

**RECEIVED**

**Jun 05 2026**

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

—————  
Certiorari to Anderson County

Honorable Jane H Merrill, Circuit Court Judge  
—————

KRISTI R. POWELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002330  
—————

APPENDIX  
—————

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Appellate Defender

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Attorney General

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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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1 APPEARANCES:

2

3 Assistant Solicitor Mary Grace Holahan, Esquire

4 Tenth Circuit solicitor's office

5 P.O. Box 8002

6 Anderson, South Carolina 29622

7 Attorney for the state of South Carolina,

8

9 Bruce A. Byrholdt, Esquire

10 Byrholdt Drawdy, LLC

11 2315 North Main Street, Suite 117

12 Anderson, South Carolina 29621

13 Attorney for the Defendant(s).

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24 (THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL

25 IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 ASSISTANT SOLICITOR HOLAHAN:

2 Your Honor, next we have Kristi Regina Powell pleading  
3 on indictment 2021GS0401229 for trafficking in  
4 methamphetamine between 28 to 100 grams. The  
5 recommendation is 7 years active time.

6 COURT CLERK:

7 If you'll please raise your right hand. Do you  
8 solemnly swear or affirm the testimony you give this  
9 Court to be the truth, the whole truth, and nothing but  
10 the truth?

11 MS. KRISTI POWELL:

12 Yes.

13 QUESTIONING BY THE COURT:

14 Q. You're Kristi Regina Powell?

15 A. Yes.

16 Q. Just do the best you can, okay, Ms. Powell? You are  
17 56?

18 A. Yes.

19 Q. Do you work?

20 A. No, disabled.

21 Q. Disabled?

22 A. Yeah.

23 Q. Are you married?

24 A. Divorced.

25 Q. Do you have children that are 18 years or younger?

1 A. No.

2 Q. And you're pleading guilty to trafficking in  
3 methamphetamine between 28 and 100 grams; is that  
4 correct?

5 A. Yes, sir.

6 Q. You understand that carries a minimum of 7 years up to  
7 25 years?

8 A. Yes.

9 Q. And although the State is recommending that you receive  
10 7 years, I could sentence you to 25 today. Do you  
11 understand?

12 A. I do understand.

13 Q. Knowing that, do you still want to go forward with your  
14 plea?

15 A. Yes.

16 Q. Are you under the influence of any medications, drugs,  
17 or alcohol?

18 A. No, sir.

19 MR. BYRHOLDT:

20 Your Honor, I have no question of her competency.

21 QUESTIONING RESUMED BY THE COURT:

22 Q. Speak loud enough so the court reporter can hear you  
23 and let me finish my question before you begin to  
24 respond, please. Has anybody forced, threatened, or  
25 promised you anything to get you to plead guilty?

1 A. No, sir.

2 Q. Are you pleading guilty freely and voluntarily?

3 A. Yes, sir.

4 Q. Do you understand that you have a Constitutional right  
5 to have a jury of 12 people decide whether you are  
6 guilty or innocent of the charge you're pleading guilty  
7 to?

8 A. Yes, sir.

9 Q. If you go forward today with your plea, you give up  
10 that Constitutional right. Do you understand that?

11 A. Yes, sir.

12 Q. Do you freely and voluntarily give up your  
13 Constitutional right to a jury trial in order to plead  
14 guilty today?

15 A. Yes.

16 Q. If you were to go to trial, during that trial, you'd be  
17 presumed innocent and the State would have to prove  
18 each and every element of the charge against you by  
19 proof beyond a reasonable doubt before you could be  
20 found guilty. Do you understand that?

21 A. Yes, sir.

22 Q. Do understand that proof beyond a reasonable doubt is  
23 the highest burden of proof that we recognize in our  
24 law?

25 A. Yes, sir.

1 Q. Also, if you were to go to trial, you could exercise  
2 the following additional Constitutional rights: First,  
3 you'd have a right to confront and cross examine anyone  
4 who testifies against you, you'd have the right to  
5 present evidence in your own defense, you could  
6 subpoena people here to court to testify on your  
7 behalf, and finally you'd have a right to remain silent  
8 or not to testify. Have these rights been explained to  
9 you and do you understand them?

10 A. Yes.

11 Q. Do understand that, if you were to go to trial and you  
12 didn't testify, the Court would instruct the jury that  
13 they couldn't consider that because that's your right  
14 under the Fifth Amendment to the United States  
15 Constitution and because the State has the burden of  
16 proving you guilty?

17 A. Yes, sir.

18 Q. If you go forward with your plea today, you will give  
19 up these additional Constitutional protections I've  
20 just outlined for you. Do you understand that?

21 A. Yes, sir.

22 Q. Do you freely and voluntarily give up your additional  
23 Constitutional rights in order to plead guilty today?

24 A. Yes, sir.

25 Q. Ms. Powell, under indictment 2021-01229, are you guilty

1 of trafficking in methamphetamine between 28 and 100  
2 grams?

3 A. Yes, sir.

4 Q. Are you satisfied with the services of your attorney?

5 A. Yes, sir.

6 Q. Has your attorney reasonably done what you've asked him  
7 to do?

8 A. Yes.

9 Q. As you stand here today, do you have any complaints  
10 about your legal representation whatsoever?

11 A. No.

12 THE COURT:

13 Counsel, have you gone over the elements of these  
14 charges with your client and explained to them the time  
15 they could get, explored whether or not they have any  
16 defenses to these charges, as well as their  
17 Constitutional rights?

18 MR. BYRHOLDT:

19 I have as to Kristi Powell.

20 THE COURT:

21 Mr. Byrholdt, I didn't ask you, did you go over with  
22 Ms. Powell the fact that her charge is violent and this  
23 would be a strike against her?

24 MR. BYRHOLDT:

25 I have, Your Honor. I also told her subsequent that if

1 she gets three strikes, it's life without parole  
2 possibility.

3 THE COURT:

4 what strike number would this be for her; do you know?

5 MR. BYRHOLDT:

6 I believe this is her first.

7 ASSISTANT SOLICITOR HOLAHAN:

8 It's just her first.

9 THE COURT:

10 Her first strike?

11 MR. BYRHOLDT:

12 Yes, sir.

13 THE COURT:

14 Is that correct, Ms. Powell? Did he explain that to  
15 you?

16 MS. KRISTI POWELL:

17 Yes.

18 THE COURT:

19 You understand that?

20 MS. KRISTI POWELL:

21 Yes.

22 THE COURT:

23 Tell me about Ms. Powell.

24 ASSISTANT SOLICITOR HOLAHAN:

25 Your Honor, this occurred on January 27th of 2021.

1 Detectives with the Anderson County Sheriff's Office  
2 conducted a search warrant at ■■■ Ellen Street here in  
3 Anderson County. That is Ms. Powell's residence. She  
4 was found to be in possession of several hundred grams  
5 of methamphetamine. It came to a little over 200  
6 grams. The State has reduced the charge based on her  
7 lack of a prior record. All she has is a possession of  
8 Ice from 2003.

9 THE COURT:

10 Okay. Mr. Byrholdt?

11 MR. BYRHOLDT:

12 Your Honor, I'd ask you to follow the recommendation.  
13 There was a co-defendant in this case. He was the one  
14 that was doing this. It was her house. I know she  
15 bears the responsibility. He has subsequently passed  
16 away, Your Honor.

17 ASSISTANT SOLICITOR HOLAHAN:

18 That's correct.

19 THE COURT:

20 Anything you want to add to that, Ms. Powell?

21 MR. BYRHOLDT:

22 Your Honor, I will tell you she's got serious health  
23 problems. The State's going to be picking up quite a  
24 tab.

25 THE COURT:

1 I understand. All right, I'm going to accept the  
2 recommendation and sentence you to 7 years. You have  
3 10 days to appeal this even though it's a plea. How  
4 many days credit is she entitled to?

5 MR. BYRHOLDT:

6 Two, Your Honor.

7 THE COURT:

8 Two days credit. Good luck to you.

9 (WITH NOTHING FURTHER, PLEA HEARING CONCLUDED AT 9:59 A.M.)

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## CERTIFICATE OF REPORTER

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I, Lisa M. Nowell, a Notary Public in and for the State of South Carolina, do hereby certify that the foregoing plea hearing was taken before me on the date and at the time and location stated on page 1 of this transcript.

That the witness was duly sworn to testify to the truth, the whole truth, and nothing but the truth.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

*Lisa M. Nowell*

\_\_\_\_\_  
Lisa M. Nowell, CVR

Notary Public for S.C.

Commission Expires: 11/22/23



- (c) \_\_\_\_\_
- 5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) 7/13/2022 • 7 years
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_

- 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) did not receive paperwork for appeal until after 10 day deadline due to being incarcerated
  - (b) see attached sheet 2

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

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

(a) Attorney Bruce Bryholdt - misrepresented me - see attached

(b) improper contact with SDC - see attached

(c) Medical - see attached.

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

(a) see attached Attorney Reason Attached <sup>see page 1</sup>

(b) SDC contact - Reason " see page 2

(c) Medical Reason " see page 3

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

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

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

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

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

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

(a) the specific nature thereof:

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

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

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

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

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

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

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

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

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

(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) \_\_\_\_\_
- (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? Yes
- (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?  
N/A

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

- (a) the name and address of each attorney who represented you:
  - i. James Bannister - Greenville S.C.
  - ii. Bruce A. Byrholdt 2315 North Main Street  
Anderson SC 29622
  - iii. \_\_\_\_\_

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

- i. Bannister - preliminary hearing (June 2021)
- ii. Byrholdt - represented on my hearing (July 2022)
- iii. \_\_\_\_\_

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

Sentence Reduction  
non-violent

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

NO

STATE OF SOUTH CAROLINA )  
County of Anderson )

VERIFICATION

I, Kristi Powell, 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.

Kristi Powell

SWORN to and subscribed before me this 3/14  
day of October, 2006

Cynthia [Signature] (L.S.)  
Notary Public

My Commission Expires: July 22nd, 2006

22 DEC 9 AM 8:52:32  
Pinder.com, SC.CDC, CP/RS

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

I, Kristi R. Powell, 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.

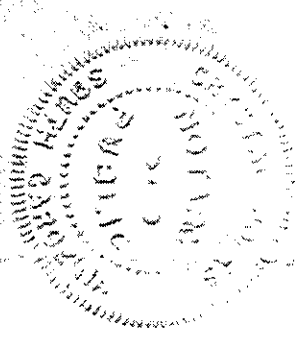
Kristi Powell  
Applicant

SWORN or affirmed to and subscribed before me this

31<sup>st</sup> day of October, 2002

[Signature]  
Notary Public

My Commission Expires: July 2nd, 2003



PCR Kristi Powell 388605  
CGCI

22 DEC 9 AMB:52:05  
Anderson, SC CDC: 98/88

To whom it may concern,

Oct. 29 2022

I am writing today in regards to my recent conviction on July 13 2022. I appeared in front of your honorable Judge McIntosh in Anderson County South Carolina. I Kristi Powell was sentenced to 7 years in SCDC for Trafficking Meth/Ice 28-100 grams. After I give you a little background about myself I will give my reasons for requesting a post sentence reduction. I am pleading with the court to please consider this request and I thank you in advance for your attention to my case.

Please allow me to give you a little background about myself. My full name is Kristi Regina Powell age 56. I was born into a big family being the youngest with four sisters two brothers. I was raised in a two parent household where one would consider me to be a daddy's girl. Although I had a great

childhood and good family up bringing my life took a turn for the worse in 1997 with the death of my father. After this I began to self medicate using Methamphetamine and Marijuana. Although I now know that it isn't right I was simply trying to cope with the loss of my father by escaping through drug use. I then lost my mother in 2002 and a sister to kidney failure in 2004. My drug use kept going longer and harder. Loss and death just kept hitting me year after year. In 2011 I was diagnosed with stage four throat cancer. At that time I was able to get myself clean and make it through 36 rounds of radiation and 7 chemotherapy treatments. On the other side of this treatment was my tracheotomy surgery in 2012. During this entire year I was able to keep myself sober and fight for my life until death hit our family again. This

time it was another sister in 2012 who passed after being diagnosed with diabetes and having multiple amputation surgeries. As you can assume I once again found myself engrossed in drug use yet again. This continued until my near fatal car wreck in 2016.

This wreck caused by another vehicle hitting me in my left side door placed me in the hospital for 2 months & 20 days.

20 days of this time was spent in a medically induced coma with the entire left side of my body crushed.

I once again fought through this trying time sober and clean. After this the year 2017 hits like a wrecking ball after I find my boyfriend of 13 years dead at his place of business. Being the one to find his body was a pain that I couldn't not endure and found a way to escape it once again through the use of drugs. So as you can see through out my

full size  
-Chari  
Plex  
Candy

bill INTO diary I WAS IN A TOYOTA

life I have had a constant struggle between fighting for my life and fighting an addiction. At no time during this was I ready to stand up and say I have a problem and need help until now.

Now to address the legal side of my life. My criminal background is very minimal and consists of one charge of distribution Meth 1st offense in 2003. Other than this my record is clear besides a few minor traffic citations. That being said when I was charged with this trafficking charge I was in a world unknown to me. I never so much as received my motion or understood the process of plea agreements or trial. While in the court room in front of Judge McIntosh I was under the influence of Meth and should have spoke up multiple times. Not making excuses for myself but I do feel at that

time my judgement was impaired.

At this time I am pleading to the courts for a reconsideration of my sentence. No I am not asking to just walk free as I realize there are consequences to be served. What I am asking is for the court to consider possibly a home detention or to consider a change in my violent status to non-violent where I may be eligible for parole so that I can get the constant medical attention needed for my failing health and track. I would like to stress to the court that I am not a danger to the community and am not the drug trafficker these charges make me appear to be. What I am is an addict asking for help in the form of some sort of rehabilitation program and supervised prole, probation, or home detention. I do have a strong family support system at home to include my

Sister Janet Craft who is a small business owner and a productive member of society. My sister is willing to provide me with not only the peace of mind of being my caregiver but also supply me with a job to off set the expense that may come with home detention, probation or parole.

