LAW OFFICE OF

TARA DAWN SHURLING, PA

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3614 Landmark Drive
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August 20, 2015

The Honorable Daniel E. Shearouse
South Carolina Supreme Court Clerk
Post Office Box 11330
Columbia, South Carolina 29211-1330

Re: Shawn Madison, #328499 v. State of South Carolina; 2009-CP-02-00369.

Dear Mr. Shearouse:

Enclosed please find for filing a Notice of Appeal in the above captioned Post-Conviction Relief matter along with proof of service on opposing counsel. This Notice addresses the client's intent to appeal the Order of Dismissal issued by Judge Brown in this matter. I was retained to represent this client in the circuit court only. The family has not yet advised me whether they intend to hire me to handle this appeal. I am asking that they make this decision immediately. I am providing the client a copy of this Notice of Appeal, and a Form Affidavit of Indigency. I am instructing him to fill it out and return it to me immediately for submission to Appellate Division of the South Carolina Commission on Indigent Defense, if he wishes to seek representation by them. I will make certain he is aware that time is of the essence, and that he must return his affidavit to me immediately. For now, I would appreciate having the two additional copies of this notice enclosed with this correspondence clocked and returned to me in the self-addressed, stamped envelope provided. With my thanks for your kind assistance always, I am,

Sincerely yours,

Tara D Shurling

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg
Enclosure
cc: Dan Gourley, Assistant Attorney General
Lorienne French, Legal Service Coordinate, Appellate Defense
Shawn Madison, #328499
Lisa Madison

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
D. Craig Brown, Presiding Judge

2009-CP-02-00369

SHAWN MADISON, #328499, Applicant,

v.

THE STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

NOW COMES the Applicant in the above-captioned Post-Conviction Relief matter, acting by and through his undersigned counsel, giving notice of his appeal from the Order of Dismissal denying his Post-Conviction Relief filed May 8, 2015, and the Order Denying the Applicant's Motion to Alter or Amend pursuant to Rule 59(e) SCRCP which was filed with the Aiken County Clerk of Court on July 24, 2015.

Tara Dawn Shurling
Attorney and Counselor at Law
S.C. Bar No. 5099

3614 Landmark Drive, Suite A
Columbia, South Carolina 29204
(803)738-8622
(803)738-1600 FAX

ATTORNEY FOR APPLICANT

This 20th day of August, 2015.

Other Counsel of Record:
Daniel Gourley, Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211
Attorney for Respondent
(803) 734-3737

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
D. Craig Brown, Presiding Judge

2009-CP-02-00369

RECEIVED
AUG 24 2015
S.C. SUPREME COURT

SHAWN MADISON, #328499, Applicant,

v.

THE STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that one copy of the Applicant's Notice of Appeal in the above-entitled cause has been served upon opposing counsel, Daniel Gourley, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 20th day of August, 2015.

Tara Dawn Shurling
Attorney and Counsel at Law

SWORN TO BEFORE me this 20th day of August, 2015.

Notary Public for South Carolina (L.S.)
My Commission Expires: 2/28/24

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)	IN THE COURT OF COMMON PLEAS FOR THE SECOND JUDICIAL CIRCUIT
Shawn Madison, #328499, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2009-CP-02-00369 **ORDER**

FILED 7-24-2015
C.C.P. & G.S. 130
Deputy Clerk

This matter comes before this Court by way of a post-conviction relief (PCR) application filed by Shawn Madison (Applicant) on March 3, 2009. The State (Respondent) made its return on May 14, 2009. An evidentiary hearing in to the matter was convened on January 12, 2015, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Tara D. Shurling, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office. This Court issued an Order dated May 8, 2015, denying the application for post-conviction relief.

Applicant filed a motion pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, in which he asked this Court to alter or amend its order dismissing his PCR application. Respondent made its return to the motion, requesting this motion be dismissed.

Based upon careful reconsideration of the evidence in this case, including Applicant's motion and supporting memorandum, this Court is not persuaded to alter or amend its judgment. This Court further finds oral argument would not aid in the reconsideration of the original judgment. The Order of Dismissal issued by this Court

 DCR 1.10.2

contains the required findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2014) and Rule 52(a) of the South Carolina Rules of Civil Procedure.

