

THE EPPS LAW FIRM, LLC

┆ LITIGATION ATTORNEY || LEGAL COUNSELOR ┆

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Mailing Address:  
104-A Franklin Avenue  
# 281  
Spartanburg, SC 29301

August 23, 2017

The Hon. Daniel E. Shearouse  
Clerk of Court  
Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

**RECEIVED**

AUG 28 2017

**S.C. SUPREME COURT**

RE: Alonzo C Jeter III, Appellant, v. State of South Carolina, Respondent  
Circuit Court Case No. 2016-CP-11-0293

Dear Mr. Shearouse:

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

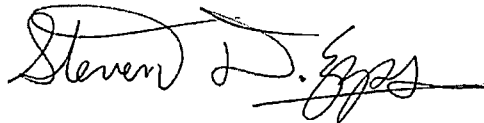
- (1) Proof of service of the notice of appeal on the respondent, and
- (2) A copy of the order which is to be challenged on appeal.

I am mailing a second set of documents to be returned to me in the self-enclosed stamped envelope once they have been filed with the Court. No filing fee is being paid regarding this matter as this is the appeal of a post-conviction relief matter.

Should you require anything further from me, do not hesitate to ask.

With warm regards, I remain,

Very truly yours,



Steven D. Epps

SDE/jnd  
Enclosures: As stated above

*Sup. Ct. – Filing Notice of Appeal, etc.*

*August 23, 2017*

*Page 2*

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Cc: Client

Julie A Coleman, Esq.  
Assistant Attorney General  
S.C. Attorney General's Office  
Post Office Box 11549  
Columbia, SC 29211

Cherokee County Clerk of Court  
P.O. Box 2289  
Gaffney, SC 29342  
(2 copies; 1 for file and 1 to return)

**NOTICE OF APPEAL IN A CIVIL CASE**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

AUG 28 2017

APPEAL FROM CHEROKEE COUNTY  
Court of Common Pleas

**S.C. SUPREME COURT**

Robin B. Stilwell, Circuit Court Judge

Case No. 2016-CP-11-0293

Alonzo C. Jeter III

Appellant,

v.

State of South Carolina,

Respondent.

**NOTICE OF APPEAL**

Alonzo C Jeter III appeals the order of the Honorable Robin B. Stilwell dated July 24, 2017. Appellant received written notice of entry of this order on August 1, 2017. Further, Appellant received written notice of the denial of his motion to reconsider the above order on August 18, 2017.

Respectfully submitted,

EPPS LAW FIRM, LLC

  
STEVEN D. EPPS (SC Bar # 72722)

104-A Franklin Avenue, # 281

Spartanburg, SC 29301

(864) 590-4848 Telephone

Spartanburg, South Carolina

steven@eppsllawfirm.com

ATTORNEY FOR APPELLANT

Other Counsel of Record:

Julie A Coleman.

Assistant Attorney General

S.C. Attorney General's Office

Post Office Box 11549

Columbia, SC 29211

**PROOF OF SERVICE OF A NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM CHEROKEE COUNTY  
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

---

Case No. 2016-CP-11-0293

Alonzo C. Jeter III

Appellant,

v.

State of South Carolina,

Respondent.

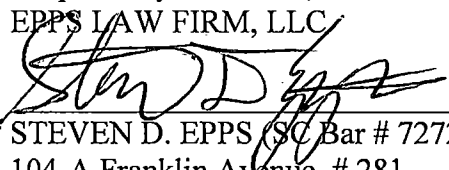
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**PROOF OF SERVICE**

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I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on August 23, 2017 addressed to its attorney of record, Julie A Coleman, Esq., Assistant Attorney General, Post Office Box 11549, Columbia, SC 29211.

