LAW OFFICE OF

Kristy Grafton Goldberg, LLC

ATTORNEY AT LAW

October 2, 2018

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

RE: Wade Rouse, SCDC # 300130, vs. State of South Carolina
Appeal of Case No. 2014-CP-19-196

Dear Mr. Shearouse,

Enclosed for filing is a Notice of Appeal in the above referenced case. Also enclosed are a certificate of service and a copy of the original court order which is to be challenged on appeal. I would appreciate it if you could file the Notice of Appeal and mail a date-stamped copy back to me in the enclosed pre-stamped envelope.

By copy of this letter I am informing the Office of Appellate Defense of this Appeal. I was **appointed** to represent Mr. Rouse on his PCR.

Please let me know if you have any questions or concerns regarding this matter.

Respectfully,

Kristy Goldberg

CC: Joe Maye
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

Wade Rouse
6 Horne Street
Edgefield, South Carolina 29824

The Honorable Charles Reel
Clerk of Court
Post Office Box 34
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Office of Appellate Defense

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 2014-CP-19-196

Wade Rouse, SCDC # 300130, ... Appellant

v.

State of South Carolina, ... Respondent.

Applicant Wade Rouse hereby appeals from the Order of the Honorable William P. Keesley presiding Judge for the 11th Judicial Circuit, filed September 10, 2018 and received by counsel for the Applicant on September 19, 2018 in the matter of Wade Rouse v. State of South Carolina, Case No. 2014-CP-19-196.

October 2, 2018

Kristy Goldberg
Attorney for Plaintiff

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THE STATE OF SOUTH CAROLINA
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PROOF OF SERVICE

Personally appeared before me, Kristy Goldberg, Esquire, who being duly sworn, deposes and states:

She is the counsel of record for Applicant;
Service by mail is proper in this instance; and
She has served the NOTICE OF APPEAL on the following party on October 2, 2018 by depositing one copy in the U.S. Mail, postage prepaid:

Assistant Attorney General, Joe Maye
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Other Counsel of Record:
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF EDGEFIELD	)	ELEVENTH JUDICIAL CIRCUIT
	)	
Wade Rouse, S.C.D.C. No. 300130	)	C.A. No. 2014-CP-19-0196
Applicant,	)	
v.	)	**ORDER OF DISMISSAL**
State of South Carolina,	)	
Respondent.	)	

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL
2018 SEP 10 AM 9:32

This Edgefield County matter comes before this Court by way of a *pro se* application for post-conviction relief filed June 20, 2014, by Wade Rouse (Applicant). Applicant was assigned PCR counsel, attorney Kristy Goldberg, Esquire, who filed an Amended PCR Application alleging two grounds of ineffective assistance of counsel. Respondent made its Return on May 5, 2015, requesting an evidentiary hearing be held.

WAC #1

Prior to hearing, Ms. Goldberg filed a Second Amended PCR Application on June 14, 2016. By consent of the parties, this Court convened a PCR evidentiary hearing in this matter at the Lexington County Courthouse on July 6, 2016. Applicant was present at the hearing and represented by Ms. Goldberg. Respondent was represented by Assistant Attorney General Johanna Valenzuela. Applicant testified on his own behalf. Plea counsel W. Greg Siegler, Esquire (now the Honorable Judge W. Greg Siegler, hereinafter referred to as "plea counsel") was called to testify by Respondent. Following the conclusion of testimony, this Court left the record open and continued the matter in order to allow the State to produce testimony from the Edgefield County Solicitor's officer concerning discovery production. The hearing was reconvened on September 29, 2016, wherein Lieutenant Roosevelt Young and Managing Assistant Solicitor Ervin Maye testified. This Court also granted Applicant's Motion to Amend

his pleadings to conform to the evidence presented. Therein, this matter proceeded on the basis of Applicant's Third Amended Application for Post-Conviction Relief.

This Court had before it Applicant's appellate records, Edgefield County Clerk of Court's records regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the Edgefield County Clerk of Court records for this current proceeding. After reviewing the record in its entirety, along with the testimony and evidence presented at the evidentiary hearings, this Court finds Applicant has failed to establish any constitutional deprivations or other grounds entitling him to relief and hereby denies and dismisses this application with prejudice.

PROCEDURAL HISTORY

The records before this Court establish that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Edgefield County Clerk of Court. The Applicant was indicted at the January 2013 term of the Edgefield County Grand Jury for distribution of crack cocaine; third offense (2013-GS-19-0142). Applicant was also charged with Distribution of Schedule III Drug (2013-GS-19-144 – *nol prossed*), Distribution of Marijuana (2013-GS-19-141 – dismissed), Distribution of a *Schedule II Drug (2013-GS-19-143 – nol prossed), and Burglary 3rd degree (2013-GS-19-145 – nol* prossed). However, as part of his guilty plea agreement from the State, these additional charges were not prosecuted and Applicant was permitted to plead guilty to *distribution, of crack cocaine, second offense*, with the recommendation of a ten year sentencing cap. Applicant was represented by W. Greg Seigler, Esquire. On August 13, 2013, the Honorable Thomas A. Russo accepted Applicant's plea and sentenced Applicant to ten (10) years imprisonment. The sentence was set to run concurrently with Applicant's probation revocation.

A timely notice of appeal was filed on the Applicant's behalf. In an order filed October 30, 2013, the South Carolina Court of Appeals dismissed Applicant's appeal pursuant to Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules (SCACR). The Remittitur was returned on November 15, 2013.

Petitioner filed his *pro se* PCR Application on June 20, 2014, alleging ineffective assistance of counsel, coercion, fraud upon the Court, perjury, and entrapment. Following the appointment of PCR Counsel, Ms. Goldberg filed an Amended PCR Application on November 25, 2014. Applicant, by and through counsel, then moved for an Order to produce discovery in this matter, specifically, the confidential informant video. This Motion was granted and later amended to permit PCR counsel to view the video, but not permit Applicant himself to view the video or be told of identifiable information about the informant. Respondent submitted its Return May 15, 2015. Applicant subsequently submitted a Second Amended Application for Post Conviction Relief on June 14, 2016. This Second Amended Application asserted three grounds of ineffective assistance of counsel:

WAC #3

a) Ineffective assistance of trial counsel – counsel failed to allow Applicant to review all available discovery materials related to his criminal charges, specifically including but not limited to the alleged video of the drug transaction, and therefore client made and uninformed decision in waiving his right to trial.
b) Ineffective assistance of trial counsel – Applicant was induced into entering an involuntary guilty plea based on statements made by counsel that Applicant's father would be arrested if Applicant asserted his right to trial.
c) Ineffective assistance of trial counsel – Counsel failed to sufficiently advise the Applicant regarding the procedure and substantive information that would be presented to the Court during the guilty plea and incorrectly informed Applicant regarding what sentence he would receive.