IT IS THEREFORE ORDERED that Applicant's motion be denied and dismissed.

AND IT IS SO ORDERED this 27 day of June, 2015.

D. CRAIG BROWN
Presiding Judge
Second Judicial Circuit

Florence, South Carolina

PCR
p 2 of 2

ALAN WILSON
ATTORNEY GENERAL

July 22, 2015

The Honorable Liz Godard
Clerk of Court, Aiken County
Post Office Box 583
Aiken SC 29802-0583

Re: **Shawn Madison, #328499 v. State of South Carolina**
2009-CP-02-0369

Dear Ms. Godard:

Enclosed please find the original **Order** signed by the Honorable D. Craig Brown in the above-captioned case, for filing in your office. Please forward a **time stamped copy** back to our office for our file.

Sincerely,

Daniel Gourley
Assistant Attorney General

DG/cc
Enclosure

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2009CP0200369

Shawn Madison	South Carolina, State Of
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.

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 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.**

7/24/2015

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 **7-24-15**, and a copy mailed first class or placed in the appropriate attorney's box on **7-24-15**, to attorneys of record or to parties (when appearing pro se) as follows:

Tara Dawn Shurling 3614 Landmark Drive Suite A Columbia, SC 29204

ATTORNEY(S) FOR THE PLAINTIFF(S)

Megan Harrigan Jameson PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Liz Godard - 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.

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)	IN THE COURT OF COMMON PLEAS FOR THE SECOND JUDICIAL CIRCUIT
Shawn Madison, #328499 Applicant, v. State of South Carolina, Respondent.	)	2009-CP-02-00369 **ORDER OF DISMISSAL**

5 8 15
Liz Ekelund
C.C.P.&G.S.
Shawn Gaines 1153
Deputy Clerk

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on March 3, 2009. Respondent made its return on May 14, 2009. An evidentiary hearing into the matter was convened on January 12, 2015, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Tara D. Shurling, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was indicted at the February 2008 term of the Aiken County Grand Jury for trafficking in cocaine greater than ten grams but less than twenty-eight grams – third offense (2008-GS-02-0089). Everett Chandler, Esquire represented him. On May 19, 2008, a suppression motion was held and denied. On May 20, 2008, Applicant entered a negotiated guilty plea before the Honorable Doyet A. Early, III, and was sentenced to twenty years imprisonment and a $50,000.00 fine. Applicant did not appeal his conviction or sentence.

An evidentiary hearing was convened into the matter on July 12, 2011, before the Honorable James C. Barber, III, at the Aiken County Courthouse. At the conclusion of the hearing, Applicant's PCR counsel, Demal I. Mattson, Jr., renewed a previously filed motion for discovery to obtain the 911 phone call audio tape and the officer's ticket books in order to explore the possibility of a pretextual stop. Judge Barber issued a Form 4 order retaining jurisdiction and continuing the case until the September 2011 term of PCR Court. By Order dated September 16, 2011, Judge Barber ordered that the case be continued and placed on the next available roster before the next presiding judge. On September 17, 2012, the Honorable Doyet A. Early, III signed a consent order of substitution of counsel and Tara D. Shurling, Esquire, was substituted as counsel of record for Damel I. Mattson, Jr., Esquire.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
    a. "Counsel failed to inform me of right to appeal."
    b. "Counsel did not file an appeal."
    c. "Counsel did not file a motion to reconsider the sentence."
    d. "Counsel never advised applicant to obtain character witnesses and family members for the sentencing process."
    e. "Counsel did not adequately explain the plea sentence."
    f. "Counsel did not recommend any substance abuse or counseling programs for applicant to attend for sentencing purposes and possible mitigation."
    g. Counsel did not recommend Applicant to obtain any type of psychological profile or evaluations for sentencing purposes."
    h. "Counsel never spoke with any family members, friends, teachers, of Applicant for sentencing purposes nor did he advise applicant or even question applicant about the existence of persons to support applicant during sentencing purposes."
    i. "Counsel failed to file any motions to require an independent evaluation of the alleged controlled substance seized from the applicant."

