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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Aiken County
Honorable D. Craig Brown, Circuit Court Judge

DENNIS F. SANDERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002204
APPELLATE CASE NO. 2015-002205

SUPPLEMENTAL APPENDIX

DAVID ALEXANDER
Appellate Defender

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Appellate Defender

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INDEX

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	IN THE COURT OF COMMON PLEAS FOR THE SECOND JUDICIAL CIRCUIT
Dennis F. Sanders, #245612, Applicant, v. State of South Carolina, Respondent.	2012-CP-02-01278 **ORDER OF DISMISSAL**

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on May 23, 2012. Respondent made its return on August 28, 2012. An evidentiary hearing into the matter was convened on January 13, 2015, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Tricia Blanchette, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was indicted during the February 2011 term of the Aiken County Grand Jury for possession of pseudoephedrine second offense (2011-GS-02-0094) and possession with intent to distribute methamphetamine (2011-GS-02-0095). During the September 2009 term of the Aiken County Grand Jury, the Applicant was subsequently indicted for manufacturing methamphetamine second offense (2011-GS-02-1356), manufacturing methamphetamine within one-half mile of a

school (2011-GS-02-1357), possession with intent to distribute marijuana second offense (2011-GS-02-1358), and two (2) counts of unlawful manufacturing of methamphetamine within the presence of a minor- second offense (2011-GS-02-1360, -1362). Michael Routzong, Esquire and Charles H.S. Lyons, Esquire represented Applicant. On September 1, 2011, the Applicant pled guilty as indicted. The Honorable Doyet A. Early, III sentenced the Applicant to a period of twenty years confinement each for possession of pseudoephedrine and possession with intent to distribute methamphetamine, and ten years confinement for each other offense. The sentences are to be served concurrently. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

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

As to Charles Lyons:

1. Ineffective Assistance of Counsel that resulted in an involuntary 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, Counsel's failure to review the handling of the drug evidence.
2. Ineffective Assistance of plea counsel that resulted in an involuntary guilty plea due to counsel's failure to discuss prior to the day of the joint plea whether Applicant was subject to and would be entering his joint plea under the "new law" passed in June 2010, which was not in effect at the time of one of his Aiken County charges. Specifically, failure to advise Applicant that he would not be eligible for parole under the joint plea agreement.
3. Failure to inform the plea court that there was a basis for dismissal/defense to the charges dismissed in conjunction with the joint plea.

As to Michael Routzong:

1. Ineffective assistance of plea counsel that resulted in an involuntary guilty plea for failure to review the search warrant and/or consent to search, drug analysis and pictures with Applicant prior to the entry of his guilty plea. Failure to speak with witness(es) at residence during the search.
2. Failure to inform the plea court that there was a basis for dismissal/defense to the charges dismissed in conjunction with the joint plea.

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 Applicant'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 2011 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.[1] 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's performance was ineffective for failing to investigate and evaluate the merits of pursing 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 of a lack of probable cause to support the search warrant and purported facial defects in the document itself. In support of his allegations, Applicant presented law enforcement documents that he alleges he was unaware of when he made the decision to enter the joint guilty plea agreement. Applicant testified counsel failed to apprise him of these purportedly critical discovery materials during the representation; notably, Applicant testified

[1] 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.

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 concluded some of the non-methamphetamine drugs were not scheduled narcotics. He testified that he detrimentally relied on the Lexington County Solicitor's Office nol prosing 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 to the 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's 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 from Augusta, Georgia. Applicant stated he was up for trial a week before the 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 more 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 to see 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 a ten year offer and the State wanted twenty years. Applicant stated his family wrote letters.

Additionally, Applicant stated Attorney Routzong represented him on charges as a result of a search of the residence he was occupying. 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 various indictments. 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 Carigg 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 the probable cause determination and the ownership of vehicle. Attorney Carrigg also testified that several different solicitors prosecuted Applicant's Lexington County charges during the short course of his 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 with one of the reports in question that certain pills in Applicant's possession 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 testimony from both Aiken attorneys, the State's evidence of overwhelming guilt was substantially certain on each set of the Aikens charges, and 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, and the benefits/detriments to Applicant's exposure for incarceration, among other things. Attorney Carrigg advised Applicant that the 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 Applicant 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 the current law. Attorney Routzong stated that Applicant could have potentially received three strikes based on all his charges had he not pled guilty to all three separate charges 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).

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), 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, 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.

Court's findings as to the allegations against Attorney Lyons:

> *Ineffective Assistance of Counsel for failing to go over discovery materials and conduct an independent investigation of the case. Specifically, Counsel's failure to discuss the handling of the drug evidence.*

This Court finds Applicant's allegation that Attorney Lyons was ineffective for failing to go over discovery materials and conducting an independent investigation of the case is without merit. This Court finds Counsel's testimony credible, and Applicant's testimony not credible. Counsel Lyons stated he reviewed discovery and the drug analysis with Applicant prior to his plea. Counsel Lyons recalled Applicant pointing out weight, but that Applicant was charged with possession with intent to distribute. Counsel Lyons stated that he was going to plead Applicant to a trafficking charge. Counsel Lyons stated at the time of plea, Applicant knew of

the evidence against him and "it was a done deal." Based off of the foregoing, this Court finds Plea Counsel's actions and advice was 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 the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms.

Additionally, this Court finds that Applicant has failed to establish any prejudice resulting from Counsel's alleged ineffective assistance of counsel, as Applicant stated during the evidentiary hearing that he was guilty. Where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial. See 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). Additionally, this Court notes Applicant entered a guilty plea based on a favorable plea offer from the State that was secured pursuant to Attorney Lyons' competent performance. Accordingly, this Court finds that Applicant has failed to meet his burden of proof and thus, this allegation is denied and dismissed with prejudice.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Attorney Lyons failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Attorney Lyons committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.

Ineffective Assistance of plea counsel that resulted in an involuntary guilty plea due to counsel's failure to discuss prior to the day of the joint plea whether Applicant was subject to and would be entering his joint plea under the "new law" passed in June 2010, which was not in effect at the time of one of his Aiken County charges. Specifically, failure to advise Applicant that he would not be eligible for parole under the joint plea agreement.

This Court finds Applicant's allegation that he received ineffective assistance rendering his plea involuntary due to counsel's failure to advise Applicant that he would not be eligible for parole under the joint plea agreement is meritless. This Court finds Counsel's testimony credible, and Applicant's testimony not credible. This Court notes Applicant alleges that Attorney Lyons failed to advise him of his parole eligibility. Unless counsel gives erroneous parole advice, lack of advice about parole information is not a ground for collateral attack of a guilty plea. Smith v. State, 329 S.C. 280, 494 S.E.2d 626 (1997). Counsel is not ineffective for failing to advise a defendant regarding parole eligibility because it is a collateral consequence of sentencing. Id. Accordingly, counsel is not required to notify a defendant that his offenses are "no parole" offenses, requiring service of 85% of the sentence imposed and making him ineligible for parole. Knox v. State, 340 S.C. 81, 530 S.E.2d 887 (2000). Based off of the foregoing, this Court finds Applicant's allegation should be denied and dismissed with prejudice as Attorney Lyons had no duty to advise Applicant of parole eligibility.

Failure to inform the plea court that there was a basis for dismissal/defense to the charges dismissed in conjunction with the joint plea.

This Court finds Applicant's allegation that he received ineffective assistance of counsel for failing to inform the plea court that there was a basis for dismissal/defense to the charges dismissed in conjunction with the joint plea to be meritless. This Court finds Attorney Lyons'

testimony credible, and Applicant's testimony not credible. Counsel Lyons stated Judge Early does not put much stock into defense counsel's arguing their defense to charges that were being dismissed. Counsel Lyons recalled advising Applicant of his right to appeal the guilty plea. Our courts are understandably wary of second-guessing defense Plea Counsel's tactics. Where Plea Counsel articulates valid reasons for employing a certain strategy, Plea Counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Attorney Lyons articulated valid strategic reasons for failing to present possible defenses for charges that were dismissed pursuant to the plea. The Applicant has not shown that Attorney Lyons was deficient in his choice of tactics. This Court finds Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms.

Additionally, this Court finds that Applicant has failed to establish any prejudice resulting from Counsel's alleged ineffective assistance of counsel, as Applicant stated during the evidentiary hearing that he was guilty. Where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial. See 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). Additionally, this Court notes Applicant entered a guilty plea based on a favorable plea offer from the State that was secured after Attorney Lyons competent

performance. Accordingly, this Court finds that Applicant has failed to meet his burden of proof and thus, this allegation is denied and dismissed with prejudice.

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Attorney Lyons failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Attorney Lyons committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.

Court's findings as to the allegations against Attorney Routzong:

> *Ineffective assistance of plea counsel that resulted in an involuntary guilty plea for failure to review the search warrant and/or consent to search, drug analysis and pictures with Applicant prior to the entry of his guilty plea. Failure to speak with witness(es) at residence during the search.*

This Court finds Applicant's allegation that he received ineffective assistance of counsel for failing to review the search warrant, consent to search, drug analysis, pictures, and failing to speak with witnesses to be meritless. This Court finds Attorney Routzong's testimony credible, and Applicant's testimony not credible. Attorney Routzong stated he filed for and received all Rule 5 and Brady material. Attorney Routzong stated he received discovery information on September 1, 2011. Attorney Routzong stated that he would have reviewed the drug analysis with Applicant prior to his plea. Based on the foregoing, this Court finds Plea Counsel's actions and advice were reasonable 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 Applicant has failed to

present sufficient evidence to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms.

Additionally, this Court finds that Applicant has failed to establish any prejudice resulting from Counsel's alleged ineffective assistance of counsel, as Applicant stated during the evidentiary hearing that he was guilty. Where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial. See 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). Additionally, this Court notes Applicant entered a guilty plea based on a favorable plea offer from the State that was secured after Attorney Routzong's competent performance.

Accordingly, this Court finds that Applicant has failed to meet his burden of proof and thus, this allegation is denied and dismissed with prejudice. Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Attorney Rouztong committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.

Failure to inform the plea court that there was a basis for dismissal/defense to the charges dismissed in conjunction with the joint plea.

This Court finds Applicant's allegation that he received ineffective assistance of counsel for failing to inform the plea court that there was a basis for dismissal/defense to the charges

dismissed in conjunction with the joint plea to be meritless. This Court finds Applicant has failed to present any credible evidence in support of this allegation. This Court further finds that any discussion about possible defenses to charges that were dismissed pursuant to the plea would have been extraneous and irrelevant.

Furthermore, this Court finds that Applicant has failed to establish any prejudice resulting from Counsel's alleged ineffective assistance of counsel, as Applicant stated during the evidentiary hearing that he was guilty. Where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial. See 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). Additionally, this Court notes Applicant entered a guilty plea based on a favorable plea offer from the State that was secured after Attorney Routzong's competent performance.

Accordingly, this Court finds that Applicant has failed to meet his burden of proof and thus, this allegation is denied and dismissed with prejudice. Additionally, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Attorney Routzong committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.

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

AND IT IS SO ORDERED this 9th day of June 2015.

HONORABLE 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 2012CP0201278

Dennis F Sanders	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.**

6/17/2015

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

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

This judgment was entered on **17th day of June 2015**, and a copy mailed first class or placed in the appropriate attorney's box on **17th day of June 2015**, to attorneys of record or to parties (when appearing pro se) as follows:

Tricia A. Blanchette PO Box 12725 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

Daniel Francis Gourley II P.O Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard my shannon Jowers

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.