

Clarissa Warren Joyner

Attorney at Law

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November 21, 2016

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

RECEIVED

NOV 28 2016

S.C. SUPREME COURT

Re: **Duane Harrison v. State of South Carolina**
Docket No.: 2015-CP-46-1244

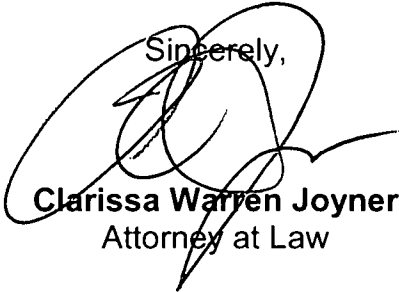
Dear Mr. Shearouse:

Enclosed herewith please find the Notice of Appeal in the above-referenced case. Also enclosed are Proofs of Service of the Notice of Appeal on the Office of the Attorney General, Clerk of Court for York County, and on the Petitioner.

Should you have any questions or need any additional information, please do not hesitate to contact me.

With kind regards, I am

Sincerely,


Clarissa Warren Joyner
Attorney at Law

CWJ/mdc
Enclosures

cc: Duane Harrison

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

NOV 28 2016

APPEAL FROM YORK COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Letitia H. Verdin, Circuit Court Judge

Case No. 2015-CP-46-1244

State of South Carolina, Respondent,

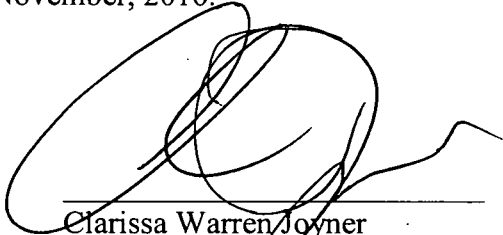
v.

Duane Harrison, #241473 Petitioner.

NOTICE OF APPEAL

Duane Harrison appeals the judgment of the Honorable Letitia H. Verdin denying his application for post conviction relief issued on the 7th day of November, 2016 and served on counsel on the 9th day of November, 2016.

Dated: November 21, 2016



Clarissa Warren Joyner
Attorney for the Appellant
Post Office Box 1724
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Other Counsel of Record:
Justin James Hunter
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

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NOV 28 2016

APPEAL FROM YORK COUNTY
Court of Common Pleas

S.C. SUPREME COURT

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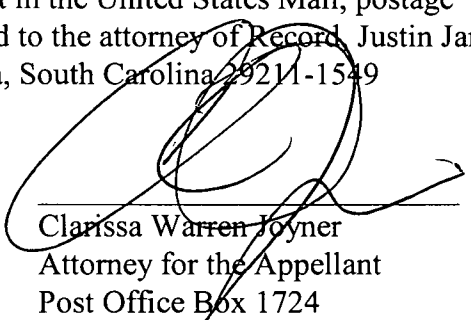
v.

Duane Harrison, #241473 Petitioner.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the South Carolina Attorney General's Office by depositing a copy of it in the United States Mail, postage prepaid, on November 21, 2016, addressed to the attorney of Record, Justin James Hunter, Post Office Box 11549, Columbia, South Carolina 29211-1549

Dated: November 21, 2016


Clarissa Warren Joyner
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Other Counsel of Record:
Justin James Hunter
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Columbia, SC 29211-1549

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

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NOV 28 2016

S.C. SUPREME COURT

APPEAL FROM YORK COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2015-CP-46-1244

State of South Carolina, Respondent,

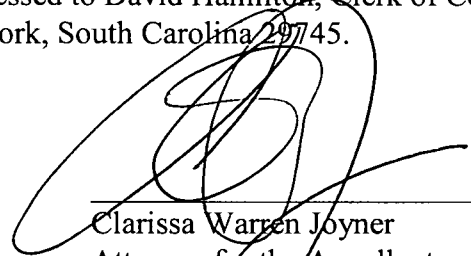
v.

Duane Harrison, #241473 Petitioner.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the York County Clerk of Court's Office by depositing a copy of it in the United States Mail, postage prepaid, on November 21, 2016, addressed to David Hamilton, Clerk of Court for York County, Post Office Box 649, York, South Carolina 29745.

Dated: November 21, 2016



Clarissa Warren Joyner
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Other Counsel of Record:
Justin James Hunter
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Columbia, SC 29211-1549

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2015-CP-46-1244

State of South Carolina, Respondent,

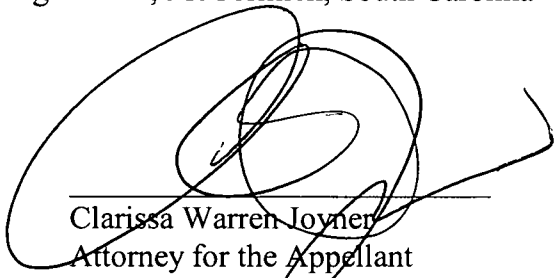
v.

