *not* be given: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; (2) *when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense...*

S.C. Code Ann. § 24-13-40(c)(1)-(2) (2014) (emphasis added).

This Court finds, as a matter of law, that Applicant was not entitled to receive credit for time served for the time he spent serving the ten (10) year sentence for shoplifting (enhanced) and contraband to reduce the fifteen (15) year sentence for the subsequent trafficking meth conviction. This Court finds *credible* Counsel's testimony that she informed Applicant, prior to the plea, that while she could ask for credit for time served, she did not believe Applicant was entitled to time served credit under the statute. This Court finds Counsel's advice regarding credit for time served was both accurate and competent. Further, the fact that Applicant hoped or wished to receive credit for time served is insufficient to support a collateral attack on his guilty plea. *See Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (fact that defendant "hoped" and "expected" to get a reduced sentence does not render a plea invalid).

This Court finds Applicant failed to overcome the presumption that Counsel rendered competent advice regarding the State's evidence against him. This Court finds *credible* Counsel's testimony that she reviewed the discovery in Applicant's case, including listening to the recordings at the solicitor's office before Applicant pled guilty. This Court finds *credible* Counsel's testimony that she reviewed discovery with Applicant and went over the State's case against him.

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This Court finds Applicant failed to prove a reasonable probability that he would have insisted on going to trial but for Counsel’s advice. This Court finds *credible* Counsel’s testimony that from the beginning of her representation, Applicant was interested in plea bargaining. This Court finds *credible* Counsel’s testimony that although Applicant mentioned going to trial on May 2<sup>nd</sup>, he gave Counsel authorization to continue to engage in plea negotiations with the State. This Court also finds *credible* Counsel’s testimony that she was adequately prepared for trial and while Applicant was being fitted for trial clothing, he still discussed plea offers with Counsel.

Focusing on Applicant’s conduct and decision making around the time of the plea, this Court finds Applicant’s repeated conversations with his attorney regarding plea offers, and credit for time served, support a finding that Applicant was not interested in going to trial. This Court also finds Applicant failed to prove it would have been rational for him to reject the State’s fifteen (15) year plea offer and proceed to trial where there was overwhelming evidence of his guilt (recordings, a reliable CI, seized drugs, and the burner cellphone), and he faced, at the least, a twenty-five (25) year sentence for trafficking if convicted. This Court finds *credible* Counsel’s testimony that while the case could have gone to trial, she did not think trial was a good idea and was concerned that Applicant would “back himself into a corner” and receive twenty-five (25) years. Thus, Applicant failed to meet his burden.

*Applicant’s Competency at the Time of the Plea*

Applicant alleges his guilty plea was made without a full and complete understanding at the time of the guilty plea (i.e., involuntarily) due to not taking his medications prior to the plea. This Court finds Applicant failed to prove prejudice because Applicant failed to prove by a preponderance of the evidence, that he was incompetent at the time he pled guilty.

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Before a defendant pleads guilty, it must be established that the defendant is competent, and that the defendant's decision to plead is knowing and voluntary. *Garren v. State*, 423 S.C. 1, 14, 813 S.E.2d 704, 711 (2018). The test for competency is "whether the defendant has the present ability to consult with his attorney with a reasonable degree of rational understanding" and whether the defendant has "a rational as well as factual understanding of the proceedings against him." *Id.* (citation omitted). Where a PCR applicant claims his guilty plea was involuntary due to the influence of medication, he must show "that his mental faculties were so impaired by the drugs [or lack thereof] when he pled that he was incapable of full understanding and appreciation of the charges against him, his constitutional rights, and the consequences of the plea." *Id.* at 15, 813 S.E.2d at 712. (citation omitted).

In *Garren*, the Supreme Court held a PCR applicant's guilty plea was not made involuntarily where the record was devoid of any evidence that the applicant's ability to understand the guilty plea was diminished by the effects of medications that the applicant alleged were taken *on the day he pled guilty*. *Id.* at 17, 813 S.E.2d at 713. In ruling, the Court noted that nothing in the guilty plea transcript suggested that the applicant was under the influence of drugs or otherwise dispossessed of his mental faculties *at the time the guilty plea was entered*. *Id.* at 16, 813 S.E.2d at 712. (emphasis added).

This Court finds Applicant failed to prove that he did not have the ability to consult with his attorney with a reasonable degree of rational understanding at the time he pled guilty. This Court finds *credible* Counsel's testimony that she had no concerns about Applicant's competency on the day he pled guilty or during the course of representation. This Court finds *credible* Counsel's testimony that nothing about Applicant seemed out of the ordinary, and Applicant did not seem confused or incoherent on the day he pled guilty. This Court finds *credible* Counsel's

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testimony that Applicant communicated with her on the day of the plea and did not have trouble communicating. This Court finds *credible* Counsel's testimony that Applicant did not indicate to her that he was having any mental health issues or was not given his medications on the day of his plea hearing. This Court finds *credible* Counsel testified that there was nothing that made her believe Applicant could not go forward with his plea on the day of the plea hearing. This Court finds, based on Counsel's *credible* testimony, that Applicant was competent on the day he pled guilty. *See McLaughlin v. State*, 352 S.C. 476, 575 S.C. 841 (2003) (holding nothing in the record suggested that a PCR applicant was incompetent before or during his trial where the applicant's trial counsel testified that he had no trouble communicating with her during the trial and clearly understood and responded to questions).

Further, the record establishes Applicant had the present ability to consult with his attorney at the time of the guilty plea as evidenced by the following verbal exchange between Applicant and Counsel during the plea:

[Counsel]: [W]e would ask that you just consider starting his new sentence today running that concurrent. Thank you, Judge.

[Applicant]: I'm gonna withdraw my plea, Your Honor.

[Counsel]: Sir, you're making a mistake.

[Applicant]: Nah, this is –

[Counsel]: You're making a mistake.

[Applicant]: That is not what y'all told me Friday.

[Counsel]: Yes, it is is.

[Applicant]: It's not.  
(Pause)

Court: Just talk to your lawyer.  
(Pause)

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Court: All right. Do you still want to go ahead with the plea?

[Applicant]: Yes, I do.

(Plea Tr. 19:22-20:12).

This Court finds Applicant failed to prove that he did not have a rational and factual understanding of the pleadings *at the time he pled guilty* due to not receiving his medication. While this Court finds *credible* Dr. Maddox's testimony that Applicant was not taking his prescribed Strattera medication for ADHD, this Court finds Applicant failed to prove the lack of medication affected his rational and factual understanding of the guilty plea or ability to consult with his attorney *at the time of the guilty plea*. See *Garren*, 423 S.C. at 14-15, 813 S.E.2d at 711-12 (stating the critical question is whether the drugs [or lack thereof] impaired the defendant's ability to plead guilty "on this occasion") (citation omitted). Dr. Maddox testified that she evaluated Applicant in April 2023, nearly four (4) years *after* Applicant pled guilty on May 6, 2019. Dr. Maddox testified that she wrote a report in January 2024, nearly five (5) years *after* Applicant pled guilty.

While this Court finds *credible* Dr. Maddox's testimony that not taking his Strattera medication for ADHD would have affected his *attentiveness* and *ability to focus*, this Court finds Applicant failed to prove that not taking the medication would have affected his *rationality*. *Garren*, 423 S.C. at 18, 813 S.E.2d at 713 ("[the applicant] must show that the medication affected his *rationality*") (emphasis added). This Court finds Dr. Maddox's testimony of the findings in her report that Applicant would have experienced inattentiveness and impulsivity of little probative value since the findings were *commenced years after* Applicant pled guilty and do not directly relate to Applicant's *ability to consult with his attorney* at the time he pled guilty. See *McEughlin*, 352 S.C. at 481, 575 S.E.2d at 843 (stating an applicant's medical records from SCDC had "little probative value" because they commenced after the applicant's trial and do not directly relate to

directly relate to the applicant’s ability to consult with his attorney or understand the proceedings at the time of trial).

This Court finds the record establishes that Applicant was competent and had a rational understanding of the proceeding at the time he pled guilty. This Court finds *credible* Dr. Maddox’s testimony that because she was not present at the guilty plea, the guilty plea transcript is the best source of what occurred at the guilty plea hearing. At the guilty plea, in accordance with the plea judge’s instructions, Applicant stood and sat in response to the judge’s questions. (Plea Tr. 10-12). Applicant stood, affirmatively, to indicate that his plea was being made freely and voluntarily. (Plea Tr. 11) Applicant did not stand up when the judge asked if he wanted to exercise his right to a jury trial. (Plea Tr. 12). Applicant stood up, affirmatively, when the judge asked if he understood his constitutional rights and wanted to waive them to plead guilty. (Plea Tr. 12). Applicant addressed the court individually and answered several of the judge’s very specific questions about his educational, familiar, and employment background. (Plea Tr. 14).

This Court finds *credible* Counsel’s testimony that prior to Applicant pleading guilty, she explained to him his constitutional rights and the negotiated sentence he was entering for the trafficking charge. Thus, the record established that Applicant pled guilty freely, voluntarily, knowingly and intelligently, with an awareness of the charges against him, the fifteen (15) year negotiated sentence, and his constitutional rights. Accordingly, this Court finds Applicant failed to meet his burden.

*[Space left blank intentionally. Conclusion follows on next page.]*

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CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

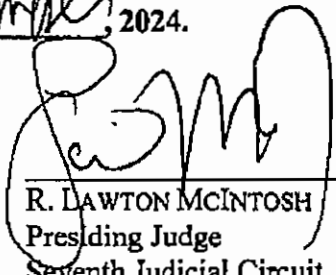
Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty (30) days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

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

AND IT IS SO ORDERED THIS 22 day of November, 2024.

Anderson, South Carolina

  
 R. LAWTON MCINTOSH  
 Presiding Judge  
 Seventh Judicial Circuit

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STATE OF SOUTH CAROLINA )	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG )	SEVENTH JUDICIAL CIRCUIT
Mark Wingo, 269107, )	2019-CP-42-3767
Applicant, )	
v. )	
State of South Carolina, )	MOTION PURSUANT TO
Respondent. )	RULE 59 (a) & (e), SCRPC

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on October 25, 2019. Pursuant to Rule 59 (a) & (e) of the South Carolina Rules of Civil Procedure, Applicant would move before this Court for relief as follows.

PROCEDURAL HISTORY

During the August 2018 term of the Spartanburg County Grand Jury, Applicant was indicted for trafficking methamphetamine, 200-400 grams (2018-GS-42-4597). On May 6, 2019, Applicant entered a guilty plea to the lesser included offense of trafficking methamphetamine, 28-100 grams, in front of the Honorable J. Mark Hayes, II. Applicant was represented by Andrea L. Price, Esquire. Sydni Kallam, Assistant Solicitor, represented the State. After accepting Applicant's guilty plea, the Honorable J. Mark Hayes, II, sentenced Applicant to a term of fifteen years.

On May 6, 2019, Applicant, through counsel, filed a Motion to Reconsider. On May 9, 2019, Applicant, through counsel, filed a Motion to Withdraw. On October 2, 2019, a motion hearing was conducted in front of the Honorable J. Mark Hayes, II. Applicant was present and represented by Andrea L. Price, Esquire. Sydni Kallam, Assistant Solicitor, represented the State. At the conclusion of the hearing, Judge Hayes

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 SEVENTH JUDICIAL CIRCUIT

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took the matter under advisement and issued an Order of denial on October 28, 2019. A notice of appeal was not filed.

On October 25, 2019, an Application for Post Conviction Relief was filed. On November 14, 2019, Rodney Richey, Esquire was appointed to represent Applicant. On April 30, 2020, Respondent submitted a Return and Motion for More Definite Statement. On April 25, 2022, a Motion for Substitution of Counsel of and Continuance was filed by Tricia A. Blanchette, Esquire. On May 5, 2022, an Order for Substitution was issued by the Honorable R. Keith Kelly, which was filed on May 6, 2022.

On September 27, 2022, a Motion for Discovery was filed. On November 2, 2022, an Order Authorizing Discovery and Granting Continuance was issued by the Honorable R. Keith Kelly. On August 6, 2024, Applicant, through counsel, filed an Amendment to Application for Post Conviction Relief.

