

RECEIVED
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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Maite Murphy, Circuit Court Judge

ANTHONY JEROME HEYWARD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000733

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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AMANDA K. HAFFENDEN, RPR, CRR
Circuit Court Reporter
P.O. Box 424
Summerville, SC 29484
ahaffenden@sccourts.org

October 10, 2017

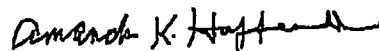
TO: Jennifer Jennison
Office of the Attorney General
Rembert C. Dennis Building
PO Box 11549
Columbia, SC 29211-1549

IN RE: Anthony J. Heyward

Ms. Jennison:

Pursuant to the email you sent inquiring whether I still had records pertaining to the above-captioned case, I apologize, but I am unable to provide the transcript to you. Per our rules, I do not retain any records after the five-year period.

Sincerely,



Amanda K. Haffenden

SLB20100200983

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1002764

ARREST WARRANT NUMBER

K609954

DATE OF ARREST

February 18, 2010

ACTION OF GRAND JURY

TRUE BILL

Da Nerven

Foreperson of Grand Jury
Date:

MAY 10 2010

VERDICT

Foreperson of Petit Jury

Date

INDICT

DOCKET NO. 2010GS1003194

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

May Term 2010

THE STATE

10915(01)

vs.

ANTHONY JEROME HEYWARD

DOB: [REDACTED]
B/M

Indictment for

Trafficking Cocaine

FILED

6/2/2010 5:22:08 PM
JULIE J ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

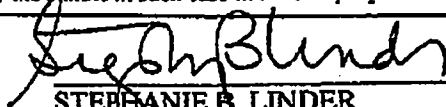
INDICTMENT

At a Court of General Sessions, convened on May 10, 2010 the Grand Jurors of Charleston County present upon their oath:

Trafficking Cocaine

That in Charleston County, South Carolina, on or about February 18, 2010, the Defendant, ANTHONY JEROME HEYWARD, unlawfully and knowingly did sell, manufacture, cultivate, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did possess or attempt to possess a controlled substance or a controlled substance analogue, to wit: Cocaine, in excess of 28 grams; in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



STEPHANIE B. LINDER
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.

Anthony Jerome Heyward

AKA: _____

Race: BLACK Sex: M Age: 24

DOB: _____ SS#: _____

Address: CAMBRIDGE STREET

City, State, Zip: NORTH CHARLES, SC 294060000

DL#: _____ SID#: SC01724480

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was
TO: Trafficking in cocaine, 10-28 grams, 2nd offense

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE# 2010GS1003194

A/W#: K609954

Date of Offense: 2/18/2010

S.C. Code §: 44-53-0370(e)(2)(b)1

CDR Code #: 2359

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 44-53-0370(e)(2)(a)2 of the S.C. Code of Laws, bearing CDR Code # 0387

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45
w/minor 1st or Lewd Act

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Stephanie B. Under 72656 SC Bar# Stephanie B. Under Defendant Anthony Jerome Heyward Attorney for Defendant Casey SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 12 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ _____ plus 20% fee: \$ _____
_____ days/hours Public Service Employment

Payment Terms: _____
 Set by SCDPPPS

Recipient: _____

| *Fine: | | \$ |
|--|---------|-----------|
| § 14-1-206 (Assessments 107.5 %) | | \$ |
| § 14-1-211(A)(1) (Conv. Surcharge) | \$100 | \$ 100.00 |
| § 14-1-211(A)(2) (DUI Surcharge) | \$100 | \$ |
| § 56-5-2995 (DUI Assessment) | \$12 | \$ |
| § 56-1-286 (DUI Breath Test) | \$25 | \$ |
| Proviso 47.9 (Public Def/Prob) | \$500 | \$ |
| § 14-1-212 (Law Enforce Funding) | \$25 | \$ 25.00 |
| § 14-1-213 (Drug Court Surcharge) | \$150 | \$ 150.00 |
| § 50-21-114(BUI Breath Test Fee) | \$50 | \$ |
| § 56-5-2942(J) (Vehicle Assessment) | \$40/ea | \$ |
| Proviso 90.5 (SCCJA Surcharge) | \$5 | \$ 5.00 |
| 3% to County (if paid in installments) | | \$ 8.40 |
| TOTAL | | \$ 288.40 |

Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: Attu if available

Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk Whitney Lockens
Court Reporter: Amanda Haffner
SCCA/217 (03/2011)

Presiding Judge [Signature]
Judge Code: 2128
Sentence Date: 5/14/11

FORM 5

2012-CP-10-2567

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of CHARLESTON)

Anthony Heyward #345985)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

FILED
2012 APR 18 PM 4:47
JULIE J. AHERS/CLERK
BY _____

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention EVANS Correctional Institution