Duane Harrison, #241473 Petitioner.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Duane Harrison by depositing a copy of it in the United States Mail, postage prepaid, on November 21, 2016, addressed to Duane Harrison, SCDC#: 241473, McCormick Correctional Institution, 386 Redemption Way, Building F2-124, McCormick, South Carolina 29899.

Dated: November 21, 2016



Clarissa Warren Joyner
Attorney for the Appellant
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Other Counsel of Record:
Justin James Hunter
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FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2015CP461244

Duane Harrison
 State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC (Vol. Nonsuit);
 - Other: Application for Post-Conviction Relief is denied and dismissed with prejudice.
- Rule 43(k), SCRPC (Settled);
- ACTION STRICKEN (CHECK REASON):
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other:
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other:

FILED-RECEIVED
 2016 SEP 19 PM 12:4
 DAVID HAMILTON
 CLERK
 YORK COUNTY, SC

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:
ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk:

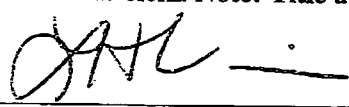
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.



Circuit Court Judge

2162

Judge Code

9/16/2016

Date

For Clerk of Court Office Use Only

This judgment was entered on **September 19, 2016**, and a copy mailed first class or placed in the appropriate attorney's box on **September 19, 2016**, to attorneys of record or to parties (when appearing pro se) as follows:

Clarissa Warren Joyner 1259 Amelia St., Ste., A PO Box
1724 Orangeburg, SC 29115

Justin James Hunter PO Box 11549 Columbia, SC
29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)
 Duane Harrison,)
 S.C.D.C. #241473,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 OF THE SIXTEENTH JUDICIAL CIRCUIT

2015-CP-46-1244

ORDER OF DISMISSAL

FILED-RECEIVED
 2016 SEP 19 PM 12:46
 DAVENHAMPTON
 C.C. CLERK
 YORK COUNTY, S.C.

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed April 29, 2015. An evidentiary hearing into the matter was convened on August 1, 2016, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Clarissa Joyner, Esquire. Justin J. Hunter, Esquire, of the South Carolina Attorney General's Office represented the Respondent. At the hearing, Applicant testified on his own behalf. Todd Rutherford, Esquire testified. Applicant's father, Arthur Harrison, testified. Danielle Dowdell also testified. This Court also had before it a copy of the records of the York County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined with the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the May 2014 term of the York County Grand Jury for Trafficking in Cocaine over 400 grams (2013-GS-46-2041). Applicant was represented by James Todd Rutherford, Esquire. On September 2, 2014, Applicant pled no contest before the Honorable Lee S. Alford to the lesser

included offense of conspiracy to traffic cocaine, 28-100 grams, first offense. He was sentenced, pursuant to a negotiated sentence, to imprisonment for twelve and one-half years.

Allegations

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

1. Ineffective Assistance of Counsel
 - a. Failure to conduct pre-trial investigation
 - b. Failure to advise applicant that a preliminary hearing was scheduled
 - c. Violation of due process rights to be present at preliminary hearing and examine the evidence.
 - d. Ineffective for advising Applicant to plead no contest
 - e. Failure to file any pretrial brief or motion before advising to plea
 - f. Failure to file a direct appeal

II. SUMMARY OF EVIDENCE PRESENTED AT PCR HEARING

Applicant's Testimony

Applicant testified that he retained Counsel within a month after his arrest. He testified that they met one time at Counsel's office. He testified that during this meeting, the two discussed his case but never discussed the motion for discovery. Applicant testified that they discussed the payment plan and whether or not Applicant would plead guilty or go to trial. He testified that discovery was given to Counsel but Applicant did not go over it with Counsel. Applicant testified that they discussed the weaknesses of his case, and Counsel believed that the State would have a hard time proving conspiracy. Applicant further testified that Counsel never discussed the defense strategy.

Applicant testified that he never discussed his version of events with Counsel. He testified that he felt Counsel needed to know his story but did not discuss it with Counsel since he was not taking the stand. He testified that he told Counsel that he was not in the location

where the drugs were found and never saw the package of drugs. He further testified that no one would tell him why he was being arrested.