On September 3, 2024, an evidentiary hearing was convened in Spartanburg County in front of the Honorable R. Lawton McIntosh. Applicant was present and represented by Tricia A. Blanchette, Esquire. Respondent was represented by Bryan T. Hall, Assistant Attorney General. Applicant took the stand and called Brian Setree, Dr. Donna Maddox and Andrea Price, Esquire. Respondent did not call a witness.

At the conclusion of the hearing, the Court took the matter under advisement. On November 22, 2024, an Order of Dismissal was issued, which was filed on December 2, 2024. Applicant, through counsel, received a copy of the signed and filed Order via email on December 2, 2024, from which this Motion timely follows.

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ARGUMENT

Pursuant to Rule 59 (a) & (e), SCRPC, Applicant moves before the Court to open the standing Order, amend the findings of fact and conclusions of law and/or direct the entry of a new judgment. Applicant submits that such action by the Court is necessary since the standing Order fails to properly address the issues raised via filed Amendment and at the evidentiary hearing, fails to properly consider the testimony and support offered for said issues and fails to properly address the applicable law as set forth in Applicant's Memorandum of Law, which is incorporated hereby reference and attached as an Exhibit.

As addressed in the attached Memorandum of Law, in *Frierson v. State*, 815 S.E.2d 433, 436 (2018), the South Carolina Supreme Court addressed the prejudice analysis in a case stemming from a guilty plea. The court explained and clarified:

In order to establish prejudice when challenging a guilty plea, a defendant must prove "there is a reasonable probability that, but for counsel's errors, the defendant would have not pled guilty, but would have gone to trial." *Harden v. State*, 360 S.C. 405, 408, 602 S.E.2d 48, 49 (2004). The crux of the inquiry is whether counsel's ineffective performance affected the outcome of the plea process, not whether the defendant would have been successful had he gone to trial. *Alexander v. State*, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

*Id.* In affirming as modified, the Supreme Court further held:

Because the prejudice inquiry in a case involving a guilty plea is so limited, it was error for the court of appeals to conduct an overwhelming evidence analysis in this case. *See Smalls*, 422 S.C. at \_\_\_, 810 S.E.2d at 843-47 (surveying cases that discuss overwhelming evidence - all of which involved a conviction obtained at trial).

*Id.* In conclusion, the Supreme Court emphasized the following:

We reiterate the prejudice analysis is limited to the outcome of the plea process – whether but for counsel's deficiency, the defendant would have declined to plead and instead proceeded to trial.

*Id.*

Here, the Order strays from the Supreme Court's explanation and reiteration of the prejudice analysis in *Frierson* and fails to take into proper consideration the repeated testimony from Applicant that but for counsel's deficient performance he would not have pled guilty but proceeded to trial.

In *Davie v. State*, 381 S.C. 601, 613, 675 S.E.2d 416, 422-23 (2009), the South Carolina Supreme Court reasoned that it is not always necessary for a defendant to offer objective evidence to support a claim of actual prejudice. Instead, depending on the facts of the case, a defendant's self-serving statement may be sufficient to establish actual prejudice. See *Jackson v. State*, 342 S.C. 95, 97, 535 S.E.2d 926, 927 (2000) (Rejecting objective evidence requirement established in *Judge* and finding Petitioner proved he was prejudiced by counsel's deficient performance in failing to properly advise the Petitioner that he was pleading to a felony rather than a misdemeanor where Petitioner's uncontradicted testimony established that he would not have pled had he known the charge was a felony), overruling *Judge v. State*, 321 S.C. 554, 562, 471 S.E.2d 146, 150 (1996) ("The second prong of the ineffective assistance inquiry--prejudice--is shown by demonstrating through objective evidence . . . [the existence of] a reasonable probability that, but for counsel's advice, [the defendant] would have accepted the plea. Mere statements by the PCR petitioner that he would have accepted the plea agreement but for counsel's incompetence are insufficient to show prejudice because they are self-serving and inherently unreliable.") (citation omitted); See also *Smith v. State*, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006) ("The defendant's undisputed testimony that he would not have pled guilty to the charges but for trial counsel's advice is sufficient to prove that

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defendant would not have pled guilty."). *Thompson v. State*, 340 S.C. 112, 531 S.E.2d 294 (2000) (Holding that there was enough evidence to demonstrate that there was a reasonable probability that defendant would not have pled guilty even though defendant did not specifically testify that he would have insisted upon going to trial if he had known the solicitor was going to make a recommendation.).

Turning to the completeness of the Order, in *Marlar v. State*, 375 S.C. 407, 653 S.E.2d 266 (2007), the South Carolina Supreme Court made it clear that a post-conviction relief judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented. *See also* S.C. Code Ann. § 17-27-80. Therefore, Applicant would respectfully request that the Court ensure that specific findings of fact and conclusions of law are entered on each issue raised in the Amendment and that the record before the Court and testimony of each witness is properly addressed in the standing Order of Dismissal ("Order").<sup>1</sup>

Applicant submits the discussion and finding in the Order are structured in such a way that the issues raised in the Amendment and pursued at the evidentiary hearing are misconstrued and not properly addressed. Therefore, Applicant will list each issue with a brief summary, as raised and addressed via the Amendment and evidentiary hearing, since all of the issues are not reflected with the language of the Amendment in the Order:

In general, Applicant would allege that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as pursuant to Article I, Section 14 of the South Carolina Constitution, were violated prior to, during and following his guilty plea. Applicant would further amend his Application for Post Conviction Relief to contain the following specific allegations of ineffective assistance of counsel:

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Applicant also submits the analysis of the record and law in the standing Order is presented in the light most favorable to the State.

ES:11/14/16

1. Counsel provided ineffective assistance of counsel that rendered his guilty plea involuntary, due to but not limited to the following:
  - a. Counsel failed to properly review the evidence with Applicant and conduct an independent investigation prior to the entry of the guilty plea.
    - i. Applicant testified that counsel failed to review the evidence with him and conduct an independent investigation. Counsel testified regarding her review of the evidence and meetings with Applicant, but counsel also testified she did not conduct an independent investigation (as stated in the Order). Brian Setree, private investigator, was called to address his work in the case and matters of importance not addressed by counsel due to her lack of investigation. Applicant testified that but for counsel's lack of preparation and investigation, he would not have pled guilty and would have gone to trial. Applicant submits that the testimony offered establishes ineffective assistance and prejudice and counsel's failure to conduct an independent investigation should not be excused or found to be reasonable.
  - b. Counsel failed to prepare for trial and properly advise Applicant regarding possible defenses.<sup>2</sup>
    - i. Applicant testified that counsel did not prepare with him for a trial or advise him regarding possible defenses. Specifically, Applicant and counsel were asked about the defense of entrapment, matters related to the CI and Applicant's voice identification. Applicant testified that he wanted to pursue a trial and only entered his plea due to counsel's failure to prepare a defense and her advice preceding his decision to enter a guilty. Applicant submits that the testimony offered establishes ineffective assistance and prejudice due to counsel's failure to prepare for trial and to not advise Applicant regarding possible defenses.
  - c. Counsel misadvised Applicant prior to the entry of the plea agreement regarding the evidence against him and credit for time served, which induced his guilty plea. Additionally, counsel failed to ensure that he had a full and complete understanding at the time of the guilty plea.
    - i. Applicant testified that but for counsel's advice that his brother-in-law would testify against him / identify his voice on recordings and advice that he could receive 517 days jail time

<sup>2</sup> Applicant submits that Issues 1 (a) & (b) could be combined and addressed as one issue.

credit, he would not have pled guilty and proceeded to trial. Brian Setree, private investigator, testified to his investigation, to include his interview of Applicant's brother-in-law, whereby he was informed that Applicant's brother-in-law did not plan to testify nor was he contacted by defense counsel prior to the plea. As reflected in the Order, counsel offered her position on the jail time credit issue and admitted to not speaking with Applicant's brother-in-law.

As addressed at the hearing and reflected in the transcript, Applicant informed the Court that he had served 517 days, and Applicant attempted to withdraw his plea after hearing counsel ask that the Court run his sentence from the day of the plea. Plea Transcript pp. 14, lns. 23-25, p. 19, lns. 20- p. 20, ln. 8.

Applicant explained that he relied upon counsel's advice that he could receive credit for time served and that his brother-in-law would testify for the State in reaching his decision to enter a guilty plea and not proceed to trial. Applicant submits that the record of the plea and subsequent motion hearing further supports his testimony regarding the same and demonstrate that his understanding of counsel's advice regarding these two matters wrongly induced his guilty plea and but for such advice he would not have pled guilty and proceeded with a trial.

- d. Counsel failed to properly address Applicant's mental health, specifically but not limited to his medications, prior to and during his guilty plea.
  - i. It appears from the Order that the Court has misconstrued this claim to be that counsel failed to obtain a competency evaluation and that he was incompetent at the time of his plea thus rendering his guilty plea involuntary. What Applicant is alleging is that counsel was ineffective when she failed to consider and address his mental health prior to and during his guilty plea, which was clearly stated via Amendment and addressed at the evidentiary hearing.

In support of this claim, Dr. Donna Maddox was called at the evidentiary hearing and qualified as an expert. In brief summary, Dr. Maddox testified regarding her review of the records, evaluation of Applicant and her diagnosis. She further testified regarding her findings, which included the impacts that resulted from the failure of the county detention center to administer Applicant's mental health medications and him taking part of a multi-defendant guilty plea. She explained

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how she or Dr. Howard could have been utilized by counsel to ensure that Applicant's mental health was properly addressed.

Applicant submits that it is clear from the records and the testimony offered that counsel chose not to address Applicant's mental health but for the post hoc mention at the motion hearing, which will be addressed below. Applicant submits that the testimony of Dr. Maddox established counsel's error in failing to properly address his mental health, and his testimony establishes that but for counsel's ineffectiveness in addressing his mental health he would not have proceeded with the guilty plea, during which he was suffering the symptoms of his mental health diagnosis, and would have pursued a trial.

2. Counsel provided ineffective assistance of counsel in preparation for and during the post-plea motion hearing, to include failure to utilize a mental health expert, failure to address Applicant's understanding regarding time credit, failure to ensure availability of a witness, and failure to properly advise Applicant before the withdrawal of the motion to reconsider.
  - a. It appears from the Order that this issue is not being addressed in its entirety and/or is being misconstrued. At the evidentiary hearing, Applicant and counsel testified regarding their interaction following the plea hearing, the filing of the Motion to Reconsider and Motion to Withdraw, the hearing held on October 2, 2019 and their interaction after the hearing. Applicant testified that he asked counsel to file the motions due to the inducement of the plea from his errant understanding that she would request credit for time served and that his brother-in-law was going to testify if he went to trial. He also brought the matter of his lack of mental health medications to her attention and provided her a letter, which was marked as Applicant's #2. Applicant explained the he agreed to withdraw the Motion to Reconsider due to counsel's advice prior to the motion hearing. To address counsel's failure to properly address the matter of his mental health prior to and at the motion hearing, Applicant called Dr. Maddox to provide the testimony that could have been provided to Judge Hayes at the motion hearing.

As the record reflects, counsel set forth two issues at the motion hearing. First, she addressed mental health by handing up the letter she deemed self-explanatory, without calling the author Dr. Howard or another qualified mental health professional. Motion Hearing pp. 5-6. She also addressed the information that she received about his brother-in-law testifying, which induced his plea, but informed the court that she needed more time to present the witness that was on vacation. Motion Hearing pp. 6-7.

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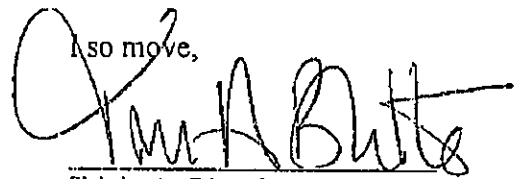
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Applicant submits that the record made at the evidentiary hearing and the record of the motion hearing clearly establish that counsel was ineffective in the handling of his post-plea motions and that he was prejudiced as a result. By way of the Order, it appears the Court has errantly focused on competency and not on counsel's representation of Applicant that was far from reasonable or effective.

