Tommy A. Thomas

ATTORNEY AND COUNSELOR AT LAW

HARRINGTON BUILDING
7588 WOODROW STREET
IRMO, SOUTH CAROLINA 29063

TELEPHONE:
(803) 732-5507
(803) 732-5508

FACSIMILE:
(803) 781-4226

PLEASE REPLY TO:
PO BOX 88
IRMO, SC 29063

INMATE LINE
(803) 732-6542

February 12, 2018

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

RE: Hector Cases Carreras #363117 v. State

Dear Mr. Shearouse:

Enclosed please find a Notice of Appeal and Certificate of Service in the above matter.

Kindly return a clocked copy to me in the enclosed envelope. Thank you and please let me know if you have any questions.

Yours truly,

Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: Johnny James, Esq.
Hector Cases-Carreras #363117

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
FEB 14 2018
S.C. SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Post-Conviction Relief

William H. Seals, Jr., Circuit Court Judge

Case No.: 2015-CP-26-7903

Hector Cases-Carreras #363117,..... Appellant,

vs.

State of South Carolina, ...Respondent.

NOTICE OF APPEAL

Hector Cases-Carreras #363117 appeals the Order of the Honorable William H. Seals, Jr., dated December 15, 2017 and filed on December 20, 2017. Appellant received written notice of entry of this order on January 12, 2018.

TOMMY A. THOMAS
Attorney for Appellant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Other Counsel of Record:
Johnny Ellis Johnson, Esq.
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
Attorney for Respondent

Irmo, South Carolina
February 12, 2018

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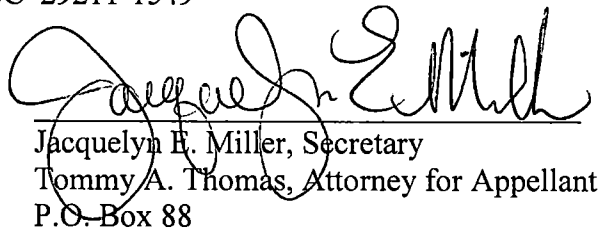
State of South Carolina, ...Respondent.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Appellant, hereby certify that I placed in the United States Mail, a copy of a Notice of Appeal, with postage prepaid and the return address clearly shown on said envelope to:

Office of the Attorney General
Attention: Johnny Ellis Johnson, Esq.
P.O. Box 11549
Columbia, SC 29211-1549



Jacquelyn E. Miller, Secretary
Tommy A. Thomas, Attorney for Appellant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Irmo, South Carolina
February 12, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
Hector Cases-Carreras, S.C.D.C. No. 363117,	)	Case No.: 2015-CP-26-07903
Applicant,	)	
	)	**ORDER OF DISMISSAL**
v.	)	
State of South Carolina,	)	
Respondent.	)	

This matter comes before the Court by way of an application for post-conviction relief filed by Hector Cases-Carreras ("Applicant") on November 4, 2015. Respondent made its return on or about October 24, 2016. The Court convened an evidentiary hearing into the matter on Monday, September 18, 2017, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by Tommy A. Thomas, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Dean N. Mureddu, Esq. ("Mureddu"), prior counsel, David J. Canty, Esq. ("Canty"), and David P. Caraker, Esq. ("Caraker"), also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Horry County Clerk of Court regarding the subject convictions, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the May 2014

term of the Horry County Grand Jury for trafficking in illegal drugs (heroin), 28 grams or more (2014-GS-26-02133). David J. Canty, Esq. represented Applicant through a preliminary hearing. Dean N. Murcddu, Esq. represented Applicant thereafter. David P. Caraker, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On February 23, 2015, Applicant pled guilty to the lesser-included offense of trafficking in heroin, between 4 and 14 grams, first offense. The Honorable Michael G. Nettles sentenced Applicant to imprisonment for a term of 18 years. Applicant did not appeal his plea or sentence.

