

**RECEIVED**

**Feb 19 2026**

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Aiken County

Honorable Debra R. McCaslin, Circuit Court Judge

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EVIN RAE DAVENPORT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001619

---

APPENDIX

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ATTORNEYS FOR RESPONDENT

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I N D E X

(No witnesses were called.)

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(No exhibits were submitted.)

P R O C E E D I N G S

EVIN RAE DAVENPORT

After being duly sworn, testified as follows:

THE COURT: Mr. Gibbons, have you explained to Ms. Davenport the nature of her charges, the possible penalties and her Constitutional rights regarding these cases?

MR. GIBBONS: I have, Your Honor.

THE COURT: Do you believe that she has understood that?

MR. GIBBONS: Yes, ma'am.

THE COURT: Are you in agreement with her decision to plead guilty?

MR. GIBBONS: I am.

THE COURT: Mr. Weeks.

MR. WEEKS: Your Honor, Ms. Davenport is before you on three indictments, two stemming from one incident and one, a separate incident. She's charged with trafficking in methamphetamine from a purchase of methamphetamine from her on July the 23rd of 2020. She is before you, also, on two indictments stemming from an arrest on September the 23rd of 2020. Both of these separate incidents occurred in Aiken County.

The first incident occurred with narcotics officers with Aiken County Sheriff's Department making a purchase of methamphetamine from Ms. Davenport in the parking lot of the

1 Clearwater shopping center. The drugs were analyzed and  
2 came back over the statutory ten gram limit for trafficking  
3 in methamphetamine.

4 The second event occurred on the date I indicated and  
5 was the result of them taking warrants taken out for the  
6 July 23rd, 2020 incident to arrest her, maybe on other  
7 warrants, too, that were out there pending. They went to  
8 her house, which is located in Aiken, where she was living  
9 in Aiken County. I think it was on Beech Island Avenue in  
10 Aiken County.

11 She was present there. When she opened the door, the  
12 officers indicated -- the officers are here in the courtroom  
13 today because this is the case that we were going to trial  
14 on today. They indicated that she broke out in tears and  
15 when questioned about the drugs, she said, They're in my  
16 purse in the bedroom.

17 There was a sufficient quantity of methamphetamine to  
18 get by the statutory inference level of ten grams. The  
19 heroin that was confiscated from the same purse came back  
20 just shy of trafficking in heroin inference level, so we  
21 have accepted a plea of possession with intent to distribute  
22 heroin third offense.

23 Ms. Davenport has, at least, two prior convictions for  
24 drug offenses. The last one was a trafficking in drugs and  
25 she received a sentence of five years.

1 All of the indictments before you today, we have  
2 included a negotiation for a negotiated sentence of 25-year  
3 minimum under the statute. She has a number of other  
4 pending charges, Your Honor, as a result of several  
5 different arrests. With this plea, we're dismissing those  
6 pending indictments.

7 THE COURT: Thank you, Mr. Weeks.

8 Ms. Davenport, have you had any illegal drugs or  
9 alcohol within the last 72 hours?

10 THE DEFENDANT: No, ma'am.

11 THE COURT: Are you on any type of medication that  
12 would prevent you from understanding what we're doing here  
13 today?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: Have you had enough time to speak with your  
16 attorney?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Are you totally and completely satisfied  
19 with his representation of you?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Ms. Davenport, has anyone forced you or  
22 promised you anything in order to take this plea today?

23 THE DEFENDANT: No, ma'am.

24 THE COURT: Are you pleading guilty because you are  
25 guilty?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Ms. Davenport, have you been truthful in  
3 your answers to me?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Did you hear everything that the solicitor  
6 told me about your case?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Are you in agreement with those facts?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: How do you wish to plead?

11 THE DEFENDANT: Guilty.

12 THE COURT: All right. I'll accept your plea and I'll  
13 find it has been made freely and voluntarily. You have the  
14 assistance and counsel of an attorney, Mr. Gibbons, with  
15 whom you told me you were satisfied with.

16 Mr. Gibbons.

17 MR. GIBBONS: Thank you, Your Honor. May it please the  
18 Court.

19 I'd like to first start out in saying that Evin has  
20 been locked up a couple times on these charges, but  
21 according to the jail, she has 269 days credit on these  
22 charges.

23 THE COURT: All right.

24 MR. GIBBONS: She's 31. She's from the Aiken area.  
25 She went to school in North Augusta. She didn't finish, but

1 she -- she does not have her GED, but she wants to work on  
2 that. She has two small children, two girls, ten and five.  
3 She's mostly concerned about them. She understands she has  
4 not seen them for a while and she needs to be the best  
5 example she can. She's made some mistakes in the past, but  
6 she wants to be a good mother to them in whatever way, shape  
7 or form she can.

8 She has worked in the past doing insurance sales. She  
9 had a home cleaning business. She's done some waitresses,  
10 home health care, things like that. I know it was hard for  
11 her to make ends meet after her last stint she did in prison  
12 and put her financially kind of in the hole, but she knows  
13 she's made some really bad choices here. We would ask the  
14 Court to consider that and to follow along with the  
15 negotiation.

16 Do you have anything to say, Evin, at this point?

17 THE DEFENDANT: Just that I accept full responsibility  
18 for my actions. I'm not one to say I'm not guilty if I  
19 actually did something. Like he said, I'm just mainly  
20 worried about my kids. Thank you, because you just granted  
21 my kids' father an appeal. You gave him 20 years and then  
22 he asked for an appeal and you actually granted it to him,  
23 so he'll be home, so I thank you. He got a 20-year sentence  
24 for an accidental ATV death. He accidentally killed his  
25 friend. He's never been in trouble before. So, again,

1 thank you.

2 MR. GIBBONS: Your Honor, her dad --

3 THE DEFENDANT: I have that whole back row.

4 MR. GIBBONS: Yeah, her dad, her friends --

5 Raise your hand if you're here with Evin.

6 They're here supporting her today. Your Honor, we've  
7 talked about this. It's been a lot of bad news what I've  
8 brought to her and it hasn't always been easy for her to  
9 deal with that, I don't blame her. But she knows completely  
10 what's going on. We've talked about the limited options  
11 that she has and she feels like this is the best thing she  
12 can do at this point to avoid LWOP and consecutive sentences  
13 and things like that. It's still a tough pill to swallow.  
14 You know, she's got to dig herself out of this situation.  
15 We would ask the Court to go along with this.

16 THE COURT: Mr. Weeks, just so I'm clear on the  
17 negotiated sentence, it is 25 to 30?

18 MR. WEEKS: 25 to 30 is the sentence range --

19 MR. GIBBONS: The negotiation is 25. It carries 25 to  
20 30.

21 MR. WEEKS: 25, concurrent on them.

22 THE COURT: Ms. Davenport, you understand that when you  
23 plead guilty, you give up your right to a jury trial?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: And I understand that you wish to go

1 forward with the plea today?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Ms. Davenport, if for any reason, you wish  
4 to appeal this plea, you must do so by contacting Mr.  
5 Gibbons within the next ten days. Do you understand that?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: All right. I am going to go along with the  
8 negotiated sentence. I am sentencing you to a 25-year  
9 sentence. All charges will run concurrent with each other.  
10 You will receive credit for the time you have served in the  
11 amount of 269 days.

12 THE DEFENDANT: Thank you.

13 THE COURT: Good luck to you, Ms. Davenport.

14 THE DEFENDANT: Thank you.

15 MR. GIBBONS: Thank you, Your Honor.

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CERTIFICATE OF TRANSCRIBER

I, PENNY M. JOHNSON, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

March 9, 2023

Penny M. Johnson  
Penny M. Johnson  
Court Reporter III

FORM 5

2023CPO 200025

STATE OF SOUTH CAROLINA )

County of Aiken )

Evin Rue Davenport )

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

v. )

State of South Carolina )

IN THE COURT OF COMMON PLEAS

FILED 1-9 2023

10:36  
8P

Robert J. White  
C.C.P. & G.S.

Shadell Parks  
Deputy Clerk

APPLICATION FOR  
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Aiken County
2. Name and location of Court which imposed sentence Aiken County  
109 Park Avenue SE Aiken SC 29801
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2021-GIS-02-00757 2020A0210400363
  - (b) 2021-GIS-02-00762 2020A0210900090

(c) 2021-BS-02-00756

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

(a) Le. 13.21

(b) Le. 13.21

(c) Le. 13.21

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?

NO

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

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

i. \_\_\_\_\_

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

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

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

i. \_\_\_\_\_

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

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

(c) the date of each such result:

i. \_\_\_\_\_

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

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

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. \_\_\_\_\_

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

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

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) I was informed by my Public Defender

if I appealed I would be facing life

sentence without the chance of parole.

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

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

- (a) This should be my 2<sup>nd</sup> strike (7-30 yrs.)
- (b) NOT my 3<sup>rd</sup> (25 years) <sup>mandatory</sup> I also was told my
- (c) heroin charge was a possid charge not a

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

- (a) ive only ever had one trafficking before.
- (b) I was told my weight was 3.2 dust
- (c) below the trafficking limit.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? yes

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. I wrote my Judge asking for a motion
- ii. of reconsideration - Never received a
- iii. response from her. - Along w/ the same
- iv. letter to Judge Krasley whom sent me this

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

- i. Aiken County Court House
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

NO

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

(a) which grounds have been presented:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- (a) NO Response from Judge Clyburn-Pope
- (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? \_\_\_\_\_
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?  
\_\_\_\_\_

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
  - i. Garrett Gribbons Aiken County Public Defenders office
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. ~~trial~~ motion for release of (counsel)
  - ii. Sentencing
  - iii. \_\_\_\_\_

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

A lesser sentence 100% Parole eligible

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

NO

STATE OF SOUTH CAROLINA

County of Aiken County

VERIFICATION

I, Evin Rae Dawenpost, 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.

Evin Rae Dawenpost

SWORN to and subscribed before me this 30 day of December 2000

Salandra V. King (L.S.)  
Notary Public

My Commission Expires: 1/1/01

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

I, Evin Rae Davenport, 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.

Evin Rae Davenport  
Applicant

SWORN or affirmed to and subscribed before me this  
30 day of December, 2002.

Salandra V. Kelley  
Notary Public

My Commission Expires: 1/1/04

STATE OF SOUTH CAROLINA )  
 COUNTY OF AIKEN )  
 )  
 )  
 Evin Davenport, SCDC #378081, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE SECOND JUDICIAL CIRCUIT

Case No. 2022-CP-02-00025

**RETURN AND PARTIAL MOTION  
 TO DISMISS  
 (COUNSEL APPOINTED)**

FILED 4-3 2023 12:48  
 JP  
 Robert J. White  
 C.C.P. & G.S.  
 Shadell Parks  
 Deputy Clerk

In response to the post-conviction relief (PCR) action commenced by Evin Davenport (Applicant) on January 9, 2023, the State makes this return:

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Aiken County Clerk of Court. During its June 2021 term, the Aiken County Grand Jury indicted Applicant for trafficking heroin 4 to 14 grams (2021-GS-02-00757), trafficking methamphetamine 10 – 28 grams (2021-GS-02-00756), and trafficking methamphetamine 10 to 28 grams (2021-GS-02-00762). Applicant was represented by Second Circuit Public Defender De Grant Gibbons. The case was prosecuted by Solicitor William Weeks.

