Christopher L. Murphy
Admitted in SC
cmurphy@rlattorneys.com

RESNICK & LOUIS, P.C.
ATTORNEYS AT LAW

REPLY TO THE CHARLESTON OFFICE
234 Seven Farms Drive, Suite 128
Charleston, SC 29492
(843) 800-1187

September 20, 2018

VIA U.S. MAIL
The Honorable Daniel E. Shearhouse
Clerk of South Carolina Supreme Court
Supreme Court Building
Post Office Box 11330
Columbia, SC 29211

Re: *Jason A. West v. State of South Carolina*
Civil Action No.: 2016-CP-10-6395

Dear Mr. Shearhouse:

Enclosed for filing, please find an original and two copies of Appellant's Notice of Appeal of the denial of his application for Post-Conviction Relief, and a Proof of Service regarding same. If you find everything in order, please file the original and return the clocked-in copies in the enclosed self-addressed envelope.

Please note, I was appointed to this and case and have copied the Office of Appellate Defense on this who will handle the appeal. Please call if you have any questions.

With kindest regards, I am

Sincerely,

Christopher L. Murphy, Esq.
For the Firm

CLM/jh

Enclosures
cc (w/ encls.): Mr. Jason West
Kelly Openheimer, Asst. AG
Office of Appellate Defense
The Honorable Roger M. Young, Sr.
The Honorable Julie J. Armstrong, Clerk, 9th Jud. Cir.

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No.: 2016-CP-10-6395

Jason A. West, ... Appellant

v.

State of South Carolina ..... Respondent

NOTICE OF APPEAL

Appellant appeals the Court's denial of his application for post-conviction relief. Attached is the order from the court dated September 4, 2018 and received September 17, 2018.

September 20, 2018

Christopher L. Murphy
Resnick & Louis, PC
234 Seven Farms Drive, Suite 128
Charleston, SC 29492
Phone & Fax: (843) 800-1187
Email: cmurphy@rlattorneys.com

Other Counsel of Record:
Kelly Oppenheimer
Asst. Attorney General
Rembert C. Dennis Building
PO Box 11549
Columbia, SC 29211-1549
Phone: (803) 734-3970
Fax: (803) 253-6283
koppenheimer@scag.gov

THE STATE OF SOUTH CAROLINA
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Case No.: 2016-CP-10-6395

Jason A. West, ... Appellant

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PROOF OF SERVICE

I certify that I have served APPELLANT'S NOTICE OF APPEAL by delivering a copy via U.S. Mail First-Class postage prepaid on the 20th day of September, 2018, on the following:

Kelly Oppenheimer Asst. Attorney General Rembert C. Dennis Building PO Box 11549 Columbia, SC 29211-1549 The Honorable Julie J. Armstrong Clerk of Court, Ninth Judicial Circuit 100 Broad Street, Suite 106 Charleston, SC 29401 Mr. Jason A. West 7650 Hunter Ridge Lane N. Charleston, SC 29420	The Honorable Roger M. Young, Sr. Charleston County Judicial Center 100 Broad St., Suite 368 Charleston, SC 29401 Office of Appellate Defense PO Box 11433 Columbia, SC 29211-1433

Jodi Hanshaw

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AG
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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Jason A. West, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2016-CP-10-6395 **ORDER OF DISMISSAL**

FILED
2018 SEP -5 AM 10: 31
JULIE J. ARMSTRONG
CLERK OF COURT

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed November 30, 2016, by Jason A. West (Applicant). The State (Respondent) made its Return and Partial Motion to Dismiss on June 21, 2017, requesting an evidentiary hearing be held on Applicant's allegations of ineffective assistance of counsel and requesting Applicant's allegation regarding an illegal search warrant be summarily dismissed for failing to state a cognizable claim. An evidentiary hearing into the matter was convened on May 21, 2018, and July 26, 2018, at the Charleston County Courthouse before the Honorable Roger M. Young, Sr. Applicant was present at the hearing and was represented by Christopher L. Murphy, Esquire. Assistant Attorney General Kelly Oppenheimer, of the South Carolina Attorney General's Office, represented Respondent.

During its December 2013 term, the Charleston County Grand Jury indicted Applicant for trafficking cocaine, more than ten grams but less than twenty-eight grams, third offense (2013-GS-10-07264). Louis S. Moore, Esquire, represented him on this charge. Assistant Solicitor Chris Lietzow, of the Ninth Circuit Solicitor's Office, prosecuted the case. On January 7, 2016, Applicant appeared before the Honorable Deadra L. Jefferson and pled guilty to the

lesser-included offense of trafficking cocaine, more than ten grams but less than twenty-eight grams, first offense. Pursuant to a negotiated sentence, Judge Jefferson sentenced Applicant to a term of imprisonment of five years. Applicant did not appeal his plea or sentence.