2. Name and location of Court which imposed sentence Charleston County Court of G.S. 100 Broad St, Suite 106, Charleston S.C. 29401

3. Name(s) of co-defendant(s) (if any) NIA

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: K-609954
(a) WARRANT number K-609954 Traffic King COCAINE 44-53-39D
609954

(b) PWID Cocaine close proximity to a park WARRANT No. 609955 / 44-53-445

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

X (a) Applicant was sentenced to 12 yrs. 85% on May-16-2011

(b) _____

(c) _____

6 Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

N/A

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. N/A

ii. N/A

iii. N/A

(b) the result in each such Court to which you appealed:

i. N/A

ii. N/A

iii. N/A

(c) the date of each such result:

i. N/A

ii. N/A

iii. N/A

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. N/A

iii. N/A

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) No grounds exist to file a direct appeal. No objections for guilty plea

- (b) N/A
- (c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL
- (b) ILLEGAL SEARCH & SEIZURE IN VIOLATION OF MY 4TH AND 14TH AMENDMENTS U.S.C.A.
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) COUNSEL FAILED TO INVESTIGATE THE MITIGATING FACTS & CIRCUMSTANCES
- (b) SURROUNDING MY CASE AND COUNSEL FAILED TO CONDUCT A SUPPRESSORIAL
- (c) HEARING TO HAVE ALL EVIDENCE SUPPRESSED

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. N/A
 - iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

(b) the proceedings in which each ground was raised:

i. N/A

ii. N/A

iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) N/A
- (b) N/A
- (c) N/A

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? YES
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

X 18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. Marybeth Mullaney
Public Defender, 101 Meeting Street, 5th floor
Charleston, SC 29401
- ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

- i. guilty plea
- ii. _____
- iii. _____

19. State clearly the relief you seek in filing this application:

I would like to have my sentence vacated
or reduce sentence.

20. Are you now under sentence from any other court that you have not challenged?

No

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of Charleston)

VERIFICATION

I, Anthony Heyward, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Anthony Heyward

SWORN to and subscribed before me this 6 day of April 2013

Pamela Rogers Melton (L.S.)
Notary Public

My Commission Expires: August 18, 2018

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Anthony Hayward
Applicant

SWORN or affirmed to and subscribed before me this
6 day of April, 2012.

Pamela D. Jones Melrose
Notary Public

My Commission Expires: August 18, 2018

Dear Julie Armstrong,

I would like to be appointed a lawyer. At Evans Correctional Institution, for denied me medical treatment, I believe that I was food poison at this Institution. I've have notify all official officer and nurse ~~about~~ ^{about} my condition. I have even sit down with the doctor here, and he refuse to give me the proper treatment I need. So I'm asking for your assistance, please respond back as soon as possible.

Respectfully

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
)
 Anthony Heyward, SCDC # 345985,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2012-CP-10-2567

RETURN

Respondent, making its Return to the application for Post-Conviction Relief filed on April 18, 2012¹, would respectfully show this Court:

I.

Anthony Heyward (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. During its May 2010 term, the Charleston County Grand Jury indicted Applicant for trafficking in cocaine (more than 28 grams) (third offense) (2010-GS-10-3194) and possession with intent to distribute cocaine within proximity of a park (2010-GS-10-3195). He was represented by Marybeth Mullaney, Esquire. Assistant Solicitor Stephanie Linder prosecuted the case

On May 16, 2011, Applicant appeared in the Charleston County Court of General Sessions before the Honorable Deadra L. Jefferson, circuit court judge, and pled guilty to the lesser-included offense of trafficking in cocaine (10-28 grams) (second offense). Pursuant to negotiations between the State and Applicant, Judge Jefferson sentenced Applicant to twelve years imprisonment. The State dismissed the possession with intent to distribute cocaine within proximity of a park (2010-GS-10-3195) charge pursuant to the plea agreement. Applicant did not appeal his pleas or sentences.

¹ A copy of this application was not received by Respondent until October 5, 2017.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully based on an allegation of ineffective assistance of counsel for failure to investigate mitigating facts and circumstances and failure to conduct suppression hearing to have all evidence suppressed.

Attached to this Return and incorporated by reference are the records of the Charleston County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the application.² Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, the applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at

² Respondent attempted to order a copy of the guilty plea proceeding, but received a letter from the court reporter indicating she was unable to produce a transcript because it had been more than five years since the proceeding.

625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only

individual authorized to file amendments to this application. See Rule 11, SCRC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRC.

V.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VI.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

Nov. 7, 2017

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 ANTHONY HEYWARD, #345985)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent,)
 _____)

IN THE COURT OF COMMON PLEAS

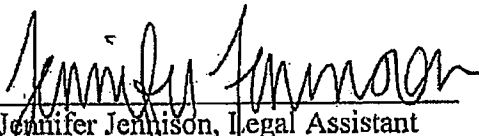
2012-CP-10-2567

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Christopher L. Murphy, Esquire
Murphy Law Offices, LLC
234 Seven Farms Drive, Suite 128
Charleston, SC 29492

DATED this the 7th day of November, 2017.


