ALAN WILSON
ATTORNEY GENERAL

July 1, 2015

The Honorable Daniel E. Shearouse
Clerk of the South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Frank Daniel Simpson, Respondent v. State, Petitioner
Case No. 2014-CP-23-0531

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

1. A copy of the orders which are to be challenged on appeal.
2. Proof of service of notice of appeal on Respondent.
3. Letters ordering the two transcripts (from the PCR and motion hearings) from the court reporters.

Sincerely,

Karen C. Ratigan
Senior Assistant Deputy Attorney General

cc: Charles Grose, Esquire
South Carolina Department of Corrections
Greenville County Clerk of Court
Solicitor Walt Wilkins
Office of Appellate Defense
Trisha Allen, Victim Services

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2014-CP-23-0531

Frank Daniel Simpson,.....Respondent,

v.

State of South Carolina,.....Petitioner.

NOTICE OF APPEAL

The State of South Carolina appeals the following orders from the Honorable Eugene C. Griffith, Jr.: (1) amended order of dismissal filed March 19, 2015 and (2) order granting Rule 59(e) motion filed June 9, 2015. The State received notice of entry of the order granting Rule 59(e) motion on June 12, 2015. A copy of the orders on appeal is attached to this notice.

Respectfully submitted,

ALAN WILSON
Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General
S.C. Bar # 68331

P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

By: _____
Attorneys for the Petitioner

Columbia, South Carolina

July 1, 2015

Other counsel of record:

Charles Grose, Esquire
Grose Law Firm
404 Main Street
Greenwood, SC 29646

STATE OF SOUTH CAROLINA
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APPEAL FROM GREENVILLE COUNTY
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Frank Daniel Simpson,.....Respondent,

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PROOF OF SERVICE

I, Karen C. Ratigan, Counsel for Petitioner, certify that I have today served the within notice of appeal upon Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorney of record:

Charles Grose, Esquire
Grose Law Firm
404 Main Street
Greenwood, SC 29646

I further certify that all parties required by Rule to be served have been served this 1st day of July, 2015.

KAREN C. RATIGAN
S.C. Bar. #68331
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
Attorney for Petitioner

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

Frank Daniel Simpson,
S.C.D.C. No. 354338,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
C.A. No. 2014-CP-23-0531

AMENDED
ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 28, 2014. The Respondent made its return on March 26, 2014. An evidentiary hearing was held on December 17, 2014 at the Greenville County Courthouse. The Applicant was present and represented by E. Charles Grose, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified at the PCR hearing. Also testifying were Robert Simpson and the Applicant's plea counsel, Cameron G. Boggs, Esquire. The Court had before it the transcript of the guilty plea hearing, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, and Applicant's Exhibit 1.

The Applicant's attorney, Charles Grose, sent correspondence to the Court regarding a factual finding in the order and that he intended to file motion pursuant to Rule 59(e) SCRCP to alter or ament the final order. The court without hearing amends its findings of facts.

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PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the December 2011 term of the Greenville County Grand Jury for trafficking methamphetamine (2011-GS-23-9272). He was represented by Cameron G. Boggs, Esquire.

On February 13, 2013, the Applicant pled guilty to trafficking methamphetamine (28-100 grams), first offense. The Honorable Letitia H. Verdin sentenced the Applicant to nine years imprisonment. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
   a. "Plea counsel failed to prepare for Applicant's guilty plea.
   b. "Plea counsel inaccurately advised Applicant about entering his guilty plea, the applicable penalties, and the authority of the sentencing judge."
   c. "Plea counsel failed to present accurately available mitigation during the guilty plea and sentencing proceedings."

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 closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action,

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"[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). 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 v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The Applicant stated he had numerous meetings with plea counsel. The Applicant stated he and plea counsel reviewed the State's evidence and his prior criminal record. The Applicant stated plea counsel told him the State had a strong case against him. The Applicant stated plea counsel asked if his family could pay any of his fines (the Applicant stated his brother could do so). The Applicant stated he knew the sentence to which he was pleading guilty carried a mandatory minimum seven-year sentence. The Applicant stated plea counsel said he would ask for a sentence of house arrest and GPS monitoring. The Applicant stated he was under the impression this was a possibility but not that he would receive such a sentence. The Applicant stated he would not have pled guilty if he had known he would not receive house arrest. The Applicant stated he was unhappy with plea counsel's performance but admitted he sent him an Easter card after the plea hearing.