j. "Counsel did not obtain anyone to independently weigh the amount of the alleged controlled substance."

k. "At the suppression hearing counsel was completely unprepared and deficient in the following particulars:

   i. Never inquired as to why the Police had been dispatched to the apartment complex;

   ii. Never obtained a copy of the 911 call or tape of the complainant concerning his or her call to the police;

   iii. Never raised the issue of racial profiling or the pretextual stop;

   iv. Never obtained or attempted to obtain the Police Dispatch Log dispatching law enforcement officers to the area;

   v. Never filed a Motion to obtain the arresting officers ticket books or warning ticket books to determine the possibility of racial profiling and/or pretextual stops which would have provided him with the names and addresses of possible witness for the Suppression Hearing."

l. "The applicant's rights were violated by the ineffective assistance of counsel which prejudiced the Defendant in violation of the 6th Amendment to the United States Constitution. Strickland v. Washington, 455. U.S. 558, 104 S.Ct. 2052 (1984)."

Applicant's Counsel, Tara D. Shurling filed an amended application for post-conviction relief on July 28, 2014, alleging the following allegations;

1. Plea Counsel was ineffective for failing to fully present evidence and arguments in support of Applicant's motion to suppress the drug evidence in his case.
2. Plea Counsel was ineffective for advising his client to accept a guilty plea bargain, and enter a plea of guilty, without first fully advising his client of all the consequences of such a plea including the waiver of his right to appeal the decision of the lower court on his motion to suppress the drug evidence in his case.
3. Plea Counsel was ineffective for neglecting to advise his client that a plea of guilty would effectively waive his right to have an appellate court review the question of whether or not the lower court erred in ruling that the drug evidence in his case was admissible notwithstanding evidence that the drugs were seized as a result of an unlawful detention.
4. Plea Counsel was ineffective for failing to develop a record in support of Applicant's motion to suppress the drug evidence in his case.
5. Plea Counsel was ineffective for failing to challenge the assertion of law enforcement that the tag cover found on the vehicle driven by Applicant on the night of the incident in question violated State law.
6. Plea Counsel was ineffective for failing to take necessary measures to preserve the license tag and tag cover from the car driven by Applicant on the evening of the violation alleged by this State where said evidence was material to Applicant's ability to prove that the reason advanced by law enforcement for the stop of the vehicle on the evening in question was a pretext.

7. Plea Counsel was ineffective for failing to take proper measures to obtain copies of law-enforcement logs, dispatch tapes and other law-enforcement records which would have documented the exact nature of the call which resulted in law enforcement coming to the apartment complex where Applicant was stopped, eventually arrested, on the night of his arrest.
8. Applicant's plea was not voluntarily and intelligently entered where it was entered without the understanding that he would not be able to appeal the lower court's ruling on the legality of the seizure of the drugs in his case if he pleaded guilty, and where his belief that he would still have the right to appeal that decision was reinforced by remarks from the Court at the time of his plea.

This Court notes Applicant only proceeded on claims stemming from his amended application filed by PCR Counsel on July 28, 2014.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from Rose Rivers (Rivers). The State presented testimony from Everett Chandler, Esquire (Plea Counsel). This Court also had before it a copy of the motion hearing transcript, plea transcript, the Aiken County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, amended allegations, and return.

During the evidentiary hearing, Applicant called Plea Counsel to testify. Plea Counsel stated that he was retained to represent Applicant on or about April 2, 2007. Plea Counsel stated Applicant was stopped by police on March 27, 2007 after exiting an apartment complex. Plea Counsel explained that the police were dispatched to the apartment complex for a complaint related to a drug transaction. Plea Counsel stated Applicant consented to a search of the vehicle and as he exited the vehicle a package of cocaine fell out of his pants. Plea Counsel stated the police initially stopped Applicant for a tinted license plate. Plea Counsel stated he filed a motion to suppress the evidence due to an unlawful search and seizure. Plea Counsel stated the motion was heard on May 19, 2008, before the Honorable Doyet A. Early, III. During the course of the suppression hearing, Plea Counsel argued that the stop was pretextual in nature because the

officers never mention the tinted license plate. Plea Counsel stated he argued that Applicant was only given a warning for the tinted license plate after the stop, search, and seizure had occurred. Plea Counsel stated Judge Early ultimately denied the motion to suppress the drug evidence. Plea Counsel stated the following day, May 20, 2008, Applicant pled guilty to the lesser included offense of trafficking cocaine-second offense 10 grams to 27.9 grams and was sentenced to a negotiated twenty year sentence. Plea Counsel stated he discussed Applicant's right to withdraw his guilty plea.

