THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Post Conviction Relief

Perry H. Gravely, Circuit Court Judge

Appellate Case No.: 2018-000627

Titus L. Rouse, Respondent,

vs.

State of South Carolina Petitioner.

PETITION FOR APPEAL BOND

Respondent, through his undersigned counsel, respectfully petitions this Court for an appellate bond pursuant to Rule 240, SCACR, and Rule 243(k), SCACR. Respondent is requesting an appellate bond during the pendency of the appeal of the Order Granting Application for Post Conviction Relief, which was signed by the Honorable Perry H. Gravely on March 28, 2018, and is incorporated by reference and attached hereby.

POST CONVICTION RELIEF PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post Conviction Relief filed on May 22, 2015. The State filed a Return on June 3, 2015. On February 18, 2016, Tricia A. Blanchette was substituted in as Respondent's counsel. On October 17, 2016, Respondent, through counsel, filed an Amendment to his Application, as follows:

1. Ineffective assistance of counsel for failure to properly prepare and investigate prior to trial, to include counsel's representation at the preliminary hearing, which induced an involuntary guilty plea.

2. Ineffective assistance of counsel for failure to effectively make all reasonable pre-trial motions and effectively represent Applicant on pre-trial motions made prior to the entry of Applicant's guilty plea.

3. Ineffective assistance of counsel for advising Applicant to forego trial and enter a guilty plea.

4. Ineffective assistance of counsel for failure to ensure that Applicant had a full understanding of the charge he was entering a plea to and failure to ensure that the oral pronouncement of the charge matched the sentencing sheet. Additionally, ineffective assistance of counsel for failure to ensure that Applicant's plea was being made to a proper lesser include offense.

5. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

On April 5, 2017, Respondent, through counsel, submitted an additional Amendment to his Application, as follows:

1. Ineffective assistance of counsel for failure to obtain a canine expert and/or fully investigate the canine evidence and prepare to move to suppress and/or move to suppress testimony and/or evidence derived from the deployment of canines. Ineffective assistance of counsel for errantly advising Applicant regarding testimony and evidence derived from the deployment of canines, which induced an involuntary guilty plea.

On April 21, 2017, an evidentiary hearing was conducted at the Greenville County Courthouse in front of the Honorable Perry H. Gravely. Respondent was present and represented by Tricia A. Blanchette, Esquire. Petitoiner was represented by DeShawn Mitchell, Assistant Attorney General. Respondent proceeded on the allegations set forth above and called Michael Gould, Honorable Robert Simms, Edward Cooper, C. Rauch Wise, Esquire, Richard Warder, Esquire, and Titus Rouse to the stand. Petitioner called John Redman. Respondent introduced fourteen exhibits and provided a Memorandum of

Law to the Court addressing cases involving post conviction relief stemming from a guilty plea.

Thereafter, the Honorable Perry H. Gravely requested Petitioner propose an Order of Dismissal. Upon receipt of the proposed Order of Dismissal, Respondent's counsel sent a letter to Judge Gravely detailing concerns with the Order on October 6, 2017. On December 1, 2017, an Order of Dismissal was signed and filed. Respondent, through counsel, received notice of entry of the Order on December 11, 2017. Thereafter, Respondent, through counsel submitted a Rule 59(a) and (e), Motion via mail to the Honorable Perry H. Gravely, the Greenville County Clerk of Court and Petitioner on December 19, 2017. As acknowledged by the Greenville County Clerk of Court the Motion was erroneously returned to counsel, and it was resubmitted and filed on January 8, 2018.

After careful reconsideration of Respondent's Motion, the Honorable Perry H. Gravely issued a request detailing his concerns with the standing Order and asking Respondent's counsel to propose an Order Granting Application for Post Conviction Relief. An Order was submitted as requested for the lower court's review and consideration. Thereafter, the Honorable Perry H. Gravely issued an Order Granting Application for Post Conviction Relief on March 28, 2018, which was filed on March 29, 2018.

On or about April 10, 2018, Petitioner filed a Notice of Intent to Appeal. Petitioner has received an extension for filing the Petition for Writ of Certiorari and Appendix.

GENERAL SESSIONS SUMMARY

On May 27, 2012, Respondent was arrested for trafficking in heroin, twenty-eight grams or more, at a hotel located on McPrice Street in Greenville, South Carolina.[1] A preliminary hearing was conducted in front of the Honorable Robert Simms on July 12, 2012.[2] Respondent was present and he was represented by Richard H. Warder, Esquire. The State was represented by Brennan Townsend, Esquire, of the Thirteenth Judicial Circuit.