On June 13, 2022, Applicant pleaded guilty before the Honorable Courtney Clyburn Pope. Pursuant to negotiations between the State and Applicant, Judge Clyburn Pope sentenced Applicant to 25 years for each trafficking methamphetamine charge, and 25 years for the lesser

included offense of possession with intent to distribute heroin, third or subsequent offense; with those sentences to be served concurrently.<sup>1</sup> Applicant did not file a direct appeal.

**FACTUAL SUMMARY**

*TRAFFICKING IN METHAMPHETAMINE (2021-GS-02-00762)*

The Solicitor gave the following recitation of the facts during the plea proceeding:

The first incident occurred with narcotics officers with the Aiken County Sheriff's Department making a purchase of methamphetamine from Ms. Davenport in the parking lot of the Clearwater shopping center. The drugs were analyzed and came back over the statutory ten-gram limit for trafficking in methamphetamine.

(Gp. Tr. p. 3, ll. 15-25 – p. 4, ll. 1-3).

*TRAFFICKING IN METHAMPHETAMINE (2021-GS-02-00756), TRAFFICKING IN HEROIN (2021-GS-02-00757)*

The Solicitor gave the following recitation of the facts during the plea proceeding:

The second event occurred on the date I indicated and was the result of them taking warrants for the July 23, 2020 incident to arrest her, maybe on other warrants too, that were out there pending. They went to her house, which is located in Aiken, where she was living in Aiken County. I think it was on Beech Island Avenue in Aiken County. She was present there. When she opened the door, the officers indicated... that she broke out in tears and when questioned about the drugs, she said, they're in my purse in the bedroom. There was sufficient quantity of methamphetamine to get by the statutory inference level of ten grams. The heroin that was confiscated from the same purse came back just shy of trafficking in heroin inference level, so we have accepted a plea of possession with intent to distribute heroin third offense.

(Gp. Tr. p. 4, ll. 4-22).

---

<sup>1</sup> The following charges were nolle prossed in exchange for the plea: habitual traffic offender (2021-GS-02-00753), failure to stop for a blue light (2021-GS-02-00754), driving under suspended license (2021-GS-02-00755), possession of a controlled substance (2021-GS-02-00760), possession of contraband (2022-GS-02-1000), manufacture/possession of scheduled substance (2022-GS-02-00998), failure to stop for a blue light (2022-GS-02-1002), trafficking in methamphetamine (2022-GS-02-1003).

**CURRENT APPLICATION**

In her application for post-conviction relief, Applicant alleges she is being held in custody unlawfully based on the following:

1. Illegal Sentence
  - a. "This should be my 2<sup>nd</sup> strike (7 – 30 yrs) not my 3<sup>rd</sup> strike (25 years)... I've only ever had one trafficking before."
2. Ineffective Assistance of Counsel<sup>2</sup>
  - b. "I was also told my heroin charge was a pwid charge not a trafficking. I was told my weight was 3.2 just below the trafficking limit."

Applicant requests relief as follows:

"A lesser sentence 65% parole eligible"<sup>3</sup>

Attached to this return and incorporated by reference are the Aiken County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

**MOTION TO DISMISS ALLEGATION SENTENCE WAS ILLEGAL BECAUSE APPLICANT WAS NOT A THIRD OFFENDER**

Applicant's allegation she should not have been sentenced for trafficking in methamphetamine, 3<sup>rd</sup> or subsequent offense is without merit. Applicant was sentenced as a third offender based on her prior convictions for distribution of methamphetamine (2017-GS-02-

---

<sup>2</sup> Respondent has construed this allegation as one of ineffective assistance of counsel.

<sup>3</sup> The relief Applicant seeks is not available because the Uniform Post-Conviction Procedure Act does not provide a vehicle for sentence reduction. See Clark v. State, 259 S.C. 378, 382–83, 192 S.E.2d 209, 210 (1972) (*per curiam*) (holding that an inmate cannot seek a "time cut" in his sentence via post-conviction relief if the sentence was within the statutorily defined limits). If this Court finds a defect in the original proceedings, the appropriate relief would be a new trial on the original **indictments**. See generally Singleton v. State, 313 S.C. 75, 85–86, 437 S.E.2d 53, 59–60 (1993) (discussing section 17-27-20(B) and the appropriate relief in PCR cases); Gilstrap v. State, 252 S.C. 625, 628, 168 S.E.2d 88, 89 (1969) (stating that even under the assumption that all the allegations were true, the relief to be granted on PCR is remand for a new trial); Smith v. State, 413 S.C. 194, 195, 775 S.E.2d 696, 696 (2015) ("We now clarify the proper remedy is a new trial.").

00104) and trafficking in methamphetamine, 10 – 28 grams (2018-GS-02-02129). Applicant was correctly and lawfully sentenced as a third offender pursuant to S.C. Code Ann. § 44-53-470(A)(4) (1985), which provides:

(A) An offense is considered a second or subsequent offense if,

- (4) for an offense involving a controlled substance other than marijuana pursuant to this article, the offender has at any time been convicted of a second or subsequent violation of a controlled substance offense provision, other than a marijuana offense provision, of this article or of another state or federal statute relating to narcotic drugs, depressants, stimulants, or hallucinogenic drugs.

Applicant's two prior drug convictions both involved a narcotic drug, specifically methamphetamine. Notwithstanding Applicant's prior guilty pleas to distribution of methamphetamine (2017-GS-02-00104) and trafficking in methamphetamine (2018-GS-02-02129) were entered at the same proceeding, they are considered two separate offenses for purposes of sentencing because they "occurred separately and did not stem from continuous course of conduct." Robinson v. State, 693 S.E.2d 402, 405. The sentencing sheets for these offenses show that each offense constituted a separate offense occurring months apart. Thus, Applicant was properly sentenced for a third drug offense, in that defendant had two prior drug convictions which were properly used to enhance Applicant's sentence. Accordingly, this allegation fails as a matter of law and should be summarily dismissed.

#### **RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL**

##### **Ineffective Assistance of Trial Counsel, Generally**

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not

receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel’s performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel’s representation fell below an objective standard of “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, “does not guarantee perfect representation[—]only a ‘reasonably competent attorney.’” Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel’s conduct “so

undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” Harrington, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” Strickland, 466 U.S. at 690.

An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment.” Id. The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” Id.

The Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” **not** whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or “prejudice” prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” Strickland, 466 U.S. at 694. Thus, it is not enough “to show the errors had some conceivable

effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to deprive the defendant of a fair trial.” Id. at 687 (emphasis added).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel.” Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel’s performance was deficient; and second, evidence that counsel’s deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

The analysis of counsel’s performance under the first prong of Strickland remains unchanged—the applicant must show counsel’s representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” Hill, 474 U.S. at 56.

The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” Id. at 58–59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” Id. at 59. This inquiry “focuses on a defendant’s decision making” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to

proceed to trial. Lee v. United States, 582 U.S. \_\_\_, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting Strickland's high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." Lee, 582 U.S. \_\_\_, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.'"). Reviewing "[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Lee, 582 U.S. \_\_\_, 137 S. Ct. at 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences." Id. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

The performance and prejudice standards, however, "do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Strickland at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both

components of the inquiry if the defendant makes an insufficient showing on one.” Strickland at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

**Counsel Misadvised Applicant She Was Charged With Possession With Intent to Distribute (PWID) Heroin**

Respondent submits Applicant’s allegation Counsel erroneously advised Applicant she was charged with PWID heroin and not trafficking is without merit. Applicant was originally indicted for trafficking in heroin; however, she pleaded guilty to the lesser included offense of possession with intent to distribute heroin. Thus, Applicant was not prejudiced by any alleged misadvice regarding her heroin charge.

The record from Applicant’s guilty plea further refutes this allegation. During Applicant’s plea hearing, the following inquiry occurred between the Court and Counsel:

The Court: Mr. Gibbons, have you explained to Ms. Davenport the nature of her charges, the possible penalties and her Constitutional rights regarding these cases?

Mr. Gibbons: Yes, ma’am.

The Court: Are you in agreement with her decision to plead guilty?

Mr. Gibbons: I am.

(Gp. Tr. p. 1, ll. 4 – 13).

During the solicitor’s recitation of the facts, he informed the plea court of the following:

Solicitor: The heroin that was confiscated from the same purse came back just shy of trafficking in heroin *inference* level, so we have accepted a plea of possession with intent to distribute heroin third offense.

(Gp. Tr. p. 4, ll. 18 – 22, emphasis added).

Following the Solicitor’s recitation of the facts, the plea judge engaged in the following colloquy with Applicant:

The Court: Did you hear everything that the solicitor told me about your case?

The Defendant: Yes, ma'am.

The Court: Are you in agreement with those facts?

The Defendant: Yes, ma'am.

The Court: How do you wish to plead?

The Defendant: Guilty

(Gp. Tr. p, 6, ll. 5 – 11).

Counsel informed the plea court he explained to Applicant the nature of her charges and the consequences she faced. Furthermore, Applicant informed the plea court she agreed with the solicitor's recitation of the facts, which included the explanation regarding the nature of the plea agreement concerning the heroin charge. Applicant was fully informed of the terms of her guilty plea, the nature of the charges she was pleading to, and the consequences of the plea. Thus, Applicant's allegation is without merit.

#### **Conclusion and Action Requested**

For the above-reasons, Applicant cannot satisfy either requirement of Strickland. To the extent Applicant's allegations are not conclusively refuted by the record, the State requests and evidentiary hearing be held to fully resolve those issues. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

#### **ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS**

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last

minute be stricken because of undue prejudice to the State pursuant to Love v. State, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. Id. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

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

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

#### **GENERAL DENIAL**

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

CONCLUSION

WHEREFORE, the State respectfully requests this Court dismiss the allegation of an illegal sentence, and order an evidentiary hearing be convened on the claim of ineffective assistance of counsel.

Respectfully submitted,

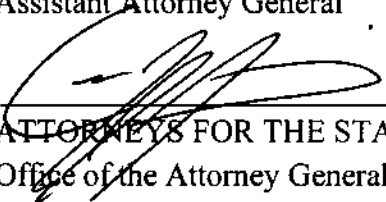
ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

T. CRUISE MITCHELL  
Assistant Attorney General

By:

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

March \_\_\_\_, 2023

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF AIKEN )  
 )  
 )  
 EVIN RAE DAVENPORT, #378081 )  
 )  
 ) Applicant, )  
 )  
 ) vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 ) Respondent, )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

2023-CP-02-25

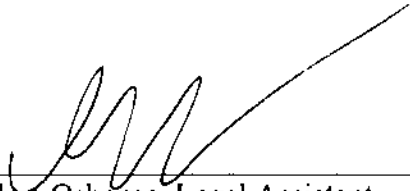
CERTIFICATE OF SERVICE BY MAIL

FILED 4-3 2023 10:45 SP  
 \_\_\_\_\_  
 C.C.P. & G.S.  
 \_\_\_\_\_  
 Deputy Clerk

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 to the Application for Post-Conviction Relief in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Ashley A. McMahan, Esquire**  
**McMahan Law, LLC**  
**Post Office Box 50536**  
**Columbia, South Carolina 29250**

DATED this 31<sup>st</sup> day of March, 2023.