In conclusion I am writting in hopes that getting to know me as a person and giving a little insight into my background as well as my lack of knowledge to the judicial system you all would consider my post conviction relief application. I cannot stress enough to you that I am not what these charges make me seem to be and I know beyond a reasonable doubt that I to can be a productive member of society if I can receive the help that I need help that is not

Offered in a prison cell for the next 7 years, I thank you so much for your time and I thank you in advance for your attention in this matter. May god bless you and I look forward to your response.

*Kristi R. Powell*  
Kristi R. Powell  
SCDC # 308603

Return Address:

1120 Sanders Drive  
Anderson SC 29624



PCR Kristi Powell - 388603

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my 2011 surgery was still there. I was having difficulty with food lodging behind the large knot, so when I went to hospital they found the knot was because of the swelling of the surrounding of the stitch. At the removal of the stitch and swelling went down and had time to heal. I was going to my Regular Dr. Dr. Davis in Greenville because at the surgery it caused my trachea to be too small and had and still have a lot of leakage around throat opening for the trachea, I was going to my Doctor to get the trachea resized and that was the reason <sup>July 29th, 2012</sup> Atty Bryholdt requested me to get Dr's statement to possibly get postponed because

PCR Kristi Powell

388603

Page 3 of 8

The trachea needed to be resized. I brought my doctors statement on July 13, 2022 to Court but Atty Bryholdt just stuck the letter inside his jacket pocket never presented to the judge. I tried to speak at in the presence of the judge but was told not to speak until questions were completed by the judge. Atty Paryholdt tapped me in my back 3 times when I began to speak about the upcoming appointment and I took it by Atty Bryholdt that he would mention it to get a post ponement because the trachea was going to be resized. I did not know I was actually going to trial on July 13<sup>th</sup> 2022. At the end of the 5 people lined up in front of the judge that

PCR KRBT: Power 388603

Page 4 of 8

that I was sentenced to 1 year and

it was a violent crime I was totally shocked.

I asked the person who took me back to carrying me to jail that day if I could possibly go back

and talk to the judge I was told no. I tried to call Attorney Poyholdt to accept my call

when I got to jail, but I figure because of date recognition, a problem I have because of

trache. If the phone call was not accepted so

I called my sister Janet Craft to call him and

asked about why the doctor's appointment was not

mentioned and to ask him about being tired

not knowing that was why I was in front of the

judge that day, because on Thursday at Atty.

PCR KRISH PRINCE 388603

Page 5 of 8

Bygholt's office he requested that I

get the Doctor's statement and present it

to the Judge for a postponement which was

never mentioned. <sup>Somebody</sup> The Judge ever asked the

Att'y Bygholt if this was my first offense

and Mr Bygholt didn't even know the Solicitor

spoke up and said it was my first offense

I have not seen a doctor ever until now about

my trachea being resized. The day I got to

Camille Graham Correctional Institute on Aug 4, 2012

I went to hospital but the doctor there said he

did not know what to do I needed to get

an appointment with an ENT. It took several

PCL: KRISHI ANUWA 388003 Page 6 of 8  
months to get an ENT appointment and  
when I got the appointment with the ENT  
the doctor's office was closed. I still have  
not got an appointment with an ENT.

I have to stuff toilet paper around the trash  
because of leakage.

I tried contacting the Judge - my attorney -  
which never returned my call I have a certified  
letter for him to contact me in which he has  
never done as of yet. The judge was not  
on the jail records because they had me locked  
up as violation probation and no judge was  
listed through Public Records until I was  
transferred to CGCI Columbia on 8-4-22

PCR: Krista Pouch 388603

Page 2 of 2

I wrote another certified letter to the Judge once I found out who presided over my case. We even asked the officer at Anderson County Detention Center to see about the Judge I was to contact and they said it was beyond them there was not one listed because when I was sentenced 7-13-22 and sent to ACDC they registered me as Probation Violator. My sentence was not recorded until Aug 4, 2022 I was locked up from court July 13, 2022. We have copies where the computer records showed no Judge to contact.

I have been locked down twice because of COVID when I was in R&E Cell

PCR: Kristi Powell 388603

Page 8 of 8

No proper contact between my attorney and I.

No proper paperwork to contact in right amount of

time because posted wrong from day 1 - July 13, 2022

until Aug 4, 2022.

And my medical still not taken care of

NO ENT appointment even until now.

I was not offered any kind of any kind

of sentence being 1<sup>st</sup> offense and going before

a judge to be sentenced 7 years violent

not knowing was going to be sentenced that

day because of attorney Bryholdt instructions

to get medical records to him from Thursday July

7<sup>th</sup> on Thursday and get to him on July 13<sup>th</sup> to

go before a judge to maybe get postponed.



or more, and Possession of a Weapon During the Commission of a Violent Crime (2021-GS-04-01229).

On July 13, 2022, Applicant appeared before the Honorable R. Lawton McIntosh and pled guilty to the lesser charge of Trafficking Methamphetamine, 28-100 grams. Bryce A. Byrholdt, Esquire (Plea Counsel), represented Applicant. Tenth Circuit Assistant Solicitor Mary Grace Holahan (Solicitor Holahan) prosecuted the case. The State recommended seven (7) years active time. Judge McIntosh sentenced Applicant to seven (7) years imprisonment for Trafficking Methamphetamine.

Applicant did not appeal her sentence or conviction.

#### SUMMARY OF THE FACTS PRESENTED AT THE PLEA HEARING

The facts giving rise to Applicant's conviction were articulated by the Solicitor Holahan, as follows:

Your Honor, this occurred on January 27th of 2021. Detectives with the Anderson County Sheriff's Office conducted a search warrant at 411 Ellen Street here in Anderson County. That is Ms. Powell's residence. She was found to be in possession of several hundred grams of methamphetamine. It came to a little over 200 grams. The State has reduced the charge based on her lack of a prior record. All she has is a possession of Ice from 2003.

(Plea Tr. pp. 8, ll. 25 – 9, ll. 1-8).

#### CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is entitled to relief based on the following grounds:<sup>3</sup>

1. Ineffective Assistance of Counsel
  - a. Applicant only had three short visits with Plea Counsel.
  - b. Trial Counsel requested Applicant get doctors note to postpone plea because Applicant was going to have trachea

---

<sup>3</sup> Allegations summarized for the sake of brevity.

- resizing surgery on July 27, 2022. Applicant brought doctors note to plea hearing July 13, 2022, but Trial Counsel failed to present the doctors note to the plea court.
- c. Trial Counsel did not know this was Applicant's first offense.
  - d. No proper contact with Trial Counsel.
  - e. Applicant never received discovery.
2. Involuntary Guilty Plea
    - a. Applicant felt coerced by Trial Counsel not to speak at plea hearing and mention her upcoming surgery.
    - b. Applicant tried to address plea judge, but Trial Counsel told her not to speak until questions were completed by the plea judge.
    - c. Trial Counsel tapped Applicant on back three times when she tried to bring up her upcoming surgery.
    - d. Applicant did not know she was pleading guilty on July 13, 2022.
    - e. Applicant under the influence of methamphetamine at time of plea.
    - f. Applicant did not understand plea process.
  3. White v. State<sup>4</sup>
    - a. "Did not receive paperwork for appeal until after 10 day deadline due to being incarcerated."
  4. Improper Contact with SCDC
    - a. Applicant unable to contact plea judge because SCDC had her listed as locked up for probation violation, and Applicant's sentence was not recorded correctly until August 4, 2022.
  5. Medical Issues
    - a. Applicant has not had an appointment for trachea resizing since being incarcerated.

As requested relief, Applicant states she is seeking the following as relief:

"At this time I am pleading to the court for a reconsideration of my sentence. No I am not asking to just walk free as I realize there are consequences to be served. What I am asking for is the court to consider possibly a home detention or to consider a change in my violent status to non-violent where I may be eligible for parole so that I can get the constant medical attention needed for my failing health and trach."<sup>5</sup>

<sup>4</sup> Respondent interprets Applicant's response to Question 9 as a request for a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

<sup>5</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

Attached herewith and incorporated herein are the records of the Anderson County Clerk of Court regarding the underlying general sessions proceedings, the transcripts from Applicant's plea proceeding, Applicant's records from the South Carolina Department of Corrections, and Applicant's records from this PCR action.

### MOTION TO DISMISS

In her application, Applicant asserts Improper Contact with SCDC and Medical Issues. Respondent submits that these claims should be summarily dismissed for failure to state a cognizable claim under the Uniform Post-Conviction Procedure Act. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral

---

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); John H. Blume, *An Introduction to Post-Conviction Remedies, Practice and Procedure in South Carolina*, 45 S.C. L. Rev. 235, 268 (1994) (noting that "[t]he lack of jurisdiction to reduce otherwise proper sentences seems not to be widely recognized by many inmates who file pro se applications seeking a reduction in their sentences"). If this Court finds a defect in the original proceedings, the appropriate relief would be a new trial on the original indictment. 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.").

attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A). Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. PCR relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000).

Therefore, the allegations of Improper Contact with SCDC and Medical Issues should be summarily dismissed for failure to state a cognizable claim.

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

Applicant alleges various allegations of ineffective assistance of counsel. 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 relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). 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).

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." ). 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). 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. 357 (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. at 368–69 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 ("[R]equiring a

'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.'). Reviewing "[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Lee, 582 U.S. at 369. 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, 466 U.S. 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." Id. 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.

Respondent submits the record likely refutes Applicant's allegations, and Applicant cannot satisfy either requirement of Strickland. However, Applicant alleged specific instances of ineffective assistance of counsel, which is not conclusively refuted by the record, raising a question which can only be resolved by a hearing. Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981). Therefore, the State requests an evidentiary hearing to fully resolve the issues. See Sharper v.

State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

#### RESPONSE TO WHITE V. STATE CLAIM

Applicant claims that she was denied effective assistance of counsel because Plea Counsel failed to inform him of his right to direct appeal. Specifically, Applicant alleges she was unable to timely file her appeal because she received her appeal paperwork after the ten day time to file her notice of appeal.

"Following a trial, counsel must make certain the defendant is made fully aware of the right to appeal." Simuel v. State, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010). "However, the standard for a guilty plea differs." Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). "Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea." Id.; Roe v. Flores-Ortega, 528 U.S. 470 (2000); Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995) ("bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief").

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

Respondent submits Applicant's allegation is without merit. However, because this allegation likely raises questions of fact not conclusively refuted by the record, the State requests an evidentiary hearing to fully resolve the issue. 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").

#### RESPONSE TO ALLEGATIONS OF INVOLUNTARY GUILTY PLEA

Applicant further claims her plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

An applicant alleging his plea was involuntary because the government failed to fulfill their promise under the guilty plea must show the existence of the agreement and detrimental reliance by the applicant on the agreement. Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999). Detrimental reliance may result where the defendant relies on the prosecution's plea by taking a substantial step or accepting risk of an adverse result, such as performing part of the bargain. Reed, 333 S.C. at 689, 511 S.E.2d at 403.

The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to

contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)). Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

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

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

**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 in advance of the evidentiary 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. See Id. at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) ("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.")).

Pursuant to section 17-27-150 of the South Carolina Code, 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. Further, Respondent 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. As noted above, 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. See Love, 428 S.C. 231, 834 S.E.2d 196.

**[CONCLUSION AND SIGNATURE ON FOLLOWING PAGE]**

CONCLUSION

WHEREFORE, Respondent respectfully requests this Court grant Respondent's motion to dismiss the allegations of Improper Contact with SCDC and Medical Issues and convene an evidentiary hearing to resolve all other claims as set forth in her application.

Respectfully submitted,

ALAN WILSON  
Attorney General

DONALD J. ZELENKA  
Chief Deputy Attorney General

TALIDA BALAJ  
Assistant Attorney General

By: 

**ATTORNEYS FOR RESPONDENT**  
Office of the Attorney General  
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Columbia, SC 29211  
Telephone: (803) 734-3737

March 14, 2024



**A TRUE COPY**

SEP - 5 2025

*Reena Thomason*  
CLERK OF COURT

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS  
 COUNTY OF ANDERSON TENTH JUDICIAL CIRCUIT

KRISTI POWELL,  
 APPLICANT.

v.

THE STATE OF SOUTH CAROLINA,  
 RESPONDENT.

AMENDED APPLICATION

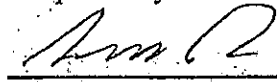
CASE # 2022-CP-04-2554

25 SEP 5 AM 11:55:40  
 Anderson, SC CLK: CP/RS

This matter comes before the Court by way of application of post-conviction relief filed December 9, 2022, alleging prosecutorial misconduct, judicial bias and incompetence. A Return and Partial Motion to Dismiss was made on March 14, 2024. The Applicant hereby adds the following allegations of Fifth, Sixth, Eighth and Fourteenth Amendment violations of the Constitution of the United States & Art. I Sec. 3, 10, & 14 of the South Carolina Constitution. Ineffective assistance of trial counsel for:

- (a) failure to communicate with Applicant, provide a copy of discovery, and discuss legal options;
- (b) failure to present medical issues, lack of priors, and fact that the Search Warrant that led to the search of the Applicant's home was targeting her co-defendant to the solicitor and judge in mitigation;
- (c) pressuring Applicant to plead when she was sick with cancer awaiting upcoming surgery and under the influence;
- (d) failure to appeal case when requested; and
- (e) failing to follow up with Sec. 24-21-715 argument for compassionate release.

