Law Office of Leah B. Moody, LLC

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Phone: (803) 327-4192 Fax: (803) 329-1344

April 23, 2015

Mr. Daniel E. Shearouse
The Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29221

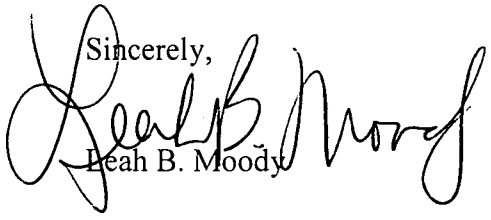
RE: Travis Colston v. State of South Carolina
Case No.: 2013-CP-11-00238

Dear Mr. Shearouse:

The Cherokee County Court of Common Pleas appointed my office to represent Travis Colston in his Post-Conviction Relief action. Please find enclosed for filing the original and two (2) copies of the Notice of Appeal, Proof of Service, and one (1) copy of the Order of Dismissal in the above-referenced case. Please return the clocked copies to me in the enclosed self-addressed, stamped envelope.

Thank you for your assistance with this matter.

Sincerely,



Leah B. Moody

Enclosure

cc Travis Colston
Suzanne White, Esquire
Sharon Graham, SCCID
Brandy W. McBee, Clerk of Court, Cherokee County

RECEIVED

MAY 01 2015

S.C. Supreme Court

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Deadra Jefferson, Presiding in Spartanburg County

Case No.: 2013-CP-11-00238

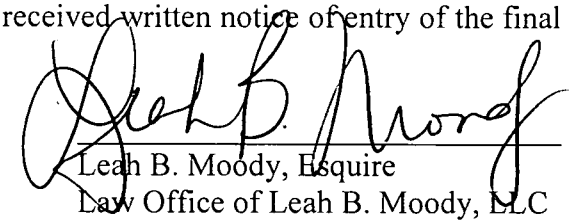
Travis Colston, ... Appellant,

v.

State of South Carolina, ... Respondent.

NOTICE OF APPEAL

Travis Colston appeals the order of the Honorable Deadra Jefferson, March 31, 2015 and mailed on April 2, 2015. Appellant received written notice of entry of the final order on April 7, 2015.



Leah B. Moody, Esquire
Law Office of Leah B. Moody, LLC
235 E. Main Street, Suite 115
Post Office Box 1015
Rock Hill, South Carolina 29731

Other Counsel of record:
Suzanne White, SC Attorney General's Office
Rembert C. Dennis Building
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-3970

RECEIVED
MAY 01 2015
S.C. Supreme Court

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

Deadra l. Jefferson, Presiding in Spartanburg County

Case No.: 2013-CP-11-00238

Travis Colston, ... Appellant,

v.

State of South Carolina, ... Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Suzanne White by depositing a copy of it in the United States Mail, postage prepaid, on 4/23, 2015 addressed to its attorney of record, Suzanne White, Post Office Box 11549, Columbia, South Carolina, 29211-1549.

Leah B. Moody, Esquire
Law Office of Leah B. Moody, LLC
235 E. Main Street, Suite 115
Post Office Box 1015
Rock Hill, South Carolina 29731

April 23, 2015
cc Travis Colston
Suzanne White, SC Attorney General
Honorable Brandy W. McBee

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP1100238

Travis Lamar Colston	State Of South Carolina
PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED IN OFFICE OF CLERK OF COURT CHEROKEE COUNTY, S.C. 2015 APR 2 AM 11 BRANDY W. MCGEE

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

Order of Dismissal

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

s/ Deadra L. Jefferson	2128	4/2/2015
Circuit Court Judge	**Judge Code**	**Date**

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

For Clerk of Court Office Use Only

This judgment was entered on April 2nd 2015 , and a copy mailed first class or placed in the appropriate attorney's box on **April 2nd 2015**, to attorneys of record or to parties (when appearing pro se) as follows:

Leah B. Moody 235 E. Main St., Ste 115 PO Box 1015 Rock Hill, SC 29730

ATTORNEY(S) FOR THE PLAINTIFF(S)

Alan McCrory Wilson PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Brandy W. McBee

Brandy W. McBee, Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2015 APR 2 AM 11 22
BRANDY W. MCBEE

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF CHEROKEE	)	
	)	
	)	2013–CP–11–0238
Travis Lamar Sentell Colston, #240843,	)	
	)	
Applicant,	)	
	)	
v.	)	**ORDER OF DISMISSAL**
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Presiding Judge:	Hon. Deadra L. Jefferson
Applicant's Attorney:	Leah B. Moody, Esquire
Respondent's Attorney:	Suzanne H. White, Esquire
Plea Counsel:	Michael A. Berry, Esquire
Date of Hearing:	January 15, 2015
Court Reporter:	Pamela E. Green

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 11, 2013. The Respondent made its Return on or about March 18, 2014. An evidentiary hearing into the matter was convened on January 15, 2015, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Leah B. Moody, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. By consent of the parties, Michael A. Berry, Esquire, was sworn and testified via telephone.[1] This Court also had before it a copy of the records of the Cherokee County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

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PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. He was indicted at the June 2011 term of the Cherokee County Grand Jury for Trafficking in Crack Cocaine 28–100 Grams–Third Offense[2] (2011–GS–11–0367) and Possession with Intent to Distribute (PWID) Marijuana[3] (2011–GS–11–0368). Michael A. Berry, Esquire, represented the Applicant. On July 24, 2012, the Applicant pled guilty to the lesser-included offense of Trafficking in Crack Cocaine 10–28 Grams–Second Offense[4] and PWID Marijuana. The Honorable Lee S. Alford sentenced the Applicant, pursuant to a negotiated sentence, to concurrent sentences of fifteen (15) years for Trafficking in Crack Cocaine and five (5) years for PWID Marijuana. Judge Alford also terminated the Applicant's probation on Indictment Number 2011–GS–11–367[5] and gave the Applicant credit for six (6) months time served, pursuant to S.C. CODE ANN. § 24–13–40 (2011). The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

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

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[1] Michael A. Berry, Esquire was ill on the date of the hearing and confined to his home due to the nature of this illness.

