State of South Carolina
In the Supreme Court

Certiorari to Horry County
George C. James Jr. Circuit Court Judge

Maria I. Rodriguez #332544 ~~2012~~ 2011-CP-26-2645
vs.
State of South Carolina Respondent

Austin Petition For Writ of Certiori.

PRO. SE Petitioner
Maria I. Rodriguez #332544
CGGCI ZG/33
4450 Broad River Rd.
Columbia, SC. 29210

Maria I. Rodriguez

The Supreme Court of South Carolina

Maria Rodriguez #332544	~~2012~~ 2011-CP-26-2645
VS.	Notice of Intent to Appeal
The State of South Carolina	S.C.R.C.P Rule 201, 227

The Petitioner files this notice of Intent to Appeal Pursuant to S.C.R.C.P. Rule 71

This appeal is based on after-discovered Evidence. The (Petitioner) was unaware of her rights to appeal her P.C.R. conviction. Trial judge did not give the (Petitioner) any instruction. Instruction on an Appeal culpable with Atty's negligence for failing to file an appeal and for failing to advise the (petitioner) of her Rights to appeal. Quoting case laws S.C. Code Ann 17-27-100 (1985) Quoting case law Austin -v- State, 305 S.C. 453 S.E. 2d. 395 (1991). Quoting Supreme Court Rule 50 b P.C.R. counsel was negligent when he failed in Austin -v- State, Supreme court ruled that (applicant) is entitled to seek appellate review of the denial of Post-Conviction Relief and or if the record otherwise shows that the (applicant) did not knowingly and intelligently waive his right to appeal, The P.C.R. Court's order.

Maria I. Rodriguez

The Supreme Court of South Carolina

Maria I. Rodriguez #332544 vs. The State of South Carolina	~~2012~~ 2011-CP-26-2645 Statement of fact

Attorney for the (Petitioner) failed to present an adequate defense for the (Petitioner). The (Petitioner) was deprived of due process of law, when P.C.R. counsel failed to call (alibi) witness for open court testimony, inreefference to the ownership of the vehicle she was driving. The (appellant) was the driver of the vehicle, which was not Registered to her, as a result of being stopped for an alledged offense of ABHAN. The victim gave a description of the vehicle and the ~~petition~~ petitioner. The co-defendant (Eric Dantzler) fled the ~~[illegible]~~ vehicle and police had the vehicle impounded because the co-defendant didn't have a driver's liscense. Officers conducted a search of the vehicle and the locked (glove compartment) contained (19 bags of cocaine). Officer Ran the tag and registration of the car, the car belonged to (Mr. Bill Thompson). Petitioner was charged for the drugs, as well as the co-defendant, who subsequently was released after appeal from the Supreme Court granted his writ of certiori, which was heard on November 11th 2013 and filed on June 18th 2014. See case law of co-defendant. (State v. Dantzler)

Maria I. Rodriguez

The Supreme Court of South Carolina

Maria I. Rodriguez #332544	~~2012~~ 2011-CP-26-2645
- vs. -	Notice of Intent to Appeal
The State of South Carolina	The Argument

P.C.R. counsel was ineffective in failing to argue subject-matter jurisdicition, cuplable with constuctive possession as to (trafficking of cocaine 2nd) based on ownership of the car. P.C.R counsel was ineffective when he failed to ~~[illegible]~~ subpeona (Mr. Bill Thompson) who was the owner of the car, to give testimony of ownership.

P.C.R. counsel, was ineffective when he failed to move to have appellate review of the denial of PCR claim.

The P.C.R. counsel failed to inform the courts that the state consolidated both cases without being indicted by the State Grand Jury. In addition with the (Petitioner) being deprived of a right to appeal before the State Grand Jury hearing.

The (Petitioner) did not knowingly and voluntary waive her rights to have her P.C.R. claim Reviewed by the Supreme Court. The (Petitioner) is entitled to have this conviction set aside and or reversed based on denial of Due Process of Law. Under the 14th amendment U.S.C.A

Maria I. Rodriguez

In the Supreme Court

Maria I. Rodriguez #332544 vs. The State of South Carolina	~~2012~~ 2011-CP-26-2645 Issue Presented

6th and 14th ammendment U.S.C.A. due process of law denied a right for Appellate Review of her P.C.R claim- the Appellant did not waive her right to appeal order of dismissal of P.C.R. atty was ineffective for failing to file appeal. Denial of P.C.R. appellate counsel assistances provide under S.C.R.C.P. Rule 71.1g.

Maria I. Rodriguez

The Supreme Court of South Carolina

Maria I. Rodriguez #332544 -vs.- State of South Carolina	~~2012~~ 2011-CP-26-2645 Notice of Intent to appeal SCACP 201 Argument

The South Carolina Supreme Court, issued an Order to Reverse the Lower Courts conviction of Eric Dantzler, a Horry County Case No 2011-CP-26-2645
Supreme Court No. 2011-199609
No: 2014-MO-020 (Reversed)
This case was overturned based on these facts. Constructive Possession, the passenger could not be held responsible for the contents of the vehicle, in which he was only a passenger. Quoting case State-v-Brown, 267 SC. 311, 227 SE 2d at. 676 (1976) ID. 313-14. 227 SE 2d at 675-76 The (Petitioner) believes that her charge of (trafficking cocaine 2nd) must also be vacated because she was not the original owner of the car. Therefore the issue of subject-matter-jurisdiction, was and is the key factor in this case, as opinion of the Supreme Court who reversed co-defendants case, Eric Dantzler -v- the State. Supreme Court held that (Dantzler) couldn't be held responsible for the contents of the car. Although the (Petitioner) was driving the vehicle, she was not the original owner. Charge should've been of a lesser included offense.

Maria I. Rodriguez

In the Supreme Court

Maria I. Rodriguez #332544 -vs- State of South Carolina	~~2012~~ 2011 - CP - 26 - 2645
	Notice of Intent to Appeal
	SC.RCP. Rule 201 50 D, SCRCP. Rule 71.1g

The (Petitioner) files this notice of Intent to appeal Order of Dismissal of her P.C.R. claim in the above court.

Appealing Judge (George C. James Jr.)

Motion to Dismiss with Prejudice

Appeal from Horry County, Court of Common Pleas.

I hereby certify under ~~oath~~ penalty of purjury, that a true copy of the notice of appeal has been served ~~to~~ on the Atty. Gen. throughout the clerk of courts office of the Honorable George C James, Jr. C.C. S.C. Supreme Ct.

Maria I. Rodriguez
10/27/14

Sworn to And Subscribed Before Me

on this 27 day of October 2014

Notary Public for the State of South Carolina

Jackie P. Hyatt

My Commission Expires: 8-23-21

Maria I. Rodriguez

The Supreme Court of South Carolina

Maria I. Rodriguez #332544 -vs.- State of South Carolina	~~2012~~ 2011-CP-26-2645 Destination of Matter Affidavit of Service

I declare under penalty of purjury, that the following documents are included for review on the merits of the Writ of Certiori.