Respectfully submitted,  
EPPS LAW FIRM, LLC

  
STEVEN D. EPPS (SC Bar # 72722)

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Spartanburg, South Carolina

steven@eppslawfirm.com

ATTORNEY FOR APPELLANT

Alonzo Columbus Jeter, III, #282902

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> 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), SCRPC;  Rule 4(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

FILED IN OFFICE OF  
 CLERK OF COURT  
 CHEROKEE COUNTY, S.C.  
 2016 AUG 16 11:30 AM  
 STANLEY/MCBEE

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)
N/A		\$
		\$
		\$
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.**

**E-Filing Note:** In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

S/ Robin B. Stilwell  
 Circuit Court Judge

2158  
 Judge Code

August 16, 2017  
 Date

**For Clerk of Court Office Use Only**

This judgment was entered on the 16th day of August, 2017 and a copy mailed first class or placed in the appropriate attorney's box on this 16th day of August, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Steven D. Epps  
104-A Franklin Ave., Ste. 281  
Spartanburg, SC 29301  
ATTORNEY(S) FOR THE PLAINTIFF(S)

SC Attorney General's Office  
PO Box 11549  
Columbia, SC 29211-1549  
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT  
*Brandy W. McBee*

**Court Reporter:**

**E-Filing Note:** In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

**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.

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.  
2017 AUG 16 11:35  
BRANDY W. MCBEE

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHEROKEE )  
 )  
Alonzo Columbus Jeter, III, #282902, )  
 )  
Applicant, )  
 )  
vs. )  
 )  
State of South Carolina, )  
 )  
Respondent. )


IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

**ORDER DENYING MOTION FOR  
RECONSIDERATION  
PURSUANT TO RULE 59, SCRP**

C. A. No.: 2016-CP-11-0293

This matter comes before the Court pursuant to the Applicant's Motion for Reconsideration of the Court's Final Order, pursuant to Rule 59 of the South Carolina Rules of Civil Procedure. After having had the opportunity to carefully review the Motion, this Court respectfully denies the same.

**AND IT IS SO ORDERED.**

  
ROBIN B. STILWELL  
2158

August 14, 2017  
Greenville, South Carolina

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.  
2017 AUG 16 10:17  
BRANDY W. MCBEE

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-11-293

Alonzo Columbus Jeter, III, #282902

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<input type="checkbox"/> 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), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- STAYED DUE TO BANKRUPTCY**
- 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 :

FILED IN THE  
 CLERK'S OFFICE  
 2017 JUL 27 P  
 3:55  
 CHEROKEE COUNTY, SC

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property<sup>2</sup> 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)
N/A		\$
		\$
		\$

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.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

S/ Robin B. Stilwell  
 Circuit Court Judge

2158  
 Judge Code

July 27, 2017  
 Date



STATE OF SOUTH CAROLINA )  
COUNTY OF CHEROKEE )  
)   
Alonzo Columbus Jeter III, #282902, )  
)   
Applicant, )  
)   
v. )  
)   
State of South Carolina, )  
)   
Respondent. )

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

2016-CP-11-0293

**ORDER OF DISMISSAL**

FILED IN THE CLERK'S OFFICE  
CHEROKEE COUNTY, SOUTH CAROLINA  
2017 JUN 27 A 11:17

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on April 28, 2016. Respondent submitted its Return on November 15, 2016. An evidentiary hearing was convened on March 20, 2017, at the Spartanburg County Courthouse. Applicant was present at the hearing and was represented by Steven D. Epps, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Christopher Kennedy, Esquire ("Plea Counsel") also testified. The Court had before it a copy of the guilty plea transcript, the records of the Cherokee County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings.

Following the evidentiary hearing, Respondent filed a motion to reopen the record to submit additional records from the Cherokee County Clerk of Court. Applicant objected to the motion, and a hearing was held on June 30, 2017, at the Spartanburg County Courthouse. At the hearing, this Court granted the motion and took judicial notice that Applicant had two prior convictions for possession of crack (2004-GS-11-925 and -926). The additional documentation

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of these convictions were added to the record before the Court and considered in making the findings below. The Court finds as follows:

### I. PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Cherokee County. Applicant was charged with two counts of distribution of methamphetamine, third or subsequent offense (2015-GS-11-0461 and -0463), two counts of distribution of methamphetamine within one-half mile of a park or school (2015-GS-11-0462 and -0464), and one count of trafficking in methamphetamine 10–28 grams, third offense (2015-GS-11-0465). Applicant was represented by Christopher Kennedy, Esquire. On July 16, 2015, Applicant waived presentment to the grand jury on all charges and pleaded guilty to the lesser included offenses of two counts of distribution of methamphetamine, second offense, and trafficking in methamphetamine 10–28 grams, second offense. Pursuant to a negotiated recommendation of 15 years and concurrent sentencing, the Honorable Lee S. Alford sentenced Applicant to imprisonment for concurrent terms of 15 years for each count of distribution of methamphetamine and trafficking in methamphetamine, and 10 years for each count of distribution of methamphetamine within one-half mile of school.<sup>1</sup> Applicant did not appeal his guilty plea or sentence.