 Jennifer Jennison, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF CHARLESTON) Court of Common Pleas
) Case No. 2012-CP-10-02567
 3 _____)
 4 ANTHONY JEROME HEYWARD,)
) Applicant,)
 5)
 6 vs.) Transcript of Record
 7)
 8 STATE OF SOUTH CAROLINA,)
) Respondent.) DATE: February 2, 2018
 9 _____)

10 B E F O R E:

11 THE HONORABLE MAITE MURPHY
12

13 A P P E A R A N C E:

14 CHRISTOPHER L. MURPHY
15 Attorney for the Applicant

16 RASHEEDA CLEVELAND
17 Attorney for the Respondent

18 Karen V. Andersen, RMR, CRR
19 Circuit Court Reporter
20
21
22
23
24
25

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EXAMINATION

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Witness Name

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MARY BETH MULLANEY

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Cross By Mr. Murphy 18

1 MS. CLEVELAND: May it please the Court. This is
2 Anthony Heyward vs. The State of South Carolina, Docket No.
3 2012-CP-10-2567.

4 Mr. Heyward is presently confined in the South
5 Carolina Department of Corrections pursuant to the orders of
6 commitment of Charleston County Clerk of Court during its
7 May 2010 term. The Charleston County Grand Jury indicted
8 Mr. Heyward for trafficking in cocaine more than 28 grams,
9 third offense, and possession with intent to distribute
10 cocaine within proximity of a park.

11 He was represented by Mrs. Mary Beth Mulaney. And
12 Assistant Solicitor Stephanie Linder prosecuted the case.

13 On May 16th, 2011, Mr. Heyward appeared in the
14 Charleston County Court of General Sessions before the
15 Honorable Deadra Jefferson and pled guilty to the
16 lesser-included offense of trafficking in cocaine, 10 to 28
17 grams, second offense.

18 Pursuant to the negotiations between the State and
19 Mr. Heyward, Judge Jefferson sentenced Mr. Heyward to 12
20 years imprisonment. The State dismissed the possession with
21 intent to distribute cocaine within the proximity of a park,
22 and charged pursuant to the plea agreement.

23 Applicant did not appeal his plea or sentence.
24 Mr. Heyward filed this post-conviction relief action on
25 April 18th, 2012, alleging ineffective assistance of

1 counsel.

2 He is present in the courtroom today and
3 represented by Mr. Christopher Murphy.

4 THE COURT: Mr. Murphy.

5 MR. MURPHY: Thank you, Your Honor. May it please
6 the Court. Mr. Heyward is due to be released in about two
7 years, in 2020. I advised him that I think it's in his best
8 interest to withdraw the plea. I've explained the timing,
9 if there's an appeal, he will be out, and he doesn't need to
10 face the same set of charges again. He indicates he wants
11 to go forward despite this.

12 Also, we had -- he asked me to amend his
13 application to include some issues, which I've sent to the
14 attorney general. And those would include, number one,
15 counsel failed to investigate mitigating evidence; two,
16 counsel failed to move to dismiss the indictment; he claims
17 as three, his plea was involuntary; four, he claims that he
18 didn't waive any presentment to the Grand Jury. Actually,
19 that issue has been withdrawn. I showed him it was true
20 billed. And then, five, he alleges a failure to act within
21 90 days of the warrant. And that would be all, Your Honor.
22 And he would be our first and only witness.

23 THE COURT: All right. So, Mr. Heyward, let me ask
24 you a couple of questions before we get started.

25 ANTHONY HEYWARD,

1 having been duly sworn, testifies as follows:

2 the COURT: Mr. Heyward, I need to ask you a couple
3 of questions regarding going forward here today. You
4 understand that there are potential benefits and, of course,
5 potential downfalls of you going forward if your application
6 is approved. Basically, if I grant your application for
7 post-conviction relief, your case starts over in its
8 entirety. So whatever benefit you got from whatever plea
9 negotiations, that could completely go away and you would be
10 looking at total exposure for all of the charges that you
11 were originally charged for. Do you understand that?

12 MR. HEYWARD: Yes, ma'am.

13 THE COURT: And what would that exposure?

14 MR. MURPHY: 25 years mandatory.

15 THE COURT: So you would be looking at 25-year
16 mandatory sentence if your application is granted and they
17 went forward with your case. And they wouldn't have to
18 offer you the same thing you were originally offered. Do
19 you understand that?