1.-Notice of Intent to appeal & Brief
1.-Final Order of Dismissal of PCR claims
1.-Affidavits of Service, served on Atty. Gen.
1.-Proof of Service
1.-Photocopy of Indictment
1.-Copy of co-defendant's order of the Supreme Court Reversal

Maria I. Rodriguez
10/27/14

Sworn to and Subscribed Before Me
on this 27 Day of October 2014
Notary Public for the State of South Carolina
Jennifer P. Hyatt
My Commission Expires: 8-23-21

Maria I. Rodriguez

The South Carolina Supreme Court

Maria Rodriguez #332544 - vs. - State of South Carolina	~~2012~~ 2011 - CP - 26 - 2645 Designation of Matter

1) Letter from PCR attorney Paul Archer
2) Letter from Supreme Court
3) Brief of co-defendant, Eric Dantzlers' case reversal
4) 3 Indictment Sentencing Sheets
5) Appeals Brief
6) Affidavit of Service
7) Notice of Intent to Appeal

Maria J. Rodriguez
10/27/14

Sworn to and Subscribed Before Me
on this 27 Day of October 2014
Notary Public for the State of South Carolina
Judith P. Hyatt
My Commission Expires: 8-23-21

Maria J. Rodriguez

In the Supreme Court of South Carolina

Maria I. Rodriguez #332544 vs. The State of South Carolina	~~2012~~ 2011-CP-26-2645 Proof of Service

I declare under penalty of purjury, that I have submitted a photocopy of the Intent to Appeal on the Attorney General, Mr. Alan Wilson at P.O. Box 11549, Columbia, SC 29201. Notice was served throughout the Horry County Clerk of Courts Office of the Atty. Gen. on this day of October 2014.

Maria I. Rodriguez
10/27/14

Sworn to and Subscribed Before Me
on this ~~day~~ 27 day of October 2014
Notary Public for the State of South Carolina
Jimenez P. Hyatt
My Commission Expires: 8-23-21

Maria I. Rodriguez

1)

PAUL ARCHER

Attorney at law

Phone/FAX: (843) 979-4000 **Cell:** 843-333-7814

Email: archerlawfirm@gmail.com

Certified as Lead Counsel for Death Penalty Defense

Member N.Y. Bar since 1966
Member S.C. Bar 1994
Federal Bar since 1967
United States Supreme Court 1976

233 Muirfield Drive
Pawleys Island, South Carolina 29585

RECEIVED

NOV 03 2014

S.C. SUPREME COURT

Maria Rodriguez # 332544
Camille Griffin Graham Correctional
4450 Broad River Rd.
Columbia, SC 29210

October 8, 2014

I received your letter.

You must have received a dismissal of your appeal. You have 30 days to appeal your PCR dismissal which was in 2012. Your appeal must have been dismissed. Indigent Appellate Defense in Columbia did your appeal.

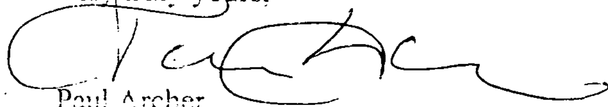
If there is new evidence which you could not know when you filed your PCR in 2012 for it did not exist, you have one year from the date you found out about it, to file another PCR on newly discovered evidence. If you just file another PCR it will be dismissed because you had a PCR in 2012.

I have recently retired and only take a few PCR cases a year. Your file is in storage.

If you want me to see if you have new evidence for another PCR, my fee would be $2,500.

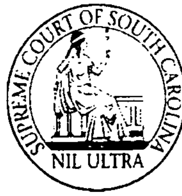
I hope this helps.

Very truly yours,



Paul Archer

RECEIVED
NOV 03 2014
S.C. SUPREME COURT



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

October 1, 2014

Ms. Maria G. Rodriguez #332544
CGGCI
4450 Broad River Road
Columbia, SC 29210

Re: Rodriguez v. State

Dear Ms. Rodriguez:

This will acknowledge a letter from you received in this office on September 29, 2014. We have checked the records in this office and the records at the Court of Appeals and do not find where any appeal has been filed in your post conviction relief case.

Very truly yours,

CLERK

/bs

RECEIVED
NOV 03 2014
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry

STATE

VS.

Maria Isabel Rodriquez

AKA:

Race: H Sex: F Age: 38

DOB: [redacted] SS# [redacted]

Address: [redacted] T 4

[redacted]

DL#: SID#:

INDICTMENT/CASE#: 2008GS2601201

A/W#: J736562

Date of Offense: 12/22/2007

S.C. Code § : 44-53-0370~~(C)(1)(b)~~ (e)(2)(a)(2)

CDR Code #: ~~0451~~ 387

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Trafficking in Cocaine [redacted] 10 to 28 grams, 2nd offense (5-30)

in violation of § 44-53-0370~~(C)(1)(b)~~ (e)(2)(a)(2) of the S.C. Code of Laws, bearing CDR Code # ~~0451~~ 387

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

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

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

ATTEST: [signature]

Debusk, George — Defendant — Attorney for Defendant — SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,** for a determinate term of 15 [redacted]/years or ☐ under the **Youthful Offender Act** not to exceed ______ years and/or to pay a fine of $ ______ ; provided that upon the service of ______ days/months/years and/or payment of $______; plus costs and assessments as applicable*; the balance is suspended with **probation** for ______ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: ______

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: $ ______ plus 20% fee: $ ______

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 35.13 (Public Def/Prob)	$500	$
§ 73.3, 1B TP (Law Enforce. Funding)	$25	$25.00
§ 33.7, 1B TP (Drug Court Surcharge)	$100	$100.00
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$6.90
§ 90.11 TP (SCCJA Surcharge)	$5	$5.00
TOTAL		$236.90

PTUP

______ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E begining

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be ~~pd. in equal~~, consecutive ~~weekly~~/monthly pmts. of $ 25 beginning 2/6/2024

$ ______ paid to Public Defender Fund

Other:

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

Melanie Huggins

Clerk of Court/Deputy Clerk

Court Reporter: Dixie Eubank

PRESIDING JUDGE [signature]

Judge Code:

Sentence Date: 1/6/09

STATE OF SOUTH CAROLINA | IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry
STATE
VS.
Maria Isabel Rodriquez
AKA:
Race: H Sex: F Age: 38
DOB: [redacted] SS#: [redacted]
Address: [redacted]
DL#: SID#:

INDICTMENT/CASE#: 2008GS2601200
A/W#: J736561
Date of Offense: 12/22/2007
S.C. Code § : 17-25-0030/CL
CDR Code #: 0013

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO: Assault / Assault and battery of a high and aggravated nature (ABHAN) (0-10)
in violation of § 17-25-0030/CL of the S.C. Code of Laws, bearing CDR Code # 0013
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. ____ (Defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☒ ~~Recommendation by the State.~~ 5 cont

ATTEST: [signature]
Debusk, George | Maria I. R. [signature] Defendant | [signature] Attorney for Defendant | SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections**, ☐ **County Detention Center**, for a determinate term of 5 ~~days/months~~/years or ☐ under the **Youthful Offender Act** not to exceed ____ years and/or to pay a fine of $ ____; provided that upon the service of ____ days/months/years and/or payment of $ ____; plus costs and assessments as applicable*; the balance is suspended with **probation** for ____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: w/ active sentence of 15 years
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 1/6/09
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ **RESTITUTION**: ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ ____ plus 20% fee: $ ____
Payment Terms:
☐ set by SCDPPPS
Recipient:

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 35.13 (Public Def/Prob)	$500	$
§ 73.3, 1B TP (Law Enforce. Funding)	$25	$ 25.00
§ 33.7, 1B TP (Drug Court Surcharge)	$100	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 3.90
§ 90.11 TP (SCCJA Surcharge)	$5	$ 5.00
TOTAL		$ 133.90

PTUP
____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E begining
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be ~~paid in equal~~, consecutive ~~weekly~~/monthly pmts. of $ 25 beginning 2/7/2024
$ ____ paid to Public Defender Fund
Other:

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

Melanie Huggins
Clerk of Court/ Deputy Clerk
Dixie Eubank

PRESIDING JUDGE [signature]
Judge Code:
Sentence Date: 1/7/09

STATE OF SOUTH CAROLINA) IN THE CO[illegible] OF GENERAL SESSIONS

COUNTY OF Horry)
STATE)
VS.) INDICTMENT/CASE#: 2009-GS-26-49 (was already incarcerated in 2009)
Maria Isabel Rodriguez) A/W#: J738937
AKA:) Date of Offense: 11/19/2008
Race: W Sex: F Age: 38) S.C. Code § : 44-53-0370(b)(1)
DOB: [redacted] SS#: [redacted]) CDR Code #: 0184
Address: [redacted])
DL#: SID#:)

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO: PWID/Dist. of Cocaine/LSD/other Narcotic drugs in Sch. I(b) & (c)/Sched. II. 2nd (5-30)
in violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0184
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury MIR (Defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State. 5 Y [illegible]

ATTEST: [signature] Debusk, George — [signature] Defendant — [signature] Attorney for Defendant — 70208 SC Bar#

WHEREFORE, the Defendant is commited to the ☑ **State Department of Corrections**, ☐ **County Detention Center**, for a determinate term of 5 ~~[struck out]~~/years or ☐ under the **Youthful Offender Act** not to exceed ______ years and/or to pay a fine of $ ______; provided that upon the service of ______ days/months/years and/or payment of $ ______; plus costs and assessments as applicable*; the balance is suspended with **probation** for ______ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☑ CONCURRENT or ☐ CONSECUTIVE to sentence on w/active sentence of 15 years on 1/6/09.
☑ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ ______ plus 20% fee: $ ______
Payment Terms:
☐ set by SCDPPPS
Recipient:

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
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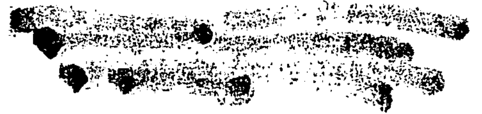
§ 56-5-2995 (DUI Assessment)	$12	$
§ 35.13 (Public Def/Prob)	$500	$
§ 73.3, 1B TP (Law Enforce. Funding)	$25	$ 25.00
§ 33.7, 1B TP (Drug Court Surcharge)	$100	$ 100.00
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 6.90
§ 90.11 TP (SCCJA Surcharge)	$5	$ 5.00
TOTAL		$ 236.90

PTUP ______
______ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E begining
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be paid in [illegible] consecutive ~~weekly~~/monthly pmts. of $ 25.— beginning 2/1/2024
$ ______ paid to Public Defender Fund
Other:

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

Melanie Huggins
Clerk of Court/Deputy Clerk
Dixie Eubank

PRESIDING JUDGE [signature]
Judge Code:
Sentence Date: 1/7/09



The State, Respondent,

v.

Eric Dantzler, Petitioner.

Appellate Case No. 2011-199609

Appeal From Horry County
Steven H. John, Circuit Court Judge

Memorandum Opinion No. 2014-MO-020
Heard November 19, 2013 – Filed June 18, 2014

REVERSED

Appellate Defender Kathrine Haggard Hudgins, of Columbia, for Petitioner.

Attorney General Alan McCrory Wilson, Chief Deputy Attorney General John W. McIntosh, Senior Assistant Deputy Attorney General Salley W. Elliott, Assistant Attorney General Christina J. Catoe, all of Columbia; and Solicitor John Gregory Hembree, of North Myrtle Beach, all for Respondent.

JUSTICE PLEICONES: This Court issued a writ of certiorari to review an unpublished court of appeals opinion affirming a denial of a motion for a directed verdict. *State v. Dantzler,* 2011-UP-343 (S.C. Ct. App. filed June 29, 2011). The issue before the Court is whether there was sufficient evidence Petitioner constructively possessed cocaine. We reverse.

FACTS

The incident leading to this conviction occurred when Petitioner and his girlfriend, Maria Rodriques, were pulled over by officers of the Myrtle Beach Police Department. Officers were called to investigate an incident at a restaurant. On arrival, they noticed a car pulling out of the parking lot and suspected that the occupants of the vehicle were involved in the incident. They pulled the car over and approached the vehicle. Ms. Rodriques was driving the car, and Petitioner was seated in the passenger seat.

An officer spoke briefly to Ms. Rodriques and Petitioner and determined that Ms. Rodriques was involved in the incident at the restaurant. As a result, Ms. Rodriques was immediately arrested.

Since the car was not registered to either Ms. Rodriques or Petitioner,[1] and Petitioner did not have a valid driver's license, officers determined that the car should be towed.

When Petitioner was informed of the towing decision, he asked the officers if a third party could come and pick up the car. The officers denied his request. Upon being told the car was going to be towed, Petitioner acted anxious and nervous and began side stepping away from the vehicle. At this time, an officer began inventorying the car. As Officer Pearce opened the locked glove compartment, Petitioner took off in a sprint.[2] The officers pursued Petitioner but were unable to catch him. After several days, Petitioner turned himself in to the Myrtle Beach Police Department.

During the inventory search, the officer found in the locked glove compartment two plastic baggies containing smaller baggies with a white powdery substance

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[1] The car was registered to a third-party who was not involved in this case.
[2] At the time Petitioner ran away, an officer still had Petitioner's I.D. card, which Petitioner had given him earlier.

that tested positive for cocaine. In addition to the cocaine, cash in the amount of one thousand seven hundred and thirty dollars was found in Ms. Rodriques's purse.

Ms. Rodriques and Petitioner were tried as co-defendants. At the close of the State's case, Petitioner moved for a directed verdict, arguing that the evidence when viewed in a light most favorable to the State did not suffice to create a jury issue as to constructive possession. The court denied the motion. Petitioner and co-defendant, Maria Rodriques, were convicted of trafficking cocaine in violation of S.C. Code Ann. § 44-53-370(e)(2)(a) (2002), and the Petitioner was sentenced, as a third-time drug offender, to twenty-five years.

Petitioner appealed his conviction, and the court of appeals affirmed. Petitioner sought a writ of certiorari, and this Court granted certiorari on the issue of whether the denial of the directed verdict motion was proper.