### II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully based on the following allegations:

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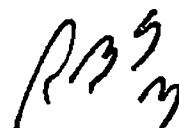
<sup>1</sup> Applicant was also charged with possession of an ounce or less of marijuana (2014-GS-11-591), second offense, and pleaded guilty to that charge in the same proceeding. Judge Alford sentenced him to time-served. Applicant does not challenge that conviction in his application.

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1. Ineffective Assistance of Counsel, in that:
  - a. "Counsel failed to investigate and request continuance. . . . A continuance would have given counsel more time to investigate, prepare for mitigation and bargaining, as well as time to discover the applicant's state of mind and needs."
  - b. "Counsel failed to challenge insufficient indictments."
  - c. "Counsel failed to present nor allow me to present mitigating evidence and factors at opportunity"
  - d. "Counsel failed to obtain the original plea offer of seven (7) years."
  - e. "Counsel failed to inform me of my right to appeal and make sure I understood what it was and how to do it."
  - f. "Charges were erroneously enhanced - Prior marijuana conviction should not have been used to enhance my charges. It also had been 11 years since my first conviction and therefore should not have been used to enhance."
  
2. Due Process Violation
  - a. "My constitutional rights of due process under the Fourteenth Amendment, and applicable case law, was violated as counsel failed to request a competency hearing."
    - i. Absent counsel's errors there is a reasonable probability that the evidence would have been reweighed and thus it would have been concluded that the balance of aggravating and mitigating circumstances did not warrant such harsh sentencing and punishment.
    - ii. Applicant also had the right to be competent when entering a guilty plea and a complete picture of the Applicant's mental condition would have established that the Applicant was suffering from a mental or emotional disturbance both at the time the crimes were committed and at the time of entering a plea of guilty.
    - iii. Due process prohibits this conviction therefore the conviction is illegal.
  
3. Lack of Subject Matter Jurisdiction
  - a. "The court lacked subject matter jurisdiction to accept my guilty pleas."

### III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel 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, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order 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. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, 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 (1985).

#### V. SUMMARY OF RELEVANT TESTIMONY

Applicant testified that the prior convictions the Solicitor relied upon in charging him with a third offense in trafficking cocaine were incorrect and his convictions could not properly be used to enhance his sentence. He testified that he was charged with a third offense of trafficking, but he pled guilty to the lesser included offense of trafficking, second offense. He

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testified that he pled guilty to possession with intent to distribute within a half-mile of a park or school, but he later found out that the park he was near was a church playground, not a public park, and this charge was improper. He stated that he did not mention the fact that it was a church playground to Plea Counsel.

Applicant testified that he knew that he did not have any hard drug convictions from after 2004, but could not think straight enough to tell Plea Counsel. He stated that Plea Counsel did not discuss the defense of entrapment with him, but he knows that if he had gone to trial on his charges and argued entrapment, he would have been acquitted. He stated that the separate charges he picked up in April and May following this charge were dismissed after he pled guilty to these offenses in exchange for his guilty plea. He testified that he was not taking his medication during the guilty plea. He stated that Plea Counsel had mitigation materials about how Applicant had tried to find work but was turned down for multiple jobs, and Plea Counsel should have presented them to the plea court. He stated that he wanted Plea Counsel to appeal his guilty plea, but he never got a chance to talk to him after the plea.

Plea Counsel testified that the Solicitor's original plea offer to Applicant was a seven year deal, but it was contingent on him speaking to the investigators in the case. He stated that after the Solicitor spoke with the investigator, they revoked their offer and told him that they could not offer a seven year deal. He stated that he had nothing guaranteeing him this deal in writing, it was only on his word and it relied on the approval of the investigator, which the investigator did not give.