Respectfully submitted,

  
 \_\_\_\_\_  
 Susannah Ross  
 Attorney for the Applicant  
 330 E. Coffee St,  
 Greenville, SC 29601  
 susannah@rossenderlin.com  
 (864) 242-0029

This 1 day of September, 2025

A TRUE COPY  
SEP -5 2025  
C. Regina Thomas  
CLERK OF COURT

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF ANDERSON ) TENTH JUDICIAL CIRCUIT

KRISTI POWELL,  
APPLICANT.

v.

THE STATE OF SOUTH CAROLINA,  
RESPONDENT.

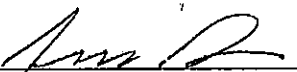
AFFIDAVIT OF SERVICE  
BY ELECTRONIC MAIL

CASE # 2022-CP-04-2554

05 SEP 5 PM 1:55:49  
Anderson, SC COCL: CP/89

1. I am the attorney for the Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Amended Application** in the above-captioned matter on the following person by electronic mail addressed to:

BryanHall@scag.gov  
RyanKowlaski@scag.gov

  
Attorney for Applicant

This 1 day of Sept, 2025

State of South Carolina  
County of Anderson

Court of Common Pleas

Kristi Powell )  
 )  
 Applicant, )  
 v. )  
 )  
 State of South Carolina )  
 )  
 Respondent.)

Transcript of Record  
2022-CP-04-02554

September 8, 2025  
Anderson, South Carolina

B E F O R E:

The Honorable Jane H. Merrill, Judge.

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

Susannah C. Ross, Esquire  
Attorney for the Applicant

Ryan Kowalski, Esquire  
Attorney for the Respondent

Lisa Scott  
Circuit Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1	Applicant's - search warrant		X

- - -

P R O C E E D I N G S

- - -

1 THE COURT: Good morning, everybody.

2 MR. KOWALSKI: Good morning, Your Honor.

3 THE COURT: Are y'all ready to begin?

4 MR. KOWALSKI: Yes.

5 MS. ROSS: Yes.

6 THE COURT: All right. So this is *Kristi*  
7 *Powell, Applicant, v. The State of South Carolina,*  
8 *Case 2022-CP-04-2554.*

9 Counsel, if you'll just state your name on the  
10 record and who you represent, please.

11 MR. KOWALSKI: Ryan Kowalski for the State.

12 MS. ROSS: I'm Susannah Ross and I represent  
13 Ms. Powell.

14 THE COURT: All right. Thank you, both. Is  
15 everybody ready to proceed?

16 MR. KOWALSKI: Yes, Your Honor.

17 MS. ROSS: Yes.

18 THE COURT: Any preliminary matters?

19 MS. ROSS: No.

20 MR. KOWALSKI: Just to brief -- briefly  
21 mention. I wanted to just make sure that we're  
22 clear on the record. We have an initial application  
23 from Ms. Powell for -- for PCR. And Ms. Ross  
24  
25

1 recently submitted an amended application. We had  
2 moved to partially dismiss a few of the initial  
3 allegations, but I just wanted to ask Ms. Ross to  
4 make it clear for the record if the amended  
5 application will be taking the place of the initial  
6 allegations in the application.

7 MS. ROSS: Thank you, Judge. May it please the  
8 Court? I usually move pursuant to *Love v. State* to  
9 have if something else is brought up. I don't like  
10 to give up the allegations that my client makes,  
11 just to give Your Honor the opportunity to make a  
12 determination based on those.

13 However, upon my review of the State's return,  
14 I did file the amended application in September,  
15 September 1st. And then I just put those five  
16 allegations -- failure to communicate, failure to  
17 present medical issues, some mitigation that there  
18 was no prior record.

19 And the whole -- the whole -- whole case  
20 against Ms. Powell basically was based on a search  
21 warrant that was issued after codefendant, I  
22 believe, sold drugs to someone who was pulled over  
23 and found with those drugs and that led to the  
24 search warrant of what was Kristi's home, but it was  
25 the codefendant's drugs mostly. And then pressuring

1 the applicant to plea when she was sick and under  
2 the influence. And failure to appeal the case when  
3 requested and failing to follow-up with a argument  
4 for compassionate release pursuant to Section  
5 24-21-715. So that's what we're going forward on  
6 today, I believe.

7 THE COURT: All right. Thank you. So that I  
8 understand correctly, you're going forward on  
9 everything that's in the amended application, but if  
10 something comes up that was also included in the  
11 initial application, you want that to be heard, as  
12 well? Is that -- am I correctly stating that?

13 MS. ROSS: That's correct, Your Honor. I just  
14 don't want -- if there is a strong issue that you  
15 saw that I didn't see, then I don't want it further  
16 served by not considering that.

17 THE COURT: Okay.

18 MR. KOWALSKI: And we would just briefly --  
19 I -- I would just briefly like to renew our  
20 objection just in case any issues with regarding  
21 improper contact with SCDC or medical issues as  
22 listed in the initial application. We would just --  
23 I would just like to renew our motion to dismiss  
24 those allegations specifically.

25 THE COURT: Okay. All right. I'll hold off on

1 a ruling on that until we hear everything, but that  
2 is certainly noted for the record.

3 MR. KOWALSKI: Would you like for me to call  
4 the case, Your Honor?

5 THE COURT: Certainly.

6 MR. KOWALSKI: As you stated, this is *Kristi*  
7 *Regina Powell v. The State of South Carolina*, Case  
8 No. 2022-CP-04-2554 out of Anderson County. The  
9 applicant is presently confined in the South  
10 Carolina Department of Corrections pursuant to  
11 orders of commitment from the Anderson County Clerk  
12 of Court. During its July 2021 term, the Anderson  
13 County Grand Jury indicted applicant for trafficking  
14 methamphetamine, 200 grams or more, and possession  
15 of a weapon during the commission of a violent  
16 crime.

17 On July 13, 2022, applicant appeared before the  
18 Honorable R. Lawton McIntosh and pled guilty to the  
19 lesser charge of trafficking methamphetamine between  
20 28 and 100 grams.

21 Bruce Byrholdt, Esquire, represented applicant.  
22 Tenth Circuit Assistant Solicitor Mary Grace Holahan  
23 prosecuted the case. The State recommended seven  
24 years active time. Judge McIntosh sentenced  
25 applicant to seven years imprisonment for

1 trafficking methamphetamine. The applicant did not  
2 file an appeal for her sentence or conviction.

3 We've already stated the allegations that are  
4 articulated in the initial application that was  
5 filed on December 9, 2022. As per requested relief,  
6 applicant states she's seeking reconsideration of  
7 her sentence and possibly a change in her status  
8 from violent to nonviolent to make her eligible for  
9 parole so that she can get attention for her -- for  
10 her health.

11 Before we proceed, I would just respectfully  
12 request that Your Honor review with the applicant  
13 the type of relief that post-conviction relief  
14 provides if you could do that.

15 THE COURT: Certainly. Madam clerk, would you  
16 please swear in Ms. Powell?

17 MS. ROSS: I'm going to be calling her to the  
18 stand. We can swear her in then.

19 THE COURT: Well, I just want to ask to make  
20 she understands about the relief, so I'm going to do  
21 that under oath.

22 THE CLERK: Would you raise your right hand?

23 THE APPLICANT: (Complying.)

24 THE CLERK: Do you swear or affirm to tell the  
25 truth, the whole truth, and nothing but the truth?

1 THE APPLICANT: Yes, ma'am.

2 THE CLERK: Thank you.

3 THE COURT: All right. Ms. Powell, I just want  
4 to make sure. I did note your application as the  
5 attorney general just stated, one of things you  
6 asked for -- or several things you asked for --  
7 reduction or reconsideration of your sentence as  
8 part of your PCR application, as well as a change in  
9 class -- classification from violent to nonviolent.  
10 I just want to make sure you understand that what  
11 this Court can consider is whether or not to  
12 grant -- whether or not it's appropriate to grant  
13 the relief, but this Court cannot change your  
14 sentence or change the classification.

15 So if you were to be granted post-conviction  
16 relief, essentially, what happens is you start over.  
17 So you would start back at -- as if that pending  
18 charge, the initial pending charge, not the one they  
19 reduced it to, the initial pending charge, so the  
20 trafficking meth 200 to 400 grams, that and the  
21 possession of a weapon during the commission of a  
22 violent crime, those charges would start anew. Do  
23 you understand that?

24 THE APPLICANT: Yes, ma'am, I do.

25 THE COURT: Okay. So your attorney explained

1 it. I just wanted to put on the record and make  
2 sure you understand that some of the relief you're  
3 requesting, it's impossible for this Court to grant.

4 THE APPLICANT: I understand.

5 THE COURT: You understand. Okay. Thank you.  
6 I just wanted to clarify that with you.

7 THE APPLICANT: Thank you.

8 MS. ROSS: But it's still your wish to go  
9 forward?

10 THE APPLICANT: Yes, ma'am.

11 THE COURT: And you still want to go forward  
12 today?

13 THE APPLICANT: Yes, ma'am.

14 THE COURT: All right. You can call your first  
15 witness.

16 MS. ROSS: All right. We'd call Kristi Powell.

17 THE COURT: Ms. Powell, you're still under  
18 oath. Okay?

19 THE APPLICANT: Yes, ma'am.

20 KRISTI POWELL,  
21 having been previously produced and first duly sworn  
22 as a witness on behalf of the Applicant, testified  
23 as follows:

24 DIRECT EXAMINATION

25 BY MS. ROSS:

1 Q. Hey, Kristi. If you need a minute, just tell  
2 me you need a minute.

3 A. Okay.

4 Q. Now, how did you come to retain Mr. Byrholdt?

5 A. I had went and talked with him. I had an  
6 attorney in Greenville, but I went and talked to him  
7 and he told me that he could probably get me zero to  
8 seven years, and that's how we got him.

9 Q. So he originally, when you talked with him,  
10 said he thought he could get you zero to seven  
11 years?

12 A. Yes, ma'am.

13 Q. Okay. Now, was that your continued  
14 understanding as you went forward with the case?

15 A. When we went to a hearing, he seen me outside  
16 and he told me he thought he could get me lesser,  
17 like zero years because of my health issues.

18 Q. And did you go and get all your medical records  
19 and everything for him?

20 A. Yes, ma'am, I did. And I turned them into him,  
21 but he never turned them into the Courts with me  
22 there.

23 Q. And with your medical issues, you had throat  
24 cancer, right?

25 A. Yes, ma'am. That's correct.

1 Q. And at the time of your plea, you were still  
2 undergoing medical treatment?

3 A. Yes, ma'am. I was supposed to go to the doctor  
4 that month, but I went to jail instead.

5 Q. And was your surgery ever completed?

6 A. Yes, ma'am. The surgery was completed. Yes,  
7 ma'am.

8 Q. Now, did your lawyer go over your discovery  
9 with you?

10 A. No, ma'am.

11 Q. But did you -- you did understand the charges  
12 that you had against you?

13 A. Yes, ma'am. The way I understood, he was going  
14 to get the codefendant because I had a drug habit,  
15 not a -- I wasn't a seller or nothing like that.

16 Q. Now, was that Andrew Marshall McElrath?

17 A. Yes, ma'am.

18 Q. All right. And I'm going to show you an  
19 affidavit from the search warrant, which wasn't in  
20 the clerk of court's package, so I might just mark  
21 this as a Court's exhibit because it's going to get  
22 buried in there, but down at the bottom of the  
23 affidavit. And, again, I got this from the clerk of  
24 court's package, but down at the bottom, can -- can  
25 you ---

1 A. I can't see good.

2 Q. Well ---

3 A. The underlined?

4 Q. Yes.

5 A. Yes, ma'am.

6 MS. ROSS: Okay. Well, I guess I ask this be  
7 marked and offered as an applicant's exhibit.

8 THE COURT: Are you moving that into evidence?

9 MS. ROSS: Yes.

10 THE COURT: Okay. Any objection from the State  
11 to Applicant's Exhibit 1, the search warrant?

12 MR. KOWALSKI: No objection.

13 THE COURT: All right. So Exhibit 1 is entered  
14 into evidence without objection.

15 (Applicant's Exhibit No. 1 was received into  
16 evidence.)

17 MS. ROSS: And, Judge, I believe that was part  
18 of the package, as well, so we'd argue already in  
19 evidence.

20 BY MS. ROSS:

21 Q. But, basically, the search warrant, your home  
22 was searched and drugs and guns were found; is that  
23 correct?

24 A. Yes, ma'am. That's correct.

25 Q. And guns were found in the car?

1 A. Yes, ma'am. In the trunk of the car because  
2 they wasn't -- they wasn't my guns. My ex at the  
3 time but had passed away, his mother was coming to  
4 get the guns, and they were in the trunk of my car.  
5 It wasn't at the house.

6 Q. Okay. And you also submitted statements to  
7 your attorney pointing out how those guns were not  
8 yours. They actually belonged to ---

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

10 Q. Now, as far as the drugs, were most of those  
11 drugs actually that codefendant's drugs?

12 A. Yes, ma'am.

13 Q. And ---

14 A. That's correct.

15 Q. --- and -- and how did they come to be in your  
16 house?

17 A. Well, I guess he just left them there.

18 Q. And was he -- did you know whether ---

19 A. They wasn't -- I -- I never stayed in the back  
20 bedroom. I always stayed in the living room, and  
21 they were found in the back bedroom.

22 Q. And -- and you certainly don't deny that you  
23 had a drug issue?

24 A. Yes. I had a drug problem. I did have a drug  
25 problem from years, but I've been locked up over

1 three years.

2 Q. Now, what happened with that codefendant? Was  
3 he ever charged or convicted?

4 A. No, ma'am. He did not live here. He just come  
5 and went.

6 Q. All right. So even though the search warrant  
7 and he was selling drugs, he did -- he was not  
8 charged as you?

9 A. No, ma'am. They -- they never did anything to  
10 him.

11 Q. Now, can you explain how you came to -- the day  
12 you pled guilty, were you expecting to plead guilty  
13 that day?