  
 \_\_\_\_\_  
 Joshua Osborne, Legal Assistant  
 For Respondent

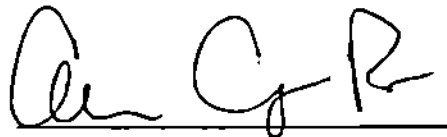
STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )  
 )  
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 )  
\_\_\_\_\_ )

COURT OF COMMON PLEAS  
FOR THE 2<sup>nd</sup> JUDICIAL CIRCUIT  
  
ORDER OF PROTECTION

This matter comes before the Court on Motion of Ashley A. McMahan, for an Order of the Court granting her protection from any court appearances beginning at 1:30pm on September 7, 2023 and continuing through the entirety of September 8, 2023.

Ms. McMahan informs the court that she has a flight booked and hotel reservations for an event in Omaha, NE that weekend.

THEREFORE, IT IS ORDERED that Ashley A. McMahan is granted an Order of Protection from all court appearances beginning at 1:30pm on September 7, 2023 and continuing through the entirety of September 8, 2023.



COURTNEY CLYBURN POPE  
CHIEF ADMINISTRATIVE JUDGE  
SECOND JUDICIAL CIRCUIT

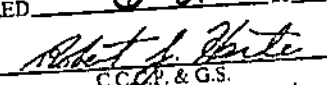
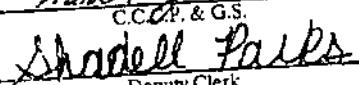
June 27, 2023

Aiken, South Carolina

I SO MOVE:



ASHLEY A. MCMAHAN  
ATTORNEY AT LAW

FILED 6-29 2023  
  
C.C.P. & G.S.  
  
Deputy Clerk

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )

THE COURT OF COMMON PLEAS  
FOR THE 2<sup>nd</sup> JUDICIAL CIRCUIT  
Case No.: 2023-CP-20-00025

Evin R. Davenport, #378081, )  
Applicant, )

v. )

State of South Carolina, )  
Respondent. )

ORDER OF CONTINUANCE

FILED 7-10 2024

Robert J. White  
C.C.P. & G.S.

Shadell Parks  
Deputy Clerk

This matter comes before the Court by way of an application for post-conviction relief. An evidentiary hearing into the matter was scheduled for July 15, 2024, at the Aiken County Courthouse. This Court finds that this matter should be continued until the next term of court for post-conviction relief matters in the 8<sup>th</sup> Judicial Circuit.

**IT IS THEREFORE ORDERED:**

1. That this post-conviction relief matter shall be continued and rescheduled,
2. Applicant be remanded to the custody of Respondent.

**AND IT IS SO ORDERED!**

Courtney Clyburn Pope

COURTNEY CLYBURN POPE  
CHIEF ADMINISTRATIVE JUDGE - CP  
2<sup>ND</sup> JUDICIAL CIRCUIT

July 10, 2024  
Aiken, South Carolina

2023CP0200025

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN, )  
\_\_\_\_\_ )

COURT OF COMMON PLEAS  
FOR THE 2<sup>nd</sup> JUDICIAL CIRCUIT  
ORDER OF PROTECTION

This matter comes before the Court on Motion of Ashley A. McMahan, for an Order of the Court granting her protection from any court from post-conviction relief hearings June 12-13, 2025; and June 23, 2025.

Ms. McMahan informs the court that she has a long planned trip scheduled from June 12-23, 2025, and has already gotten week-long protection via AIS for the week of June 16-20, 2025.

THEREFORE, IT IS ORDERED that Ashley A. McMahan is granted an Order of Protection from all court appearances from June 12-13, 2025; and June 23, 2025.

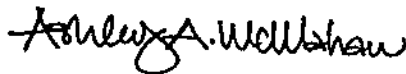


COURTNEY CLYBURN POPE  
CHIEF ADMINISTRATIVE JUDGE  
2<sup>ND</sup> JUDICIAL CIRCUIT

12/9, 2024

Aiken, South Carolina

I SO MOVE:



ASHLEY A. MCMAHAN  
ATTORNEY AT LAW

FILED December 9 2024

Robert J. Hite 1200  
C.C.P. & G.S.

Charla Peartre mp  
Deputy Clerk

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF AIKEN )  
 Evin R. Davenport, #378081, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina. )  
 \_\_\_\_\_ )

COURT OF COMMON PLEAS  
 FOR THE 2<sup>nd</sup> JUDICIAL CIRCUIT  
 Case No.: 2023-CP-02-00025

**AMENDED POST-CONVICTION  
 RELIEF APPLICATION**

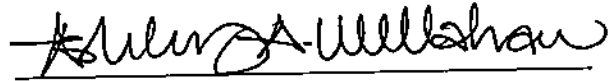
The Applicant, by and through her undersigned attorney, hereby amends her PCR application filed on January 9, 2023, to add the following allegations:

1. Ineffective Assistance of Counsel of Chief Public Defender De Grant Gibbons:
  - a. Informed Applicant that the two trafficking charges she pleaded guilty to were parole eligible. She was told she would get a certain amount of years that she would have to serve before she was eligible for release.
  - b. Never informed by Mr. Gibbons that she was LWOP eligible.
  - c. Failed to adequately explain the possible range of time she was facing on each of her pending charges.
  - d. Did not inform the Applicant in a timely manner about the trial date and had not met with counsel enough to know what his defense would be at trial. Applicant wanted a trial but took the plea offer after getting frustrated with counsel.

Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

FILED June 4 2025  
*Robert J. White* 135  
 C.C.P. & G.S.  
*Charla Rountree* *amp*  
 Deputy Clerk

Respectfully submitted,



Ashley A. McMahan

**M<sup>C</sup>MAHAN LAW,LLC**

PO Box 50536

Columbia, SC 29250

803-219-1110

ashley@mcmahanlawsc.com

SC Bar-No. 71676

ATTORNEY FOR APPLICANT

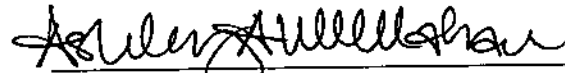
May 30, 2025

**CERTIFICATE OF SERVICE**

I certify that I have served this document via email to:

T. Cruise Mitchell  
Assistant Attorney General  
cruisemitchell@scag.gov

This 30<sup>th</sup> Day of May, 2025.



Ashley A. McMahan  
Attorney for Applicant

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	2023-CP-02-00025
	)	
	)	
	)	
	)	
EVIN R. DAVENPORT,	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	
_____	)	

June 9, 2025  
Aiken, South Carolina

B E F O R E:

THE HONORABLE DEBRA R. MCCASLIN, JUDGE.

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

ASHLEY A. MCMAHAN, ESQ.  
Attorney for the Applicant

CRUISE MITCHELL, ESQ.  
Attorney for the Respondent

PENNY M. JOHNSON  
Court Reporter III

I N D E X

(AW) - Denotes Applicant's Witness  
(RW) - Denotes Respondent's Witness

Page No.

(AW) EVIN DAVENPORT:

Direct Examination by Ms. McMahan.....

Cross-Examination by Mr. Mitchell.....

(RW) DE GRANT GIBBONS:

Direct Examination by Mr. Mitchell.....

Cross-Examination by Ms. McMahan.....

Examination by the Court.....

Recross-Examination by Ms. McMahan.....

E X H I B I T S

(There were no exhibits submitted.)

P R O C E E D I N G S

1  
2 THE COURT: I'm going to ask y'all to call the case,  
3 please.

4 MR. MITCHELL: May it please the Court, Your Honor?

5 THE COURT: Yes, sir.

6 MR. MITCHELL: This is the PCR matter of Evin Davenport  
7 v. State, case number 2023-CP-02-00025. During the June  
8 2021 term, the Aiken County Grand Jury indicted Applicant  
9 for trafficking heroin four to 14 grams, trafficking  
10 methamphetamine 10 to 28 grams, and trafficking  
11 methamphetamine -- another charge of trafficking  
12 methamphetamine 10 to 28 grams. Applicant was represented  
13 by Second Circuit Public Defender De Grant Gibbons. The  
14 case was prosecuted by Solicitor William Weeks.

15 On June 13th, 2022, Applicant pled guilty before the  
16 Honorable Courtney Clyburn-Pope. Pursuant to negotiation  
17 between the State and Applicant, Judge Clyburn-Pope  
18 sentenced Applicant to 25 years for each trafficking  
19 methamphetamine charge and 25 years to the lesser included  
20 offense of possession with intent to distribute heroin third  
21 or subsequent offense. Both sentences to be served  
22 concurrently.

23 Your Honor, a bunch of unrelated charges were dismissed  
24 as part of this plea as well. Applicant did not file a  
25 direct appeal.

1 With that, I'll turn it over to Ms. McMahan.

2 MS. MCMAHAN: Judge, at this time, we'd call Ms.  
3 Davenport.

4 THE COURT: Ms. Davenport, come forward and get sworn  
5 in, please.

6 EVIN DAVENPORT,

7 after being duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MS. MCMAHAN:

10 Q Ms. Davenport, please spell your name for the court  
11 reporter, your last name.

12 A D-A-V-E-N-P-O-R-T.

13 Q And your first name is Evin, E-V-I-N, correct?

14 A E-V-I-N.

15 Q Not Erin?

16 A Yes, ma'am.

17 Q And did you file this PCR application?

18 A I did.

19 Q And we've had discussions about what happens if you're  
20 successful in your PCR application and knowing that, you  
21 still wish to go forward?

22 A Yes, ma'am.

23 Q So let's talk about the allegations in your  
24 application.

25 MS. MCMAHAN: And I think most of these allegations

1 sort of, also, are in the amended application, also, Your  
2 Honor.

3 BY MS. MCMAHAN:

4 Q Let's start with the first issue that you have that you  
5 wanted to bring up to the Court about your representation by  
6 Mr. Gibbons.

7 A Specifically, what was --

8 Q Like, which one do you want to start with first? Do  
9 you want to start with this is my second strike not my  
10 third? Because that, also, goes into --

11 A Yeah, we can go there.

12 Q What would you like the Court to know about that?

13 A Upon meeting him, he immediately kept telling me this  
14 was my third strike, this was my third strike. And then  
15 upon signing my plea deal, he was like, This is actually  
16 your second. And I stopped, I paused before I signed it. I  
17 was like, Well, that changes things, doesn't it? And he was  
18 like, No, it doesn't change anything. And I said, Well,  
19 these are parole eligible, correct? And he was like, Yeah.  
20 So I signed and went ahead with it.

21 But every time he had seen me, it was third strike,  
22 third strike, third strike and then as I'm getting ready to  
23 sign the plea deal, it's all of a sudden being told this is  
24 my second. So I thought that would change the range on the  
25 sentencing. But he said it didn't affect anything. And

1 when I asked if they were parole eligible and he said yes, I  
2 just went ahead and signed it.