20 MR. HEYWARD: Yes.

21 THE COURT: Knowing that, you wish to proceed and
22 go forward here today?

23 MR. HEYWARD: Yes, ma'am.

24 THE COURT: All right. Have you talked to your
25 attorney about that?

1 MR. HEYWARD: Yeah.

2 MR. MURPHY: He understands, Your Honor, and he
3 would like to proceed.

4 THE COURT: All right. So, Mr. Heyward, obviously,
5 this is against the advice of your attorney. Mr. Heyward,
6 can you tell me, how far did you go in school?

7 MR. HEYWARD: Ninth grade.

8 THE COURT: Did you get a GED?

9 MR. HEYWARD: No, ma'am. I was in the course of
10 trying to take it while I've been in the institution.

11 THE COURT: Okay. But are you okay to read and
12 write? Do you understand?

13 MR. HEYWARD: I got a good capable understanding.

14 THE COURT: So you understand? Do you have any
15 kind of mental illness or any alcohol -- have you ever been
16 treated for any kind of mental --

17 MR. HEYWARD: I mean, I have been treated for
18 something when I was back in younger days, like, I think
19 depression.

20 THE COURT: Depression?

21 MR. HEYWARD: Yeah.

22 THE COURT: And that was when you were younger?

23 MR. HEYWARD: Yes, ma'am.

24 THE COURT: Anything about having that issue in
25 your past that prevents you from understanding what you are

1 doing here today?

2 MR. HEYWARD: I mean, no, ma'am.

3 THE COURT: Are you sure?

4 MR. HEYWARD: Yes, ma'am.

5 THE COURT: All right. So, again, you understand
6 if your relief is granted, you would be looking at potential
7 25-year sentence instead of what you are currently serving;
8 you understand that?

9 MR. HEYWARD: Yes, ma'am.

10 THE COURT: All right. So your decision to go
11 forward, is it freely and voluntarily and intelligently
12 made? You feel comfortable with this decision?

13 MR. HEYWARD: Yes, ma'am.

14 THE COURT: And your attorney tells me that he's
15 advised you against this. He could only give you advice.
16 But the choice is ultimately only yours. You understand
17 that?

18 MR. HEYWARD: Yes, ma'am.

19 THE COURT: And knowing that you are going against
20 the advice of your attorney, you wish to go forward?

21 MR. HEYWARD: Yes, ma'am.

22 THE COURT: All right. Come on up to the witness
23 stand.

24 Any other questions, Mr. Murphy?

25 MR. MURPHY: Nothing, Your Honor.

1 ANTHONY HEYWARD,

2 having been duly sworn, testifies as follows:

3 THE CLERK: Spell your first and last name into the
4 record.

5 THE WITNESS: My first name is Anthony Heyward,
6 A-n-t-h-o-n-y. My last name is H-e-y-w-a-r-d.

7 THE COURT: Your witness.

8 MR. MURPHY: Thank you, Your Honor. May it please
9 the Court.

10 DIRECT EXAMINATION

11 By MR. MURPHY:

12 Q. Mr. Heyward, you understand what you are doing here
13 today?

14 A. Yes. Yes, sir.

15 Q. And you are alleging that your attorney committed
16 certain errors which prejudiced your case; is that correct?

17 A. Yes, sir.

18 Q. Now, let's talk about the errors that you allege.
19 The first issue you allege is that your attorney failed to
20 investigate mitigating evidence.

21 A. Yes, sir.

22 Q. Can you tell the Court what your attorney
23 specifically failed to do?

24 A. She had failed to investigate my case, to see that
25 I had insufficient indictments before I pled guilty.

1 Q. All right. Now, is there anything else she failed
2 to do that you allege?

3 A. No, I think that's all right there.

4 Q. Okay. Now we are going to move kind of into the
5 second issue, which you say that the indictments against you
6 were fatal or they should not -- they weren't good, correct?

7 A. Yes, sir.

8 Q. Tell the Court why you think they were fatal or
9 defective?

10 A. My indictment was defective on the face of the
11 indictment because the charge wasn't filed with the clerk of
12 court and assigned a permanent case number before presenting
13 it to the Grand Jury.

14 Q. What you are saying is, there was not a case number
15 assigned when the matter was presented to the Grand Jury?

16 A. Yes, sir.

17 Q. And do you believe that's fatal?

18 A. Yes, sir.

19 Q. All right. Is there any other issues you allege
20 with the indictment being insufficient?

21 A. That's all I allege.

22 Q. All right. Now, you've also alleged with the third
23 issue that your plea was involuntary?

24 A. Yes, sir.

25 Q. And what does it mean to have an involuntary plea?

1 A. I wasn't really aware of the situation
2 beforehand.

3 Q. And you are talking about "the situation"; what
4 specifically are you talking about?

5 A. Like, that I had insufficient indictment. I know
6 my counsel had known, because Jefferson told her and
7 Stephanie Linder that I wasn't fit for South Carolina court
8 of law. So that was giving me the curiosity to seek out
9 what's going on in my case. And I see the report inside the
10 indictments.