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

1. "4th Amendment violation – Respondents did not have a search warrant;" and
   a. "Search warrant executed at residence does not exist."
2. "6th Amendment violation – Counsel was unlicensed and failed to investigate."
   a. "Counsels [sic] license suspended at the time of representation/failed to investigate the existence of 2 search warrants."

At the evidentiary hearing, Applicant proceeded forward on the allegation of ineffective assistance of counsel—specifically that counsel was ineffective for failing to investigate the search warrant(s) raised in his application for post-conviction relief.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented the testimony of Assistant Solicitor Chris Lietzow and plea counsel, Louis S. Moore, Esquire, (hereinafter "Counsel). This Court also had before it a copy of Applicant's plea transcript, the records of the Charleston County Clerk of Court, Applicant's records from the South Carolina Department of Corrections,[1] and the transcript from the first portion of Applicant's post-conviction relief hearing.

During the evidentiary hearing, Applicant testified on his own behalf. Applicant testified that he was charged with trafficking cocaine, third offense, and hired Leon Stavirnakis, Esquire to represent him on this charge. He testified that Mr. Stavirnakis obtained a bond reduction for Applicant, though he was already released on bond at the time. He further testified that Mr. Stavirnakis also waived his right to a preliminary hearing, which Applicant discovered through

[1] At the time of this hearing, Applicant was no longer incarcerated.

Counsel. Applicant also testified that he had Mr. Stavirnakis relieved as his counsel, at which time he was up for a plea. He elaborated that he had also retained Counsel at that time to represent him. Applicant testified that the only thing with regards to the search warrant that he discussed with Mr. Stavirnakis was that the warrants had two different signatures. He explained that he informed Mr. Stavirnakis of this after Applicant had fired him.

Applicant testified he received Counsel's name through a friend, and he and Counsel discussed his situation. He elaborated he explained to Counsel the situation with Mr. Stavirnakis and that he was not receiving any information.

Applicant also testified that he takes issue with the search warrant in this case. He elaborated that he had two warrants with different signatures. He further elaborated the warrant describes a confidential informant (CI), who alleged to have bought drugs at Applicant's home, but it does not indicate the time or date of this buy. He testified he did not discuss the CI with Counsel, but he was supposed to look into it. He elaborated Counsel informed him on January 2nd that the CI was willing to testify, but Counsel did not give him any additional information. Applicant further testified he told Counsel he needed to file a motion to suppress. He explained when he asked Counsel to do this, Counsel informed him Judge Jefferson had denied the motion. He further explained this led him to believe Counsel had filed the motion. Applicant also testified at this time, he told Counsel he wanted to proceed to trial, to which Counsel responded he did not want to represent Applicant, therefore Applicant would need to have a public defender represent him. He testified he also asked Counsel about the pre-recorded money, to which Counsel informed him he was unaware of pre-recorded money, but the State had audio of the CI-buy. Applicant elaborated that none of this information was in his discovery, so he asked Counsel about it. He further elaborated that Counsel told him it was irrelevant, and that it was

Applicant's word against the word of the law enforcement officers. Applicant testified Counsel told him given Applicant's prior record, he would not take the chance at trial.

He further testified he told Counsel to investigate the CI, but he did not know who the CI was. He elaborated Counsel was supposed to obtain that information. He testified he and Counsel did not discuss any other defenses, as that was supposed to be Counsel's decision. He explained he told Counsel what happened—that law enforcement had planted evidence. He further explained Mr. Stavirnakis told him the North Charleston Police Department was known to plant evidence.

Applicant also testified other than the information regarding the defective warrant, he also had a defense to the charge, in that there were two different signatures from the magistrate judge on the warrant[2]. He testified Counsel told him he would have to hire an expert to determine whether or not those signatures were the same. He elaborated Counsel indicated Applicant would have to hire the expert. He further testified he later discovered he should have argued this point at a preliminary hearing. He also testified Counsel told him this point was irrelevant, which was a lie. Applicant testified he has never hired a handwriting expert to look at the warrants, but he talked with one. He elaborated Counsel told him not to proceed with this expert, so he never followed through. He further elaborated he has not hired an expert since his plea. Applicant also testified he would not have to be an expert to determine the magistrate judge did not sign the warrants, but he is not a handwriting expert and has no training in handwriting.