Deputy Michael Giovanni was the sole witness for the State. Deputy Giovanni offered testimony regarding the tip that was received and the surveillance conducted on May 27, 2012. Preliminary Hearing pp. 5-6. He saw a white Mercedes pull into the hotel location, decided to check the tag, circled back around the parking lot and found the car had been abandoned. Preliminary Hearing pp. 7-8. He requested additional officers and a canine unit to respond to the scene. Preliminary Hearing p. 8.

Thereafter, additional officers arrived, including a canine unit that began a track. Preliminary Hearing p. 8. He explained that he did not see Respondent jump out of the car. Preliminary Hearing p. 8. About fifteen minutes into the track, he saw Respondent with a towel around his neck head into the hotel office area. Preliminary Hearing p. 9. He recalled the canine officer speaking with Respondent during the track near the pool area. Preliminary Hearing p. 17, lns. 14-21.

He later stated that it was about fifteen minutes into the track that the drugs were found. Preliminary Hearing p. 16. He explained where the drugs were found and that "the

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[1] Respondent was also issued tickets for the offenses of habitual traffic offender and driving under suspension, which were not subject of the present PCR Application.

[2] At the evidentiary hearing, the preliminary hearing transcript was admitted as Applicant's Exhibit 1.

narcotics were left there in a bag, and his slippers were also there." Preliminary Hearing p. 11, ln. 17- p. 12, ln. 12. He detailed his conversation with Respondent and decision to detain him.

When cross-examined about his testimony on direct that Respondent claimed ownership of the slippers, he testified: "He did not admit possession of those particular slippers. He said that he had run out of his slippers, and, of course, he denied having any association with narcotics directly to me. Now what he told the narcotics investigator or anybody else, I don't know." Preliminary Hearing pp. 17, lns. 4-11. He also testified that he did not show the slippers to Respondent. Preliminary Hearing p. 16, ln. 20 – p. 17, ln. 1.

He obtained a search warrant for Respondent's hotel room. Preliminary Hearing p. 11. No evidence was found in the hotel room. Preliminary Hearing p. 11, lns. 9-13.

At the conclusion of the hearing, Judge Sims found probable cause to bind the case over. Preliminary Hearing p. 23.

Subsequently, Respondent was indicted for the offense of trafficking heroin by the Greenville County Grand Jury (Indictment No. 2012-GS-23-06017). On August 6, 2014, Respondent was called to trial in Greenville County in front of the Honorable Edward W. Miller and a jury. Respondent was represented by Richard H. Warder, Esquire, and C. Rauch Wise, Esquire. The State was represented by Joyce K. Monts, Assistant Solicitor.

After the jury was selected and sworn, a Jackson v. Denno hearing was conducted. Transcript p. 27. During the Jackson v. Denno hearing, the State called

Michael Giovanni, John White, and John Cannon to the stand. The hearing concluded with the following discussion:

Court:	Well, anything you want to tell me? What is it you want to suppress?
Mr. Wise:	The statement we, originally, thought that was in custody we thought was originally more damming than what they testified to.
The Court:	I didn't really hear a confession.
Mr. Wise:	Well, I don't think it necessarily has to be a confession. But it just was not as we originally thought it was.
The Court:	So, you don't have any objection?
Mr. Wise:	No.

Transcript p. 53, ln. 21 – p. 54, ln. 7.

Following the Jackson v. Denno hearing, the State agreed to exclude character evidence and a discussion was put on the record regarding "the tip." Transcript pp. 54-56. A bench conference was conducted, and the record reflects that counsel requested the opportunity to speak with the Solicitor and to speak with Respondent. Transcript p. 57. Upon return to the courtroom, Judge Miller provided Respondent with his opinion of when a defendant should proceed to trial, after which the guilty plea proceeding began. Transcript pp. 58-9.

During the plea proceeding, the Assistant Solicitor stated

> Officers did run a K9 around the car, which alerted, but they didn't find anything inside the car. The tracking dog did follow the Defendant's trail around the apartment -- hotel complex, and did end up where the cocaine – excuse me, heroin and slippers were.

Transcript p. 62, lns. 15-19. The plea was accepted, and Applicant was sentenced to a term of twelve years. Transcript p. 67. A direct appeal was not filed on Respondent's behalf.

SUMMARY OF THE EVIDENTIARY HEARING TESTIMONY

At the evidentiary hearing, Respondent testified, and Respondent, through counsel, called the following witnesses: Michael Gould, Robert Sims, Edward Cooper, C. Rauch Wise, Esquire, and Richard Warder Esquire. Petitioner called John Redman. Below is a summary of the relevant portions of evidentiary hearing transcript, as is also addressed by the lower court in rendering his decision in the Order Granting Application for Post Conviction Relief.