ISSUE

Did the court of appeals err in affirming the circuit court's denial of Petitioner's motion for a directed verdict?

STANDARD OF REVIEW

A defendant is entitled to a directed verdict when the State fails to present evidence of the offense charged. *State v. McHoney*, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001). In deciding whether the circuit court erred in denying a motion for a directed verdict, the appellate court must view the evidence in the light most favorable to the State. *State v. Hudson*, 277 S.C. 200, 201, 284 S.E.2d 773, 774 (1981). If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the court must find the case was properly submitted to the jury. *State v. Curtis,* 356 S.C. 622, 591 S.E.2d 600 (2004).

DISCUSSION

Petitioner argues that the court of appeals erred in affirming the circuit court's denial of a motion for a directed verdict because the State failed to show Petitioner constructively possessed the cocaine found in the locked glove compartment of the car. The crux of Petitioner's contention is that while his flight demonstrates evidence of guilty knowledge and intent,[3] there was no direct evidence and

[3] Petitioner does not contend that he lacked knowledge.

insufficient circumstantial evidence of Petitioner's right to exercise dominion and control over the locked glove compartment and the cocaine therein to create a jury issue on constructive possession. We agree.

A. Elements of Constructive Possession

Conviction of drug possession requires proof of possession, either actual[4] or constructive, coupled with knowledge of its presence. *State v. Hudson, supra.* In order to prove constructive possession, the "State must show a defendant had dominion and control, or the right to exercise dominion and control over the [illegal substance]." *State v. Heath,* 370 S.C. 326, 329, 635 S.E.2d 18, 19 (2006) (citing *State v. Halyard,* 274 S.C. 397, 400, 264 S.E.2d 841, 842 (1980)). The State may establish constructive possession by either circumstantial or direct evidence. *Id.* Finally, the defendant's knowledge and possession may be inferred if the substance was found on premises under his control. *State v. Adams,* 291 S.C. 132, 135, 352 S.E.2d 483, 486 (1987).

Whether the evidence is sufficient to withstand a directed verdict motion when the State relies upon circumstantial evidence of constructive possession is a fact intensive determination. However, this Court has dealt with similar factual scenarios, which provide us with guidance as to what evidence is sufficient to withstand a motion for a directed verdict.

B. Illustrative Cases

In *State v. Tabory*, 260 S.C. 355, 196 S.E.2d 111 (1973), we affirmed the denial of a directed verdict motion where the defendant was a passenger in a U-haul truck, where twenty-six hundred pounds of marijuana were found. *Id. at* 362, 196 S.E.2d at 112. The Court noted that while defendant's presence in the truck alone might not support a finding of constructive possession, his presence coupled with incriminating testimony of the State's witness, who testified that he had discussed the unloading and loading of the marijuana with the defendant, made a clear jury issue on the question of constructive possession. *Id.* at 365-66, 196 S.E.2d at 113.

In *State v. Brown,* 267 S.C. 311, 227 S.E.2d 674 (1976), we were again asked whether the evidence of a passenger's constructive possession was sufficient to withstand a motion for directed verdict. In *Brown*, the defendant was a passenger in the front seat of the car where marijuana was found. *Id.* at 313-14, 227 S.E.2d at

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[4] The State has never argued that Petitioner was in actual possession of the cocaine.

675-76. In finding the State's evidence insufficient to create a jury issue on constructive possession, the Court stated:

> The sum total of the State's evidence against [defendant] is that he was a passenger in a car on a deserted rural road about 1:00 A.M., that [driver] had an undetermined sum of cash in a large roll, that [defendant] was nervous and had no identification, that there was a smell of marijuana in the car, and that there was a large opaque bag containing eight pounds of marijuana on the rear floorboard. [Driver] knew [defendant's] name as Chuck Brown and [defendant] told [driver] to be quiet when [driver] started to admit the crime.
>
> *Id.* at 315, 227 S.E.2d at 676.

Additionally, the Court noted the defendant did not own the car, and the State failed to show any special relationship defendant had with the driver or owner of the car from which defendant's control of the car or its contents might be inferred. *Id.* The Court distinguished *Tabory* focusing on the fact that in *Tabory,* there was testimony of a State witness which tied the contraband to the defendant. *Brown,* at 317, 227 S.E.2d at 677.

In *State v. Heath*, *supra*, we discussed the "right to exercise dominion and control" element of constructive possession. In *Heath,* the defendant lived with his mother in her home. Police arrived at the residence to search the home for cocaine. *Id.* at 328, 635 S.E.2d at 18. The defendant and his brother were standing outside of the house, and defendant remained there throughout the search. *Id.* at 328, 635 S.E.2d at 18-19. In the house, police found a small crack rock, scales, and numerous plastic baggies. *Id.* In addition, a police dog found 43.48 grams of crack in a car washing mitt in the recycling bin at the rear of the house, and there was evidence that the defendant had been washing the car before the police arrived. *Id.* at 330, 635 S.E.2d at 19.

The appeal centered on whether there was evidence that defendant was in constructive possession of the crack cocaine found in the mitt. *Id.* at 330, 635 S.E.2d at 19. We found there was no direct or circumstantial evidence linking defendant to the crack cocaine, and therefore, examined whether there was evidence that the defendant had dominion and control over the property where the crack was found. *Id.* We held that although the defendant lived where the crack was found, the premises were owned by his mother, and as a result, the defendant only had a right to access the area where the crack was found and not a right to

exercise dominion and control over the area. *Id.* Accordingly, we held that the court erred in not granting defendant's motion for a directed verdict.

In contrast, in *State v. Hudson, supra*, this Court found that there was sufficient evidence of constructive possession, where the defendant shared control of the premises in which contraband was found. In *Hudson* , defendant lived in an apartment with his wife and their children. *Id.* at 201 , 284 S.E.2d at 774. The police searched the house and found heroin. *Id.* When the police arrived, the defendant was not home, and he never returned home. *Id. at* 202, 284 S.E.2d at 774. He was arrested in his vehicle approximately three hours later. *Id.* Defendant argued there was insufficient evidence that he constructively possessed the heroin found in the apartment. *Id.* at 201, 284 S.E.2d at 774.. The Court disagreed and held that the fact defendant shared control of the premises was sufficient evidence to deny a directed verdict on constructive possession. *Id.* at 203, 284 S.E.2d at 775.