Plea Counsel testified that there was nothing that made him think that Applicant's mental health was an issue. He stated that he never thought that Applicant did not understand what was going on during his proceedings, and there was no basis to seek a hearing over his mental

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competency. Plea Counsel testified that, as part of his investigation, he went to the church playground in question and verified that it was within a half-mile of where Applicant was caught selling drugs. He testified that he had mitigation records to present, but they did not need to present them at the guilty plea because Applicant pled to a negotiated sentence. Plea Counsel stated that he did speak to Applicant after the guilty plea, and he also remembered Applicant's girlfriend calling him and speaking to him after the plea, and neither of them asked him to file an appeal. He stated that there was no indication that Applicant wanted an appeal.

Plea Counsel testified that he does not recall discussing an entrapment defense with Applicant, and he did not think that an entrapment defense would have been successful in this case. Plea Counsel stated that he did not think they would win if they had gone to trial. He stated that he did not ask for the identity of the confidential informant because the Solicitor's Office practice is to withdraw any plea offers if they reveal the identity. He stated that if Applicant had gone to trial rather than pleading guilty, the Solicitor's Office would have tried each charge separately, and on the third charge, he would have been convicted of trafficking third offense and received a life sentence. He stated that he believed there was a reasonable basis for the State to try each charge separately because there were a few days between each drug buy.

## **VI. 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

Applicant has asserted several allegations of ineffective assistance of counsel. This Court finds these claims to be meritless and they should be denied and dismissed with prejudice. This Court finds Plea Counsel's representation did not fall below the standards of professional norms in any manner. He communicated properly with Applicant and reviewed all discovery materials with him. Based on this testimony and the record before the court, this Court finds Plea Counsel's representation was not ineffective in any regard.

*Failure to investigate and request a continuance*

Applicant alleges that Plea Counsel was ineffective for failing to investigate his case and request a continuance before his guilty plea. This allegation is meritless.

Plea Counsel credibly testified that he investigated this case as well as Applicant's criminal history. He stated that he drove to the church playground in question to verify that it was within a half-mile of the location Applicant sold the drugs. He read the SLED report and verified its information. Based on the strength of the State's evidence against Applicant, Plea Counsel strategically negotiated plea deals with the State and was able to obtain a negotiated sentence. Plea Counsel testified that there was no reason to request a continuance before the guilty plea.

Based on this testimony, this Court finds that Plea Counsel thoroughly investigated Applicant's case and was not ineffective in this regard. Therefore, this allegation is denied and dismissed with prejudice.

*Failure to present mitigation*

Applicant alleges that Plea Counsel was ineffective for failing to present or allow him to present mitigating evidence and factors at the guilty plea. This Court finds that Plea Counsel was

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not deficient for choosing not to present mitigating factors because Applicant pled guilty pursuant to plea deal for a negotiated sentence. Presenting mitigating factors would not have changed the plea court's sentence because it accepted a negotiated plea, and there can be no prejudice to Applicant. Therefore, since neither prong of the Strickland test is met, this allegation is denied and dismissed with prejudice.

*Failure to obtain original seven year plea deal*

Applicant alleges Plea Counsel was ineffective for failing to obtain the original seven year plea offer from the State. This allegation is meritless.

Plea Counsel credibly testified that the State's original offer of seven years was contingent upon approval from the investigator in the case. After the Solicitor consulted with the investigator, the investigator indicated that he wanted a much higher sentence, and the Solicitor rightfully revoked his offer. The Solicitor never promised to Applicant or Plea Counsel in writing or orally that he would definitely offer a seven year deal. It was through no fault of Plea Counsel's that this deal was not offered. Any plea offer and its terms are within the discretion of the prosecuting Solicitor. See State v. Johnson, 287 S.C. 171, 172, 337 S.E.2d 204, 205 (1985) (holding a solicitor has broad discretion in choosing the offenses with which a defendant will be charged and in plea negotiations leading up to trial). Based on this testimony presented at the evidentiary hearing, it is clear that Plea Counsel was not ineffective in this regard, and this allegation is denied and dismissed with prejudice.