At the start of the evidentiary hearing, Michael Gould, of New York, was called to the stand via SKYPE, pursuant to prior order of the PCR court. PCR p. 12. Mr. Gould was properly sworn and qualified as an expert in the area of canine procedure and deployment.[3] PCR p. 20. Mr. Gould identified the materials he had been provided and addressed the photographs, which were admitted into evidence. PCR pp. 21-24. Mr. Gould acknowledged that he reviewed all law enforcement reports from the case, and he provided his initial general opinion, as follows:

> So, I saw a very contaminated scene. Not only was it contaminated by humans, but another dog. And, frankly, one thing I want to say, I don't think that anything that I have read, including a training record, I don't think anybody intentionally did anything wrong, but I see a crime scene, as I said, that was chaotic and confused. And things should have been slowed down a little bit.

[3] Mr. Gold was qualified over the State's objection. PCR pp. 19-20.

PCR p. 25, lns. 6-12. He also provided further explanation regarding his concerns with the contamination of the scene. PCR pp. 26, 30, 32, 36. He stated: "So dogs can be confused just like humans can be confused." PCR p. 36, lns. 24-25.

Mr. Gould addressed the two dogs utilized (Nero and Duke), and explained that Nero was a utility or multi-purpose dog and Duke was a single purpose human scent detection dog. PCR p. 25. He expressed concerns with the presence of two canines at the scene, the handling of the canines and the reports generated from the scene. PCR p. 28-30, 33, 42, 43. He explained how a canine is truly a scientific instrument and even though the canines are capable of "amazing things" they have "definite limitations." PCR p. 27. He further explained that a canine's value is really tapped into in a nighttime scene. PCR pp. 27-28.

Throughout his testimony, Mr. Gould opined that he did not understand completely why the canines were utilized and he found no connection or nexus between the canine, Respondent, and the drugs that were located by the officer. PCR pp. 28, 40-41. He addressed the drop scent procedure that was utilized and the dogs trail; he opined that he could not determine what the dog was trailing. PCR p. 35-39. He noted that the drugs were found in a natural path and he found nothing in Officer Redman's report that the dog's behavior changed or he alerted. PCR p. 38, 40. He opined that the track was not reliable. PCR p. 41. In sum, he found no value the canines brought to the scene, he stated: "My overall conclusion that the K-9 teams, both K-9 teams, didn't add value or scientific evidence to the entire scene." PCR pp. 44, 45, lns. 15-18.

He agreed that he would have been willing to provide his services to counsel if contacted prior to Respondent's trial, and he would have rendered the same opinions.

PCR p. 44. He further agreed that he would have been willing to testify at trial, if needed. PCR pp. 44-45. When asked about the Assistant Solicitor's statement regarding the utilization of the canines during the plea proceeding, and, specifically, if he agreed that the canine tracked from Respondent to the drugs, he simply stated: "No." PCR p. 47, lns. 11-19.

When C. Rauch Wise, Esquire took the stand, he recalled being hired by Respondent well in advance of trial to join Mr. Warder in his representation of Respondent. PCR p. 79. He identified a letter he wrote Mr. Warder, which included a brief he had written in a case involving circumstantial evidence that was not sufficient to convict. PCR pp. 79-80. He explained that he sent Mr. Warder the brief because he found it analogous to the slipper evidence in the instant case. PCR p. 81.

He indicated that he was now aware that he only received a portion of the discovery from Mr. Warder, but he was aware that no matches to Respondent's prints were found on the drugs and no DNA was reported on the slippers. PCR pp. 83, 102, 112-113. In particular, he explained that the lack of matching prints on the drugs was similar to the case brief he provided Mr. Warder. PCR p. 83.

When asked, he responded that most of his cases go to trial, and it was his understanding that he was brought on to get the case ready for trial and "appeal if necessary too." PCR p. 83, lns. 7-13. He stated that they were preparing the case for trial. PCR p. 83, lns. 5-6. He recalled a plea was never seriously discussed until the day Respondent entered a guilty plea. PCR p. 83.

He recounted meeting with Respondent for several hours in Edgefield prior to trial, and he remembered that the canine evidence was not discussed. PCR pp. 85-6. The

first time he heard about the canine evidence was the day of trial when the Assistant Solicitor told him "that the drug dog had tracked from the car to where the drugs were." PCR p. 86, lns. 8-14. He explained that from his viewpoint the Solicitor's statement was a game changer. PCR p. 86, lns. 21-25. Simply put, he thought the jury would believe that Respondent had the drugs. PCR p. 86, lns. 21-25.