14 A. No, ma'am. It was the officer. Mr. -- I may  
15 not pronounce his name right. I know his first name  
16 is Jonathan. He just kept on and kept on. And I  
17 told him anything in the house was mine, including  
18 my dog.

19 Q. Okay. But you gave a statement?

20 A. I was told that I needed to.

21 Q. And what did your attorney tell you about your  
22 chances of trial or pleading or that -- how did your  
23 attorney advise you?

24 A. He never did tell me anything. He just told me  
25 to sign this piece of paper. We went to court on

1 the 13th, and I signed the piece of paper. And when  
2 we went to court, he told me I had seven years to  
3 do.

4 Q. Okay. And the piece of paper, did you sign it  
5 the day of your plea?

6 A. It was like on a Friday. We went to court that  
7 following week.

8 Q. Did he advise you of what kind of sentence you  
9 were looking at if you pled guilty?

10 A. He just said seven years at that time.

11 Q. Did he tell you about that it was 7 to  
12 25 years?

13 A. No, ma'am.

14 Q. Did he tell you about you being released on  
15 community supervision for two years?

16 A. No, ma'am.

17 Q. Did he tell you how it was a violent charge?

18 A. No, ma'am. I did not know it was a serious and  
19 violent charge until a year after when I finally got  
20 my paperwork. He never -- I asked -- I called from  
21 the county jail I got locked up in. I called him  
22 several times. And me being or him not charging me,  
23 trying to make him answer the call.

24 I had my sister call him several times. I  
25 wanted to get an appeal because McIntosh told me to

1 make sure I did get an appeal, but he never returned  
2 none of my calls. I never seen him until today.  
3 He's in the court today, because this is the first  
4 time I've seen him in three and a half years.

5 Q. So you wanted an appeal and didn't get an  
6 appeal?

7 A. Yes, ma'am. I never could get in touch with my  
8 attorney, and I didn't never get my paperwork until  
9 I was sentenced on the 13th of July.

10 August 4th, I went to Camille Graham and I've  
11 been there since, but I didn't get my paperwork  
12 until almost a year later.

13 My sister had mailed me some paperwork of it  
14 when she had got it, but I never got any kind of  
15 paperwork until a year later. They had said that  
16 they couldn't find me is what he's saying, but I was  
17 there like the whole time.

18 Q. Now, just skipping back to your actual guilty  
19 plea. When you were deciding whether to plead  
20 guilty or not, did you plead -- why did you plead  
21 guilty as opposed to ---

22 A. I just pleaded guilty because it was my house  
23 and that's what I thought I was supposed to do.

24 Q. Okay. Is that based on the advice of your  
25 lawyer saying ---

1 A. No. He never advised me to say guilty or not  
2 guilty.

3 Q. Okay.

4 A. I just said I was guilty because I had a drug  
5 problem and I liked doing drugs back then. And  
6 that's why I just pleaded guilty because I thought  
7 that's what I was supposed to do.

8 Q. Okay. Now, I don't think this judge can help  
9 you with this, but you've been looking for a  
10 compassionate release; is that correct?

11 A. Yes, ma'am.

12 Q. All right. And -- and why is that?

13 A. I'm not -- because I feel like I've done --  
14 done enough time. I learned -- I learned my lesson.  
15 I know I can't buy drugs and do drugs. I didn't  
16 think. If you just did drugs, I wasn't harming  
17 nobody but myself.

18 Q. All right. How about your health? How is your  
19 health doing?

20 A. My health has gotten worse. It's harder for me  
21 to breathe. My airway is narrowing is what a doc --  
22 a doctor person told me.

23 MR. KOWALSKI: Your Honor, I'm going to object  
24 on relevance grounds. And in the alternative, this  
25 is kind of getting into what the State partially

1 moved to dismiss regarding her -- her health issues,  
2 so I'd just like to object.

3 THE COURT: All right. Again, we already  
4 talked about it a little bit, but she's started to  
5 indicate what someone else said to her, so I'm going  
6 sustain that as hearsay. I think she can testify  
7 about what she has knowledge of regarding her health  
8 because I think that is part of her application so I  
9 think it is relevant. So I'm going to overrule it  
10 as far as that goes, but I am going to sustain as  
11 hearsay.

12 So, Ms. Powell, make sure you don't tell me  
13 what somebody else said ---

14 THE APPLICANT: Okay.

15 THE COURT: --- but you can tell -- you can  
16 answer your attorney's questions with what you have  
17 personal knowledge of. Okay?

18 THE APPLICANT: Okay.

19 BY MS. ROSS:

20 Q. Okay. I spoke to your sister, Janet Craft.  
21 And as a result of that discussion, she seemed to  
22 indicate that you'd had some calls to her recently  
23 about the state of your health.

24 A. Yes.

25 MR. KOWALSKI: Objection. That calls for

1 hearsay.

2 MS. ROSS: I'm simply asking for what she told  
3 her sister.

4 THE COURT: Why don't you rephrase the question  
5 and -- and not reference any phone calls between her  
6 and her sister.

7 BY MS. ROSS:

8 Q. All right. I think you testified to this  
9 before, but how would you describe your state of  
10 health now?

11 A. It has gotten worse, my breathing. I can --  
12 when I take a shower now, I get out of breath. I  
13 can walk from here back to the elevator, and I'm out  
14 of breath. It wasn't as quite as bad when I first  
15 went. It's gotten worse.

16 Q. And -- but when you first went to prison, when  
17 you pled guilty ---

18 A. Yes.

19 Q. --- it was pretty bad then, wasn't it?

20 A. Yes. It was still bad.

21 Q. And wasn't it still -- they described your  
22 airway the size of a pencil eraser?

23 A. Yes, ma'am. That's correct. And I had leakage  
24 right there where they took the stitch out. That's  
25 why you'll see me put my finger over the hole so you

1 can hear me. If I don't cover it, all you hear is  
2 air. You can't hardly hear what I'm saying without  
3 covering it.

4 Q. And correct me if I'm wrong, but I thought that  
5 there was some issues of some further surgeries that  
6 you were scheduled to have to expand that airway.

7 A. No, ma'am. They said there's nothing they can  
8 do. They had to reroute my vocal cord. They won't  
9 open the airway, and that's why it's smaller than a  
10 pencil.

11 Q. All right. Now, did your lawyer, during your  
12 guilty plea, submit any of your medical records?

13 A. Not that I know of.

14 Q. All right.

15 A. He had ---

16 Q. I have -- go ahead.

17 A. He told me to bring my appointments to him that  
18 day when we were going to court, but he just told  
19 me -- he stuck it in his back pocket. He never  
20 handed them to the judge.

21 Q. All right. And did your lawyer discuss any  
22 negotiations he'd done on your behalf with the  
23 solicitor in your case?

24 A. Not that I know of. No, ma'am. Not that I can  
25 recall.

1 MS. ROSS: Okay. I have no further questions.  
2 Is there anything else you'd like tell the judge  
3 before you answer questions from the attorney  
4 general?

5 THE APPLICANT: No, ma'am. Thank you for your  
6 time.

7 THE COURT: All right. Cross-examination?

8 CROSS-EXAMINATION

9 BY MR. KOWALSKI:

10 Q. Good morning, Ms. Powell.

11 A. Good morning.

12 Q. So at your guilty plea, you told Judge McIntosh  
13 under oath that you understood the sentencing range  
14 of your plea, didn't you?

15 A. Zero to ten years, not seven years.

16 Q. And, specifically, that seven years was the  
17 minimum, correct?

18 A. Yes. Because Byrholdt told me seven years, but  
19 he didn't never show me a paper that I signed.

20 Q. And what sentence did you receive?

21 A. Seven. Seven years.

22 Q. And at the guilty plea, you told the judge that  
23 you weren't under the influence of any drugs,  
24 medications, or alcohol, right?

25 A. That's correct, but I was. He told me -- he

1 told to choose the date. That's correct.

2 Q. And you also told him that you were pleading  
3 guilty freely and voluntarily, right?

4 A. Yes. That's correct, but I was under the  
5 influence of drugs.

6 MR. KOWALSKI: And, Your Honor, I would just  
7 like to make note on page four of the guilty plea  
8 transcript, that when Judge McIntosh asked  
9 Ms. Powell about if she's under the influence.

10 THE APPLICANT: Byrholdt told me when I went to  
11 say something, he touched me and he said, "Yeah," so  
12 I said, "Yes."

13 BY MR. KOWALSKI:

14 Q. So you're saying that you only said "yes" to  
15 the questions because Mr. Byrholdt told you to?

16 A. He did tell me to say "yes," and so I said,  
17 "Yes." That was the first time up there being in  
18 front of the judge. I didn't know what I was doing.

19 Q. And you also told the judge that you were  
20 satisfied with Mr. Byrholdt's representation, that  
21 he had reasonably done what you had asked him -- or  
22 asked of him and that you had no complaints about  
23 him whatsoever?

24 A. Yes. I said that. Yes, I did.

25 Q. And ---

1 A. I don't recall because I was ---

2 MR. KOWALSKI: Beg the Court's indulgence.

3 BY MR. KOWALSKI:

4 Q. So just briefly, you mentioned on direct  
5 examination that you were pleading guilty because  
6 you thought that was the right thing to do. And  
7 then you also said that you were pleading guilty  
8 because you had a drug problem. Could you expand on  
9 that a little bit?

10 A. Well, I did have a drug problem. I liked drugs  
11 and I just said I was guilty because that's all I  
12 knew to do at the time. I didn't know I could plead  
13 not guilty at the time.

14 Q. You're alleging that Mr. Byrholdt didn't tell  
15 you that you could go to trial?

16 A. No, sir. If I went to trial, I would be  
17 looking at 25 years.

18 MR. KOWALSKI: No further questions.

19 THE COURT: Redirect?

20 MS. ROSS: No redirect, Your Honor.

21 THE COURT: All right. Thank you, Ms. Powell.

22 You can step down.

23 THE APPLICANT: Thank you.

24 THE COURT: Be careful. Watch your step.

25 THE APPLICANT: Thank you for your time.

1 THE COURT: All right. Ms. Ross, you may call  
2 your next witness.

3 MS. ROSS: That's our case, Your Honor.

4 THE COURT: All right. Thank you. State have  
5 any witnesses?

6 MR. KOWALSKI: Yes. The State calls  
7 Mr. Byrholdt.

8 THE COURT: All right.

9 (Witness approached.)

10 THE CLERK: Do you swear or affirm to tell the  
11 truth, the whole truth, and nothing but the truth?

12 THE WITNESS: I do.

13 THE CLERK: Thank you.

14 BRUCE BYRHOLDT,

15 having been produced and first duly sworn as a  
16 witness on behalf of the State, then testified as  
17 follows:

18 BY MR. KOWALSKI:

19 Q. Good morning, Mr. Byrholdt.

20 A. Good morning.

21 Q. Can you tell me how long you've practiced law  
22 for?

23 A. I think I'm in my -- I'm in my 45th year. I  
24 was admitted to the bar in 1980.

25 Q. And how much of your experience has been

1 criminal?

2 A. Probably more than 80 percent.

3 Q. Were you appointed or retained in Ms. Powell's  
4 case?

5 A. I -- I was retained by Ms. Powell in this case.

6 Q. And can you estimate about how many times you  
7 met with her?

8 A. I'd say at least six or seven times. You know,  
9 we met in my office. I went over the discovery with  
10 her. I knew she had serious health problems. She  
11 had -- had to use, you know, a plugged airway when  
12 she spoke with me. It was a bad situation, but she  
13 was charged with, you know, 200 to 400 grams of  
14 methamphetamines. And had she pled to that or gone  
15 to trial and been convicted of that, she would have,  
16 you know, been looking at a minimum of 25 years and  
17 a major fine. It's just a sad case, but...

18 Q. Did you have enough time to meet and speak with  
19 her?

20 A. Without a doubt. No question.

21 Q. Did you receive discovery from the State in  
22 this case?

23 A. I did. We reviewed it with Ms. Powell. Went  
24 over it. Like I said, it was the man that she was  
25 involved with and I believed he was kind of in

1 charge of everything, but she was, you know, going  
2 along with it. She was -- you know, she was  
3 involved. And that was my concern that, you know,  
4 had she gone to trial with that much drugs, she  
5 would've been convicted. You know, we had the drug  
6 results back from -- from the lab, and it was in  
7 excess of 200 grams of methamphetamines.

8 Q. And this man you mentioned was the codefendant?

9 A. Yes.

10 Q. And could you tell me about the State's  
11 evidence in this case?

12 A. Well, I mean, they -- they -- they had  
13 information that they believed drugs were -- were  
14 being sold out, you know, by these people out of  
15 that area. There's no way it's going to be more  
16 than 200 grams for personal use. And when the drugs  
17 were discovered at the house where Kristi lived,  
18 it's going to be a major problem.

19 Q. Did you explain with Ms. Powell her options as  
20 far as pleading guilty or going to trial,  
21 specifically pleading not guilty or pleading guilty?

22 A. Yes. I mean, the option was hers. I mean, my  
23 concern was with the evidence they had, I think  
24 there was a substantial likelihood that she would be  
25 convicted, and then she was going to go to jail for

1 at least 25 years. I think the initial offer was  
2 around 12 and a half, 13 years, you know, because of  
3 her health problems and they were serious health  
4 problems. She was going through a lot with her drug  
5 cancer. I was able to convince the solicitor and  
6 have the judge go along with it that the minimum  
7 seven years was a fair and reasonable sentence.

8 Q. And did you keep Ms. Powell updated with these  
9 plea offers and the recommended sentence?

10 A. Yes.

11 Q. While you were speaking with her, did she  
12 appear to understand everything that you were  
13 explaining to her?

