

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Richland County

R. Knox McMahon, Circuit Court Judge

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WILLIAM H. WARNER, JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2013-001274

---

APPENDIX

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WANDA H. CARTER  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON  
Attorney General

MEGAN HARRIGAN  
Assistant Attorney General

P. O. Box 11549  
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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FORM 5

STATE OF SOUTH CAROLINA )  
 )  
 County of RICHLAND )  
 )  
William Harvey Warner, Jr. )  
 Full name and prison number (if any) of Applicant )  
 )  
 v. )  
 )  
 State of South Carolina )  
 )  
 )  
 )

IN THE COURT OF COMMON PLEAS  
2011-CR-400-5587

AMENDED

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 Not currently detained.
2. Name and location of Court which imposed sentence Richland County General Sessions, Columbia, SC
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2011-GS-40-02642
  - (b) \_\_\_\_\_

- (c) \_\_\_\_\_
- 5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) April 28, 2011
  - (b) Driver's license suspended (Restricted to and from work)
  - (c) for six months, court costs and fine
- 6. Check whether a finding of guilty was made:
  - (a) after a plea of guilty Yes.
  - (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. N/A
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (b) the result in each such Court to which you appealed:
    - i. N/A
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (c) the date of each such result:
    - i. N/A
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (d) if known, citations of any written opinion or orders entered pursuant to such results:
    - i. N/A
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
- 9. If you answered "no" to (7), state your reasons for not so appealing:
  - (a) Mr. Warner was unaware of the consequences of the plea bargain,
  - (b) particularly as they related to his employment.

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

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

(a) Mr. Warner is not being held in custody. Mr. Warner believes that his sentence is subject to collateral attack because the SC DMV  
(b) improperly revoked his license under SC Code Ann §56-1-745, which  
(c) had already been repealed and no longer in effect at the time he was sentenced.

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

(a) N/A

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

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

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

(a) any petition in a State Court under South Carolina Law? No.

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.

(d) any other petitions, motions or applications in this or any other Court? No.

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

(a) the specific nature thereof:

i. N/A

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

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

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

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

i. N/A

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

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

No. \_\_\_\_\_

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

(a) which grounds have been presented:

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

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

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

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

- (a) Mr. Warner has served the six month suspended license, and
- (b) he did not understand the consequences of the plea until
- (c) now.

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? Yes.
- (c) your sentencing? Yes.
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No.
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?  
Yes only as to the current petition. No to all others.

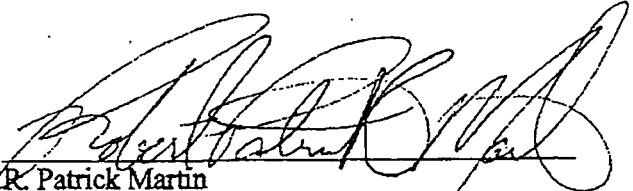
18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
  - i. Mark A. Sawyer, Jr. as to 17(a), (b), and (c)  
Richland County Judicial Center
  - ii. 1701 Main St. Columbia, SC 29201
  - iii. R. Patrick Martin with the Lazenby Law Firm as to 17(e)  
134 Oakland Avenue, Spartanburg, SC 29302
- (b) the proceedings at which each such attorney represented you:
  - i. Pre-trial as to Mark Sawyer, Jr.
  - ii. In the preparation of the present petition as to  
R. Patrick Martin
  - iii. \_\_\_\_\_

19. State clearly the relief you seek in filing this application:  
I wish for the State to remove the suspension of my driver's  
license from my record so that I can resume employment.

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

Respectfully submitted,



R. Patrick Martin

LAZENBY LAW FIRM, LLC  
134 Oakland Ave. (29302)  
Post Office Box 6099  
Spartanburg, SC 29304  
Phone: (864) 804-5050  
Fax: (864) 804-5051  
Email: [patrick@lazenbylawfirm.com](mailto:patrick@lazenbylawfirm.com)

**ATTORNEY FOR APPLICANT**

December 22, 2011

STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )  
 William H. Warner, Jr., )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Defendant(s). )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS


CASE NO: 2011-CP-40-5587

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify on December 22, 2011, a true and correct copy of the Amended Application for Post-Conviction Relief was served via US Mail upon Brian Petrano, Esq., by mailing to:

Brian T. Petrano, Esq.  
 S.C. Attorney General's Office  
 PO Box 11549  
 Columbia, SC 29211-1549

By:



\_\_\_\_\_

Jessica E. Holmen, Paralegal

LAZENBY LAW FIRM, LLC  
 PO Box 6099  
 Spartanburg, SC 29304  
 134 Oakland Ave. (29302)  
 Phone: (864) 804-5050  
 Fax: (864) 804-5051  
 Email: [alan@lazenbylawfirm.com](mailto:alan@lazenbylawfirm.com)

**ATTORNEY FOR APPLICANT**

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 WARNER William H - )  
 # NI, )  
 )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS

2011CP4005587

RETURN

2012 JAN 10 AM 10:29  
 JEANETTE W. MCBRIDE  
 C.C.P. & G.S.  
 RICHLAND COUNTY  
 FILED

The Respondent, making its Return to the application for post conviction relief (PCR) filed August 23, 2011, would respectfully show this Court:<sup>1</sup>

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was represented by Mark A. Sawyer, Esquire. On April 28, 2011, following a guilty plea, the Applicant was sentenced by The Honorable Caroline W. Streamer. The Applicant had been indicted and/or convicted of the following:

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<sup>1</sup>  
<http://www4.rcgov.us/publicindex/PICaseDetails.aspx?County=40+&Casenum=2011CP4005587&CourtType=G&CaseType=Civil&CourtAgency=40002>

Poss. of Marijuana over an ounce - (2011-GS-40-2642). The Applicant is NOT currently incarcerated.