*Failure to inform of right to appeal*

Applicant alleges Plea Counsel failed to inform him of his right to appeal his guilty plea. At the evidentiary hearing, Plea Counsel credibly testified that his practice is always to discuss his client's right to appeal before the actual guilty plea. He stated he was sure he did that in this



case, and the plea judge reviewed this right with him, as well. Trial tr. 17, ll. 25. Plea Counsel testified that there was no indication that Applicant wanted an appeal, and he spoke to both Applicant and his girlfriend after the guilty plea and neither mentioned an appeal. He further stated there was no factual or legal basis for an appeal of his guilty plea and there were no objections made during the guilty plea.

This Court finds that Plea Counsel did advise Applicant of his right to appeal and that he received no indication that an appeal needed to be filed. Therefore, Plea Counsel cannot be deficient. This allegation is denied and dismissed with prejudice.

*Failure to challenge insufficient indictments*

This Court finds that Plea Counsel was not ineffective for failing to challenge the indictments in this case. Applicant was properly indicted and put on notice of his charges. Applicant waived presentment to the grand jury on all of his charges. Plea Counsel credibly testified that he saw no basis for challenging the indictments on the grounds that the facts didn't support the charge on the indicted offense, and this Court agrees.

Applicant alleges that the indictments for Distribution of Methamphetamine within a Half-Mile of a Park or School (2015-GS-11-0462 and -0464) were improper because the park within a half-mile of the sale was a private church playground that does not fall under the statute, S.C. Code Ann. § 44-53-445 (2010). However, this Court finds that this challenge to the classification of the park is a factual argument against the State's evidence and not a challenge to the sufficiency of the indictment. Any factual challenge to this offense, meaning whether the church playground was public or private, was waived by Applicant when he chose to plead guilty.

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"[I]n South Carolina, a guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013) (citing Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal defendant's right to contest the validity of such a plea is usually, but not definitely, foreclosed. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (2007). In Jamison, the South Carolina Supreme Court noted it would be a "rare case" where the interests of justice require the vacation of a knowing and voluntary guilty plea involving an admission of guilt and a waiver of trial. Jamison, 165 S.E.2d at 130.

The factual argument that the church playground is not a public park is not a defect in the indictment, but rather it is a challenge to the sufficiency of the State's evidence that Applicant and Plea Counsel could have raised if Applicant had chosen to go to trial. This Court finds that Plea Counsel was not deficient for failing to challenge this as an attack on the sufficiency of the indictments.

Furthermore, Applicant can prove no prejudice because he knowingly and intelligently pled guilty to this offense and received a ten year sentence for these charges, which he is serving concurrently to his fifteen year sentence for the other offenses. Even if these indictments had been dismissed, Applicant would still be serving a fifteen year sentence, so there can be no prejudice. Because Applicant has failed to meet his burden of proving both prongs of the Strickland test, this allegation is denied and dismissed with prejudice.

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*Failure to challenge improper enhancements*

Applicant alleges Plea Counsel was ineffective for failing to challenge the improper enhancement of his charges. This allegation is meritless.

Applicant was charged with Distribution of Methamphetamine, third offense, and Trafficking Ice, Crank, or Crack, ten grams or more but less than 28 grams, third offense. After plea negotiations with the State, Applicant pled guilty to distribution, second offense, and trafficking, second offense; the State allowed him to plea to a lower offense in exchange for his guilty plea. Applicant now alleges in his PCR action that he never had the proper prior convictions to allow the State to enhance his charge to third offense. He argued to the Court that his prior trafficking conviction was just outside of the ten year scope of offenses allowed and should not have been used to enhance his charge. He further argued that the other prior conviction used for enhancement purposes was a marijuana conviction, which under the law cannot be used for enhancement purposes in this case.

At the evidentiary hearing, Applicant testified that he did not tell Plea Counsel about the problems with his enhancement because he assumed they were correct. Plea Counsel testified that he discussed Applicant's prior convictions with him and the effect that they would have on his sentencing if convicted at trial. He stated that Applicant was subject to a potential sentence of Life Without Parole if convicted based on his prior record. Plea Counsel testified that his strategy was to negotiate a plea deal with the State to allow Applicant to plea to a lesser sentence, because he believed that the State could reasonably convict Applicant on all three separate drug buys, which would definitely be three strikes against him, resulting in a life sentence. He stated that there was video evidence of Applicant selling drugs, and the evidence was strong enough

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that Applicant likely would not prevail at trial. Because of this, Plea Counsel believed a plea deal was in Applicant's best interest, regardless of what his prior convictions were.