14 A. Yeah. I mean, she knew that she was involved  
15 in something that she shouldn't have been involved  
16 in. The main concern is the health problems she was  
17 going through. You know, she just didn't -- didn't  
18 have a lot of options.

19 Q. And the -- so Ms. Powell ultimately decided to  
20 plead guilty?

21 A. Yes. I mean, it was -- when we went to court,  
22 the offer was there. And the offer was turned down  
23 at that point. They were going to place her on the  
24 trial docket and that would not have been in her  
25 best interest at all.

1 Q. So you agreed with her decision?

2 A. Yes.

3 Q. Did you ever pressure her into pleading guilty?

4 A. No. I don't -- you know, I don't mind trying  
5 cases, but I believe it's in my client's best  
6 interest to know, you know, what the options are and  
7 what the risk is. And the risk in that case with  
8 the amount of drugs involved, was just really not,  
9 you know, a legitimate issue of going forward. I  
10 think she would've been convicted.

11 Q. Did Ms. Powell ever ask you to file an appeal?

12 A. She did not.

13 Q. Did you see any reason to file an appeal?

14 A. No. And like I say, I have filed or attempted  
15 to file appeals. After a guilty plea, you got to  
16 explain it to the appellate court why. I mean,  
17 usually, you know, you're giving up your trial  
18 rights when you enter a plea of guilty. And unless  
19 there's some major error, a sentence in excess of  
20 what, you know, what the statute allows, you really  
21 don't have much appellate rights.

22 Q. And just going back just to be clear about this  
23 as far as the recommended sentence, you said you  
24 spoke to the solicitor and the judge about this?

25 A. Yes.

1 Q. You -- you mentioned that you got the judge to  
2 go along with it. Did you mention, as part of this,  
3 her health issues?

4 A. I did. And if we're -- I mean, if you -- if  
5 you meet Ms. Powell and speak with her, you know  
6 she's suffering from throat cancer and has  
7 significant health problems.

8 Q. So you believe the Court was aware of her major  
9 issues?

10 A. It would be impossible for the Court not to  
11 have been aware of it.

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

13 By MR. KOWALSKI:

14 Q. On the day of the guilty plea, did Ms. Powell  
15 appear to be under the influence of any drugs?

16 A. None whatsoever. I think the -- the problem  
17 that she was having was the same problem she was  
18 having with her throat cancer. That was the only  
19 problem that I was aware of. It was hard for the  
20 Court to understand her. We had to take things  
21 slowly, but it was done.

22 Q. And did you ever consider making an argument  
23 for compassionate release?

24 A. I've been practicing, like I say, on my 45th  
25 year. I have made motions for compassionate release

1 in Federal court and -- and had some granted. I was  
2 never asked by Ms. Powell -- Ms. Powell to -- to  
3 seek that. I've never had one granted in State  
4 court.

5 MR. KOWALSKI: I think I have no further  
6 questions.

7 THE WITNESS: Thank you, sir.

8 THE COURT: Cross-examination?

9 MS. ROSS: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MS. ROSS:

12 Q. Now, just looking back, did you actually submit  
13 to the judge the medical records that Ms. Powell ---

14 A. I did not submit the medical records. There  
15 was -- there was no -- nobody contested the fact  
16 that she was suffering from throat cancer and had  
17 been suffering and going through a long medical  
18 ordeal.

19 Q. All right.

20 A. And it was as you saw her in court today, the  
21 trouble she has speaking and that was evident.

22 Q. Did you ever ask any of the doctors about  
23 whether their recommendation would be time or for --  
24 you know, whether she could be treated for her  
25 injuries in SCDC or anything to that effect?

1 A. I've had clients with -- with serious medical  
2 problems who received treatment in SCDC. That was  
3 not the issue that was before the Court. I was  
4 trying to get her the least amount of time possible.  
5 She'd made a mistake. She accepted responsibility  
6 for it and -- and got the low end of the sentencing  
7 guidelines.

8 Q. And you told her she accepted responsibility  
9 because the drugs were in her house, correct?

10 A. There was more to it than that.

11 Q. Okay.

12 A. She knew ---

13 Q. Now ---

14 A. --- she knew what was going on in the -- in the  
15 business with the male that was involved.

16 Q. And -- and my review of the -- the search  
17 warrant, it looks like they were primarily, it was  
18 Andrew McElrath who was selling drugs out of her  
19 house. And -- and there were, I think, two pulled.  
20 And both times it was Andrew McElrath who people  
21 stated were selling the drugs.

22 With that being said, did you ever offer  
23 Kristi's testimony against him? It sounds like he  
24 was uncharged and walked away from all of this.

25 A. I believe at the time we entered the plea, he

1           might have already been deceased if I remember  
2           right.

3           Q.    All right.  And did you look into that, whether  
4           he was deceased or not?

5           A.    That was based on what Ms. Powell told me.

6           Q.    Was he charged as a codefendant?

7           A.    She was the only one charged at that time.

8           Q.    And in negotiations, did you ever make efforts  
9           to have her give testimony against him?

10          A.    She made no offer to do that.

11          Q.    Did you ever ask her about that or talk to the  
12          solicitor about that?

13          A.    (No response.)

14          Q.    Did you ever ask her about giving statements  
15          against him?

16          A.    Yes.

17          Q.    And she was unwilling to?  Is that what you're  
18          saying?

19          A.    She told me she was not going to get involved  
20          with that end of it.

21          Q.    Okay.  Did you ever talk to law enforcement  
22          about that option of going after McElrath versus  
23          Ms. Powell?

24          A.    No.  I was trying to protect her interest.

25          Q.    Now, going to appellate rights, you didn't

1 appeal the plea?

2 A. No, ma'am.

3 Q. And ---

4 A. I was not -- I was not asked to appeal.

5 Q. She testified that she and her sister called  
6 your office asking for an appeal after her plea.

7 A. I don't -- I don't recall that and I don't have  
8 any record of it in my file. And I filed -- I have  
9 file appeals from guilty pleas on a couple of  
10 instances. And you're required to give a reason why  
11 you think you've got a legal basis to make that  
12 appeal. I didn't think we had one in this case.

13 MS. ROSS: All right. I have no further  
14 questions.

15 THE COURT: Redirect?

16 MR. KOWALSKI: Just one question.

17 THE COURT: Yes, sir.

18 REDIRECT EXAMINATION

19 BY MR. KOWALSKI:

20 Q. Mr. Byrholdt, did you -- during the guilty  
21 plea, did you ever tell Ms. Powell to say "yes" to  
22 the questions?

23 A. No, sir. I've never done that. I never will.

24 MR. KOWALSKI: Okay. That's all I have.

25 THE COURT: All right. Thank you,

1 Mr. Byrholdt. You can step down.

2 (Witness excused.)

3 THE COURT: State have another witness?

4 MR. KOWALSKI: That's all the State's  
5 witnesses, Your Honor.

6 MS. ROSS: Judge, we'd like to call Janet Craft  
7 in rebuttal.

8 THE COURT: All right.

9 (Witness approached.)

10 THE CLERK: If you'll please raise your right  
11 hand.

12 THE WITNESS: (Complying.)

13 THE CLERK: Do you swear or affirm to tell the  
14 truth, the whole truth, and nothing but the truth?

15 THE WITNESS: I do.

16 THE CLERK: Okay. You can have a seat in the  
17 witness stand.

18 THE WITNESS: (Complying.)

19 MR. KOWALSKI: Your Honor, I would like to  
20 note, we were not advised that there would be  
21 another witness testifying. I would just like to  
22 place that on the record.

23 THE COURT: So are you objecting to this --  
24 what's your specific objection?

25 MR. KOWALSKI: We're -- the State is prejudiced

1 by this. We didn't have time to prepare for this  
2 witness. We were not informed that this witness --  
3 that the applicant was intending to call this  
4 witness to testify, and so the State needs time to  
5 prepare for this witness or would've needed time to  
6 prepare.

7 THE COURT: Ms. Ross, what's your response to  
8 that?

9 MR. KOWALSKI: So, specifically, lack of  
10 notice, Your Honor.

11 MS. ROSS: Judge, the amended application, one  
12 of the allegations was failure to appeal this case  
13 when requested. I did not intend to call Ms. Craft,  
14 except in rebuttal now because that issue has been  
15 brought to light since Mr. Byrholdt testified he was  
16 not requested to appeal the case. So I do believe  
17 the State has had notice of that allegation, and her  
18 testimony becomes relevant in light of  
19 Mr. Byrholdt's testimony.

20 THE COURT: All right. Considering that an  
21 applicant only has one shot at this, I'm going to  
22 allow this witness to testify, but if the State  
23 needs a few minutes after she testifies before doing  
24 their cross-examination to discuss with your  
25 co-counsel at the table or review any documents, I

1 will certainly give you that time. So at this time  
2 I'm going to overrule the objection, allow this  
3 witness to testify.

4 MR. KOWALSKI: Thank you, Your Honor.

5 JANET CRAFT,  
6 having been produced and first duly sworn as a  
7 witness on behalf of the Applicant, testified as  
8 follows:

9 DIRECT EXAMINATION

10 BY MS. ROSS:

11 Q. Mr. Craft, can you tell us how -- how you know  
12 Kristi Powell?

13 A. Kristi is my younger sister.

14 Q. And you've heard testimony about why  
15 Mr. Byrholdt didn't file an appeal. He said no one  
16 asked him for an appeal. Do you have any personal  
17 knowledge as to that statement?

18 A. Yes, I do. Kristi had called me from the  
19 Anderson County jail and said that she had tried  
20 contacting Mr. Byrholdt about an appeal, and she  
21 said, "I don't -- I guess it's because I can't -- he  
22 can't hear me on the phone."

23 So I called Mr. Byrholdt and I told him --  
24 asked him to contact Kristi at the Anderson County  
25 jail. And he told me she knew what the charges were

1 and she was very much aware of it. And he would put  
2 information in the mail to me, and I never received  
3 anything from him. So that's -- that's the extent  
4 of our conversation. She wanted to talk to him. He  
5 couldn't understand her, and so I made a phone call  
6 for her to contact her about talking to her about  
7 the case.

8 MS. ROSS: All right. I have no further  
9 questions.

10 THE COURT: Cross-examination?

11 CROSS-EXAMINATION

12 BY MR. KOWALSKI:

13 Q. Good morning.

14 A. Hi.

15 Q. When you -- do you recall when you placed these  
16 phone calls to Mr. Byrholdt's office?

17 A. Yes, I do.

18 Q. Could you tell me the date?

19 A. The date? No, sir. But Kristi was in the  
20 Anderson County Detention Center.

21 Q. Do you know if this was right after her guilty  
22 plea?

23 A. Right after her guilty plea, yes, because the  
24 day of the trial, she was up there. She didn't know  
25 that she was being tried for the case. He asked her

1 the weekend before her come and to get a statement  
2 from her doctor where she was going to have a  
3 pending examination results from where they removed  
4 a stitch in her throat.

5 So she went Monday and got that information  
6 from them. Handed it to Mr. Byrholdt at the -- at  
7 the courtroom, and he stuck it in his inside pocket.

8 Well, she didn't even know she was being tried,  
9 so she was trying to get in touch with who she  
10 needed to because her trial was not under her  
11 knowing that she was going to be tried that day and  
12 gone to jail because she looked at him and she said,  
13 "I'm going to jail today? I'm being tried today?"  
14 after the sentence. And he said, "Yes. Today."

15 So right after that, she wanted to talk to him  
16 because she was not exactly sure that she was being  
17 tried that day in front of Judge McIntosh.

18 Q. So if it ---

19 A. Can I say something?

20 Q. Sure. Go ahead.

21 A. Okay. Judge McIntosh, whenever they sent her  
22 to jail, they -- on the paperwork from being  
23 sentenced at the jail, I tried to get in touch with  
24 the attorney. And then I tried to get in touch with  
25 Judge McIntosh. Well, on her records, they did not

1 have Judge McIntosh listed. They had her like she  
2 was gone to jail for a violation of probation and  
3 didn't have a judge listed, so I couldn't contact  
4 the judge to ask him anything.

5 And Mr. Byrholdt, when I called him, he said  
6 that he would put something -- he knew what was  
7 going on, and he would put me something in the mail,  
8 and I never received it. And I still -- and until  
9 she got sentenced on eight -- moved from Anderson  
10 County Detention Center to Camille Graham, she --  
11 the charge -- the judge wasn't listed until that  
12 point in time because I kept checking the records of  
13 who to contact for her to get on appeal, even before  
14 she went down the road.

15 Q. So you mentioned you were able to get in  
16 contact with Mr. Byrholdt after she pled guilty?

17 A. Yes, I did.

18 Q. And what -- so what did you talk about with him  
19 once you got him on the phone?

20 A. He was -- he was very short with me and he said  
21 that Kristi knew what the sentencing was and he  
22 would put me something in the mail, and that was the  
23 extent of our conversation.

24 Q. And so you're saying here today that you asked  
25 him about filing an appeal on this?

1 A. I did not ask him filing. I asked him to  
2 contact Kristi at the Anderson County jail.

3 MR. KOWALSKI: I have no further questions.

4 THE COURT: Redirect?

5 MS. ROSS: None, Your Honor.

6 THE COURT: All right. Thank you.

7 THE WITNESS: Thank you.

8 (Witness excused.)

9 THE COURT: All right. Any other -- I'm  
10 assuming no other witnesses, right?

11 MR. KOWALSKI: Judge, if I could just put  
12 Mr. Byrholdt back on the stand for a couple of  
13 questions.

14 THE COURT: All right. I'm going to -- I'm  
15 going to allow you to do that since we allowed the  
16 rebuttal witness.

17 (Witness approached.)