He recalled seeing Officer Redman's report regarding the canine track for the first time the day of trial. PCR p. 87, 112-113. He further recalled reviewing it in conjunction with a map in his office with PCR counsel and determining that the track was not a direct route from the car to the drugs in contrast to what he believed on the day of the plea. PCR pp. 87-88. He explained that he would have raised the issue to co-counsel if he had reviewed the report prior to trial and looked into getting a canine expert. PCR p. 89. He was present for Mr. Gould's testimony and stated that he would have utilized him as an expert at trial. In explanation, he addressed his current concern that the canine possibly was not even tracking Respondent's scent and that he did not get a clear impression from hearing Mr. Redman's testimony at the evidentiary hearing that the dog tracked to the drugs. PCR p. 89, ln. 24 – p. 90, ln. 16.

After being provided a copy of a letter he wrote Respondent shortly after his plea, he explained that he letter reiterated the information he was provided by the Solicitor and his belief that due to the canine evidence, as he understood it on the day of trial, Respondent was likely to be convicted. PCR pp. 91-93. Then, he explained that based upon the expert testimony and his current understanding of the canine evidence, the case was much more "defensible" and he could "easily defend his (Respondent's) decision to go to trial." p. 93, ln. 4 to 94, ln. 18.

In sum, he stated the canine evidence was the "key thing in the whole thing." PCR P. 96, lns. 2-3. When asked about essentially abandoning the Jackson v. Denno hearing, he explained that he was not aware of that canine evidence at that juncture or he would not have abandoned it. He further explained his interpretation of the importance of the slipper and canine evidence, as follows:

> It was a combination of the testimony that the tracking dog went to the drugs and the admission of the slippers were his, those two factors together clearly, I think, gets it to the jury and makes it a very difficult case to win. Eliminate the dog, the slippers are just not that important.

PCR p. 107, lns. 18-22.

On cross-examination, Mr. Wise was asked if he would have advised Respondent differently, and he responded: "I would probably advise him differently." PCR p. 115, lns. 13-16. He explained that the dog tracking "is not as strong as I was led to believe." PCR p. 115, lns. 17-19. He also reiterated his prior testimony regarding the weakness of the slipper evidence standing alone, he explained: "I can deal with the slippers. I am not worried about that – Slippers coupled with dog tracking does concern me." PCR p. 115, lns. 20-25. He also explained that he was confident the tip was not going to come in as evidence. PCR p. 116. On redirect, he conceded that he was not prepared on the day of trial to defend against the purported canine evidence. PCR p. 117.

Following Mr. Wise, Richard Warder, Esquire, was called to the stand. PCR p. 118. After being asked about being retained, he answered that he remembered that Respondent came to him. PCR p. 119, lns. 2-7. He explained that he began discussing pursuing a plea with Respondent, but Respondent wanted to go to trial. PCR p. 119-120. At that juncture, Respondent wanted a second opinion, and Mr. Warder recommended Mr. Wise. PCR pp. 119-120. He recalled having a meeting with Respondent and Mr.

Wise, and he stated that he thought they went over "everything we had." PCR p. 120, lns. 17-22.

When asked about the preliminary hearing, he indicated that must have handled it from what he had heard. PCR pp. 120-121. Specifically, when asked about questions he posed at the preliminary hearing, he stated that he likely did not have complete discovery and he may have been fishing. PCR p. 121-122. He could not recall what he did to look into obtaining the video referenced at the preliminary hearing that was destroyed prior to trial. PCR pp. 121-123.

Regarding the Jackson v. Denno hearing, he indicated that he could not remember why they chose to not make an objection. PCR pp. 127-8. He followed up by explaining he had a "standard seventy three year old memory." PCR p. 128, lns. 3-8.

He explained that the trial strategy was to "get a directed verdict because of the lack of direct evidence and it was a circumstantial case." PCR p. 124, lns. 9-11. Based upon his memory, he believed the case turned in the direction of a plea following a bench conference where the Judge recommended that they speak with the Solicitor. PCR p. 12.

After that conference, he advised Respondent it was "time to fold them" and take a plea.[4] PCR p. 125, lns. 7-11. He outlined the evidence that was not favorable and said he had not given much "weight on the day" since he assumed the dog track had not produced anything. PCR p. 126. But, he explained the day of the trial the Solicitor told him "that her officer that day was going to say that he trailed – the dog trailed him right to my client." PCR p. 126, lns. 13-15. He conceded that he had not obtained the dog records nor prepared to cross-examine the officer. PCR pp. 126-127.

[4] On cross-examination, he testified that he thinks he would advise Respondent to take the plea "today." PCR p. 132, lns. 8-19.

When called to the stand, Respondent recalled retaining Mr. Warder and his limited interactions with him prior to the retainer of Mr. Wise. PCR pp. 136-137. He recalled reviewing some discovery items during a joint meeting with both attorneys. PCR p. 137. He recalled Mr. Wise doing most of the talking during their meeting. PCR p. 137.