## II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the trial transcript, and the Applicant's applicable direct appeal files.<sup>2</sup> The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

### **Direct Appeal**

The Applicant did not appeal his conviction and/or sentence .

The application for post conviction relief (PCR) was filed August 23, 2011. Through appointed counsel, an amended application was filed on or about December 22, 2011.

## III.

For the purposes of this Return, the Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of

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<sup>2</sup> The transcript has not yet arrived, if one is even available.

counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at

625, citing Strickland. Second, counsel's deficient performance must have 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 of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). Even with respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985)c

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record.<sup>3</sup> The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent

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<sup>3</sup> The potentially issue(s) of fact are mostly legal issues as to whether S.C. Code § 56-1-745 was applicable as amended at the time of the Applicant's conviction. The issue of fact will be what counsel advised or should have advised the Applicant regarding the amended nature of S.C. Code § 56-1-745.

moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

The Applicant has submitted a motion for summary judgment. The Respondent agrees with the Applicant's motion that it does appear that the essence of this case is a legal issue, i.e. the applicability of the amended version of S.C. Code § 56-1-745. The Respondent will await this Court's ruling if an expedited hearing is warranted. The Respondent takes this opportunity to proffer a potential exhibit at the hearing regarding this issue (exhibit "D" is pasted on the following page):



**South Carolina Court Administration**  
 South Carolina Supreme Court  
 Columbia, South Carolina

ROSALYN W.  
 FRIERSON  
 DIRECTOR

1015 BLANTER STREET, SUITE 308  
 COLUMBIA, SOUTH  
 CAROLINA 29201  
 TELEPHONE: (803) 734-1900  
 FAX: (803) 734-1288  
 E-MAIL: (803)734-2223

**MEMORANDUM**

**TO:** Magistrates and Municipal Judges  
**FROM:** Robert L. McCurdy, Assistant Director  
**RE:** New Legislation: Driver's License Suspension  
**DATE:** April 15, 2011

On April 12, 2011, Governor Haley signed into law House Bill 3668, R. 30 (Act No. not yet assigned) repealing §56-1-745, which required that a defendant's driver's license be suspended upon conviction of a controlled substance violation. The Bill is effective on April 12, 2011 and, per the savings clause, applies only to charges made on or after the effective date. Therefore, any qualifying charges pending prior to April 12, 2011, are, upon conviction, subject to a driver's license suspension. In your courts, the only qualifying charge would be simple possession of marijuana or hashish, §44-53-370(d)(4). You may view this legislation in its entirety at the following link: [http://www.scstatehouse.gov/ sess119\\_2011\\_2012/bills/3668.htm](http://www.scstatehouse.gov/ sess119_2011_2012/bills/3668.htm).

Should you have questions concerning this matter, please do not hesitate to contact this Office.

RLM/mhb

EXHIBIT D

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, D. Alan Lazenby, Esquire regarding when the hearing should be set.<sup>4</sup>

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

BRIAN T. PETRANO  
Assistant Attorney General

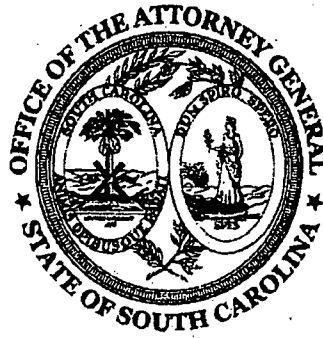
By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
Telephone: (803) 734-3737  
[bpetrano@scag.gov](mailto:bpetrano@scag.gov)

January 3, 2012

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<sup>4</sup> The current PCR Roster for the 5<sup>th</sup> Circuit is available at <http://www.scag.gov/criminal-litigation/postconvictionrelief>  
WARNER William H - State's Return - (2011CP4005587)  
Page 7 of 7



ALAN WILSON  
ATTORNEY GENERAL

Tuesday, January 03, 2012


Clerk of Court - Richland County  
Jeanette W. McBride  
PO Box 2766  
1701 Main Street, Room 205  
Columbia, SC 29202

Re: PCR (2011CP4005587) - WARNER William H, NI v. State

Richland County Clerk of Court:

Enclosed for filing is the State's Return in the PCR matter for:  
WARNER William H, NI v. State  
(2011CP4005587).