[2] Trafficking in Crack Cocaine 28–100 Grams–Third Offense is a violent, serious offense punishable by "a mandatory minimum term of imprisonment of not less than twenty-five [(25)] years and not more than thirty [(30)] years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars [($50,000.00)]. S.C. CODE ANN. § 44–53–375(C)(2)(c) (2011); S.C. CODE ANN. § 16–1–60 (2011); S.C. CODE ANN. § 17–25–45 (2011).

[3] PWID Marijuana–First Offense is a felony punishable by imprisonment for "not more than five [(5)] years" or a fine of "not more than five thousand dollars [($5,000.00)], or both." S.C. CODE ANN. § 44–53–370(b)(2)(2011).

[4] Trafficking in Crack Cocaine 10–28 Grams–Second Offense is a violent, serious offense punishable by "a term of imprisonment of not less than five [(5)] years nor more than thirty [(30)] years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars [($50,000.00)]. S.C. CODE ANN. § 44–53–375(C)(1)(b) (2011); S.C. CODE ANN. § 16–1–60 (2011); S.C. CODE ANN. § 17–25–45 (2011).

1. Ineffective assistance of counsel, in that;
    i. Counsel violated the Applicant's 5th, 6th, and 14th amendments,
2. Involuntary guilty plea, in that;
    i. The Applicant was not made aware of the charges he was pleading to or the penalties,
3. Violation of due process, in that;
    i. The Applicant's 4th, 5th, 6th, and 14th amendments were violated.

At the hearing, the Applicant proceeded only on the following grounds: Counsel was ineffective for failing to advise the Applicant of the charges he was facing, the associated penalty ranges, and the consequences of his plea agreement; therefore, the Applicant argues his guilty plea was involuntary. This Court finds the Applicant failed to present any testimony or evidence regarding any other claims raised his Application; therefore, all allegations other than those presented at the hearing are deemed abandoned by the Applicant, denied, and dismissed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review 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 his or her 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).

Concurrent PCR Cases and Motion to Dismiss

At the commencement of the evidentiary hearing, the Respondent moved to dismiss the Applicant's PCR Application based on the following grounds: the Applicant filed an additional Application for PCR under Case Number 2013–CP–11–238, which was subject to a conditional

[5] See Tr. 4:14–15; 14:21–25. The Applicant does not challenge the disposition of this offense and termination of his

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dismissal pursuant to the South Carolina Supreme Court's April 12, 2013 Administrative Order. The Respondent contends that the Applicant's Reply was untimely. Pursuant to S.C. CODE ANN. § 17–27–70 (2011):

> When a court is satisfied, on the basis of the application, the answer or motion, and the record, that the applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and its reasons for so doing. The applicant shall be given an opportunity to reply to the proposed dismissal. In light of the reply, or on default thereof, the court may order the application dismissed or grant leave to file an amended application or direct that the proceedings otherwise continue. Disposition on the pleadings and record is not proper if there exists a material issue of fact.

S.C. CODE ANN. § 17–27–70 (2011). "Generally, successive applications for post-conviction relief are viewed with disfavor and the applicant has the burden of showing that a new ground for relief could not have been raised in a previous application." Carter v. State, 293 S.C. 528, 530, 362 S.E.2d 20, 21 (1987) (citing Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). "If the applicant meets this burden, a hearing must be afforded despite the successiveness of the application." Id. (citing Case v. State, 277 S.C. 474, 289 S.E.2d 413 (1982)). Where the Circuit Court conditionally dismisses an application for PCR, the applicant must reply to that dismissal and show cause as to why the application should not be summarily dismissed. See Lewis v. State, 368 S.C. 630, 630 S.E.2d 464 (2006); Edith v. State, 369 S.C. 408, 632 S.E.2d 844 (2006). The Applicant's PCR application regarding Case Number 2013–CP–11–238 is not properly before the Court. Thus, the Court proceeded with the hearing.

Motion for Continuance

The Applicant requested a continuance based on the following grounds: the Applicant requested this hearing be continued because of concurrent PCR case pending as Case Number

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probationary case on collateral review before this Court.

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2013–CP–11–238. The Applicant also requested a continuance so that he could subpoena O. Cyrus Hinton, Esquire and Trent Pruett, Esquire to testify on his behalf. The Applicant testified they were necessary witnesses because the Applicant attempted to hire them to represent him on his underlying charges and, although he had other options, he was forced to be represented by Counsel. The Applicant argued that when he tried to hire Hinton, the judge and Assistant Solicitor initially told him that he would be given time to secure counsel, but then said he would have to go forward and plead guilty or go to trial. The Applicant argued that Pruett agreed to represent the Applicant, but was unable to take his case at the last minute. The Applicant also contended that he was not sure of the charges he was facing while incarcerated.