Applicant alleged that Counsel was ineffective for failing to prepare for trial. He testified that the State never had a warrant to search the phone and that the warrant's affidavit was fabricated. He testified that the affidavit was fabricated because he did not have any cocaine but Counsel said that the officers were acting in good faith. Applicant also testified that Counsel should have argued that the search warrants lacked probable cause. He testified that Counsel should have argued issues dealing with the chain of custody.

Applicant testified that there was an extensive pretrial hearing concerning the admissibility of cell phone evidence. He testified that he pled because he thought a ruling had been made on the admissibility but testified that the judge never made a ruling.

Applicant testified that he informed Counsel of potential witnesses, including Ms. Dowdell who would testify that Applicant was not at the scene but was in North Carolina. He also testified that he provided the name of another witness who would say that he was not the lookout.

Applicant testified that Counsel never told him about the preliminary hearing. He testified that he told Counsel that he wanted to attend and would have made a difference in the outcome of the preliminary hearing.

Applicant testified that he was never at the location where the drugs were delivered and was only brought there by the police from another location.

Applicant testified that he pled no contest because Counsel did not talk to his alibi witnesses or move to suppress the evidence. He testified that he still wanted to go to trial but Counsel told him that he should plead. Applicant further testified that Counsel told him that if he

pled, he would get a time cut if he helped the police. He testified that he was transported to York County for his meeting to help the police and then to Richland County for another meeting. He testified that he cooperated with police. He testified that he did tell the plea court that he was not promised anything to plead guilty but did not want to tell the court the truth.

Applicant testified that he thought Counsel's representation was negatively affected by money and Applicant's payment. He testified that he told his girlfriend to give Applicant his truck to help pay.

Applicant testified that he was not advised of his right to appeal. He testified that he wanted to appeal and tried to appeal on his own. He testified that his family sent Counsel a text message asking about the appeal.

Arthur Harrison's Testimony

Applicant's father, Arthur Harrison testified at the evidentiary hearing. He testified that he was not at the plea but was present during the conversation about Applicant getting a time cut. He testified that he went with Applicant to one of the meetings but did not take part in it. He testified that he did not think there was enough communication between Counsel and Applicant. Mr. Harrison further testified that Applicant contacted him to talk to Counsel about filing an appeal. He testified that Counsel told him that he had been talking to Applicant. Lastly, Mr. Harrison testified that Counsel told him that Applicant would receive a twenty-five year sentence.

Danielle Dowdell's Testimony

Applicant's girlfriend, Danielle Dowdell, testified that Applicant went to her work in North Carolina on the day of the incident and could not have been the lookout for the drug

delivery. She testified that the State alleged that Applicant had a rental car but that she did not rent a car to be a drug delivery lookout.

Ms. Dowdell testified that she was not present to hear the plea arrangement. She testified that she spoke with Applicant after he spoke with Counsel, and Applicant told her that Counsel told him that he could get his sentence cut in half.

Ms. Dowdell testified that after the plea, Counsel took Applicant's wallet and watch to help pay for his representation. She testified that Applicant told her to give her watch to Counsel as well.

Ms. Dowdell testified that she told Counsel to file a direct appeal but Counsel told her that he was not being paid to file an appeal.

Counsel Todd Rutherford's Testimony

Counsel testified that he has been practicing law for twenty years and has been practicing criminal defense since 1998. He testified that he was hired to represent Applicant.

Counsel testified that the State's alleged facts included that Applicant was the lookout for a cocaine delivery and drove back and forth near the delivery location. He testified that Applicant and his codefendant threw their cell phones after being caught and that the search warrant for their phones was from the day before the incident.

Counsel testified that he and Applicant met several times prior to the plea. He testified that they talked for hours and discussed the evidence, lack of evidence, and defense strategy. He testified that they discussed possible witnesses as well. Counsel testified that they went over Applicant's alibi that he was in North Carolina at the time but it was irrelevant because Applicant was at the delivery house when the drugs were delivered and was caught by police going back and forth in front of the delivery house before fleeing. Counsel testified that there was not much

they could do in challenging the search warrants on the phone and package and Applicant had no standing to challenge the search warrant on the package.

Counsel testified that the preliminary hearing did not make a difference 'because Applicant would have been direct indicted on the charges. Counsel also testified that the State produced all evidence in Applicant's case.