Robert Simpson, the Applicant's twin brother, stated the Applicant had asked him

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whether he would be able to pay a fine on his behalf. Simpson stated he was at the Applicant's plea hearing.

Plea counsel testified he was the Applicant's second attorney. Plea counsel testified he met with the Applicant more than any other client that he did not take to trial. Plea counsel testified the Applicant was extremely intelligent and a drug abuser, not a dealer. Plea counsel testified this case was never going to trial and that his role was to obtain the best deal possible and make a mitigation argument. Plea counsel testified he was able to negotiate a reduction of the second offense to a first offense. Plea counsel testified he prepared a sentencing memorandum for the plea judge (as well as another document listing mitigating factors) in which he requested a sentence of house arrest. Plea counsel testified both he and the Applicant were aware the Applicant's charge carried a mandatory minimum sentence of seven years but that he had seen sentences suspended before and that he would have to make this request if he had any hope for such a suspension. Plea counsel testified he never told the Applicant he would receive house arrest and that the Applicant would not have expected to receive a sentence of less than seven years. Plea counsel testified he did not tell the Applicant to rely upon the possibility of an illegal sentence and that the Applicant never expected anything other than a chance. Plea counsel testified the Applicant's family had the financial ability to pay any fines.

Initially, this Court notes the Applicant acknowledged to the plea judge that he was aware the sentence range for this offense was 7-30 years. (Plea transcript, p.7). The Applicant did not dispute the facts recited by the assistant solicitor. (Plea transcript, pp.18-19). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced. (Plea transcript, pp.8-11). Specifically, the Applicant stated he was not made any promises in exchange for his guilty plea. (Plea transcript,

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p.9). This Court finds there is no evidence in the guilty plea transcript to support the Applicant's assertion that he had been misadvised (or made any promises) about the sentence he would receive; therefore the transcript has refuted this allegation. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007); see also Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him).

This Court finds the Applicant failed to meet his burden of proving plea counsel was ineffective. Plea counsel testified he had more contact with the Applicant than with any other guilty plea client. Plea counsel testified the Applicant was extremely intelligent and aware of the sentence he was facing. Plea counsel testified he explained to the Applicant that he would request the plea judge suspend his sentence to house arrest and that the Applicant understood this was merely a request. Plea counsel testified the Applicant knew not to expect to receive a sentence of less than seven years. This Court finds plea counsel's testimony is credible. This Court finds plea counsel explained the sentencing scheme to the Applicant, as well as his strategy to ask the plea judge to depart from that scheme (as happens in federal court) in order to receive a sentence of house arrest. This Court finds plea counsel articulated a valid reason that he asked for a departure from the mandatory minimum sentence in this case. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel). This Court finds the Applicant was aware of this strategy – as well as the fact that he must assume he would still receive a sentence of at least seven years. This Court finds plea counsel was a zealous advocate for his client and presented a compelling mitigation

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argument to the plea judge. (Plea transcript, p.20-27). While the Applicant may have hoped for a sentence of house arrest, plea counsel did not promise that he would receive such. See Holden v. State, 713 S.E.2d 611, 617, 393 S.C. 565, 575-76 (2011) (citation omitted) ("Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made.").

This Court finds the Applicant's testimony that he would have gone to trial if he had realized he would not receive house arrest is not credible. The Applicant was aware of the sentence range (including the mandatory minimum sentence of seven years) for his offense. The Applicant also admitted that, while house arrest was presented as a possibility, it was never promised that he would receive this sentence. The Applicant failed to present any credible evidence or testimony that he would have chosen to proceed to a jury trial. See Hill v. Lockhart, 474 U.S. at 58-59, 106 S. Ct. at 370.