Thank you for all of your assistance in this matter,

  
Brian T. Petrano  
Assistant Attorney General  
[bpetrano@scag.gov](mailto:bpetrano@scag.gov)

Enc.  
cc. D. Alan Lazenby, 134 Oakland Avenue, Spartanburg, SC 29302

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 WARNER William H - )  
 # NI, )  
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 Applicant, )  
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 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS

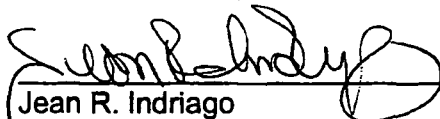
2011CP4005587

CERTIFICATE OF SERVICE

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

D. Alan Lazenby, 134 Oakland Avenue , Spartanburg, SC 29302

DATED January 6, 2012.

  
 \_\_\_\_\_  
 Jean R. Indriago  
 Legal Assistant

RICHLAND COUNTY  
 FILED  
 2012 JAN 10 AM 10:29  
 JEANNETTE MCBRIDE  
 C.C.P. CLERK

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	CASE NO. 2011-CP-40-5587
	)	
WILLIAM H. WARNER,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Defendant.	)	
	)	

---

August 17, 2012  
Columbia, South Carolina

B E F O R E:

THE HONORABLE R. KNOX MCMAHON, Judge

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

PATRICK MARTIN, Esquire  
Attorney for the Plaintiff

ROB CORNEY, Esquire  
Office of the Attorney General  
Attorney for the Defendant

KRYSTAL J. SMITH  
Court Reporter

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I N D E X

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William H. Warner	
Direct Examination by Mr. Martin.....	10
Closing Arguments of Counsel.....	12
Court Reporter Certification.....	16

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
	(No Exhibits Presented)		

1 AUGUST 17, 2012

2 (WHEREAS this matter was scheduled for a post-conviction  
3 relief hearing, the applicant appeared along with his  
4 counsel of record. The hearing began at 10:38 a.m.)

5 MR. CORNEY: If I may approach, Your Honor?

6 THE COURT: Yes, sir.

7 MR. CORNEY: I'll bring you the packet up on Mr. William  
8 Warner.

9 THE COURT: All right. All right. Yes, sir?

10 MR. MARTIN: Your Honor, I also have the memorandum of  
11 law with some law attached to it.

12 THE COURT: All right. Thank you. All right, Mr.  
13 Attorney General?

14 MR. CORNEY: Yes, sir. May it please the Court, Your  
15 Honor. This is the PCR of William Warner, Docket Number 2011-  
16 CP-40-5587. Mr. Warner had a warrant issued for his arrest on  
17 March 15<sup>th</sup>, 2011, in Richland County for the charge of  
18 manufacturing marijuana. He appeared April 28<sup>th</sup>, 2011, at the  
19 Richland County General Sessions Court before the Honorable  
20 Benjamin Byrd, where he waived presentment to the grand jury  
21 on one count of possession of marijuana over one ounce and  
22 pled guilty. He was sentenced to six months imprisonment or a  
23 \$300 fine at that point in time.

24 He filed a PCR application August 23<sup>rd</sup>, 2011, and amended  
25 that application December 22<sup>nd</sup>, 2011. I believe he has an

1 issue with a suspension of a driver's license that he's  
2 bringing before the Court, Your Honor. He is represented  
3 today by Mr. Patrick Martin and we are prepared to go forward.

4 THE COURT: All right. Thank you. Mr. Martin?

5 MR. MARTIN: Yes, Your Honor. As a preliminary matter,  
6 we filed a motion for summary judgment. I believe we could  
7 possibly resolve this without testimony today as most of our  
8 claims are resolving -- are revolving around whether a statute  
9 remained in effect at the time of conviction.

10 THE COURT: All right.

11 MR. MARTIN: If Your Honor would like to hear the  
12 argument?

13 THE COURT: Certainly.

14 MR. MARTIN: Your Honor, on March 15<sup>th</sup>, 2011, Mr. Warner  
15 was charged with possession of marijuana in excess of one  
16 ounce, as the solicitor has told you, and on April 12<sup>th</sup>,  
17 Governor Haley repealed the statute under Title 15, Chapter 1,  
18 Section 745, and I'll refer to that as the driver's license  
19 statute. That statute required that anybody convicted of a  
20 drug offense had their license suspended for a mandatory six  
21 months.

22 But Mr. Warner was not sentenced until April 28<sup>th</sup>, sixteen  
23 days after the statute was repealed and our basic argument,  
24 Your Honor, is that 56-1-745, the driver's license statute,  
25 says that it only applies to someone convicted of a drug

1 possession crime. At the time that Mr. Warner was convicted,  
2 this statute was no longer in effect.

3 Now, it had a savings clause in there, but it was only as  
4 to pending criminal prosecutions and Mr. Warner was not being  
5 prosecuted under the driver's license statute. He was  
6 prosecuted under the possession charge. And so we believe  
7 that the statute had expired or been repealed at the time of  
8 sentencing and the State did not have the ability to sentence  
9 Mr. Warner to the driver's license suspension.