3 Q So when you signed it, though, it says trafficking meth  
4 28 or greater, 10 to 28 -- it says third or subsequent under  
5 sentencing sheet. And then the other one, the one you were  
6 talking about the PWID, that says third or subsequent on  
7 your sentencing sheet, too. So is it your understanding  
8 that when you went forward that day, it was negotiated 25 to  
9 a second offense?

10 A No, I was understanding that the 25 was parole  
11 eligible. And then upon getting to SCDC working at one of  
12 the jobs that I worked, the lady looked it up on her  
13 computer and it had a star by my charge and says  
14 non-parolable. So that's what originally made me file the  
15 PCR, being told that it was non-parolable.

16 Q But when you signed your sentencing sheets, you saw  
17 that they were thirds or did you --

18 A To be honest with you, I was so set on taking it to  
19 trial, being told seconds before I was going to take it to  
20 trial that it was possible LWOP shook me to where all of the  
21 checked boxes on there, I couldn't tell you what I said. I  
22 just know that my biggest thing was okay, I'm going to sign  
23 this because y'all are going to LWOP me, which I was never  
24 informed of being a possibility, and is this just -- is it  
25 parole eligible? Because if it was parole eligible, then I

1 would just parole out when the time came.

2 Q Okay. So your understanding of what parole eligible is  
3 what, like, you have to serve a less percentage of time?

4 A No, he said 85 percent. But again, when I got to SCDC,  
5 upon working my first job and the lady looking it up on the  
6 computer and it having a star by it and saying non-parolable  
7 eligible shook me.

8 It, also, came up on the computer as trafficking heroin  
9 third and upon looking back through my paperwork, I didn't  
10 -- I seen the NVP on the sentencing sheet, but the  
11 indictment was for four grams to 14 and I know mine was for  
12 a possession, which upon talking to you and we've gone over  
13 it, it does say possession, but I was informed that was the  
14 one that was non-parole eligible.

15 Q So at SCDC, you have the possession with intent to  
16 distribute third offense, right? Is that the one they're  
17 telling you is --

18 A Yeah.

19 Q And then you have the two trafficking meths 10 to 28  
20 that were third?

21 A Yes, ma'am.

22 Q And then your understanding is that the PWID heroin is  
23 not parole eligible?

24 A Yes, ma'am.

25 Q And your understanding was when you were talking to Mr.

1 Gibbons in court, he said they were all parole eligible?

2 A Yes, ma'am.

3 Q Did he indicate, like, any amount of time specifically  
4 you were going to have to serve?

5 A He said 85 percent.

6 Q But he didn't give you, like, a specific seven and a  
7 half years, nothing like that?

8 A No.

9 Q Okay. And then when did you find out you were LWOP  
10 eligible?

11 A Literally, like -- I came to hire Lir Derieg and he  
12 told me that if he could get a continuance, which would be  
13 the only continuance that I've ever requested upon getting  
14 these charges, that he would take my case, but if he could  
15 not get a continuance, he would not take my case. He went  
16 and talked to Judge Pope and could not get a continuance, so  
17 he would not take my money or my case because they wanted  
18 him ready for trial that day.

19 And when he come back there, he was like your solicitor  
20 informed me that if you don't take the deal that's being  
21 offered, they're going to LWOP you. And I said, What is  
22 that? And he said, Life without parole. And I said, For 49  
23 grams? He was like, Yeah, he's going to second  
24 consecutively against you. And I freaked.

25 Q So Mr. Gibbons didn't tell you this, it was Mr. Derieg?

1 A Yes.

2 Q And that was the day you were trying to get a  
3 continuance?

4 A Yeah, that was the day I was going to take it to trial.

5 Q And that's the same day you pled?

6 A Yes, ma'am. That's why I pled. I didn't even know  
7 that it was on the table as a possibility.

8 Q So the day that you pled guilty was the day you were,  
9 also, supposed to start a trial?

10 A Yes.

11 Q Okay. Did you get to the point where you were pulling  
12 a jury or anything or did you just --

13 A No, ma'am, it was just the first day of it.

14 Q Okay. So were you out on bond this entire time or were  
15 you in jail or what was going on?

16 A So the charges originally stemmed from July 23rd, 2020.  
17 I did not get arrested then. When they come to serve the  
18 warrant, that was September 23rd, 2020, I was arrested then.  
19 When I was arrested then, there was more charges from that  
20 day. I sat in the county from September 23rd, 2020 until  
21 January 9th of 2021 and then I bonded out. I did not come  
22 back to Aiken County until January 2nd of 2022.

23 May 24th, after seeing Mr. Gibbons maybe three times, I  
24 was informed on May 24th that I was trial docket number one  
25 for the week of July 13th. I asked how to go about firing

1 him. He said I was -- I had to put in a release of motion.  
2 So I immediately went back to my cell, wrote Judge Pope a  
3 letter for relief of counsel -- not release of motion --

4 Q Yeah.

5 A On June 6th, I was pulled to Aiken County Courthouse,  
6 went in front of Judge Sprouse, told Judge Sprouse my  
7 concerns. He told me that I could not fire him and that  
8 whoever I hired was to be ready for trial the following  
9 Monday.

10 Q And then that's when you tried to hire Lir Derieg?

11 A Yeah, that's when my father had, actually, come up with  
12 the money to put down as a down payment and was going to  
13 hire him. But he said he would not take my money if he  
14 could not get a continuance.

15 Q So where were you the time when you weren't in Aiken  
16 County?

17 A I was free until December 18th of 2021. I got arrested  
18 in Richmond County --

19 Q So you were sitting in Augusta?

20 A I was free until December and then, yeah, upon that, I  
21 got arrested. Aiken County had teamed up with Richmond  
22 County and come and gotten me. There were items in a  
23 vehicle that I was riding passenger in --

24 Q Well, you don't want to get into too much of the facts  
25 of that, but you were sitting in the -- you were in the

1 Richmond County jail for a little while?

2 A I got to -- December 18th is when I was incarcerated in  
3 Richmond County and I bonded out and by January 2nd, I was  
4 back in Aiken County custody.

5 Q And that was in '22?

6 A '21.

7 Q So you came back to Aiken in May of '21 or '22, I'm  
8 sorry?

9 A January.

10 Q Of '21?

11 A No, I'm sorry, January of '22.

12 Q Okay. But in May of '22, that's when you were told you  
13 were on the trial list?

14 A Yes.

15 Q Okay.

16 A May 24th, 2022.

17 Q So you were here in Aiken County at the detention  
18 center from September 20th to July of 2021?

19 A No. I was in Aiken County Detention Center from  
20 September 20th to January 9th.

21 Q Okay.

22 A Then I was released and did not come back to Aiken  
23 County until January of '22.

24 Q Okay. Sorry, I just wanted to make sure I cleared that  
25 up. And the times that you were in the Aiken County

1 Detention Center, did Mr. Gibbons come talk to you?

2 A Yes.

3 Q How many times do you think he talked to you?

4 A Before I was notified of being trial docket number one,  
5 maybe three.

6 Q Did you ask him to try to get you another bond hearing  
7 or anything like that?

8 A Yes.

9 Q Okay.

10 A Numerous times. Because I felt that the charges were  
11 over a year and a half old. I hadn't missed any court  
12 dates. I hadn't been called to any court dates. I had been  
13 in and out of the public defender's office for other  
14 appointments, so I knew that I hadn't been running from  
15 nothing, they just hadn't called me to court. So I asked  
16 him to take me over for a bond hearing and he wouldn't --

17 Q Did you just eventually post bond on what was given to  
18 you from the beginning or what happened?

19 A No. When I got sentenced in June, I went from sentence  
20 to prison.

21 Q Okay. So you said you talked to him maybe three times  
22 prior to the May time you met with him?

23 A Yeah, and then I probably seen him or spoke with him,  
24 whether in person or a video visit, maybe three, four times  
25 after that.

1 Q So in total, maybe six to eight times?

2 A Yes.

3 Q Do you remember what you guys talked about?

4 A The 25 years. First, it was 30, then it was 25 years.  
5 I asked why I was trial docket number one on a recorded  
6 Aiken County phone call at some point between May 24th and  
7 before I got my plea deal and he said my solicitor had made  
8 a mistake and was under a lot of scrutiny in the media and,  
9 unfortunately, he was trying to make up for it, to sum it  
10 up. Those aren't his exact words, but right there in the  
11 ballpark.

12 Q So he was calling a bunch of cases to trial, is that  
13 what he was --

14 A Yes. I guess he had either let somebody out or  
15 something and was under scrutiny in the media for it and I  
16 ended up being on the chopping block.

17 Q Now, you said the first offer was 30?

18 A Uh-huh. The first time he seen me, he said, You're  
19 looking at 30 years. And I said, Well, I plan to hire an  
20 attorney, so let's just try to push this as far as we can so  
21 I can get my family to be able to hire an attorney.

22 And then by May 24th, I was -- and I had asked for my  
23 discovery numerous times. He had told me he doesn't just  
24 print it out and leave it at the county. He mails it in. I  
25 think it actually took me coming out of character for me to

1 actually get a copy of my motion, discovery motion.

2 Q So when did you finally get all that?

3 A Right before -- I can't remember if it was June 6th or  
4 right before June 6th.

5 Q It was just before the trial?

6 A Yes, ma'am.

7 Q When you guys were discussing possibly going to trial,  
8 was he discussing any possible defenses or anything you had?

9 A No.

10 Q Do you remember besides the 25 anything else he may  
11 have said to you about your case?

12 A No.

13 Q And then when did the 25 come about? How far -- was  
14 that just before court on the 6th?

15 A I want to say it was maybe the video visit call that he  
16 had scheduled. He said something about taking 25 and I was  
17 like, Well, I hope the rest of the charges are going to go  
18 away if I'm going to take the plea deal for 25 years. And  
19 then when I got to court on the day of the 13th, he was  
20 like, the rest of the charges are being thrown out and you  
21 will plead to the three.

22 Q So the deal was plead to the three for 25 years  
23 negotiated? So it was like take it or leave it, 25 years?  
24 Like, there was no range, nothing like that?

25 A Right.

1 Q Okay. Did we cover everything that you wanted to bring  
2 up?

3 A Yes, ma'am. My recorded call, the denial of  
4 continuance and denial of counsel.

5 MS. MCMAHAN: Okay. Answer any questions the Attorney  
6 General may have for you.

7 CROSS-EXAMINATION

8 BY MR. MITCHELL:

9 Q You realize the only relief that Judge McCaslin can  
10 grant you today is a new trial on the charges you pled to?

11 A Yes, sir.

12 Q And you understand that all the other charges that were  
13 dismissed by the plea, also, come back?

14 A Yes, sir.

15 Q And the State will, also, be able to serve you with a  
16 life without parole notice if they wish?

17 A Yes, sir.

18 Q You still want to go forward today?

19 A Yes, sir.

20 Q You testified that Mr. Gibbons did inform you that you  
21 would have to serve 85 percent of the sentence?

22 A Yes, sir.

23 Q And what's this about you pled guilty once you found  
24 out you were LWOP eligible?

25 A I was going to take it to trial the day of June 13th.

1 I was getting ready to go forward with the process of  
2 whatever that may be and Lir Derieg, who I was going to  
3 hire, is the only person who ever told me that that was a  
4 possibility. So upon him telling me, it naturally freaked  
5 me out and I was okay, well, I'm taking the 25 years and  
6 I'll just fight it from the inside.