This Court also finds the Applicant cannot prove he was prejudiced as a result of plea counsel's representation. Plea counsel's strategy to request a departure from the mandatory minimum sentence (in favor of house arrest) cannot be viewed as having prejudiced the Applicant because the State had overwhelming evidence[1] of the Applicant's guilt. See Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence

[1] Plea transcript, pp.18-19.

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that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

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

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and

2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 6th day of March, 2015.

Eugene C. Griffith, Jr.
Presiding Judge
Thirteenth Judicial Circuit

Newberry, South Carolina.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
Frank Daniel Simpson, SCDC #354338	)	Case Number: 2014-CP-23-00531
v.	)	**Order Granting Applicant's Rule 59(e), SCRCP Motion and Post-Conviction Relief**
State of South Carolina	)	

This matter is before the Court on the applicant, Frank Daniel Simpson's, Rule 59(e), SCRCP motion to alter or amend the amended order dismissing his application for post-conviction relief. After carefully considering the guilty plea transcript, the evidence presented at the evidentiary hearing, the Rule 59(e) motion, the State's response to the Rule 59(e) motion, and arguments presented at the hearing on the motion, the Court has reconsidered the amended order of dismissal, withdraws the amended order of dismissal, grants the Rule 59(e) motion, and grants Mr. Simpson's application for post-conviction relief.

Procedural History

As a result of a traffic stop on March 24, 2011, the State charged Mr. Simpson with trafficking methamphetamine, 28-100 grams, second offense. On February 13, 2013, the State called Mr. Simpson's case before the Honorable Letitia H. Verdin for a guilty plea. Joyce L. Monts represented the State. Cameron G. "Bozzie" Boggs represented Mr. Simpson. Judge Verdin sentenced Mr. Simpson to nine (9) years imprisonment. By written order dated March 18, 2014, the Honorable Edward W. Miller reduced Mr. Simpson's sentence "from a term of nine (9) years to seven (7) years" pursuant to S.C. Code Ann. §17-25-65.

On January 28, 2014, Mr. Simpson filed this application for post-conviction relief. This Court convened an evidentiary hearing on December 17, 2014 at the Greenville County Courthouse.

Prior to receiving notice of the written order signed on February 10, 2015 and filed on March 16, 2015, by email dated February 12, 2015, counsel for Mr. Simpson informed the Court of his objections to the order of dismissal. By written order dated March 6, 2015, filed on March 19, 2015, the Court amended the order of dismissal.

On March 30, 2015, Mr. Simpson served a Rule 59(e), SCRCP motion. On April 1, 2015, the State served its return to Mr. Simpson's motion. On May 7, 2015, the Court convened a hearing on this motion to reconsider its amended order at the Newberry County Courthouse.

Findings of Fact

The following occurred during the guilty plea colloquy:

> **The Court:** And Mr. Simpson, you are here today to plead to Trafficking in Methamphetamine less than 100 grams, but greater than 28 grams second offense. That carries a minimum sentence of seven years up to 30 years and it's a violent offense and a serious offense. Is that your understanding?
>
> **Mr. Simpson:** Yes, ma'am.
>
> **The Court:** Okay. And a violent offense means that any active jail sentence you receive, you'll serve a greater percentage than it [sic] if were non-violent. You understand that?
>
> **Mr. Simpson:** Yes, ma'am.
>
> The Court: And serious means that if you were to get two other serious offenses, on the third, the State could seek life

without the possibility of parole against you. You understand that?

Mr. Simpson: I do.

Guilty Plea Transcript (hereinafter "Tr.") 7, line 9 – 8, line 2.

Ms. Monts summarized the factual background, provided Mr. Simpson's prior record, and recommended "a cap of 15" years. Tr. 18, line 1 – 19, line 23.

Plea counsel provided Judge Verdin the Defendant's Sentencing Memorandum and another document "entitled Mitigating Factors and Extenuating Circumstances." Tr. 20, lines 9-18. During his presentation to the Court, plea counsel argued:

> Judge, I know there's a statutory minimum, but just as a point of reference, as you know, there's an annotated statutory provision that said any sentence can be suspended by a judge even though this says no suspended sentence. I'm not – I'm not trying to insult your intelligence in any way, Judge. He can do house arrest, Judge. He can make it. He would want it. Obviously, who wouldn't.