The grant or denial of a continuance is within the sound discretion of the trial judge and is reviewable on appeal only when an abuse of discretion appears from the record. Plyler v. Burns, 373 S.C. 637, 650, 647 S.E.2d 188, 195 (2007) (citing Bridwell v. Bridwell, 279 S.C. 111, 112, 302 S.E.2d 856, 858 (1983)). See Hudson v. Blanton, 282 S.C. 70, 74, 316 S.E.2d 432, 434 (Ct. App. 1984) (noting a moving party must show the absence of some material evidence and due diligence on his part to obtain such evidence to justify a continuance). Cf. Beasley v. Kerr–McGee Chem. Corp., 273 S.C. 523, 532, 257 S.E.2d 726, 730 (1979) (finding a movant failed to show due diligence to justify a continuance when he had eight months from filing of the complaint until trial to prepare). The bald assertion that the Applicant or his counsel were not ready to go forward and the Applicant was unprepared is not a sound basis for granting a motion for continuance. See State v. Williams, 321 S.C. 455, 459, 469 S.E.2d 49, 51–52 (1996); Plyler v. Burns, 373 S.C. 637, 650, 647 S.E.2d 188, 195 (2001) ("[T]he denial of a motion for a continuance on the ground that [a party] has not had time to prepare is rarely disturbed on appeal.").

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DLG

This Court finds that the witnesses' purported testimony is not relevant to the Applicant's PCR Application. This Court denied the Applicant's motion for continuance. This Court finds that at the time of the Applicant's plea hearing, his case had been pending for a year; therefore, the Applicant's argument that he was prejudiced by his inability to hire private counsel on the eve of trial is disingenuous, dilatory, and a delay tactic. This Court can discern no legitimate basis to grant the Applicant's motion for continuance. However, the Court advised the Applicant that if he could establish any relevant or germane evidence supporting his claims, his PCR attorney could supplement the record on his behalf. Thereafter, the Court proceeded with the Applicant's evidentiary hearing.[6]

Summary of the Testimony

The Applicant testified that he was currently in prison at Perry-Lieber Correctional Institute on the charges of Trafficking Crack Cocaine 28–100 Grams–Second Offense, and PWID Marijuana, following his guilty plea on July 24, 2012. The Applicant testified that he accepted and "signed off on" the plea offer of fifteen (15) years on the day of his plea because he felt he had no choice. He testified that he could either plead guilty or proceed to trial that day and face a possible life without parole sentence.

The Applicant testified that he had several meetings with Counsel and that he tried to explain the circumstances of his charges, but his attorney never understood what he was facing. The Applicant alleged the arresting officer was lying and that he never pulled the Applicant out of the car before the officer performed his search and found the drugs; the Applicant claimed that the other responding officer pulled him out of the vehicle. The Applicant further testified that Counsel never advised him about the police report, would not allow witnesses to take the police report up to the stand, and never explained why. The Applicant characterized Counsel's advice:

[6] The Applicant declined to supplement the record after his hearing.

if the Applicant went to court, the State would go off the police report, and that's it. The Applicant stated that he had a problem with Counsel's explanation.

The Applicant testified that he met with Counsel twice. At the first meeting, The Applicant asked Counsel to investigate whether or not the traffic stop was legal and the discrepancies with the incident report. The Applicant testified he was parked lawfully on the lawn. The Applicant testified that he provided Counsel with several names and addresses of witnesses he knew of and explained how to find other individuals, but The Applicant does not believe that Counsel tried to contact any of those witnesses. At their second meeting, Counsel conveyed the State's fifteen (15) year offer. The Applicant testified that he was scheduled for a court appearance on the date of his plea and he signed the sentencing sheets a few moments before the plea because he was told that if he did not accept the offer that day, he would proceed to trial. He explained that he was not sure whether he wanted to accept the offer because he was in the process of retaining an attorney, was not sure whether Counsel had uncovered evidence regarding his potential witnesses, and Counsel was not prepared to go to trial.

Additionally, the Applicant testified that he was released from the South Carolina Department of Corrections and was supposed to go to the Cherokee County Detention Center for roll call in April 2012. He then testified that he bonded out of the Cherokee County Detention Center and at roll call in May 2012, he was served with LWOP notice. He testified that at that time, he was not represented by anyone. The Applicant testified that he thought the charge was being reverted back to a Trafficking in Crack Cocaine 28–100 grams–First Offense, with a penalty range of seven (7) to twenty-five (25) years and he was pleading to the fifteen (15) year offer, instead of the reduced Trafficking in Crack Cocaine 10–28 grams–Second Offense, with a range of five (5) to thirty (30) years. The Applicant admitted that it was ignorance for him not to

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read or ask about the sentencing sheet before signing it, but that he was emotional and did not discuss the nature of the charges with Counsel at that time.

Finally, the Applicant testified he was unaware of the drug enhancement scheme, the plea colloquy, and the violent and serious nature of the Trafficking offense. The Applicant testified that he asked the Assistant Solicitor about his LWOP eligibility during roll call and asked the judge to explain serious offenses. He alleged the Solicitor said that he did not understand and Counsel said that his Trafficking offense was not considered as a strike because it was a first offense, not a second. However, on cross examination, the Applicant admitted that he knew he was pleading to the fifteen (15) year offer and remembered that he reviewed the nature of the Trafficking in Crack Cocaine–Second Offense penalty, drug enhancements, and the facts during the plea colloquy. The Applicant also admitted that during the colloquy he stated that his plea was free and voluntary.