A PCR evidentiary hearing was convened on July 6, 2016, and the parties proceeded on the basis of these three claims. Applicant and plea counsel testified before the court. This Court ordered

that the matter be continued and reconvened at a later date to permit testimony from the Solicitor's office on matters concerning discovery production prior to Applicant's guilty plea.

The PCR hearing was reconvened on September 29, 2016. As an initial matter, Applicant moved to amend his pleadings to conform to the evidence presented. This Court granted the motion and this matter proceeded on the basis of Applicants' Third Amended Application for Post Conviction. This Third Amended Application asserts four grounds for relief:

1. Ineffective assistance of trial counsel – counsel failed to allow Applicant to review all available discovery materials related to his criminal charges, specifically including but not limited to the alleged video of the drug transaction, and therefore client made an uninformed decision in waiving his right to trial and entered into an involuntary guilty plea.
2. Ineffective assistance of trial counsel – Applicant was induced into entering an involuntary guilty plea based on statements made by counsel that Applicant's father would be arrested if Applicant asserted his right to trial.
3. Ineffective assistance of trial counsel – Counsel failed to sufficiently advise the Applicant regarding the procedure and substantive information that would be presented to the Court during the guilty plea and incorrectly informed Applicant regarding what sentence he would receive.
4. Ineffective assistance of trial counsel – Counsel failed to object to the State's offer of a plea agreement which was conditional on forgoing discovery.

Testimony resumed and Respondent called Lieutenant Roosevelt Young and Managing Assistant Solicitor Ervin Maye to testify. At the conclusion of testimony and arguments from counsel, this matter was taken under advisement. This Order of Dismissal follows.

SUMMARY OF FACTS ADDUCED AT HEARING

The witnesses presented at the evidentiary hearing testified extensively, the facts adduced from their respective testimonies are summarized as follows:

Applicant Wade Rouse

Applicant testified that he was arrested in connection to a criminal domestic violence charge that was ultimately dismissed, but that the distribution of crack cocaine charge accompanied his arrest. (June 6, Tr., p. 5). Applicant made no mention of the four other charges

that were ultimately *nol prossed* or dismissed as a result of his negotiated guilty plea. He confirmed that he was appointed an attorney, and that plea counsel met with him at the jail to review discovery for his charges. (June 6, Tr., p. 6). Applicant stated that he reviewed some photographs with plea counsel, but that he specifically requested an opportunity to view the State's video evidence supporting his distribution charge. (June 6, Tr. p. 6). Applicant testified that he was informed he could not view the video due to the State's desire to protect the identity of the confidential informant used to obtain the video evidence. (June 6, Tr., p. 7). He testified that plea counsel informed him that the only way in which he'd be permitted to view the video was if he chose to proceed to trial. (June 6, Tr., p. 8). However Applicant also claimed that plea counsel informed him that after his plea he would be permitted to look at a copy of the video that would be kept in his attorney's client file. (June 6, Tr., p. 8).

Applicant has never seen the confidential informant video, but he did confirm that he was given two photographs taken as still shots from the video. (June 6, Tr., p. 9). He asserted that one photograph depicted him with a plastic bag in his mouth, and the other depicted his father sitting. (June 6, Tr., p. 8). He testified that plea counsel advised him that while crack cocaine was not identified in the video, marijuana was visible and that a jury would likely convict him of the charge regardless. (June 6, Tr., p. 30-31).

Applicant conceded that plea counsel had viewed the video prior to his plea, and had reviewed with Applicant what he had seen in the video. (June 6, Tr., p. 24). Despite having viewed the photographic evidence and the fact that plea counsel had reviewed the contents of the video with him prior to accepting his plea deal, Applicant testified that he believed he had a right to view the video himself before deciding whether to plead guilty. (June 6, Tr., p. 9). Ms. Goldberg asked Applicant during direct examination how watching the video would have

affected his decision regarding whether to plead guilty. Applicant responded that "Without me seeing it, I mean, I don't – I can't – I can't give you a direct answer as to what the outcome would have been." (June 6, Tr., p. 9-10). Applicant claims that he initially desired to go to trial on his charges, but that "they started telling me that my family members would be arrested, that my father would be arrested if I went through with the trial proceeding. He'd be arrested for conspiracy to crack cocaine, distribution. . ." (June 6, Tr., p. 10). Applicant stated that this message came from Solicitor Frank Young, and was relayed to him by plea counsel. (June 6, Tr., p. 10). Applicant testified that he called his father from the county jail, and that his father informed him that plea counsel had visited and assured him that the solicitor was just blowing hot air and that it was not a serious matter. (June 6, Tr., p. 11). Applicant testified that he never had that conversation directly with plea counsel, or else he would not have chosen to plead guilty. (June 6, Tr., p. 11).

Applicant testified that he believed the plea offer from the State was a "five to ten cap. It was no recommendation about the ten years, it was only a five to ten. It was a chance I could get five, a chance I could get ten, in which I was told – I was advised that most likely I would not get ten years." (June 6, Tr., p. 13). He claimed that plea counsel informed him that they were in a "good situation," in front of Judge Russo, and that "he didn't see me getting ten years and it was highly unlikely that I would get ten years." (June 6, Tr., p. 13).

Applicant testified that the Solicitor displayed some still photographs to the judge and informed the judge that they displayed Applicant with crack cocaine in his mouth. Applicant claimed that plea counsel informed him beforehand that there was no visual conformation of crack cocaine in the video. However, Applicant admitted at PCR hearing that he confirmed the accuracy of the facts asserted by the Solicitor at his plea, including the photographs provided to

the court. (June 6, Tr., p. 21-22). Applicant then argued that he only agreed because counsel told to "go along" with what was said and admit guilt to the crime. (June 6, Tr., p. 21).

Applicant complained that the State brought up his criminal record, including a "charge on my record of threatening a public official" that occurred while he was still seventeen. (June 6, Tr., p. 14). As a result, Applicant believed he was not sufficiently prepared for his guilty plea hearing. (June 6, Tr., p. 15). Applicant testified that he believed his guilty plea was involuntarily made due to his denied right to view the State's video evidence. (June 6, Tr., p. 15). In relief, Applicant requested that his conviction be overturned and that he be allowed to view the video before deciding whether or not to plead guilty. (June 6, Tr., p. 16). He also requested that this Court watch and consider the video in consideration of his PCR claims. (June 6, Tr., p. 16).