He made it clear that his attorneys were well aware that he wanted a trial, and he explained that would not have hired two attorneys known for handling trials if he wanted to pursue a guilty plea. PCR pp. 137-138, 156. He confirmed that he intended to go forward with a trial on August 6, 2014. PCR p. 138. He explained that he had just turned down a plea and the plea really came out of the blue. PCR p. 156, lns. 1-14. He further explained that he entered the plea solely on the advice of counsel. PCR p. 156, lns. 10-14.

Regarding the discovery he had reviewed on his own and/or with counsel prior to trial, he explained that counsel did not review the preliminary hearing transcript with him nor was he aware of the canine evidence. PCR pp. 138-139. As was stated by Mr. Wise, he affirmed that any matters involving canines were not discussed with him prior to his trial. PCR pp. 138-139. He remembered seeing the canine while at the pool, but he was never approached by the canine. PCR p. 154-155.

Respondent confirmed that he would have provided funds for a canine expert if his counsel would have told him one was needed to prepare for trial. PCR p. 151-152. He also confirmed that he would have wanted an expert utilized as was done for his PCR. PCR p. 152.

Respondent was directed to his comments during the plea, and he explained that he was trying to deny ownership of the slippers and "everything revolving around the case." PCR pp. 152, 153, lns. 15-18. He explained that he admitted to ownership of the

drugs since counsel told him "you have to own up to this stuff or you not going to get your plea." PCR p. 153, lns. 15-16.

At the conclusion of his direct testimony, he reiterated that he did not want to plead guilty and he wanted to proceed to trial. PCR pp. 158-159. He also remembered his attorneys' outlook on trial being changed due to what was communicated by the Solicitor regarding the dog evidence and entering the plea due to the advice of his attorneys. PCR pp. 158-159.

As the sole witness for the State, John Redman was called to the stand. He explained his certification and training, along with his involvement in the case. PCR pp. 56-58. He stated that he did not have his report, so he qualified his recollection as "vague." PCR p. 58. He briefly recalled a second canine officer being at the scene, that the car was running and a tip had come into the front desk. PCR pp. 58-9.

On cross-examination, he responded that he did not review the canine records provided in discovery prior to the hearing. PCR p. 60. He identified his report, which was admitted into evidence. PCR p. 61. When asked whether or not the canine alerted, he provided a lengthy response, which he concluded by saying: "There was no way he could alert to him because he wasn't there anymore." PCR p. 62. He explained that his dog's "true alert" would be to "either jump on the person or sit next to the person." PCR p. 64, lns. 18-24. Specifically, he stated: "He never alerted. He didn't have the opportunity to alert. There was nothing for him to alert to." PCR p. 77, lns. 6-7.

When asked if he was confident that his dog was trailing Respondent, he explained that his dog was trailing the scent from the gauze pad taken from the steering wheel of the car. PCR pp. 65-66, 68. In response to why he did not obtain a scent directly

from Respondent, he explained that he did not know that Respondent was on the scene. PCR pp. 65-66. He was asked about his interactions with the Solicitor's Office prior to the trial, and he stated that he was unsure if he would have stated that his dog was "able to track from the Defendant to the drugs." PCR p. 67, lns. 8-20. He explained that he stopped the track upon location of the drugs and the dog did not trail to Respondent's location on the scene. PCR p. 68, 76. He later stated, "We went to the location where the Defendant was." PCR p. 69, lns. 12-15. When asked when that occurred, he responded: "When we stopped." PCR p. 69, lns. 15-16.

LOWER COURT'S FINDINGS

In pertinent part, the lower court held as follows:

As a threshold matter, this Court must address the credibility of the witnesses. This Court is concerned that Mr. Warder seemed to have limited recall and admittedly had a limited independent recollection. On the other hand, Mr. Wise had a clear independent recollection of the events in question. Therefore, based upon the firsthand impression of the attorneys' testimony, this Court finds the testimony of Mr. Wise highly credible and the testimony of Mr. Warder limited in credibility. This Court also finds the testimony of Mr. Gould highly credible and the testimony of Applicant credible.

This Court finds the testimony of Mr. Redman credible, but this Court makes his findings with the following facts in mind. Mr. Redman admitted he had not reviewed anything pertaining to the case prior to his testimony, and the State failed to qualify Officer Redman as an expert pursuant to State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009) or establish any of the White factors for the admissibility of the canine evidence

he addressed.[5] As a result, this Court is concerned with the weight that should be given to Mr. Redman's testimony and assigns limited value to his testimony.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee criminal defendants the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). In a PCR stemming from a guilty plea, an applicant alleging a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). Therefore, an applicant that entered a plea on the advice of counsel may only attack the voluntary nature of that plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, applicant would not have pled guilty and insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366 (1985), Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000). In Hill, the Supreme Court of the United States made it clear that the "voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." 474 U.S. at 57, 106 S.Ct. at 369.

In Hill and Padilla v. Kentucky, 559 U.S. 356, 130 S.Ct. 1473 (2010), the Supreme Court of the United States examined the role of advising a client about a plea

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[5] In State v. White, 382 S.C. 265, 272, 676 S.E.2d 684, 687 (2009), the South Carolina Supreme Court held, as follows:

To provide uniformity, we think it advisable to adopt the following evidentiary framework to guide our bench and bar concerning dog tracking evidence. By extrapolating from our case law and other authorities, we conclude a sufficient foundation for the admission of dog tracking evidence is established if (1) the evidence shows the dog handler satisfies the qualifications of an expert under Rule 702; (2) the evidence shows the dog is of a breed characterized by an acute power of scent; (3) the dog has been trained to follow a trail by scent; (4) by experience the dog is found to be reliable; (5) the dog was placed on the trail where the suspect was known to have been within a reasonable time; and (6) the trail was not otherwise contaminated. See State v. Childs, 299 S.C. at 476-77, 385 S.E.2d at 842-43; State v. Brown, 103 S.C. at 443-45, 88 S.E. at 22-23; see also State v. Taylor, 337 N.C. 597, 447 S.E.2d 360, 368-69 (1994); Jay M. Zitter, Annotation, Evidence of Trailing by Dogs in Criminal Cases, 81 A.L.R. 5th 563 (2000).

offer and ensuing guilty plea as was discussed in Missouri v. Frye, 132 S. Ct. 1399, 1405-06 (2012)(emphasis added), as follows:

> Hill established that claims of ineffective assistance of counsel in the plea bargain context are governed by the two-part test set forth in Strickland. See Hill,supra, at 57, 106 S. Ct. 366, 88 L. Ed. 2d 203. As noted above, in Frye's case, the Missouri Court of Appeals, applying the two part test of Strickland, determined first that defense counsel had been ineffective and second that there was resulting prejudice.
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> In Hill, the decision turned on the second part of the test. There, a defendant who had entered a guilty plea claimed his counsel had misinformed him of the amount of time he would have to serve before he became eligible for parole. But the defendant had not alleged that, even if adequate advice and assistance had been given, he would have elected to plead not guilty and proceed to trial. Thus, the Court found that no prejudice from the inadequate advice had been shown or alleged. Hill, supra, at 60, 106 S. Ct. 366, 88 L. Ed. 2d 203.
> In Padilla, the Court again discussed the duties of counsel in advising a client with respect to a plea offer that leads to a guilty plea. Padilla held that a guilty plea, based on a plea offer, should be set aside because counsel misinformed the defendant of the immigration consequences of the conviction. The Court made clear that "the negotiation of a plea bargain is a critical phase of litigation for purposes of the Sixth Amendment right to effective assistance of counsel." 559 U.S., at ___, 130 S. Ct. 1473, 176 L. Ed. 2d 284, 298. It also rejected the argument made by petitioner in this case that a knowing and voluntary plea supersedes errors by defense counsel. Cf. Brief for Respondent in Padilla v. Kentucky, O. T. 2009, No. 08-651, p. 27 (arguing Sixth Amendment's assurance of effective assistance "does not extend to collateral aspects of the prosecution" because "knowledge of the consequences that are collateral to the guilty plea is not a prerequisite to the entry of a knowing and intelligent plea").

Here, Applicant's allegations are best addressed in a three part discussion, as follows: 1. Whether counsel was ineffective for his failure to investigate and handle pre-trial / trial matters, not including the canine evidence; 2. Whether counsel was ineffective for failure to ensure that Applicant had a full understanding of the charge he was pleading to and failure to ensure that the oral pronouncement of such matched the sentencing sheet; and 3. Whether counsel was ineffective for advising Applicant to enter a guilty

plea due to the canine evidence when counsel did not have a full understanding nor had prepared to defend against the canine evidence prior to trial.

The Issue on which relief was granted, is addressed as follows:

> Counsel was ineffective for advising Applicant to enter a guilty plea due to the canine evidence when counsel did not have a full understanding nor had prepared to defend against the canine evidence prior to trial.

"Where, as here, a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice 'was within the range of competence demanded of attorneys in criminal cases.'" Hill v. Lockhart, 474 U.S. 52, 56 (1985) (quoting McMann v. Richardson, 397 U.S. 759, 771 (1970)). "[T]he defendant can show prejudice by demonstrating a 'reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.'" Lee v. United States, 137 S. Ct. 1958, 1965 (2017) (quoting Hill, 474 U.S. at 59).

As was testified to at the evidentiary hearing and set forth in the letter written by Mr. Wise shortly after the entry of the plea, Applicant entered his guilty plea as a result of counsel's advice to forego the trial due to the strength of the evidence, specifically the canine evidence. The advice to forego trial was in complete contrast to counsel's pre-trial strategy to obtain a directed verdict due to the insufficiency of the evidence. This Court finds as a result of thorough review of the record, testimony and evidence offered that this advice was deficient and amounts to ineffective assistance of counsel.

The record supports a finding that counsel was ineffective due to counsel's failure to review and discuss the canine evidence, lack of understanding regarding the canine evidence, failure to utilize a canine expert, and advice to forego trial due to the canine

evidence.[6] At the evidentiary hearing, Mr. Wise testified that he was unaware of the canine evidence until he was told about it by the Solicitor at trial, that he would have used the canine expert called, and he would not have advised Applicant to forego trial now that he had a proper understanding of the canine evidence and the case as a whole.[7] PCR pp. 86-94, 99-100, 106-107, 113-117. Constitutionally defective performance is found when defense counsel offers erroneous advice concerning an issue that is central to the defendant's decision to plead guilty. Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991). This Court cannot ignore the admitted erroneous advice that caused Applicant to abandon trial and enter a guilty plea. Plea counsel's advice, which was not based upon a proper review of the discovery or utilization of an expert but solely upon the Solicitor's view of the evidence, was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985) (quoting McMann v. Richardson, 397 U.S. 759, 771 (1970)).

Turning to the prejudice prong, it is clear that Applicant wanted to proceed to trial and only chose to forego trial based upon the advice of counsel. This finding is supported

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[6] As summarized above and reflected in the evidentiary hearing transcript, Applicant called Michael Gould, and he was qualified as an expert in the area of canine procedure and deployment. PCR p. 20. Based upon the opinions and testimony offered by Mr. Gould, this Court is persuaded that counsel's advice was deficient and that counsel was ineffective for failing to utilize Mr. Gould to prepare to defend against the canine evidence. See Reeves v. State, 415 S.C. 366, 782 S.E.2 747 (Ct. App. 2015) (Reversing the denial of post conviction relief reasoning that trial counsel was deficient for failing to discuss with Reeves hiring a medical expert to more thoroughly challenge the State's medical evidence presented at trial and finding that trial counsel did not present a legitimate trial strategy for failing to consult with an expert before trial or call an expert at trial.). Here, counsel did not provide a trial strategy for failure to utilize an expert. On the other hand, counsel admitted that an expert should have been utilized and stated that he would have utilized Mr. Gould.

[7] As detailed above, Mr. Warder testified that he thought they went over all the discovery during the joint meeting with Applicant, but both Applicant and Mr. Wise recalled the canine evidence and reports were not discussed. Mr. Warder also explained that the Solicitor's comments about the canine evidence were different than the weight he had given the evidence, and he had not prepared to cross-examine the officers about the canine evidence. PCR pp. 120, 125-127.

by the following evidence in the record before this Court. As testified to at the evidentiary hearing, Applicant hired a second attorney (Mr. Wise) who stated that he was brought on board with the belief that the case was proceeding to trial. The case did proceed to trial, with the jury being sworn and pre-trial motions being made. The trial turned into a guilty plea only after Applicant met with his attorneys and received the advice discussed above. Most importantly, Mr. Wise, Mr. Warder and Applicant testified that Applicant wanted to proceed to trial and only chose to enter a guilty plea after their meeting regarding their discussion with the Solicitor about the canine evidence. At the evidentiary hearing, Applicant repeatedly stated that but for the advice of counsel he would have proceeded to trial and wants the opportunity to proceed to trial. PCR pp. 137-8, 156, 159. This Court finds this testimony to not be merely self-serving, but it is supported by the testimony of both attorneys and the record before this Court. Therefore, this Court finds that prejudice has sufficiently been established.

As a result of these findings, this Court finds a new trial must be granted.

GROUNDS IN SUPPORT OF REQUEST FOR BOND

Rule 243(k), South Carolina Appellate Court Rules, provides the following guidance:

> The authority to grant bail will be exercised with caution and only in exceptional cases. In deciding whether to exercise the discretionary authority to admit an applicant to bail, the following factors will be considered: the probability the applicant will prevail on appellate review and the nature of the relief he or she will receive; the seriousness of the criminal offense committed; the danger the applicant may pose to the community if he or she is released; the likelihood that the applicant may flee if released; and the character and circumstances of the applicant.

Respondent would respectfully request that this Court exercise discretion and allow him to be admitted to bail during the pendency of the State's appeal and will address each of the factors as follows.