Plea Counsel stated that he did not file a motion to preserve the tinted license tag, log books, or 911 audio tapes. Plea Counsel stated that he did not think to preserve the 911 calls or dispatch logs because he did not believe they were relevant to the suppression motion. Plea Counsel stated his strategy was to argue the stop was pretextual in nature because the police never mentioned that the basis for stopping Applicant was the tinted license plate. Plea Counsel stated in his opinion, the warning for the tinted license plate was only issued in an attempt to give some sort of justification for the stop. Plea Counsel stated that he continually argued that there was never any mention about a tinted tag prior to or during the stop. Plea Counsel further stated the police never discussed the tag with Applicant during the stop. Plea Counsel stated it was his opinion that the warning for the tinted license plate was a retroactive justification for the stop itself.

Plea Counsel recalled that the vehicle Applicant was driving was registered to Applicant's girlfriend and it was released to Applicant's girlfriend after the search was conducted. Plea Counsel recalled visiting the apartment complex, meeting with Applicant's girlfriend, and going into her apartment. Plea Counsel could not recall if he took pictures of the vehicle or license tag cover. Plea Counsel stated he knew Applicant was at the apartment

complex visiting his girlfriend prior to being pulled over by the police. However, Plea Counsel stated the focus was not on why Applicant was at the apartment complex. Plea Counsel stated that Applicant did not "volunteer" to have the car searched, but instead gave "permission" that the car be searched. Plea Counsel conceded that he may have artfully worded that Applicant volunteered that the car be searched.

Plea Counsel stated that he did not attempt to bifurcate the State's argument during the course of the suppression hearing. Plea Counsel stated he was not focused on whether or not the police were acting on a credible "tipster." Plea Counsel stated he did not present evidence that the tip was about a lone female smoking marijuana. Plea Counsel recalled talking to the apartment complex personnel. Plea Counsel opined that the stop was pretextual and the best argument to suppress the evidence was to argue that the police merely used the tinted license tag as means to legitimize the stop. Plea Counsel stated that he reviewed the applicable law and determined that a tinted license tag was illegal.

Plea Counsel stated that he advised Applicant of his right to appeal his guilty plea and Applicant did not indicate that he wanted to file an appeal. Plea Counsel stated he could not recall, seven years later, whether he advised Applicant that he would lose the right to appeal the denial of the suppression motion hearing if he pled guilty. However, Plea Counsel stated it is his typical practice to advise his clients that they waive all non-jurisdictional challenges by pleading guilty. Plea Counsel further explained that he visited Applicant after his guilty plea and discussed his appellate rights and his post-conviction relief rights. Plea Counsel further recalled the plea judge advising Applicant of his appellate rights.

Following Plea Counsel's testimony, Applicant called Rivers to testify on his behalf. Rivers stated that she was the apartment manager for North Augusta Garden Apartments in 2007.

Rivers stated that there were over 100 units in 18 individual buildings. Rivers stated a concerned resident, Billy Laird, brought to her attention that there was a lone female smoking marijuana outside one of the buildings. Rivers stated that she advised Billy Laird that he could call the police. Rivers stated the Billy Laird called the police and she obtained the police report the following day. Rivers stated that Billy Laird is no longer a resident of the apartment and she does not know where he currently resides.

Rivers stated that Applicant was a frequent guest at the apartment complex. Rivers stated that Applicant's girlfriend was a tenant at the apartment complex. Rivers stated Applicant's girlfriend lived in apartment building one. Rivers stated apartment building one faced apartment building two and was at the end of a cul-de-sac. Rivers stated Applicant's girlfriends name was Dricka Robinson.