10 Accordingly, Your Honor, we're not asking for a new  
11 trial. We're just asking that the Court remove the suspension  
12 from Mr. Warner's record so that he can then have a better  
13 chance of getting employment. He's already served the  
14 sentence. He's just hoping to clean his record.

15 THE COURT: All right. Thank you, thank you very much.  
16 Yes, sir?

17 MR.. CORNEY: Yes, sir, Your Honor. This was under South  
18 Carolina Code Section 56-1-745. That was where the suspension  
19 of the driver's license came into play. It was repealed by  
20 the 2011 Act Number 13, which as counsel has said was signed  
21 into effect by Governor Haley on April 12<sup>th</sup>, 2011. Section Two  
22 of the Act did have a savings clause noting that the law would  
23 still apply to charges pending prosecution at the time the act  
24 was signed into effect.

25 Thereafter, Your Honor, the South Carolina Court

1 Administration -- and I don't mean to cite this as a -- as  
2 binding law of any -- of any kind, but just to give you a  
3 little bit of background, the South Carolina Court Admin --  
4 Court Administration issued a memorandum on April 15<sup>th</sup>, 2011,  
5 to the magistrate and municipal judges in the state -- this  
6 was three days after that statute was repealed -- essentially  
7 advising them to the change saying any qualifying charges  
8 pending prior to April 12<sup>th</sup>, 2011, are upon conviction subject  
9 to the driver's license suspension under the old law, saying  
10 that anything that was pending at the time this new statute  
11 came into effect are subject to the old law.

12       Based on the Richland County Clerk of Court's online  
13 database, the applicant was arrested March 15<sup>th</sup>, 2011. The  
14 charge was received by the General Sessions Court March 28<sup>th</sup>,  
15 2011, and therefore, the charge was pending at the time that  
16 this act was repealed April 12<sup>th</sup>, 2011, and the State would  
17 submit that under the savings clause and the interpretation  
18 obviously that the courts were using, at least at the  
19 magistrate and municipal court levels, this was -- he -- he  
20 was subject to the prior law.

21       We -- we've spoken with the South Carolina Department of  
22 Motor Vehicles. They say they take the same stance on that  
23 regard, so that would be the stance that we would submit to  
24 the Court that this was the effective law at the time and he  
25 was -- properly had his license suspended, Your Honor.

1 THE COURT: What -- why is this in a PCR?

2 MR. CORNEY: And, Your Honor, and that was something  
3 actually I wanted to touch on is I don't even know that this  
4 is a proper action to be brought in a post-conviction relief  
5 setting. I mean I guess if it's -- if it's some sort of newly  
6 discovered evidence or some sort of constitutional issue,  
7 which I don't think it is, I don't know that it's a proper  
8 subject to be brought in a post-conviction relief action  
9 regardless, and so I would submit that to the Court and I have  
10 that in my notes to actually bring to the Court's attention.  
11 So I'm glad you mentioned it.

12 I mean post-conviction relief is the setting for  
13 constitutional deprivations that occur during trial or mostly  
14 under El-Shabazz mainly ineffective assistance of counsel  
15 claims. There are some that fall outside of that under the  
16 statute obviously, but I would submit that's not a proper PCR  
17 claim and even on the merits it fails as he was properly  
18 sentenced, Your Honor.

19 THE COURT: Yes, sir?

20 MR. MARTIN: Yes, Your Honor. I don't have a copy. I  
21 can pass up my only copy of the statute 17-27-20, which says a  
22 person who has been convicted of or sentenced for a crime who  
23 claims that the sentence -- item number three, that the  
24 sentence exceeds the maximum authorized by law. That is the  
25 ground on which the PCR was founded, Your Honor, is that the

1 Court sentenced him to something that the Court was not  
2 authorized by the legislature to do at the time and ---

3 THE COURT: I don't believe that's part of the sentence.

4 MR. MARTIN: Your Honor?

5 THE COURT: Even in his application, he's got the date  
6 which sentence was imposed and the terms of the sentence,  
7 5(c), for six months and court costs or fine. I mean he -- he  
8 -- I'm not saying it's not a venue fault. Please don't get me  
9 wrong. I've heard cases in non-jury motion matters where, for  
10 example, an individual has had a history of DUIs and was  
11 trying to get his license back after a period of time and, of  
12 course, the Department has notice. Usually there's an AG  
13 that's assigned to motor vehicles -- Department of Motor  
14 Vehicles that deals with that.

15 MR. MARTIN: As an additional ground, Your Honor, whether  
16 this is or is not a proper forum, Mr. Warner's attorney did  
17 not tell him that prior to the hearing. We can introduce  
18 testimony to that effect, but I think that the fact the law  
19 was being repealed and he might have a defense to it in the  
20 first place is something that would fall within the normal  
21 ambit of effective counsel and failing to do so would  
22 constitute ineffective assistance of counsel.

23 THE COURT: All right. Well, if you want to call some  
24 witnesses, you may certainly do so, if that's what you want to  
25 do.