Counsel testified that he represented the Applicant, the Applicant applied for the services of the Cherokee County Public Defender's Office, his office opened a file for this case in May 2012, and that he was appointed a few months before the Applicant's plea on May 17, 2011. Counsel understood that The Applicant was served with a clocked and filed copy of the State's notice to seek life imprisonment without parole on March 27, 2012. Counsel testified that he met with the Applicant and reviewed the elements of the charges, sentencing ranges, and constitutional rights he would give up if he pled guilty. Counsel testified that he received the court's general sessions docket that the Public Defender's Office sent notice to his client of his appointment on June 12, 2012, and he met with the Applicant at 4:00 PM on that day to discuss the original posture of the Applicant's case. The State's original offer, which was extended on June 6, 2012, was to withdraw LWOP in exchange for a negotiated plea to twenty-five (25) years

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on the Trafficking in Crack Cocaine 28–100 Grams–Third Offense and PWID Marijuana–Third Offense. Counsel testified the offer expired on June 15, 2012. Counsel testified, "clearly [I] would have gone over the mandatory minimums at that time." Counsel testified that he and the Applicant reviewed the sentencing sheets received from the Assistant Solicitor, which listed the charges and noted the penalty ranges. Thereafter, Counsel testified, he reviewed the Applicant's prior record for drug enhancements to determine whether the Applicant was LWOP eligible and reviewed the indictments and applicable statutes. Counsel testified that when the case was not reached on the June docket and after the Applicant rejected the initial offer, he continued to negotiate on the Applicant's behalf.

At that time, Counsel reviewed the facts of the case and discovery materials with the Applicant. Counsel testified that he had only two first names of potential witnesses in his file but could not discern their identities and could not recall whether he had noted any other names. Counsel denied that the Applicant provided him any leads. He believed the only witnesses were listed in the incident report and had already given statements that the property where the drugs were found belonged to the Applicant. He explained to the Applicant that those witnesses would be called to court to testify to that effect and that their statements would be admissible. Additionally, Counsel testified that he listened to the Applicant's version of the events, researched the case by reviewing maps of the area, and researched and explained the law on traffic stops and search and seizure law with the Applicant in his office. Counsel explained that he could not challenge the search because the officer was entitled to stop and search the vehicle based upon the fact that there was an open container in the vehicle where the Applicant was seated in the back. Counsel testified that he could not recall the Applicant's description of a home.

Counsel testified that he does not recall whether Hinton appeared at the docket sounding or at the Applicant's plea date. At the time the Applicant's case was called on the docket, in chambers the plea judge denied the Applicant's motion to continue his case in order to hire Hinton and they had to be ready to plead guilty or go to trial. Counsel testified that the Applicant then received the fifteen (15) year offer. Although Counsel could not recall whether he relayed the offer to the Applicant on the Monday of the docket sounding or on the day of his trial, Counsel advised the Applicant to accept the State's offer based upon the fact that The Applicant was facing a sentence of life without parole at trial. Counsel noted that the Applicant was cordial during their interactions in June 2012, but his mood turned somber, perhaps when he realized he was LWOP eligible. Counsel felt the Applicant was reluctant to sign the sentencing sheet, which he interpreted as the Applicant's reluctance to go to prison for fifteen (15) years, and which he felt was nothing out of the ordinary, but Counsel was adamant in his advice for the Applicant to accept the deal. Finally, Counsel testified that had the Applicant rejected the offer, his trial would have commenced the next morning and he was adequately prepared to go forward.

Ineffective Assistance of Counsel

In a PCR action, "the burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 622, 300 S.E.2d 482, 483 (1983)). Where the Applicant 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." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 686, 104 S. Ct. at 2064).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. See Strickland at 690, 104 S. Ct. at 2066. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See id. 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 to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. See id. at 117–18, 386 S.E.2d at 625. Under this prong, attorney performance is measured by its "'reasonableness under prevailing professional norms.'" Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 668, 104 S. Ct. at 2052). 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.'" Id. at 117–18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068).

The Applicant alleges he received ineffective assistance of counsel. This Court finds the testimony of Counsel to be more credible than the testimony of Applicant as to all allegations raised in the Application, the Amended Application, and at the hearing. This Court finds Counsel is a criminal practitioner who has experience in the trial of serious offenses. This Court finds Counsel provided credible testimony during the Applicant's evidentiary hearing.

Counsel conferred with the Applicant on numerous occasions, reviewed all discovery

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materials with the Applicant, and determined there were no viable defenses or challenges to the stop or search and seizure. During conferences with the Applicant, Counsel discussed the pending charges, the elements of the charges and what the State was required to prove, the Applicant's version of the facts, the Applicant's constitutional rights, and his possible defenses or lack thereof. The record reflects that Counsel effectively explained the charges, their associated penalty ranges, and the consequences of pleading guilty. This Court finds that Counsel was prepared to proceed to trial if necessary, but was able to work out a very good plea offer on behalf of the Applicant. This Court can find no deficiency in Counsel's representation in this matter. The record further reflects that the Applicant's plea was entered freely, voluntarily, knowingly, and intelligently.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that the Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687–88, 104 S. Ct. 2052, 2064–65; Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 687–88, 104 S. Ct. at 2064–65, Turner v. Bass, 753 F.2d 342, 348 (4th Cir. 1985), *rev'd on other grounds*, Turner v. Murray, 106 S. Ct. 1683 (1986); Marzullo v. Maryland, 561 F.2d 540, 543 (4th Cir. 1977)). This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that Counsel's representation did not fall below an objective standard of reasonableness.