- 3. Applicant did not knowingly and voluntarily waive a direct appeal and requests a belated appeal under *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974).
  - a. Applicant submits that he should be granted a belated direct appeal under *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974) and *Turner v. State*, 380 S.C. 223, 670 S.E.2d 373 (2008), as cited in the Order. At the evidentiary hearing, Applicant testified that he that he would have wanted an appeal to be filed on his behalf following the denial of the post-plea motion, and counsel lacked a specific recollection as to why an appeal was not filed. Additionally, the record of the post-trial motion does not reflect the court advising Applicant of his right to an appeal and/or the proper procedure for securing an appeal. As asked of counsel, Applicant submits there are non-frivolous issues on which to file an appeal due to the filing and denial of the post-trial motion. Therefore, Applicant would urge the Court to grant a belated appeal.

CONCLUSION

In conclusion, Applicant would request that the Court review the full record, and alter, amend or reconsider the standing Order of Dismissal and/or rehear Applicant's case pursuant to Rule 59(a) and (e), SCRPC.

Also move,  


Tricia A. Blanchette  
Attorney for Applicant  
PO Box 2147  
Leesville, SC 29070

December 11, 2024  
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STATE OF SOUTH CAROLINA )  
 COUNTY OF SPARTANBURG )

IN THE COURT OF COMMON PLEAS  
 DOCKET NO.: 2019-CP-42-3767

Mark Wingo, 269107, )  
   Applicant, )  
   v. )  
 State of South Carolina, )  
   Respondent, )

MEMORANDUM OF LAW

It is well established that a guilty plea may not be accepted unless it is voluntarily and understandingly made. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709 (1969). In South Carolina, the courts have consistently held that that a defendant must have a full understanding of the consequences of his plea and the charges against him. Smith v. State, 329 S.C. 280, 494 S.E.2d 626 (1997), Simpson v. State, (317 S.C. 506, 455 S.E.2d 175 (1995). Additionally, a defendant has the right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution.<sup>1</sup> See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

In examining the assistance provided by counsel, "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). When evaluating the reasonableness of counsel's conduct, the court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case.

<sup>1</sup> The "Sixth Amendment guarantees a defendant the right to have counsel present at all 'critical' stages of the criminal proceedings." Montejo v. Louisiana, 556 U.S. 778, 786, 129 S. Ct. 2079, 173 L. Ed. 2d 955 (2009) (quoting United States v. Wade, 388 U.S. 218, 227-228, 87 S. Ct. 1926, 18 L. Ed. 2d 1149 (1967)). Critical stages include arraignments, post-indictment interrogations, post-indictment lineups, and the entry of a guilty plea. See Hamilton v. Alabama, 368 U.S. 52, 82 S. Ct. 157, 7 L. Ed. 2d 114 (1961) (arraignment); Massiah v. United States, 377 U.S. 201, 84 S. Ct. 1199, 12 L. Ed. 2d 246 (1964) (postindictment interrogation); Wade, supra (postindictment lineup); Argersinger v. Hamlin, 407 U.S. 25, 92 S. Ct. 2006, 32 L. Ed. 2d 530 (1972) (guilty plea).

Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007). Moreover, while the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case. Id.

In Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008), the South Carolina Supreme Court reversed the lower court and granted PCR relief when counsel failed to conduct a reasonable investigation. The Court held that a reasonable investigation includes interviewing witnesses and conducting an independent investigation of the facts of the case. Lounds, 380 S.C. at 460, 670 S.E.2d at 649, See Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590. In McKnight, the Court held: "This Court has recognized that strategic choices made by counsel after an incomplete investigation are reasonable 'only to the extent that reasonable professional judgment supports the limitations on the investigation.'" McKnight v. State, 378 S.C. 33, 45, 661 S.E.2d 354, 360 (2008) (*quoting Von Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004)).

In a PCR stemming from a guilty plea, an applicant alleging a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). Therefore, an applicant that entered a plea on the advice of counsel may only attack the voluntary nature of that plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, applicant would not have pled guilty and insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366 (1985), Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000). In Hill, the Supreme Court of the

United States made it clear that the "voluntariness of the plea depends on whether

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counsel's advice was within the range of competence demanded of attorneys in criminal cases." 474 U.S. at 57, 106 S.Ct. at 369.

In Hill and Padilla v. Kentucky, 559 U.S. 356, 130 S.Ct. 1473 (2010), the Supreme Court of the United States examined the role of advising a client about a plea offer and ensuing guilty plea as was discussed in Missouri v. Frye, 132 S. Ct. 1399, 1405-06 (2012) (emphasis added), as follows:

Hill established that claims of ineffective assistance of counsel in the plea bargain context are governed by the two-part test set forth in Strickland. See Hill, supra, at 57, 106 S. Ct. 366, 88 L. Ed. 2d 203. As noted above, in Frye's case, the Missouri Court of Appeals, applying the two part test of Strickland, determined first that defense counsel had been ineffective and second that there was resulting prejudice.

In Hill, the decision turned on the second part of the test. There, a defendant who had entered a guilty plea claimed his counsel had misinformed him of the amount of time he would have to serve before he became eligible for parole. But the defendant had not alleged that, even if adequate advice and assistance had been given, he would have elected to plead not guilty and proceed to trial. Thus, the Court found that no prejudice from the inadequate advice had been shown or alleged. Hill, supra, at 60, 106 S. Ct. 366, 88 L. Ed. 2d 203.

In Padilla, the Court again discussed the duties of counsel in advising a client with respect to a plea offer that leads to a guilty plea. Padilla held that a guilty plea, based on a plea offer, should be set aside because counsel misinformed the defendant of the immigration consequences of the conviction. The Court made clear that "the negotiation of a plea bargain is a critical phase of litigation for purposes of the Sixth Amendment right to effective assistance of counsel." 559 U.S., at \_\_\_, 130 S. Ct. 1473, 176 L. Ed. 2d 284, 298. It also rejected the argument made by petitioner in this case that a knowing and voluntary plea supersedes errors by defense counsel. Cf. Brief for Respondent in Padilla v. Kentucky, O. T. 2009, No. 08-651, p. 27 (arguing Sixth Amendment's assurance of effective assistance "does not extend to collateral aspects of the prosecution" because "knowledge of the consequences that are collateral to the guilty plea is not a prerequisite to the entry of a knowing and intelligent plea").

In South Carolina, a substantial number of cases have developed a body of case

law that establish which consequences must be explained to a defendant by counsel prior

to a plea. Generally speaking, a defense attorney must only inform a defendant of the direct consequences of his plea, and counsel has no obligation to inform his client of the collateral consequences of his plea. See Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983), Frasier v. State, 351 S.C. 385, 570 S.E.2d 172 (2002) (Finding that a defendant need not be informed of the collateral consequences of his sentence such as parole eligibility; however if an attorney undertakes to advise a defendant of the collateral consequences of his sentences, then the advice must be accurate); Hinson v. State, 377 S.E.2d 338, 297 S.C. 456 (1989) (Based upon the testimony of co-defendant's counsel, the court found counsel's advice regarding parole eligibility misstated the law, and prejudiced was established from "uncontravered testimony that Hinson entered the plea in expectation of receiving the lesser period for parole eligibility.").

Direct consequences have a "definite, immediate, and largely automatic effect on the range of the defendant's punishment." Cuthrell v. Director, Paxtuent Institution, 475 F.2d 1364, 1366 (4<sup>th</sup> Cir. 1973). If a criminal defendant does not properly understand the direct consequences of his plea, then the plea is invalid. State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980).<sup>2</sup> A defense counsel's failure to advise a client of the direct consequences of a guilty plea constitutes ineffective assistance counsel. Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999). Additionally, constitutionally defective performance is found when defense counsel offers erroneous advice concerning an issue that is central to the defendant's decision to plead guilty. Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

<sup>2</sup>On this direct appeal from the lower court's denial of motion to withdraw guilty plea, the South Carolina Supreme Court held that counsel's improper advice regarding the sentence for kidnapping rendered her guilty plea involuntary.

In Glover v. United States, 531 U.S. 198, 203 (2003), the Supreme Court of the United States held "any amount of [additional] jail time has Sixth Amendment significance." In Davie v. State, 381 S.C. 601, 613, 675 S.E.2d 416, 422-23 (2009), the South Carolina Supreme Court reasoned that it is not always necessary for a defendant to offer objective evidence to support a claim of actual prejudice. Instead, depending on the facts of the case, a defendant's self-serving statement may be sufficient to establish actual prejudice. See Jackson v. State, 342 S.C. 95, 97, 535 S.E.2d 926, 927 (2000) (Rejecting objective evidence requirement established in Judge and finding Petitioner proved he was prejudiced by counsel's deficient performance in failing to properly advise the Petitioner that he was pleading to a felony rather than a misdemeanor where Petitioner's uncontradicted testimony established that he would not have pled had he known the charge was a felony), overruling Judge v. State, 321 S.C. 554, 562, 471 S.E.2d 146, 150 (1996) ("The second prong of the ineffective assistance inquiry--prejudice--is shown by demonstrating through objective evidence . . . [the existence of] a reasonable probability that, but for counsel's advice, [the defendant] would have accepted the plea. Mere statements by the PCR petitioner that he would have accepted the plea agreement but for counsel's incompetence are insufficient to show prejudice because they are self-serving and inherently unreliable.") (citation omitted); See also Smith v. State, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006) ("The defendant's undisputed testimony that he would not have pled guilty to the charges but for trial counsel's advice is sufficient to prove that defendant would not have pled guilty."), Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000). (Holding that there was enough evidence to demonstrate that there was a reasonable probability that defendant would not have pled guilty even though defendant

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did not specifically testify that he would have insisted upon going to trial if he had known the solicitor was going to make a recommendation.).

Similarly, in Ray v. State, 303 S.C. 374, 401 S.E.2d 151 (1991), counsel was found to be ineffective for erroneously advising the defendant regarding the sentence he could receive, thus inducing a guilty plea. On appeal, the State agreed that the advice given was erroneous but argued that the lack of prejudice required reversal. Ray, 303 S.C. at 376, 401 S.E.2d at 153. In addressing the difference between the sentence Ray was advised he could receive (life) versus the actual sentence he could receive (possible 75 years without parole) and the issue of prejudice the Court reasoned:

We hold this distinction is sufficient to satisfy prong two of the Hill v. Lockhart test. Ray's steadfast maintenance of his innocence; his uncontroverted testimony that he would not have pled guilty absent the erroneous advice of counsel; and the real distinction between the penalty Ray faces and the advice given him, convince us to *REVERSE* the lower court and *REMAND* for a new trial.

Ray v. State, 303 S.C. 374, 376, 401 S.E.2d 151, 153 (1991).

More recently, in Frierson v. State, 815 S.E.2d 433, 436 (2018), the South Carolina Supreme Court addressed the prejudice analysis in a case stemming from a guilty plea. The court explained and clarified:

In order to establish prejudice when challenging a guilty plea, a defendant must prove "there is a reasonable probability that, but for counsel's errors, the defendant would have not pled guilty, but would have gone to trial." Harden v. State, 360 S.C. 405, 408, 602 S.E.2d 48, 49 (2004). The crux of the inquiry is whether counsel's ineffective performance affected the outcome of the plea process, not whether the defendant would have been successful had he gone to trial. Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

Id. In affirming as modified, the Court further held:

Because the prejudice inquiry in a case involving a guilty plea is so limited, it was error for the court of appeals to conduct an overwhelming

evidence analysis in this case. See Smalls, 422 S.C. at \_\_\_\_, 810 S.E.2d at 843-47 (surveying cases that discuss overwhelming evidence - all of which involved a conviction obtained at trial).

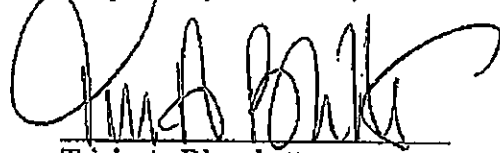
Id. In conclusion, the court emphasized the following:

We reiterate the prejudice analysis is limited to the outcome of the plea process -- whether but for counsel's deficiency, the defendant would have declined to plead and instead proceeded to trial.

Id.