Based on Plea Counsel's credible testimony of the strategy behind his negotiations, this Court finds that Plea Counsel was not deficient in failing to challenge Applicant's charges.

Most importantly, this Court further finds that Applicant was not prejudiced by Plea Counsel's failure to challenge the charges against him because Applicant did have the proper prior convictions to enhance his charge to a second offense. Applicant pled guilty on October 12, 2004, to two separate counts of possession of crack. There is no question that these were separate and distinct convictions because the drug buys were on two different dates several months apart, and they resulted in two convictions with two concurrent sentences and sentencing sheets.

South Carolina law provides that an offense under the relevant statute is considered a second or subsequent offense if "the offender has *at any time* been convicted of a second or subsequent violation of a controlled substance offense provision" other than marijuana. S.C. Code Ann. § 44-53-470(A)(4) (emphasis added). Neither 2004 conviction was a marijuana conviction. Therefore, one of the 2004 convictions is a "second or subsequent" conviction under the law, and can be properly used to enhance Applicant's 2015 charges, even if they were more than ten years before the current guilty plea.

Although it appears from the guilty plea transcript that the Solicitor used the wrong charge to enhance the conviction (See Tr. 21:11-12, where the Solicitor cites a 2013 possession of a controlled substance conviction that was actually marijuana and unable to be used to enhance under the statute), there is no prejudice because Applicant *did* have prior convictions to properly enhance his charges to at least a second offense. Applicant pled guilty to trafficking, second offense, and thus his conviction was proper and should not be overturned.

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Because Applicant has failed to meet his burden of proving either prong of the Strickland test, this allegation is denied and dismissed with prejudice.

#### DUE PROCESS

Applicant alleges that he was denied due process of law. Applicant's allegation claims infringement of his rights under the Fourteenth Amendment to the United States Constitution based on Plea Counsel's failure to request a mental competency hearing. This allegation is meritless.

The testimony presented at the evidentiary hearing and the record of the guilty plea indicate that Plea Counsel was not deficient in choosing not to challenge Applicant's mental competency. Plea Counsel credibly testified that he believed Applicant always understood what was going on and show no indications of mental issues. He testified that he saw no reason to request an evaluation or challenge his guilty plea based on a lack of competency. This Court finds that Plea Counsel was not deficient in this regard.

Secondly, Applicant has failed to meet his burden of proving prejudice because he has not proven that he actually lack mental competency. The South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Applicant did not present any testimony from a mental evaluator or introduced any mental health records or

*R.B.*  
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*i*

evaluation reports proving that he was incompetent. Therefore, as a matter of law, he cannot prove prejudice.

Applicant has failed to meet his burden of proving any due process violation, and this allegation is denied and dismissed with prejudice.

#### SUBJECT MATTER JURISDICTION

Applicant alleges the court did not have subject matter jurisdiction over his charges. An Applicant may challenge the subject matter jurisdiction of the trial court and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 363 S.C. 93; See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction. Applicant has failed to present any evidence that the convictions he challenges in this application are in a class over which the circuit court does not have the authority to provide.

Furthermore, to any extent that Applicant is challenging subject matter jurisdiction based on what he alleges were faulty indictments, Applicant waived his right to challenge the indictments by waiving presentment to the grand jury and pleading guilty. “When a defendant timely objects to the sufficiency of the indictment, before the jury is sworn, a ruling that an indictment is not sufficient will result in the quashing of the indictment **unless the defendant waives presentment to the grand jury and pleads guilty.** State v. Means, 367 S.C. 374, 385, 626 S.E.2d 348, 354 (2006) (citing Cutner v. State, 354 S.C. 151, 155, 580 S.E.2d 120, 122–23

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(2003), *overruled on other grounds*, Gentry, 363 S.C. 93, 610 S.E.2d 494) (emphasis added).

Therefore, this allegation is denied and dismissed with prejudice.

