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This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on **January 14, 2016**, to attorneys of record or to parties (when appearing pro se) as follows:

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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/kpk

Court Reporter

Beth A. Carrigg - 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.

offense of trafficking methamphetamine, ten to twenty-eight grams, second offense.² He was sentenced by the Honorable Doyet A. Early, III, to twenty (20) years. Judge Early ordered that sentence be run concurrently with his Aiken County sentences. Applicant did not appeal his guilty pleas or sentences.

ALLEGATIONS

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

As to Attorney Carrigg:

1. Ineffective Assistance of plea counsel that resulted in an involuntary guilty plea due to counsel's failure to prepare with Applicant by going over the discovery materials and conducting an independent investigation of the case, specifically matters related to the search and subsequent relinquishment of Dempsey Sanders' vehicle and handling of the drug evidence and analysis conducted by SLED.
2. Ineffective assistance of plea counsel that resulted in an involuntary guilty plea due to counsel's failure to discuss prior the day of the joint plea whether Applicant was subject to and would enter his joint plea under the "new law" passed in June 2010, which was not in effective at the time of one of his Aiken County Charges.³
3. Ineffective Assistance of plea counsel that resulted in an involuntary guilty plea due to counsel's failure to advise that Applicant that he was being charged and would be required to plea to a trafficking charge and that he would not be eligible for parole under the joint plea agreement.
4. Ineffective assistance of plea counsel that resulted in an involuntary guilty plea due to counsel's failure to discuss the waiver of venue and plea offer with Applicant prior to the day of the joint plea in Aiken County

² Included in the plea, Applicant also pled guilty to several Aiken County offenses.

³ This Court adopts its finding from the companion order. See Dennis Sanders v. State, C.A. No. 2012-CP-02-01278, Order of Dismissal, p.14. Therefore, further comment in this Order is unnecessary.

5. Prosecutorial misconduct for failing to disclose a SLED report that determined that the butterfly tablets seized from the vehicle were not illegal narcotics

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from Judy Sanders (hereinafter "Sanders"), Denise Sanders (hereinafter "sister"), John Carrigg, Esquire (hereinafter "Attorney Carrigg"), Charles H.S. Lyons (hereinafter "Attorney Lyons"), and Michael Routzong (hereinafter "Attorney Routzong"). This Court also had before it a copy of the Plea transcript, the Aiken County Clerk of Court records, Lexington County Court records, Applicant's South Carolina Department of Correction records, the PCR application, and return.

During the evidentiary hearing, Applicant called Judy Sanders to testify on his behalf. Sanders testified that she attempted to reach Attorney Lyons on defendant's behalf. Sanders stated that she was attempting to check on the progress of the case. Sanders stated that she was told that Applicant faced up to ten years from Attorney Lyons' paralegal. Sanders stated that Applicant discussed wanting a trial.

Following Sander's testimony, Sister testified on Applicant's behalf. Sister stated that Applicant was her brother. Sister could not recall when she spoke with Attorney Lyons. Sister couldn't get a hold of Attorney Lyons. Sister stated she wasn't sure if she was present at 2004 plea. Sister stated she was under the impression that Applicant was facing ten years.

Following Sister's testimony, Applicant testified on his own behalf and stated that he retained Attorney Carrigg to initially represent him at the bond hearing concerning his January 2011 Lexington County charges that stemmed from the CVS drug store incident. He testified he first met Attorney Carrigg at the preliminary hearing. In support of his allegations on Attorney

Carrigg's purported ineffective performance for failing to independently investigate, evaluate, and advise Applicant on Lexington County law enforcement's case against him, Applicant introduced a number of exhibits in support of his personal version of the evidence.⁴ Applicant testified to his version of inaccuracies in the incident report, his speculative theories on a variety of legal matters ranging from purported defects in the State's chain-of-custody of the drugs to S.L.E.D.'s drug analysis report on his designer drugs also discovered with the methamphetamine from the search of the vehicle.