Counsel testified that there was an extensive pretrial suppression hearing. He testified that Judge Alford told him and codefendant's counsel in chamber how he was going to rule on the suppression issue, which prompted Counsel and Applicant to think about pleading. He testified that Applicant was facing a mandatory minimum of twenty-five years had he gone to trial so he talked with Applicant and his family about taking a plea deal. Counsel testified that that he discussed with Applicant the potential twenty-five year mandatory minimum that Applicant was facing. He testified that Applicant did not want to enter a plea until realizing that the suppression motion would fail. Counsel testified that he believed pleading was the best option.

Counsel testified that he was able to negotiate a no-contest plea to a lesser included offense. He testified that a plea waiver form was used and he was present to go over it with Applicant. He testified that he talked to the State about Applicant cooperating to possibly get his sentence lowered. He testified that, after the plea, Counsel arranged for Applicant to be taken to York County to meet with law enforcement but Applicant would not cooperate. Counsel testified that he arranged for Applicant to then be taken to Richland County to make a second attempt at providing information but again did not provide cooperative information. He testified that the federal agents were upset that they went to great lengths to allow Applicant to cooperate only to be provided with no information. He testified that Applicant understood that there was no

guarantee that he would get a reduction in sentence simply by cooperating and knew that he did not have to cooperate. Counsel further testified that Applicant understood by pleading no contest that he was pleading to and would receive a twelve and one-half year sentence, and that any reduction in his sentence would require sufficient cooperation.

Counsel testified that Applicant went back and forth on whether or not he wanted a direct appeal. He testified that they discussed the advantages and disadvantages of a direct appeal. Counsel testified that, in his opinion, the success rate on appealing a negotiated no contest plea was less than zero. He further testified that Applicant said he did not want to appeal and wanted to continue cooperating with law enforcement. Counsel also testified that there were no meritorious issues to raise on appeal. Counsel testified that the motion to suppress could have led to an appealable issue only if Applicant had actually gone to trial and been convicted.

Counsel testified that Applicant gave him a watch, wallet, and bracelet because he owed Counsel over \$6,000. He testified that any property given by Applicant was not part of their original representation arrangement.

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, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (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 plea counsel, the Applicant must show 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, 59 (1985).

IV. 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 Clerk of Court records regarding the subject convictions, the plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible and persuasive

on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Ineffective Assistance of Counsel

Failure to conduct pre-trial investigation

Applicant alleges that Counsel was ineffective for failing to conduct a pre-trial investigation. Applicant alleged that Counsel should have produced Ms. Dowdell as an alibi witness to testify that he was not at the scene of the crime but was in North Carolina.

This Court finds that although Ms. Dowdell was credible, Counsel made a legal determination not to use her as an alibi witness because her potential testimony would not have been useful to Applicant's case. This Court finds Counsel's testimony credible that Applicant's alibi through Ms. Dowdell that he was in North Carolina was irrelevant because Applicant was caught by police officers when the drug delivery was made.

This Court finds that Applicant has failed to definitively show what any additional investigation would have found. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (relief denied where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). Applicant has failed to prove that Counsel was deficient regarding his investigation and has also failed to show prejudice as he has

failed to show that he would have gone to trial but for Counsel's actions. Accordingly this allegation must be dismissed.

Failure to advise Applicant that a preliminary hearing was scheduled

Applicant alleged that Counsel was ineffective for failing to advise him that a preliminary hearing had been scheduled. This Court finds that Applicant has not established that Counsel was ineffective or that any part of the preliminary hearing was done improperly or objectionable. This Court finds credible Counsel's testimony that the State shared all discoverable evidence and finds relevant the fact that Applicant was subsequently indicted on the charge. Further, this Court finds that Applicant has failed to prove that he was prejudiced by Counsel's actions as he has failed to show that he would not have pled but would have instead proceeded to trial if he had attended the preliminary hearing.

Applicant also alleges that his due process rights were violated because his right to be present at the preliminary hearing and examine the evidence was violated. This Court finds that Counsel provided credible testimony that the State produced all discoverable evidence and that Counsel went over the evidence with Applicant prior to the plea. This Court finds that Applicant has failed to show that he was not given the right to be present at the preliminary hearing. Accordingly this allegation must be dismissed.

Advising Applicant to plead no contest

Applicant alleges that Counsel was ineffective for advising him to plead no contest. An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An

applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969).