"In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing." Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007); See Moorehead v. State, 496 S.E.2d 415 (1998).<sup>3</sup> "Specifically, the voluntariness of a guilty plea is not determined by an examination of a 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 also from the record of the PCR hearing." Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000).

Respectfully submitted,



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<sup>3</sup> In Moorehead v. State, 496 S.E.2d 415 (1998), the South Carolina Supreme Court reversed the lower court's grant of PCR relief. At the evidentiary hearing, Moorehead testified that he entered his guilty plea because counsel advised him he would receive probation. Counsel did not agree with this assertion by Moorehead. Id. at 416. In reversing the lower court's finding that counsel misadvised Moorehead and relief was warranted, the Supreme Court reasoned that Moorehead's responses that he had not been promised anything and the plea judges statements regarding the plea negotiations did not support the granting of relief. Id. at 416-717.

STATE OF SOUTH CAROLINA )  
 COUNTY OF SPARTANBURG )  
 )  
 Mark S. Wingo, 269107, )  
 Applicant, )  
 v. )  
 State of South Carolina, )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 SEVENTH JUDICIAL CIRCUIT

2019-CP-42-03767

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that pursuant to the Order issued by the South Carolina Supreme Court "RE: Service by E-Mail in the Trial Courts," issued on May 6, 2022, that a true copy of Motion Pursuant to Rule 59 (a) & (e) has been served on opposing counsel this 11<sup>th</sup> day of December 2024 by sending an email to her following registered email address:

Bryan T. Hall, Assistant Attorney General  
 Bryanhall@scag.gov



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December 11, 2024

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 SPARTANBURG, SC

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STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG  
THE COURT OF COMMON PLEAS  
C.A. NO. 2019-CP-42-03767

MARK STEPHEN WINGO,

PLAINTIFF,

vs.

STATE OF SOUTH CAROLINA,

DEFENDANT.

H E A R I N G  
BEFORE THE HONORABLE LAWTON R. MCINTOSH

DATE: JANUARY 1, 2025  
LOCATION: SOUTH CAROLINA CIRCUIT COURT 9  
TRANSCRIBED BY: AMANDA WATSON

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EXHIBITS

(NONE MARKED)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS  
REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

## P R O C E E D I N G S

1  
2 THE COURT: Good morning -- afternoon. First -- this is  
3 a Spartanburg case. Everybody, apparently, is agreeable --  
4 had venue resolved in Oconee County.

5 MS. BLANCHETTE: Your Honor, Tricia Blanchette, on  
6 behalf of the applicant. The applicant does waive any venue  
7 jurisdictional issues.

8 THE COURT: Thank you so much.

9 MR. HALL: And the State waives as well, Your Honor.  
10 May it please the Court?

11 THE COURT: Yes, sir.

12 MR. HALL: Assistant Attorney General, Brian Hall for  
13 the State. Your Honor, this is the case of Mark Wingo versus  
14 State of South Carolina. Docket number 2019-CP-42-03767.  
15 Your Honor, I'll keep the procedural history brief, as I'm  
16 sure that you're familiar with this case already. But,  
17 Mr. Wingo was indicted by the Spartanburg County grand jury  
18 for trafficking meth in August of 2018.

19 He pled guilty on May 6th of 2019, before the honorable  
20 J. Mark Hayes the second. He pled to the lower -- to the  
21 lesser included offense of trafficking meth, 28 grams to 100  
22 grams, and was sentenced to a negotiated sentence of 15 years  
23 to run concurrent to his already, then existing, sentence for  
24 shoplifting enhanced.

25 THE COURT: It was a negotiated sentence?

1 MR. HALL: Yes, Your Honor.

2 THE COURT: Okay.

3 MR. HALL: Mr. Wingo filed this PCR on August 6th of  
4 2024. He was alleging ineffective assistance of counsel. He  
5 was also alleging that he did not voluntarily waive his right  
6 to a direct appeal, and he was collaterally challenging his  
7 guilty plea. Your Honor heard this case on September 3rd of  
8 2024.

9 An evidentiary hearing was convened before the honorable  
10 R. Lawton McIntosh. Mr. Wingo was present and represented by  
11 Tricia Blanchette and I represented the State in that  
12 hearing. Judge, you issued an order on December 2nd of 2024,  
13 denying PCR relief for Mr. Wingo, as I'm sure you know, and  
14 we are here because I believe Mr. Wingo has a motion. So,  
15 I'll turn it over to Ms. Blanchette to make a motion.

16 THE COURT: Ms. Blanchette.

17 MS. BLANCHETTE: Yes. Thank you, Your Honor. Tricia  
18 Blanchette, again on the record on behalf of Mr. Mark Wingo.  
19 As the State indicated, we did submit a motion after the  
20 issuance of the order of dismissal, and that motion was  
21 submitted on December 11th, and that was filed on December  
22 29th. Does Your Honor need a copy of that motion, or do you  
23 have it?

24 THE COURT: I have it.

25 MS. BLANCHETTE: Okay. Perfect. I was going to

1 reference it Your Honor, not go through it as it is there,  
2 just make some highlights and then be available for ---

3 THE COURT: Well, may I ask you a question?

4 MS. BLANCHETTE: Yes.

5 THE COURT: Please, ma'am. One big concern I have, and  
6 we got clear directive from the Supreme Court, is that we  
7 have to, in our orders, address all the issues that are  
8 raised by the applicant or the petition. And in your 59  
9 motion, you say I didn't do that. Could you itemize for me,  
10 as best you can, the issues that were not addressed in that  
11 order so that they can be addressed?

12 MS. BLANCHETTE: Yes, Your Honor, and I will say you had  
13 asked myself and Brian Hall to go back and forth. And I do  
14 even have the emails with me today. We did extensive emails  
15 back and forth, and what he agreed to, which I think -- and  
16 our case law is a little murky, if I can say so myself, what  
17 he did agree to do was put in all the issues in the order as  
18 they're listed in the amendment, but he felt that it was best  
19 -- and I'll let Brian speak for himself, but this is what I  
20 got from our conversations. Was he wanted to break the  
21 issues out differently than how they were addressed in the  
22 amendment. So, what I did in my 59 is I addressed them as  
23 they were listed in the amendment. So, that was just my  
24 major concern, is that in how they were broken out in the  
25 order, I wanted to make sure, for preservation purposes ---

1 THE COURT: Yes, ma'am.

2 MS. BLANCHETTE: Not saying the Court couldn't rule how  
3 this order is structured, but if this comes up on appeal,  
4 based upon Marla and it's progeny, it's my duty to make sure  
5 those issues are preserved. So, I'm not saying I just put  
6 that language in there loosely, but to make sure that --  
7 because the issues are broken out and addressed differently  
8 than they are in the amendment. And I think, from your head  
9 nod, you understand what I'm saying. That was my concern.

10 THE COURT: Okay.

11 MS. BLANCHETTE: Is that they were broken out. And then  
12 specifically, there's like the second section of the order  
13 where it talks about an involuntary guilty plea. I have told  
14 Mr. -- I told the Assistant Attorney General beforehand, you  
15 know, we weren't making a separate allegation of involuntary  
16 guilty plea, but I understand how that comes under the guise  
17 of a guilty plea PCR. And so he felt it was necessary to  
18 have that section. So, just in how the order was structured,  
19 was my main concern there.

20 THE COURT: Okay. Go ahead. I -- thank you for  
21 answering that.

22 MS. BLANCHETTE: And, Your Honor, too, maybe as I go  
23 through these there may be some portions of the issues that I  
24 have concerns on that will make a little more sense as I go  
25 through the issues.

1 THE COURT: Okay.

2 MS. BLANCHETTE: And I did try to do my best to put in  
3 more argument than I typically do, knowing that these can be  
4 decided without a hearing. So, I appreciate you allowing us  
5 to have a hearing today.

6 THE COURT: Sure.

7 MS. BLANCHETTE: Your Honor, kind of the main takeaway  
8 that I wanted to convey to you today is I feel like the State  
9 has distracted this Court into believing that this case was  
10 about the competency of Mr. Wingo, when that was not the  
11 issue we were trying to present to Your Honor. I feel like  
12 this became about the Garren case that dealt with an inmate  
13 that was raising a PCR that he was incompetent at the time of  
14 his plea.

15 If you looked at our allegations, that is not an  
16 allegation in this case. I understand how that case could be  
17 instructive and help the Court in examining this case, but I  
18 think Garren is highly distinguishable. This case is about  
19 the competency of counsel once she was appointed to represent  
20 Mr. Wingo. We're trying to address ineffective assistance at  
21 counsel here, not just in the realm of mental health, but we  
22 raised various issues. The second thing that I should --

23 THE COURT: Say that again, please, ma'am.

24 MS. BLANCHETTE: Not just ineffective assistance in the  
25 realm of mental health, but we've raised various issues of

1           ineffective assistance.

2           THE COURT: Okay.

3           MS. BLANCHETTE: Your Honor, also on pages three through  
4 five of the filed motion, which I won't go through in great  
5 detail, it's our position that primarily absent from the  
6 order of dismissal, specifically the Frierson case, which I  
7 do argue here in the written motion. I also attached the  
8 applicant's memorandum of law, which was handed up to the  
9 Court at the evidentiary hearing.

10           We submit that the error here is in finding that the  
11 assistance offered was not ineffective, and in the  
12 application of the prejudice prong. I would submit to you  
13 that the prejudice analysis in this order goes beyond what  
14 our Court clarified at Frierson. And the need for Frierson  
15 is because orders were starting to go beyond and expanding  
16 upon the prejudice prong in a guilty plea case.

17           As addressed in our 59, Mr. Wingo repeatedly testified  
18 that he had planned to proceed to a trial and only decided  
19 last minute to enter the guilty plea after rejecting a plea  
20 for the same amount of time previously. And he accepted it,  
21 we would submit, due to counsel's errant advice, lack of  
22 preparation, and failure to properly address his mental  
23 health.

24           Your Honor, as also argued in the motion, and this kind  
25 of comes under the Marla case law as well, we would submit

1 that the summary of the testimony is not complete. I  
2 understand that's not in the portion of the findings and  
3 facts of conclusions of law, but I feel like, for  
4 preservation matters, I have to make that argument.

5 THE COURT: Okay.

6 THE COURT: Obviously, the State did not have the  
7 transcript when they wrote this as there's no citations to  
8 the evidentiary hearing transcript. And always in preparing  
9 an order of dismissal, or whichever side is preparing an  
10 order, it's going to be in the light most favorable to that  
11 party. So, I understand that, but for preservation purposes,  
12 specifically as to Dr. Maddox's testimony, I think that was  
13 very abbreviated in the summary that's in the order. Now ---

14 THE COURT: If I may, I know you've got -- tell you  
15 what, go ahead and then let me ask my question. I don't want  
16 to interrupt you.

17 MS. BLANCHETTE: You go right ahead, Your Honor, I have  
18 an outline. You're not going to throw me off.

19 THE COURT: I do understand that this is not a M'Naghten  
20 or ability to assist counsel type argument in this matter,  
21 but explain to me what the testimony from Dr. Maddox was  
22 trying to establish as to the -- what the attorney should  
23 have done or didn't do that they should have done.

24 MS. BLANCHETTE: Yeah, Your Honor, I'll jump to that  
25 issue first. It was going to be my last issue, but I'll jump

1           there ---

2           THE COURT:   Okay.

3           MS. BLANCHETTE:  --- and then I'll jump back to the  
4           others.  So, this is addressed on -- this would be issue 1D  
5           and I did address it on pages seven and eight of the 59, so I  
6           won't reread all of that back to you, just kind of hit some  
7           highlights and some additional information to answer that  
8           question.  I also think this comes under issue two, which was  
9           the preparation and her representation at the post-trial  
10          hearing.

11          As Your Honor knows, you heard testimony from  
12          Dr. Maddox.  I just said, it's not -- we submitted -- it's  
13          not fully summarized in the order, but what we were trying to  
14          show is that counsel simply failed to properly address his  
15          mental health prior to, during, and after the guilty plea.  
16          And that's what I think makes it different than Garren.

17          And in Garren too, in looking at that case closely, when  
18          the Court analyzed not the voluntariness of the plea but the  
19          Strickland prejudice in the first half of the decision, they  
20          said only Garren testified.  He didn't have any records about  
21          this medication he supposedly got at the County Detention  
22          Center.