18 FURTHER DIRECT EXAMINATION

19 BY MR. KOWALSKI:

20 Q. Do you recall ever receiving a phone call from  
21 Janet Craft?

22 A. I do.

23 Q. What did you discuss?

24 A. She wanted a copy of the file. I told her I  
25 made a copy of the file, and it's still sitting on

1 my desk. She was supposed to come by my office and  
2 pick it up. There was never any discussion of an  
3 appeal.

4 Q. Do you recall when this conversation happened?

5 A. Shortly after the guilty plea, within a week or  
6 so.

7 MR. KOWALSKI: Beg the Court's indulgence.  
8 That's all -- that's all the State has.

9 THE COURT: Ms. Ross, any questions?

10 MS. ROSS: No, Your Honor.

11 THE COURT: All right. Thank you,  
12 Mr. Byrholdt.

13 (Witness excused.)

14 THE COURT: All right. I'm happy to hear any  
15 arguments for either side. And then if the State  
16 wants to renew any of their motions to dismiss, they  
17 may do that, but I'm happy to hear arguments from  
18 either side if you wish to do that on the record.

19 MS. ROSS: Judge, just going back to some of  
20 the testimony and allegations. This is a hard  
21 situation when there's a guilty plea certainly, but  
22 you heard testimony of Ms. Powell and her sister  
23 that she was not prepared and didn't understand the  
24 process that was happening regarding the guilty plea  
25 that day or certainly that was her testimony.

1           It looks like these charges arose out of the  
2 drug dealing activity of an uncharged codefendant  
3 who certainly should've been charged and possible  
4 negotiations could have received a better sentence,  
5 with the understanding that there were a great deal  
6 of drugs involved here and there were some mandatory  
7 minimums.

8           As to the appeal itself, I heard some testimony  
9 on direct. Mr. Byrholdt was saying, you know, there  
10 really are no appellate rights from a guilty plea  
11 and that you do have to give a justification for  
12 that. However, judges instruct clients there are  
13 appellate rights from a guilty plea. And the  
14 testimony of Ms. Powell was that she wanted her plea  
15 to be appealed and that she made efforts to get in  
16 touch with Mr. Byrholdt.

17           And then Ms. Craft testified that she had  
18 called and asked Mr. Byrholdt to get in contact with  
19 her sister, Ms. Powell, because she wanted to  
20 discuss the case. And what you heard was, the  
21 discussion that she wanted to have was please appeal  
22 my case. And that's what she wanted to have, so we  
23 would think to ask that Ms. Powell certainly be  
24 given relief pursuant to *State v. White* regarding an  
25 appeal of her guilty plea.

1           As to the plea itself, I think it was effected,  
2           certainly with negotiations that nothing was handed  
3           up. No continuance was requested. No medical forms  
4           were handed up saying "we need a little bit more  
5           time to get this throat cancer situation under  
6           control."

7           And while I do understand that SCDC does  
8           provide medical treatment, the reports I'm getting  
9           from Ms. Craft and from Kristi herself is that her  
10          health has been going downhill and she's really just  
11          taking care of herself more than anything in keeping  
12          her stoma clean, which is difficult.

13          THE COURT: Thank you.

14          MR. KOWALSKI: So the record reflects from the  
15          guilty plea that Mr. Byrholdt presented applicant's  
16          medical issues, her codefendants being deceased at  
17          the time, and the applicant's likely priors at the  
18          guilty plea on the record. So his testimony today  
19          shows that applicant understood what was going on.  
20          She was sober-minded at the time of the guilty plea.  
21          She indicated as much to the -- the judge at the  
22          guilty plea.

23          Mr. Byrholdt also testified that they had  
24          reviewed discovery together, and that he kept her  
25          apprised of the nature of the recommended sentence

1 as well as updates involving guilty plea offers.

2 And furthermore, his testimony today indicates  
3 that he was never asked to file an appeal and that  
4 he did not see a reason to file an appeal.

5 Applicant's rebuttal witness today testified  
6 that when she got in contact with Mr. Byrholdt's  
7 office that she did not ask about filing an appeal.  
8 And his testimony in rebuttal to that indicates the  
9 same.

10 His testimony also established -- his testimony  
11 -- I'm very sorry. His testimony also indicates  
12 that all parties, including the judge and the  
13 solicitor, were aware of applicant's severe medical  
14 issues when it came time for the guilty plea and the  
15 sentencing. And so for all those reasons, the State  
16 asks that you deny applicant's application. And  
17 that's all I have.

18 MS. ROSS: Judge, just one thing briefly. Just  
19 as a criminal defense attorney myself, generally  
20 after a plea, when the family members or the  
21 defendants are attempting to get in contact, it's  
22 either about an appeal or motion to reconsider, and  
23 neither of those options were explored by  
24 Mr. Byrholdt.

25 THE COURT: Thank you. All right. I

1 appreciate the work everyone put into the case and  
2 the testimony and the arguments. I will take this  
3 matter under advisement and let the attorneys know  
4 as soon as possible. I may request either one or  
5 the other to draft an order. Thank you.

6 MS. ROSS: Thank you, Judge.

7 MR. KOWALSKI: Thank you, Your Honor.

8 (At 10:43 a.m., the proceedings concluded.)

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

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Anderson County, South Carolina, on the 8th day of September, 2025.

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

December 17, 2025

/s/Lisa Scott

*Lisa Scott*  
*Circuit Court Reporter*

23 SEP 07 12:06:13  
Anderson, SC 29624 09/05

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF ANDERSON

Detective Jonathan M. Velez

Personally appeared before me, one Det. Jonathan M. Velez, who being duly sworn, say that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this City:

DESCRIPTION OF PROPERTY SOUGHT

Methamphetamine and any other contraband drugs, any and all books, records, receipts, notes, ledgers and other papers relating to the sale, ordering, and distribution or manufacture of contraband drugs, any and all books, records, receipts, bank statements and other items evidencing the obtaining, secreting transfer, and/or concealment of assets and the obtaining secreting, transfer, concealment and/or expenditure of money, any and all U.S. Currency, precious metals, contraband drugs, any and all indicia of occupancy, residency, and/or ownership of the premises described. Included but not limited to utility and telephone bills, cancelled envelopes and keys, any conveyances used to facilitate the transportation, distribution, or storage of methamphetamine and other contraband drugs.

DESCRIPTION OF PREMISES (PERSON, PLACE, OR THING) TO BE SEARCHED

The residence to be searched can be located at [redacted] Ellen Street, South Carolina. The residence can be located by traveling Highway 28 Bypass until reaching Abbeville Highway. Turn right onto Abbeville Highway and travel until reaching Airline Road. Turn right onto Airline Road and travel approximately a mile before reaching Ellen Street on the right. Turn right onto Ellen Street and travel until reaching [redacted] Ellen Street which will be located on the right side of the road.

There is a black plastic mailbox at the roadway with the numbers [redacted] across the street from the residence. The residence to be searched is a single level tan vinyl siding home with white trim, white screen door and a gray roof. The residence has brick front steps with a wooden handrail. There are also several outdoor buildings/sheds located around the rear of the property, along with a large white motorhome. The property can be found on the Anderson County tax map system under tax map ID 126-02-01-039-000 and the owner on record is listed as Kristi Powell.

This search is to include all vehicles, persons, electronic communication devices, outbuildings, attics, crawlspaces, safes/storage containers and all attached and detached garages located on the property at the time of the search.

REASON FOR AFFIANT'S BELIEF THAT THE PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

(ACSO case number 2021- 02643) On January 14, 2021, at approximately 10:59am Deputy Kaleb Grant, employed by the Anderson County Sheriff's Office and assigned to the Uniform Patrol Division, observed a Red Kia Spectra leaving the target location [redacted] Ellen Street.

Deputy Grant while running the vehicles information (South Carolina plate [redacted]) observed that the vehicle's left two tires abruptly crossed the center double yellow line, failing to maintain its designated lane of travel near S. McDuffie Street and Carey Street. As a result of the above described violations, a traffic stop was conducted on the vehicle at S McDuffie Street and Bronco Drive. Contact was made with the driver a Sharon RAMSEY (DOB: [redacted] 64) and front passenger Tommy Ramsey (DOB: [redacted] /80) and they were advised the reason for the stop. A consent to search was requested by Deputy Grant and the search was granted by the vehicle owner Sharon RAMSEY. During the search of the vehicle, Deputy Grant asked Sharon RAMSEY consent to search her purse and while searching the purse Deputy Grant located a plastic baggy containing approximately 3 grams of a crystal-like substance that field tested positive for methamphetamine.

A Confidential Source/ Source of Information on January 15, 2021 provided information that an Andrew Marshall MCEL RATH (DOB: [redacted] 78) has been selling methamphetamine at [redacted] Ellen Street at the

EXHIBIT  
# 1  
Applicants  
PERGAD 800-867-0088

residence of Kristi POWELL. On January 21, 2021 Detective Velez spoke with the CS/ CI with Detective Joshua Durham about the target location. CS/CI provided the same account about MCEL RATH selling from the location and the CS/CI also provided a detailed physical description of the residence and layout of the property.

(ACSO Case Number 2021-03547) On January 19, 2021, at approximately 7:45pm surveillance was being conducted by Detective Jonathan Velez at [REDACTED] Ellen Street in reference to suspected drug sales. During surveillance a white Hyundai sedan was in the driveway of the said location.

A few moments later, Deputy Kaleb Grant, employed by the Anderson County Sheriff's Office and assigned to the Uniform Patrol Division, observed the same white Hyundai sedan (South Carolina plate [REDACTED]) leaving the target location [REDACTED] Ellen Street. Grant got behind the said vehicle and while running the vehicle's information observed the driver of the vehicle fail to use a turn signal on Brookhaven Drive. A traffic stop was conducted and contact was made with the driver and sole occupant of the vehicle Kenneth BURNETTE. BURNETTE was advised the reason for the stop and while speaking with BURNETTE Deputy Grant could smell the odor consistent with marijuana coming from the vehicle's interior.

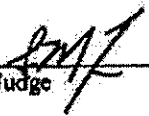
A probable cause search was conducted of the vehicle and on BURNETTE's person. During the search of BURNETTE's person Deputy Grant located approximately 19 grams of a crystal-like substance that field tested for methamphetamine in the front left pocket of BURNETTE. During the search of the vehicle Deputy Grant located approximately 26 grams of marijuana near and around the center console of the vehicle.

It is the affiant's belief that a search of the residence and the curtilage of the property will yield methamphetamine, other contraband drugs, U.S. Currency and or records, ledgers, and mobile devices containing evidence of the sale and/or distribution of methamphetamine and/or other contraband drugs within Anderson County.

Sworn to and Subscribed before me

This 22nd day of January, 2021

Signature of Judge



1:53 pm

AFFIANT



ADDRESS 305 Camson Rd ANDERSON, SC 29625  
PHONE 864-260-4400

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

THE COUNTY OF ANDERSON SHERIFF'S OFFICE  
305 Camson Rd  
ANDERSON, S.C. 29625

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**SEARCH WARRANT**

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Date: January 22, 2021

Officer: Detective Jonathan M. Velez  
Case Number: 2021-01116

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

SEARCH WARRANT

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF ANDERSON

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

**DESCRIPTION OF PREMISES (PERSON, PLACE, OR THING)  
TO BE SEARCHED**

The residence to be searched can be located at [REDACTED] Ellen Street, South Carolina. The residence can be located by traveling Highway 28 Bypass until reaching Abbeville Highway. Turn right onto Abbeville Highway and travel until reaching Airline Road. Turn right onto Airline Road and travel approximately a mile before reaching Ellen Street on the right. Turn right onto Ellen Street and travel until reaching [REDACTED] Ellen Street which will be located on the right side of the road.

There is a black plastic mailbox at the roadway with the numbers "[REDACTED]" across the street from the residence. The residence to be searched is a single level tan vinyl siding home with white trim, white screen door and a gray roof. The residence has brick front steps with a wooden handrail. There are also several outdoor buildings/sheds located around the rear of the property, along with a large white motorhome. The property can be found on the Anderson County tax map system under tax map ID 126-02-01-039-000 and the owner on record is listed as Kristi Powell.

This search is to include all vehicles, persons, electronic communication devices, outbuildings, attics, crawlspaces, safes/storage containers and all attached and detached garages located on the property at the time of the search.

**DESCRIPTION OF PROPERTY**

Methamphetamine and any other contraband drugs, any and all books, records, receipts, notes, ledgers and other papers relating to the sale, ordering, and distribution or manufacture of contraband drugs, any and all books, records, receipts, bank statements and other items evidencing the obtaining, secreting transfer, and/or concealment of assets and the obtaining secreting, transfer, concealment and/or expenditure of money, any and all U.S. Currency, precious metals, contraband drugs, any and all indicia of occupancy, residency, and/or ownership of the premises described. Included but not limited to utility and telephone bills, cancelled envelopes and keys, any conveyances used to facilitate the transportation, distribution, or storage of methamphetamine and other contraband drugs.

This search warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to the Search Warrant shall be made to Judicial Official within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such a copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

ANDERSON, SC  
January 22, 2021

  
Signature of Judge

(L.S.)

State of South Carolina, County of Anderson  
In the Court of Common Pleas, Tenth Judicial Circuit

Kristi R. Powell,  
Applicant/Petitioner

vs.

State of South Carolina,  
Respondent.

Case No. 2022-CP-04-02554

Preliminary Order

25 SEP 10 PM 3:59:35  
Anderson, SC CDC, CP/85

Date of Hearing	September 8, 2025
Presiding Judge	Jane H. Merrill
Court Reporter	Lisa Scott
Applicant/Petitioner's Attorney	Susannah C. Ross
Respondent's Attorney	Ryan T. Kowalski

This post-conviction relief case came before the court for a hearing. Having now heard this matter, the court orders as follows.