11 Q. I want to back up because you are talking about two
12 things. The first issue I asked you about the involuntary
13 plea, and you went back to the indictment being faulty,
14 ineffective.

15 A. Yes.

16 Q. The second issue you mentioned is, you weren't
17 competent or didn't know what was going on?

18 A. Yes, yes, sir.

19 Q. Were you evaluated by a doctor?

20 A. I mean, they evaluate me, but they say I was
21 competent enough to stand.

22 Q. All right. Now, let me ask you. You understand
23 that this case was -- your charges were presented to the
24 Grand Jury, correct?

25 A. Yes, sir.

1 Q. Now, the final issue you've raised is that there
2 was some failure to act within 90 days of the warrant.

3 A. Yes, yes, sir. The solicitor should have had acted
4 on the warrant within 90 days due to the fact -- due to the
5 fact for planning indictment to be presented to the Grand
6 Jury. Means the indictment should have been filed with the
7 clerk of court and given a criminal case number and then
8 presented to the Grand Jury. And that the solicitor taking
9 last necessary steps of procedures to do that, South
10 Carolina Rule Criminal Procedures Rule 32 state that
11 formally solicitor indictment asking that the warrant is
12 token (sic).

13 Q. And let me just see if I could summarize what you
14 are saying. Is it your position that the matter should have
15 been presented to the Grand Jury within 90 days of the
16 arrest warrant?

17 A. Yes, yes. Yes, sir.

18 Q. All right. And you believe that was a fatal flaw?

19 A. Yes, sir, because the criminal Rule 3D says due to
20 the extension of time, that the solicitor failed to put in a
21 partition that extended delays actually on the warrant,
22 which means that they get statement 90 days to correct all
23 error. And Rule 95 to the circuit court, that required the
24 solicitor to act on warrant within 90 days.

25 Q. And now, let me ask you this. Did you talk about

1 any of these issues with your attorney?

2 A. I mean, at the time, being I had no clue what's
3 going on, I have to learn myself.

4 Q. All right. And did you discuss, when you pled
5 guilty, any waiver of any issues to get this deal, the
6 12-year deal?

7 A. I just told -- I had to do what she said. She just
8 told me to plead guilty.

9 Q. And you understand that you were looking at a
10 mandatory 25 years initially?

11 A. Yes, yes. Yes, sir, I was looking at 25 years.

12 Q. And you actually went almost -- you picked a jury
13 in your case, correct?

14 A. Yes. I picked a jury. So as I state that, she
15 could have objected to the warrant to dismiss the case
16 before it even got any further.

17 Q. And do you know what a negotiated plea is?

18 A. I mean, I guess that's something that the solicitor
19 and her work out.

20 Q. Did your attorney talk to you about a 12-year
21 negotiated plea?

22 A. She just told me to plead to 12 years, because she
23 said I didn't have a chance, but she didn't even object to
24 error in the case.

25 Q. Do you have any other issues with your attorney

1 that you believe she should have done differently?

2 A. I feel like she was prejudiced because she didn't
3 really -- she had to know beforehand because the judge told
4 her that I wasn't fit, so --

5 Q. And that goes back to the warrants that you are
6 talking about?

7 A. Yes.

8 MR. MURPHY: All right. That's all I have, Your
9 Honor.

10 THE COURT: Cross-examination.

11 CROSS-EXAMINATION

12 BY MS. CLEVELAND:

13 Q. Just briefly. Mr. Heyward, do you recall telling
14 the plea judge that no one promised you anything or
15 threatened you in order to get you to plead guilty?

16 A. I mean, I can't recall that, but I think I told her
17 that.

18 Q. And do you recall telling the plea judge that you
19 wished to plead guilty in this case?

20 A. I mean, yes, as far as following what my attorney
21 told me.

22 Q. Mr. Heyward, do you understand that 12 years, a
23 12-year deal, is better than serving 25 years, and you chose
24 to take that deal?

25 A. I mean, 12 years was better, yes, yes. Yes, ma'am.

1 MS. CLEVELAND: Thank you, Mr. Heyward. I have
2 nothing further for this witness.

3 MR. MURPHY: Nothing further.

4 THE COURT: You may step down, Mr. Heyward.
5 Any other witnesses?

6 MR. MURPHY: Nothing, Your Honor.

7 MS. CLEVELAND: The State would call Ms. Mary Beth
8 Mullaney.

9 MARY BETH MULLANEY,
10 having been duly sworn, testifies as follows:

11 The clerk: Spell your last name for the record:

12 THE WITNESS: My name is Mary Beth Mullaney,
13 M-u-l-l-a-n-e-y.

14 THE COURT: Your witness.

15 DIRECT EXAMINATION

16 By MS. CLEVELAND:

17 Q. Good morning, Ms. Mullaney. Just briefly, I have a
18 few questions for you. Do you recall the matter of South
19 Carolina vs. Anthony Heyward?