7 Q So the main reason for taking the 25 years was to avoid  
8 the life without parole?

9 A Yes, sir.

10 Q Do you remember at the plea hearing telling Judge  
11 Clyburn-Pope that you were completely satisfied with your  
12 attorney?

13 A Yes.

14 MR. MITCHELL: I believe that's all the questions I  
15 have for you, Ms. Davenport.

16 MS. MCMAHAN: I have no further questions.

17 THE COURT: You can step down.

18 MS. MCMAHAN: The Applicant rests.

19 THE COURT: Thank you.

20 You can call any witnesses you may have.

21 MR. MITCHELL: Your Honor, at this time, the State  
22 would call Grant Gibbons on the stand.

23 DE GRANT GIBBONS,

24 after being duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. MITCHELL:

2 Q Good afternoon, Mr. Gibbons.

3 A Good afternoon.

4 Q Where are you currently employed?

5 A The Circuit Public Defender for the Second Circuit.

6 Q And were you the Circuit Public Defender during your  
7 representation of Ms. Davenport?

8 A I was.

9 Q Will you explain the charges that Ms. Davenport was  
10 facing to the best of your recollection?

11 A Well, I know she had a prior drug case, so they were  
12 all going to be more than first offenses. And she got a  
13 trafficking case and then bonded -- along with some other  
14 charges, she bonded out. And within a short period of time,  
15 she got another trafficking case and she was looking at a  
16 lot of charges.

17 Q So she pled guilty to charges that came in different  
18 instances, correct?

19 A Correct.

20 Q So the State, if they wished, could have gone to trial  
21 on them separately?

22 A Yeah. That was my conversation with her, that they  
23 were upset with her. The Solicitor took the case and he was  
24 going to make a statement with this case if she didn't take  
25 the deal.

1 Q And was the State going to pursue life without parole  
2 based on her prior charges had you gone to trial?

3 A That's what they indicated to me.

4 Q And did you inform Ms. Davenport of that as well?

5 A I did. She had attempted to hire a couple of different  
6 attorneys and my policy is I always work with them and kind  
7 of tell them what they're getting into so they don't get  
8 blind-sided by anything. So I explained the situation to  
9 Mr. Screen, he was involved at one point. I shared the  
10 discovery with him and he talked about her case. Mr. Derieg  
11 got involved late in the game, like, days before the trial  
12 was supposed to go on. He and I worked together. I was the  
13 one that explained to him the LWOP situation. At that  
14 point, she was not happy with me, so he relayed that  
15 information to her, but I was the one who actually talked to  
16 him about what she was looking at.

17 Q Do you recall the plea negotiations in this case?

18 A Yeah, she would get 25 years and everything else would  
19 be dismissed.

20 Q So the main motivation was to avoid that life without  
21 parole?

22 A Well, not just life without parole, consecutive  
23 sentences, you know, numerous sentences with the charges she  
24 got dismissed. It was a bad situation.

25 Q Did you explain the negotiated sentence to Ms.

1 Davenport prior to the plea?

2 A I did. I don't know what the confusion is, an 85  
3 percent sentence is a no parole sentence. It's the same  
4 thing. So we did go over that, that it was going to be 85  
5 percent. You get probation when you're paroled. It is what  
6 it was.

7 Q So all this was advised to Ms. Davenport prior to her  
8 taking the plea?

9 A Yes.

10 Q And did you meet with Ms. Davenport prior to the plea?

11 A I did. I looked through my notes. I went and saw her  
12 five times and had either one or two video conversations  
13 with her. My investigator went over there and went through  
14 her information with her. I saw his notes. My notes  
15 indicate that in June of '22, she said that she didn't want  
16 to go to trial, that she wanted to work something out. And  
17 that's kind of where we were at up until she wanted to hire  
18 Mr. Derieg.

19 Q Did you review discovery with her prior to court?

20 A I did. I don't think we had -- they would not turn  
21 over the videos to me, but my investigator and I went over  
22 and viewed them. We went and told her what they showed and  
23 what the problem was going to be.

24 Q Do you believe given the LWOP notice and the amount of  
25 charges that this plea was in her best interest?

1 A Yeah, I mean, it's hard to say with that particular  
2 sentence. I mean, I feel really bad for her, that's a  
3 terrible sentence. But they were really mad at her at that  
4 time and thought that she was a big dealer with some  
5 organization and they were going to go after her to the full  
6 extent. She's one of the smartest clients I've had. She's  
7 a smart young lady. She just got wrapped up in some stuff.

8 Q And the decision to plead guilty, was that, ultimately,  
9 hers?

10 A It was. Like I said, I talked to Mr. Derieg. When the  
11 Judge denied the continuance, he said he wasn't going to get  
12 on the case. And I said, Well, let's talk. She's  
13 communicating with you right now and we can all kind of get  
14 together on where we should go on this. And that's what  
15 happened.

16 MR. MITCHELL: Mr. Gibbons, I think that's all I have  
17 for you.

18 THE COURT: Any cross?

19 CROSS-EXAMINATION

20 BY MS. MCMAHAN:

21 Q Is it common for Mr. Weeks to take on his own cases?

22 A He does carry a case load. It is not uncommon for him  
23 to take cases. Usually, it's murder cases and high profile  
24 cases and that's why I think he picked this one up. It was  
25 a pretty strong case and people were up in arms about folks

1 bonding out and getting arrested again at that time, I guess  
2 they still are, and he was bound and determined to make an  
3 example if we didn't take the deal.

4 Q You referenced the videos. These were CI buys?

5 A There were CI buys. There were, also, videos of her  
6 being with somebody at a particular business, things like  
7 that.

8 Q And is it normal for the solicitor not to turn over the  
9 CI tapes until just before trial?

10 A Unfortunately.

11 Q Did you get a chance to even look at them or did they  
12 give you still shots or anything like that?

13 A I looked at them. My investigator and I both went over  
14 and looked at them and then he went over to the jail.

15 Q Were you convinced that was Ms. Davenport in those  
16 videos?

17 A Oh, yeah, it was her.

18 Q If this had gone to trial, what kind of defenses would  
19 she have been looking at?

20 A The only thing we could have maybe done is that she was  
21 just a mule or participant, go-between, she wasn't the big  
22 person involved. It would have been a tough argument to get  
23 completely scott free on it.

24 Q So she was more of like a middle man in between the two

25 --

1 A That's what I would have argued. There wasn't a whole  
2 lot.

3 Q Did you see any issue with the seizure of the drugs,  
4 any issues with the chain or anything like that?

5 A No.

6 Q And you heard her talking about getting her discovery.  
7 What normally do you do when trying to provide clients with  
8 copies of it?

9 A Well, I advise most of them with serious charges like  
10 this and volumes of discovery, I usually tell my clients I  
11 will come over here, I will send someone over here and show  
12 you whatever you want to see any time you want to see it.  
13 If you absolutely demand it, I will give it to you, but it's  
14 a dangerous thing to have in your cell with people facing  
15 charges looking for a way to get you to help themselves.

16 Q You mean, like, sort of, jailhouse snitches getting --

17 A Well, you could be reading it and someone look over  
18 your shoulder and see a date and a time or color of the car  
19 and they'll call their lawyer and say hey, she admitted to  
20 me it happened on this date and was in a green car. And  
21 then you have another witness against you. But if they  
22 actually demand it, I give it to them.

23 This was during Covid, so it was kind of crazy times  
24 with all the video visits and things like that. And  
25 discovery comes in piecemeal, especially when there are

1 multiple charges like this.

2 Q Is that still sort of the case or just that time that  
3 was pretty common?

4 A Yeah, it's still -- it's not as common as it was then,  
5 but it's still common.

6 Q And then was it given to you electronically, in paper  
7 or how do you typically receive it?

8 A Well, most of the time, I get it electronically. Mr.  
9 Weeks is a little bit old school and he will send a paper  
10 copy over. And I was, actually, talking to a friend of  
11 Evin, she gave me permission to deal with her. There was  
12 talk about me e-mailing discovery and they will not let me  
13 e-mail discovery to the jail. There's no way to do that. I  
14 don't remember exactly what that was all about unless I was  
15 going to e-mail it to her friend or maybe I was going to  
16 e-mail to her what I had while she was out. But when she  
17 was out, we really didn't have much contact.

18 Q When did you know that this case was going to be on the  
19 trial docket?

20 A Looks like it was about the middle of May, middle to  
21 late May.

22 Q So approximately 30 days before the court term?

23 A Correct.

24 Q Is that pretty par for the course?

25 A It is. And that's the time my notes indicate we gave

1 her discovery.

2 Q She was back in the detention center at that point?

3 A Yes.

4 MS. MCMAHAN: I have nothing further, Your Honor.

5 THE COURT: Any redirect?

6 MR. MITCHELL: No redirect, Your Honor.

7 EXAMINATION

8 BY THE COURT:

9 Q I was just looking at the transcript. I mean, it's  
10 obvious that you told her that she was looking at LWOP. The  
11 transcript verifies that. But her LWOP comes from her prior  
12 drug offense of trafficking meth that she had pled to and  
13 then -- that was strike one?

14 A Correct.

15 Q And then she picked up all these other traffickings --

16 A Two separate incidents, so that would have been a  
17 second and a third.

18 Q Exactly. And my point is that she got charged with  
19 trafficking, made bond and then got out and got charged with  
20 another trafficking and I assume they kept her there?

21 A They did, Your Honor. I think she, also, had some kind  
22 of charge over in Georgia, drug charge over there, too.

23 Q So they would not have -- more than likely not have  
24 tried those together. They're separate incidences and would  
25 have tried them separately and there goes her life without

1 parole. And they reduced one of the traffickings to  
2 distribution of heroin?

3 A Yeah, yeah.

4 Q I mean, clearly, clearly her third and clearly a life  
5 without parole situation?

6 A And the PWID third is the same thing as far as the  
7 strike goes.

8 Q Right. But it doesn't matter if she pled to PWID or  
9 trafficking, it would have been a strike any way being her  
10 third offense and, also, the mandatory minimum 25.

11 A Right.

12 THE COURT: Okay. I just wanted to make sure I had all  
13 that right in my head.

14 MS. MCMAHAN: Just a few followup.

15 RECROSS-EXAMINATION

16 BY MS. MCMAHAN:

17 Q Are these true third offenses? So we know she had the  
18 2017 trafficking. Did she have any possessions or anything  
19 prior to that?

20 A No. When they charged the third, they were assuming  
21 the second was going to be a conviction. She had a first,  
22 then they charged when they arrested her on the first  
23 trafficking as a second, which it would have been.

24 Q Uh-huh.

25 A And then when she got caught with another trafficking,

1 they charged her as a third.

2 Q She pled to three third offenses, so where was the  
3 second offense in all of that?

4 A I don't remember -- I mean, I --

5 THE COURT: With her trafficking first offense, that  
6 very first, she was charged with another drug offense.

7 MS. MCMAHAN: Yes, but she had no prior conviction  
8 between that first trafficking offense until she pled to  
9 these, so there was no second in the middle is what I'm  
10 trying to say. So there was a first trafficking --

11 THE COURT: Well, I don't know what the --

12 THE WITNESS: I don't have her rap sheet in front of  
13 me.

14 BY MS. MCMAHAN:

15 Q Is trafficking serious or most serious?

16 A Serious.

17 Q So if she didn't have another prior serious offense,  
18 then these would have really been seconds. Because she pled  
19 to them all in the same day, so that's the conviction date.  
20 There was no second.