23          He didn't even call his mother and he didn't call any  
24          type of mental health expert.  That's why we called  
25          Dr. Maddox.  Is because I knew about the Garen case.  Even

12

1           though we weren't right in line with that, I thought that it  
2           was our duty in order to show prejudice and show what counsel  
3           should have done. That's why we presented Dr. Maddox ---

4           THE COURT: What should counsel have done, before,  
5           after, and during this plea that was not done?

6           MS. BLANCHETTE: And, Your Honor, I'll just kind of  
7           shoot to the chase with you. Look, through Dr. Maddox -- and  
8           we have it --I believe it was exhibit two. Beg the Court's  
9           indulgence. Just one moment.

10          THE COURT: Sure.

11          MS. BLANCHETTE: Your Honor, through Dr. Maddox's  
12          testimony, she addressed his diagnosis that she came up with  
13          for evaluation of him. We also introduced, I believe it was  
14          through him, the letter that he had provided to counsel that  
15          was defense exhibit one. That was the letter from Dr. Howard  
16          addressing his medications.

17          And through Dr. Maddox's testimony, what we were trying  
18          to show is that he was suffering from mental health  
19          conditions, and she shared with Your Honor and testified to  
20          his diagnosis. Furthermore, she had reviewed all the records  
21          from the County Detention Center and was able to testify and  
22          explain to the Court that he had not been given his  
23          medications at the County Detention Center, and as a result,  
24          he would have been suffering from severe impacts of not  
25          having his medications and withdrawals.

1           THE COURT: Well, what -- if counsel had engaged in that  
2 analysis before, during, and after, what difference would it  
3 have made?

4           MS. BLANCHETTE: Your Honor, I don't think the plea  
5 would have gone forward that day. First of all, she's  
6 dealing with a client that had not had his medications. He  
7 had, prior to the plea -- so, the plea was in May. In March,  
8 he'd gotten a letter from Dr. Howard because he'd previously  
9 been transported to the detention center and not gotten his  
10 medication. So, he wanted to make his attorney, who clearly  
11 wasn't paying attention to his mental health and said there  
12 was no problem, he got a letter from -- or he got the report  
13 from Dr. Howard, that I have here today if we need another  
14 copy of that for the record, that we introduced at the  
15 evidentiary hearing, saying that he had to have his  
16 medications at the detention center, and what could happen if  
17 he did not. She had that. It was predated the plea. He had  
18 to go and get that, bring this to her attention. Then he  
19 goes to the detention center ---

20           THE COURT: What -- what did that letter say, without it  
21 being in front of me? What did the doctor opine would happen  
22 if he was ---

23           MS. BLANCHETTE: Your Honor, I do have it here. If you  
24 want me to grab it, I ---

25           THE COURT: You can just -- so hey, you can certainly

1 make it part of the record.

2 MS. BLANCHETTE: Okay.

3 THE COURT: Whatever you want to do.

4 MS. BLANCHETTE: It is already marked as an exhibit, and  
5 I went to go grab it, but I'll be honest with you, I was  
6 working with this yesterday and think I took it out of the  
7 exhibit folder and put it somewhere else.

8 THE COURT: Okay.

9 MS. BLANCHETTE: So, if I could beg the Court's  
10 indulgence, one moment, let me put my hands on it.

11 THE COURT: Absolutely.

12 MS. BLANCHETTE: It was hiding from me, Your Honor, I  
13 appreciate your patience.

14 THE COURT: Yes, ma'am.

15 MS. BLANCHETTE: It was marked as Defendant's Exhibit 1  
16 at the post plea hearing with Judge Hayes.

17 THE COURT: Okay.

18 MS. BLANCHETTE: It was marked as applicant's Number 2  
19 at the evidentiary hearing. I have additional copies.

20 THE COURT: Sure.

21 MS. BLANCHETTE: If you would like me to hand that up.

22 THE COURT: If you could just give me a summary -- yeah,  
23 we'll make it a copy -- make it an exhibit to this hearing.

24 MS. BLANCHETTE: Okay.

25 THE COURT: Well, I don't think we can take exhibits of

1 this hearing. This is a reconsideration.

2 MR. HALL: Judge, it's -- I believe it's already a part  
3 of the record ---

4 THE COURT: Okay.

5 MS. BLANCHETTE: It's part of the record ---

6 THE COURT: Okay. All right.

7 MS. BLANCHETTE: I can just reference it ---

8 THE COURT: Sure.

9 MS. BLANCHETTE: --- as applicant's Number 2 from the  
10 evidentiary hearing.

11 THE COURT: Here's what I'm driving at. Obviously, this  
12 doctor said, if he doesn't get his medications, x, y, z, is  
13 going to occur. Did that -- did the doctor or this -- his  
14 record that's already in evidence say that if he didn't get  
15 his medications, that he would not be competent to go  
16 forward, or what would happen?

17 MS. BLANCHETTE: Your Honor, if you look at page three,  
18 it's actually got a circle and a star by it, number four.  
19 And she says, what will happen there if he does not get his  
20 medications.

21 THE COURT: All right, so let me ask you this, you're  
22 not arguing M'Naghten, because obviously that's not -- it's  
23 not even relevant to this case at this point. But you really  
24 say we're not arguing the competency to stand trial issue  
25 either. All right?

1 MS. BLANCHETTE: And, let me tell you why, Your Honor,  
2 because I know ---

3 THE COURT: Let me -- let ask you ---

4 THE COURT: Okay.

5 MS. BLANCHETTE: I know you will. You're extremely  
6 smart. But are you arguing for another exception today, or  
7 the change in the law? Is that what you're asking me to do?

8 MS. BLANCHETTE: I'm not, Your Honor. I think this  
9 falls under a Strickland or, you know, a guilty plea analysis  
10 under Frierson. He's saying both of my counsel being  
11 ineffective, not properly addressing my mental health. I  
12 wouldn't have made this rash, last-minute decision to forgo  
13 the trial, and I would have gone -- I wouldn't have done a  
14 guilty plea. I would have gone forward with the trial.

15 THE COURT: Well, wouldn't you have to show at the  
16 hearing that he was, in fact suffering from this condition,  
17 as opined by this doctor at page three and four in the  
18 Department of Corrections document Exhibit Number 1?

19 MS. BLANCHETTE: Yes, Your Honor. Here's ---

20 THE COURT: In order to meet his standard of proof in  
21 his case, wouldn't he have to show that, not only should she  
22 had known that I needed this medication, but in fact, I did  
23 have those situations going on when I pled, that's why it was  
24 not a good plea or not ---

25 MS. BLANCHETTE: Absolutely, Your Honor. I think that's

1 where Garren failed. He just got up and said they gave me  
2 these medications with no proof of how that would have  
3 affected him at the time of his plea and if the medications  
4 were actually administered. So, what I did is -- what I did  
5 on behalf of the applicant, is we got the records from the  
6 detention center that showed that they were not administered.  
7 We retained an expert in forensic psychiatry that could  
8 testify to the Court regarding what would happen. I  
9 obviously can't go back in that moment.

10 THE COURT: Right.

11 MS. BLANCHETTE: That's why we're not arguing  
12 competency.

13 THE COURT: So, doesn't that go to the Court and his  
14 attorney's visualization -- visualize, you know, the  
15 Defendant at the hearing like did seem competent to plead.  
16 And yes, he is. I hadn't seen the colloquy, but I would  
17 assume that kind of conversation was there.

18 MS. BLANCHETTE: The problem was he was also in, what I  
19 call, a cattle-call plea. There were 16 Defendants, where  
20 they're all in the jury box, and so the opportunity for them  
21 to really have that interaction. And Dr. Maddox even  
22 testified to how a cattle-call or multi-Defendant guilty plea  
23 could impact his diagnoses as well and exasperate his  
24 symptoms even further.

25 But Your Honor, I did -- I was getting ready to say, and

1 I think we're kind of tracking with each other, why we're not  
2 alleging that he was incompetent, because, in her  
3 professional opinion, with a degree of scientific certainty,  
4 Dr. Maddox can't go back and address whether or not he was  
5 competent, so we didn't offer that testimony, because I know  
6 she can't go back in time to do that.

7 What we could offer is, these are the steps his attorney  
8 should have taken, especially if she had that information  
9 from Dr. Howard, to ensure that one, he was on his  
10 medications at the time of this guilty plea, and he had a  
11 full understanding. We're not saying that he could have been  
12 deemed incompetent. We don't know because she didn't do it.  
13 And that's the problem, she just didn't do these things.

14 And I feel like in South Carolina, I'm not going to try  
15 to get off on a rabbit trail, we don't have good case law as  
16 far as it comes to mental health. You know, the Garren case  
17 is in some ways similar, but it's not this situation. Garren  
18 actually tried to do, I would say, in some ways what we're  
19 trying to do here. He said that he had been given a  
20 medication, I believe, that impaired his ability.

21 THE COURT: Wouldn't the -- there necessarily, or at  
22 least by implication, be a finding that the trial judge felt  
23 that he was competent, or they wouldn't have gone forward in  
24 the first place, based on his colloquy with counsel and the  
25 Defendant?

1 MS. BLANCHETTE: And, Your Honor, this case is unique  
2 too because we have that post-plea motion with Judge Hayes.

3 THE COURT: But wouldn't that be basically what's going  
4 on -- and if so, then that's the -- wouldn't it be an abuse  
5 of discretion standard that you'll be looking at this because  
6 the Court had made this decision based on either the wrong  
7 application of the law or facts not in the record?

8 MS. BLANCHETTE: Your Honor, I think I'm following you,  
9 so I'm going to go back and kind of just say at the post-plea  
10 motion, we were also alleging she was ineffective, because  
11 all she did was hand up that letter. And I think, I don't  
12 want to quote -- misquote her, but says this is self  
13 explanatory. She made no argument to Judge Hayes, and I  
14 submit to you for my 20 years of experience of practicing in  
15 front of Judge Hayes, I think if he would have heard the  
16 arguments that I'm trying to make in this PCR, he would have  
17 said, wait a minute.

18 He's made a motion to withdraw this guilty plea based  
19 upon his mental health concerns that he wasn't given his  
20 medication. If Dr. Maddox would have been called at that  
21 post-plea motion, I submit to you Judge Hayes would have said  
22 it was fine. But it wasn't done because his counsel was  
23 ineffective, and so that's why this case is about ineffective  
24 assistance to counsel. Is because -- and not about  
25 competency.

1           Is because we're alleging these steps she should have  
2 taken prior to, during, and after -- which after is that  
3 post-plea motion, where all she does -- and Your Honor has  
4 the record before you of that post-please motion. We have  
5 two issues, mental health and his brother-in-law. And I'm  
6 summarizing.

7           THE COURT: I was going to ask you about that, but go  
8 ahead.

9           MS. BLANCHETTE: Yeah ---

10          THE COURT: I don't want to ---

11          MS. BLANCHETTE: Mental health and his brother-in-law.  
12 Here's this letter from Dr. Howard. It's self explanatory.  
13 That's it. She didn't go into the medications he was  
14 supposed to be on. His diagnoses. She didn't have any  
15 records from the detention center. She didn't call her own  
16 mental health expert, and most importantly, the Court didn't  
17 hear from him like Your Honor did.

18          So, I don't think it's something that Judge Hayes was  
19 even given the opportunity to properly rule upon. Why?  
20 Because counsel isn't effective. So, that's where my issue  
21 is with the order. When I say I feel like the Court's been  
22 distracted by competency. I hope you know for all the years  
23 I've practiced in front of you, I respect you deeply.

24          THE COURT: I don't take any offense to it at all. I  
25 promise you.

1 MS. BLANCHETTE: But I feel like, for some reason, the  
2 State felt this case was about competency, when that was  
3 never our position. I couldn't offer an expert to opine on  
4 his competency and go back in time. That professionally  
5 wouldn't have been responsible for her or me, but what we can  
6 show are the steps that his attorney should have done that  
7 rendered her assistance ineffective. I don't feel like Judge  
8 Hayes had the proper opportunity, especially in that post-  
9 claim motion, to address this issue of mental health.