Finally, in a factual scenario similar to this case, the court of appeals examined the denial of an automobile's passenger's directed verdict motion where drugs were found in the glove compartment. *State v. Brownlee*, 318 S.C. 34, 455 S.E.2d 704 (Ct. App. 1995). In *Brownlee,* defendant was seen by an officer outside of a bar walking up to a car in the parking lot and entering the passenger side of the vehicle. *Id.* at 36, 455 S.E.2d at 705. The officer was suspicious due to the defendant's behavior while in the car with the door partially opened. *Id.* After a short period of time, defendant exited the vehicle and returned to the bar. *Id.* The officer then approached the vehicle and saw a pistol on the floor partially hidden by the seat. *Id.* Shortly thereafter, two women approached the vehicle, one being the owner of the vehicle. *Id.* The officer placed both women under arrest and searched the vehicle finding cocaine in the glove compartment. *Id.* Both women denied knowing anything about the gun or cocaine. *Id.* The owner of the vehicle explained that defendant had borrowed her keys to put something in her car. *Id.* Another witness corroborated this testimony and stated that defendant fled the scene upon seeing the officer approach the two women. *Id.* The court noted that even with the officer admitting that he never saw the defendant touch the glove compartment, there was sufficient evidence for the trial judge to deny the motion for the directed verdict. *Id.* at 37, 455 S.E.2d at 705-706. The court noted the owner's testimony that she always kept her vehicle locked, that she did not own a gun, and that she testified that there had been no cocaine or gun kept in her car prior to this incident. *Id.* Accordingly, the court affirmed the circuit court's denial of defendant's motion for a directed verdict. *Id.* at 39 , 455 S.E.2d at 707.

C. Application

CHIEF JUSTICE TOAL: I respectfully dissent. Because the State presented evidence showing that Petitioner had the right to exercise dominion and control over the cocaine, I would hold that the court of appeals properly affirmed the trial court's denial of Petitioner's directed verdict motion.

A trial judge is required to deny a directed verdict motion and submit the case to the jury if there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused. *State v. Lollis*, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (citations omitted). When reviewing a denial of a directed verdict motion, this Court must view the evidence and all reasonable inferences in the light most favorable to the State. *State v. Frazier*, 386 S.C. 526, 531, 689 S.E.2d 610, 613 (2010).

A conviction for drug possession requires proof of actual or constructive possession, coupled with knowledge of the presence of the drugs. *State v. Halyard*, 274 S.C. 397, 400, 264 S.E.2d 841, 842 (1980). To prove constructive possession, "the 'State must show a defendant had dominion and control, or the *right to exercise dominion and control* over the illegal substance.'" *State v. Heath*, 370 S.C. 326, 329, 635 S.E.2d 18, 19 (2006) (quoting *Halyard*, 274 S.C. at 400, 264 S.E.2d at 842) (internal marks omitted). Petitioner's nervous behavior and his immediate flight upon police initiating a search of the car's glove compartment indicate that Petitioner had knowledge of the cocaine in the glove compartment. *See State v. Grant*, 275 S.C. 404, 407, 272 S.E.2d 169, 171 (1980) ("[A]ttempts to run away have always been regarded as some evidence of guilty knowledge and intent." (citation omitted)); *State v. Attardo*, 263 S.C. 546, 550, 211 S.E.2d 868, 869 (1975) (stating that knowledge "can be proved by the evidence of acts, declarations or conduct of the accused from which the inference may be drawn that the accused knew of the existence of the prohibited substances").

I would find that the facts of this case provide substantial circumstantial evidence reasonably tending to prove that Petitioner had the right to exercise dominion and control over the cocaine in the glove compartment because his actions indicate that he had the right to control disposition of the car itself. *Cf. State v. Ballenger*, 322 S.C. 196, 199, 470 S.E.2d 851, 854 (1996) ("[C]onstructive possession occurs when the person charged with possession has dominion and control over either the drugs or the premises upon which the drugs are found."); *State v. Hudson*, 277 S.C. 200, 203, 284 S.E.2d 773, 775 (1981) ("Where contraband materials are found on premises under the control of the accused, this fact in and of itself gives rise to an inference of knowledge and possession which may be sufficient to carry the case to the jury." (citation omitted)). Petitioner's

efforts to avoid having the car towed indicate that he had the right to exercise dominion and control of the car, as well as the drugs inside. Although the police ultimately prevented his attempts, Petitioner's apparent authority over the car and right to control the disposition of the car were evidenced by his attempts to contact a friend to whom he could relinquish control of the car.

In my opinion, the instant case is distinguishable from *State v. Heath*. In *Heath*, the Court found that the State presented no direct or circumstantial evidence linking a defendant to a car-washing mitt that contained crack cocaine. 370 S.C. at 330, 635 S.E.2d at 19. The mitt was found within a recycling bin outside the back door of the defendant's mother's house, where the defendant lived. *Id.* Unlike in *Heath*, where the only connections between the defendant and the drugs were his presence and residency at the house where the drugs were found, Petitioner attempted to control the disposition of the car, had been seen in the car for months prior to the stop, and had a special relationship with the driver. *Id.* In addition, while the defendant in *Heath* was never observed in close proximity to the mitt of crack cocaine, Petitioner was seated in the passenger seat of the car at the time of the stop, within arm's reach of the cocaine in the glove compartment. *Id.*

Further, I find it significant that Petitioner enjoyed a special relationship with the driver of the car—his girlfriend. *See State v. Brown*, 267 S.C. 311, 315, 227 S.E.2d 674, 676 (1976). In *Brown*, the defendant, who was charged with constructive possession of marijuana, was a passenger in the front seat of a car where marijuana was found in a rear passenger compartment. *Id.* at 313, 227 S.E.2d at 314. In holding that the trial judge should have granted the defendant's directed verdict motion, the Court noted that there was no evidence of any "special relation" between the defendant and the driver of the car "from which [defendant's] control of the car or its contents might be inferred." *Id.* at 315, 227 S.E.2d at 676. Unlike in *Brown*, where the defendant's "mere presence" in the car was not enough to create a jury issue on dominion and control of the marijuana, I would find that Petitioner's relationship with the driver, as well as the fact that the two of them had been seen driving the car for several months prior to the stop, is evidence that tends to prove Petitioner's right to exercise dominion and control over the cocaine in the car. *See id.* at 316, 227 S.E.2d at 677.

Therefore, in my opinion, substantial circumstantial evidence existed to create a jury question on constructive possession, and I would hold that the trial judge properly submitted the case to the jury.

KITTREDGE, J., concurs.

The dispositive issue in this case is whether there is sufficient evidence that Petitioner had the right to exercise dominion and control over the locked glove compartment.[5]

In determining whether to grant a motion for a directed verdict on constructive possession, as to a co-occupant's right to exercise dominion and control over the place where the contraband is found, in addition to presence, this Court will look for the following evidence: testimony tying the defendant to the contraband (*Tabory, supra; Brownlee, supra*); evidence of control or shared control of the premises (*Hudson, supra*); and evidence of a special relationship between the owner of the premises from which a right to control may be inferred (*Brown, supra*).

Here, in contrast to *Tabory, supra* and *Brownlee, supra,* there is no evidence of Petitioner's control of the cocaine in the locked glove compartment. In both those cases, there was testimony directly stating that the defendant had either exercised or discussed control over the contraband. The evidence here is that while petitioner may have been aware of the cocaine, there is no evidence he possessed or had a right to control the key to the glove box or the cocaine within.

As to evidence of Petitioner's control or shared control of the vehicle, the State argues that Petitioner's attempts to control the disposition of the vehicle evidences Petitioner's right to exercise dominion or control of the vehicle. We disagree and find that this fact cuts against the proposition that Petitioner had a right to control this vehicle.