Present Application

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

1. Ineffective assistance of counsel, in that:
    a. Counsels failed to quash the indictment and challenge the subject-matter jurisdiction of the Court to accept the plea,
    b. Counsels failed to obtain minutes of the grand jury,
    c. Counsels misadvised Applicant regarding "mere presence,"
    d. Counsels failed to move to "suppress fruits of unlawful warrantless search and seizure[,]"
    e. Counsels failed to investigate Applicant's case;
    f. Counsel failed "to object to gross disparity and disproportion in sentencing guide-lines, and weight category between schedule 1 drugs; and Racial Disparity in South Carolina Criminal Justice System that target Hispanic/Blacks."
    g. Counsel Canty abandoned Applicant after the preliminary hearing.
2. Involuntary Guilty Plea, in that:
    a. "Applicant submits that he was coerce into plea under duress, and threaten imprisonment of an actual innocent (Juliana Lopez) person."
    b. "Applicant was advised by Plea Counsel that if he plead guilty Lopez's charges would be drop against her as part of the plea bargain. However, Applicant did not learn otherwise till after he entered plea that charges against her was not drop, which was the motive for him to enter a plea."
    c. Counsel failed to withdraw Applicant's plea "after the State refuse to honor components of plea bargain as the Applicant understood it to be."
3. Prosecutorial misconduct, in that:

a. "Applicant submits that bogus charges against Juliana Marie Santiago Lopez were the motivating factor to enter plea-bargain that bogus charges against her would be rescinded[.]"

By filing September 14, 2017, Applicant, by and through counsel, amended his application to supplement with the following additional allegations:

1. "That Trial Counsel was ineffective for the following additional reasons:"
   a. "Failure to object to and to investigate the discrepancy in the weight of the drugs in the Indictment for Trafficking Heroin, 28 grams or more. The Affidavit section, on the face of the Warrant and Indictment indicates 117.7 grams for Vasquez and 116.7 grams for the Applicant. Each of these weights are off by 200 grams. In addition, the search warrant is also wrong and should read 316.7 grams."
   b. "Failure to have an interpreter present at meetings with Counsel. The Applicant does not speak English. The Applicant had difficulty in understanding the judicial process. Defense Counsel is ineffective for not explaining this process to the Applicant."
   c. "Failure to adequately investigate the case."
   d. "Failure to completely discuss the Discovery and State's evidence with the Applicant."
   e. "Failure to discuss with Applicant the ability to take this case to trial, rather than accepting the plea."
   f. "Failure to discuss with the Applicant the chain of custody, as well as the SLED reports regarding the drugs in question."
   g. "Failure to investigate and use the fact that the Applicant was living in Florida and that all of the drugs were found in his Co-Defendant's house. The Applicant alleges that none of these drugs belong to him."
2. "That the Applicant is informed and believes that his guilty plea was not freely, voluntarily, intelligently and knowingly given for the following reasons."
   a. "The Applicant does not speak English and had difficulty understanding the plea."
   b. "The Applicant was coerced into accepting the plea offer because of law enforcement's agreement that they were going to drop the charges against his daughter-in-law."
   c. "The Applicant was forced into taking the plea as a result of [being] scared into accepting the plea. He was told that he could receive over forty-five (45) years if he went to trial."

Additionally, at the end of the evidentiary hearing, this Court raised *sua sponte* the question of whether the plea was rendered involuntary in light of the fact that the plea court failed to state on the record the full range of sentencing exposure faced by Applicant.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel and Involuntary Guilty Plea

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "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." Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a

defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

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 at 117, 386 S.E.2d at 625 (citing Strickland at 688). 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 at 117-18, 386 S.E.2d at 625 (citing Strickland at 694). The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97.

Applicant further claims his plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v.

Alabama, 395 U.S. 238, 243 (1969); Dover v . State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)).

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

The Court shall address each of Applicant's allegations in order, starting with those more clearly set forth in the amendment filed September 14, 2017.

IAC Allegation #1 – Failure to Investigate and Challenge Discrepancy in Weight

Applicant alleges Canty and Mureddu were ineffective for failing to challenge the discrepancy in reports regarding the actual weight of the drugs recovered. Applicant was originally charged with violating S.C. Code Ann. § 44-53-370(e)(3)(c), which reads in sum total:

> Any person who knowingly sells, manufactures, cultivates, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of:
>
> (3) four grams or more of any morphine, opium, salt, isomer, or salt of an isomer thereof, including heroin, . . . is guilty of a felony which is known as "trafficking in illegal drugs" and, upon conviction, must be punish as follows if the quantity involved is:
>
> (c) twenty-eight grams or more, a mandatory term of imprisonment of not less than twenty-five years nor more than forty years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars[.]