10 THE COURT: Okay.

11 MS. BLANCHETTE: Now, Your Honor, I can turn to the  
12 other issues ---

13 THE COURT: Absolutely.

14 MS. BLANCHETTE: Unless you have any other questions on  
15 mental health.

16 THE COURT: I'm going to ask you to do me a favor ---

17 MS. BLANCHETTE: Uh, huh.

18 THE COURT: --- to just -- I'll stop bothering you. But  
19 would you resend -- send me a transcript from Judge Hayes and  
20 his plea. I don't think I have it. I want to re-read it  
21 again. If you don't mind.

22 MS. BLANCHETTE: From the pleas and the post-plea  
23 motion?

24 THE COURT: Yeah.

25 MS. BLANCHETTE: Both transcripts? There are two

1 separate transcripts.

2 THE COURT: Yes.

3 MR. HALL: Your Honor, I brought an extra copy if you'd  
4 like one.

5 THE COURT: Great. If you would give those before you  
6 go. All right. Go ahead.

7 MS. BLANCHETTE: Yes, Your Honor. So, I'm going to flip  
8 back and start with the first issue addressed, and that issue  
9 appears on page six of the motion. And again, just  
10 (indiscernible). And, Your Honor, as submitted in the  
11 motion, issues 1A and B as outlined in the amendment, I  
12 think, can be addressed together. They just deal with the  
13 failure to investigate and prepare for trial.

14 We submit that the applicant was facing trial with an  
15 attorney that, admittedly, did not conduct an independent  
16 investigation and didn't prepare with him for trial. We  
17 called Brian Setree, the private investigator, Your Honor  
18 heard from him, to try to meet our burden. There's further  
19 cases, too, that I didn't see in the order that I just asked  
20 the Court to consider.

21 In *Lowndes versus State*, the South Carolina Supreme  
22 Court reversed lower court and granted PCR relief when  
23 counsel failed to conduct a reasonable investigation. The  
24 Court held that a reasonable investigation includes  
25 interviewing witnesses and conducting an independent

1 investigation of the facts of the case.

2 Also to M'Naghten, the Supreme Court held that this  
3 Court has recognized the strategic choices made by counsel  
4 after an incomplete investigation are reasonable --  
5 reasonable only to the extent that reasonable professional  
6 judgment supports the limitations on the investigation. Here  
7 we would submit similar to *R versus Cato*, counsel failed to  
8 make the adversarial process work even before they got to  
9 that plea.

10 As the order explained, she testified that she went  
11 through the file herself and looked for any red flags, and if  
12 there aren't red flags, then they don't do an investigation.  
13 I don't think that meets the case law in South Carolina.  
14 What I just submitted to you, Your Honor, I would say that's  
15 ineffective assistance.

16 Unless Your Honor has any questions on that issue, I'll  
17 turn to the next issue, which begins on page six of the  
18 motion, which would be 1C. And this is about counsel's  
19 miss-advice. We touched on this just a minute ago, but we  
20 would submit there's miss-advice here regarding two matters,  
21 the brother-in-law witness and the 517 days jail credit.

22 THE COURT: Let me stop you there. Brother-in-law  
23 witness, isn't it incumbent upon you to present to the  
24 brother-in-law and have him testify about what he would have  
25 testified to? Not him, or you, or somebody else saying what

1 he would have testified to. I think you hadn't met your  
2 burden in that regard.

3 MS. BLANCHETTE: Your Honor, since it isn't a trial case  
4 and we're not submitting he would have -- we would have used  
5 him to testify at trial what we did ---

6 THE COURT: But you are saying that he would have  
7 testified to is -- is not what he was told by his attorney  
8 that he would testify to.

9 MS. BLANCHETTE: Your Honor, it was Mr. Wingo's  
10 understanding, the day that he made the decision to take the  
11 guilty plea, there were two things told to him. One, that  
12 she would ask and he could, not would, but could get 517 days  
13 jail credit. And that his brother-in-law, the State had  
14 secured him, he was prior law enforcement, to come and  
15 identify his voice and essentially testify against him. He  
16 testified clearly in front of Your Honor that those were two  
17 primary bases for him accepting the guilty plea.

18 THE COURT: But your position is, that the  
19 brother-in-law was not going to testify?

20 MS. BLANCHETTE: Yes, Your Honor. So ---

21 THE COURT: So, wouldn't he have to be here to say, "No,  
22 I wasn't going to testify in this case"?

23 MS. BLANCHETTE: It could be seen that way. But since  
24 this is a guilty plea case, the route we took and we're  
25 saying that she ---

1 THE COURT: I'm talking about your burden.

2 MS. BLANCHETTE: Yeah, she lacked an investigation. So,  
3 Brian Setree came in and testified to Your Honor, that as the  
4 hired investigator in this case he went and interviewed the  
5 brother-in-law. And he was allowed to testify that the  
6 brother-in-law asserted to him that he would not have  
7 testified at the time and that he has no interest in ever  
8 testifying in the case.

9 So, what we did is we sent out an investigator, as we're  
10 saying she should have done, to go talk to the brother-in-law  
11 to see if he really was going to testify before she advises  
12 him that he's going to testify. Does that make sense? So, I  
13 felt the best way to meet the burden would be to do what we  
14 are saying she should have done.

15 THE COURT: Okay.

16 MS. BLANCHETTE: Is to get an investigator to go  
17 interview the witness to find out, versus just taking what  
18 the State is saying, which I'm not trying to say anything  
19 negative against the State, and that was addressed in the  
20 post-plea motion as well. What Andrea Price said is that the  
21 State had told her he was going to testify and the solicitor  
22 said in the post-plea motion, in front of Judge Hayes, he was  
23 going to testify. But what we did is went out and spoke to  
24 the actual individual that we're saying she should have done  
25 to see if that advice was errant, that she gave him, that

1 induced his guilty plea. And we submit it is.

2 THE COURT: Okay.

3 MS. BLANCHETTE: Turning to the 517 days. Your Honor,  
4 he clearly testified, as I've already mentioned, that was a  
5 basis, that he could receive credit for that time. Now, as  
6 addressed at the hearing and reflected in the transcript, he  
7 informed the Court that he had 517 days, and then he  
8 attempted to withdraw his plea. And this is on page 14,  
9 lines 23 through 25 and page 19.

10 The minute she says, we're asking that you start the  
11 sentence from today. He attempts to withdraw his plea  
12 because, wait a minute, I wasn't wanting it to start from  
13 today. It was my understanding concurrent, and could get  
14 credit for 517 days means it gets backdated to the sentence  
15 that I'm currently serving. Now, in the order, Your Honor,  
16 it does cite to SC code -- the SC code regarding the  
17 application of credit. And what we would submit to Your  
18 Honor is it's actually an error of law. And if I could just  
19 have the Court's indulgence for one moment ---

20 THE COURT: Sure.

21 MS. BLANCHETTE: --- while I turn to that section of the  
22 order. And, Your Honor, that's cited on page 18 of your  
23 order. And underneath citing of statute it says, this Court  
24 finds as a matter of law that applicant was not entitled to  
25 receive credit for time served for the time he spent, and it

1 goes on from there.

2 Your Honor, I would just submit and we just agree, that  
3 as a matter of law, he wasn't entitled to it. This is the  
4 statute that if you check the box on the sentencing sheet, it  
5 instructs SCDC and how to apply good credit, and it doesn't  
6 allow SCDC to automatically apply, or I'm sorry, credit for  
7 time served. It doesn't automatically allow them to apply it  
8 for time served on other charges or other sentences. I would  
9 submit that doesn't preclude the Court from allowing it.

10 THE COURT: Hang on here. You were -- under the real,  
11 in this case, 517 days, were those times he spent in jail on  
12 other charges other than what he plead guilty to?

13 MS. BLANCHETTE: He was currently serving a sentence in  
14 SCDC. So, he was in SCDC serving. Now, some of those went  
15 back dates when he actually got the charges in this case.

16 THE COURT: Okay.

17 MS. BLANCHETTE: But she had him calculated at 517 days.  
18 And I submit to you, why is he calculating that? Why is he  
19 telling Judge Hayes if she didn't advise him there's some  
20 possibility you can get this. At the hearing she said, "No,  
21 that's -- that's not what I advised him." But why is that  
22 happening? Why is he stopping the hearing and saying he  
23 wants to withdraw if that wasn't part of the inducement?

24 And here we're talking about the standard for granting  
25 in a guilty plea, one that his attorney was ineffective, and

1 but for that, he would not have pled guilty, and he clearly  
2 testified to Your Honor, that it was his understanding that  
3 he could get those 517 days. And he clearly testified for  
4 Your Honor, but for that, he would not have pled guilty, he  
5 would have gone to trial. So, we submit that we meet the  
6 burden on that.

7 There's also in his understanding, as he explained in  
8 front of Your Honor at the evidentiary hearing that that was  
9 going to be addressed via the motion to reconsider and the  
10 motion to withdraw that were filed. But as was testified to  
11 by both parties immediately before the motion hearing, in  
12 front of Judge Hayes, she told him, for the first time, Judge  
13 Hayes isn't inclined to give you that time, so we're not  
14 going to go forward on the motion to reconsider we're just  
15 going to do the motion to withdraw.

16 Whether it be that Judge Hayes wasn't inclined to it, or  
17 whatever it be, she needed to give him proper advice before  
18 he decided to forego the trial and do the guilty plea. And,  
19 Your Honor, just skipping over the mental health issue. If  
20 you have any other questions there, I can address that. And  
21 again, we submit this isn't an issue of competency as to  
22 that, and I think I've definitely made that point clear.

23 So, I'll turn to the final two issues. Those are the  
24 issue two and three of the amendment. Those are also  
25 addressed in more detail in the filed 59. So, we would

1 submit, beyond the issue of mental health and what I've  
2 already talked about, counsel was ineffective in her  
3 assistance at that post-plea hearing. Again, we've talked  
4 about the 517 days.

5 But also in the record, she brings up the brother-in-  
6 law, tells the Court, well, he's on vacation or something, I  
7 need more time to get him here, and then the hearing just  
8 ends. There's no, "And I need to keep the record of it," it  
9 just ends, Your Honor. And so we submit, when you look at  
10 the testimony that was presented to you in the record before  
11 you, there was just no effective assistance in that post-plea  
12 motion hearing, and that ties into the next issue.

13 We've asked, Your Honor, to grant a belated appeal, and  
14 we submit that under *White versus State* it should be granted.  
15 He testified at the evidentiary hearing that he wanted an  
16 appeal to be filed, and following the denial of post-plea  
17 motions, it just ends with, we need more time. And thank you  
18 from Judge Hayes, I'm paraphrasing. You have in front of  
19 you.

20 There's no advice to him as to his appellate right. He  
21 clearly testified in front of Your Honor that he wanted that  
22 appeal, and we would submit that the testimony offered by  
23 Andrea Price was not sufficient to show that she ever  
24 properly advised him, and he indicated to her he did not want  
25 an appeal.

1           We also submit there's non-frivolous issues, despite her  
2 lack of proper purposes -- sorry, despite her lack of proper  
3 representation at that post-plea hearing that could be  
4 raised. I understand a lot of guilty plea cases there are  
5 issues, but here he moved to -- or he moved to stop the plea  
6 and withdraw at the end of the plea, then they have the  
7 post-plea motion hearing where, even though we submit the  
8 issues weren't properly addressed in front of Judge Hayes,  
9 they were addressed, and he did make a ruling, and that's  
10 something that should be reviewed by the appellate Court.  
11 Which goes back to your question about abuse of discretion.  
12 Nobody's ever reviewed this under abuse of discretion,  
13 because nobody ever filed an appeal for him.

14           THE COURT: Did the plea judge advise him of his right  
15 to appeal?

16           MS. BLANCHETTE: Your Honor, I have to look back and see  
17 if that was at the end of the plea itself. What I was  
18 focused on is that last hearing in front of Judge Hayes, and  
19 it was not addressed there.

20           THE COURT: Does the State know?

21           MS. BLANCHETTE: And Your Honor, what's tricky is  
22 because there were all of the Defendants, we have the portion  
23 as it relates to Mr. Wingo. And so in the portion as it  
24 relates to Mr. Wingo, I do not see it, not to say that they  
25 all didn't stay in the courtroom longer, and there will come

1           instead.