Tr. 26, lines 11-18. Judge Verdin neither advised Mr. Simpson that house arrest was not an available sentencing option nor corrected plea counsel's assertion that the minimum sentence could be suspended.

Mr. Simpson's mother, Ida Simpson who is "in her 80s" addressed Judge Verdin. Mr. Simpson's fraternal twin, Robert Simpson, addressed the plea judge and requested:

> Right now, my wife and I have a small daughter. I can't help my parents as they grow older. I really need Frank to help out. If this had happened 10 years ago, I would not be here today. I would let him do the time and let him live in his own debt. But right now, he's – I really need help. Thank you.

Tr. 30, lines 17-23. Mr. Simpson addressed Judge Verdin. Tr. 31, line 4 – 33, line 9.

Judge Verdin sentenced Mr. Simpson to nine (9) years imprisonment and returned the Sentencing Memorandum to plea counsel. Tr. 34, lines 13-23.

Although the Sentencing Memorandum plea counsel provided Judge Verdin was not introduced into the record during the guilty plea, Mr. Simpson introduced it into the record during the post-conviction relief proceedings. Section II of the Sentencing Memorandum, at p. 2, is captioned, "A Federal-esque 'Variance' is appropriate in this case." The memorandum argues, "In the federal system, a variance, or reduction, from a statutory sentence is available to the defendants based on various factors set forth in 18 U.S.C. §3553(a)." After reviewing a number of justifications for treating Mr. Simpson with mercy, the Sentencing Memorandum, at p. 5, concludes:

> Even when mandatory sentencing levels exist, this Court, like the federal courts across the country and in this very state, should be able to treat those before them as individuals. . . . If federal laws and cases dictate that a Court should impose a sentence that is "sufficient, but not greater than necessary," then all sentencing courts should have greater latitude to impose a sentence that fits not only the crime, but the person before the court. Therefore, Frank [Simpson] respectfully submits that a sentence of house arrest, would be a sentence that is "sufficient, but not greater than necessary."

During the post-conviction relief hearing, plea counsel testified he prepared this Sentencing Memorandum and submitted it to Judge Verdin in which he requested a sentence of house arrest. Plea counsel also confirmed that Mr. Simpson's family had the financial ability to pay the fines.

Mr. Simpson testified he expected to receive a fine, a suspended sentence, and that any active sentence could be served through home incarceration. He also testified that he would not have plead guilty but for his plea counsel's erroneous legal advice.

Robert Simpson corroborated this expectation. He testified he was present in the courtroom and prepared to pay a fine in excess of $100,000.00 the same day as his brother's guilty plea.

Conclusions of Law

In his application for post-conviction relief, Mr. Simpson contends he "was denied the right to effective assistance of counsel during his guilty plea, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution" because "[p]lea counsel failed to prepare for Applicant's guilty plea" by "inaccurately advis[ing him] about entering his guilty plea, the applicable penalties, and the authority of the sentencing judge." PCR Application ¶¶ 10 and 11.

In determining whether trial defense counsel provided ineffective assistance of counsel, pursuant to the Sixth and Fourteenth Amendments, this Court must apply the standards set forth in *Strickland v. Washington,* 466 U.S. 668 (1984). Under *Strickland,* the defendant "must show that counsel's representation fell below an objective standard of reasonableness," which must be judged under "prevailing professional norms." *Id.* at 688.

Once the defendant asserting ineffective assistance of counsel has established counsel's failure to comply with the prevailing professional norms, he must affirmatively prove that this deficiency has prejudiced him. Specifically:

> The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.

Strickland, 466 U.S. at 694. The totality of the evidence must be considered in deciding whether the defendant was prejudiced by counsel's errors.

Furthermore,

> [i]n *Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985), the Supreme Court applied the two part standard adopted in *Strickland* to guilty plea challenges bottomed on ineffective assistance of counsel. The Court reiterated that the defendant must show first that counsel's representation fell below the standard of reasonableness; and, that there was a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. 106 S.Ct. at 370. Specifically, the Court stated that the defendant must show that "there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." 106 S.Ct. at 370.

