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February 27, 2014

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RE: Quintin J. Holt, 268198 vs. State of South Carolina
2012-CP-22-735

Dear Sir or Madam:

Enclosed herewith you will find the **Notice of Appeal, Order of Dismissal,** along with a **Proof of Service** in reference to the above named Applicant.

If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

Sincerely,

Charles T. Brooks, III
CTB/srw

Enclosed as stated

Cc: Joshua L. Thomas, Office of Attorney's General
South Carolina Office of Appellate Defense
Quintin J. Holt, 268198

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Case No: 2012-CP-22-735

Quintin J. Holt.....Appellant
S.C.D.C. 268198
v.
The State.....Respondent

NOTICE OF APPEAL

Quintin J. Holt, appeals his Denial for Post Conviction Relief in this case. The order of Dismissal was imposed and signed by the Honorable J. Cordell Maddox, Jr., January 30, 2014, which I, Charles T. Brooks, III, received on February 26, 2014.

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Other Counsel on Record:
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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Case No: 2012-CP-22-735

Quintin J. Holt.....Appellant
S.C.D.C. 268198
v.
The State.....Respondent

PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 28th day of February, 2014, I served the foregoing **Notice of Appeal, Order of Dismissal,** as well as **Proof of Service** in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on February 28, 2014, addressed to the following as indicated below:

South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense
1330 Lady Street, Suite 401
PO Box 11589
Columbia, SC 29211-1589

Office of Attorney's General
Attn: Joshua L. Thomas, Esquire
Post Office Box 11549
Columbia, South Carolina 29211-1549

Quintin J. Holt, 268198
McCormick Correctional Institution
386 Redemption Way
McCormick, South Carolina, 29899

Dated: February 28, 2014

Charles T. Brooks, III
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STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT
Quintin J. Holt, #268198, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2012-CP-22-735 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed July 11, 2012. Respondent made its Return on or about October 8, 2012, and its amended return on or about August 20, 2013. The Court convened an evidentiary hearing into the matter on August 29, 2013, at the Georgetown County Courthouse. Applicant was present at the hearing and represented by Charles T. Brooks, III, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the PCR hearing. Applicant's trial counsel, Cezar E. McKnight, Esquire, also testified. The Court had before it a copy of the trial transcript, the records of the Georgetown County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the amended return. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. The Georgetown County Grand Jury indicted Applicant in February 2010 for two counts of distribution of cocaine base,

third offense (2010-GS-22-179 and 2010-GS-22-181). Cezar E. McKnight, Esquire ("trial counsel"), represented Applicant on the charges. On September 20-22, 2010, Applicant stood trial before the Honorable Benjamin H. Culbertson and a jury. The jury found Applicant guilty as indicted. On each charge, Judge Culbertson sentenced Applicant to concurrent terms of confinement for a period of twenty-five (25) years or a fine or $50,000.

Applicant filed a timely notice of appeal and Tristan M. Shaffer of the South Carolina Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed the conviction in an unpublished opinion on April 25, 2012. State v. Holt, Op No. 2012-UP-253 (S.C. Ct. App. filed April 25, 2012). The remittitur was returned to the circuit court on May 15, 2012.

II. ALLEGATIONS

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "See attached Amended PCR"

In a subsequently filed amendment, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "[H]is convictions ...Were Constructive Amended."
2. "[T]he Chain of Custody Link have been broken."
3. "[T]he Trial Court was without any jurisdiction to entertain indictment(s) of an greater sentence/offense."
4. "Applicant was denied effective assistance of Trial Counsel."
5. "[T]here was no chain of custody ... from (C.I.) to Deputy Grant."
6. "Applicant was denied discovery of Grand Jury Impanelment Documents."
7. "Prosecutorial Misconduct, where Trial Counsel was ineffective for failing to object to the Solicitor's Closing Arguments."
8. "Denial of sixth Amendment to the United States Constitution."

In a second amendment, Applicant further alleges:

1. "Counsel was ineffective by his failure to do reasonable investigation and move to suppress communications that was unlawfully intercepted..."
2. "Appellate counsel was ineffective by failing to raise amending the indictments before the South Carolina Appellate Court."

At the PCR hearing, the Applicant proceeded on only the allegations of ineffective assistance of trial counsel for failure to challenge the indictments, failure to challenge the introduction of a recording, failure to advise, and failure to investigate. Applicant also alleged he received an illegal sentence because Judge Culbertson sentenced him to imprisonment *OR* a fine, whereas the statute requires imprisonment *AND* a fine.

III. SUMMARY OF TESTIMONY

Applicant testified he was not aware of how much time he could potentially serve if convicted. He testified he rejected the State's ten (10) year offer because trial counsel advised Applicant the State did not have a strong case. He further testified trial counsel should have investigated whether the police had a warrant to intercept the audio from the confidential informant who purchased drugs from Applicant. Applicant testified he was not aware his prior drug crimes would be placed before the jury if he testified. He further testified he would not have taken the stand had he been advised the jury would hear of his prior record. Applicant also testified the indictments in his case stated the incorrect dates on which he sold drugs to the confidential informant. Finally, Applicant testified he received an illegal sentence because the trial judge sentenced him to twenty-five (25) years *OR* a fine of $50,000 dollars.

Trial counsel testified he met with Applicant three (3) or four (4) times after being retained. He further testified he filed discovery motions and discussed the State's responses to

those motions with Applicant. The State's evidence consisted of police reports, chemical analyses, and an audio recording of a drug buy. Trial counsel testified the only defenses he had to the charge were challenges to the sufficiency of the indictment and to the confidential informant's credibility. Trial counsel's investigation involved reviewing the informant's case file and visiting the location where the drug buy was alleged to have happened. Trial counsel testified he advised Applicant of the potential sentences. Trial counsel further testified he negotiated a ten (10) year deal with the State, but Applicant rejected the offer. Trial counsel testified he discussed with Applicant the risks of trial versus the benefits of accepting the plea. He further testified he explained to Applicant that his prior record would come into play if he testified at trial.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Ineffective Assistance of Trial Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be

relied upon as having produced a just result." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

The Court finds Applicant failed to meet his burden of proof regarding his allegation of ineffective assistance of trial counsel. The Court finds Applicant's testimony regarding trial counsel's ineffectiveness to be not credible; accordingly, the Court finds trial counsel's testimony very credible. The Court further finds trial counsel adequately conferred with Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

Specifically, the Court finds trial counsel advised Applicant of the nature of the charges, the maximum penalty, and any available defenses.

Applicant's allegation trial counsel failed to investigate the case is without merit. Failure to conduct an independent investigation is not *per se* ineffective assistance of counsel, especially where an investigation would not have uncovered any helpful information. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). Here, Applicant has not presented any evidence of what a further investigation would have uncovered. Further, trial counsel's investigation was proper in light of his defense strategy of attempting to discredit the confidential informant. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992))).

Applicant's allegations trial counsel failed to challenge the indictment and failed to challenge the introduction of the recording of the crime is wholly unsupported by the record. Trial counsel challenged the State's attempt to amend the indictment. (Trial Tr. 36:1). Inherent in his argument is a challenge to the sufficiency of the indictments for failing to include the correct dates on which the crime occurred. Likewise, trial counsel objected to the introduction of the recording. (Trial Tr. 103:24).

Furthermore, Applicant's allegation he would not have testified had he been informed his prior record would be presented to the jury is unsupported by the record. Applicant was twice informed he would be subject to cross examination regarding his prior record. (Trial Tr. 186:32, 191:6). The Court finds credible trial counsel's testimony he advised Applicant of the risks of

testifying. Regardless, the colloquy with the trial judge regarding Applicant's right to remain silent should have driven this point home to him. See Wolfe v. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997).

B. Illegal Sentence

Finally, the Court finds Applicant is not serving an illegal sentence. A sentence is not illegal as long as it is "within the limits of the punishment prescribed by statute and conformable to the gravity of the offense." Willis v. Leeke, 255 S.C. 230, 236, 178 S.E.2d 251, 254 (1970). Applicant was convicted of distribution of cocaine base, third offense, which is punishable by a fine or imprisonment, or both. S.C. Code Ann. § 44-53-375(B)(3) ("[F]or a third or subsequent offense ... the offender must be imprisoned for not less than ten years nor more than thirty years, or fined not more than fifty thousand dollars, or both."). Therefore, Judge Culbertson's sentence was well within the limits prescribed by law. Furthermore, Applicant testified he has made no attempt to pay the $50,000 fine. Therefore, he cannot complain he is being held in violation of the court's sentence.

C. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, the Court finds Applicant failed to present sufficient evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

V. CONCLUSION

Based on the foregoing, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his

application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes that Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on the applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 30 day of January, 2014.

THE HONORABLE J. CORDELL MADDOX, JR.
Presiding Judge

Anderson, South Carolina

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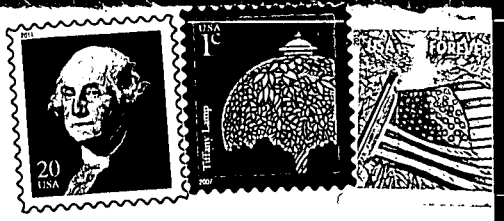

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