Inability to Retain Private Counsel

The Applicant argues that the plea court should have allowed him to fire Counsel, continue his case, and hire one of two (2) private defense attorneys to represent him. A motion to relieve counsel is addressed to the discretion of the trial court and will not be disturbed absent an abuse of discretion. State v. Gregory, 364 S.C. 150, 152, 612 S.E.2d 449, 450 (2005). Likewise, the grant or denial of a continuance is within the sound discretion of the trial judge and is reviewable on appeal only when an abuse of discretion appears from the record. Plyler v. Burns, 373 S.C. 637, 650, 647 S.E.2d 188, 195 (2007) (citing Bridwell v. Bridwell, 279 S.C. 111, 112, 302 S.E.2d 856, 858 (1983)).

The defendant bears the burden of showing satisfactory cause for removal. State v. Graddick, 345 S.C. 383, 386, 548 S.E.2d 210, 211 (2001). In analyzing a defendant's motion to relieve counsel, the court may consider the following factors: "timeliness of the motion, adequacy of the trial [court]'s inquiry into the defendant's complaint, and whether the attorney-client conflict was so great that it resulted in a total lack of communication, thereby preventing an adequate defense." State v. Sims, 304 S.C. 409, 414, 405 S.E.2d 377, 380 (1991). "It is well-established that a defendant may waive the right to counsel and proceed *pro se*." Dearybury v. State, 367 S.C. 34, 39, 625 S.E.2d 212, 215 (2006) (citing Faretta, 422 U.S. at 834, 95 S.Ct. at 2525. "Although a defendant's decision to proceed *pro se* may be to the defendant's own detriment, it "must be honored out of that respect for the individual which is the lifeblood of the law." Id. (citing Faretta, 422 U.S. at 834, 95 S.Ct. 2525). "The trial judge has the responsibility to ensure that the accused is informed of the dangers and disadvantages of self-representation, and makes a knowing and intelligent waiver of the right to counsel." Id.

This Court finds credible Counsel's testimony that at the docket sounding, as the Applicant's case was called to trial, the Applicant still had not secured private representation.

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Counsel further testified that the plea court advised him that the Applicant's case would not be continued so that the Applicant could retain private counsel. Once the Applicant's case was called to trial, the plea court advised, his trial would not be continued and thus the Applicant would be required to proceed *pro se*. See id.; State v. Williams, 312 S.C. 455, 459, 469 S.E.2d 49, 52 (1996) (where fifteen months had passed since counsel was retained and defendant could not show satisfactory cause to grant motion to relieve counsel, trial court did not abuse its discretion by denying defendant's motion on the eve of trial). This Court finds that the trial court's refusal to relieve Counsel and grant the Applicant a continuance on the eve of trial was not an abuse of discretion. This Court finds that the Applicant's case had been pending for approximately one (1) year and he still had not secured private counsel. Therefore, his motion to relieve Counsel and for continuance was a dilatory delay tactic and without merit. Accordingly, the Applicant's assignment of error is without merit.

Failure to Investigate

The Applicant claims Counsel was ineffective for failing to fully investigate his case and discover potential witnesses. This Court finds the Applicant has failed to show the potential benefit of any further investigation; this Court will not speculate as to the result of such investigation.

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012), *overruled on other grounds*, Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014). "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result."

Porter v. State, 368 S.C. 378, 385–86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521–22, 123 S. Ct. 2527, 2535 (2003).

Our Courts have repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing Pauling v. State, 31 S.C. 606, 503 S.E.2d 468 (1998); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995); Underwood v. State, 309 S.C. 345, 495 S.E.2d 768 (1998)). The Applicant's mere speculation as to what a witness' testimony would have been by itself cannot satisfy the Applicant's burden of showing prejudice. Id. (citing Glover, 318 S.C. at 498–99, 458 S.E.2d at 540). See Edwards, 392 S.C. at 457, 710 S.E.2d at 65 ("So long as a defendant's attorney conducts a reasonable investigation, including interviewing potential witnesses when it is reasonable to do so, his performance will not be deficient."); Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006) (citing Strickland, 466 U.S. at 691, 104 S. Ct. at 2066) ("Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.").

This Court finds credible Counsel's testimony that he fully and thoroughly investigated the Applicant's case, including reviewing maps of the scene of the crime and performing legal research. This Court further finds credible Counsel's testimony that he received and reviewed all discovery with the Applicant prior to his plea. This Court finds the Applicant's uncorroborated

assertions that Counsel failed to investigate potential witnesses, whose names he provided to his attorney, is not credible. Ultimately, the Applicant failed to present the favorable testimony of such witnesses at his evidentiary hearing. Therefore, this Court finds that Counsel adequately investigated the Applicant's case and finds no basis to speculate as to the results of any further investigation. Thus, this Court finds the Applicant has failed to carry his burden of proving Counsel was ineffective for failing to fully investigate his case.

Failure to Advise of Penalty and Sentencing Consequences

The Applicant alleges Counsel was ineffective for failing to inform the Applicant of the penalty ranges associated with his charges, the potential sentences he was facing, the terms of the plea offer, and the consequences of entering his plea, specifically the violent and serious classification of his Trafficking offense. This Court finds this allegation is wholly without merit. This Court finds credible Counsel's testimony that he informed the Applicant of the following: the elements of the charged offenses; the penalty ranges of the offenses; the potential sentences associated with his charges; and his LWOP eligibility. This Court finds most credible Counsel's affirmation that he certainly would have discussed the mandatory minimum sentences with the Applicant during their first meeting and that after investigation into the Applicant's prior criminal record, informed the Applicant of the potential drug enhancements.