"A search or seizure does not violate the Fourth Amendment if it is authorized by a warrant that is supported by probable cause." State v. Kinloch, 410 S.C. 612, 616-17, 767 S.E.2d 153, 155 (2014) (citations omitted). "A warrant is supported by probable cause if, given the totality of the circumstances set forth in the affidavit, there is a fair probability that contraband or evidence of a crime will be found in a particular place." Id., 410 S.C. at 617, 767 S.E.2d at 155.

The affidavit in support of the arrest warrant initially charging Applicant indicates that he "was found to be in possession of approximately 116.7 grams of a light brown chunked substance" which field tested positive for heroin. See A/W 2013A2610203553 (Applicant's Ex. 2).[1] The "Grand Jury Case Summary," however, indicates that Applicant was instead found in possession of "approximately 316.7 grams of a light brown in color chunked substances, housed

[1] The warrant was also before the Court as part of materials provided in support of Respondent's return.

in multiple plastic wrappers or sitting loosely on digital scales[,]" which field tested positive for heroin. Applicant's Ex. 1 at 9. The Case Summary thereafter notes the "typographical error" on the face of the warrant and affirms that the total weight of the drugs to be charged to Applicant is 316.7 grams. Id. at 12. At the guilty plea proceeding, the State indicated that a drug report promulgated by the State Law Enforcement Division returned a weight of 298 grams of heroin. Tr. 7, ll. 5-14. Applicant agreed with that description at his plea proceeding. Tr. 7, ll. 15-20.

At the evidentiary hearing, Murredu testified that law enforcement discovered much more heroin than they originally anticipated. The residence in question was searched after a confidential informant alerted law enforcement that a target of an ongoing investigation was in the process of returning from Florida with what was suspected to be a fresh, bulk shipment of illegal narcotics. Murredu noted that all of the quantities noted in the warrant, grand jury report, and at the guilty plea were *well* in excess of the 28 gram threshold for statute charged. The search was conducted after multiple confidential buys and in reliance upon a CI whose reports were corroborated by the independent observations of surveilling law enforcement. Consequently, Murredu could conceive of no meritorious argument to quash the warrant and search.

Canty testified that he filed a motion to dismiss for want of probable cause, but the motion was denied by the Court. Canty wrote Applicant a letter at the close of his representation setting forth in detail the considerable strength of the State's case against Applicant, and the weakness of Applicant's defenses.

The Court finds no deficiency on the part of counsels, nor can it conceive of any prejudice. Each counsel was clearly aware of the issue. Each counsel used competent professional judgment in determining how to treat the matter. There is no argument set before

this Court adequate to quash the warrants against Applicant, nor can it independently conceive of one. There is no allegation of any deliberate falsehood or misrepresentation on the part of law enforcement. The exhibits and testimony together show that considerable probable cause existed to search the residence in question. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

IAC Allegation #2 – Failure to Utilize an Interpreter

Applicant alleges that counsels were ineffective for failing to hire and utilize a professional interpreter in the course of their representation. At the guilty plea proceeding, Applicant indicated satisfaction with counsel and that he did not need any additional time with Mureddu. Tr. 9, ll. 3-11. Mureddu, in mitigation, told the Court "the language barrier in reviewing the evidence has not been impossible" but offered it as a reason for Applicant's delay at the eve of trial. Tr. 12, ll. 9-18.

At the evidentiary hearing, Applicant testified that he is originally from Puerto Rico and speaks Spanish. Applicant claimed he had difficulty understanding counsels and that his wife operated as a translator during meetings with Mureddu and Canty. Applicant testified that others attempted to translate on various occasions, including the interpreter at the plea proceeding and Canty himself, but their Spanish was not very good. This Court observed Applicant's testimony closely and, on multiple occasions, he indicated a complete understanding of questions offered in English before the interpreter could translate them, and frequently launched into answers in Spanish before the interpreter could begin translation. This Court, and the attorneys for each party, chided Applicant to permit the interpreter to translate before answering questions.

Mureddu testified he does not speak very good Spanish and that Applicant does not speak very good English. Mureddu testified that, as a consequence, he always had an interpreter save

in one instance, at which time Applicant's wife translated discussions. Murredu noted that materials provided in discovery indicated the confidential informant with whom Applicant repeatedly dealt only spoke English. Mureddu was satisfied that Applicant understood everything they discussed, but admitted that phone conversations were challenging.