1 MR. MARTIN: Your Honor, I would call Mr. William Warner  
2 to the stand.

3 THE COURT: Okay.

4 MR. CORNEY: Your Honor, just for purposes of the record,  
5 I would just object to an amendment at this point in time.  
6 That wasn't the allegation brought forth in his application.  
7 There -- he's amending the allegation to essentially fit  
8 within the purview of the Court. He alleged essentially trial  
9 court error in giving him the unconstitutional sentence and  
10 that would be a direct appeal issue that he should have raised  
11 in a different forum. So the State would just object to the  
12 amendment of the application at this time, Your Honor.

13 THE COURT: Well, he's got on answer 9(a) that Mr. Warner  
14 was unaware of the consequences of the plea bargain,  
15 particularly as it relates to his employment. You may call  
16 your witnesses. Come around and be sworn, please, sir.

17 THE BAILIFF: Place your left hand on the Bible and raise  
18 your right hand and face the judge.

19 THE CLERK: Do you swear or affirm the testimony you  
20 shall give this Court to be the truth, the whole truth, and  
21 nothing but the truth, so help you God?

22 THE APPLICANT: I do.

23 THE CLERK: Please have a seat there, sir, and state your  
24 full name for the record and spell your last.

25 THE APPLICANT: My name is William Harvey Warner, W-A-R-

WILLIAM H. WARNER - DIRECT EXAMINATION BY MR. MARTIN

1 N-E-R.

2 WILLIAM H. WARNER, being first  
3 duly sworn, testifies as follows:

4 DIRECT EXAMINATION

5 BY MR. MARTIN:

6 Q: Where are you from, Mr. Warner?

7 A: From South Carolina.

8 Q: South Carolina? Where do you live right now?

9 A: 4600 Fort Jackson Boulevard.

10 Q: And why are you here today?

11 A: I'm trying to get my MVR cleared up so I can get a job.  
12 I mean a regular job instead of just piece-mealing part-time  
13 jobs together.

14 Q: Why are you unable to get a job right now?

15 A: Everybody checks your MVR now and if there's anything on  
16 it at all, they won't hire you.

17 Q: And what are they finding on the MVR?

18 A: The -- the drug conviction charge.

19 Q: All right. When were you convicted -- or when were you  
20 arrested for the drug charge?

21 A: March of last year. I don't know the date.

22 Q: And when -- when did you plead to that charge?

23 A: Late April.

24 Q: Now, in-between the time that you were arrested and when  
25 you pled, who was your attorney?

## WILLIAM H. WARNER - DIRECT EXAMINATION BY MR. MARTIN

1 A: Mr. Sawyer.

2 Q: And what contact did you have with Mr. Sawyer during that  
3 time?

4 A: We had a couple of meetings.

5 Q: At what point in time did Mr. Sawyer tell you that the  
6 law you're possibly going to be sentenced under would be  
7 repealed?

8 A: He didn't.

9 Q: Had you known the law might be repealed, would you have  
10 pled at the time?

11 A: No.

12 MR. MARTIN: No further questions for this witness, Your  
13 Honor.

14 THE COURT: Mr. Attorney General?

15 MR. CORNEY: No questions for this witness, Your Honor.

16 THE COURT: Thank you. You may step down. You may step  
17 down, Mr. Warner. All right. You may call your next witness.

18 (Whereupon, the witness leaves the stand at 10:54 a.m.)

19 MR. MARTIN: Your Honor, I believe that will be it for  
20 the plaintiff's case.

21 THE COURT: All right. Mr. Attorney General?

22 MR. CORNEY: Your Honor, I don't believe I have any  
23 witnesses to call, just a small, short, brief closing  
24 argument.

25 THE COURT: All right. I'll be glad to hear from you,

1 Mr. Martin.

2 MR. MARTIN: Yes, Your Honor. Again, Mr. Warner was  
3 prosecuted for drug possession under statute 44-53-370. He  
4 was not prosecuted under the driver's license statute and I'll  
5 direct Your Honor's attention to Exhibit "A" to the  
6 memorandum. It's a copy of statute -- the driver's license  
7 statute, 56-1-745, and "A" reads, paragraph A: The driver's  
8 license of a person convicted of a controlled substance  
9 violation.

10 At the point in time when Mr. Warner was convicted, this  
11 statute had been repealed and to allow Mr. Warner's conviction  
12 to stand is to allow this law to last past the time the  
13 legislature said to take it off the books. The legislative  
14 history, Your Honor, is attached, the Westlaw reference as  
15 Exhibit "B", and from the state legislature is on Exhibit "C".

16 Our argument, Your Honor, is that the statute was not in  
17 effect and to allow it to continue to be in effect when there  
18 was no pending criminal prosecution under it would be unfairly  
19 extending the law and I believe it should be set aside as a  
20 matter of law.

21 THE COURT: All right. Thank you, thank you very much.  
22 Mr. Attorney General?

23 MR. CORNEY: Yes, sir, Your Honor, just -- and I forgot  
24 that I had these in there. This is just a -- if I could hand  
25 this up to the Court -- just a copy of the language that was

1 in the statute which I believe is already included in the  
2 brief, the bill which is already included in the brief as  
3 well, if I could possibly hand those out.