Applicant alleged Attorney Carrigg performance was ineffective for failing to investigate and evaluate the merits of pursuing a suppression defense. Applicant testified to his version of the facts of the CVS incident and subsequent search that led to his arrest. He testified to his personal opinions regarding the purported lack of probable cause to support the search warrant and purported facial defects in the document itself. In support of this allegation, Applicant presented law enforcement documents that he claims he was unaware of when he made the decision to enter the joint guilty agreement. Applicant testified that counsel failed to apprise him of these purportedly critical discovery materials during the representation; notably, Applicant testified that he was perplexed and disappointed in Attorney Carrigg's inability to locate him to discuss these matters after he absconded.

Applicant alleged Attorney Carrigg's performance was ineffective for failing to investigate and apprise him of one of S.L.E.D.'s reports on the numerous drugs obtained from the incident that some of the non-methamphetamine drugs were not scheduled narcotics. He

⁴ The Court notes that Applicant obtained said documents after his adjudication during his confinement in the Dept. of Corrections from one of two sources: (1) a copy of Attorney Carrigg's case file that contained the State's discovery disclosures to Attorney Carrigg; (2) P.C.R. counsel's F.O.I.A. requests on State law enforcement agencies made for the purposes of this civil action.

testified that he detrimentally relied on the Lexington County Solicitor's Office not proving the charges on these non-scheduled narcotics in making his decision to accept the joint plea. Applicant testified that he would not have pled guilty on Lexington County charges had he known that several of the less significant indictments were rendered baseless by S.L.E.D.'s drug analysis report. Applicant also alleged his Lexington County guilty pleas were rendered involuntary because Attorney Carrigg's performance was ineffective in failing to advise him on the strategic advantage of asserting venue in Lexington County for the joint plea hearing.

Applicant pursued several allegations of ineffective assistance of counsel related to Attorney Carrigg's performance in advising him on the terms of the joint plea agreement. First, Applicant testified that he entered the joint plea under the purported pretense that he was facing a ten year prison sentence; thus, he now asserts that he would not have entered the joint plea had he known that he was looking at a twenty year aggregate sentence. Last, Applicant alleged Attorney Carrigg's performance was ineffective for failing to file a post-plea motion for reconsideration and to file a notice of appeal on Applicant's behalf. It was Applicant's opinion that Judge Early comments at the guilty plea hearing showed that Attorney Carrigg's performance was ineffective in presenting a mitigation theory that Applicant produced, transported, etc., the narcotics to support his personal addiction. Applicant testified that he desired Attorney Carrigg file a motion for reconsideration of sentence to remedy the matter.

Additionally, Applicant testified that he was arrested on February 24, 2010 as a result of a traffic stop. Applicant stated that he made bond in January 2011. Applicant stated he hired an attorney out of Augusta. Applicant stated he then appeared in court with Mr. Lyons as an associate of Hawks Law firm in Augusta, Georgia. Applicant stated he was up for trial a week

before September 1st guilty plea. Applicant stated that he did not discuss arrest warrants or indictments with Attorney Lyons. Applicant clarified and stated that he barely went over the arrest warrants. Applicant stated that some of his charges fell under the “old law.” Applicant stated that he pled guilty to pseudoephedrine less than 28 grams. Applicant explained that he was originally charged with possession of pseudoephedrine less than 9 grams.

Applicant stated the charges stemmed from a traffic stop. Applicant stated that he never saw any of the pseudoephedrine. Applicant stated that he had two other people with him in the car. Specifically, Applicant stated John Hicks and Benji Young were both with him in the car at the time of the stop. Applicant stated he made Attorney Lyons aware of all this information prior to his plea. Applicant stated that he never thought to ask about the pseudoephedrine.

Applicant stated Attorney Lyons never secured a plea offer. Applicant opined that Attorney Lyons was not prepared for trial. Applicant stated he wanted ten year offer and State wanted twenty year offer. Applicant stated his family wrote all letters.

Additionally, Applicant stated Attorney Routzong represented him on charges as a result of a search of the residence he was living in. Specifically, Applicant stated he woke up to a knock on the door. Applicant stated the police detained him and other occupants while they searched the house. Applicant stated he never saw a drug report or search warrant. Applicant stated he and Attorney Routzong discussed filing a motion to suppress but that it would require them to push forward with trial. Applicant stated that he was facing the possibility of life without parole. Applicant opined that the search of his residence was illegal. Applicant recalled waiving presentment on each indictment. Applicant felt there was some issue with the ½ mile of school zone charge.

Attorney Carrigg's testimony

Attorney Carrigg testified at the PCR hearing to the course of his conduct during the representation. Attorney Carrigg outlined his over two decades of experience in practicing criminal defense law. Attorney Carrigg explained the circumstances surrounding getting retained on Applicant's case, which was initially limited to just the bond hearing. Attorney Carrigg met with Applicant and discussed the case during the initial stages of the representation. In April, Attorney Carrigg also provided Applicant physical copies of the State's initial discovery disclosures. He recalled that they reviewed the incident report, among other things. Upon Attorney Carrigg's initial evaluation of the State's evidence, he discovered a possible suppression defense based upon the relationship between probable cause determination and the ownership of vehicle. Attorney Carrigg also testified that several different solicitor's prosecuted Applicant's Lexington County charges during the short course of the representation. Upon PCR counsel's questioning on one of the numerous S.L.E.D. analysis reports, Attorney Carrigg testified that the State never provided him the report in question. The report revealed that certain pills found in Applicant's possession that appeared to be illegal narcotics in fact lacked the chemical compositions of any scheduled drugs.

Attorney Carrigg testified that Applicant disappeared soon into his representation. Attorney Carrigg outlined his general practice in obtaining contact information from a client at the outset of a case. Attorney Carrigg's attempts to locate Applicant, based upon the thorough information provided by Applicant, proved futile. Next, Attorney Carrigg contacted Applicant's former girlfriend and his family. His additional efforts only yielded him an address. Attorney

Carrigg penned correspondence to Applicant and he testified that he desired to be relieved because Applicant's conduct severely hampered his ability to provide meaningful representation.

Applicant's Aiken attorneys, not Applicant, notified Attorney Carrigg that the Aiken County police had arrested Applicant for a third set of serious methamphetamine related charges that stemmed from a new incident. Similar to testimonies from both Aiken attorneys, the State's evidence of overwhelming guilt was substantially certain on each set of the Aikens charges, it became apparent to all that a joint plea agreement, that shielded Applicant from a presumptive aggregate life sentence on all three future dispositions, was in Applicant's best interests. Attorney Carrigg outlined his communications with the Aiken Attorneys and Lexington County Solicitor in a chronological manner. Attorney Carrigg communicated with Applicant in September then further discussed the case with him on the day of the joint plea hearing. Attorney Carrigg testified with certainty that Applicant's decision to accept the joint plea agreement was made after he fully discussed the strengths and weaknesses of the State's Lexington County case, the terms of the plea agreement, the benefits/detriments to Applicant's exposure for incarnation, among other things. Attorney Carrigg advised Applicant that joint plea agreement included concurrent service on all convictions that exposed him to a maximum thirty years imprisonment. A maximum ten year term was never part of the negotiations. Furthermore, Attorney Carrigg disagreed with Applicant's post hoc assessment of the mitigation strategy; thus, he testified that Applicant's opinion of Judge Early's comments was unfounded.

Attorney Lyons' testimony

Attorney Lyons testified that Applicant was a difficult client and continually "ran around." Attorney Lyons stated Applicant was difficult to contact. Attorney Lyons clarified and

stated that he did not have a personal problem with Applicant; simply put Applicant was missing in action throughout most, if not all, of his representation. Attorney Lyons stated he reviewed discovery with Applicant prior to his plea. Attorney Lyons stated he reviewed the drug Analysis with Applicant. Attorney Lyons recalled Applicant pointing out weight, but that Applicant was charged with possession with intent to distribute. Attorney Lyons stated that he was going to plea Applicant to a trafficking charge. Attorney Lyons noted that he had a favorable plea deal worked out for Applicant prior to him picking up additional charges in Aiken County.

Attorney Lyons stated that the problem in his case was that Applicant was the only person to “run” from the scene when the police arrived. Attorney Lyons stated at no point in time did he tell Applicant that he could not have a trial. Attorney Lyons stated the State wanted at least a twenty year sentence and Applicant was aware of this fact. Attorney Lyons stated at the time of plea, Applicant knew of the evidence against him and “it was a done deal.”

Attorney Lyons stated Applicant wanted a change of venue to Lexington County. Attorney Lyons stated he did not know how the Lexington County Solicitor felt about the case, but he knew the Aiken County Solicitor was very upset about the methamphetamine being cooked in front of his child.

Attorney Lyons stated Judge Early does not put much stock into defense counsel’s arguing their defense to charges that were being dismissed. Attorney Lyons recalled advising Applicant of his right to appeal the guilty plea. Attorney Lyons stated he knew Judge Early would not reconsider the sentence. Attorney Lyons stated Applicant was potentially facing Life Without Parole had he not pled guilty to all charges at one time. Attorney Lyons explained that

all three charges could have been tried separately and would have given Applicant “three strikes.”

Attorney Routzong’s testimony

Following Attorney Lyons testimony, Attorney Routzong was called to testify by the State. Attorney Routzong stated he was appointed sometime after June 11th. Attorney Routzong stated that he met with defendant less than five times. Attorney Routzong testified that he filed Rule 5 and Brady motions. Attorney Routzong stated he received and reviewed discovery with Applicant prior to his plea. Attorney Routzong stated that he would have reviewed the drug analysis with Applicant prior to his plea.

Attorney Routzong stated that he attempted to try and get a “global resolution” regarding Applicant’s three pending charges. Attorney Routzong stated that he explained to Applicant that he could proceed to trial if he wanted a trial. Attorney Routzong stated that he addressed the potential threat of a life without parole sentence if the solicitors in Aiken and Lexington tried him separately on all three charges. Attorney Routzong stated that each of the three separate incidents had charges that amounted to a “strike” under our current law. Attorney Routzong stated Applicant could have potentially received three strikes based off of all his charges had he not pled guilty to all three separate charge on the same day. Attorney Routzong stated there was a letter written for mitigation. Attorney Routzong stated the letter was very well written. Attorney Routzong stated that he was very careful to tailor his arguments to Judge Early.

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 weigh their testimony accordingly. 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).

As a matter of general global impression, this Court finds that the credible evidence and testimony dispositive shows Applicant, as an experienced and knowledgeable participant in General Sessions Court, made a knowing, intelligent, voluntary decision to enter the joint plea agreement on three (3) distinct sets of charges that he accrued during a brief period of his continued brazen involvement with substantial narcotics crime. This Court finds that had Applicant proceeded to separate trials on each set of his charges, he faced the likely probability of receiving a presumption life sentence based upon the aggravating circumstances at issue. Moreover, Applicant entirely failed to present any legitimate justification for this Court to accept his contrary post hoc representations and depart from statements made by his attorneys, the Aiken County Solicitor, and Judge Early at the plea hearing.

As a matter of general impression on Applicant's action against just Attorney Carrigg's performance, this Court finds Applicant's contention that his guilty plea on the Lexington County charges was rendered involuntary as a result of ineffective assistance of counsel at issue to be wholly incredible. In contrast, this Court finds Attorney Carrigg's testimony convincing and his representation to be sound. Although Applicant made several prima facie showings of uncertain defects in the State's case that Attorney Carrigg may have exploited had the Lexington County Solicitor's Office proceeded to trial, Applicant fell well short of meeting his burden to prove Strickland's deficiency prong. Furthermore, this Court finds lacks substantial standing in this forum, where his conduct served to undermine Attorney Carrigg's ability to provide

effective representation by absconding and by picking up a new, third, set of serious narcotics charges. Last, Applicant failed to meet his most basic burden on Strickland's prejudice prong that: (1) Attorney Carrigg's purported deficient advice on the terms of the plea agreement in conjunction with the attendant consequences of pleading guilty that would have reasonably resulted in his rejection of the plea offer in favor of dire sentencing exposure in three separate dispositions; (2) production of relevant and material evidence at the PCR hearing to prove the merits of the post-hoc suppression argument concerning the admissibility of the narcotics evidence on Lexington County charges. Ultimately, any possible prejudice on this PCR action is fatally negated by the Applicant's valid Aiken County convictions for equally serious offenses that he is serving concurrently to his Lexington County sentences.

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; 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, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 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). The applicant must

overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the 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, 88 L.Ed. 2d 203 (1985). After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action.

Ineffective Assistance of plea counsel that resulted in an involuntary guilty plea due to counsel's failure to prepare with Applicant by going over the discovery materials and conducting an independent investigation of the case, specifically matters related to the search and subsequent relinquishment of Dempsey Sanders' vehicle and handling of the drug evidence and analysis conducted by SLED.

This Court finds this allegation to be without merit. A PCR applicant 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 applicant 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). Criminal 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.” Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted). The allegation rests entirely on speculation. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (“failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result”).

For reasons stated in the companion Aiken County Order where Applicant had competent representation in making his knowing, intelligent, and voluntary decision to enter the joint plea, this Court finds this allegation to be without merit. This Court finds Attorney Carrigg’s testimony more credible than Applicant’s testimony. First, Applicant lacks the footing to challenge counsel’s performance for failure to investigate suppression defenses in conjunction with investigating State’s evidence when Applicant absconded and failed to cooperate with his attorney. See U.S. v. Pellerito, 878 F.2d 1535, 1543 (1st Cir. 1989) (“If counsel was ineffective in any sense, it was only because the client rendered him so, first by keeping Noriega in the dark, and then, by refusing to heed his advice. That is not the sort of “ineffectiveness” for which relief can be granted).

Second, Applicant failed to produce sufficient evidence to remove the underlying allegation from the realm of speculation. Notably missing in Applicant’s case-in-chief was testimony or other credible evidence from the arresting officers concerning the search warrant procedure. Contrast Kollé v. State, 386 S.C. 578, 590-91, 690 S.E.2d 73, 79-80 (2010) (“Initially, [the Court] agree with the PCR judge’s decision that plea counsel was deficient in failing to procure pertinent discovery materials, in particular the call/dispatch logs and the search

warrant. If plea counsel had these materials, he could have effectively cross-examined the officers at the suppression hearing and pointed out the time discrepancies”).⁵

Third and most compelling, this Court rejects this allegation, and the entire Application for reasons stated in the companion Aiken County Order where Applicant had competent representation in making his knowing, intelligent, and voluntary decision to enter the joint plea. **See Dennis Sanders v. State, C.A. No. 2012-CP-02-01278, Order of Dismissal, pp.14-17; p.18** (citing Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001) (finding overwhelming evidence of guilt negated any claim that counsel’s deficient performance could have reasonably affected the result of defendant’s trial)). Even if there were potentially serious defects in the State’s Lexington County case against Applicant, Applicant still failed to provide any credible evidence to support his allegation. Simply, the global structure of the favorable plea agreement all but negated the prospect of prejudice on this case. Judge Early made the critical determination that the Petitioner knowingly and voluntarily pled guilty; consequently, Applicant’s plea constituted a waiver of non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence. See Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981); Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975). Dispositively, Applicant has produced no credible evidence that would now exempt Applicant from the presumption of truthfulness in his representations at the plea. Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367, 371 (1997) (“A statement that questions are “routine” is not an invitation to answer them

⁵ Further contrasted from Applicant’s case, the PCR Judge in the Kolle petitioner’s case evaluated the evidence presented in support of the PCR action in conjunction with the transcript of a prior suppression hearing. Here, Applicant pled guilty well before he had the opportunity to contest the admissibility of the narcotics at a suppression hearing. In comparison to Kolle, Applicant’s burden to produce credible and compelling evidence is even more heightened here. Thus, the evidentiary import of Applicant’s vast majority of exhibits lacked evidentiary import without relevant testimony from the necessary source witnesses. Thus, this Court notes that Applicant case-in-chief established significant noise without meaningful substance.

untruthfully, nor does it constitute a reason to believe the questions and statements of the judge during a guilty plea proceeding mean nothing”). Therefore, this allegation is readily denied and dismissed with prejudice.

Ineffective Assistance of plea counsel that resulted in an involuntary guilty plea due to counsel's failure to discuss the waiver of venue and plea offer with Applicant prior to the day of the joint plea in Aiken County.

This Court finds this allegation to be facially without merit. The fact that the Applicant desired a change of venue is entirely without legal justification. Applicant testified that the Aiken County Solicitor aggressively prosecuted her cases because Applicant’s third arrest involved child endangerment. Because a change of venue does equate to the removal of a particular prosecutor, this allegation is entirely without merit. Where further discussion is unnecessary, this allegation is readily denied and dismissed with prejudice.

Ineffective Assistance of plea counsel that resulted in an involuntary guilty plea due to counsel's failure to advise that Applicant that he was being charged and would be required to plea to a trafficking charge and that he would not be eligible for parole under the joint plea agreement.

This allegation is summarily without merit. See Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983) (Parole eligibility has been held to be a collateral consequence of sentencing of which a defendant need not be specifically advised before entering a guilty plea); Smith v. State, 329 S.C. 280, 283, 494 S.E.2d 626, 628 (1997). Alternatively, for reasons previously announced in this Order, the companion order, and that are manifestly obvious in the record, this allegation is summarily denied and dismissed with prejudice.

Prosecutorial misconduct for failing to disclose a SLED report that determined that the butterfly tablets seized from the vehicle were not illegal narcotics.

This Court finds that Applicant failed to meet his burden in proving that the non-disclosure of the SLED report was material, or that it was relevant to Applicant's decision to enter the joint plea agreement. Furthermore, Applicant has failed to show that the SLED report was relevant to Applicant's ability to present a credible case that warranted relief. In considering "prosecutorial misconduct," the United States Supreme Court has stated that prosecutors must "refrain from improper methods calculated to produce a wrongful conviction." Berger v. United States, 295 U.S. 78, 88, 55 S.Ct. 629, 79 L.Ed. 1314 (1935). The appropriate standard of review for prosecutorial misconduct is the narrow one of due process and not the broad exercise of supervisory power. See Darden v. Wainwright, 477 U.S. 168, 181, 106 S.Ct. 2464, 91 L.Ed.2d 144 (1986). See also Donnelly v. DeChristoforo, 416 U.S. 637, 642, 94 S.Ct. 1868, 1871, 40 L.Ed.2d 431 (1974) (not every trial error which might call for supervisory power violates fundamental fairness). The Supreme Court has recognized that prosecutorial misconduct may "so infec[t] the trial with unfairness as to make the resulting conviction a denial of due process." Donnelly v. DeChristoforo, 416 U.S. at 643, 94 S.Ct. 1868. A defendant's due process rights are violated when a prosecutor's misconduct renders a trial "fundamentally unfair." Darden v. Wainwright, 477 U.S. at 181, 106 S.Ct. 2464. See also Greer v. Miller, 483 U.S. 756, 765, 107 S.Ct. 3102, 97 L.Ed.2d 618 (1987); Williams v. Stewart, 441 F.3d 1030, 1042 (9th Cir.2006) (citing Donnelly v. DeChristoforo, 416 U.S. at 643, 94 S.Ct. 1868 as articulating standard for prosecutorial misconduct).

This Court finds Attorney Carrigg's testimony on the matter to be credible. The fact that Lexington County Solicitor gave her case file to Attorney Carrigg before the plea hearing in Aiken evidenced his strong professional relationship with the Lexington County Solicitor's

Office. Thus, the evidence before this Court shows that minimal non-disclosure of one of the many SLED Reports occurred absent intentional misconduct on part of the Lexington County Prosecutor. The Report in question concerned the chemical composition of butterfly tablets that were ancillary to the other narcotics seized from the vehicle at the CVS incident. This Court finds that Applicant's testimony that had he known of the potentially exculpatory report concerning the butterfly tablets, then he would have not entered the joint plea, to be incredible and entirely dubious. At best, the non-disclosure constituted ancillary sloppiness, not legitimate evidence to prove prejudice where Applicant's decision to plead guilty centered upon obtaining a joint plea agreement that included concurrent sentencing. For reasons previous announced in this Order, the companion order, and that are manifestly obvious in the record, this allegation is nothing more than a red herring and is readily 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, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

CONCLUSION

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 notes that 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), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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 18 day of Nov., 2015.



HONORABLE D. CRAIG BROWN
Presiding Judge
Second Judicial Circuit



, South Carolina

FILED
2015 DEC 16 A 11:10
BETH A. OBERG
CLERK OF COURT
LEXINGTON, SC