Canty testified he learned Spanish in the 1960's and speaks it fluently, as does every member of his office. Canty's written and oral communications to Applicant were entirely in English, as Canty was satisfied that Applicant was fluent in English.

The Court finds no deficiency on the part of counsels or prejudice therefrom. First and foremost, the Court concurs in Canty's judgment that Applicant has a complete understanding of the English language. As noted above, the Court closely observed Applicant's responses at the evidentiary hearing—the haste with which Applicant responded in numerous instances betrays his adequate command and understanding of English. Furthermore, the Court finds Applicant's testimony not credible—in particular his claim that Canty does not speak very good Spanish. Canty has more than 40 years of experience speaking Spanish and in excess of 30 years of experience practicing law. Applicant's claim that Canty's command of Spanish is poor is so facially absurd as to discredit the remainder of his testimony. Even if there were a modicum of truth to it, the Court is satisfied that Mureddu utilized various interpreters in his meetings, including Applicant's wife, and his judgment that Applicant understood everything. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

IAC Allegation #3 – Failure to Adequately Investigate the Case, Review Discovery

Applicant alleges counsels were ineffective for failing to investigate the case against him or review with him any of the materials provided in discovery.[2] Where an Applicant alleges

[2] Due to the non-specific nature of Applicant's claim that counsel failed to investigate, the Court considers it alongside Applicant's allegation that counsel failed to review discovery with him.

counsel was ineffective due to deficient preparation or investigation, Applicant must show how the outcome would have been different had counsel spent more time preparing or investigating. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008); Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998); Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997).

At the evidentiary hearing, Applicant testified that Mureddu did nothing to prepare his case and did not review discovery with him. Applicant recalled that he saw Mureddu one time in his office and three times in court, with each meeting lasting between 5 and 15 minutes. Applicant testified that he did not know if the State had any evidence against him because Mureddu never reviewed the discovery with him. Applicant claimed that he saw a video one hour before his trial and was simply told immediately before trial that he had no viable defense and had no choice but to plead guilty. When asked on cross-examination why Applicant told the plea court he was satisfied with counsel, Applicant asserted that he lied to the plea court because Mureddu told him that he had to.

Mureddu testified that he was appointed to represent Applicant after Canty's representation terminated after the preliminary hearing. Mureddu met with Applicant on five or six occasions, with the longest meeting lasting around two hours. Mureddu acquired discovery materials from the State and reviewed them, both on his own and with Applicant. Mureddu searched for any issues with the search warrant, chain of custody, and any other defenses that might be available to Applicant. Mureddu explained Applicant was found fleeing from the bathroom of the residence in the immediate company of a quantity of heroin; the only remotely conceivable defense would be to blame Applicant's son, argue Applicant lived in Florida and not the residence in question, and argue "mere presence." Mureddu did not see any technical

defenses available to Applicant, only a weak factual defense. Mureddu understood that Applicant would face a joint trial alongside his son and prepared a motion to sever, but felt the prospects of that motion being granted were poor. Mureddu discussed all of these matters with Applicant.

The Court finds no deficiency or prejudice therefrom. For the reasons set forth in Section II.A.2, above, as well as Applicant's self-serving declaration that he previously lied to the plea court, the Court finds Applicant's testimony generally not credible. Mureddu fully investigated the case against Applicant, prepared a competent defense, and explained the case to Applicant at length. Furthermore, Applicant has not shown what, if anything, would have been accomplished by further preparation or investigation on the part of counsel. Accordingly, Applicant's request for relief by way of this allegation is **DENIED.**

IAC Allegation #4 – Failure to Explain Right to Jury Trial

Applicant alleges counsel was ineffective by failing to explain his right to a jury trial and by indicating that Applicant's only choice was to plead guilty. At the evidentiary hearing, Applicant testified Mureddu told him there was no way to win at trial. When questioned as to his statements of voluntariness at the guilt plea proceeding, Applicant testified he had no other option and that trial was only an option if his attorney did his job. Mureddu testified Applicant did not care to discuss trial strategy and was primarily focused on minimizing jail time. Nonetheless, as noted in Section II.A.3., above, Mureddu prepared a trial defense strategy, weak though it was.