1. The application for post-conviction relief is hereby:  denied  granted \_\_\_\_\_ under advisement; a formal order will be filed (see below Number 5).
2. Motion(s) was/were heard in this case and the court orders:  The motion to dismiss the "improper contact with SCDC" and "medical treatment at SCDC" portions of Applicant's petition is granted.
3. A conditional order of dismissal was previously filed in this case. Upon review of the matter, the court finds:  
  
\_\_\_\_\_ Good cause as to why the case should not be dismissed has been shown in response to the order of dismissal; therefore, a hearing on the merits of the application shall be scheduled.  
  
\_\_\_\_\_ The court has considered the response to the conditional order of dismissal and finds that good cause has not been shown or \_\_\_\_\_ no response has been filed to the conditional order of dismissal; therefore, the application is hereby dismissed.
4. The application was freely, voluntarily, and intelligently withdrawn as indicated on the record; therefore, this case is dismissed \_\_\_\_\_ with prejudice \_\_\_\_\_ without prejudice.

*JHM*

5. The court further orders:

X The Attorney General is directed to submit to the court a proposed order and to serve the order on opposing counsel by October 10, 2025. The order shall be submitted in .doc format via email to the Court's administrative assistant (jmerrillsc@sccourts.org) and law clerk (jmerrilllc@sccourts.org). In its proposed order, the Attorney General shall include the procedural history and a summary of the evidence at trial and may include additional findings of facts and conclusions of law supported by the pleadings and evidence that are consistent with this preliminary order. The court's preliminary findings are below. The language in bold font is Applicant's allegations, and the court's findings follow and should be included as part of the proposed order.

Applicant's requested relief for a reduced sentence or a change in classification from violent to nonviolent is outside the scope of this court's review. The court informed Applicant of this prior to all testimony, and the Applicant, under oath, acknowledged she understood.

\_\_\_\_\_ Both sides are directed to submit proposed orders to the court and to serve the orders on each other within \_\_\_\_\_ days.

\_\_\_\_\_ The court does not request proposed orders.

1. Ineffective Assistance of Counsel

- a. **Applicant only had three short visits with Plea Counsel.** Plea Counsel testified he met with Applicant six or seven times in his office, including for her to sign the plea paperwork the Friday before Applicant entered her guilty plea the following week. The court finds it credible that the Applicant and Plea Counsel had enough meetings, whether it was three or seven, such that Applicant understood the charges against her and the nature of her plea. Plea Counsel was not deficient.
- b. **Plea Counsel requested Applicant get doctors note to postpone plea because Applicant was going to have trachea resizing surgery on July 27, 2022. Applicant brought doctors note to plea hearing July 13, 2022, but Plea Counsel failed to present the doctor's note to the plea court.** Plea Counsel testified it was unnecessary to present the medical record(s) because it was obvious Applicant had a Tracheostomy in place and had difficulty speaking loudly. The court finds both Applicant and Plea Counsel credible as to this testimony. However, it was not deficient for Plea Counsel to decide it unnecessary to present the medical record(s) for the reasons cited. Plea Counsel was not deficient.
- c. **Plea Counsel did not know this was Applicant's first offense.** During the plea hearing, the Solicitor stated that Applicant had a prior possession of ice conviction from 2003. Plea Counsel accurately told the court during the plea this was Applicant's first strike,

which required knowing Applicant's criminal history. The court finds Plea Counsel credible, and he is not deficient.

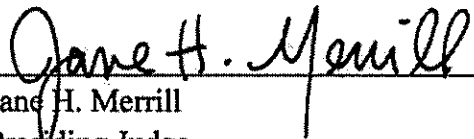
- d. **No proper contact with Plea Counsel.** (See the court's findings related to 1.a.)
  - e. **Applicant never received discovery.** Plea Counsel reviewed discovery with Applicant prior to her plea. Based on testimony from Plea Counsel, it appears credible that Applicant did not get a copy of discovery, but providing a copy of discovery is not required and Plea Counsel was not deficient because he was reviewed and discussed the discovery with Applicant.
2. Involuntary Guilty Plea
- a. **Applicant felt coerced by Plea Counsel not to speak at plea hearing and mention her upcoming surgery.** During the plea, the Court asked if there was anything Applicant wanted to add. (Transcript, p. 9). Applicant did not respond, and Plea Counsel responded that she has serious health issues. Nothing in the transcript, such as the court commenting on Applicant raises her hand or otherwise gesturing that she wished to speak, demonstrates Applicant wanted to speak further and was denied the opportunity. The court finds Applicant was provided an opportunity to address the court directly and did not respond. Plea Counsel testified that he did not tell Ms. Powell how to answer which the court finds credible. Plea Counsel was not deficient.
  - b. **Applicant tried to address plea judge, but Plea Counsel told her not to speak until questions were completed by the plea judge.** (See the court's findings related to 2.a.)
  - c. **Plea Counsel tapped Applicant on back three times when she tried to bring up her upcoming surgery. Applicant's testimony as to this was not disputed, but Plea Counsel was not asked a question about it by either party.** (See the court's findings related to 2.a.)
  - d. **Applicant did not know she was pleading guilty on July 13, 2022.** The court finds this lacks credibility. The plea paperwork was signed the Friday before the plea, and Applicant clearly and easily answered the court's questions during the plea hearing.
  - e. **Applicant was under the influence of methamphetamine at time of plea.** The court finds this lacks credibility. Plea Counsel testified she did not appear to be under the influence of drugs during the plea. Additionally, Applicant, while under oath, answered the court's questions during the plea hearing, including denying that she was under the influence of any drugs. (Transcript, p. 4). Further, if the Court had any concern about the Applicant being under the influence, such concerns would have been addressed during the plea. Plea Counsel was not deficient.
  - f. **Applicant did not understand plea process.** The court finds this lack credibility. Throughout the plea, Applicant stated she understood the charge, the minimum and maximum it carries, that it is violent, that it is a (Serious) strike on her record, and answered all other applicable questions throughout the plea. Plea Counsel was not deficient.

3. *White v. State* (belated appeal)
  - a. **“Did not receive paperwork for appeal until after 10 day deadline due to being incarcerated.” Respondent interprets Applicant’s response to Question 9 as a request for a belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974).** Applicant testified that she wanted to appeal, and called her sister from the jail to request her sister call Plea Counsel because it is difficult for others to hear Applicant on the phone. Over the State’s objection, Applicant’s sister, Janet Craft, testified as a rebuttal witness. Ms. Craft confirmed she contacted Plea Counsel’s office after Applicant was sentenced but she did not tell Plea Counsel that Applicant wanted to appeal. Additionally, the court advised Applicant she had ten days to appeal at the conclusion of her plea. (Transcript, p. 10). When recalled to the stand after Ms. Craft testified, Plea Counsel confirmed Ms. Craft called his office to request a copy of Applicant’s file for her, but did not request that he file an appeal. The court finds Applicant knew she could file an appeal within ten days and did not timely request Plea Counsel file an appeal, and Plea Counsel was not deficient.
4. Improper Contact with SCDC
  - a. **Applicant unable to contact plea judge because SCDC had her listed as locked up for probation violation, and Applicant’s sentence was not recorded correctly until August 4, 2022.** This is outside the scope of the court’s review on a PCR, and is therefore, dismissed.
5. Medical Issues
  - a. **Applicant has not had an appointment for trachea resizing since being incarcerated.** This is outside the scope of the court’s review on a PCR, and is therefore, dismissed.

The court finds Plea Counsel was not deficient. Therefore, it is unnecessary to analyze the prejudice prong of the *Strickland* standard. The relief requested by Applicant is denied.

In its proposed order, the Attorney General shall include the procedural history and a summary of the evidence at trial and may include additional findings of facts and conclusions of law supported by the pleadings and evidence that are consistent with this preliminary order. This is not the final order that ends the case. It is so ordered.

September 10, 2025  
Anderson, SC

  
\_\_\_\_\_  
Jane H. Merrill  
Presiding Judge

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

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

Kristi R. Powell, #388603

) Case No.: 2022-CP-04-02554  
)

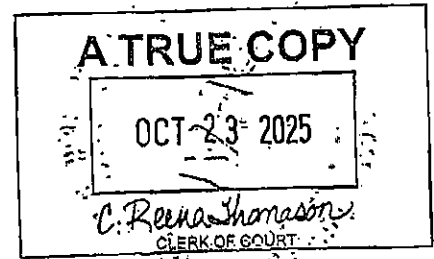
) Applicant,  
)

**ORDER OF DISMISSAL WITH  
PREJUDICE**

) v.  
)

) State of South Carolina,  
)

) Respondent.  
)



25 OCT 23 PM 12:08:28  
Anderson, SC:CCJ, CP/86

Presiding Judge: Jane H. Merrill  
Court Reporter: Lisa Scott  
Applicant's Attorney: Susannah C. Ross, Esq.  
Respondent's Attorney: AAG-Ryan T. Kowalski  
Plea Counsel: Bruce A. Byrholdt, Esq.  
Date of Hearing: September 8, 2025

This matter comes before the Court by way of the post-conviction relief (PCR) action filed by Kristi R. Powell (Applicant) on December 9, 2022. Respondent, the State of South Carolina, made its Return and Partial Motion to Dismiss on March 18, 2024, requesting an evidentiary hearing to resolve the claims as set forth in the application. Applicant filed an amended application on September 5, 2025. An evidentiary hearing convened on September 8, 2025, at the Anderson County Courthouse before the Honorable Jane H. Merrill. Applicant was present and represented by Susannah C. Ross, Esquire. Assistant Attorney General Ryan T. Kowalski represented Respondent.

At the hearing, Applicant proceeded forward on the claims set forth in her application. In support of these claims, Applicant testified on her own behalf, and presented testimony from Applicant's sister, Janet Craft. Respondent presented testimony from Bruce A. Byrholdt, Esquire. (Plea Counsel). Following a thorough review of the record in its entirety, along with the testimony

and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling her to relief and, accordingly, denies and dismissed this action with prejudice.

#### PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Anderson County Clerk of Court. During its July 2021 term, the Anderson County Grand Jury indicted Applicant for Trafficking Methamphetamine, 200 grams or more, and Possession of a Weapon During the Commission of a Violent Crime (2021-GS-04-01229).

On July 13, 2022, Applicant appeared before the Honorable R. Lawton McIntosh and pled guilty to the lesser charge of Trafficking Methamphetamine, 28-100 grams. Bryce A. Byrholdt, Esquire (Plea Counsel), represented Applicant. Tenth Circuit Assistant Solicitor Mary Grace Holahan (Solicitor Holahan) prosecuted the case. The State recommended seven (7) years active time. Judge McIntosh sentenced Applicant to seven (7) years imprisonment for Trafficking Methamphetamine. Applicant did not appeal her sentence or conviction.

#### SUMMARY OF THE FACTS PRESENTED AT THE PLEA HEARING

The facts giving rise to Applicant's conviction were articulated by the Solicitor Holahan, as follows:

Your Honor, this occurred on January 27th of 2021. Detectives with the Anderson County Sheriff's Office conducted a search warrant at ■■■ Ellen Street here in Anderson County. That is Ms. Powell's residence. She was found to be in possession of several hundred grams of methamphetamine. It came to a little over 200 grams. The State has reduced the charge based on her lack of a prior record. All she has is a possession of Ice from 2003.

(Plea Tr. pp. 8, ll. 25 – 9, ll. 1-8).



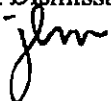
CURRENT APPLICATION

In her application for post-conviction relief, Applicant alleges she is entitled to relief based on the following grounds:<sup>1</sup>

1. Ineffective Assistance of Counsel
  - a. Applicant only had three short visits with Plea Counsel.
  - b. Trial Counsel requested Applicant get doctors note to postpone plea because Applicant was going to have trachea resizing surgery on July 27, 2022. Applicant brought doctors note to plea hearing July 13, 2022, but Trial Counsel failed to present the doctors note to the plea court.
  - c. Trial Counsel did not know this was Applicant's first offense.
  - d. No proper contact with Trial Counsel.
  - e. Applicant never received discovery.
2. Involuntary Guilty Plea
  - a. Applicant felt coerced by Trial Counsel not to speak at plea hearing and mention her upcoming surgery.
  - b. Applicant tried to address plea judge, but Trial Counsel told her not to speak until questions were completed by the plea judge.
  - c. Trial Counsel tapped Applicant on back three times when she tried to bring up her upcoming surgery.
  - d. Applicant did not know she was pleading guilty on July 13, 2022.
  - e. Applicant under the influence of methamphetamine at time of plea.
  - f. Applicant did not understand plea process.
3. *White v. State*<sup>2</sup>
  - a. "Did not receive paperwork for appeal until after 10 day deadline due to being incarcerated."
4. Improper Contact with SCDC
  - a. Applicant unable to contact plea judge because SCDC had her listed as locked up for probation violation, and Applicant's sentence was not recorded correctly until August 4, 2022.
5. Medical Issues

<sup>1</sup> Allegations summarized for the sake of brevity.

<sup>2</sup> Respondent interprets Applicant's response to Question 9 as a request for a belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974).



- a. Applicant has not had an appointment for trachea resizing since being incarcerated.

As requested relief, Applicant states she is seeking the following as relief:

“At this time I am pleading to the court for a reconsideration of my sentence. No I am not asking to just walk free as I realize there are consequences to be served. What I am asking for is the court to consider possibly a home detention or to consider a change in my violent status to non-violent where I may be eligible for parole so that I can get the constant medical attention needed for my failing health and trach.”<sup>3</sup>

#### STANDARD OF REVIEW

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984); *Taylor v. State*, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a

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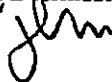
<sup>3</sup> The relief Applicant seeks is not available because the Uniform Post-Conviction Procedure Act does not provide a vehicle for sentence reduction. *See Clark v. State*, 259 S.C. 378, 382–83, 192 S.E.2d 209, 210 (1972) (per curiam) (holding that an inmate cannot seek a “time cut” in his sentence via post-conviction relief if the sentence was within the statutorily defined limits); John H. Blume, *An Introduction to Post-Conviction Remedies, Practice and Procedure in South Carolina*, 45 S.C. L. Rev. 235, 268 (1994) (noting that “[t]he lack of jurisdiction to reduce otherwise proper sentences seems not to be widely recognized by many inmates who file pro se applications seeking a reduction in their sentences”). If this Court were to find a defect in the original proceedings, the appropriate relief would be a new trial on the original indictment. *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.”).