While Petitioner sought to have the vehicle turned over to a third party, he failed in this attempt. If Petitioner did, in fact, have a *right* to exercise control over this vehicle, then presumably, the officers would have permitted him to designate someone else to drive the car. This was not the case. In fact, the officers testified that because defendant did not own the car and lacked a driver's license, i.e. did not have a right to control the vehicle, they would not permit him to control the ultimate disposition of the vehicle.

Additionally, the State argues that there is evidence from which a right to control the vehicle may be inferred. The State contends that the special relationship

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[5] The State does not argue that Petitioner was exercising dominion or control over the locked glove compartment. Therefore, the inquiry is limited merely to whether he had the right to exercise control over the locked glove compartment.

between the driver and Petitioner and his previous use of the vehicle are sufficient circumstantial evidence from which to infer Petitioner's right to control the locked glove compartment.

While we have acknowledged, that the lack of a special relationship supported a grant of directed verdict, we have never held that a special relationship in and of itself will suffice to withstand a motion for directed verdict. Further, mere presence, even before the incident leading to the discovery of the contraband, will not support the denial of a directed verdict.

Furthermore, in *Heath,* both a special relationship and previous use of the premises were present, yet we found that there was insufficient evidence to create a jury issue as to constructive possession. In *Heath*, the defendant was the son of the owner of the premises. This is a special relationship as substantial as the boyfriend/girlfriend relationship present here. Furthermore, in *Heath*, the defendant's mother actually owned the residence, while as here, Petitioner's girlfriend did not own the vehicle. Additionally, there was evidence that the defendant was a resident of the home, as well as circumstantial evidence that defendant had previously used the car washing mitt where the cocaine was found. Thus, when we have both a comparable special relationship and less evidence of previous use than in *Heath*, we find the evidence did not warrant submission to the jury.

Finally, the State points to Petitioner's proximity as support that Petitioner had a right exercise control over the locked glove compartment. We find Petitioner's proximity is not evidence of his right to control the glove box because the glove box was locked. The right to access the box was dependent on access to the key, which petitioner never possessed. *Compare Brownlee, supra.*

Accordingly, we hold that the court of appeals erred in affirming the circuit court's denial of Petitioner's motion for a directed verdict.

REVERSED.

BEATTY and HEARN, JJ., concur. TOAL, C.J., dissenting in a separate opinion in which KITTREDGE, J., concurs.

ALAN WILSON
ATTORNEY GENERAL

HORRY COUNTY
12 MAR 30 PM 1:11
MELANIE HUGGINS-WARD
CLERK OF COURT

March 29, 2012

The Honorable Melanie Huggins-Ward
Horry County Clerk of Court
Common Pleas Division (PCR)
Post Office Box 677
Conway, South Carolina 29528

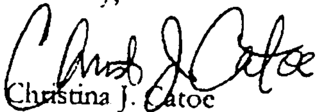
RE: **Maria Isabel Rodriguez, #332544, v. State of South Carolina**
2011-CP-26-2645

Dear Mrs. Huggins-Ward:

Enclosed please find, for filing in your office, the original signed **Order Denying Post-Conviction Relief** in the above-referenced PCR matter.

Thank you for your assistance in this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,



Christina J. Catoe
Assistant Attorney General

Enclosure

cc: Paul Archer, Esquire
233 Muirfield Drive
Pawleys Island, SC 29585

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Maria Isabel Rodriguez, # 332544,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2011-CP-26-2645

ORDER DENYING POST-CONVICTION RELIEF

HORRY COUNTY 12 MAR 30 PM 1:11 MELANIE HUGGINS-WARD CLERK OF COURT

This matter came before the Court pursuant to an Application for post-conviction relief filed March 21, 2011, by Maria Isabel Rodriguez. Respondent made a Return on April 20, 2011. An evidentiary hearing was convened at the Horry County Courthouse on January 23, 2012. The Applicant was present in court and represented by Paul Archer, Esquire. The Respondent was represented by Christina J. Catoe, Assistant Attorney General.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to a conviction from Horry County.[1] The Applicant was indicted in March 2008 for trafficking in cocaine, 10-28 grams (2008-GS-26-1201). R. Paul Taylor, Esquire, represented her. On January 5-6, 2009, the Applicant was tried and convicted following a jury trial before the Honorable Steven H. John. Judge John sentenced the Applicant to 15 years. A notice of appeal was timely filed, and LaNelle C. DuRant, Esquire, represented the Applicant on appeal. The South Carolina Court of Appeals affirmed the conviction on January 24, 2011 (2011-UP-012). The case was remitted to the circuit court on February 10, 2011.

[1] The Applicant is also serving unrelated sentences for possession with intent to distribute cocaine (2009-GS-26-0049) and ABHAN (2008-GS-26-1200).

STANDARD OF REVIEW

In a post-conviction relief proceeding, the applicant bears the burden of proving his or her allegations by a preponderance of the evidence. Caprood v. State, 338 S.C. 103, 109-110, 525 S.E.2d 514, 517 (2000); Rule 71.1(e). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The correct measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, supra. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case." Caprood, supra, at 109, 525 S.E.2d at 517 (citations omitted). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. When a defendant challenges his conviction after a trial, the proper consideration is whether there is a reasonable probability that, absent the errors, the fact-finder would have had a reasonable doubt respecting guilt. Smith v. State, 375 S.C. 507, 515, 654 S.E.2d 523, 527-28 (2007. (citations omitted). In order to receive relief, an applicant must prove both

ineffective assistance and resulting prejudice. See, e.g., Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007).

ALLEGATIONS

In her Application, Ms. Rodriguez alleged that her custody was unlawful for the following reason(s):

(1) Ineffective assistance of counsel:

a. Counsel allowed co-defendant's attorney to make prejudicial statements – see page 35 of transcript of record;
b. Counsel failed to object and failed to preserve objection – see Respondent's appeal brief, page 3, statement of issue on appeal;
c. Defendant should not have been tried with co-defendant; and
d. Defendant's 6th Amendment right was violated.

The Applicant stated she was seeking a new trial, a sentence reduction, and/or mercy of the court.

Summary of Relevant Facts

On December 22, 2007, the Applicant's car was stopped by police in reference to an investigation into a fight that occurred between the Applicant and another female at the "Noisy Oyster" bar in Myrtle Beach, SC. The Applicant was the driver of the car, and her boyfriend and co-defendant, Eric Dantzler, was the sole passenger. Eric Dantzler was the father of the Applicant's son, and he and the Applicant were living together at the time. Officers were aware that the Applicant and Mr. Dantzler had been in possession of the car for several months, although the car was still officially registered to Bill Thompson, a friend of Mr. Dantzler's. The police investigation resulted in the Applicant's arrest for assault and battery of a high and aggravated nature after it was determined that she bit off the other female's ear during the bar fight. After determining that Appellant was going to be arrested for the Noisy Oyster incident, the officers decided that the car would have to be towed since the co-defendant had no driver's license. Officers then began their routine inventory search of the car. At the precise moment when officers entered the glove box and

found 33 baggies of cocaine, the co-defendant ran away. A search incident to the Applicant's arrest revealed cash in the amount of $1,730.00 in her purse. Both the Applicant and Mr. Dantzler were charged with trafficking in cocaine in an amount between ten and twenty-eight grams. The cases were called for a consolidated trial in January 2009. Both the Applicant and her co-defendant were found guilty.

