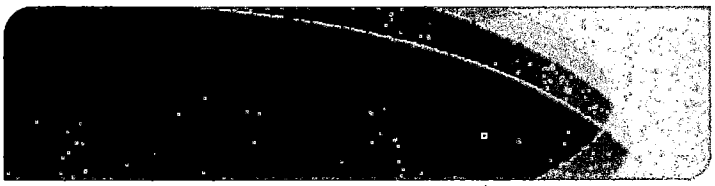

Lowcountry Law Office

101 Meeting Street, 5th Floor
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Phone: 843-882-5065 Fax: 843-958-1860
E-Mail: Davis@LowcountryLawOffice.com

December 11, 2018

The Honorable Daniel E. Shearhouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

RE: Samuel Brown v. State of South Carolina, Case No.: 2014-CP-08-2566

Dear Mr. Shearhouse:

Enclosed for filing is the Notice of Appeal (original and clocked copy) in the above Post Conviction Relief (PCR) case. Also enclosed are the following:

(1) Proof of service of the Notice of Appeal on the respondent;

(2) The Order of Dismissal &

(3) A Request for Representation on Appeal.

The Applicant-Appellant was represented by me as an indigent pursuant to my contract with the South Carolina Commission on Indigent Defense (SCCID) to handle PCR cases. By copy of this letter, I am forwarding a duplicate set of documents to the SCCID.

The Request for Representation on Appeal and the Affidavit in Support thereof are signed by me as attorney for Applicant-Appellant. If you need anything further, do not hesitate to contact me. Thank you for your time and attention to this matter.

Sincerely,

Rodney D. Davis
South Carolina Bar #: 12396
101 Meeting Street, 5th Floor
Charleston, SC 29401
(843) 882-5065
Davis@LowcountryLawOffice.com

CC: Johnny James
Assistant Attorney General

Kimberly McCall
Appellate Division, SCCID

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No.: 2014-CP-08-2566

Samuel Brown, Appellant,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Samuel Brown appeals the denial of his Post Conviction Relief application in this case. The Application for relief was denied, following an evidentiary hearing before the Honorable Michael G. Nettles on October 1, 2018. The Order of Dismissal was received on or about November 17, 2018.

December 11, 2018
12

Rodney D. Davis
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Attorney for Appellant

Other Counsel of Record:
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P.O. Box 11549
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Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

RECEIVED

DEC 17 2018

S.C. SUPREME COURT

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Samuel Brown, Appellant,

v.

State of South Carolina, Respondent.

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December 11, 2018
12

Rodney D. Davis
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FILED
2018 DEC 13 AM 11:13
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

Other Counsel of Record:
Johnny James, Assistant Attorney General
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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No.: 2014-CP-08-2566

RECEIVED

DEC 17 2018

S.C. SUPREME COURT

Samuel Brown, Appellant,

v.

State of South Carolina, Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State by mailing a copy of it to the address of record, Johnny James, P.O. Box 11549, Columbia, South Carolina 29211-1549, on December 12, 2018.

Rodney D. Davis
101 Meeting Street, 5th Floor
Charleston, SC 29401
(843) 882-5065
Davis@LowcountryLawOffice.com
Attorney for Appellant

FILED
2018 DEC 13 AM 11:13
MARY P BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

Other Counsel of Record:
Johnny James, Assistant Attorney General
Office of the Attorney General, State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

SAMUEL BROWN, #254907)
Plaintiff,)
vs.)
STATE OF SOUTH CAROLINA)
Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO: **2014-CP-08-2566**

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney:	Defendant's Attorney:
Lance S. Boozer, Esquire. Address: The Boozer Law Firm, LLC 1400 Laurel Street, Suite 4A Columbia, SC 29201 Phone: ____ Fax ____ E-mail: ____ Other: ____	Johnny E. James, Jr., Esquire. Address: South Carolina Attorney General's Office PO Box 11549 Columbia, SC 29211 Phone: ____ Fax ____ E-mail: ____ Other: ____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: ____
Estimated Time Needed: ____ Court Reporter Needed: ☐ YES/☒ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant — November 5, 2018 Date submitted

FILED
2018 NOV 15 PM 1:01
HENRY D. BRUNK
CLERK OF COURT
BERKELEY S.C.

SECTION III: Motion Fee

☐ PAID – AMOUNT: $ ____

EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: ____
☐ Other: ____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: ____	JUDGE CODE ____ Date: ____

CLERK'S VERIFICATION

Collected by: ____ Date Filed: ____
☐ MOTION FEE COLLECTED: $ ____
☐ CONTESTED – AMOUNT DUE: $ ____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	
Samuel Brown, S.C.D.C. No. 254907,	)	Case No.: 2014-CP-08-02566
Applicant,	)	
	)	**ORDER OF DISMISSAL**
v.	)	
State of South Carolina,	)	
Respondent.	)	