The record reflects that Applicant was fully advised of the charges against him, his constitutional rights, and the consequences of entering a plea. This Court finds that Applicant has failed to show that Counsel was ineffective in this regard and has failed to show that he should depart from his statements during the plea hearing. This Court finds that the plea waiver form, signed and initialed by Applicant, clearly states that Applicant was agreeing to plead no contest to conspiracy to traffic cocaine, 28 to 100 grams, and that the offense carries a sentence ranging from seven days to twenty-five years imprisonment. The waiver form explains that Applicant was pleading to a negotiated sentence of twelve years and six months. This Court finds Counsel's testimony credible that he reviewed the plea waiver form with Applicant. After reviewing the plea hearing transcript, this Court finds no deficient performance by Counsel during Applicant's plea. This Court also finds that Counsel's ability to negotiate a no contest plea to a lesser included offense after already proceeding through pretrial motions resulted in a substantially lower sentence than Applicant was facing and a benefit to Applicant. Applicant has failed to prove that Counsel's performance was deficient or that he was prejudiced by Counsel's actions. Accordingly, this allegation must be dismissed.

To the extent Applicant alleges that Counsel promised him a sentence of six years, this Court finds that this allegation is without merit. The plea transcript reflects that Applicant was

informed of the negotiated sentence in the signed plea waiver form and from the solicitor and judge during the plea colloquy. Additionally, this Court finds that Applicant informed the plea court that he was not promised anything in order to induce his plea. See Plea Transcript, p. 12, ll. 6-8. See Wolfe v. State, 485 S.E.2d 367, 371, 326 S.C. 158, 165 (1997) (Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made). Furthermore, this Court further finds that Counsel discussed with Applicant the fact that any post-plea reduction in his sentence would depend solely on his cooperation with law enforcement and was not guaranteed. This Court finds that Counsel arranged meetings with law enforcement as promised, but Applicant was unsuccessful in providing cooperative information. This Court finds that Applicant has failed to show that he was prejudiced by Counsel's actions because Applicant has failed to show that he otherwise would have elected to go to trial. Accordingly, this allegation is denied and dismissed.

Failure to file any pretrial brief or motion before advising to plea

Applicant alleges that Counsel was ineffective for failing to file a pretrial brief or motion before advising Applicant to plead. This Court finds that Counsel joined in Applicant's codefendant's pretrial motion to suppress text messages, which was heard by the court extensively over the course of two days. Counsel provided credible testimony that Judge Alford informed the parties in chambers as to how he planned to rule on the suppression issue, which prompted Counsel to discuss with Applicant the possibility of pleading. This Court also finds that Judge Alford's method of notifying the parties of his ruling to allow them to work out a plea deal is a normal practice. This Court agrees that the text messages would have been detrimental to Applicant at trial. Furthermore, the plea transcript reflects that Judge Alford gave a lengthy

and detailed explanation as to how he would have ruled on the motion to suppress. See Plea Transcript, p. 19 l. 8 – p. 26 l. 18. As such, this Court finds that Counsel was not ineffective because he did join in the pretrial suppression motion and argue extensively on Applicant's behalf. Additionally, this Court finds that any other evidentiary issues were waived and Counsel determined that they would be without merit. Furthermore, Applicant has failed to prove that he was prejudiced by Counsel's actions in this regard. Accordingly, this allegation must be dismissed.

Failure to file a direct appeal

Applicant also alleges that Counsel was ineffective for failing to file his direct appeal. Applicant testified that he was not advised of his right to appeal and that his family asked Counsel to file an appeal. Ms. Dowdell also testified that she asked Counsel to file a direct appeal. This Court finds Counsel's testimony credible that he and Applicant wanted to work toward cooperating with law enforcement rather than filing a meritless direct appeal. As such, this Court finds that Counsel's actions were not deficient in this regard. Most importantly, this Court finds that it is clear from the record that an appeal from Applicant's negotiated no-contest plea would not have led to any fruitful results. This Court finds that Applicant was well informed of the consequences of his plea through discussions with Counsel, the initialed and signed plea waiver form, and his colloquy with the plea judge. The plea transcript shows that Applicant did not raise any issues or concerns or make objections at any point during the plea hearing. Applicant has not shown that any specific issue was raised and ruled upon at the plea hearing or would be otherwise preserved for direct appeal. Accordingly, Applicant has failed to meet his burden of showing that he was prejudiced by Counsel's actions, and this allegation must be dismissed.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

V. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

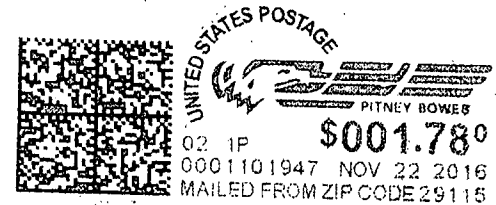
AND IT IS SO ORDERED this 14 day of Sept., 2016.



LETITIA VERDIN
Presiding Judge
Sixteenth Judicial Circuit

York, South Carolina

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The Honorable Daniel Shearouse
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