He testified Counsel did not present any challenge to the warrant whatsoever, even when Assistant Solicitor Lietzow said there was an issue with the warrant. He further testified had

[2] Applicant, however, concedes there was no issue with the warrant with respect to the signatures, as he has confirmed with the magistrate judge those were, indeed, his signatures. May 21, 2018 PCR Tr. 29.

Counsel filed a motion to suppress, the charges against Applicant would have been dismissed. He testified Judge Jefferson determined there was a Scrivener's error to the transcript, in that it indicated Applicant was represented by Julius C. Moore, rather than Louis S. Moore.

Applicant testified he indicated he was guilty at the plea. He further testified he indicated to the plea court he was satisfied with the services of Counsel, and Counsel had answered all of his questions. He elaborated he indicated at the plea that Counsel had done everything he asked of him. He further elaborated he had no complaints about Counsel at the plea. Applicant also testified he had to plead guilty because he had no alternative. He explained he had no one who would represent him, as getting another attorney would not look good for him. He further explained he had to do what Counsel told him to do, because Counsel told him the motion to suppress had been denied and he could not argue. Applicant further testified, however, it was his decision to plead guilty, but it was a coerced decision. He elaborated when he decided to plead guilty he was relying on Counsel's word that the motion to suppress had been denied.

Applicant testified he did not recall Assistant Solicitor Lietzow reviewing the facts at his plea, but he did recall Assistant Solicitor Lietzow saying they had potential issues with the warrant. He elaborated the State did not have any specifics, nor discussed any specifics regarding the CI or the transaction. He further elaborated the State indicated on October 1, 2013, North Charleston Police Department detectives arrived at his residence, executing a search warrant. He testified the State indicated this search warrant was based on the CI-buy, but did not specify the date of this transaction. Applicant further testified he did agree with the facts at the plea.

He testified he wanted a trial. He further testified he recalled the plea court reviewing each of his rights at trial with him. He elaborated he understood he was waiving those rights by pleading guilty.

He also testified he discussed his case with Counsel after the plea. He explained he had his family call Counsel, and he contacted Counsel approximately three months after his plea. He further explained he asked Counsel for copies of his paperwork. He testified Counsel said he had his file in storage, but Applicant never received a copy of anything, including his sentencing sheet. He further testified when he told Counsel he was going to have his brothers collect his file, Counsel sent him six pieces of paper. He also testified he wrote the Clerk of Court for his file, who responded there was no record. He testified in these attempts, he was looking for the motion to suppress in order to discern the court's reasoning for denying the motion.

After Applicant rested his case, Respondent presented the testimony of Assistant Solicitor Chris Lietzow. Assistant Solicitor Lietzow testified he has been an assistant solicitor for a little over five years, and at the time of Applicant's plea, he would have been working as an assistant solicitor for three years. He testified this was not his first trafficking case and was not his first case in which there was a search warrant executed at a residence.

He further testified North Charleston Police Department indicated a CI had purchased drugs from Applicant's home, which led to them getting a search warrant. Assistant Solicitor Lietzow testified during the plea he mentioned to the plea court there might have been some issues with the search warrant. He elaborated he and Mr. Stavirnakis discussed potential issues with the search warrant, specifically that there may have been some discrepancies in the address. He further elaborated the title page of the warrant had Applicant's address, but a subsequent page had a different address. He explained this address must have remained on the warrant because it

was a boilerplate form, and law enforcement merely forgot to remove it. He further explained there was only one instance in which the address was incorrect, and it was correct everywhere else in the warrant. He testified this first issue was merely a Scrivener's error. Assistant Solicitor Lietzow also testified there was an issue that the search warrant return was outside the ten days required by law. He testified, however, there was no prejudice from this timeframe, as the search warrant was not fatal and would have been upheld. He testified he had multiple conversations with Mr. Stavirnakis about the warrant, but could not recall whether or not he discussed the warrant issues with Counsel. Assistant Solicitor Lietzow also testified Mr. Stavirnakis indicated he would file a motion to suppress based on the warrant, but one was never filed. He testified Counsel never filed a motion with respect to the search warrant. He testified the potential issues with the search warrant played a part in the offer made to Applicant.

He also testified he received several letters and motions from Applicant while Applicant was incarcerated, in which Applicant alleged there were two different signatures on the warrants. He elaborated he investigated, but the signatures were that of the same judge. He further elaborated there were only slight alterations in the signatures. He explained one signature started a little farther to the left than the other, and on the other a loop was slightly different. He further explained the magistrate judge would have signed multiple copies of the same warrant, and the signatures were that of the same person, but slightly different. He further testified he provided Counsel with a copy of the search warrant in discovery prior to the plea.