4 The only things I wanted to hand up, Your Honor, if I  
5 may, are just a memorandum that I just -- that I briefly  
6 referenced earlier from South Carolina Court Administration to  
7 the municipal courts and judges that we received from the  
8 Department of Motor Vehicles regarding this statute -- you can  
9 keep that copy if you want to -- and then just a copy of the  
10 Richland County public index search showing when Mr. Warner's  
11 charges were received by the General Sessions Court. If I may  
12 approach, Your Honor?

13 THE COURT: Yes, sir.

14 MR. CORNEY: There's two things I want to make part of  
15 the record. This is the memorandum to -- the memorandum to  
16 the municipal court judges and magistrate judges regarding  
17 that repeal of the law and then a copy of his clerk's online  
18 records.

19 And, Your Honor, the State would submit that either way  
20 this claim fails. Mr. Warner's testimony was clear. His  
21 complaint is that Mr. Sawyer didn't advise him of the repeal  
22 -- I mean that his license could be -- or that his license  
23 would be suspended as a result of him entering this plea to  
24 the marijuana possession charge and the State would submit  
25 that that's a collateral consequence of the plea. It doesn't

1 flow directly from the plea. The direct sentence is -- the  
2 direct sentence that flows from that was his six months or  
3 \$300 fine.

4 The suspension of a driver's license is a collateral  
5 consequence and I don't have the law in front of me, Your  
6 Honor. I'd be happy to submit a brief on this behalf, but  
7 it's my understanding the law -- the State would submit that  
8 the law is very clear that counsel does not have to advise a  
9 defendant of collateral consequences not flowing directly from  
10 the conviction and I would submit that this suspension of  
11 driver's license is a collateral consequence.

12 Mr. Sawyer was not ineffective in failing to advise him  
13 of the collateral consequence not flowing directly from the  
14 plea he entered, Your Honor. So I would ask you to deny this  
15 application for post-conviction relief.

16 And just on another note, I believe that any allegation  
17 that he was improperly sentenced or unconstitutionally  
18 sentenced under a repealed sentence is a trial court error  
19 that needs to be raised on direct appeal. It's not proper at  
20 a PCR.

21 THE COURT: Thank you.

22 MR. CORNEY: Thank you very much, Your Honor.

23 THE COURT: Mr. Martin, anything further?

24 MR. MARTIN: A brief rebuttal, Your Honor, just to the  
25 fact that even the State is using the collateral term to

1 reference the sentence. It was not a pending criminal  
2 prosecution at the time, which would bring in the savings  
3 clause. They're saying this was a collateral source, not a  
4 pending criminal prosecution as I understand it to say and,  
5 accordingly, the law should be repealed and should be of no  
6 effect to Mr. Warner.

7 THE COURT: All right. Thank you, thank you very much.  
8 Submit proposed orders within fifteen days.

9 MR. CORNEY: Thank you, Judge.

10 MR. MARTIN: Thank you, Your Honor.

11 THE COURT: Thank you. Good luck to you, Mr. Warner.

12 THE APPLICANT: Thank you, sir.

13 (Whereupon, the proceedings end at 10:54 a.m.)

14 --- END REQUESTED TRANSCRIPT ---

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STATE OF SOUTH CAROLINA )  
 ) CERTIFICATE  
COUNTY OF FLORENCE )

I, the undersigned, Krystal J. Smith, Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 17th day of August, 2012.

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

Krystal J. Smith  
Court Reporter

Florence, South Carolina  
July 3, 2013

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS

) CASE NO: 2011-CP-40-5587

William H. Warner, Jr.,

Petitioner,

v.

ORDER OF DISMISSAL

State of South Carolina,

Defendant(s).

2013 MAY -7 PM 12:38  
JEANETTE W. McBRIDE  
C.C.P. & G.S.  
RICHLAND COUNTY  
FILED

**PROCEDURAL HISTORY**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 23, 2011, and amended December 22, 2011. An evidentiary hearing into the matter was convened on Friday, August 17, 2012, at the Richland County Courthouse. The Applicant was present at the hearing with counsel, Patrick Martin, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. This Court also had before it a copy of the transcript of the proceedings against Applicant, the records of the Richland County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that Applicant was arrested March 13, 2011, for Manufacturing Marijuana (Warrant No. M-722354). On April 28, 2011, Applicant appeared with counsel, Mark Sawyer, Esquire, at the Richland County Courthouse before the Honorable Benjamin Byrd, where he waived presentment to the Grand Jury of one count of Possession of Marijuana (Over One Ounce). Applicant pled guilty to the charge and was sentenced to six (6) months imprisonment or a three-hundred dollar (\$300) fine.



In the current Application, the Applicant alleged the following:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Mr. Warner is not being held in custody. Mr. Warner believes that his sentence is subject to collateral attack because the SC DMV  
 (b) improperly revoked his license under SC Code Ann §56-1-745, which  
 (c) had already been repealed and no longer in effect at the time he was sentenced.
19. State clearly the relief you seek in filing this application:  
I wish for the State to remove the suspension of my driver's license from my record so that I can resume employment.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the arguments presented by both parties at the evidentiary hearing. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have 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.