20 A. I do.

21 Q. And how were you involved in this case?

22 A. I was working for the public defender at the time
23 and I was appointed to represent Anthony.

24 Q. Do you recall how Mr. Heyward's charges arose?

25 A. I do. He -- when you ask that question, are you

1 wanting me to talk about what his defense was or just the
2 underlying facts of the case?

3 Q. Just the underlying facts, just briefly.

4 A. Sure. The underlying facts of the case were that
5 Anthony was in an area called Bayside, which is a very
6 high-crime area. And it was Officer Light and Officer
7 Bailey who had seen him in that area. It was Officer
8 Bailey's position that -- or Officer Light's position, I
9 believe, that he saw what appeared to be the outline of a
10 gun. And so that he went to approach Anthony, and upon
11 going to approach Anthony, Anthony ran.

12 They chased Anthony. They Tased Anthony. And then
13 Anthony had, I believe it was, a brown paper bag in his
14 pocket. And as he was falling to the ground, he threw it.
15 And there was approximately, I think, over 140 grams of
16 cocaine that was in that bag.

17 Q. Did you meet with Mr. Heyward to discuss these
18 charges?

19 A. Yes. Mr. Heyward was incarcerated and was
20 incarcerated during his case. And we met several times
21 while he was at the detention center.

22 Q. Do you recall how many times?

23 A. Oh, it was a lot of times. I was -- I was
24 concerned, because Anthony was facing so much time. And I
25 felt, and I still feel, that the sentence was harsh. We

1 actually prepared the case for trial and picked a jury. And
2 so -- and I also had Anthony evaluated by Susan Knight at
3 M.U.S.C. And I was -- met with Anthony, explored many
4 different defenses.

5 At one point, he was offered the 12 years. And he
6 did not take it. And we went to trial. And Ms. Linder did
7 not want to give him the offer back, even though I begged
8 and begged.

9 And then during trial, Judge Jefferson actually
10 helped me to convince Ms. Linder to make the 12-year offer
11 to Anthony, even though I was hoping to get a better offer
12 on a nonviolent crime, because Anthony had never served time
13 before. He had had prior drug convictions, but had gotten
14 probation. So this was the first time he had ever served
15 any type of real time. And it seemed like a very harsh
16 sentence to me. So I was trying to do everything I could to
17 make his situation better.

18 Q. During those meetings with Mr. Heyward, did you all
19 discuss the indictments and the elements of the offenses?

20 A. I'm sure at some point we did. I do not have an
21 independent recollection of that, though.

22 Q. And did you see any basis for challenging the
23 indictments at all?

24 A. I did not, no.

25 Q. One final question. Did you feel it would be in

1 Mr. Heyward's best interest to take the plea?

2 A. I did. I felt like it was pretty risky, because
3 our defense at trial would have been -- you know, Anthony
4 had reported, which I did investigate his defense -- that at
5 the time he was, you know, almost acting as a mule. He was
6 paid \$100 to deliver the drugs to someone. And the actual
7 person that he told me -- he told me the person's name was
8 Juice. That was his street name. And it turned out,
9 shortly after Anthony was arrested and incarcerated, that
10 there was a drug dealer that was killed in that area,
11 Bayside, whose name was Juice. He was very known to be, you
12 know, very violent and well-connected dealer in the area.
13 So, you know, I had investigated that.

14 I did believe that that was -- that what Anthony
15 told me was correct and that he was paid \$100 to deliver the
16 drugs. The drugs had a street value of \$12,000. I don't
17 think that Anthony ever had any type of job or any type of
18 source of income. He was, you know, fairly unsophisticated.

19 So for him to have had that amount of weight on
20 him, to me, led that his story was true. And, however, it
21 was extremely risky to go to trial on that, because, God
22 forbid, if we lost and if a jury didn't see it the way that
23 Anthony and I saw it, that he would do the -- the minimum
24 would be 25 years on a violent crime. So it was a very,
25 very risky proposition for him to go to trial.

1 MS. CLEVELAND: Thank you, Ms. Mullaney. I have
2 nothing further of this witness.

3 THE COURT: Cross-examination.

4 MR. MURPHY: Thank you, Your Honor. Very briefly.

5 CROSS-EXAMINATION

6 BY MR. MURPHY:

7 Q. Reading the facts, the witness that actually saw
8 Anthony throw the drugs was a police officer; isn't that
9 correct?