The Court finds no deficiency of counsel or prejudice therefrom. For the reasons set forth in Section II.A.2., above, the Court finds Applicant's testimony entirely not credible. Taking Applicant's testimony at face value, his explanation that he could not proceed to trial

because he believed Mureddu was unprepared would demonstrate that he consciously and strategically opted against going to trial, as opposed to his professed lack of understanding of the right. Furthermore, the plea court clearly explained the right to a jury trial during the plea proceeding, at which time Applicant indicated that he understood the right. Tr. 8, ll. 2-15. Accordingly, Applicant's request for relief as to this allegation is **DENIED.**

IAC Allegation #5 – Failure to Discuss Chain of Custody

Applicant alleges counsel was ineffective by failing to discuss with him the chain of custody and SLED reports in his case. For the reasons set forth in the preceding sections, in particular Section II.A.3, the Court finds no deficiency on the part of counsels or prejudice therefrom and, accordingly, Applicant's request for relief by way of this allegation is **DENIED.**

IAC Allegation #6 – Failure to Investigate "Mere Presence"

Applicant alleges counsel was ineffective by failing to explore and utilize the "facts" that Applicant did not reside in the residence searched, but was from Florida, and that the drugs found were entirely those of his co-defendant son. For the reasons set forth in the preceding sections, in particular Section II.A.3, the Court finds no deficiency on the part of counsels or prejudice therefrom and, accordingly, Applicant's request for relief by way of this allegation is **DENIED.**

IAC Allegation #7 – Misadvice as to Sentencing Exposure

Applicant alleges that he was affirmatively misadvised that he faced up to 45 years incarceration on the charges. At the evidentiary hearing, Applicant did not testify to this allegation. By his silence on this issue, Applicant has failed to demonstrate that his plea was affected by the alleged suggestion that he faced 45 years. See Roscoe v. State, 345 S.C. 16, 21, 546 S.E.2d 417, 419 (2001). Furthermore, the plea transcript reflects that the plea court advised

Applicant that, pursuant to terms negotiated between Applicant and the State, he would face between 18 and 20 years incarceration in exchange for his plea. Tr. 8, ll. 18-23. As such, this Court finds that Applicant was accurately apprised of his total sentencing exposure. Accordingly, Applicant has failed to meet his burden to show either deficiency or any prejudice therefrom and his request for relief by way of this allegation is **DENIED.**

IAC Allegation #8 – Indictment & Subject-Matter Jurisdiction

Applicant alleges counsel was ineffective for failing to challenge the subject-matter jurisdiction of the based on alleged deficiencies in the warrant and, consequently, the indictment. "[S]ubject matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct concepts and the blending of these concepts serves only to confuse the issue. Circuit courts obviously have subject matter jurisdiction to try criminal matters." State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005). Applicant pled in circuit court and this allegation is patently without merit. Accordingly, Applicant's request for relief by way of this allegation is **DENIED.**

IAC Allegation #9 – Failure to Argue Equal Protection

Applicant alleges counsel was deficient by failing to argue, as this Court interprets it, that his right to equal protection of the laws was violated by racial sentencing disparities. Nobody testified to this issue or otherwise argued it at the evidentiary hearing. Accordingly, the Court considers it abandoned and any relief demanded thereby is **DENIED.**

IAC Allegation #10 – Abandonment of Counsel

Applicant alleges that Canty was ineffective insofar as he abandoned representation of Applicant after the preliminary hearing. Applicant testified that Canty quit and refused to represent him after the preliminary hearing, citing a poor relationship with the solicitor then

assigned to the case. Canty testified that he did not quit, but that he was only ever retained to represent Applicant through the preliminary hearing. Canty did confirm his desire to not further represent Applicant due to a poor relationship with the solicitor then assigned to the case. This Court cannot find Canty, or any counsel for that matter, deficient for declining representation beyond the terms set forth and agreed to between an attorney and a client, nor can this Court conceive of what constitutional prejudice could result therefrom. Accordingly, Applicant cannot meet his burden by way of this allegation and his request for relief is **DENIED**.