*Repeal of S.C. Code § 56-1-745*

Applicant alleges his driver's license was improperly suspended as a result of his April 2011 guilty plea to Possession of Marijuana (Over One Ounce) as the statute was repealed prior to his plea and sentencing. Applicant alternatively argues counsel was ineffective for failing to advise him that suspension of his license was a probable result of his conviction.

Applicant was arrested on March 15, 2011, in Richland County and charged with Possession of Marijuana in Excess of One Ounce.<sup>1</sup> On April 28, 2011, Applicant pled guilty to Possession of Marijuana under S.C. Code § 44-53-370(d)(2), which provides any person in possession of a Schedule I (d) controlled substance such as marijuana "is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six (6) months or fined not more than one thousand dollars (\$1,000)." Applicant was sentenced to six (6) months imprisonment or a three hundred dollar (\$300) fine upon entry of his plea.

<sup>1</sup>The arrest warrant served on Applicant on March 15, 2011, references a "Manufacturing Marijuana" charge under S.C. Code § 44-53-370(b)(4); however, in his trial brief, Applicant sets forth that the charge was in fact possession.

On April 12, 2011, between Applicant's arrest and plea date, Governor Haley signed House Bill 3668, R. 30 into effect as "2011 Act 13", repealing S.C. Code § 56-1-745 which provided in part "[t]he driver's license of a person convicted of a controlled substance violation must be suspended for a period of six months." The law had defined a "controlled substance violation" in subsection (d)(1) as "a violation of Chapter 53 of Title 44 of the South Carolina Code of Laws". Because Applicant had a pending charge under Code § 53-44-370 prior to the enactment of 2011 Act 13, his driver's license was suspended.

Applicant first contends his conviction was not subject to the mandatory license suspension provision because, at the time he entered his plea and was sentenced, that portion of the code had been repealed. He noted that the statute which required suspension of his license specifically applied to "person[s] convicted of a controlled substance violation", but he was not convicted of the charge until the entry of his plea roughly two (2) weeks after the statute was repealed.

This Court finds Applicant's prayer for relief to be without merit. First, the Act repealing the law has a savings clause which explicitly applies to Applicant's situation. Specifically, in Section 2, the Act explicitly states:

"The repeal...by this act of any law, whether...civil or criminal, does not affect pending actions...founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purposes of sustaining any pending...criminal prosecution or appeal existing as of the effective date of this act, and for the enforcement of...penalties...as they stood under the repealed or amended laws."

Based on the plain and unambiguous language set forth in the Savings Clause, it is clear the Act was not intended to apply retroactively to cases such as Applicant's regardless of its "effective date" being prior to Applicant's actual conviction. The plain language set forth in the savings clause specifically indicates the legislature's intent that the Act be applied prospectively in repealing Code § 56-1-745.

This case is very similar to the recent case of State v. Dawson, 27238, 2013 WL 1319782 (S.C. Apr. 3, 2013). In Dawson, the South Carolina Supreme Court determined that the Defendant was not entitled to be sentenced under the Omnibus Crime Reduction and Sentencing Reform Act of 2010, S.C. Acts NO. 273 (the Act), which became effective after the Defendant committed the crime but before she was sentenced. The Act contained a savings clause identical to the savings clause at issue in the present case. The Court in Dawson held that

the Act unambiguously states its sentencing amendments do not apply to actions arising under the amended laws. Specifically, the Act's savings clause states the Act "does not affect pending actions founded on an amended or repealed law or alter, discharge, release, or extinguish any penalty... incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide.

*Id.* The Court went on to hold that "because Appellant committed [the offense] in October 2009, prior to the Act's effective date, her criminal prosecution arose from, and her penalty was incurred under, the former version of [the section]." *Id.* When applied to the present case, Dawson makes clear that Applicant was still subject to the penalties set forth in S.C. Code § 56-1-745(a).

Accordingly, his claim is without merit.

This Court also finds State v. Bolin instructive. In Bolin, the South Carolina Court of Appeals addressed the issue of whether a criminal statute repealed by an Act with a savings clause applies to a conviction/sentence entered after the Act's effective date. State v. Bolin, 381 S.C. 557, 673 S.E.2d 885 (Ct. App. 2009). In Bolin, the Court found a statute repealed by an Act (which contained an *identically* worded savings clause as the one in the case at hand) still applied to Bolin's

charges despite his trial and sentencing not occurring until roughly two (2) months after the Act's effective date. The Bolin court specifically noted that because the Act went into effect "four months after the events" leading to Bolin's charges, the Act would only apply to make the statute irrelevant if there was legislative intent showing the act was meant to apply retroactively. *Id.* at 561, 673 S.E.2d 887 (emphasis added). The Court went on to say the savings clause contained in the Act, which was identical to the one contained in 2011 Act 13, "specifically indicate[d] the legislature's intent that the Act be applied prospectively" only. *Id.* The "events" leading to Applicant's eventual plea and sentence occurred on March 15, 2011, nearly a full month before the Act went into effect. The Act contained a savings clause which "specifically indicated" legislature's intent that the Act be applied only prospectively. Therefore, Applicant was still subject to the penalties set forth in S.C. Code § 56-1-745(a).