This Court finds Counsel was not deficient in this regard and his performance did not affect the outcome of the Applicant's proceeding. See Randall v. State, 356 S.C. 639, 641–42, 591 S.E.2d 608, 609–610 (2004) (citing Jackson v. State, 349 S.C. 62, 562 S.E.2d 475 (2002)) (failure to advise of collateral consequences of parole eligibility before the applicant proceeds to trial not ineffective assistance of counsel); Knox v. State, 340 S.C. 81, 530 S.E.2d 887 (2000), *overruled on other grounds*, State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) (counsel is not

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ineffective for failing to advise a defendant regarding parole eligibility in connection with his guilty plea because it is a collateral consequence of sentencing); Smith v. State, 329 S.C. 280, 494 S.E.2d 626 (1997) (unless counsel gives erroneous advice, parole information is not a ground for collateral attack of a guilty plea); Brown v. State, 306 S.C. 381, 412 S.E.2d 399 (1991) (guilty plea is not rendered involuntary if the defendant is not informed of the collateral consequences of his sentence).

"A defendant must be advised of a mandatory punishment for the offense to which he is pleading." State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980). Despite counsel's alleged failure to advise his or her client regarding the mandatory minimum sentences, the trial judge cures any misconception by properly advising the defendant of the penalty ranges at the plea hearing. Knox, 340 S.C. at 86, 530 S.E.2d at 889 (citing Moorehead v. State, 329, S.C. 329, 496 S.E.2d 415 (1998)). Cf. Smith v. State, 329 S.C. 280, 284–85, 494 S.E.2d 626, 628–29 (1997) (enumerating collateral consequences of burglary conviction and holding that guilty plea not rendered invalid for counsel's failure to advise of each consequence associated with violent crimes). This Court finds that any deficiencies in the Applicant's personal understanding of the ramifications of his plea were cured during the plea court's colloquy. Specifically, the Applicant was advised of and understood the charges against him (Tr. 4: 4–15), the associated penalty ranges (Tr. 5:18–7:5), and the potential drug offense enhancements (6:12–7:5). The Applicant indicated he understood the nature and terms of the negotiated plea (Tr. 8:25–9:17).

Additionally, this Court finds that the Applicant's assertion that he thought his Trafficking charge was a first offense and that he did not understand the ramifications of pleading guilty to a violent, serious offense is without merit. The Applicant's criminal history is extensive at best—including a distribution of crack conviction, a distribution of crack within

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proximity to a school charge, another PWID charge, and a PWID within proximity to a school charge, for a total of six (6) prior offenses—and indicates that he was aware of the criminal justice system and sentencing process. Moreover, the Applicant admitted the State served him with a clocked and filed LWOP notice prior to his trial date, which would have included the prior offenses on his record that made him eligible for life imprisonment without possibility of parole. Thus, this Court finds the Applicant has failed to carry his burden of proving Counsel was ineffective in this regard.

Failure to Challenge the Search and Advise of Defenses

The Applicant alleges that he attempted to explain to Counsel that the search of his vehicle and seizure of the drugs was invalid but Counsel failed to raise the illegal search as a defense and thus was ineffective. This Court finds that Counsel was not ineffective for failing to challenge the search, seizure, and the Applicant's arrest and advising the Applicant that he had no defenses. This Court finds that the Applicant had no defenses to raise at trial and that Counsel had no basis to challenge the search or admission of the drugs. Moreover, the Applicant cannot establish prejudice because any challenge regarding the search would not have been successful at trial.

"Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Strickland, 466 U.S. at 693, 104 S. Ct. at 2067. Where counsel articulates a valid strategic reason for his action or inaction, based on an objective standard of reasonableness, counsel's performance should not be found ineffective. See Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes, 308 S.C. at 548, 419 S.E.2d at 779.

Generally, the Fourth Amendment requires the police to have a warrant in order to conduct a search. Robinson v. State, 407 S.C. 169, 182, 754 S.E.2d 862, 868 *cert. denied*, 134 S. Ct. 2888 (2014) (quoting State v. Weaver, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007)). "Evidence seized in violation of the warrant requirement must be excluded from trial. . . . However, a warrantless search may nonetheless be proper under the Fourth Amendment if it falls within one of the well-established exceptions to the warrant requirement." Id. (citing State v. Moore, 377 S.C. 299, 308–09, 659 S.E.2d 256, 261 (Ct. App. 2008)). The exceptions to the warrant requirement are: "(1) search incident to a lawful arrest; (2) hot pursuit; (3) stop and frisk; (4) automobile exception; (5) the plain view doctrine; (6) consent; and (7) abandonment." State v. Brown, 401 S.C. 82, 89, 736 S.E.2d 263, 266 (2012). Furthermore, if police officers are following their standard procedures, they may inventory impounded property without obtaining a warrant. See Colorado v. Bertine, 479 U.S. 367, 372–73, 107 S.Ct. 738, 93 L.Ed.2d 739 (1987).