This matter comes before the Court by way of an application for post-conviction relief filed by Samuel Brown ("Applicant") on November 20, 2014. Respondent made its return on or about August 31, 2015, and thereafter amended it by filing dated September 6, 2018. The Court convened an evidentiary hearing into the matter on Monday, October 1, 2018, at the Berkeley County Courthouse in Moncks Corner, South Carolina. Applicant was present at the hearing and represented by Rodney D. Davis, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Chad D. Shelton, Esq. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Berkeley County Clerk of Court regarding the subject convictions, Applicant's direct appeal records, the pleadings, and the records of Applicant's appeal from the prior dismissal of his application. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. Applicant was indicted at the September 2013 term of the Berkeley County Grand Jury for possession with intent to distribute marijuana (2014-CP-08-02566). Chad D. Shelton, Esq. represented Applicant, and Mike Patterson, Esq., of the Ninth Circuit Solicitor's Office, prosecuted the case. On May 20, 2014, Applicant pled guilty as indicted. The Honorable Kristi L. Harrington sentenced Applicant to imprisonment for a term of three years. Applicant did not appeal his plea or sentence.

Applicant filed his application for post-conviction relief on November 20, 2014. An evidentiary hearing into the matter was first convened on September 16, 2016, before the Honorable Jean H. Toal. Applicant was present at the hearing and represented by Rodney D. Davis, Esq. Christopher Harrison, a third-year law student at the Charleston School of Law, practicing pursuant to Rule 401, SCACR, and supervised by J. Rutledge Johnson, Esq., of the South Carolina Attorney General's Office, represented Respondent. At the outset of the hearing, Respondent moved to dismiss the application as moot, noting Applicant had already served the sentence to completion, and had other drug convictions such that the subject conviction had no enhancement value. By written order dated November 10, 2016, and filed November 25, 2016, Judge Toal dismissed the application.

Applicant filed a timely notice of appeal and a petition for writ of certiorari was filed by Laura R. Baer, Esq. on Applicant's behalf, who raised the following issue:

> Whether the PCR court erred in granting the state's motion for summary judgment and dismissing Petitioner's application for post-conviction relief where (a) the PCR court erroneously ruled that an applicant who is in custody at the time of the filing of his PCR application can no longer pursue PCR if he completes the service of his sentence prior to the PCR hearing; and (b) the PCR court erroneously ruled that Petitioner was required to allege that "the results of his

prior conviction still persist" in his original PCR application, filed while he was still in custody on the contested conviction, or in an amended application?

Respondent filed its Return on November 6, 2017. On May 9, 2018, the Supreme Court of South Carolina granted the petition for writ of certiorari, dispensed with briefing, reversed, and remanded to the PCR court for a hearing on the merits. Brown v. State, 423 S.C. 56, 814 S.E.2d 146 (2018). The Remittitur was issued on May 25, 2018. Pursuant to the Supreme Court's order, this Court convened an evidentiary hearing on the merits on Monday, October 1, 2018.

Present Application

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

1. "Ineffective Assistance of Counsel"
    a. "Failure to [pursue] a trial"
    b. "Failure to show competent advice on a plea"
    c. "Failure to investigate"
    d. "Failure to suppress evidence"
    e. "Failure to advise defendant"
2. "Rule 5/Brady Violation"
    a. "Failure to object and preserve Rule 5/Brady violation"
3. "Due Process of Law"
    a. "Prejudice to show illegal search and seizure"

At the evidentiary hearing, Applicant clarified the allegations to mean that Counsel was ineffective in failing to properly investigate and communicate certain legal arguments to Applicant, namely regarding the validity of the checkpoint at which Applicant was stopped; in failing to meet with Applicant an adequate number of times; and in generally rushing Applicant to plead guilty.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony

accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. 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." Butler, 286 S.C. at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (quoting Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (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 an 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; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[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, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688). 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 (citing Strickland, 466 U.S. at 694). With respect to guilty plea counsel, 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, 59 (1985).

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. Strickland, 466 U.S. at 696. 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. Id. at 696-97.

1. Failure to Investigate Validity of Checkpoint

Applicant alleges Counsel was ineffective in failing to adequately investigate, factually and legally, the validity of the checkpoint at which he was stopped, searched, and arrested. In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses

stopping drunk drivers. Nonetheless, Applicant felt the search of the trunk of his rental car was beyond the scope of what was justifiable. Applicant recalled law enforcement searched his duffel bag in the trunk and found the marijuana in a vacuum sealed container. Applicant questioned how law enforcement could have smelled the marijuana despite the vacuum seal, and asserted the officer never mentioned smelling anything during the stop. Applicant asked Counsel by letter to file a motion to suppress. Applicant testified he would have gone to trial had there been any indication on the part of Counsel of his willingness to fight the case.

On cross-examination as to why he pled guilty feeling as he did about his case, Applicant broadly referred to the "routines of cooperating" in facing criminal charges. Applicant asserted there was no way he would have gone to trial with Counsel. Asked why he did not move to relieve Counsel if he was displeased with his performance, Applicant answered that there was "a lot going on at the time" and that he could not recall why he did not move to relieve counsel.