Additionally, in the context of any alleged Strickland v. Washington claim of ineffective assistance of counsel, this Court finds neither deficiency nor resulting prejudice. Applicant contends counsel was ineffective for failing to advise him that, as a result of his plea, Applicant would be subject to a suspension of his driver's license. This Court finds no deficiency in this regard as suspension of a driver's license is a collateral consequence of a conviction. "The imposition of a sentence may have a number of collateral consequences, however, a plea of guilty is not rendered involuntary in a constitutional sense if the defendant is not informed of the collateral consequences." Smith v. State, 329 S.C. 280, 284, 494 S.E.2d 626, 628 (1997) (emphasis in original). Defendants need not be affirmatively informed about collateral consequences of a conviction by counsel. *Id.*, citing Brown v. State, 306 S.C. 381, 412 S.E.2d 399 (1991); Culhrell v. Director, Patuxent Inst., 475 F.2d 1364 (4th Cir. 1973) ("[B]efore pleading, the defendant need not be advised of all collateral consequences of his plea, or...all ancillary or consequential results which are peculiar to the individual and which may flow from a conviction of a plea of guilty."), quoting United States v. Sambro, 454 F.2d 918, 920 (1971). This Court finds the suspension of Applicant's driver's license to

be an "ancillary", "consequential", and collateral consequence of the Applicant's plea which counsel is not ineffective for not advising Applicant of prior to his plea.

Further, this Court finds the Applicant has failed to carry his burden in proving that but for counsel's alleged deficiency in failing to advise him of such, there is a reasonable probability Applicant would not have pled but rather would have proceeded to trial. Therefore, this allegation is also without merit. Accordingly, the application must be denied and dismissed with prejudice.

### CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise all additional allegations raised in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BML Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Cl. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

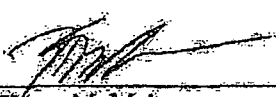
This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCAOR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and

file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice.

AND IT IS SO ORDERED this 12 day of April, 2013.

  
 \_\_\_\_\_  
 R. Knox McMahon,  
 Presiding Judge  
 Fifth Judicial Circuit  
 Columbia, South Carolina.

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland  
STATE

INDICTMENT/CASE#: 2011 GS 40-2642

vs. William Warner

A/W#: M722354

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

Date of Offense: 3-15-11

Race: \_\_\_\_\_ Sex: \_\_\_\_\_ Age: \_\_\_\_\_

S.C. Code §: 44-53-370 (A)(2)

DOB: \_\_\_\_\_ SS#: \_\_\_\_\_

CDR Code #: 0191

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

DL# \_\_\_\_\_ SID# \_\_\_\_\_

SENTENCE SHEET

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

TO: Poss. Marital Rape in Once

in violation of § 44-53-370 (A)(2) of the S.C. Code of Laws, bearing CDR Code # 0179

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  §17-25-45  
(CSC w/minor 1<sup>st</sup> or Lewd Act)

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. W.W. (defendant initial)

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

ATTEST:

[Signature] Solicitor 2111 SC Bar # William H. Warner Defendant [Signature] Attorney for Defendant 76140 SC Bar #

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 6 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ 300; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: \_\_\_\_\_  
 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 State Department of Corrections.  
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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 \_\_\_\_\_  
Substance Abuse Counseling

\*Fine: \$ \_\_\_\_\_ Random Drug/Alcohol Testing   
§14-1-206 (Assessments 107.5%) \$ \_\_\_\_\_ Fine may be pd. in equal, consecutive weekly/monthly  
§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ \_\_\_\_\_ pmts. of \$ \_\_\_\_\_ Beginning \_\_\_\_\_  
§14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_ \$ \_\_\_\_\_ paid to Public Defender Fund  
§56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_  
§56-1-289 (DUI Breath Test) \$500 \$ \_\_\_\_\_  
§35.13 (Public Def/Prob) \$25 \$ \_\_\_\_\_  
§73.3, 1B TP (Law Enforce. Funding) \$25 \$ \_\_\_\_\_  
§33.7, 1B TP (Drug Court Surcharge) \$100 \$ \_\_\_\_\_  
§50-21-114(BUI Breatin Test Fee) \$50 \$ \_\_\_\_\_  
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_  
3% to County (if paid in installments) \$ \_\_\_\_\_  
§90.11 TP (SCJA Surcharge) \$5 \$ \_\_\_\_\_  
TOTAL \$ \_\_\_\_\_

Appointed PD or appointed other counsel, §35.13 TP  
 Requires \$500 be paid to Clerk during probation

PRESIDING JUDGE [Signature]

Jeanette H. McBridge  
Clerk of Court/ Deputy Clerk

Court Reporter: \_\_\_\_\_

Judge Code: 2001  
Sentence Date: 4/29/11  
SCCA/217 (03/2009)  
RICHLAND COUNTY SOUTH CAROLINA