21 THE COURT: They're separate incidences.

22 THE WITNESS: They let her plead on the same day so  
23 they could count as one.

24 BY MS. MCMAHAN:

25 Q Yes, but there was no --

1 A They were planning on splitting.

2 Q But there were no -- but I'm saying there was the first  
3 offense trafficking?

4 A Right.

5 Q Then there was nothing. Then she got charged with  
6 stuff that she was never convicted of, so she never had a  
7 second offense conviction on those. Then she pled to three  
8 thirds.

9 A I don't have the rap sheet, but I'll be glad to look at  
10 it.

11 (Pause.)

12 BY MS. MCMAHAN:

13 Q Did you just discover something?

14 A I just asked him and he said he found something.

15 MR. MCMAHAN: What did you find?

16 MR. MITCHELL: This is the sentencing sheet from I  
17 believe a guilty plea from 2017 where she pled to drugs and  
18 the date of the offense -- I believe she pled to two drug  
19 charges on the same guilty plea, but they were two different  
20 incidences.

21 THE WITNESS: Two DUSs on the same day is still two  
22 DUSs.

23 MS. MCMAHAN: Yes, but for the purposes of a  
24 conviction, the conviction matters on the day it's heard,  
25 not the day that the crime occurred. So if the convictions

1 happened on the same day --

2 MR. MITCHELL: I believe I have case law, Robinson V.  
3 State, which says that when charges are entered at the same  
4 proceeding, they are considered two separate offenses for  
5 the purposes of sentencing when they occurred separately and  
6 did not stem from continuous course of conduct. I believe  
7 that applies to guilty pleas on two different -- to charges  
8 on one day, but to two different offenses.

9 MS. MCMAHAN: I have no further questions.

10 THE COURT: Thank you. You may step down.

11 THE WITNESS: Thank you.

12 THE COURT: I'll be happy to hear from you.

13 MS. MCMAHAN: Judge, I think we just laid out our  
14 issues pretty appropriately on the record. I would still  
15 contend that there's a possibility this actually should have  
16 been seconds instead of thirds. Obviously, I haven't had a  
17 chance to look at the Robinson V. State case to determine  
18 that, but if there's some case law that says otherwise, that  
19 would be our main issue.

20 THE COURT: Anything from the State?

21 MR. MITCHELL: Your Honor, the State would just submit  
22 that Ms. Davenport has not met her burden of establishing  
23 post-conviction relief. Mr. Gibbons testified credibly that  
24 Ms. Davenport was advised, fully advised of the consequences  
25 of the plea. She knew she was LWOP eligible. In fact, she

1 admitted she was eligible. She knew she was eligible prior  
2 to the plea.

3 THE COURT: It's in the transcript.

4 MR. MITCHELL: Yes, Your Honor, the transcript reflects  
5 that as well. She did testify that Mr. Gibbons advised her  
6 she was parole eligible, but that he told her it was 85  
7 percent. So for all practical purposes, the exact same  
8 thing as being no parole is 85 percent. So for those  
9 reasons, Your Honor, I would submit that this application  
10 should be denied.

11 THE COURT: Okay. Thank you.

12 I'll take it under advisement.

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA            )  
COUNTY OF AIKEN                    )

I, PENNY M. JOHNSON, Official Court Reporter for the Second Judicial Circuit of 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 the evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Aiken County, South Carolina, on the 9th day of June, 2025.

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

October 18, 2025

Penny M. Johnson  
Penny M. Johnson  
Official Court Reporter

STATE OF SOUTH CAROLINA )  
 COUNTY OF AIKEN )  
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 )  
 Evin Rae Davenport, SCDC #378081, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE SECOND JUDICIAL CIRCUIT

Case No. 2023-CP-02-00025

**ORDER OF DISMISSAL**

FILED August 5 20 25  
*Robert J. White* 1240  
 C.C.P. & G.S.  
*Charla Peartre* *cmr*  
 Deputy Clerk

**INTRODUCTION**

The matter before this Court is an action for post-conviction relief (PCR) commenced by Evin Rae Davenport (“Applicant”) on January 9, 2023. On June 9, 2025, a hearing into the matter was convened before the Honorable Debra R. McCaslin at the Aiken County Courthouse. Applicant was present and represented by Ashley A. McMahan, Esquire. Assistant Attorney General Cruise Mitchell represented the State. At the evidentiary hearing, testimony was taken from Applicant and De Grant Gibbons, Esquire (“Counsel”).

After hearing the testimony at the PCR hearing and upon full review of the record, this Court finds Applicant’s allegations regarding ineffective assistance of counsel are without merit. For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Aiken County Clerk of Court. During its June 2021 term, the Aiken County Grand Jury indicted Applicant for trafficking heroin 4–14 grams (2021-GS-02-00757), trafficking methamphetamine 10–28 grams (2021-GS-02-00756), and trafficking

methamphetamine 10–28 grams (2021-GS-02-00762). Applicant was represented by Second Circuit Public Defender De Grant Gibbons. The case was prosecuted by Second Circuit Solicitor J. William Weeks.

On June 13, 2022, Applicant pleaded guilty before the Honorable Courtney Clyburn Pope. Pursuant to negotiations between the State and Applicant, Judge Clyburn Pope sentenced Applicant to 25 years for each trafficking methamphetamine charge, and 25 years for the lesser included offense of possession with intent to distribute heroin, third or subsequent offense; with those sentences to be served concurrently.<sup>1</sup> Applicant did not file a direct appeal.

**FACTS PRESENTED AT THE GUILTY PLEA HEARING**

*TRAFFICKING IN METHAMPHETAMINE (2021-GS-02-00762)*

The Solicitor gave the following recitation of the facts during the plea proceeding:

The first incident occurred with narcotics officers with the Aiken County Sheriff's Department making a purchase of methamphetamine from Ms. Davenport in the parking lot of the Clearwater shopping center. The drugs were analyzed and came back over the statutory ten-gram limit for trafficking in methamphetamine.

(Gp. Tr. p. 3, ll. 15-25 – p. 4, ll. 1-3).

*TRAFFICKING IN METHAMPHETAMINE (2021-GS-02-00756), TRAFFICKING IN HEROIN (2021-GS-02-00757)*

The Solicitor gave the following recitation of the facts during the plea proceeding:

The second event occurred on the date I indicated and was the result of them taking warrants for the July 23, 2020 incident to arrest her, maybe on other warrants too, that were out there pending. They went to her house, which is located in Aiken, where she was living in Aiken County. I think it was on Beech Island Avenue in Aiken County. She was present there. When she opened the door, the officers indicated... that she broke out in tears and when questioned about the drugs, she

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<sup>1</sup> The following charges were nolle prossed in exchange for the plea: habitual traffic offender (2021-GS-02-00753), failure to stop for a blue light (2021-GS-02-00754), driving under suspended license (2021-GS-02-00755), possession of a controlled substance (2021-GS-02-00760), possession of contraband (2022-GS-02-1000), manufacture/possession of scheduled substance (2022-GS-02-00998), failure to stop for a blue light (2022-GS-02-1002), trafficking in methamphetamine (2022-GS-02-1003).

said, they're in my purse in the bedroom. There was sufficient quantity of methamphetamine to get by the statutory inference level of ten grams. The heroin that was confiscated from the same purse came back just shy of trafficking in heroin inference level, so we have accepted a plea of possession with intent to distribute heroin third offense.

(Gp. Tr. p. 4, ll. 4-22).

### CURRENT APPLICATION

In her application for post-conviction relief, Applicant alleges she is being detained unlawfully for the following reasons:

1. Illegal Sentence
  - a. "This should be my 2<sup>nd</sup> strike (7-30 yrs) not my 3<sup>rd</sup> strike (25 years)... I've only ever had one trafficking before."
2. Ineffective Assistance of Counsel
  - b. "I was also told my heroin charge was a pwid charge not a trafficking. I was told my weight was 3.2 just below the trafficking limit."<sup>2</sup>

On June 4, 2025, Applicant amended her application to include the following allegations:

1. Ineffective Assistance of Counsel of Chief Public Defender De Grant Gibbons:
  - a. Informed Applicant that the two trafficking charges she pleaded guilty to were parole eligible. She was told she would get a certain amount of years that she would have to serve before she was eligible for release.
  - b. Never informed by Mr. Gibbons that she was LWOP eligible.
  - c. Failed to adequately explain the possible range of time she was facing on each of her pending charges.
  - d. Did not inform the Applicant in a timely manner about the trial date and had not met with counsel enough to know what his defense would be at trial. Applicant wanted a trial but took the plea offer after getting frustrated with counsel.

Before this Court are the records of the Aiken County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the records of the current action.

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<sup>2</sup> No evidence or testimony was presented at the evidentiary hearing regarding this allegation. However, this Court notes this issue was addressed by the Solicitor at the plea hearing, in which he stated, "[t]he heroin that was confiscated from the same purse came back just shy of trafficking in heroin inference level, so we have accepted a plea of possession with intent to distribute heroin third offense." (Plea Tr. p. 4). Thus, this allegation is without merit.

INEFFECTIVE ASSISTANCE OF COUNSEL, GENERALLY

In a PCR action, Applicant bears the burden of proving the allegations in his application by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985); Rule 71.1(e), SCRPC. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel’s performance was deficient. *Strickland*, 466 U.S. at 687; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy

judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 694). “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112.

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

#### **FINDINGS OF FACT & CONCLUSIONS OF LAW**

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State’s return, this Court proceeds to the claims raised in the application and finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this

Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

*Illegal Sentence Allegation*

Applicant alleges this should have only been her second strike, not her third since she has had only one prior trafficking conviction. This allegation is without merit. Applicant was sentenced as a third offender based on her prior convictions for distribution of methamphetamine (2017-GS-02-00104) and trafficking in methamphetamine, 10 – 28 grams (2018-GS-02-02129). Applicant was correctly and lawfully sentenced as a third offender pursuant to S.C. Code Ann. § 44-53-470(A)(4) (1985), which provides:

(A) An offense is considered a second or subsequent offense if,

- (4) for an offense involving a controlled substance other than marijuana pursuant to this article, the offender has at any time been convicted of a second or subsequent violation of a controlled substance offense provision, other than a marijuana offense provision, of this article or of another state or federal statute relating to narcotic drugs, depressants, stimulants, or hallucinogenic drugs.

Applicant's two prior drug convictions both involved a narcotic drug—specifically methamphetamine. Although her guilty pleas to distribution of methamphetamine (2017-GS-02-00104) and trafficking in methamphetamine (2018-GS-02-02129) were entered at the same proceeding, they are considered separate offenses for sentencing purposes because they “occurred separately and did not stem from continuous course of conduct.” *Robinson v. State*, 387 S.C. 568, 693 S.E.2d 402, 405. The sentencing sheets for these convictions demonstrate these offenses occurred months apart. Thus, this Court finds Applicant was properly sentenced as a third offender, as her two prior drug convictions were appropriately used to enhance her sentence.