On cross-examination, Applicant testified that he did not remember the State recommending a ten year cap at the beginning of his plea hearing. (June 6, Tr., p. 17; See Plea Tr., p. 3). He also did not recall Judge Russo advising him that his charge could carry between five and thirty years. (June 6, Tr., p. 17-18; Plea Tr., p. 5). He confirmed that he informed Judge Russo that he had not been induced to plead guilty by threat or promise, and was doing so freely and voluntarily. (June 6, Tr., p. 18). Applicant conceded that he informed Judge Russo that he was satisfied and "very thankful" for plea counsel. (June 6, Tr., p. 18-19). Applicant also acknowledged that he waived his various constitutional rights in order to plead guilty. (June 6, Tr., p. 19).

Plea Counsel W. Greg Siegler

Plea counsel confirmed that he viewed the video and discussed its contents with Applicant prior to his plea. (June 6, Tr., p. 44). Plea counsel explained that he had received all of the State's discovery, other than the video, and had reviewed the discovery several times with

Applicant. (June 6, Tr., p. 45; 52). Plea counsel explained that the State would not allow him to show the video to Applicant during plea negotiations. Plea counsel noted that Applicant would only be permitted to see the video if he chose to go to trial, in which case all plea offers would be withdrawn. (June 6, Tr., p. 45). According to plea counsel, this was the typical policy for the tri-county area. (June 6, Tr. p. 45; 50). Plea counsel could not recall the specifics of the video in question, having watched so many CI videos in his career, but agreed that in watching the video he would have analyzed the content of the video and the strength of evidence that the State has to convict. (June 6, Tr., p. 49-50).

Plea counsel testified that though he cannot recall the specific discussion, he is confident that he explained the State's position regarding the video to Applicant and that Applicant chose to proceed with the plea offer. (June 6, Tr., p. 46). Plea counsel acknowledged that one of the photographs had an older gentlemen in it, whom he presumed was Applicant's father, but does not specifically recall speaking to Applicant's father about the matter of a potential charge. (June 6, Tr., p. 46-47). He also stated that he had no recollection of the Solicitor threatening to bring charges against Applicant's father, but confirmed that if such matter was made known to him, he would certainly have relayed the issue to his client. (June 6, Tr., p. 47).

Plea counsel was confident that he made no guarantee of a certain sentence to Applicant and only stated that he would do his best to argue for as little a sentence as possible. (June 8, Tr., p. 48). He also confirms that Applicant understood that it was his decision whether or not to accept the plea offer, and that his rights the guilty plea process would ~~had~~ have been thoroughly reviewed. (June 6, Tr., p. 47-48). He could not recall when trial was set for Applicant's case, but was confident that he would have been prepared at the time the trial arrived. (June 6, Tr., p. 52). Plea counsel was unable to recall any other specifics regarding Applicant's case.

Lieutenant Roosevelt Young

Lieutenant Roosevelt Young (herein after Lieutenant Young) testified that he works in the Narcotics division of the Edgefield Sheriff's Office, and has done so for the past sixteen years. (Sept. 29, Tr., p. 7). He testified that with any confidential informant there are dangers in revealing their identity. The main two concerns being witness tampering and fear of retaliation against the informant. (Sept. 29, Tr., p. 8). Lieutenant Young testified that the identity of confidential informants is purposefully not disclosed in order to prevent any harm coming to informant and to prevent jeopardizing their ability to assist police in other cases in the future. (Sept. 29, Tr., p. 8). By way of example, Lieutenant Young testified that on one occasion the identity of a confidential informant in Aiken County was discovered and spread by word of mouth in the community, and as a result that informant had been murdered and his remains had yet to be recovered. (Sept. 29, Tr., p. 8). He testified that the safety and anonymity of informants is essential and that it would be difficult to work with or even find a willing confidential informant if their identities were consistently revealed in court. (Sept. 29, Tr., p. 9).

WPC #4

Lieutenant Young confirmed that he was familiar with both the confidential informant used in Applicant's case and the video in question. (Sept. 29, Tr., p. 7). Specific to Applicant, Lieutenant Young testified that Applicant had a very large group of family, friends, and associates, and as a result there was concern in his mind that someone might attempt to harm or interfere with the informant in this case. (Sept. 29, Tr., p. 9). He conceded that he had no knowledge of what any particular acquaintance to Applicant was capable of, and knew of nothing that would raise *specific* concerns, but that the safety of the informant is paramount. (Sept. 29, Tr., p. 9; 12).

On cross-examination, Lieutenant Young testified that prior to his involvement in Applicant's matter, the informant had met with police and agreed to perform a controlled purchase of drugs in exchange for assistance with the criminal charges he was facing. (Sept. 29, Tr., p. 10-11). Afterwards, this same informant told police that he could make a purchase of drugs from Applicant. Lieutenant Young did not know of what previous relationship or history the informant had with Applicant. Lieutenant Young testified that in addition to Applicant's case, this particular informant has been involved in two other cases for police. One case had resulted in a guilty plea, and the other case was still pending.

Assistant Solicitor Ervine Maye

Assistant Solicitor Ervine Maye (hereinafter "Solicitor Maye") serves as the managing Assistant Solicitor for Edgefield, McCormick, and Saluda Counties, and has done so for many years. (Sept. 29, Tr., p. 14). Solicitor Maye confirmed that for purposes of plea negotiations, it is his office's policy not to provide a defendant with a copy of a video/audio tape obtained by a confidential informant, or to even permit the defendant to view such evidence unless the matter proceeds to trial. He then explained the reasoning and purpose behind the policy.

WPAC #10

Solicitor Maye explained that keeping the identity of the informant confidential is vital to the safety of the informant and to prevent witness tampering, as well as to enable police to continue using the confidential informant for future busts. With most videos taken by confidential informants, the voice of the informant, the locations displayed, and the circumstances of the interaction usually provide enough information for a defendant to confidently determine the identity of the informant. (Sept. 29, Tr., p. 19-20; 23). Consequently, showing the video to defendants creates an unnecessary risk of danger for the confidential informant, the potential for witness tampering issues for the State, and the negated ability for

police to continue using the confidential informant. (Sept. 29, Tr., p. 20-21). For these reasons, a defendant is not given immediate access to the video or audio evidence obtained by the confidential informant.