Respondent submits that the probability that he will prevail on appeal is evidenced by the clear and well-reasoned findings of the lower court, which are fully supported by evidence in the record.[10] At the evidentiary hearing, not only did Respondent offer an expert in support of his claims of ineffective assistance, but the testimony of Attorney C. Rauch Wise also amounted to an admission of ineffective assistance of counsel. Respondent testified and counsel affirmed that he wanted to proceed to trial, that C. Rauch Wise, Esquire, was retained to assist Richard H. Warder, Esquire, since the case was on a trial track and that trial was only abandoned after counsel rendered deficient advice regarding the strength of the canine evidence. See Robinson v. State, Op. No. 27762 (S.C. Sup. Ct. filed Feb. 7, 2018). In sum, Respondent submits that there is ample evidence to support the lower court's findings on appellate review.

Turning to the nature of relief and the seriousness of the offense, Respondent understands that he was charged with trafficking heroin and entered a plea, pursuant to counsel's erroneous advice, to trafficking heroin greater than four grams. Respondent was sentenced by the Honorable Edward W. Miller to a term of twelve years.[11] If Respondent remains incarcerated during the pendency of the State's appeal, he may serve

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[10] As is addressed in the procedural history, the Honorable Perry H. Gravely initially issued an Order of Dismissal. Yet, after considering the controlling case law and record, he determined that his decision needed to be rescinded. Respondent submits that the lower court's acknowledgment that the Order of Dismissal should not stand supports the strength of the resulting Order Granting Application for Post Conviction Relief and strength of said Order on appeal.

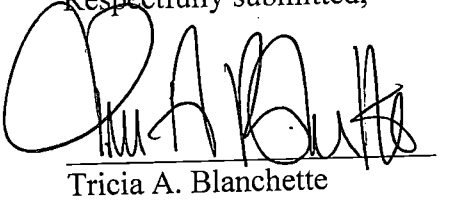
[11] As a result of his sentence, Respondent is barely over the ten year limit for submitting this Petition to the lower court.

nearly all of his active sentence. Nevertheless, due to his original desire to go to trial, Respondent seeks the relief granted by the lower court – a new trial.[12]

Finally, to address the absence of danger Respondent would pose to the community if he is released, the likelihood Respondent may flee if released, and the character and circumstances of Respondent, the following are attached: GED Diploma; a letter from his Unit Counselor; a letter in support from Tameka Thomas, Nystaysia Washington, and from Minister Antoine D. Paden; an employment letter from Ace of Shine, LLC, and Thomas L. Johnson, Jr.; and a letter from Respondent. As is addressed in Respondent's letter, he is begging this Court for the opportunity to return to his family and community that he is committed to bettering during the pendency of the State's appeal and for the remainder of his life.

Therefore, based upon the foregoing, Respondent respectfully requests that this Court grant his Petition for an Appellate Bond Pursuant to Rule 240, SCACR, and Rule 243(k), SCACR.

Respectfully submitted,



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(803) 908-3266
Attorney for Respondent

July 23 2018

[12] The South Carolina Department of Corrections is currently showing a max out date of October 2024.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Post Conviction Relief

Perry H. Gravely, Circuit Court Judge

Appellate Case No.: 2018-000627

Titus L. Rouse, Respondent,

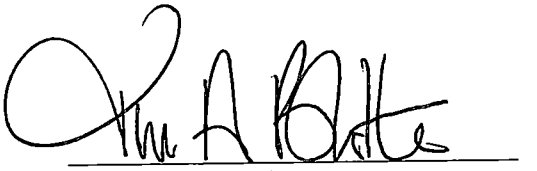
vs.

State of South Carolina Petitioner.

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for Respondent, hereby certify that I hand delivered this 23rd day of July 2018 a Petition for Appeal Bond to DeShawn Mitchell of the Attorney General's Office, at:

Office of the Attorney General
Att: DeShawn Mitchell, Assistant Attorney General
1000 Assembly Street, 5th Floor
Columbia, SC 29201



Tricia A. Blanchette
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July 23, 2018

LAW OFFICE OF

TRICIA A. BLANCHETTE

RECEIVED

JUL 23 2018

S.C. SUPREME COURT

July 23, 2018

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

RE: Titus L. Rouse v. State; App. Case No.: 2018-000627

Dear Sir:

Attached for filing, please find an original and six copies of a Petition for Appeal Bond, with attachments and Certificate of Service, in the above referenced PCR appeal.

Please contact me if any additional information is needed. I appreciate your assistance with this matter.

Yours truly,

Tricia A. Blanchette
Attorney at Law

cc: DeShawn Mitchell, Assistant Attorney General
Titus Rouse

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803.908.3266 • blanchettelaw@gmail.com