Accordingly, this Court finds this allegation is DENIED.

***Misadvise Regarding Parole Eligibility***

Applicant alleges Counsel was ineffective for erroneously advising her that her two trafficking convictions were parole eligible. This Court finds this allegation without merit.

At the evidentiary hearing, Applicant testified she believed she was sentenced to 25 years with parole eligibility. She explained she believed she would be parole eligible after serving 85% of her sentence. Applicant testified she accepted the 25-year plea offer when she learned she was facing a potential life without parole sentence. However, Counsel testified that he advised Applicant she was facing a serious situation, including the possibility of a life without parole sentence and consecutive sentences. Counsel testified he does not understand the source of Applicant's confusion as serving 85% of a sentence is indicative of a no-parole offense.

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. *Boykin v. Alabama*, 395 U.S. 238, 243 (1967). Additionally, the defendant "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999).

Parole eligibility is a collateral consequence of sentencing which a defendant need not be specifically advised before entering a guilty plea. *Griffin v. Martin*, 278 S.C. 620, 300 S.E.2d 482 (1983). See *Brown v. State*, 306 S.C. 381, 412 S.E.2d (1991) (guilty plea is not rendered involuntary if the defendant is not informed of the collateral consequences of his sentence). "However, if trial Counsel actively misinforms the defendant about parole eligibility, the defendant must prove [she] relied on the misinformation to receive PCR". *Frasier v. State*, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

This Court finds that Counsel properly informed Applicant of the consequences of her plea. Based on the testimony of both Applicant and Counsel, this Court finds Applicant was fully informed she would have to serve 85% of her sentence upon pleading guilty to trafficking. Counsel credibly testified he advised Applicant she was facing a life without parole sentence, and that the reference to serving 85% of her sentence was in the context of explaining no-parole offenses, where an inmate must serve at least 85% of the sentence imposed.

By Applicant's own admission she was aware she would be required to serve 85% of her sentence by pleading guilty. The record from her guilty plea further demonstrates she was advised of her constitutional rights, fully understood the consequences of her guilty plea, and knowingly accepted the terms of the negotiated plea.

Accordingly, this Court finds Counsel did not actively misinform Applicant regarding parole eligibility, and Applicant's guilty plea was knowing and voluntary.

***Failure to Inform Applicant She Was LWOP Eligible***

Applicant contends Counsel never informed her she was LWOP eligible. This Court finds Counsel's credible testimony refutes this allegation.

At the evidentiary hearing, Applicant testified she was set on proceeding to trial but decided to plead guilty after being advised of the possibility of receiving life without parole. Applicant admitted she accepted the plea offer specifically to avoid the possibility of a life sentence. Applicant testified that Counsel discussed a 25-year plea offer with her, and she hoped that accepting the plea would result in dismissal of the remaining charges, which in fact occurred. Applicant testified that attorney Lir Derieg informed her of the potential for a life sentence.

Counsel testified he met with Applicant five times, including multiple video conferences and meetings with his investigator. Counsel testified that, upon review of his notes, Applicant did

not wish to proceed to trial. Counsel explained Applicant consulted with other attorneys during the course of his representation with her. Counsel explained he was the one who informed Lir Derieg that she was facing a potential life without parole sentence.

This Court finds Applicant was properly advised of the possibility of receiving a life without parole sentence prior to her guilty plea. Applicant herself acknowledged she accepted the plea offer to avoid the possibility of a life without parole sentence. This admission was further corroborated by Counsel's credible testimony, which established that Applicant did not wish to proceed to trial due to her potential sentencing exposure. Based on Applicant's admission she was aware of the possibility of receiving a life without parole sentence prior to her guilty plea and Counsel's testimony he advised her of the same, this Court finds Counsel was not deficient.

Moreover, Applicant has failed to prove she was prejudiced by Counsel's alleged failure to advise her of this possibility. When an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, [s]he would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S. Ct. 366, 370 (1985).

Here, Applicant admitted that upon learning of the potential for a life sentence, she had no intention of proceeding to trial. This Court finds that Applicant correctly understood her two drug charges could be tried separately resulting in the possibility of life without parole. Counsel's testimony corroborates this. Thus, Applicant could not possibly be prejudiced by any alleged deficiency regarding this allegation.

Accordingly, this allegation is DENIED.

*Failure to Explain Possible Range of Time She Was Facing*

Applicant alleges Counsel was ineffective for failing to adequately explain the possible range of time she was facing on each of her pending charges. The record of Applicant's guilty plea refutes this allegation. At the outset of the plea, the Court engaged in the following colloquy with Counsel:

The Court: Mr. Gibbons, have you explained to Ms. Davenport the nature of her charges, the possible penalties and her Constitutional rights regarding these cases?

Mr. Gibbons: I have, Your Honor.

The Court: Do you believe that she has understood that?

Mr. Gibbons: Yes, ma'am.

(Plea Tr. p. 3).

At the close of his recitation of the facts, the Solicitor stated:

All of the indictments before you today, we have included a negotiation for a negotiated sentence of 25-year minimum under the statute. She has a number of other pending charges, Your Honor, as a result of several different arrests. With this plea, we're dismissing those pending indictments.

(Plea Tr. p. 5).

The Court then engaged in the following exchange with Applicant:

The Court: Did you hear everything that the Solicitor told me about your case?

The Defendant: Yes, ma'am.

The Court: Are you in agreement with those facts?

The Defendant: Yes, ma'am.

(Plea Tr. p. 6)

Following Counsel's mitigation presentation, the Court inquired of the Solicitor as to the following matters concerning the sentence negotiation:

The Court: Mr. Weeks, just so I'm clear on the negotiated sentence, it is 25 to 30?

Mr. Weeks: 25 to 30 is the sentence range - -

Mr. Gibbons: The negotiation is 25. It carries 25 to 30.

Mr. Weeks: 25, concurrent on them.

The Court: Ms. Davenport, you understand that when you plead guilty, you give up your right to a jury trial?

The Defendant: Yes, ma'am.

The Court: And I understand that you wish to go forward with the plea today?

The Defendant: Yes, ma'am.

(Plea Tr. pp. 8–9).

The record of the plea clearly demonstrates the terms of the negotiated sentence were raised several times. Counsel informed the Court he advised Applicant of the terms of the negotiation, and that she understood them. Applicant, under oath, affirmed she agreed with the Solicitor's recitation of the case, which included the specific terms of the negotiated sentence. Lastly, Counsel informed the Court that Applicant was aware of her sentencing exposure, including the possibility of life without parole and the imposition of consecutive sentences. (Plea Tr. p. 8). Therefore, this Court finds Counsel fully informed Applicant of both the potential sentencing outcomes and the specific terms of the negotiated sentence to which she ultimately agreed. Thus, this Court finds Applicant has failed to prove deficiency or prejudice as to this allegation.

Accordingly, this Court finds this allegation is DENIED.

***Failure to Adequately Inform Applicant of Trial Date and Failure to Prepare a Defense for  
Trial***

Applicant alleges Counsel was ineffective for failing to inform Applicant in a timely manner about the trial date and for not meeting with counsel enough to know what his defense

would be at trial. Applicant wanted a trial but took the plea offer after getting frustrated with counsel. This Court finds this allegation is without merit.

Applicant testified she met with Counsel approximately three times before her case was set for trial, and an additional three or four times afterward, totaling six to eight meetings. She avers that while she and Counsel discussed plea offers, they never discussed possible defenses. However, Counsel credibly testified Applicant did not desire proceeding to trial. Counsel testified he met with Applicant multiple times in which he reviewed discovery with her. He explained that the discovery included video recordings of confidential informant buys, which implicated Applicant. Counsel believed the only potential defense at trial was to argue that Applicant was merely a “mule” or “go-between”, which he considered a weak defense.

This Court finds that Counsel was not ineffective in his consultations with Applicant. At the time of her plea, Applicant asserted she had enough time to speak with Counsel and was completely satisfied with his representation of her. (Plea Tr. p. 5). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed.” *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977); see also *Jamison v. State*, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014)). Admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements. *Id.* at 137–38, 654 S.E.2d at 874; see also *Blackledge*, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a “formidable barrier in any subsequent collateral proceedings”).

Furthermore, Applicant suggests a failure to adequately meet with Counsel prior to the plea. This Court finds the testimony at the evidentiary hearing, and the record of Applicant's guilty plea, refutes these allegations. There is no established "minimum number of meetings between counsel and client prior to trial necessary to prepare an attorney to provide effective assistance of counsel." *United States v. Olson*, 846 F.2d 1103, 1108 (7th Cir.1988) (there is no constitutional minimum number of meetings between attorney and client and observes that an experienced attorney may get more out of a single meeting than a neophyte); *Moody v. Polk*, 408 F.3d 141, 148 (4th Cir. 2005); *Campbell v. Polk*, 447 F.3d 270, 279, n.2 (4th Cir. 2006) ("we cannot conclude that the fact that Campbell's counsel only met with him five times before trial made them ineffective."). "[B]revity of consultation time between a defendant and his counsel, alone, 'cannot support a claim of ineffective assistance of counsel.'" *Davis v. State*, 44 So. 3d 1118, 1130 (Ala. Crim. App. 2009) (quoting *Murray v. Maggio*, 736 F.2d 279, 282 (5th Cir. 1984)); *White v. Godinez*, 301 F.3d 796, 800 (7th Cir. 2002) ("A brief consultation does not by itself establish that counsel's performance was inadequate."); *Chavez v. Pulley*, 623 F. Supp. 672, 685 (E.D. Cal. 1985) ("brevity of consultation time between a defendant and his counsel alone cannot support a claim of ineffective assistance of counsel," especially where the defendant "fails to allege what purpose further consultation with his attorney would have served and fails to demonstrate how further consultation with his attorney would have produced a different result"). Both Applicant and Counsel testified that they met several times prior to the guilty plea proceeding. Counsel credibly testified that he reviewed the discovery materials and prepared a possible defense, though he believed it to be weak. Thus, this Court finds Counsel was not deficient in consulting with or reviewing discovery with Applicant

Moreover, Applicant has failed to present evidence or testimony as to how further

preparation would have resulted in Applicant proceeding to trial. Applicant did not offer any viable alternative defenses to her charges that would have resulted in her proceeding to trial rather than pleading guilty. In order to prevail upon a claim that counsel did not adequately prepare or investigate a defense, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Harris v. State*, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. *Id.* (citing *Davis v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); *Skeen v. State*, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Thus, Applicant has failed to prove she suffered prejudice as to this allegation.

Accordingly, this allegation is DENIED.

#### 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 his application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. This Court finds Applicant freely, knowingly, and voluntarily pleaded guilty. Therefore, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

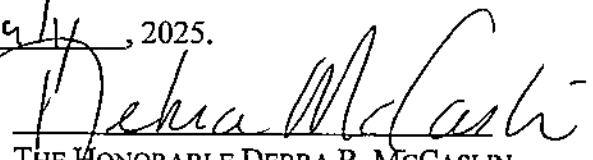
Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of

the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant must remain in the custody of the State.

AND IT IS SO ORDERED this 25 day of July, 2025.