2           THE COURT:    Okay.

3           MS. BLANCHETTE:  But I don't see it in what we have.  
4           And with it being the multiple Defendants, they just -- they  
5           printed like, a Mr. Wingo section and the beginning section.

6           THE COURT:  But this is not a case where he specifically  
7           asked when appealing wasn't perfected.  He just wasn't  
8           advised, according to your contention, of his right to  
9           appeal, but he wanted to?

10          MS. BLANCHETTE:  Yes, Your Honor, and I'd have to rely  
11          upon the testimony that was presented to Your Honor.  I don't  
12          have the transcripts here today, but it was something where  
13          his attorney did not make the effort to advise him of his  
14          rights, ensure that he did not want one, and or give him the  
15          ability or knowledge that he would need to file one on his  
16          own.  And based upon the record, again, I was just focusing  
17          at that post-plea motion hearing, but also upon the plea  
18          transcript, he was never advised by Judge Hayes, from what I  
19          have.

20          THE COURT:  All right.  Thank you.

21          MS. BLANCHETTE:  So, that's a serious concern.  And I  
22          would submit, Your Honor, typically, in these type of cases,  
23          the State would even consent to something, as far as a  
24          belated appeal.  He -- I would submit he needs his whole bite  
25          of the apple that ---

1 THE COURT: I -- I generally give (indiscernible)  
2 anyway, probably will here, just let me look at it.

3 MS. BLANCHETTE: Okay. And that's what I would say. If  
4 Your Honor is still inclined to deny all the other issues,  
5 we'd ask that you at least ---

6 THE COURT: All right.

7 MS. BLANCHETTE: --- grant the belated appeal.

8 THE COURT: Yes, ma'am.

9 MS. BLANCHETTE: Thank you, Your Honor, for all your  
10 time.

11 MR. HALL: May it please the Court?

12 THE COURT: Yes, sir.

13 MR. HALL: Judge, I'll start from the top. Regarding  
14 the order and the way that it was drafted in this case,  
15 pursuant to Your Honor's instructions, the State did draft  
16 the order in this case and submitted it to Your Honor. In  
17 drafting the order, we did confer with Ms. Blanchette and we  
18 listed the issues as she gave them to us. We listed them in  
19 the proposed order verbatim ---

20 THE COURT: Didn't the form four go through the issues?  
21 I mean, normally I do that, just say these are the issues in  
22 the case. Did -- did I not do that in this case?

23 MR. HALL: You did, Your Honor. I believe, if my memory  
24 serves me. But, Your Honor, notwithstanding, how the issues  
25 are phrased in the actual order, are how Ms. Blanchette

1 presented them at the hearing. And also the order -- some of  
2 the issues overlap, and so the analysis is the same for  
3 multiple issues. And so in the proposed order and in the  
4 final filed order, the issues that overlap and have the same  
5 analysis are addressed together, because it makes sense to  
6 address those issues together.

7 THE COURT: Did you -- I don't have in front of me -- in  
8 your order, did you do, this goes to issues one, three, and  
9 five, or something and then do discussion? Did you identify  
10 the issues that related to your -- your order -- in the  
11 order?

12 MR. HALL: Judge, we didn't number them, but we put the  
13 same language. Well, we numbered them -- I -- Judge, we have  
14 an extra copy of the order, but I believe that we marked on  
15 it. If you ---

16 THE COURT: Just send me one.

17 MR. HALL: Okay. But, Judge ---

18 MS. BLANCHETTE: I can -- I have extra copies if ---

19 THE COURT: Okay.

20 MS. BLANCHETTE: --- you'd like a copy.

21 THE COURT: That would be great.

22 MR. HALL: I think it will be ---

23 MS. BLANCHETTE: Make sure this is a clean one.

24 MR. HALL: I think it will be easy -- easier, Judge, if  
25 you could see what we're looking at and talk about.

1           THE COURT:  Sure.  Okay.

2           MR. HALL:  And I'll reference the page numbers.  So,  
3           Judge, on page two of the order, under the section that reads  
4           current application, it states that the applicant filed an  
5           amendment to his application in which he raised the following  
6           allegations, and then they list the allegations, and they're  
7           listed verbatim as provided by Ms. Blanchette.

8           THE COURT:  Okay.

9           MR. HALL:  And then, as you go to the findings of law --  
10          or findings of fact and conclusions of law section that  
11          addresses each issue, although it doesn't have the exact  
12          numbering of the issues, the language is still the same, and  
13          issues in which the analysis overlaps are grouped together  
14          because it just makes sense logically to have similar issues  
15          with the same analysis grouped together.

16          But the order sufficiently addresses each issue that was  
17          raised by Ms. Blanchette and Mr. Wingo.  Judge, if we could  
18          turn to just the issues themselves, as Your Honor knows, the  
19          standard under Strickland is you have to prove deficiency and  
20          prejudice.  Your Honor, the supreme -- US Supreme Court in  
21          Strickland states that you don't have -- the Court need not  
22          address deficiency if it's easier to dispose of the  
23          ineffectiveness claim on the ground of lack of prejudice.

24          The Court specifically says that if it's easier to  
25          dispose of the claim on the ground of lack of prejudice, that

1 course should be followed. And so, for some of the issues,  
2 the deficiency of counsel isn't addressed because this Court  
3 doesn't have to address them. Mr. Wingo failed to prove  
4 prejudice on several of his issues. The biggest one here is  
5 the mental health issue. Your Honor, the standard ---

6 THE COURT: You don't consider the failure to conduct an  
7 investigation in (indiscernible) as big one? That's a big  
8 standard that my understanding is that it is required of  
9 every criminal defense attorney. They have to make an  
10 investigation. They can not let that go.

11 MR. HALL: Your Honor, if I -- if I can, I'll  
12 respectfully disagree with you.

13 THE COURT: Okay.

14 MR. HALL: If you turn to page ten of the order, the  
15 order actually cites the law on failure to conduct an  
16 independent investigation.

17 THE COURT: Okay.

18 MR. HALL: And what case precedent says is that while  
19 all criminal defense attorneys have a duty to conduct  
20 investigations, whether -- the decision to make an  
21 independent investigation depends on the facts and  
22 circumstances of the case. And ---

23 THE COURT: Say that -- say that again, please.

24 MR. HALL: The decision for that counsel makes whether  
25 or not to conduct a particular investigation or independent

1 investigation depends on the facts and circumstances of the  
2 particular case.

3 THE COURT: So, they have an investigation -- they have  
4 a duty to investigate, but they don't have a duty to  
5 investigate?

6 MR. HALL: It -- so, the standard is they have a duty to  
7 investigate, but if they make the decision not to  
8 investigate, the Court has to evaluate their decision and why  
9 they made it under a reasonable -- reasonableness standard.  
10 Whether or not the duty not to -- or whether or not the  
11 decision not to undertake an investigation, whether that was  
12 reasonable under the circumstances. And the ---

13 THE COURT: In the case, did the attorney -- trial  
14 attorney -- plea attorney explain why he or she did not  
15 conduct an investigation?

16 MR. HALL: Yes, Your Honor, as your order states, the  
17 trial attorney did not conduct an investigation in this case  
18 because it wasn't reasonable -- it was unreasonable under the  
19 circumstances. Your Honor ---

20 THE COURT: That's just generic. Tell me -- give me  
21 something a little more specific.

22 MR. HALL: And that's -- that's where I was headed. So,  
23 the facts of this case, if Your Honor remembers, Mr. Wingo  
24 was caught in prison with a burner cell phone conducting a  
25 drug transaction. And law enforcement, I believe,

1 intercepted the call and went and found the drugs. And so,  
2 Your Honor, counsel testified at the hearing that she didn't  
3 believe it was necessary to conduct an independent  
4 investigation because one, she had no concerns about the  
5 discovery in this case. She had no concerns about the  
6 evidence, and she had no concerns about the fact that  
7 Mr. Wingo actually was in the prison using the burner cell  
8 phone -- using the contraband cell phone to conduct a  
9 truck -- drug ---

10 THE COURT: What about not investigating his mental  
11 health issue? Not about his guilt, or about the crime or  
12 what about the mental health?

13 MR. HALL: Yes, Your Honor. And so the standard for  
14 failure to investigate mental health issues is -- if I could  
15 turn to that section.

16 THE COURT: Okay.

17 MR. HALL: Beg the Court's indulgence. Again, Your  
18 Honor, citing Strickland, the Court need not address whether  
19 or not counsel was deficient if he failed to prove prejudice.  
20 And the prejudice standard for mental health is -- and I'll  
21 quote the case that talks about this. This is *Lee v. State*,  
22 396 S.C. 314. It's on page 14 of the order,

23 THE COURT: Okay.

24 MR. HALL: The standard states, in a PCR action, to show  
25 prejudice for counsel's failure to fully investigate an

1 applicant's mental capacity, i.e. mental health, the  
2 applicant must show a reasonable probability by a  
3 preponderance of the evidence that he was incompetent at the  
4 time of his guilty plea. And so that's why the order that  
5 you wrote talks about competency, because that's the --  
6 that's the prejudice standard.

7 To prove that counsel was in fact ineffective for not  
8 investigating mental health, he has to actually prove that he  
9 was incompetent at the time of the guilty plea. And that's  
10 what the Garren case talks about. The Garren case talks  
11 about, it's not just the fact that maybe he was incompetent  
12 before the guilty plea or after the guilty plea. It has to  
13 be at the time that he stood before the judge and pled, was  
14 he in his right mind, and the standard for that is rational  
15 understanding. Whether or not he had the present ability to  
16 consult with his attorney. And he has to prove that by the  
17 record.

18 And so, if Your Honor reviews the guilty plea transcript  
19 in this case, the record establishes that. Although he pled  
20 with 16 other -- other defender -- or 15 other Defendants,  
21 the judge stated, on the record, "I'm going to ask questions,  
22 stand or sit in response to my questions." The record  
23 reflects that Mr. Wingo stood and sat in response to the  
24 judge's questions, and also he answered -- the judge asked  
25 about his educational background, his family history, and the

1 record reflects that he was able to have a conversation with  
2 the judge about those things. Certainly that doesn't  
3 establish that he was incompetent.

4 Further, the case law talks as the order sites to the  
5 case law in this case, although Dr. Maddox testified at the  
6 PCR hearing that him not having his medication would have  
7 affected his attentiveness or his ability to focus, Mr. Wingo  
8 has the burden of proving that it would have affected his  
9 ability to rationally understand, and that's what he failed  
10 to do. The medication affecting his attentiveness doesn't  
11 affect his rational understanding.

12 And, Your Honor, just to cite that -- that court case  
13 that talks about rational understanding, I'll cite to -- as  
14 the order talks about on page 21 of *McLaughlin v. State*, 352  
15 S.C. 476. In that case, the Supreme Court held that there  
16 was nothing in the record that suggested that a piece -- that  
17 the PCR applicant in that case was incompetent during his  
18 trial, where the applicant's trial attorney testified that he  
19 had no trouble communicating with her during the trial and  
20 clearly understood and responded to questions by counsel.

21 In this case, Your Honor, Mr. Wingo responded to the  
22 judge's questions, and also trial counsel testified that she  
23 didn't have any concerns about his competency -- his  
24 competency or his ability to understand on the day of the  
25 actual guilty plea. In fact, counsel -- I believe counsel,

1 even testified that he didn't even indicate that he was  
2 having mental health issues around the time of the plea. It  
3 wasn't until, I believe, what was -- after the -- he -- after  
4 he actually pled, that he came forward and told counsel about  
5 these alleged mental health issues, in which case she raised  
6 it before Judge Hayes in the post-plea hearing. Certainly,  
7 if Mr. Wingo would have liked to challenge the post-plea  
8 hearing, the proper time for that would have been the direct  
9 appeal. And so, if we could -- if I could, move along to  
10 that issue.