Respondent then presented the testimony of Counsel.[3] Counsel testified he has been practicing law since 2002. He testified that initially, approximately forty percent of his practice was criminal law, but now about twenty percent involves criminal law. He testified he had handled at least four trafficking cases prior to Applicant's case, at least one of which that

[3] This testimony was taken on the second day of the hearing, July 26, 2018.

proceeded to trial. Counsel also testified he was retained by Applicant, but he did not recall the date on which he was retained. He elaborated by the time he was retained, Applicant had already rejected one plea offer for three years on the record, because he was not happy with the offer presented. He further testified by the time he got the case, it was about two or three years old, and the State was insistent on proceeding to trial. Counsel also testified at that point, the five-year offer was off the table. He elaborated Judge Jefferson required the State to make the same offer after Counsel was retained.

He also testified he met with Applicant multiple times, during which they would discuss Applicant's case. He elaborated he explained to Applicant the burden of proof, and Applicant understood the beyond a reasonable doubt standard. He further elaborated he explained the elements of the offense to Applicant. Counsel testified the major problem to overcome with Applicant's case was the fact Applicant had provided a statement to law enforcement.

Counsel testified he received the discovery materials from the State, which he reviewed with Applicant. He explained he made *Brady*[4] motions via electronic mail to the State, and Mr. Stavirnakis had also made *Brady* motions. He testified Applicant was convinced there were two different signatures on the warrant, but Counsel confirmed the signatures were that of the same magistrate judge.. Counsel also testified a handwriting expert would have had to be retained to challenge the signatures; but he confirmed the same magistrate signed the warrants, so there were no issues. He further testified he and Applicant discussed suppressing the search warrant and the evidence therefrom, but there was no basis. He elaborated all of the paperwork had the correct address. He further elaborated he believed it would have been a frivolous motion, and Judge Jefferson confirmed there was no basis for a motion to suppress at the plea. He explained

[4] *Brady v. Maryland*, 373 U.S. 83 (1963).

Judge Jefferson made this determination at the plea, not prior. Counsel testified he explained this to Applicant.

He further testified he reviewed the search warrant with Applicant. He testified the magistrate judge actually signed the warrant. He also testified there was an issue with address on the warrant, as it was for an empty lot. He explained, however, there were other documents to support how law enforcement got to Applicant's house. He further explained Judge Jefferson addressed this issue, and it was harmless. Counsel also testified there was no question as to the affidavit of the warrant. He elaborated the affidavit was detailed and was not flawed. He further elaborated the affidavit would have been the basis for his motion to suppress, but he did not file such a motion, as there were no flaws in the body of the affidavit.

Counsel also testified this was based off a CI-buy, and Applicant signed a statement indicating he committed this offense. He testified there was an audio recording, and he believes a video recording, of the transaction as well. He elaborated any question with regards to this recording was taken off the table by Applicant's sworn statement. Counsel further testified he discussed obtaining the CI's identity with Applicant, but Applicant believed he knew the CI. He testified he discussed the identity of the CI with the State, which responded it did not have to disclose the identity of the CI.

Counsel testified he had a conversation about the warrant with Assistant Solicitor Lietzow. He testified there was merely a Scrivener's error on the warrant, which would not have required the dismissal of the case. He further testified had there been a flaw in the affidavit of the warrant, he would have filed a motion to suppress. He explained he and Applicant discussed filing this motion, but he never told Applicant he had filed it. Counsel also testified he asked the State to provide him with information about the CI. He explained the State was not required to

provide him with such information. He testified he does not recall having a conversation with Judge Jefferson regarding the CI.

He further testified he would have been prepared for trial, though he did not believe it was in Applicant's best interest. He elaborated there were no witnesses to present, and he would not have been comfortable having Applicant testify. He further elaborated Applicant's prior criminal history concerned him. Counsel further testified Applicant never told him the drugs were someone else's, but Applicant believed the drugs were counterfeit. He explained, however, the drugs were tested, and the results were positive. Counsel testified Applicant did not provide him with any leads to investigate. He elaborated the only lead he had to look into was the warrant, which after researching any issues, had no merit. He further elaborated law enforcement had a detailed account of the house. He also testified at trial his only strategy would have been to question the procedure. He testified he explained all of his concerns with proceeding to trial with Applicant. He explained after that discussed, Applicant agreed the plea offer, rather than facing twenty-five years, made good sense. Counsel further testified it was Applicant's decision to plead guilty.