Following River's testimony, Applicant was called to testify on his own behalf. Applicant stated he was driving his girlfriend's car when he was pulled over by the police. Applicant stated the police never discussed the tinted tag cover when they pulled him over. Applicant stated the police officer asked him if they could search the car and he consented to the search. Applicant stated he retained Plea Counsel's services. However, Applicant stated they never discussed the Fourth Amendment issue. Applicant claimed that he saw Plea Counsel three separate times out of a thirteen month time span. Applicant stated he was aware of the suppression hearing. Applicant stated Plea Counsel never discussed the possibility of arguing that the police were called out to the apartment complex due to a woman smoking marijuana.

Applicant stated he was present at the preliminary hearing. Applicant stated he first learned about the tinted license tag cover during the preliminary hearing. Applicant stated that he did not tell Plea Counsel that the tinted license tag came from Advance Auto Parts. Applicant

stated it was his opinion that the police were merely using the tinted license tag as a justification for pulling him over. Applicant stated that he gave consent to search the vehicle. Applicant stated that he never discussed the fruit of the poisonous tree doctrine with Plea Counsel. Applicant stated that Plea Counsel never discussed the fact that he would lose his right to appeal the denial of his suppression motion if he pled guilty. Applicant stated that he was completely unaware of his appellate rights and only knew about his PCR rights.

Applicant recalled that he was sentenced pursuant to negotiations and received exactly what he bargained for during the plea process. Applicant recalled the plea judge advising him of his right to appeal within ten days of the guilty plea. Applicant stated his mom and girlfriend were present at the guilty plea hearing.

Following Applicant's testimony, Plea Counsel was recalled by the State. Plea Counsel stated that he discussed the Fourth Amendment violation with Applicant on numerous occasions. Plea Counsel stated that they discussed the Fourth Amendment violation prior to his preliminary hearing. Plea Counsel stated they discussed whether the stop was legal and valid. Plea Counsel stated that Applicant had no chance at trial and their only hope was to suppress the drug evidence. Plea Counsel stated they had no chance at trial if they lost the suppression motion because the officer's dash cam captured Applicant exiting the vehicle and a bag of cocaine falling from his pants.

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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weighed their testimony accordingly. Specifically, this Court finds Plea Counsel's testimony credible

while finding Applicant's testimony self-serving and not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would

not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

Plea Counsel was ineffective for failing to fully present evidence and arguments in support of Applicant's motion to suppress the drug evidence in his case.[1]

This Court finds Applicant's allegation that he received ineffective assistance of counsel when Plea Counsel failed to present evidence and arguments in support of the motion to suppress the drug evidence in this case to be without merit. Strickland requires that trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland v. Washington, 466 U.S. 668, 688-689 (1984). "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. Id. at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. 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 v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992).

In the instant case, Plea Counsel stated he discussed the Fourth Amendment violation with Applicant prior to the actual hearing. Plea Counsel stated he explained to Applicant that

[1] This Court notes Applicant's amended allegations 1 and 4 both stem from a central claim of ineffective assistance of counsel for failing present arguments and evidence during the suppression hearing. As such, this Court is consolidating amended allegations 1 and 4 and has addressed them as one claim.

they were going to argue that the stop itself was not valid and the subsequent search was illegal. Plea Counsel stated he explained to Applicant that if they were not successful on the suppression motion then they would have nothing left to argue at trial because Applicant was on camera when a bag of cocaine fell from his pants.

Additionally, Plea Counsel's argued that the stop and subsequent search of Applicant's vehicle was illegal and pretextual in nature. A review of the suppression motion hearing transcript reveals that Plea Counsel argued that a warning ticket for an illegal tag was merely a post-justification for the stop. Plea Counsel argued that the investigating officer had previously admitted during the preliminary hearing that he never mentioned the illegal tag during the stop. (Supp. Mtn. tr. p. 4). Plea Counsel continually stressed to the court that a warning ticket was only given "after he had been arrested for trafficking cocaine." (Supp. Mtn. tr. p. 5). Plea Counsel concluded that all the evidence should be suppressed because it was the result of an illegal stop. Based on the foregoing, this Court finds Plea Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). This Court finds Plea Counsel's strategy and arguments during the suppression motion were reasonable. Whitehead, 308 S.C at 119, 417 S.E.2d at 529 (1992).