The PCR Hearing

At the PCR hearing, the Applicant testified that Stuart Axelrod was her first attorney on the case, but Paul Taylor took over for him after Mr. Axelrod discovered that he had a conflict of interest in that he represented the co-defendant on a CDV charge against the Applicant. The Applicant stated that when Mr. Axelrod was her attorney, there was a plea offer for three years. However, she rejected the offer at that time because she didn't know what to do. After Mr. Taylor became her attorney, a plea offer was made for a sentence of seven years. The Applicant stated that the plea offer would have required her to testify against her co-defendant. The Applicant testified that she rejected this plea offer because she was scared to testify against her co-defendant since he had beaten her up in the past and he constantly intimidated her. The Applicant stated that she informed her attorney about the abuse and her fear of the co-defendant, but he said it was not relevant. The Applicant testified that the co-defendant wrote her a letter accepting blame for the drugs but asking her to "take the charges" since she would get less time than he would.

The Applicant stated that she told her attorney that she was not guilty and that she did not know the drugs were in the glove box. The Applicant testified that the car she was driving that night belonged to her co-defendant, but she always drove him around in it because she had a driver's license and he did not. She also testified that the $1,730.00 found in her purse was money she had saved up to rent a new two-bedroom apartment. She stated that at trial, the jury heard about the money found but was not provided with an explanation of it. She acknowledged that her

attorney did, through his cross-examinations and closing argument, convey to the jury that the Applicant was keeping the money in her purse because she did not have a bank account.

The Applicant testified that she wanted to take the stand at trial and explain that the drugs belonged to the co-defendant, but she was afraid to testify because her co-defendant was being tried with her and was present in the courtroom. She stated that her attorney told her that it would be not be in her best interests to testify in light of her prior record for drug offenses. The Applicant testified that she now believes that she should have testified in order to convince the jury of her innocence. The Applicant also stated that she and her co-defendant should not have been tried together. She indicated that her attorney did not make a motion to sever the cases. She also testified that her attorney did not spend adequate time working on the case and did not sufficiently explain the discovery to her.

The Applicant's trial counsel, Paul Taylor, testified that he took over the Applicant's case after Attorney Axelrod discovered a conflict of interest involving his representation of the co-defendant. He testified he met with the Applicant and reviewed with her the discovery, which he had received from Attorney Axelrod. He also called the solicitor to discuss the case. The solicitor indicated that the Applicant's charges would be dismissed if the co-defendant took responsibility, but the co-defendant was refusing to do so. Mr. Taylor stated that he discussed the seven-year plea offer with the Applicant, but she rejected the offer and was unwilling to accept any jail time. Mr. Taylor was not aware of any plea offer for three years, although he did recall an offer of five years being made to the co-defendant.

Counsel testified that he and the Applicant fully discussed her right to testify at trial. The record reflects that counsel stated to the trial judge that he and the Applicant had "spoken at great length" regarding the issue of the Applicant taking the stand. (See Trial Transcript, page 223, lines 4-5). Counsel informed the Applicant that prior convictions could come in for impeachment

purposes if she testified. Counsel also indicated that the Applicant had prior drug offenses that might have come in to impeach her if she opened the door during her testimony. The record reflects that the trial judge told counsel and the Applicant that he would allow the solicitor to bring to the jury's attention, although perhaps generically, the fact that the Applicant had been convicted of crimes in the past. (See Trial Transcript, page 225, line 3 – p. 226, line 10). The trial judge also reviewed with the Applicant her right to testify or not testify at trial. (See Trial Transcript, pages 223-27). The Applicant indicated to the judge that she freely and intelligently made the decision not to testify at trial. (See Trial Transcript, pages 223-27).

Counsel stated that he considered making a motion for severance, but did not believe such a motion would have been successful. Furthermore, counsel felt that, although their defenses were not necessarily antagonistic, it would help to establish reasonable doubt as to Ms. Rodriguez's guilt if the co-defendant were present in court, because the jury might be more inclined to point the finger at him.

Counsel was aware that there was a CDV charge against the co-defendant wherein the Applicant was the victim; however, he was not made aware of the instances of abuse described by the Applicant at the PCR hearing. Counsel testified that he did not recall the Applicant being afraid of the co-defendant; in fact, he stated that the Applicant did not seem afraid of him at all during the trial. Counsel also testified that he did not recall any letter written by the co-defendant taking blame for the charge. Counsel did not recall the Applicant telling him that the money found in her purse was to pay rent on a new apartment. In fact, counsel recalled that there was no evidence to show where the money came from.

Counsel stated that, although the Applicant was the driver of the car and had the key to the glove box in her possession, a major theme in the defense strategy was to show that the car was actually registered to and owned by a man named Bill Thompson. Counsel indicated he felt it was

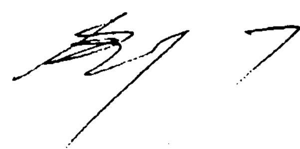
critical to elicit this information and to expose the fact that the police did not investigate Bill Thompson at all to determine if the drugs actually belonged to him. Of course, it was essentially unavoidable that the State would be permitted to respond and explain why the police did not feel it was necessary to investigate Mr. Thompson. In that vein, the arresting officer explained that he had seen the Applicant and her boyfriend in possession of that car for several months and that it was his understanding they were buying it from the registered owner. In the course of this testimony, the officer indicated that the car had been involved in "previous incidents." Counsel objected to any testimony about previous incidents, and the judge essentially sustained the objection and limited the testimony to whether or not he had observed the car earlier and in whose possession. No details about any "previous incidents" were divulged, and there was no insinuation that the prior incidents were drug-related.

Counsel acknowledged that he did not call Bill Thompson, the registered owner of the car, as a witness at trial; however, he stated that calling Mr. Thompson as a witness would have probably been a "double-edged sword." Mr. Thompson did not testify at the PCR hearing. See Porter v. State, 368 S.C. 378, 386, 629 S.E.2d 353, 358 (2006) ("Mere speculation of what a witness' testimony may be is insufficient to satisfy the burden of showing prejudice in a petition for PCR.")

Set forth below are the relevant findings of fact and conclusions of law, as required by S.C. Code Ann. § 17-27-80 (2003):

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In considering the Applicant's case, this Court had before it the Applicant's PCR file, including all pleadings filed, the records of the Horry County Clerk of Court regarding the conviction, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the direct appeal records. This Court carefully listened to all of the testimony



presented at the hearing and weighed the same according to credibility. This Court found the testimony of R. Paul Taylor, Esquire, to be credible, while the Applicant's testimony was lacking in credibility, particularly with respect to the version of events she described at the PCR hearing and with respect to her allegations of ineffective assistance of counsel.