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

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland v. Washington* to determine whether counsel’s conduct “was so [ineffective] as to require reversal” of the applicant’s conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel’s deficient performance. *Id.* at 687–88; *accord. Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that “[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable.” (citation and internal quotation marks omitted)).

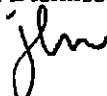
Regarding the deficiency prong of the *Strickland* analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel’s performance, the reviewing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



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

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

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



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

### *Guilty Pleas Based on Ineffective Assistance of Counsel*

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea. *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel. *See Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel’s performance under the first prong of *Strickland* remains unchanged, the applicant must show that counsel’s representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58-59; *accord Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000).

An applicant alleging their guilty plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the range of competence demanded of attorneys in criminal cases.” *Hill*, 474 U.S. at 56. The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” *Id.* at 58-59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.* at 59.

This inquiry “focuses on a defendant’s decisionmaking” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 582 U.S. 357, 367 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the



circumstances. *Padilla*, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

### FINDINGS OF FACT & CONCLUSIONS OF LAW

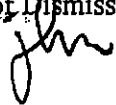
Before this Court are the records of the Anderson County Clerk of Court regarding the underlying general sessions proceedings, the transcripts from Applicant's plea proceeding, Applicant's records from the South Carolina Department of Corrections, and Applicant's records from this PCR action. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed this Court to evaluate and scrutinize their credibility. Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant her application for post-conviction relief.

### *SUMMARY DISMISSAL DUE TO NON-COGNIZABLE CLAIMS*

**Allegation: Improper Contact with SCDC**

**Allegation: Medical Issues**

Applicant alleged that she had been unable to contact the plea judge due to SCDC incorrectly listing her sentence, and that he has not been able to schedule an appointment for trachea resizing due to being incarcerated. Respondent submitted that these claims should be summarily dismissed for failure to state a cognizable claim under the Uniform Post-Conviction Procedure Act. An applicant may commence a post-conviction relief action on the following grounds:



1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A).

Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. PCR relief is only proper when the application collaterally attacks the validity of the conviction or sentence. *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). Therefore, the allegations of Improper Contact with SCDC and Medical Issues are summarily dismissed for failure to state a cognizable claim.

***INEFFECTIVE ASSISTANCE OF PLEA COUNSEL***

**Allegation: Plea Counsel only had three short visits with Applicant.**

**Allegation: No proper contact with Plea Counsel.**

Applicant alleged that Plea Counsel was ineffective for meeting with her only three times. This Court finds that Applicant has failed to meet her burden in proving that Plea Counsel was deficient and that there was any resulting prejudice from this alleged deficiency.



South Carolina case law has established that even if counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. *See Harris v. State*, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing *Easter*) (“First, there is no question that counsel met with [Applicant] on several occasions prior to the first trial. Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation.”). Mere speculation and conjecture are not insufficient to substantiate an allegation that counsel’s deficient performance was prejudicial. *See Harris v. State*, 377 S.C. 66, 659 S.E.2d 140 (2008), *abrogated by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). “[B]revity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation.” *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). To prevail on this allegation, Applicant show evidence of how additional preparation or communication would have resulted in a different outcome. *Id.*; See *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (explaining that, where an applicant failed to present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial, applicant failed to show their counsel’s lack of preparation prejudiced them).

At the evidentiary hearing, Plea Counsel testified that he met with Applicant six or seven times in his office, including for her to sign the plea paperwork the Friday before Applicant entered her guilty plea the following week. This Court finds it credible that the Applicant and Plea Counsel had enough meetings, whether it was three or seven, such that Applicant understood the charges against her and the nature of her plea. Thus, Plea Counsel was not deficient, nor did Applicant suffer any prejudice resulting therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.



**Allegation: Plea Counsel did not know this was Applicant's first offense**

During the plea hearing, Solicitor Holahan stated that Applicant had a prior conviction from 2003. Plea Counsel accurately told the plea court that this was Applicant's first strike, which required knowing Applicant's criminal history. (Plea Tr. p. 8). Thus, Plea Counsel was not deficient, nor did Applicant suffer any prejudice resulting therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

**Allegation: Plea Counsel requested Applicant get doctors note to postpone plea because Applicant was going to have trachea resizing surgery on July 27, 2022. Applicant brought doctors note to plea hearing July 13, 2022, but Plea Counsel failed to present the doctor's note to the plea court.**

Plea Counsel testified it was unnecessary to present the medical record(s) because it was obvious Applicant had a Tracheostomy in place and had difficulty speaking loudly. This Court finds both Applicant and Plea Counsel credible as to this testimony. However, it was not deficient for Plea Counsel to decide it was unnecessary to present the medical records for the reasons cited. Plea Counsel was not deficient, nor did Applicant suffer any prejudice resulting therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

**Allegation: Applicant never received discovery.**

Applicant alleged Plea Counsel was constitutionally ineffective for failing to provide her with a copy of discovery. This Court finds that Applicant has failed to meet her burden of proof. An applicant who alleges his or her defense attorney was ineffective in failing to spend more time preparing or providing a copy of the discovery materials must demonstrate prejudice by showing what evidence could have been discovered or what other defenses could have been pursued. *Harris v. State*, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)), *abrogated on other grounds by Smalls*, 422 S.C. 174, 810 S.E.2d 836. Furthermore, an applicant must also show how the new evidence or defenses would



have resulted in a different outcome. *Id.* (citing *David 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. *Id.*, 377 S.C. at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

At the evidentiary hearing, Plea Counsel credibly testified that he reviewed discovery with Applicant. Based on testimony from Plea Counsel, it appears credible that Applicant did not get a copy of discovery, but providing a copy of discovery is not required and Plea Counsel reviewed and discussed the discovery with Applicant. Furthermore, Applicant has not shown what new evidence or defenses would have resulted in a different outcome had she received a copy of the discovery.

This Court finds Applicant failed to overcome the “strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case.” *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*). Plea Counsel was not deficient, nor did Applicant suffer any prejudice resulting therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

#### *INVOLUNTARY GUILTY PLEA*

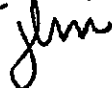
- Allegation:** Applicant felt coerced by Plea Counsel not to speak at plea hearing and mention her upcoming surgery.
- Allegation:** Applicant tried to address plea judge, but Plea Counsel told her not to speak until questions were completed by the plea judge.
- Allegation:** Plea Counsel tapped Applicant on back three times when she tried to bring up her upcoming surgery.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of their plea and the charges against them.



*See Boykin v. Alabama*, 395 U.S. 238, 243 (1969); *Dover v. State*, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. *See Harris v. Leeke*, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984). “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). Indeed, 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. Surmounting *Strickland*’s high bar is not easy, and the societal interest in finality has “special force with respect to convictions based on guilty pleas.” *Lee*, 582 U.S. 368-369.

During the plea, the plea court asked if there was anything Applicant wanted to add. (Plea Tr. p. 9). Applicant did not respond, and Plea Counsel responded that she has serious health issues. *Id.* Nothing in the transcript, such as the plea court commenting on Applicant raising her hand or otherwise gesturing that she wished to speak, demonstrates that Applicant wanted to speak further and was denied the opportunity to do so. This Court finds Applicant was provided with an opportunity to address the Plea Court directly and did not respond. This Court finds Applicant has presented no valid reason why she should be able to depart from the statements made during her guilty plea. Plea Counsel also credibly testified that he did not tell Applicant how to answer. Applicant’s guilty plea was knowingly, voluntarily, and intelligently given. Thus, this allegation must be **DENIED** and **DISMISSED**.



**Allegation: Applicant did not know she was pleading guilty on July 13, 2022.**

**Allegation: Applicant was under the influence of methamphetamine at time of plea.**

**Allegation: Applicant did not understand plea process.**

This Court finds that the plea paperwork was signed the Friday before the plea, and Applicant clearly and easily answered the plea court's questions during the plea hearing. This Court finds Applicant's testimony that she was under the influence of methamphetamine **not credible**. Plea Counsel **credibly** testified Applicant did not appear to be under the influence of drugs during the plea. Additionally, Applicant, while under oath, answered the Plea Court's questions during the plea hearing, including denying that she was under the influence of any drugs. (Plea Tr. p. 4). Further, if the plea court had any concern about the Applicant being under the influence, such concerns would have been addressed during the plea. Throughout the plea, Applicant stated she understood the charge, the minimum and maximum it carries, that it is violent, that it is a serious strike on her record, and answered all other applicable questions throughout the plea. Therefore, Plea Counsel was not deficient, nor did Applicant suffer any prejudice resulting therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

#### *BELATED APPEAL*

**Allegation: Applicant did not receive paperwork for appeal until after 10 day deadline due to being incarcerated.<sup>4</sup>**

Generally, there is no constitutional deprivation in not being advised of the right to appeal from a guilty plea absent extraordinary circumstances, such as when there is a reason to think a rational defendant would want to appeal—where a non-frivolous ground exists to appeal—or defendant reasonably demonstrated an interest in appealing. *Turner v. State*, 380 S.C. 223, 225,

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<sup>4</sup> The Court interprets Applicant's response to Question 9 as a request for a belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974).



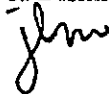
670 S.E.2d 373, 374 (2008) (citing *Roe v. Flores-Ortega*, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000); *Weathers v. State*, 319 S.C. 59, 459 S.E.2d 838 (1995)).

Applicant testified that she wanted to appeal and called her sister from the jail to request her sister call Plea Counsel because it is difficult for others to hear Applicant on the phone. Over the State's objection, Applicant's sister, Janet Craft, testified as a rebuttal witness at the PCR hearing. Ms. Craft confirmed she contacted Plea Counsel's office after Applicant was sentenced but she did not tell Plea Counsel that Applicant wanted to appeal. Additionally, the court advised Applicant she had ten days to appeal at the conclusion of her plea. (Plea Tr. p. 10). When recalled to the stand after Ms. Craft testified, Plea Counsel confirmed Ms. Craft called his office to request a copy of Applicant's file for her but did not request that he file an appeal. This Court finds that Applicant knew she could file an appeal within ten days of her guilty plea and did not timely request Plea Counsel file an appeal. Furthermore, Plea Counsel was not deficient, nor did Applicant suffer any prejudice resulting therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

#### CONCLUSION

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

This Court notifies the Applicant that she must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking



review of the denial of PCR. Rule 71.1(g), SCRCR, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

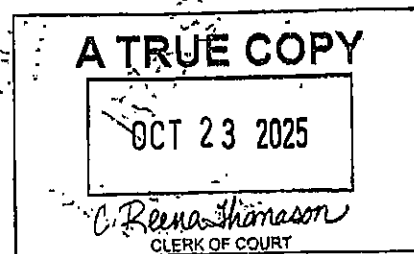
**IT IS THEREFORE ORDERED:**

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

AND IT IS SO ORDERED this 19<sup>th</sup> day of October, 2025.

*Jane H. Merrill*  
 \_\_\_\_\_  
 JANE H. MERRILL  
 Presiding Judge  
 Tenth Judicial Circuit

*Guemond*  
 \_\_\_\_\_, South Carolina



'25 OCT 23 PM 12:08:36  
 Anderson, SC CDC, CP/SS

*KRP*

**WITNESSES**

Anderson Co. Sheriff's Office  
Jonathan M. Velez

**ARREST WARRANT NUMBER**

COUNT ONE 2021A0410100100  
COUNT TWO 2021A0410100101

**ACTION OF GRAND JURY**

**TRUE BILL**

JUL 27 2021

Foreperson of Grand Jury

Date:

Foreperson



**VERDICT**

Foreperson of Grand Jury

Date:

Dismissed count 2.  
7/13/22  
Mary Molaha

DOCKET NO. 2021-GS-04- 01229

**The State of South Carolina**

**County of Anderson**

**COURT OF GENERAL SESSIONS**

**JUL 27 2021**

TERM

**THE STATE**

**VS.**

**KRISTI REGINA POWELL**

**COMMITMENT**

7/13/22 RT

**INDICTMENT FOR**

**COUNT ONE – TRAFFICKING  
METHAMPHETAMINE**

SC Code: § 44-53-375(C)

CDR Code: 0369

**COUNT TWO - POSSESSION OF A  
WEAPON DURING THE COMMISSION OF  
A VIOLENT CRIME**

SC Code: § 16-23-0490

CDR Code: 0549

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

## INDICTMENT

At a Court of General Sessions, convened on JUL 27 2021, the

Grand Jurors of Anderson County present upon their oath:

**TRAFFICKING IN METHAMPHETAMINE**

The defendant, Kristi Regina Powell, did on or about January 27, 2021, in Anderson County, South Carolina, knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of two hundred (200) grams or more of Methamphetamine, a Schedule II controlled substance as defined and otherwise limited in Section 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2). All in violation of 44-53-375(C) of the South Carolina Code of Laws (1976) as amended.

**COUNT TWO - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME**

The defendant, Kristi Regina Powell, did, on or about on or about January 27, 2021, in Anderson County, South Carolina, while committing the crime of Trafficking Methamphetamine, a crime of violence, have in her possession a firearm. All in violation of 16-23-0490 of the South Carolina Code of Laws (1976) as amended.

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

  
MARY G. HOLAHAN  
ASSISTANT SOLICITOR