Under the second prong of the analysis in Strickland, the PCR applicant "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Id. In the instant case, Applicant has failed to provide any persuasive evidence or arguments to show what, if anything, Plea Counsel could have done during the suppression

motion to convince the judge to rule in Applicant's favor. To the contrary, Applicant merely states alternative arguments that Plea Counsel *could* have pursued during the suppression motion. Applicant has failed to present any persuasive arguments to this Court that Plea Counsel's strategy during the suppression motion was not a valid argument. Therefore, this Court finds this allegation should be denied and dismissed with prejudice.

> *Plea Counsel was ineffective for advising his client to accept a guilty plea bargain, and enter a plea of guilty, without first fully advising his client of all the consequences of such a plea including the waiver of his right to appeal the decision of the lower court on his motion to suppress the drug evidence in his case.*[2]

Applicant's allegation that he received ineffective assistance of counsel when Plea Counsel failed to advise him that if he pled guilty he would ultimately waive his right to appeal the lower court's denial of his suppression motion is without merit. Plea Counsel stated that he could not specifically recall, seven years later, whether he advised Applicant that his guilty plea would waive his right to appeal the denial of his suppression motion. However, Plea Counsel stated that it is his typical practice to advise his clients of such a waiver. Furthermore, Plea Counsel recalled advising Applicant of both his appellate rights and PCR rights. Additionally, the plea transcript reveals Plea Counsel telling the court that he discussed applicant's possible defenses, challenges to the evidence, and the denial of the motion to suppress the drugs. Plea Counsel advised the court that "in light of all of that, my client has decided to waive his right to trial and plead guilty." (Pl tr. p. 8 lines 15-19). Based on the foregoing, this Court finds Plea Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland).

[2] This Court notes Applicant's amended allegations 2 and 3 both stem from a central claim of ineffective assistance of counsel for failing to advise Applicant that when he pled guilty he would ultimately waive his right to appeal the denial of his suppression motion. As such, this Court is consolidating amended allegations 2 and 3 and has addressed them as one claim.

Under the second prong of the analysis in Strickland, the PCR applicant "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Id. In order to prove prejudice, Applicant must show that the judge erred in denying his suppression motion. See generally Sikes v. State, 323 S.C. 28, 30, 448 S.E.2d 560, 562 (1994) ("When the defendant claims that counsel's failure to articulate a Fourth Amendment claim was ineffective assistance, [the] defendant must show that such claim is *meritorious* and that the verdict would have been different absent the evidence that should have been excluded." (emphasis added)).

"Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a 'seizure' of 'persons' within the meaning of [the Fourth Amendment]." Whren v. United States, 517 U.S. 806, 809–10, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996). "An automobile stop is thus subject to the constitutional imperative that it not be 'unreasonable' under the circumstances." Id. at 810, 116 S.Ct. 1769. " "As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." Id. (citing Delaware v. Prouse, 440 U.S. 648, 659, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979) and Pennsylvania v. Mimms, 434 U.S. 106, 109, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977)). Once a motor vehicle is detained lawfully for a traffic violation, the police may order the driver to exit the vehicle without violating Fourth Amendment proscriptions on unreasonable searches and seizures. Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977); State v. Williams, 351 S.C. 591, 571 S.E.2d 703 (Ct. App. 2002).

In the instant case, the North Augusta Department of Public Safety received an anonymous complaint about possible drug activity at North Augusta Gardens Apartments. (Pl. tr. p. 18). As the officers approached the complex they observed a black car pulling out of the complex. (Pl tr. p. 19). The officer's noticed that the car had a tinted cover on its license plate. A tinted license tag is a violation of the law.[3] (Pl tr. p. 19). The officers' conducted a traffic stop. (Pl tr. p. 19). During the course of the traffic stop, Applicant gave consent to search the vehicle. (Pl. tr. p. 19). While exiting the vehicle, a bag of cocaine fell from Applicant's person. (Pl tr. p. 20). Applicant was subsequently arrested.