B. Prosecutorial Misconduct & Involuntary Guilty Plea

Applicant alleges that he only pled guilty in order to secure a *quid pro quo* that in exchange for his own plea, bogus charges against another individual would be dismissed *nolle prosequi*. As previously noted, "[a]ll that is required to knowingly and voluntarily enter a plea of guilty is that a defendant have a full understanding of the consequences of his plea and of the charges against him." Gustine v. State, 325 S.C. 123, 128, 480 S.E.2d 444, 446 (1997) (citing Simpson v. State, 317 S.C. 506, 455 S.E.2d 175 (1995)). Whether the demands of a solicitor are coercive when made as part of a plea offer is to be determined on a case-by-case basis. Id. (citing Wade v. State, 308 S.C. 552, 419 S.E.2d 781 (1992) (finding record reflected petitioner's knowing, intelligent, and voluntary entry of his plea of guilty, despite the fact that petitioner alleged that his guilty plea counsel had told him that if he did not plead guilty to the charges against him, his female family members, who had also been charged, would go to jail).

At the evidentiary hearing, Applicant testified that the final plea offer brought to him was, in effect, a group deal: 18 years for Applicant, 15 years for Applicant's co-defendant son, and no additional jail time for Applicant's daughter-in-law Santiago Lopez. Mureddu testified that he explicitly told Applicant that he did not care about Applicant's son or daughter-in-law

and that his obligations were to Applicant alone. Mureddu denied ever negotiating any kind of "package deal" plea and affirmed that, as a general matter, he did not negotiate in such a way. Mureddu believed Lopez did in fact "walk" after the guilty plea, but denied that there was any kind of *quid pro quo* connecting Applicant's plea and Lopez' resolution. Caraker testified that the daughter-in-law ultimately pled to possession with intent to distribute.

The Court finds there was no "package deal" or *quid pro quo* to connect Applicant's plea with that of any other defendant. As this Court has stated repeatedly for a variety of reasons, Applicant's testimony is utterly not credible and this Court can afford it no weight. The Court finds credible Mureddu's firm assertion that there was no group negotiation. Mureddu affirmatively rejected any suggestion to, in effect, represent both Applicant and his co-defendants. Accordingly, as this Court finds that the purportedly coercive demand was not made, Applicant's demand for relief by way of this allegation is **DENIED.**

C. Failure of Court to Advise as to Minimum and Maximum Sentencing

At the close of the evidentiary hearing, this Court observed *sua sponte* that the plea court failed to apprise Applicant regarding the minimum and maximum statutory sentencing range for the lesser-included offense to which he pled. Upon this Court's observation, Applicant's PCR counsel moved to amend the application to include an allegation that Applicant's plea was rendered involuntary by the Court's omission. Respondent objected, arguing that the record was closed, and that no testimony on the question had been taken so as to justify amendment pursuant to Rule 15(b), SCRCP.

The Court agrees with Respondent that Applicant did not raise this specific allegation in its application and no testimony was offered to address it; as a result, the issue is not properly before this Court for consideration. The Court finds no extraordinary reason exists for the Court

to excuse the typical pleading requirements as to this issue because: (1) the Court plainly stated the negotiated sentencing range (18 to 20 years) to Applicant; (2) the entirety of the negotiated range fell within the statutory sentencing range of the crime to which Applicant pled (7 to 25 years); and (3) Applicant was sentenced within the stated range (18 years). Applicant clearly knew the consequences of his plea and could not possibly be prejudiced by the plea court's omission. Accordingly, the Court declines to consider the issue.

III. 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 notifies the Applicant that he must file and serve a notice of appeal within thirty (30) 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 PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

[*Conclusion and signature on following page*]

IT IS THEREFORE ORDERED:

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

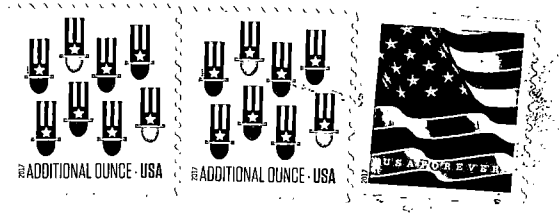
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 15 **day of** December, **2017.**

WILLIAM H. SEALS, JR.
Presiding Judge
Fifteenth Judicial Circuit

_____, South Carolina

Tommy A. Thomas, P.C.
ATTORNEY AND COUNSELOR AT LAW
HARRINGTON BUILDING
POST OFFICE BOX 88
IRMO, SOUTH CAROLINA 29063



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