Jordan v. State, 297 S.C. 52, 54, 374 S.E.2d 683, 684 (1988). *See also Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000) ("A defendant who pleads guilty on advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases and there is a reasonable probability that, but for counsel's errors, defendant would not have pled guilty and would have insisted on going to trial.").

Plea counsel's performance was deficient. Trafficking methamphetamine, 28-100 grams, second offense carries "a term of imprisonment of not less than seven years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars." S.C. Code Ann. §44-53-375(C)(2)(b). Because of this specific prohibition, the plea court's general power to suspend sentences, pursuant to S.C. Code Ann. §24-21-410, does not apply. *Compare State v. Tisdale*, 321 S.C. 153, 467 S.E.2d 270 (Ct. App. 1996) (by using language "the service of the minimum sentence is

mandatory," legislature intended for someone convicted third-offense DUI to serve actual imprisonment of at least 60 days) *with State v. Thomas*, 372 S.C. 466, 642 S.E.2d 724 (2007) (held that statute prohibiting distribution of controlled substance within proximity of school contained no provision prohibiting the suspension of a sentence imposed pursuant to the statute, and thus, trial judge had the general authority to suspend the minimum sentence). Plea counsel, therefore, was ineffective for advising Mr. Simpson to seek a fine and suspended sentence which is not available under state law for this offense. For a plea to be voluntary, intelligent, and knowing, "a defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and ***any mandatory minimum penalty***, and the nature of the constitutional rights being waived." *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (emphasis added). Here, trial counsel did not advise Mr. Simpson that the minimum sentence is mandatory and cannot be suspended.

Additionally, the sentencing court was without authority to impose house arrest. Our General Assembly has enacted a "Home Detention Act." S.C. Code Ann. §24-13-1510, *et. seq.* The "Home Detention Act," however, does not apply to "charges of violating, the illicit narcotic drugs and controlled substances laws of this State which are classified as Class A, B, or C felonies." S.C. Code Ann. §24-13-1590. Trafficking methamphetamine, 28-100 grams, second offense is a Class A felony. S.C. Code Ann. §16-1-90(A). Plea counsel, therefore, was ineffective for advising Mr. Simpson that he would request a house arrest sentence when the "Home Detention Act" expressly excludes a house arrest sentence for this class of felony.

Having concluded that plea counsel's strategy to ask for a suspended sentence and house arrest is contrary to law, the Court also concludes that this strategy is objectively unreasonable. Mr. Simpson was prejudiced by plea counsel's deficient performance. The erroneous advice was material to his decision to plead guilty. Mr. Simpson testified credibly that he would not have plead guilty but for the erroneous advice. Plea counsel's deficient performance, therefore, rendered Mr. Simpson's guilty plea involuntary. *Lockhart, Jordan, Thompson,* and *Pittman, supra.* Because plea counsel's performance was both deficient and prejudicial, Mr. Simpson is entitled to a new trial.

Conclusion

Therefore, the Court grants the Rule 59(e) motion, withdraws the amended order of dismissal, and grants Mr. Simpson's application for post-conviction relief. It is further ordered that Mr. Simpson's conviction and sentence are vacated and the case is remanded to the Greenville County Court of General Sessions for a new trial.

IT IS SO ORDERED.

Eugene C. Griffith, Jr.
Presiding Judge, Thirteenth Judicial Circuit

June 2nd, 2015
Newberry, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP 23 00531

Frank Daniel Simpson #354338

Applicant

State of South Carolina

Respondent

ENTERED COMPUTER

Submitted by: Applicant	Attorney for : ☒ Applicant ☐ Respondent or ☐ 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.

☐ **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-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 JUN 9 AM 11:25

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC 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.**

Circuit Court Judge

2154
Judge Code

06/04/2015
Date

For Clerk of Court Office Use Only

This judgment was entered on the 9th day of June, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 9th day of June, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Charles Grose	Karen Ratigan
ATTORNEY(S) FOR THE APPLICANT	ATTORNEY(S) FOR THE RESPONDENT
	Paul B. Wickensimer
	CLERK OF COURT

Court Reporter: