

**RECEIVED**

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**SC SUPREME COURT**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Appeal from Greenville County

Perry H. Gravely, Circuit Court Judge

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ELI TORRENCE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002328

---

APPENDIX

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WANDA H. CARTER  
Deputy Chief Appellate Defender

ALAN WILSON  
Attorney General

South Carolina Commission on Indigent  
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Division of Appellate Defense  
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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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FORM 5

STATE OF SOUTH CAROLINA )  
County of Greenville )  
Eli James Torrence scdc # 356338 )  
Full name and prison number (if any) of Applicant )  
v. )  
State of South Carolina )

IN THE COURT OF COMMON PLEAS

2014-CP-23-03924

APPLICATION FOR

POST-CONVICTION RELIEF

JUL 17, PM 1 59

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL A. WICKENSIMMER

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Institution SMI-B-233  
P.O. Box 205, Ridgville SC 29472
2. Name and location of Court which imposed sentence Greenville County Court  
of Common Pleas - Diane Cayle - Magistrate Court Judge.
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:  
(a) 2012A2310200074  
(b) 2012A2310200075



(c) 2012A2310200077

5. The date upon which sentence was imposed and the terms of the sentence:

(a) August "N/A" 2013

(b) \_\_\_\_\_

(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

(a) after a plea of guilty I never plead to these charges I requested legal counsel

(b) after a plea of not guilty \_\_\_\_\_

(c) after a plea of nolo contendere \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?

No

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the result in each such Court to which you appealed:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) I was illiterate of Dicane Cagle sentencing me on the charges instead of appointing me legal counsel. I ~~not~~ requested appointment of counsel. Not agree to plea.

(b) \_\_\_\_\_

(c) \_\_\_\_\_  
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Involuntary guilty plea
- (b) violation of my 6<sup>th</sup> United States Constitutional Amend.
- (c) \_\_\_\_\_

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) I did not agree to plea ~~to~~<sup>st</sup> to these charges.
- (b) I have the right to effective assistance of counsel.
- (c) \_\_\_\_\_

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_



(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(b) the proceedings in which each ground was raised:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) This is my first post conviction relief application for these charges.

(b) \_\_\_\_\_

(c) \_\_\_\_\_

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? No

(b) your trial, if any? No

(c) your sentencing? No

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?  
No

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:  
i. \_\_\_\_\_  
\_\_\_\_\_

ii. \_\_\_\_\_  
\_\_\_\_\_

iii. \_\_\_\_\_  
\_\_\_\_\_

(b) the proceedings at which each such attorney represented you:  
i. \_\_\_\_\_  
\_\_\_\_\_

ii. \_\_\_\_\_  
\_\_\_\_\_

iii. \_\_\_\_\_  
\_\_\_\_\_

19. State clearly the relief you seek in filing this application:

I request this court to grant to reverse my conviction on these charges and grant me a fair trial.

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA )  
County of Greenville )

VERIFICATION

I, Eli James Torrence, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Eli Torrence

SWORN to and subscribed before me this 24<sup>th</sup> day of June, 2014.

Shubecim Bupant (L.S.)  
Notary Public

My Commission Expires: May 26, 2020

APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF

I, Eli James Torrence, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Eli Torrence  
Applicant

SWORN or affirmed to and subscribed before me this  
24<sup>th</sup> day of June, 2014.

Andreas Bryant  
Notary Public

My Commission Expires: May 26, 2016

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Eli James Torrence,  
S.C.D.C. No. 356338,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
2014-CP-23-3924

**RETURN AND MOTION TO DISMISS**

The Respondent, making its Return to the application for post-conviction relief filed July 17, 2014 would respectfully show this Court:

I.

On October 26, 2012, the Applicant was issued tickets for driving without a license (2012A2310200074), simple possession of marijuana (2012A2310200075), and reckless driving (2012A2310200077).

On August 15, 2013, these matters were disposed of in a bench trial. The Applicant proceeded pro se. The Honorable Dean E. Ford sentenced the Applicant to time-served for each of the three charges. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Fairview/Austin Summary Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections.

II.

In the application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Involuntary guilty plea."
2. "Violation of my 6th United States Constitutional Amend."

### III.

The Court should summarily dismiss this application for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act (the Act). S.C. Code Ann. §§ 17-27-10 et seq. (2003). Pursuant to the Act, an Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief.

S.C. Code Ann. § 17-27-20(a) (2003).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. While the Applicant alleges there was an involuntary guilty plea, the Fairview/Austin Summary Court records indicate there was a bench trial in this case. In post-conviction relief cases, an applicant asserting a

constitutional violation must frame the issue as one of ineffective assistance of counsel, yet the Applicant was not represented by counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). Further, while the Applicant alleges his 6th Amendment rights were violated because he did not have counsel, this is an issue that should have been handled on direct appeal. See Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974); see also S.C. Code Ann. § 17-27-20(b) (2003) (noting PCR “is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction”). The Respondent therefore moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70(c) (2003).

## IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

## V.

WHEREFORE, having made its Return and Motion to Dismiss, the Respondent requests the matter be summarily dismissed.

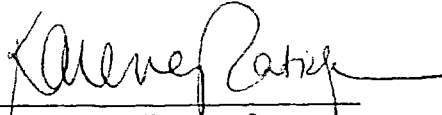
Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. MCINTOSH  
Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

P.O. Box 11549  
Columbia, S.C. 29211

By:   
**Attorneys for Respondent**

November 22, 2014

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Eli J. Torrence,	)	
	)	
v.	)	Case No. 14-CP-23-3924
	)	
State of South Carolina,	)	

### TRANSCRIPT OF HEARING

The within Post-Conviction Relief Hearing in the above-captioned matter was held on October 21, 2015, before The Honorable Perry H. Gravely in the Court of Common Pleas for Greenville County, attended by counsel, as follows:

#### APPEARANCES:

R. Mills Ariail, Jr.  
 11 North Irvine Street  
 Greenville, South Carolina 29601  
 Appearing for Applicant

Karen C. Ratigan, Assistant Attorney General  
 OFFICE OF ATTORNEY GENERAL  
 Post Office Box 11549  
 Columbia, South Carolina 29211  
 Appearing for State of South Carolina

Deborah Garrison  
*Circuit Court Reporter – 13<sup>th</sup> Judicial Circuit*  
 P O Box 27145  
 Greenville, South Carolina 296616  
[dgarrison@sccourts.org](mailto:dgarrison@sccourts.org)

## Eli J. Terrence v. State of South Carolina

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Case No. 14-CP-23-3924

Hearing of October 21, 2015

Before The Honorable Perry H. Gravely

1 THE COURT: Looks like he's got quite a  
2 bit of other things going on here. He's got a  
3 max-out date of 2021. Why are we talking about  
4 magistrate court cases?

5 MR. ARIAL: Well, the issue with  
6 magistrate court cases, Your Honor, and I think  
7 he can state it a little bit more substantively  
8 than me. He's saying that he never went in  
9 front of Judge Ford to be sentenced on these.  
10 He is saying that Judge Cagle came to see him  
11 and, uh, he's never had his due process in  
12 regards to that, having his rights that he  
13 needs under these charges.

14 THE COURT: I mean, he's serving  
15 fifteen years, isn't he? On burglary second  
16 degree.

17 MR. ARIAIL: Correct, Your Honor.

18 THE COURT: I mean, I'll be glad to  
19 hear it but I'm just curious as to time served  
20 on magistrate court cases, how that's going to  
21 make a difference in the world. Of course he  
22 has a right to have it heard. I'm just  
23 curious.

24 MR. ARIAIL: I think he just wants to  
25 let the court know that he didn't have his due

## Eli J. Terrence v. State of South Carolina

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Case No. 14-CP-23-3924

Hearing of October 21, 2015

Before The Honorable Perry H. Gravely

1 process rights in this and wants to let you  
2 hear it on his behalf.

3 THE COURT: Sure. I'll be glad to hear  
4 whatever you have.

5 MR. ARIAIL: Your Honor, I call Mr.  
6 Terrance to the stand.

7 (APPLICANT TAKES STAND)

8 ELI J. TERRANCE, having been sworn to  
9 tell the truth, and nothing but the truth,  
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. ARIAIL:

13 Q. Mr. Terrance, how you doing today?

14 A. Pretty good.

15 Q. Now, this PCR that you have filed deal  
16 with three different charges: simple  
17 possession of marijuana; reckless driving; and,  
18 then, driving without a license. Is that  
19 correct?

20 A. Yes, sir.

21 Q. Now, is -- you heard Judge Gravely and  
22 myself kinda discussing. Can you give us the  
23 reasons why you've filed this PCR.

24 A. Judge Diane Cagle and her secretary  
25 pulled me from Kirkland Correctional Institute

## Eli J. Terrence v. State of South Carolina

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Case No. 14-CP-23-3924

Hearing of October 21, 2015

Before The Honorable Perry H. Gravely

1 to the Lieber Correctional Institution where  
2 she held court for certain cases. She asked me  
3 if I wanted to apply for indigent defense or if  
4 I had my own attorney or if I wanted to go  
5 ahead and plead out to the charges on that day.  
6 I stated that I needed indigent defense because  
7 I didn't have money for my own attorney, and  
8 she handed me a paper saying to contact the  
9 Indigent Defense office in Greenville to take  
10 my case. I left. I never pled out to any  
11 charges or anything else. They don't have any  
12 record at all of me ever seeing a judge, there  
13 are no transcripts, there's no record of  
14 anything. It's like I never seen anybody.

15 Q. Okay. So you're saying that Judge Cagle  
16 was holding court at Lieber Correctional and  
17 pulled your from Kirkland and brought you down  
18 there?

19 A. Yes, sir.

20 Q. When was that?

21 A. I think that was in October -- August to  
22 October, sometime. I can't remember correctly.  
23 It was in 2013, the end of 2013. It's in the  
24 -- if you look at my SCDC records, it'll show  
25 that I got transferred from Kirkland to Lieber

1 for a court run.

2 Q. But this says that there was a Guilty,  
3 bench trial, credit for time served,  
4 disposition on August 15<sup>th</sup>, 2013 in front of  
5 Dean Ford.

6 A. I've never seen a Judge Dean Ford. If  
7 you look at my SCDC file, I wasn't transferred  
8 to see a Judge Dean Ford.

9 Q. Well, that's my first question. You were  
10 incarcerated at that time, on August the 15<sup>th</sup>,  
11 2013; correct?

12 A. Yes, sir.

13 Q. In SCDC?

14 A. (Affirmative nod).

15 Q. And you were never transferred to -- it  
16 sounds like this was -- like it was Judge  
17 Ford's over in Simpsonville. You never were  
18 transported up there for any hearing?

19 A. No, sir. You can look at the record.

20 Q. You never signed anything saying that you  
21 agreed to a plea of guilty or a bench trial of  
22 guilty on this?

23 A. (Negative gesture). If I have, can you  
24 show me the document?

25 Q. So your basis for this PCR is that

## Eli J. Terrence v. State of South Carolina

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Case No. 14-CP-23-3924

Hearing of October 21, 2015

Before The Honorable Perry H. Gravely

1 weren't -- well, first of all you never had  
2 your due process rights of getting appointed an  
3 attorney?

4 A. (Negative gesture).

5 Q. Never had a hearing on this?

6 A. (Negative gesture).

7 Q. And you were incarcerated at the time?

8 A. Yes, sir.

9 Q. Do you have anything else you want the  
10 court to consider in this manner?

11 A. The thing is that I had the right to  
12 counsel. I asked for it. I got a paper for  
13 it. And I've never been in front of this  
14 judge, and there's nothing on paper to ever  
15 show or prove that I ever went in front of this  
16 judge or ever got sentenced by this judge other  
17 than them stating it. There's no physical  
18 evidence whatsoever.

19 MR. ARIAIL: Your Honor, I have no  
20 further questions.

21 THE COURT: Ms. Ratigan?

22 MS. RATIGAN: Very briefly, Your Honor.

23 CROSS EXMAINATION

24 BY MS. RATIGAN:

25 Q. Mr. Terrance, have you seen this case

1 history form the Fairview Summary Court?

2 A. (Upon review),

3 Q. It's the summaries for your three  
4 magistrate charges.

5 A. I understand that it says that I was  
6 sentenced, but is my signature on any of this?  
7 A date?

8 Q. Well, let me ask you a question. Here it  
9 says, "Disposition: Guilty, bench trial,  
10 credit for time served." Correct?

11 A. (Affirmative nod).

12 Q. And today you're saying that there was no  
13 bench trial?

14 A. Right.

15 Q. At the very top of this page it says  
16 "Judge Ford, Dean Eugene."

17 A. (Affirmative nod).

18 Q. And you are saying today that you never  
19 appeared before Judge Ford?

20 A. I never have seen this guy or heard of  
21 him before.

22 Q. So in your opinion these records from the  
23 summary court are incorrect?

24 A. Yes, ma'am.

25 MS. RATIGAN: Okay. That's all that I

## Eli J. Terrence v. State of South Carolina

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Case No. 14-CP-23-3924

Hearing of October 21, 2015

Before The Honorable Perry H. Gravely

1 have, Judge.

2 THE COURT: Anything further.

3 MR. ARIAIL: I have no further  
4 questions, Your Honor.

5 THE COURT: All right, you may step  
6 down.

7 (WITNESS STEPS DOWN)

8 MR. ARIAIL: That is our case, Your  
9 Honor.

10 THE COURT: Anything else from the  
11 State?

12 MS. RATIGAN: No, Your Honor.

13 THE COURT: We have, as noted in cross-  
14 examination, we have certified copies of the  
15 summary court where there was a trial. Whether  
16 Mr. Terrence was there or not when there was a  
17 trial, one was held and he was given time  
18 served. So the State's Motion is granted and  
19 the Application is dismissed.

20 MS. RATIGAN: Thank you, Judge. I will  
21 do an Order.

22 (HEARING CONCLUDED)

23

24

25



STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Eli James Torrence, )  
 S.C.D.C. No. 356338, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 2014-CP-23-3924

FILED-CLERK OF COURT  
 GREENVILLE CO. S.C.  
 PAUL B. MCKENNER  
 2015 NOV 5 PM 4 42

**ORDER OF DISMISSAL  
 WITH PREJUDICE**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 17, 2014. The Respondent made its return and motion to dismiss dated November 22, 2014. A hearing was convened at the Greenville County Courthouse on October 21, 2015, at which time the Applicant was present and represented by R. Mills Ariail, Jr., Esquire. The Respondent was represented by Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General. At the hearing, the Respondent made a Motion to Dismiss, arguing the Applicant failed to state a cognizable claim for relief under the Uniform Post-Conviction Procedure Act.

**I. PROCEDURAL BACKGROUND**

The Applicant is confined in the South Carolina Department of Corrections.<sup>1</sup> On October 26, 2012, the Applicant was issued tickets for driving without a license (2012A2310200074), simple possession of marijuana (2012A2310200075), and reckless driving (2012A2310200077).

On August 15, 2013, these matters were disposed of in a bench trial. The Applicant

<sup>1</sup> The Applicant is currently serving a 15-year sentence after he pled guilty to several Pickens County charges.

*PHZ*

proceeded pro se. The Honorable Dean E. Ford sentenced the Applicant to time-served for each of the three charges. The Applicant did not appeal.

## II. ALLEGATIONS

In his post-conviction relief (PCR) application, the Applicant makes the following allegations:

1. "Involuntary guilty plea."
2. "Violation of my 6th United States Constitutional Amend."

## III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the records of the Fairview/Austin Summary Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the pleadings and makes the following findings of fact and conclusions of law.

The Applicant argued he never pled guilty to any charges in magistrate court and never saw Judge Ford. Rather, the Applicant argued a different magistrate court judge (Judge Cagle) visited him in Lieber Correctional Institution and asked him whether he wanted an attorney on these charges. The Applicant argued his due process rights were violated. The Applicant stated the records from the Fairview/Austin Summary Court are incorrect.

This Court finds the Applicant has failed to state a claim cognizable under the Uniform Post-Conviction Procedure Act (the Act). S.C. Code Ann. §§ 17-27-10 et seq. (2003). Pursuant to the Act, an Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and

heard, that requires vacation of the conviction or sentence in the interest of justice;

5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief.

S.C. Code Ann. § 17-27-20(a) (2003).

This Court finds that, even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. While the Applicant alleges there was an involuntary guilty plea, the certified copies of the Fairview/Austin Summary Court records indicate there was a bench trial in this case. In addition, in post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel, yet the Applicant was not represented by counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). Further, while the Applicant alleges his Sixth Amendment rights were violated because he did not have counsel, this Court notes this is an issue that should have been handled on direct appeal. See Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974); see also S.C. Code Ann. § 17-27-20(b) (2003) (noting PCR “is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction”).

The Applicant failed to produce any credible evidence or testimony to support his allegations. Accordingly, this Court finds the Applicant failed to meet his burden of proof, and

the PCR application must be dismissed. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (holding that, in a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.”).

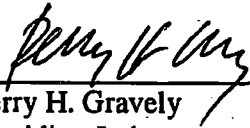
#### IV. CONCLUSION

Based on the records, pleadings, the arguments of counsel, and evidence presented this Court finds the PCR application must be dismissed. 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 the 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 THAT:

1. The Respondent’s Motion to Dismiss is hereby **GRANTED** and the post-conviction relief application is **DENIED AND DISMISSED WITH PREJUDICE**.
2. The Applicant is remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 3<sup>rd</sup> day of November, 2015.

  
 \_\_\_\_\_  
 Perry H. Gravely  
 Presiding Judge  
 Thirteenth Judicial Circuit

Averette, South Carolina.

Fairview/Austin Summary Court  
CASE HISTORY FOR CASE 2012A2310200074

The State of South Carolina vs. Eli James Torrence

FILED DATE: 8/15/2013

CASE TYPE: TR

STATUS: Disposed

JUDGE: Ford, Dean Eugene

ARRESTING AGENCY: Mauldin Police Department

CASE PARTIES:

Defendant Torrence, Eli James  
Greenville, SC 29617

Officer Lawrence, Adam  
MAULDIN, 29662-024

CASE HISTORY FOR CASE 2012A2310200074

Torrence, Eli James

Age: 23

DOB: [REDACTED]/1991

DL#: [REDACTED]

SSN: [REDACTED]

Greenville, SC 29617

CHARGE	VIOL. DATE	DISPOSITION	DISP. DATE
0701 Traffic / Driving without a license - 1st offense	10/26/2012	Guilty Bench Trial Credit Time Served	8/15/2013

SENTENCING

Credit Time Served plus \$30.00 court cost.

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
Charge: Traffic / Driving without a license - 1st offense				
Fine to General Fund	\$0.00	\$0.00	\$0.00	999
Victim Services Asm 38.0013% / 5.783	0.00	0.00	0.00	999
Law Enforcement Funding Surcharge \$:	25.00	25.00	0.00	999
SC Criminal Justice Academy Training	5.00	5.00	0.00	999
State Assessment	0.00	0.00	0.00	999
<b>Total:</b>	<b>\$30.00</b>	<b>\$30.00</b>	<b>\$0.00</b>	

DATE	TIME	EVENT DESCRIPTION
8/26/2013	12:00 AM	Court event: Criminal/Traffic Court

I CERTIFY THIS TO BE A  
TRUE AND VALID COURT COPY.

DATE 9/10/14

SIGNED *Dean E. Ford*

Print Date: 09/10/2014  
Print Time: 2:35:24PM  
Requested By:  
EWANNEMACHER

Fairview/Austin Summary Court  
 CASE HISTORY FOR CASE 2012A2310200075

The State of South Carolina vs. Eli James Torrence

FILED DATE: 8/15/2013

CASE TYPE: CR

STATUS: Disposed

JUDGE: Ford, Dean Eugene

ARRESTING AGENCY: Mauldin Police Department

CASE PARTIES:

Defendant Torrence, Eli James

Greenville, SC 29617

Officer Lawrence, Adam

, MAULDIN, 29662--024

CASE HISTORY FOR CASE 2012A2310200075

Torrence, Eli James

Age: 23

DOB: [REDACTED]/1991

DL#: [REDACTED]

SSN: [REDACTED]

Greenville, SC 29617

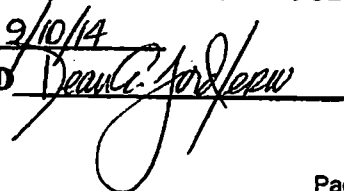
CHARGE	VIOL. DATE	DISPOSITION	DISP. DATE
0659 Drugs / Poss. of 28g (1 oz) or less of marijuana or 10g or less of hash - 1st offense	10/26/2012	Guilty Bench Trial Credit Time Served	8/15/2013
SENTENCING			
Credit Time Served plus \$205.00 court cost.			

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
Charge: Drugs / Poss. of 28g (1 oz) or less of marijuana or 10g or less of has				
Fine to General Fund	\$0.00	\$0.00	\$0.00	999
Victim Services Asm 38.0013% / 5.783	0.00	0.00	0.00	999
Victim Conviction Surcharge \$100 / \$21	25.00	25.00	0.00	999
Law Enforcement Funding Surcharge \$:	25.00	25.00	0.00	999
PCC Surcharge	150.00	150.00	0.00	999
SC Criminal Justice Academy Training	5.00	5.00	0.00	999
State Assessment	0.00	0.00	0.00	999
<b>Total:</b>	<b>\$205.00</b>	<b>\$205.00</b>	<b>\$0.00</b>	

DATE	TIME	EVENT DESCRIPTION
8/26/2013	12:00 AM	Court event: Criminal/Traffic Court

I CERTIFY THIS TO BE A  
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DATE 9/10/14

SIGNED 

Print Date: 09/10/2014  
 Print Time: 2:36:06PM  
 Requested By:  
 EWANNEMACHER

Fairview/Austin Summary Court  
CASE HISTORY FOR CASE 2012A2310200077

The State of South Carolina vs. Eli James Torrence

FILED DATE: 8/15/2013

CASE TYPE: TR

STATUS: Disposed

JUDGE: Ford, Dean Eugene

ARRESTING AGENCY: Mauldin Police Department

CASE PARTIES:

Defendant Torrence, Eli James  
Greenville, SC 29617

Officer Lawrence, Adam  
MAULDIN, 29662--024

CASE HISTORY FOR CASE 2012A2310200077

Torrence, Eli James

Age: 23

DOB: [REDACTED]/1991

DL#: [REDACTED]

SSN: [REDACTED]

Greenville, SC 29617

CHARGE	VIOL. DATE	DISPOSITION	DISP. DATE
0657 Traffic / Reckless Driving	10/26/2012	Guilty Bench Trial Credit Time Served	8/15/2013

SENTENCING

Credit Time Served plus \$30.00 court cost.

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
Charge: Traffic / Reckless Driving				
Fine to General Fund	\$0.00	\$0.00	\$0.00	999
Victim Services Asm 38.0013% / 5.783	0.00	0.00	0.00	999
Law Enforcement Funding Surcharge \$:	25.00	25.00	0.00	999
SC Criminal Justice Academy Training	5.00	5.00	0.00	999
State Assessment	0.00	0.00	0.00	999
<b>Total:</b>	<b>\$30.00</b>	<b>\$30.00</b>	<b>\$0.00</b>	

DATE	TIME	EVENT DESCRIPTION
8/26/2013	12:00 AM	Court event: Criminal/Traffic Court

I CERTIFY THIS TO BE A  
TRUE AND VALID COURT COPY.

DATE 2/10/14

SIGNED *Jean C. Ford*

Print Date: 09/10/2014  
Print Time: 2:37:13PM  
Requested By:  
EWANNEMACHER