A police officer "may . . . stop and briefly detain a vehicle if they have a reasonable suspicion that the occupants are involved in criminal activity." State v. Pichardo, 367 S.C. 84, 97–98, 623 S.E.2d 840, 847 (Ct. App. 2005). Reasonable suspicion is something more than an "inchoate and unparticularized suspicion" or hunch. Terry v. Ohio, 392 U.S. 1, 27, 88 S.Ct. 1868 (1968). "Instead, looking at the totality of the circumstances, reasonable suspicion requires there be an objective, specific basis for suspecting the person stopped of criminal activity." Robinson, 407 S.C. at 182, 754 S.E.2d at 868 "[P]olice may search the passenger compartment of a vehicle incident to a recent occupant's arrest only if (1) the arrestee is 'unsecured and within reaching distance of the passenger compartment at the time of the search,' or (2) it is reasonable to believe the vehicle contains evidence of the crime of arrest. Absent either of those two instances, 'a search of an arrestee's vehicle will be unreasonable unless police obtain a warrant or show that

another exception to the warrant requirement applies.'" Id. at 188–89, 754 S.E.2d at 872 (citing Arizona v. Gant, 556 U.S. 332, 343, 129 S.Ct. 1710, 1710 (2009)).

Here, the officer's lawful traffic stop of the vehicle and suspicion that potential criminal activity was afoot gave rise to reasonable suspicion to briefly detain the Applicant. See Robinson, 407 S.C. at 183, 754 S.E.2d at 869 (stop justified upon officer's reasonable suspicion that passengers were potentially committing a misdemeanor criminal offense). The Applicant was discovered in the back seat of the car with an open container on the floorboard in between his feet. Therefore, probable cause existed supporting his arrest. The officers then performed an appropriate search incident to lawful arrest. Accordingly, the detention and seizure of the Applicant and search of his vehicle was valid and Counsel was not ineffective for failing to raise the search as a defense.

During his testimony, the Applicant made passing references to potential witnesses who could refute the State's assertion that the vehicle was in the Applicant's dominion and control and thus he had constructive possession of the drugs at the time of the arrest. "Actual possession occurs when the drugs are found to be in the actual physical custody of the person charged with possession, while constructive 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. Fripp, 397 S.C. 455, 458, 725 S.E.2d 136, 138 (Ct. App. 2012) (citing State v. Ballenger, 322 S.C. 196, 199, 470 S.E.2d 851, 854 (1996)). "Mere presence is insufficient to prove constructive possession." State v. Heath, 370 S.C. 326, 329-30, 635 S.E.2d 18, 19 (2006) (citing State v. Tabory, 260 S.C. 355, 364, 196 S.E.2d 111, 113 (1973)). 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]." Id. (citing State v. Halyard, 274 S.C. 397,

 20-926

400, 264 S.E.2d 841, 842 (1980)) (emphasis added). "Further, the State may establish constructive possession by either circumstantial or direct evidence." Id. "The defendant's knowledge and possession may be inferred if the substance was found on premises under his *control.* Id. (citing State v. Adams, 291 S.C. 132, 135, 352 S.E.2d 483, 486 (1987)) (emphasis added).

However, as referenced above, the Applicant failed to present the favorable witness testimony supporting his purported defense at his evidentiary hearing. Therefore, the Applicant's assertion of error is overruled. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing Pauling v. State, 31 S.C. 606, 503 S.E.2d 468 (1998); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995); Underwood v. State, 309 S.C. 345, 495 S.E.2d 768 (1998)).

Involuntary Guilty Plea

In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al–Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the

truth of those statements. Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566, 566 (4th Cir. 1976).

When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill, 474 U.S. at 52, 106 S. Ct. at 366; Roscoe, 345 S.C. at 20, 546 S.E.2d at 419 (citing Hill, 474 U.S. at 52, 106 S. Ct. at 366; Jackson v. State, 342 S.C 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243–44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991) (citing State v. Hazel, 275 S.C. 392, 394, 271 S.E.2d 602, 602 (1980)). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009) (citing Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000)). See Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). "Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing." Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000). "In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of the plea." Id. (citing Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991); State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980)). A defendant's knowing and voluntary waiver of statutory or

constitutional rights must be established by a complete record and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993). "Under the procedure, a defendant, before his guilty plea may be accepted, is examined under oath on the voluntariness of his plea, including particularly its freedom from coercion by threat." Edmonds, 546 F.2d at 567. When a defendant pleads guilty on the advice of counsel, the plea may be attacked through only a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citing Al-Shabazz v. State, 338 S.C. 354, 363–64, 527 S.E.2d 742, 747 (1999)). Moreover,

> a signed document that informs a defendant of the charges against him, such as a sentencing sheet, gives rise to a presumed regularity in the proceedings and signifies that the defendant has been notified of the charges to which he has pled guilty. . . . In a criminal case, a defendant who chooses to plead guilty has ample opportunity to be fully notified of the charges he is pleading guilty to. . . . [A] defendant may check a box to indicate that he wishes to plead guilty. In addition, a defendant may sign the sentencing sheet, indicating the defendant is informed of the choices and has selected the box that corresponds to the course of action the defendant wants to take in the case. As a result, we believe that all of these factors indicate that the Defendant had notice of the charges to which he chose to plead guilty.

State v. Smalls, 364 S.C. 343, 347, 613 S.E.2d 754, 756 (2005).