10 A. That's correct.

11 Q. And that would eliminate any identification issues;
12 would that be fair?

13 A. Yes. I believe -- and I think that I did the
14 prelim when I was going through, I have the file here that
15 I've got from the public defender's office, I'm pretty sure
16 that I did the prelim. And, unfortunately, that was true.
17 The officers did not leave -- I believe their testimony
18 was -- my recollection is that they did not lose sight of
19 Anthony and that they saw him throw the drugs.

20 And because he threw the drugs, I also,
21 unfortunately, did not feel that we had any good suppression
22 issue. And so there was not a lot of options for him
23 defense-wise or legal options, unfortunately, for me to
24 pursue on his behalf.

25 Q. And at the time of his arrest, he was on probation;

1 isn't that correct?

2 A. That's correct.

3 Q. And this plea would have been a violation of that
4 probation?

5 A. That's correct.

6 Q. And if I read the transcript correct, Judge
7 Jefferson terminated that probation.

8 A. That's correct.

9 Q. Did you have any problems communicating with
10 Mr. Heyward at all during the course of representation?

11 A. I had some concerns about his competency, and
12 that's why I had him evaluated.

13 Q. And let me ask you this. What were the results of
14 his evaluation?

15 A. The results of his evaluation were that he came
16 back competent.

17 Q. And I understand you were sympathetic to the
18 charges that he faced?

19 A. Absolutely.

20 Q. But is there -- looking back, is there anything
21 else you could have done differently to get him a better
22 deal?

23 A. No. I begged. I begged Ms. Linder to try to get
24 the best deal that I could. I really wished that I could
25 have gotten him less time. As I said before, I felt like it

1 was a very harsh sentence in light of the circumstances.
2 But, you know, that's why I'm a public defender and that's
3 why she's a solicitor. So I did the best I could.

4 MR. MURPHY: That's all I have, Your Honor.

5 THE COURT: Any redirect?

6 MS. CLEVELAND: Nothing further.

7 THE COURT: You may step down, ma'am. Thank you.

8 Any other witnesses?

9 MS. CLEVELAND: No witnesses from the State, Your
10 Honor.

11 THE COURT: Parties care to give a brief summation?

12 MR. MURPHY: Your Honor, very briefly, I'm in a
13 difficult position, because I think that granting his PCR
14 would be very detrimental to him and against his best
15 interest. However, in federal court, when we submit an
16 Anders brief, we have to put any issue on the record.

17 Your Honor, we would move or argue that there were
18 certainly some problems communicating with him. And at
19 least there was not a full discussion of the charges and the
20 affidavits and warrants against him.

21 MS. CLEVELAND: Your Honor, as Ms. Mullaney just
22 testified, she met with Mr. Heyward. She discussed the
23 charges. She went over the indictments. She didn't see any
24 basis to object to the indictments or didn't see any
25 problems with the indictments.

1 Mr. Heyward had the burden today of proving that
2 his counsel was deficient and that but for her deficient
3 performance, that he would not have pled guilty.

4 Mr. Heyward has failed to meet that burden. And the State
5 would just ask that this application be dismissed with
6 prejudice.

7 THE COURT: Thank you, counsel. I will take the
8 matter under advisement and notify you.

9 (Whereupon, proceedings are adjourned.)

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CERTIFICATE OF REPORTER

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I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina
at Large, do hereby certify that the foregoing transcript is
a true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Anthony Heyward,)
S.C.D.C. No. 345985,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
OF THE NINTH JUDICIAL CIRCUIT

2012-CP-10-2567

ORDER OF DISMISSAL

FILED
2018 APR -9 PM 3:43
JULIE J. ALEXANDER
CLERK OF COURT
BY

This matter is before the Court by way of an application for post-conviction relief ("PCR") filed on April 18, 2012¹ by Anthony Heyward ("Applicant"). Respondent submitted its Return on November 7, 2017. An evidentiary hearing was convened on February 2, 2018 in Charleston County at the Charleston County Courthouse. Applicant was present and represented by Christopher L. Murphy, Esquire. Rasheeda Cleveland, Esquire of the South Carolina Attorney General's Office, represented the State.

Before the Court were the records of the Charleston County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the application.²

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. During its May 2010 term, the Charleston County Grand Jury indicted Applicant for trafficking in cocaine (more than 28 grams) (third offense) (2010-GS-10-3194) and possession with intent to distribute cocaine within

¹ A copy of this application was not received by Respondent until October 5, 2017.
² Respondent attempted to order a copy of the guilty plea proceeding, but received a letter from the court reporter indicating she was unable to produce a transcript because it had been more than five years since the proceeding.

proximity of a park (2010-GS-10-3195). He was represented by Marybeth Mullaney, Esquire. Assistant Solicitor Stephanie Linder prosecuted the case

On May 16, 2011, Applicant appeared in the Charleston County Court of General Sessions before the Honorable Deadra L. Jefferson, circuit court judge, and pled guilty to the lesser-included offense of trafficking in cocaine (10-28 grams) (second offense). Pursuant to negotiations between the State and Applicant, Judge Jefferson sentenced Applicant to twelve years imprisonment. The State dismissed the possession with intent to distribute cocaine within proximity of a park (2010-GS-10-3195) charge pursuant to the plea agreement. Applicant did not appeal his pleas or sentences.