11 THE COURT: Yes, sir.

12 MR. HALL: Mr. Wingo bears the burden of proving that he  
13 did not knowingly and intelligently waive his right to an  
14 appeal. And to cite case law on that issue, Your Honor,  
15 there is no constitutional requirement that counsel inform  
16 him of his right to -- to appeal from a guilty plea, absent  
17 circumstances that would make counsel believe that he wanted  
18 to appeal. Mr. Wingo bears the burden of proving that.

19 Counsel testified although she didn't have specific  
20 recollection of whether or not she advised him of his right  
21 to an appeal, she testified that it was her typical practice  
22 to advise clients that they have a right to an appeal, and  
23 she didn't recall Mr. Wingo ever telling her that he would --  
24 that he desired to appeal his guilty plea.

25 And the case that talks about that issue is *Turner v.*

1 State. I could find that cite for you. It's in the -- it's  
2 in the order that you wrote. That's *Turner v. State*, 380  
3 S.C. 223. That's a 2008 South Carolina Supreme Court case.  
4 But it says that there's no constitutional right to be  
5 informed of your right to direct appeal from a guilty plea  
6 absent -- absent circumstances that would make counsel  
7 believe that he desired an appeal.

8 Your Honor, moving along. Ms. Blanchette mentioned the  
9 testimony as summarized in the order. As the order states,  
10 the testimony as it's provided in the order, it's just a  
11 summary. It's not exhaustive. It doesn't talk -- it doesn't  
12 quote every single sentence that's been testified to at the  
13 hearing. It's just a summary of the information that was  
14 provided. Beg the Court's indulgence.

15 Mentioning, again, the post-trial motion hearing, again,  
16 the standard is prejudice and for the post-trial motion  
17 hearing the prejudice standard there would be a reasonable  
18 probability that the result of the hearing would have been  
19 different. And Ms. Blanchette mentions her experience with  
20 Judge Hayes and, Your Honor, that's speculative.

21 Mr. Wingo bears the burden of proving that if counsel --  
22 that there's something that counsel should have done that she  
23 didn't do that would have changed the outcome of the  
24 post-plea hearing. And Your Honor, Mr. Wingo pled before  
25 Judge Hayes. Judge Hayes was familiar with Mr. Wingo on the

1 day of his -- of his guilty plea. He was familiar with his  
2 competency, because Judge Hayes was -- well, Judge Hayes was  
3 the presiding judge. And so there was nothing in the record  
4 that would make Mr. Wingo's plea counsel or Judge Hayes aware  
5 or question his competency on the day of the guilty plea.  
6 And that's the standard. And Mr. Wingo failed to prove --  
7 prove prejudice in that regard.

8 The -- I believe this is -- this is the last issue.  
9 Regard -- regarding credit for time served. Your Honor, I  
10 will read the statute. Mr. Wingo is not entitled to credit  
11 for time served under the statute. It doesn't matter if the  
12 judge had checked the box on the sentencing sheet or had  
13 wrote a separate order to SCDC, if Mr. Wingo is not entitled  
14 to credit for time served, he wouldn't have got -- gotten  
15 that credit for time served.

16 As Your Honor knows, the judge can't do something that  
17 the statute prevents them from doing. And so that statute is  
18 SC code, section 24, 13-40, subsection C, one through two.  
19 The specific subsection is C1 or C2 and it states, "When a  
20 prisoner is serving a sentence for one offense and is  
21 awaiting trial and sentence for a second offense, in which  
22 case he shall not receive credit for time served prior to  
23 trial and a reduction of his sentence for the second  
24 offense." The Order talks about this on page 18. But, Your  
25 Honor, Mr. Wingo was already in prison serving time for

1 shoplifting enhanced. He was serving ten years, and so he  
2 was trying to get credit for time served for the shoplifting  
3 enhanced. On the ---

4 THE COURT: I've got -- you don't need to go any further  
5 on that.

6 MR. HALL: Okay.

7 THE COURT: All right.

8 MR. HALL: Yes, Your Honor, that's essentially our  
9 argument. And then the last issue, whether or not he would  
10 have proceeded to trial. Your Honor, trial -- plea counsel  
11 testified that Mr. Wingo was not interested in a trial. He  
12 wanted a plea deal from -- from the beginning of her  
13 representation.

14 And regarding the brother-in-law testifying, again, it  
15 was their burden to present him, and so any argument about  
16 what his testimony would have been is merely speculative.  
17 But counsel testified that she had no concerns about the  
18 State calling him as a witness, and at the same -- she even  
19 testified that even if the State didn't call the  
20 brother-in-law to testify, that the State could have picked  
21 another family member to -- to have testify to authenticate  
22 Mr. Wingo's voice in the jail calls.

23 And so, that was the State's purpose for calling the  
24 brother-in-law, and that was what influenced his decision to  
25 plead guilty and not go to trial. And so, he can't prove

1 that he would have gone to trial before counsel's  
2 representation. And so, Your Honor, we would just ask this  
3 Court to deny the motion and stand by its ruling after the  
4 PCR.

5 THE COURT: Ms. Blanchette, while I'm thinking of it,  
6 would you list the areas of the grounds being asserted by  
7 your client that are not addressed in the order so I can look  
8 and see if they are? Can you itemize them for me?

9 MR. HALL: I can, Your Honor. And, what it would be  
10 more so is what he said and what I touched on as well. And I  
11 think Your Honor understands what we're saying. He didn't do  
12 like a 1A and list the issue.

13 THE COURT: But while we're here, tell me the issues  
14 that are not addressed that should have been addressed.

15 MS. BLANCHETTE: I think throughout the order the issues  
16 are addressed, they're not addressed in the way they're  
17 listed in the (indiscernible).

18 THE COURT: I got you. Okay.

19 MS. BLANCHETTE: Is what I would submit to Your Honor.  
20 So, for preservation purposes, in case the appellate courts  
21 wanted to get tricky -- sorry, appellate courts. When you  
22 review this, but I wanted to make sure that we were saying  
23 that the issues as they were addressed in the amendment  
24 aren't specifically then addressed in that order.

25 THE COURT: Got you.

1 MS. BLANCHETTE: In that order. Your Honor, and my  
2 client did ask just that I clarify something, talking about  
3 the 517 days of credit, his attorney had him calculate back  
4 to when he started his sentences, but he also, under the  
5 statute, could have been entitled for the time that he  
6 received from him -- when he received the arrest warrants on  
7 those forward.

8 And as I know Your Honor is aware, with this being  
9 concurrent, all she would have had to ask was for it to be  
10 backdated, and we wouldn't even get into play with the  
11 statute of credit for time served. It just should have been  
12 backdated to the start of the other sentences, and he would  
13 have gotten the 517 days.

14 THE COURT: All right.

15 MS. BLANCHETTE: So, he wasn't sure if I was exactly  
16 clear on that before, and I wasn't either, Your Honor.

17 THE COURT: Thank you, ma'am. I will look at it again  
18 and issue an order. Thank you guys for coming here today and  
19 coming to Oconee county.

20 MS. BLANCHETTE: Thank you for having us.

21 MR. HALL: Thank you, Judge.

22

23

24 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED)

25

CERTIFICATE OF TRANSCRIBER

State of South Carolina

County of Spartanburg

I, AMANDA WATSON, a court-approved transcriber, 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 South Carolina Circuit Court 9, Spartanburg, South Carolina, on the 30th day of January, 2025.

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

Amanda Watson =

AMANDA WATSON, TRANSCRIBER

STATE OF SOUTH CAROLINA )  
 COUNTY OF SPARTANBURG )  
 )  
 Mark S. Wingo, SCDC #269107, )  
 )  
 Applicant, )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2019-CP-42-03767

**ORDER DENYING APPLICANT'S  
 MOTION TO RECONSIDER, ALTER,  
 OR AMEND JUDGMENT PURSUANT  
 TO RULE 59(E), SCRCP**

This matter is before the Court pursuant to a motion to reconsider, alter, or amend judgment pursuant to Rules 59(a) & (e), SCRCP filed by Mark Wingo ("Applicant") on December 19, 2024. On December 2, 2024, following an evidentiary hearing on the merits, this Court issued an Order of Dismissal denying and dismissing Applicant's PCR application. Applicant's motion to reconsider, alter or amend judgment followed. On January 29, 2025, a hearing on Applicant's motion was convened before the Honorable R. Lawton McIntosh in Oconee County. Applicant waived venue and was present and represented by Tricia A. Blanchette, Esquire. Assistant Attorney General Bryan T. Hall represented Respondent.

This Court has heard the arguments presented by counsel and has reviewed the materials before this Court including the Spartanburg County Clerk of Court records; Applicant's SCDC records; the plea transcript; and the records of the current PCR action. This Court finds there are no appropriate grounds to alter or amend its judgement denying Applicant's PCR. The Court finds all issues that were raised by Applicant were ruled on in the Order of Dismissal. Accordingly, this Court reasserts its findings of fact and conclusions of law as articulated in the Order of Dismissal.

FILED  
 2025 APR 14 PM 4:09  
 CLERK OF COURT  
 SPARTANBURG COUNTY  
 AMT W. OX

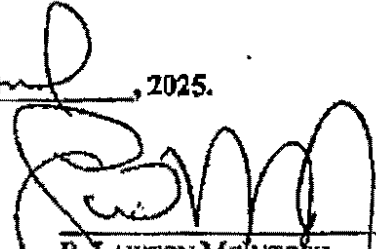
*[Space left blank intentionally, conclusion and signature follow on next page.]*

CONCLUSION

**THEREFORE, IT IS ORDERED:** based on the foregoing, Applicant's motion to reconsider, alter, or amend judgment pursuant to Rules 59(a) & (e), SCRCF, is DENIED. Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty (30) days of receipt by counsel of written notice of entry of this Order pursuant to Rule 59(f), SCRCF, and Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCF. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

AND IT IS SO ORDERED THIS 8 day of April, 2025.

Anderson South Carolina

  
R. LAWTON MCINTOSH.  
Presiding Judge  
Seventh Judicial Circuit

**FILED**  
2025 APR 14 PM 4:09  
CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

WITNESSES

SPTG CO SHERIFF'S OFFICE

*[Handwritten signature]*

ARREST WARRANT NUMBER

2017A4210104335

ACTION OF GRAND JURY

*[Handwritten signature]*

AUG 24 2018

Foreperson of Grand Jury  
Date:

VERDICT

Foreperson of Petit Jury  
Date:

DOCKET NO. -

**18-GS-42-4597**

The State of South Carolina

County of Spartanburg

*Barry J. Barnette, Solicitor*

COURT OF GENERAL SESSIONS

AUG 27 2018

TERM

THE STATE  
vs.

Mark Wingo

Indictment for  
TRAFFICKING IN METHAMPHETAMINE

SC Code: 44-63-376

CLERK OF COURT  
SPARTANBURG COUNTY  
2018 AUG 29 PM 3:20  
M. HOPE BLACKLEY

TDD

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

INDICTMENT

AUG 24 2018

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

**TRAFFICKING IN METHAMPHETAMINE**

That Mark Wingo did in Spartanburg County on or about September 28, 2017, 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 200 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.

  
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
STATE VS.

Mark Stephen Wingo

AKA:

Race: WHITE Sex: M Age: 48

DOB: SS#

Address: City, State

DL#: SID#

\*CDL Yes No CMV Yes No Hazmat Yes No

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

TO: Drugs / Trafficking in Ice, crack or crack - 28 g or more, but less than 100 g - Neg: 15 years

In violation of § 44-53-0375(C)(2)(a) of the S.C. Code of Laws, bearing CDR Code # 0392

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, (defendant's initials)

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

ATTEST: KAREEM SYDNID, SC102282 Defendant, Andrea Leah Price, SCB75786 Attorney for Defendant

WHEREFORE the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years 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.

CONCURRENT or CONSECUTIVE to sentence on: 15 months

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.

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

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-70 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered RTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms: Set by SCDFPPS Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like §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), Proviso (Public Def/Probation), §14-1-212 (Law Enforce. Funding), §14-1-213 (Drug Court Surcharge), §50-21-114 (BUI Breath Test Fee), §56-5-2942(D) (Vehicle Assessment), 3% to County (if paid in installments).

TOTAL \$282.25

Clerk of Court/ Deputy Clerk Court Reporter: Presiding Judge Judge Code: 2132 Sentence Date: 5/16/19