Based on the foregoing, this Court finds that Applicant has not shown any prejudice as a result of his Plea Counsel's alleged error because Applicant's Fourth Amendment claims fails on its merits. It is clear from the factual context as relayed at both the suppression hearing and guilty plea hearing that Applicant was lawfully stopped due to a traffic violation. During the course of the stop, Applicant gave consent to search his vehicle. While exiting the vehicle a bag of cocaine fell from his pants and Applicant was arrested. The subjective motive of the officers does not invalidate the stop. Whren v. United States, 517 U.S. 806, 809–10, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996). Under these circumstances, Applicant has not established the requisite prejudice to support his claim of ineffective assistance of counsel. Therefore, this Court finds this allegation should be denied and dismissed with prejudice.

> *Plea Counsel was ineffective for failing to challenge the assertion of law enforcement that the tag cover found on the vehicle driven by Applicant on the night of the incident in question violated State law.*

This Court finds Applicant's allegation that he received ineffective assistance of counsel when Plea Counsel failed to challenge whether a tinted license plate cover is a violation of the

[3] Applicant does not challenge that having a tinted license plate is a violation of the law.

law to be without merit.[4] Plea Counsel stated he reviewed the appropriate statute and determined that a tinted tag cover was a violation of the law. Plea Counsel stated it was not in dispute that the car Applicant was driving had a tinted license tag cover. Based on the foregoing, this Court finds Plea Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Additionally, Applicant has failed to provide this Court with any persuasive argument or case law to show Plea Counsel was ineffective in failing to challenge whether the tinted license plate was a violation of the law. Therefore, this Court finds this allegation should be denied and dismissed with prejudice.

> *Plea Counsel was ineffective for failing to take proper measures to obtain copies of law-enforcement logs, dispatch tapes and other law-enforcement records which would have documented the exact nature of the call which resulted in law enforcement coming to the apartment complex where Applicant was stopped, and eventually arrested.*[5]

This Court finds Applicant's allegation that Plea Counsel was ineffective for failing to preserve various items of evidence to be without merit. Plea Counsel stated he did not consider making an effort to preserve the information. Plea Counsel stated he did not feel the information was relevant to the proceedings or case. Based on the foregoing, this Court finds Plea Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland).

Additionally, this Court notes Applicant can show no prejudice as a result of Plea Counsel's alleged deficiencies because he failed to present any of the evidence in question. See Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of

[4] This Court notes that a tinted tag is a violation of §56-3-1240.

[5] This Court notes Applicant's amended allegations 6 and7 both stem from a central claim of ineffective assistance of counsel for failing to preserve various pieces of evidence. As such, this Court is consolidating amended allegations 6 and 7 and has addressed them as one claim.

challenged documents were not presented at the PCR hearing, applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense); see also Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). Accordingly, this Court finds that Applicant has failed to meet his burden of proof and thus, this allegation is denied and dismissed with prejudice.

> *Applicant's plea was not voluntarily and intelligently entered where it was entered without the understanding that he would not be able to appeal the lower court's ruling on the legality of the seizure of the drugs in his case if he pleaded guilty, and where his belief that he would still have the right to appeal that decision was reinforced by remarks from the Court at the time of his plea.*

This Court finds Applicant's allegation that his plea was not knowingly and intelligently entered because it was done so without the understanding that he would not be able to appeal the denial of his suppression motion to be without merit. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). 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." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless

a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

This Court finds that this allegation is without merit and Applicant has failed to carry his burden of proving that his guilty plea was involuntarily made. This Court finds that the Applicant's plea was entered freely and voluntarily. Applicant testified at the evidentiary hearing that he was pleading guilty freely and voluntarily. This Court finds further that the record reflects Applicant was thoroughly advised of the waiver of his constitutional rights by both Plea Counsel and the plea judge. Plea Counsel stated that he could not specifically recall - seven years later- whether he advised Applicant that his guilty plea would waive his right to appeal the denial of his suppression motion. However, Plea Counsel stated that it is his typical practice to advise his clients of such a waiver. Furthermore, Plea Counsel recalled advising Applicant of both his appellate rights and PCR rights.