However, Solicitor Maye testified that his office *always* allows the defense attorney to view and/or listen to a video or audio tape taken by a confidential informant. (Sept. 29, Tr., p. 14-15; 17). In the case of public defenders such as plea counsel, they usually provide this opportunity early in the process so as to allow defense counsel to determine whether he has a conflict of interest with the confidential informant used. (Sept. 29, Tr., p. 15; 17). Solicitor Maye testified that in making this evidence available to counsel, he believes he is in full compliance with Rule 5 discovery production requirements. (Sept. 29, Tr., p. 14). He stated "if there is adequate information to identify the client and listen to what's going on there, that certainly allows a defense counsel to make a determination of the validity of the evidence, the power of the evidence and advise their defendant or whoever they're representing accordingly." (Sept. 29, Tr., p. 15-16).

If the defendant decides that they still desire to see the video themselves, then ~~the~~ Solicitor Maye permits them to do so, but withdraws his negotiated plea offers and proceeds to trial. (Sept. 29, Tr., p. 16).[1] Solicitor Maye explained that in order to protect the identity of the confidential informant and not needlessly jeopardize their safety or ability to continue assisting law enforcement, his office seldom ~~ever~~ provides a copy of such evidence to defense counsel unless they choose to go to trial. (Sept. 29, Tr., p. 15; 28). In such circumstances, Solicitor Maye explained that judges generally don't require disclosure of the video until a week or two before trial, at the ~~latest~~ EARLIEST; this is done in order to minimize the time period for which an informant could

[1] A defendant would certainly still have the right to plead guilty as charged, he would just have to do so without the benefit of a negotiated plea offer.

be subject to witness tampering or personal danger. (Sept. 29, Tr., p. 16). Solicitor Maye testified that he routinely encounters situations where after releasing the identity of the confidential informant, even with just a week before trial, he learns of threats against his witness. (Sept. 29, Tr., p. 16; 23). He described the issue as an active and ongoing problem that usually occurs due to the release of the ~~tap~~ TAPE, and that his only recourse in such a circumstance is to bring charges for witness tampering and relocate the informant. (Sept. 29, Tr., p. 16; 23-24).

Solicitor Maye went on to explain that as a precaution he delays his own knowledge as to the identity of the confidential informant until needed for trial, but ensures through discussions with police officers that the tape is a quality recording that can definitively identify the defendant and that the confidential informant is still available to testify. He does so in order to ensure he negotiates in good faith with the defendant. (Sept. 29, Tr., p. 17-18). Solicitor Maye testified that it is not within the spirit of the State's good faith relationships with confidential informants to allow Applicants access to the identity of confidential informants at the PCR phase of litigation. (Sept. 29, Tr., p. 22). Informants are told that in assisting police officers, everything possible will be done to protect their identities and maintain their safety, but if a case goes to trial, they will have to appear and testify. (Sept. 29, Tr., p. 22).

Specific to Applicant's matter, Solicitor Maye confirmed that he was personally involved in Applicant's case and worked with Lieutenant Young, the narcotics unit, and plea counsel to litigate the case. (Sept. 29, Tr., p. 14). He testified that, consistent with his office's policy, Applicant was not provided a copy of the confidential informant video or given an opportunity to view it. However, he testified that plea counsel accompanied Lieutenant Young, reviewed the video, and was provided with still shot photographs from the video to take back to his client. (Sept. 29, Tr., p. 14; 17). He presumed that plea counsel and Applicant discussed the contents

of the tape, and noted that plea counsel certainly had the opportunity to view the tape, evaluate its strength and persuasiveness, and advise Applicant as to whether a plea agreement was in his best interest. (Sept. 29, Tr., p. 21-22). Solicitor Maye confirmed that, if Applicant had chosen to go to trial, he would have been provided a copy of the video, but all plea negotiations would likely have been withdrawn due to the loss of the confidential informant. (Sept. 29, Tr., p. 21; 33; 37). However, Solicitor Maye testified that even at the PCR stage of litigation, permitting an applicant to view his or her video evidence would still result in the identification and termination of an active confidential informant who is still assisting law enforcement. (Sept. 29, Tr., p. 24). Doing so at the PCR stage can also create a more difficult circumstance for bringing legal action to deter witness intimidation. (Sept. 29, Tr., p. 25). Solicitor Maye testified that if applicants are permitted to obtain the benefit of the bargain from a negotiated plea, and then come back at PCR and retroactively learn the identity of the confidential informant anyway, law enforcement would quickly lose any ability to work with informants and conduct drug busts. (Sept. 29, Tr., p. 25-26; 34).

Wlw #13

On cross-examination, Solicitor Maye testified that occasionally a case arises where the defendant knows with certainty who served as a confidential informant against them. In such cases, when the Solicitor is convinced that the informant is known, then the procedure for denying the video to defendant and/or withdrawing all negotiated pleas may change. He refused to testify in absolutes. (Sept. 29, Tr., p. 27-28). Solicitor Maye also noted that he has never encountered a Rule 5 noncompliance issue in handling confidential informant evidence in this manner. (Sept. 29, Tr., p. 28). He also noted that whether an informant is still assisting police, or has no concern for safety, can also be factors discussed with law enforcement that might also dictate release of video evidence. (Sept. 29, Tr., p. 29). Solicitor Maye testified that he could not

recall whether at the time of the plea negotiations he knew that Applicant was demanding the video tape from plea counsel. (Sept. 29, Tr., p. 31). However, he also noted that in frequent exchanges with plea counsel, if a CI video did not provide quality evidence, plea counsel would alert him to this concern and that such videos are usually the ones where still photographs cannot be acquired. (Sept. 29, Tr., p. 31). The existence of the still photographs demonstrated, at the very least, that Applicant was identifiable and therefore quality evidence existed against him. (Sept. 29, Tr., p. 32). Solicitor Maye testified that in weighing potential danger to the confidential informant used in Applicant's case, he relied upon the advice and knowledge of Lieutenant Young, and continues to do so. (Sept. 29, Tr., p. 34). Lastly, Solicitor Maye testified that he has never heard of the possibility of Applicant's father being criminally charged based on the contents of the video. (Sept. 29, Tr., p. 36). He does not believe that scenario to be the truth, as such would certainly have triggered a recollection on his part. (Sept. 29, Tr., p. 37).

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 hearings. 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. This Court finds that Applicant's testimony is not credible on the issues presented, and that the testimony of plea counsel, Lieutenant Young, and Solicitor Maye ~~to be~~ is credible on the issues presented. 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 his or her application. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813

(1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *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 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). Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. *Strickland*, 466 U.S. at 689. The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Strickland*, 466 U.S. 668. "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Smith v. State,* 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing *Caprood v. State,* 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this

prong, attorney performance is measured by its "reasonableness under professional norms." *Cherry*, 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 the context of guilty pleas, *Strickland* is still the applicable test, but its application is directed toward determining whether the plea was voluntarily, knowingly, and intelligently entered. *Hill v. Lockhart*, 474 U.S. 52, 57, 106 S. Ct. 366, 370 (1985); *Hyman v. State*, 397 S.C. 35, 43, 723 S.E.2d 375, 379 (2012) (citing *Anderson v. State*, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000)).

> A defendant who enters a plea on advice of counsel may only attack the voluntary and intelligent character of the 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, the defendant would not have pled guilty, but would have insisted on going to trial.

WPAL #16

Hyman, at 379 (citing *Holden v. State*, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011)). A plea is proper if it can be shown that a defendant was "aware of the nature and crucial elements of the offense, the maximum and any minimum penalty, and the nature of the constitutional rights being waived." *Id.* at 380.

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel. Below are this Court's specific finding regarding each of Applicant's allegations of ineffective assistance of counsel:

Allegation 1

Ineffective assistance of trial counsel – counsel failed to allow Applicant to review all available discovery materials related to his criminal charges, specifically including but not limited to the alleged video of the drug transaction, and therefore client made an uninformed decision in waiving his right to trial and entered into an involuntary guilty plea.

Applicant has failed to demonstrate that counsel was deficient in not providing Applicant an opportunity to view the video evidence taken by a confidential informant during a controlled drug purchase. Applicant has also failed to demonstrate any prejudice in his accepting the State's negotiated plea offer, and has failed to demonstrate that his plea was entered involuntarily. The record is clear that Applicant was correctly informed that he could watch the informant video if he chose to, but that doing so would reveal the identity of the confidential informant and result in the State withdrawing its efforts to negotiate a plea deal. In such circumstances, our South Carolina Supreme Court has held that an applicant is not entitled to PCR relief when defense counsel is permitted to view video evidence from a confidential informant and discuss the strength of that evidence with the defendant for purposes of considering a negotiated offer to plead guilty. *Hyman v. State*, 397 S.C. 35, 723 S.E.2d 375 (2012), abrogated on different grounds by *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). This Court finds that Applicant's first allegation must be dismissed.

This Court finds that the Supreme Court decision in *Hyman v. State* is precisely on point in this matter. In summary, Mr. Hyman was indicted for distribution of cocaine, ~~thirty~~ third offense, and distribution of cocaine within the proximity of a school. Defense counsel undertook plea negotiations with the State. *Hyman v. State*, 397 S.C. 35, 39, 723 S.E.2d 375, 377 (2012), abrogated by *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). The State offered to reduce

the charge to a second offense and five year sentence, but required that the plea agreement be conditioned upon not disclosing the videotape to Mr. Hyman. The State informed counsel that they desired to maintain the confidential identity of their informant so as not to compromise the informant's safety and to allow the informant to continue assisting law enforcement. *Id.* at 39-40. While the offer was still on the table, defense counsel reviewed the tape, concluded that it clearly depicted Petitioner engaged in a drug transaction, and relayed that opinion to Mr. Hyman. *Id.* at 40-41. Mr. Hyman still disputed the evidence, and defense counsel requested still photographs taken from the video to confirm Mr. Hyman's identity. *Id.* at 41. Mr. Hyman conceded that the photographs identified him, but that the photographs did not depict a drug sale and therefore refused to accept the solicitor's offer. *Id.* Following the expiration of the plea offer, a jury was struck, but Mr. Hyman chose to plead guilty as charged prior to the beginning of trial. The trial judge ordered he serve concurrent fifteen year and ten year sentences for his charges, which was the minimum concurrent punishment for his two convictions.

Wpe #18

On PCR Appeal, the Supreme Court affirmed the PCR judge's ruling, provided an in-depth analysis of the matter, and concluded that the nondisclosure of the videotape to Mr. Hyman, *personally*, did not render his plea involuntary. The Court found that the prosecution had not committed any *Brady* violations in establishing this negotiated plea arrangement. *Id.* at 46-47. The Court then explained that there likewise were no violations of Rule 5 of the South Carolina Rules of Criminal Procedure. *Id.* at 47.The Court concluded that the State had properly disclosed the existence of the videotape, permitted defense counsel to view the videotape, and "took the extra step of generating still photographs to assuage Petitioner's concerns about the contents of the videotape." *Id.* at 47. There was no indication that the State would have withheld the videotape had Mr. Hyman proceeded to trial. The Court also confirmed that "in cases

involving a confidential informant, a criminal defendant's interest in access to certain evidence must be weighed against the State's interest in protecting the identity and safety of the informant. *Id.* (citing *State v. Humphries* 354 S.C. 87, 90, 579 S.E.2d 613, 614-15 (2003)). As such, there was no argument to prove deficient performance by counsel.

The Court also concluded that Mr. Hyman had failed to demonstrate prejudice for his counsel's alleged deficient performance. *Id.* at 48. The Court agreed with the PCR judge, that since the videotape was not exculpatory, Mr. Hyman was not prejudiced in his matter. The Court concluded that "Petitioner was fully aware of the inculpatory nature of the videotape throughout the negotiations and the guilty plea proceeding. Consequently, Petitioner has failed to prove how the outcome would have been different had he chosen not to plead guilty until after he watched the video himself." *Id.*

In comparison, Applicant's case at hand is nearly identical to the circumstances in *Hyman.* Though he could not recall the details of the video footage, plea counsel was informed of the videotape, was permitted to view the tape, reviewed and discussed the contents of the tape with his client, and provided Applicant with still photographs from the video that clearly identified him. Applicant was offered a negotiated plea deal that enabled him to avoid prosecution on his four other charges, reduced his distribution of crack cocaine from a third offense to a second offense, and limited his sentencing exposure to a ten year cap. Applicant had sufficient opportunity to discuss with plea counsel what specifically occurred in the video, and made an informed decision to plead guilty based on his chances at trial. Applicant's own testimony confirmed that these discussions occurred, and that counsel advised him that he would not likely be successful at trial. (June 6, Tr., p. 30).

There is some dispute in the record, *albeit only from Applicant's testimony*, that he was informed by plea counsel that the video could not *visually* identify crack cocaine. Even if true, given the record, this is not a substantial issue for a number of reasons. First, Applicant's argument assumes that the video contained no discussion or reference to the sale of crack cocaine for which a jury could judge guilt. Applicant's assumption is contrary to the description of the video's contents provided by Solicitor, Franklin Young, at the guilty plea hearing. Therein, Solicitor Young described the confidential informant video and evidence to the plea court as follows:

> a discussion ensued between the CI and Mr. Rouse about the purchase of some marijuana and also about some hard, crack cocaine. There are still shots of where, on the porch of his father's residence, he began to take a quantity of marijuana out of a jar and transferred that into a bag.
>
> . . .
>
> They then got into the CI's truck and drove to a location where he [Applicant] resides on Addison Street here, again, in the city of Edgefield, in the county of Edgefield.
>
> . . .
>
> The transaction and negotiations for price and everything else went back and forth at his residence, during a part of which you can see him go over to a bag, tear it open with his teeth and then transfer a quantity of that to another bag, which was handed over at some point to the CI.
>
> . . .
>
> Both before and after, the vehicle and the CI were thoroughly searched. There was no crack on him [the CI] until he returned. And when he came back, he came back with point seven grams of crack and some marijuana, both of which tested positive.

(Plea Tr., p. 12-14). [2]

[2] The Court acknowledges that following the description of the video by Solicitor Young, Applicant's comments to Judge Russo prior to sentencing would seem to suggest that he knew ~~who~~ the identity of the confidential informant. However, the Court cannot be certain as to whether this level of detailed description of the video had been provided to Applicant during plea negotiations with the State. Likewise, the Applicant appeared to believe that he at some point got high with the informant, which is otherwise unsubstantiated by the record. It is reasonable to

The record here demonstrates a number of critical points. First, the description of the video demonstrates that the transfer of marijuana occurred at the residence of Applicant's father, before the CI and Applicant drove to Addison street for a different transaction. This second transaction is described to have occurred when Applicant tore open a bag with his teeth, which is consistent with the still photograph taken of Applicant "with a plastic bag in [his] mouth." (June 6, Tr., p. 8). Second, while a visual confirmation of crack cocaine was not established, the negotiation and payment for crack cocaine occurs in the video. Third, the State was not limited to *only* the video evidence in question. The plea transcript indicated that the informant and his vehicle were searched prior to and after the sale by Applicant; only after the sale did the informant return in possession of 0.7 grams of crack cocaine and some marijuana. After hearing the Solicitor's recitation of the video's contents and the other evidence of guilt, Applicant confirmed the accuracy of the State's case against him. (Plea Tr., p. 17).

WAC #21

At the PCR hearing, Solicitor Maye also indicated that the informant was available to testify had a trial been necessary, as were the officers, given their presence and participation in the plea hearing and PCR hearing. (Plea Tr., p. 3; Sept. 29, Tr., p. 30). Lastly, Applicant conceded that the video does indicate that he was in possession and sold marijuana, which was one of his five different charges. (Sept. 29, Tr., p. 30). Applicant's decision to plead guilty is not isolated solely to the charge of crack cocaine, but instead was a decision that resolved all of his charges. Regardless of the fact that Applicant did not see the video himself, he knew full well

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believe that the State felt Applicant could not conclusively determine the identity of the informant, but it is also irrelevant for purposes of this proceeding to make such a determination. The State is permitted to negotiate plea offers, in good faith, as it did in Applicant's case. Whether the identity of the informant was correctly deduced by Applicant or not by the time his plea hearing ended is irrelevant for questions concerning ineffective assistance of counsel.

the general content of the video and the evidence against him in the case, and took full advantage of an exceptionally beneficial plea offer from the State.

Applicant has failed to demonstrate that the video tape was exculpatory, has failed to demonstrate prejudice such that there was a reasonable probability that but for not viewing the video, he would have proceeded to trial, and has failed to demonstrate error by counsel given that Applicant was informed that he could watch the video if he desired to, albeit without the ability to accept the State's ~~gracious~~ plea offer. There is neither error nor prejudice supporting Applicant's allegation, and his guilty plea was given freely, voluntarily, and intelligently. Applicant's claim for relief is therefore denied.

Allegation 2

Ineffective assistance of trial counsel – Applicant was induced into entering an involuntary guilty plea based on statements made by counsel that Applicant's father would be arrested if Applicant asserted his right to trial.

Applicant's *Allegation 2* asserts that he did not voluntarily enter a guilty plea, but was instead pressured and coerced into the guilty plea in order to protect his father from subsequent conspiracy charges. As previously stated, this Court does not find Applicant's PCR testimony credible, and the record does not support this claim. Based on the plea hearing and the PCR hearing testimony, this Court finds that Applicant has failed to establish that Applicant's plea was given involuntarily due to coercion. Relief is therefore denied.

The only basis to support the Applicant's allegation comes from Applicant's own testimony. Therein, Applicant testified that he originally wanted to go to trial, but that plea counsel relayed to Applicant that Solicitor Young would arrest his father on conspiracy to distribute crack cocaine if Applicant did not accept the plea offer provided. (June 6, Tr., p. 10-11). Applicant further testified that plea counsel specifically spoke with his father on this subject

and assured his father that there was no legitimate risk of conspiracy charges. (June 6, Tr., p. 11). While one of the still shot photographs taken from the video identifies Applicant's father, there is no evidence to suggest that Solicitor Young or any other member of his office coerced Applicant in such a manner.[3] In response to this allegation, Solicitor Ervin Maye testified that he had absolutely no recollection of such a tactic or intention being used against Applicant, did not believe it to be an accurate accusation, and noted that such a circumstance would certainly have triggered a memory if true. (Sept. 29, Tr., p. 36-37). As Solicitor Maye was an active participant in prosecuting Applicant's case, the Court finds this testimony compelling. (Sept. 29, Tr., p. 14).

Plea counsel noted that he did find a photograph of "an older guy that I assume is Mr. Rouse's father based on his allegations in his application." While not testifying to the veracity of the allegation, plea counsel testified that he had absolutely no recollection of speaking to Applicant or Applicant's father about this issue. (June 6, Tr., p. 46-47). Plea counsel followed by testifying that Applicant was an intelligent client, whom he had represented on prior occasions, and that after considering whether or not to plead guilty, it was his decision to do so. (June 6, Tr., p. 47).

WBR #23

The plea hearing also provides insight to the claim. The plea Judge's colloquy was thorough, and Applicant confirmed that he had not been promised or threatened in anyway in order to secure his guilty plea, that he was pleading guilty of his own free will, and that he was indeed guilty of the crime. (Plea Tr., p. 11-12). Applicant also confirmed the recitation of facts, which included specific reference to the photograph of his father, but made absolutely no

[3] As the confidential informant's controlled drug purchase occurred in part at Applicant's father's residence, the utility of this still photograph assists in confirming the identity of Applicant in the video.

mention of any coercion in his case to the plea judge. (Plea Tr., p. 12; p. 17; p. 22). This Court finds no merit to the claim.

Assuming arguendo that Applicant's claim is truthful, the claim is substantially damaged by the remainder his own testimony. Applicant testified at the PCR hearing that following the alleged threat of charges against his father, he had an opportunity to speak with his father and learn that plea counsel had assured his father that conspiracy charges were not a realistic threat. (June 6, Tr., p. 11). As such, any alleged coercion and threat appears to have been alleviated, as Applicant did not testify to any further discussion of the topic with counsel prior to his plea. Furthermore, if such allegations were indeed true, Applicant could have secured the testimony of his father and/or Solicitor Frank Young in order to bolster his claim and remove the concern of hearsay from Applicant's testimony. Neither witness was provided and this Court cannot ~~not~~ speculate as to the content of witness testimony not presented at hearing. *Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995). In colloquy with the Judge Russo, the record shows that Applicant understood his charges, potential punishments, and waived constitutional rights. Applicant agreed with the evidence against him, denied any threats to secure his plea, and made no mention of conspiracy charges against his father. Applicant presented no other witnesses or evidence to support his claim, such threats of charges against his father could not be confirmed by plea counsel, and such threats were firmly denied by Solicitor Maye.

This Court finds absolutely no merit to Applicant's claim. Applicant has failed to demonstrate any deficient performance by counsel, and likewise any prejudice in accepting the plea offer, given that his colloquy responses fully support a freely and voluntarily entered guilty plea. Relief is therefore denied and the allegation is dismissed.

Allegation 3

Ineffective assistance of trial counsel – Counsel failed to sufficiently advise the Applicant regarding the procedure and substantive information that would be presented to the Court during the guilty plea and incorrectly informed Applicant regarding what sentence he would receive.

Applicant's third allegation asserts that plea counsel failed to adequately prepare him for his plea hearing and incorrectly informed him of the plea offer and sentencing he would receive. The Court finds no merit to this claim and denies relief.

Applicant first alleges that counsel failed to adequately prepare him for the guilty plea process, which included the Judge's colloquy, the recitation of facts by the State, review of his prior record, his probation violations, and an argument for leniency. Therein, Applicant's main complaint is that he was not prepared for the Solicitor to provide the still photographs to the judge, and inform the judge "that that was me with crack cocaine in my mouth in which, as far as I know of, Mr. Seigler had relayed to me beforehand that there's never any visual of crack cocaine in the video." (June 6, Tr., p. 14; 15). Applicant also complains that a charge from when he was seventeen was introduced in his prior record history to the judge, and argued that plea counsel should have warned him that this would be brought up. (June 6, Tr., p. 14). Applicant claims he would not have taken the plea had he known these issues would occur.

WPC #25

On cross-examination, Applicant testified that he did not recall that the State's ten year recommendation was put on the record at the beginning of his plea, or that Judge Russo informed him that for his distribution of crack cocaine, third offense, he could receive between five to thirty years. (June 6, Tr., p. 17-18; Plea Tr. 3; 5, 11). Applicant confirmed the remainder of his colloquy responses, including denying any threats, promises, or displeasure with plea counsel. He testified that he answered as he did because he was "just going to go along with" what was

said, that counsel instructed him to do so, and that he was interrupted from contesting the still photographs. (June 6, Tr., p. 21-22).

Applicant also argues that counsel did not properly inform him of the State's plea offer and alleges that he was never informed of the State's intention to recommend a ten year sentence. He testified instead that "what I was relayed was a plea of five to ten cap. It was no recommendation about the ten years, it was only a five to ten. It was a chance I could get five, a chance I could get ten . . ." (June 6, Tr., p. 13). Applicant then testified that his attorney advised him that he would not likely get ten years. (June 6, Tr., p. 13). He states at hearing that "My public defender told me that we was in a good situation, in was in front of a good judge, Mr. Russo, one of the best judges in South Carolina, and that for the drug charges, he didn't see me getting ten years and it was highly unlikely that I would get ten years." (June 6, Tr., p. 13).

This court finds no merit to the claims in *Allegation 3*. First, Applicant has mischaracterized the description of the photographs and video provided to the Judge Russo by the Solicitor. At no time did Solicitor Young describe the still photographs or the video as visually depicting crack cocaine. Reference was made to the verbal discussion and negotiation for sale of crack cocaine, and the actions of Applicant tearing a bag with his teeth, but at no time did the Solicitor inform the court that cocaine was visible in the video. (June 6, Tr., p. 12). Also contrary to his testimony at PCR hearing, there is absolutely no indication that Applicant attempted to interrupt the solicitor to contest the photographic evidence or otherwise raise his concerns to the court. (June 6, Tr., p. 22). Concerning the terms of the negotiated plea deal, there is no indication from any party that the Solicitor's office agreed not to weigh in with a recommendation to the Court, only that they would inform the court as to the ten year cap agreement. Given the minimum sentence requirements for the charge and the Solicitor agreement

to a ten year cap, he Applicant's own explanation of his plea offer is accurate. The Court finds no error or prejudice to any of these arguments.

Concerning Applicant's claim that he was unprepared to have Judge Russo informed of his prior record, Applicant conceded that he did have the threatening a public official conviction and that counsel corrected the Solicitor on his prior distribution conviction. (Plea Tr., p. 26; 15). Applicant also conceded that he was well versed in the guilty plea process, having gone through it numerous times with plea counsel on prior charges. (Plea Tr., p. 28-30; 19; June 6, Tr., p. 47). Plea counsel testified that he did not make any promises as to what sentence Applicant would receive, only that he would do his best to argue for as little sentence as possible. (June 6, Tr., p. 48). He was also confident that he would have reviewed the negotiated plea offer from the State with his client prior to Applicant making a decision. (June 6, Tr., p. 49).

This Court finds the testimony of plea counsel credible and compelling in this matter. There is no evidence, aside from Applicant's testimony, that plea counsel committed any error in preparation or advocacy concerning the guilty plea that Applicant chose to enter. There is likewise no basis to prove prejudice, as the evidence of guilt and prior record were properly presented to the court, and Applicant having prior knowledge of these innocuous issues would not have dissuaded him from pleading guilty. Furthermore, the content of Judge Russo's colloquy and the statements made at the plea hearing certainly afforded Applicant an opportunity to raise concerns if the information provided conflicted with his understanding. However, Applicant provided nothing but respectful confirmation to the questions posed by Judge Russo. "[W]here a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea." *Garren v. State*, 423 S.C. 1, 12, 813 S.E.2d 704, 710 (2018) (citing *Jamison v. State*, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014). "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." *Dalton v. State*, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Roddy v. State*, 339 S.C. 29, 33–34, 528 S.E.2d 418, 421 (2000).

Applicant has failed to satisfy his burden under *Strickland.* Post-conviction relief is hereby denied, and allegation three is dismissed.

Allegation 4

Ineffective assistance of trial counsel – Counsel failed to object to the State's offer of a plea agreement which was conditional on forgoing discovery.

In similar posture to *Allegation 1, Allegation 4* asserts that plea counsel was ineffective for failing to object to the State offering a plea agreement conditional on forgoing discovery. For the same reasons discussed in *Allegation 1*, Applicant has failed to carry his burden of proof and relief is therefore denied.

JPC
#28

As previously discussed, *Hyman v. State* held that when plea counsel is notified of confidential informant video/audio evidence, is permitted to view that evidence, and is provided still photographs so as to confirm the identity of their client,[4] the State is permitted to negotiate a plea deal with a defendant on condition of maintaining the confidential identity of the informant. *Id.* As in *Hyman*, Applicant was never denied the right to see the video, his viewing the video was merely conditioned on withdrawal of negotiated plea bargains from the State. In addition to the reasoning in *Hyman*, a defendant is not entitled to receive plea negotiations or favorable deals from the State as matter of course for litigating criminal charges. An Applicant therefore cannot

[4] The Supreme Court in *Hyman* characterized this effort as "an extra step," that is not necessarily required to satisfy the Rule 5 compliance in such a circumstance. *Id.* at 47.

prove impropriety in the form of conditional plea negotiations when the State is not obligated to negotiate in the first place.

Applicant was informed that he could view the video if he chose, but he instead accepted the plea offer. This Court finds that the facts of this case are materially indistinguishable from *Hyman*, agrees that there is no basis for error or impermissible dealings, and therefore rules in accordance with our South Carolina Supreme Court precedent. There is neither error nor prejudice in counsel's failure to object to the conditional limitations on discovery for purposes of plea negotiations. Relief on the basis of *Allegation 4* is therefore denied and dismissed.

CONCLUSION

Based on the foregoing, this Court finds and concludes 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 is denied and dismissed with prejudice.

#29

IT IS THEREFORE ORDERED:

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

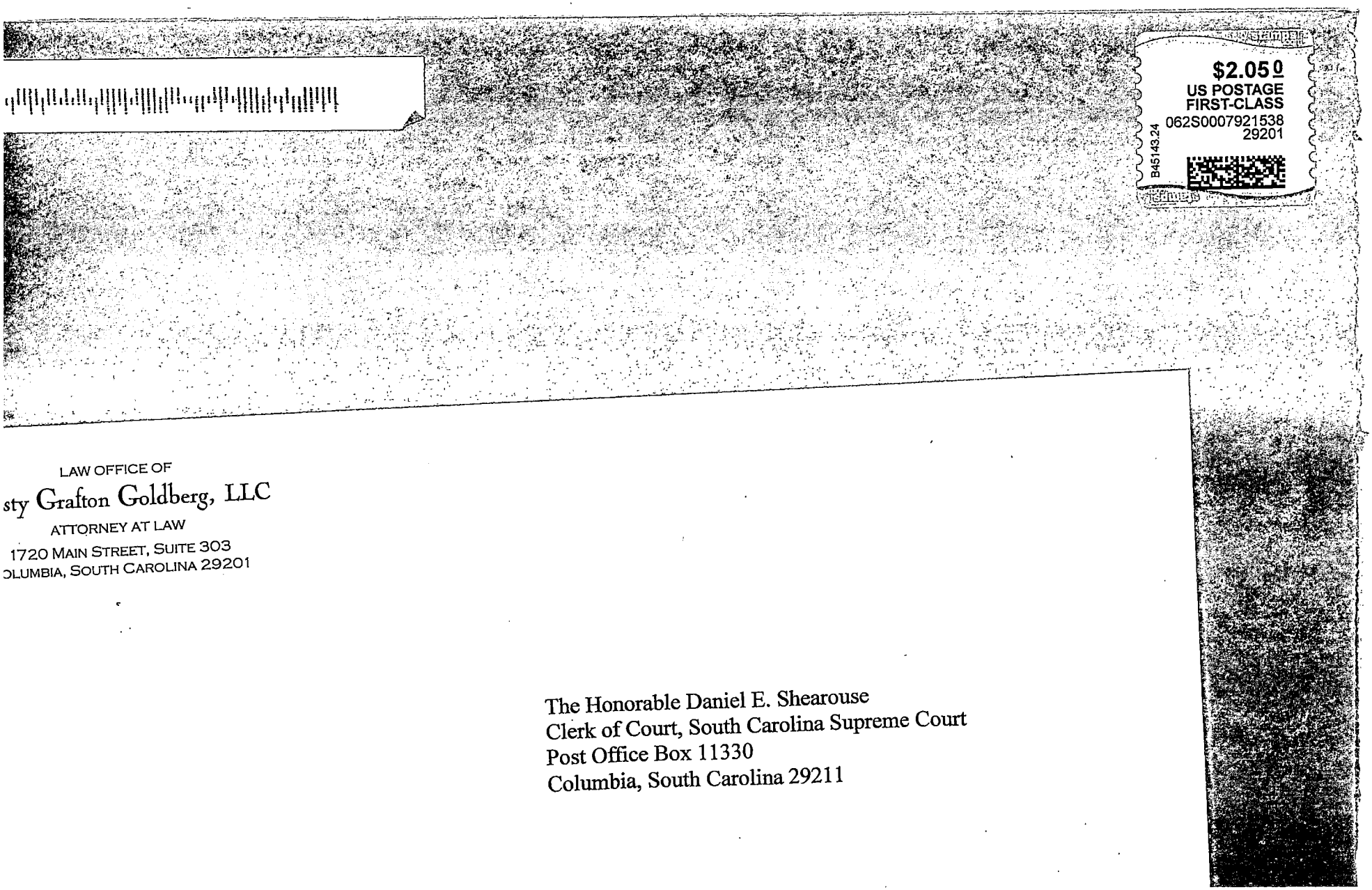
2. The Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 7th day of Sept., 2018.

William P. Keesley

WILLIAM P. KEESLEY
Presiding Judge
11th Judicial Circuit

Edgefield, South Carolina



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