This Court finds that the Applicant failed to meet his burden of proof as to this claim. This Court finds the transcript of the guilty plea to be most compelling. Based on the record of the Applicant's plea hearing, the Applicant's assertion that he believed he was pleading guilty to a first offense and did not understand the terms of his plea offer is not credible (Tr. 4: 4–15; 5:18–7:5; 8:25–9:17). This Court finds that The Applicant was advised of and understood the charges against him (Tr. 4: 4–15), the associated penalty ranges (Tr. 5:18–7:5), and the potential drug offense enhancements (6:12–7:5). The Applicant indicated he understood the nature and

terms of the negotiated plea (Tr. 8:25–9:17). The Applicant told the court that he was pleading freely and voluntarily, and was satisfied with his attorney. (Tr. p. 9–11). The Applicant was advised by and agreed with the plea court regarding his prior record; that the present offense was his third strike; that a component of the State's plea deal was waiving LWOP; and that he was subject to drug crime enhancements (Tr. 12:7–13:8). He stated for the record that he his decision to enter into a negotiated plea agreement and plead guilty was not based on any promises (Tr. 9:18–20).

The Applicant was fully advised of and waived his constitutional rights and his ability to raise any defenses on his behalf at trial (Tr. 7:10–8:21). The Applicant stated that he was satisfied with his attorney's representation (Tr. 9:21–24); that he and his attorney had fully discussed all the charges, evidence, and witnesses against him, as well as any possible defenses, (Tr. 9:25–10:10); and that he gave the names of all potential witnesses to his attorney to assist in his defense (Tr. 10:12–15). Counsel also acknowledged during mitigation that he fully discussed the Applicant's case and all possible outcomes with his client (Tr. 15:16–19).

Furthermore, The Applicant allocuted to the facts of the offense and admitted his guilt. (Tr. 11:3–5). The Applicant affirmed to the plea court that he was not under the influence of drugs or alcohol (Tr. 10:16–20), experienced no mental or emotional issues (Tr. 10:21–24), and he was pleading guilty of his own free will (Tr. 10:25–11:2). The Applicant told the plea court that he understood his right to appeal his conviction and sentence (Tr. 13:15–20). Finally, the Applicant specifically requested the plea court to honor the fifteen (15) year negotiated plea offer so that he could have a life with his family after release from incarceration (Tr.16:14–24). Therefore, this Court finds that the Applicant has failed to meet his burden of showing that his guilty plea was not entered freely, voluntarily, knowingly, and intelligently.

Due Process Violations

Although pled in his application, The Applicant did not proceed on this allegation at his PCR hearing. Therefore, this Court finds that the Applicant voluntarily abandoned this claim.

All Other Allegations

As to any and all allegations that the Applicant raised in the application and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant abandoned such allegations. Therefore, they are hereby denied and dismissed.

CONCLUSION

This Court finds in regards to the allegations of ineffective assistance of counsel and involuntary guilty plea, Applicant's testimony as a whole was not credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in her representation, and that Counsel's conduct did not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test specifically that Counsel failed to render reasonably effective assistance under prevailing professional norms. See Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in her representation of the Applicant. The Applicant failed to show that Counsel's performance was deficient. Therefore, this Court need not address whether the Applicant was prejudiced by Counsel's representation. See id. The Applicant's complaints concerning Counsel's performance are without merit and are denied and dismissed.

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

This Court cautions Applicant that he 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. 453 454, 409 S.E.2d 395, 396 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. The Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

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

AND IT IS SO ORDERED this 31st day of March, 2015.

Deadra L. Jefferson
Presiding Judge
Seventh Judicial Circuit

Charleston, South Carolina
At Chambers

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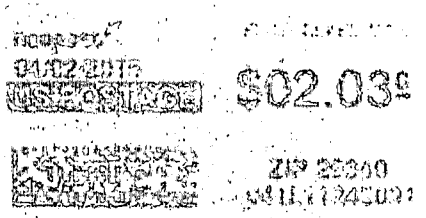

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April 23, 2015

The Honorable Brandy W. McBee
Cherokee County Clerk of Court
Post Office 2289
Gaffney, South Carolina 29342

RE: Colston, Travis Lamar v. State of SC
C.A. No.: 2013-CP-11-00238

Dear Ms. McBee:

Please find enclosed the Notice of Appeal and the Proof of Service in the above-referenced matter.

Sincerely,

Leah B. Moody

Enclosures

cc Travis Colston
Suzanne White, Assistant Attorney General
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
Sharon Graham, SCCID

Law Office of Leah B. Moody, LLC

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April 23, 2015

Suzanne White, Esquire
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211

RE: Travis Colston v. State of South Carolina
C.A. No.: 2013-CP-11-00238

Dear Ms. White:

The Spartanburg County Court of Common Pleas appointed my office to represent Travis Colstonin his Post-Conviction Relief action. Please find enclosed a copy of the Notice of Appeal and Proof of Service in this matter.

If you have any questions or concerns, please feel free to contact my office. Thank you for your attention in this matter.

Sincerely,

Leah B. Moody

Enclosures

Cc Travis Colston
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
Brandy W. McBee, Clerk of Court, Cherokee County
Sharon Graham, SCCID

Law Office of Leah B. Moody, LLC
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April 23, 2015

Ms. Sharon A. Graham
SC Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11433
Columbia, South Carolina 29211-1433

RE: Travis Colston v. State of South Carolina
Case No.: 2013-CP-11-00238

Dear Ms. Graham:

The York County Court of Common Pleas appointed my office to represent Travis Colston in his Post-Conviction Relief action. Please find enclosed the Notice of Appeal and Proof of Service the above-referenced matter.

Thank you for your attention in this matter.

Sincerely,

Leah B. Moody

Enclosures

cc Travis Colston
Suzanne White, Esquire
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
Brandy W. McBee, Clerk of Court, Cherokee County

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235 E. MAIN ST., SUITE 115
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Honorable Daniel E. Shearouse
Supreme Court of South Carolina
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Columbia SC 29211-1330