Additionally, the record reflects Applicant at his plea proceeding told the court that he wished to plead guilty. (Pl. p. 11). The record also reflects that Applicant told the court that he had not been promised or threatened by anyone to get him to plead guilty. (Pl. p. 12). This Court finds that Applicant had a full understanding of the consequences of his plea and the charges against him. This Court finds that the plea judge correctly found that the Applicant's plea was freely, voluntarily, and intelligently made. (Pl. p. 17). Based off of the foregoing, this Court finds this allegation should be denied and dismissed with prejudice.

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 Applicant failed to present

any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

CONCLUSION

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

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

IT IS THEREFORE ORDERED:

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

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

AND IT IS SO ORDERED this 22 day of April, 2015.

D. CRAIG BROWN
Presiding Judge
Second Judicial Circuit

Florence, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2009CP0200369

PLAINTIFF(S)	DEFENDANT(S)
Shawn Madison	South Carolina, State Of
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.

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 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.**

Circuit Court Judge — Judge Code — 5/8/2015 Date

For Clerk of Court Office Use Only

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

This judgment was entered on 8th day of May, 2015, and a copy mailed first class or placed in the appropriate attorney's box on 8th day of May, 2015, to attorneys of record or to parties (when appearing pro se) as follows:

Tara Dawn Shurling 3614 Landmark Drive Suite A Columbia, SC 29204

ATTORNEY(S) FOR THE PLAINTIFF(S)

Megan Harrigan Jameson PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard by Shannon Groves DC

Court Reporter

Liz Godard - 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.

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

ALAN WILSON
ATTORNEY GENERAL

May 6, 2015

The Honorable Liz Godard
Clerk of Court, Aiken County
Post Office Box 583
Aiken SC 29802-0583

5.8.15
Liz Godard
C.C.P.&G.S.
Shannon Quinn 1:15 pm
Deputy Clerk

Re: **Shawn Madison, #328499 v. State of South Carolina**
2009-CP-02-0369

Dear Ms. Godard:

Enclosed please find the original **Order of Dismissal** signed by the Honorable D. Craig Brown, in the above-captioned case, for filing in your office. Please forward a **time stamped copy** back to our office for our file.

Sincerely,

Daniel Gourley
Assistant Attorney General

DG/cc
Enclosure

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, SC 29211-1549 • TELEPHONE 803-734-3970 • FACSIMILE 803-253-6283

LAW OFFICE OF

TARA DAWN SHURLING, PA

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3614 Landmark Drive
Suite A
Columbia, South Carolina 29204

E-Mail: tdslaw@shurlinglaw.com

(803) 738-8622
(Fax) (803) 738-1600

August 20, 2015

Daniel Gourley, Assistant Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-

Re: Shawn Madison, #328499 v. State of South Carolina; 2009-CP-02-00369.

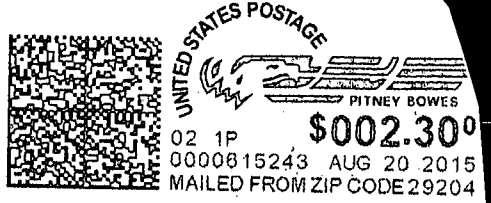
Dear Mr. Gourley:

Enclosed please find for your records a copy of the Notice of Appeal that was filed in the above-captioned matter. The family has not decided yet if they will be able to hire me to handle this appeal. I have requested that they make a decision as soon as possible. I will let you know if they decide to hire someone else or let the Appellate Division of the South Carolina Commission on Indigent Defense handle this appeal. I remain,

Sincerely yours,

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg
Enclosure
cc: The Honorable Daniel E. Shearouse, Clerk, Supreme Court of South Carolina
Shawn Madison, #328499
Lisa Madison



Law Office of
TARA DAWN SHURLING, PA
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COLUMBIA, SOUTH CAROLINA 29204

The Honorable Daniel E. Shearouse
South Carolina Supreme Court Clerk
Post Office Box 11330
Columbia, South Carolina 29211-1330