II. ALLEGATIONS

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully based on an allegation of ineffective assistance of counsel for failure to investigate mitigating facts and circumstances and failure to conduct suppression hearing to have all evidence suppressed.

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

On direct examination, Applicant testified that he had a 9th grade education and no GED. He further testified that he was treated for depression when he was younger but could understand now. Applicant during his testimony, alleged that the indictment was insufficient³ before he pleaded guilty, and Counsel knew that they indictment was not sufficient. He also testified that Counsel knew the indictment was not sufficient and was not competent. However, Applicant testified that he was evaluated and found competent enough to stand trial. Applicant stated that his Counsel told him he got a twelve year offer but she did not object to errors in the case. He

³ Applicant contends that the indictment was defective because it was not filed with the clerk or given a case number when the indictments were presented to the grand jury.

also alleged that Counsel failed to conduct a suppression hearing.

On cross-examination, Applicant testified that he was not threatened or coerced; he took the twelve years over the twenty-five year deal. He also testified that he did not discuss his issues with the indictments with his attorney.

Counsel testified that she was appointed to Applicant's case while working as a public defender. Counsel recalled meeting with Applicant several times at the detention center. Counsel testified that she had Applicant evaluated by Susan Knight at MUSC, and the result was that he was competent to stand trial. Regarding plea negotiations, Counsel testified that the State offered twelve years however, Applicant wanted less time and wanted to head to trial. Counsel further recalled that Judge Jefferson helped to convince Assistant Solicitor Stephanie Linder to re-extend the twelve year offer.

Counsel recalled that jury was picked and they were prepared for trial when Applicant decided to plead. Counsel affirmed that she discussed the indictments and the elements of the offense with Applicant, and she saw no basis for challenging. She further attested that she thought it was in Applicant's best interest to plead because it was risky to go to trial because if the jury didn't see their (Applicant and Counsel) interpretation of the case, it would've have been at minimum a 25 year sentence. Regarding the suppression issue, Counsel asserted that they did not have a good argument for suppression. Similarly, Counsel testified there were no identification issues as police saw Applicant throw the drugs as they pursued him.

IV. APPLICABLE LAW

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must

prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, the applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

V. 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

Applicant argued that his counsel was ineffective for failing to investigate his indictments. He claimed that no case numbers were assigned to them when they were presented to the grand jury. He also alleged ineffective assistance for failure to conduct a suppression hearing.

Based upon this Court's observations of Applicant at the hearing and the near total inconsistency of his testimony with any other part of the record before this Court, the Court finds Applicant's testimony not credible. Conversely, the Court finds Counsel's testimony credible. Counsel testified that she worked very hard to get a plea deal for Applicant in this case. Counsel also testified that she saw no basis for challenging the indictments and felt it was in Applicant best interest to take the plea deal. This Court finds that where an indictment is phrased substantially in the language of the statute that creates and defines the offense is ordinarily sufficient. Koon v. State, 358 S.C. 359 (2004). Moreover, an indictment is sufficient to convey jurisdiction if it apprises the defendant of the elements of the offense intended to be charged and informs the defendant of the circumstances he must be prepared to defend. Id. This Court further finds that the indictments in Applicant's case were sufficient and contained a docket number at the time they were presented to the Grand Jury.

Regarding the issue of suppression, Counsel further testified that she did not believe there was a good suppression argument because a police officer saw Applicant throw the drugs. Even if Counsel failed to seek suppression of evidence, a defendant who accepts a plea bargain on

counsel's advice does not necessarily suffer prejudice, even if it would be reversible error for the court to admit that evidence. See Premo v. Moore, 562 U.S. 115 (2011).

After hearing oral argument and reviewing all documentation provided, this Court finds no deficiency on the part of counsel, nor prejudice therefrom. Therefore, this Court finds that Applicant's application is respectfully denied.

{Conclusion and signature on the following page.}

VI. CONCLUSION

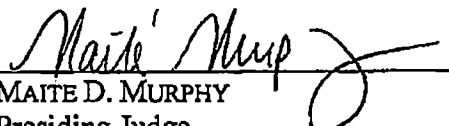
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 29 day of March, 2018.


 MAITE D. MURPHY
 Presiding Judge
 Ninth Judicial Circuit

J. Gray, South Carolina