Respondent rested, and Applicant testified further on his own behalf. Applicant testified he had a conversation with Counsel about filing a motion to suppress, because the search warrant was solely based on the CI. He also testified there was no date or time of the alleged CI-buy. He testified Counsel told him there was an audio recording of the transaction. He further testified the State had no grounds for this warrant, and the body of the warrant was flawed. Applicant also testified Counsel told him he had filed the motion to suppress, which Judge Jefferson had denied. He explained had the motion been filed, he would not have pled guilty. He further

explained he told Counsel he wanted to proceed to trial, but Counsel told him he would have to hire someone else.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, the applicant 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." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." *Cherry*,

300 S.C. at 117, 385 S.E.2d at 625 (citing *Strickland*). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. In order to satisfy the prejudice prong of this test following a guilty plea, the applicant "must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

After careful review based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

Counsel's alleged failure to challenge the search warrant

Applicant alleges Counsel was ineffective for failing to challenge the evidence the State had against Applicant. Specifically, Applicant alleges Counsel was ineffective for failing to file a motion to suppress when the search warrant did not specify the date or time of the CI-buy. As an initial matter, this Court finds Counsel's testimony and the testimony of Assistant Solicitor Lietzow, with respect to this issue, very credible, whereas Applicant's testimony is not credible.

"A guilty plea generally acts as a waiver of all non-jurisdictional defects and defenses." *State v. Thomason*, 341 S.C. 524, 526, 534 S.E.2d 708, 710 (Ct. App. 2000) (citing *State v. Munsch*, 287 S.C. 313, 338 S.E.2d 329 (1985)). Through a plea, a defendant admits all of the elements of the offense charged and waives all defenses, except for the sufficiency of the indictment. *Id.* At Applicant's plea, Applicant indicated the facts as recited by the State were correct. Tr. 9. Furthermore, when given the opportunity to add to the State's rendition of the facts, Applicant indicated he had nothing to add. Tr. 9. Moreover, Applicant indicated to the

plea court he understood by pleading guilty he would not have a jury trial, would not be able to confront the witnesses against him, and would be waiving his right to remain silent. Tr. 10-11. Based on Applicant's solemn admission of guilt at the plea, this Court finds Applicant has failed to establish Counsel was deficient.

Similarly, this Court finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. "'Although counsel should conduct a reasonable investigation into potential defenses, *Strickland* does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client.'" *Tucker v. Ozmint*, 350 F.3d 433, 442 (4th Cir. 2003) (quoting *Green v. French*, 143 F.3d 865, 892 (4th Cir. 1998)). Moreover, "failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result." *Porter v. State*, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018) (citing *Moorehead v. State,* 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." *Wiggins v. Smith*, 539 U.S. 510, 521-22 (2003). "The prosecution in a criminal case is ordinarily privileged to withhold from an accused disclosure of the identity of persons who furnished information relative to violations of law to officers charged with the enforcement thereof." *State v. Wright*, 322 S.C. 484, 487, 472 S.E.2d 642, 644 (Ct. App. 1996).

Typically, the State is not required to disclose the identity of a confidential informant who is merely a tipster and has only peripheral knowledge of the crime, but may be required to

disclose the identity of an informant when he is an active participant in the crime. *State v. Bultron*, 318 S.C. 323, 330, 457 S.E.2d 616, 620 (Ct. App. 1995).

Here, Counsel testified Applicant did not give him any independent leads or witnesses to investigate, but Counsel did research any issues with respect to the search warrant. As outlined above, Counsel attempted to obtain the identity of the CI from the State, but the State was not required to disclose that information. He further testified Applicant believed he knew who the CI was, thereby rendering the disclosure of such a witness moot. Indeed, Applicant admitted he did not provide Counsel with any leads to investigate, other than the CI.

Moreover, even if the search warrant excluded the date and time of the drug transaction, a defendant "must make a preliminary showing [law enforcement] included a deliberate falsehood or recklessly disregarded the truth in an effort to make the affidavit misleading to the magistrate." *State v. Gore*, 408 S.C. 237, 245-46, 758 S.E.2d 717, 721 (Ct. App. 2014) (citing *State v. Missouri*, 337 S.C. 548, 554, 524 S.E.2d 394, 398 (1999)). Applicant has failed to make such a showing. In fact, Counsel testified although the address on the warrant was that of a vacant lot, law enforcement provided detailed accounts of Applicant's home. He further testified based on his investigation, there were no flaws in the body of the affidavit supporting the warrant. Accordingly, this Court finds Applicant has wholly failed to meet his burden, and this allegation must be denied and dismissed with prejudice.

CONCLUSION

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

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to and remain in the custody of the State

AND IT IS SO ORDERED this 6th day of June, 2018.

ROGER M. YOUNG, SR.
Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina

RESNICK & LOUIS, P.C.
ATTORNEYS AT LAW

234 Seven Farms Drive, Suite 128, Charleston, SC 29492

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