In her PCR application, Ms. Rodriguez first alleged that counsel was ineffective for allowing the co-defendant's attorney to make prejudicial statements, as reflected at page 35 of transcript of record. This Court finds no merit to this allegation. The only statement on page 35 of the trial transcript that could be construed as prejudicial to the Applicant is the statement by the co-defendant's counsel, in her opening statement, that the evidence will show that Mr. Dantzler was not in possession of the keys to the car, was not operating the car, and that the money that was found was not in his possession. (See Trial Transcript, page 35, lines 8-13). This Court finds that the Applicant presented no authority indicating that these comments were objectionable. Therefore, this Court cannot conclude that counsel was ineffective for failing to object.

Second, the Applicant alleged that counsel failed to preserve objections to testimony from officers regarding previous incidents in which the Applicant had been in possession of the car in question. In support of this allegation, the Applicant makes reference to the State's brief in the direct appeal. In the direct appeal, the State argued (1) that the issue was not properly preserved under the strict error preservation rules, and (2) that the trial court did not err in allowing testimony about previous incidents in which the car had been in the Applicant's possession because the testimony was relevant and not unduly prejudicial to the Applicant. The Court of Appeals affirmed the Applicant's conviction, apparently concluding that the challenged testimony was relevant to prove the Applicant's possessory interest in the vehicle. See State v. Rodriguez, Unpublished Op. No. 2011-UP-012 (S.C. Ct. App. filed Jan. 24, 2011).

This Court finds that, while it may be true that counsel did not ensure the issue was properly

preserved for the direct appeal, the Applicant cannot show prejudice where the appellate court correctly concluded that the challenged testimony was properly admitted because it was relevant to prove the Applicant's possessory interest in the vehicle. Further, this Court concludes that the testimony was not unduly prejudicial to the Applicant because the references to "prior incidents" were vague and did not suggest any particular prior bad acts on the part of the Applicant. See State v. Council, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999); State v. Thompson, 352 S.C. 552, 560-61, 575 S.E.2d 77, 82-83 (Ct. App. 2003) (mistrial not warranted on basis of a single vague reference to defendant's prior bad act, where the State never introduced evidence to establish the prior bad act). Further, the State never attempted to prove any bad acts on the part of the Applicant stemming from the "prior incidents" and did not make reference to them in closing argument. Therefore, this Court concludes that, even if counsel failed to properly preserve the issue of the testimony regarding "prior incidents," the Applicant failed to establish prejudice.

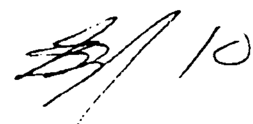
Third, the Applicant alleged that counsel should have ensured that she was not tried with her co-defendant, Eric Dantzler. The thrust of her argument on this ground was that she was afraid of her co-defendant, and the fact that they were tried together prevented her from testifying on her own behalf. However, the Applicant never informed her attorney that she was afraid of the co-defendant and did not want to be tried with him. Nevertheless, counsel did consider making a motion to sever the trials, but determined that he did not believe such a motion would be granted, and further, that it could be helpful to the Applicant to have someone else present before the jury who could be blamed for the drugs. In this case, there was a real possibility that the jury might find the co-defendant liable since he was the one who ran from police when the drugs were found.

This Court finds no ineffective assistance of counsel with respect to counsel's failure to make a motion to sever, since counsel had a valid strategic reason for not making the motion, and since the Applicant pointed to no credible evidence that would have convinced the trial judge that

the trials – which dealt with exactly the same crime and exactly the same evidence against both defendants - should have been severed. See Watson v. State, 370 S.C. 68, 634 S.E.2d 642 (2006) (recognizing that when counsel provides a valid trial strategy in response to a Sixth Amendment ineffective assistance of counsel claim, counsel's performance will not be deemed deficient); see State v. Spears, 393 S.C. 466, 475-77, 713 S.E.2d 324, 328-29 (Ct. App. 2011) (severance from co-defendant not required – even where the co-defendants point the finger at each other - where the evidence against the defendants is interconnected, where no specific trial right of the defendant is prejudiced by joinder, and where a proper cautionary instruction is given to the jury). (See Trial Transcript, page 21, line 21 – p. 22, line 3; page 278, line 18 – p. 279, line 11).

In addition, this Court finds that the Applicant failed to prove that her decision not to testify was the result of ineffective assistance of counsel. Counsel and the Applicant discussed at length her decision to testify or not testify, and counsel informed her that the judge was planning to allow into evidence – in some form or fashion – the fact the she had prior convictions. The judge also directly told the Applicant, before the defense rested, that the fact that she had been "convicted of crimes in the past" would be brought to the attention of the jury. (See Trial Transcript, page 226-26). To counsel the Applicant that the jury would learn of her specific drug record would be ineffective, as these convictions, by name, would likely be ruled inadmissible for impeachment purposes. Since the Applicant was on trial for trafficking, prior drug convictions would be too similar for the trafficking charge to be admitted. However, this Court concludes that if the Applicant chose not to testify against the co-defendant because she was afraid of him, the Applicant still would not have testified even if her drug record had not been admitted. Therefore, there is no prejudice and the Applicant is not entitled to relief on this allegation.

Finally, the Applicant alleged that her "6th Amendment right" was violated. No particular testimony or argument, other than as was set forth regarding the Applicant's other allegations of



ineffective assistance of counsel, was offered to support this very general allegation. Therefore, this Court can find no issues to rule upon and relief must be denied as to this ground.

CONCLUSION

In conclusion, based upon the entire record, this Court finds and concludes that the Applicant failed to meet her burden of proof as to any of her claims. Therefore, the Application for post-conviction relief must be denied and dismissed with prejudice for failure to meet the burden of proof under Strickland v. Washington, 466 U.S. 668 (1984), and Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

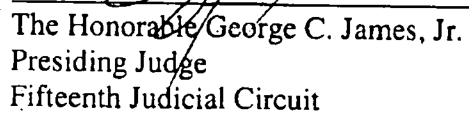
Counsel's attention is directed to Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), and Rule 59(e), SCRCP, regarding the filing of a Motion to Alter or Amend should counsel believe this Order fails to adequately address all issues raised as required by S.C. Code Ann. § 17-27-80 (2003). This Court further advises that if Applicant desires to secure appellate review of this Order, a notice of appeal must be filed and served **within thirty (30) days** of the service of this Order. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

IT IS THEREFORE ORDERED THAT:

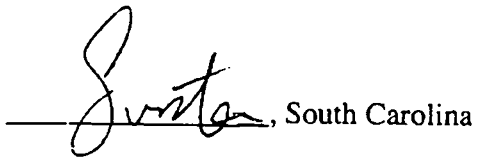
1. The Application for post-conviction relief is **DENIED and DISMISSED with PREJUDICE**.

2. The Applicant must remain in the custody of the State for completion of his sentence.

AND, IT IS SO ORDERED this 9 day of March, 2012.



The Honorable George C. James, Jr.
Presiding Judge
Fifteenth Judicial Circuit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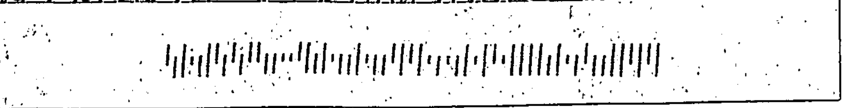

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