  
THE HONORABLE DEBRA R. MCCASLIN  
Presiding Judge  
Second Judicial Circuit

Aiken, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )  
 )

INDICTMENT FOR  
TRAFFICKING METHAMPHETAMINE

§ 44-53-0375(C)(1)(a)

At a Court of General Sessions, convened on October 1, 2018, the Grand Jurors of Aiken County present upon their oath:

That EVIN RAE DAVENPORT did in Aiken County, South Carolina, on or about November 19, 2017, knowingly or intentionally having in actual or constructive possession of at least 10 grams but less than 28 grams of Methamphetamine, a controlled substance under provisions of Section §44-53-110, et. seq., Code of Laws of South Carolina (1976), as amended, such possession not having been authorized by law.

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

  
\_\_\_\_\_  
J. STROM THURMOND, SOLICITOR

WITNESSES

SC Dept. of Public Safety (SCHP)

William K. Safford

Law Enforcement Case #: 17CH166970HP02

JWW

ARREST WARRANT NUMBER

2017A0210201977 FILED September 21 20 18

Robert J. White  
C.C.P. & G.S.

Ann Sanders  
Deputy Clerk

ACTION OF GRAND JURY

Foreperson of Grand Jury  
Date: September 27, 2018

VERDICT

Foreperson of Petit Jury  
Date:

DOCKET NO. 2018GS0202129

**The State of South Carolina**

**County of Aiken**

**COURT OF GENERAL SESSIONS**

**OCTOBER TERM 2018**

**THE STATE**

**vs.**

**EVIN RAE DAVENPORT**

**CDR #: 0450**

**Indictment for**

**TRAFFICKING METHAMPHETAMINE**

**§ 44-53-0375(C)(1)(a)**

**J. STROM THURMOND, SOLICITOR**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )  
 )

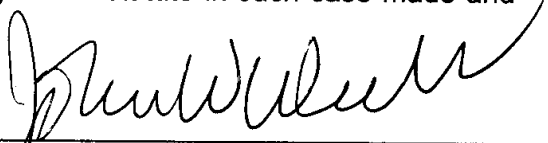
INDICTMENT FOR  
POSSESSION WITH INTENT TO  
DISTRIBUTE METHAMPHETAMINE

§ 44-53-0375 (B) (1)

At a Court of General Sessions, convened on Februray 13, 2017, the Grand Jurors of Aiken County present upon their oath:

That EVIN RAE DAVENPORT did in Aiken County, South Carolina, on or about April 10, 2016, knowingly or intentionally possess with intent to distribute a quantity of Methamphetamine, a controlled substance under provisions of §44-53-110, *et. seq.*, *Code of Laws of South Carolina (1976)*, as amended, such possession not having been authorized by law.

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

  
\_\_\_\_\_  
J. STROM THURMOND, SOLICITOR

WITNESSES

SC Dept. of Public Safety (SCHP)

∞

V A Albert

Law Enforcement Case #: 16CH054118HP02

JWW

ARREST WARRANT NUMBER

2016A0210200578 FILED 9 February 2017

*Robert J. White*  
C.C.P. & G.S.

*Angel Miles am*  
Deputy Clerk

ACTION OF GRAND JURY

TRUE bill

*Kevin J. Oglesby*

Foreperson of Grand Jury  
Date: February 9, 2017

VERDICT

Foreperson of Petit Jury  
Date:

DOCKET NO. 2017GS0200104

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

FEBRURAY TERM 2017

THE STATE  
vs.

EVIN RAE DAVENPORT

CDR #: 3198

Indictment for

POSSESSION WITH INTENT TO  
DISTRIBUTE METHAMPHETAMINE

§ 44-53-0375 (B) (1)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )  
 )

INDICTMENT FOR  
TRAFFICKING HEROIN  
§ 44-53-0370(e)(3)(a)2

At a Court of General Sessions, convened on June 7, 2021, the Grand Jurors of Aiken County present upon their oath:

That EVIN RAE DAVENPORT did in Aiken County, South Carolina, on or about September 23, 2020, commit the offense of Trafficking Heroin by knowingly or intentionally having in actual or constructive possession four (4) grams or more but less than fourteen (14) grams of Heroin, a controlled substance under provisions of Section §44-53-0110, et. seq., Code of Laws of South Carolina (1976), as amended, such possession not having been authorized by law.

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



\_\_\_\_\_  
BILL WEEKS, SOLICITOR

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WITNESSES

Aiken County Sheriff's Office

Charles G. Benfield Jr.

Law Enforcement Case #: 20-035834

DOCKET NO. 2021GS0200757

The State of South Carolina

County of Aiken

JWW

ARREST WARRANT NUMBER

2020A0210400363

FILED June 3 2021

Robert J. White  
C.C.P. & G.S.  
Paige Barnes PB  
Deputy Clerk

COURT OF GENERAL SESSIONS

JUNE TERM 2021

THE STATE  
vs.

EVIN RAE DAVENPORT

ACTION OF GRAND JURY

True Bill  
Rhonda Ward

Foreperson of Grand Jury  
Date: June 3, 2021

VERDICT

CDR #: 0156

Indictment for

TRAFFICKING HEROIN

§ 44-53-0370(e)(3)(a)2

BILL WEEKS, SOLICITOR

Foreperson of Petit Jury  
Date:

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )  
 )


INDICTMENT FOR  
TRAFFICKING METHAMPHETAMINE

§ 44-53-0375(C)(1)(c)

At a Court of General Sessions, convened on June 7, 2021, the Grand Jurors of Aiken County present upon their oath:

That EVIN RAE DAVENPORT did in Aiken County, South Carolina, on or about July 23, 2020, knowingly sell, manufacture, cultivate, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this State, or did knowingly, actually, or constructively possess, or did knowingly attempt to become in actual or constructive possession of at least 10 grams but less than 28 grams of Methamphetamine, a controlled substance under provisions of Section §44-53-110, et. seq., Code of Laws of South Carolina (1976), as amended, such possession not having been authorized by law.

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

  
\_\_\_\_\_  
BILL WEEKS, SOLICITOR

89

WITNESSES

Aiken County Sheriff's Office  
Charles G. Benfield Jr.  
Law Enforcement Case #: 20-035834

DOCKET NO. 2021GS0200762

**The State of South Carolina**  
**County of Aiken**

JWW

COURT OF GENERAL SESSIONS

JUNE TERM 2021

ARREST WARRANT NUMBER

2020A0210900090

FILED June 3 2021

Robert J. White  
C.C.P. & G.S. *PB*  
Paige Barnes  
Deputy Clerk

THE STATE  
vs.

EVIN RAE DAVENPORT

ACTION OF GRAND JURY

*True Bill*

Rhonda Ward

Foreperson of Grand Jury  
Date: June 3, 2021

CDR #: 0452

Indictment for

VERDICT

TRAFFICKING METHAMPHETAMINE

§ 44-53-0375(C)(1)(c)

Foreperson of Petit Jury  
Date:

BILL WEEKS, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Aiken
STATE VS.
Evin Rae Davenport

INDICTMENT/CASE#: 2018GS0202129
A/W#: 2017A0210201977
Date of Offense: 11/19/2017
S.C. Code § : 44-53-0375(C)(1)(a)
CDR Code #: 0450

AKA:
Race: White Sex: F Age: 27
DOB: -1991 SS#:
Address: Belair Rd
City, State, Zip: Belvedere, SC 29841-2689
DL#: SID#:
\*CDL Yes No CMV Yes No Hazmat Yes No

SENTENCE SHEET 3 yr -> 10 yrs +25,000

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Drugs / Trafficking in meth. or cocaine base - 10 g or more, but less than 28 g - 1st offense

in violation of § 44-53-0375(C)(1)(a) of the S.C. Code of Laws, bearing CDR Code # 0450
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45

The charge is 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.

Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 5 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. DEF. HAS HOLD FROM ARIZONA. WILL ATU

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDOC. CREDIT 307 DAYS SERVED

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 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Payment Terms: Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing

Recipient: Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund Other: PAY COURT COSTS WITHIN 5 YRS

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso (Public Def/Probation) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments) \$ 8.25, TOTAL \$ 283.25

Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund Other: PAY COURT COSTS WITHIN 5 YRS

Clerk of Court/ Deputy Clerk Angel Miller
Court Reporter: Brenda Sigwald
SCCA/217 (04/2018) VIOLENT FELONY MAKES IT UNLAWFUL FOR DEF. TO TRANSPORT, SHIP, RECEIVE, OR POSSESS ANY FIREARM OR AMMO. - SPECIFIC FINDING ON RECORD

Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.
Presiding Judge William P. Haskins
Judge Code: 2050
Sentence Date: Sept. 21, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS <sup>91</sup>

COUNTY OF Aiken  
STATE VS.

INDICTMENT/CASE#: 2017GS0200104

Evin Rae Davenport

A/W#: 2016A0210200578

AKA: \_\_\_\_\_

Date of Offense: 4/10/2016

Race: White Sex: F Age: 27

S.C. Code § : 44-53-0375 (B) (1)

DOB: ██████-1991 SS#: ██████

CDR Code #: 3198

Address: ██████ Belair Rd

City, State, Zip: Belvedere, SC 29841-2689

DL#: ██████ SID#: ██████

SENTENCE SHEET *0-15 yrs for 25,000*

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

CONVICTED OF or  PLEADS

In disposition of the said indictment comes now the Defendant who was TO: Drugs/ distribution, etc. of methamphetamine, 1st

in violation of § 44-53-0375 (B) (1) of the S.C. Code of Laws, bearing CDR Code # 3198

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

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. \_\_\_\_\_ (defendant's initials)

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

ATTEST: J. [Signature] 5989 Evin Rae Davenport [Signature] 7895  
Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
for a determinate term of 5 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. *DEF. HAS HOLD FROM ARIZONA.* *ATU*

CONCURRENT or  CONSECUTIVE to sentence on:  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the 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 16-25-20 or 16-25-65 (Domestic Violence ) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_ Obtain GED   
 Set by SCDPPPS \_\_\_\_\_ Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

Recipient: \_\_\_\_\_ May serve W/E beginning \_\_\_\_\_

\*Fine: \_\_\_\_\_ Substance Abuse Counseling   
§ 14-1-206 (Assessments 107.5 %) \$ \_\_\_\_\_ Random Drug/Alcohol testing

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00  
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_  
§ 56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_  
§ 56-1-286 (DUI Breath Test) \$25 \$ \_\_\_\_\_

§ 56-1-286 (DUI Breath Test) \$25 \$ \_\_\_\_\_  
Proviso (Public Def/Probation) \$500 \$ \_\_\_\_\_  
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ 150.00  
§ 50-21-114 (BUI Breath Test Fee) \$50 \$ \_\_\_\_\_  
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_

3% to County (if paid in installments) \$ 8.25  
TOTAL \$ 283.25

Clerk of Court/ Deputy Clerk Sharon Spivey  
Court Reporter: Brenda Segura

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

\$ \_\_\_\_\_ paid to Public Defender Fund  
Other: PAY COURT COSTS W/IN 5 YRS.

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

Presiding Judge William P. [Signature]  
Judge Code: 2050  
Sentence Date: Sept. 21, 2018