## VII. CONCLUSION

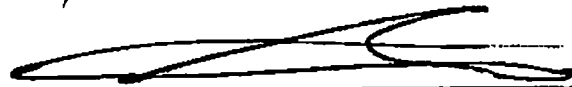
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), 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 is denied and dismissed with prejudice; and
2. That Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 24 day of JULY, 2017.



ROBIN B. STILWELL  
Presiding Judge  
Seventh Judicial Circuit

Chambers, South Carolina





After 5 Days Return To:  
 Mrs. Brandy W. McBee  
 Clerk of Court, Cherokee County  
 Post Office Drawer 2289  
 Gaffney, SC 29342

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ZIP 29340  
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Alonzo C. Jeter, III, #282902  
 Perry Correctional Institution Q1-B-215  
 430 Oaklawn Rd.  
 Pelzer, SC 29669



After 5 Days Return To:  
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ZIP 29340  
 041L11245001

Attorney Steven D. Epps  
 104-A Franklin Ave., Ste. 281  
 Spartanburg, SC 29301

FILED IN THE OFFICE  
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2017 JUL 27 P 4: 12

CHEROKEE COUNTY, SC

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\$00.93<sup>00</sup>

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Valerie Garcia Giovanoli, AAG  
SC Attorney General's Office, PCR Division  
Post Office Box 11549  
Columbia, SC 29211-1549

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SC Attorney General's Office, PCR Division  
Post Office Box 11549  
Columbia, SC 29211-1549



State of South Carolina  
The Circuit Court of the Thirteenth Judicial Circuit

Robin B. Stilwell  
Judge

Greenville County Courthouse  
305 East North Street, Suite 315  
Greenville, SC 29601-2113  
Phone: (864) 467-8406  
Fax: (864) 235-3625  
rstilwellj@sccourts.org

July 24, 2017

The Honorable Brandy W. McBee  
Cherokee County Clerk of Court  
Post Office Box 2289  
Gaffney, SC 29342

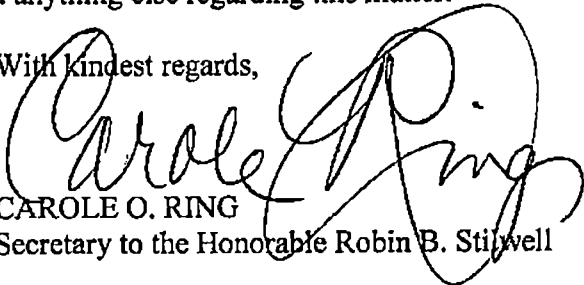
RE: Alonzo Columbus Jeter, III, v. State of South Carolina (2016-CP-11-0293)

Dear Ms. McBee:

Enclosed herewith please find an executed Order in the above-referenced matter. Judge Stilwell has asked that I send it to you for filing and for distribution to all interested parties.

Please let me know if you should need anything else regarding this matter.

With kindest regards,

  
CAROLE O. RING  
Secretary to the Honorable Robin B. Stilwell

cc  
Enclosures

FILED  
2017 JUL 27 A 11:27  
CHEROKEE COUNTY, SC



ALAN WILSON  
ATTORNEY GENERAL

July 17, 2017

The Honorable Robin B. Stilwell  
305 E. North St.  
Greenville, SC 29601

Re: Alonzo Columbus Jeter III, #282902 v. State of South Carolina  
2016-CP-1 1-0293

Dear Judge Stilwell:

Enclosed please find the original proposed **Order of Dismissal** in the above-captioned case. If this Order meets your approval, please sign and forward to the Clerk's office and have her serve the order on all parties. If you have any questions, please feel free to contact me.

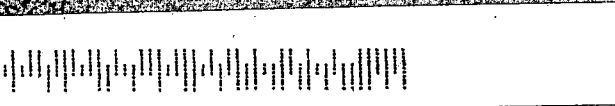
Sincerely,

*Julie A. Coleman*  
Julie A. Coleman  
Assistant Attorney General

JAC/jaj  
Enclosure(s)

cc: Alonzo Columbus Jeter III, #282902

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2017 JUL 27 A 11: 27  
WILMUNEE COUNTY, SC



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The Hon. Daniel E. Shearouse  
Clerk of Court  
Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211