Upon brief questioning by this Court, Applicant affirmed that he understood he was giving up his rights during the plea proceeding, and that he had said Counsel assisted him. On redirect, Applicant testified Counsel told him what to say. Applicant noted he had pled guilty before and was familiar with the routine.

Counsel testified he met with Applicant twice, both times at the courthouse. Counsel noted that the case was assigned to him after Applicant wrote a letter to the solicitor asking for a plea deal. Applicant specifically requested a public defender in order to facilitate a plea deal. Counsel recalled that during the first meeting, Applicant was not yet ready to plead because he had not yet received his discovery. Counsel testified he filed motions pursuant to Rule 5, SCCrimP, and Brady, and sent Applicant a copy of his discovery along with a letter explaining Counsel's thoughts and analysis of the contents. Applicant replied with a letter expressing his

applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

The Fourth Amendment of the United States Constitution protects against unreasonable search and seizure. "A search or seizure is ordinarily unreasonable in the absence of individualized suspicion of wrongdoing." City of Indianapolis v. Edmond, 531 U.S. 32, 37 (2000) (citing Chandler v. Miller, 520 U.S. 305, 308 (1997)). A vehicle stop at a highway checkpoint effectuates a seizure within the meaning of the Fourth Amendment, but such brief, suspicionless seizures of motorists have been upheld for various particular purposes. Id. at 37-40, 44 (checkpoints valid to "thwart an imminent terrorist attack or to catch a dangerous criminal who is likely to flee by way of a particular route."); Michigan Dept. of State Police v. Sitz, 496 U.S. 444 (1990) (approving of drunk driver checkpoints); Delaware v. Prouse, 440 U.S. 648, 663 (1979) (suggesting roadblock-type stops as a valid alternative to spot-checks for the purpose of checking licenses and registrations); U.S. v. Martinez-Fuerte, 428 U.S. 543 (1976) (approving of checkpoints for catching illegal aliens). Checkpoints, however, cannot be established for the primary purpose of detecting ordinary criminal wrongdoing. Edmond, 531 U.S. at 41.

The constitutionality of a traffic checkpoint is adjudged by way of a three-part test balancing the following factors:

(1) The gravity of the public interest served by the seizure;
(2) The degree to which the seizure serves the public interest; and
(3) The severity of the interference with individual liberty.

State v. Vickery, 399 S.C. 507, 517, 732 S.E.2d 218, 223 (Ct. App. 2012) (quoting State v. Groome, 378 S.C. 615, 619, 664 S.E.2d 460, 462 (2008)). With particular attention to the second factor, the State must be able to articulate and establish some basis for the location of a checkpoint. Id., 399 S.C. at 520, 732 S.E.2d at 224. However, the State is not required "to present pre-existing empirical data to justify setting up the checkpoint." Id.

At the plea proceeding, Judge Harrington explained to Applicant that he could be sentenced to up to five years on the charge. (Tr. 4-5). The plea judge asked if Applicant understood the collateral consequences of his plea, which Applicant affirmed. (Tr. 5, ll. 16-22). The plea judge explained to Applicant his right to a jury trial, his right against self-incrimination, and his right to confront the witnesses against him. (Tr. 6, ll. 1-12). Applicant waived those rights. (Tr. 6, ll. 13-15). Applicant affirmed he was satisfied with the services of Counsel and demurred when offered the opportunity to speak to Counsel's performance. (Tr. 7, ll. 6-11). The plea court pressed further on the subject, to which Applicant in no uncertain terms confirmed Counsel assisted him. (Tr. 7, ll. 12-16).

The underlying facts of Applicant's arrest were provided during the plea proceeding and agreed to by Applicant. (Tr. 7-8). Applicant was stopped at a "public safety checkpoint" near Summerville, South Carolina on or about June 26, 2013. (Tr. 7, ll. 23-25; Indictment). An officer at the checkpoint smelled marijuana and initiated a search of the vehicle, which revealed the presence of 560 grams of marijuana. (Tr. 7-8). Applicant explained that he "and some guys

got together at work and we buy it in quantities." (Tr. 8, ll. 17-19). After Applicant's plea was accepted, Counsel explained the process of reaching the plea and his investigation of the case:

> I did have a chance to go through the law as far as the stop and traffic check points. So we were able to determine that they set up a traffic checkpoint for alcohol related offenses and they did stop some people that were let go, percentage wise that the case says is okay for alcohol related offense and there was a smell of marijuana. So we went through, I went through the law and gave [Applicant] my opinion on the case through letters. We discussed it through letters at the Department of Corrections. It was his decision to go forward. It was his decision to accept the plea and I agree with that decision based on the case law and ask, Your Honor, to go along with the negotiated sentence.

(Tr. 9, ll. 4-16). Judge Harrington then accepted the negotiated terms and sentenced Applicant to three years. (Tr. 9-10).

At the evidentiary hearing,[1] Applicant testified his initial meeting with Counsel lasted about five minutes and that Counsel wasted no time advising him to plead guilty. Applicant determined from letter correspondence with Counsel that he was not particularly interested in defending the case. Applicant testified Counsel never met with him at the jail, but only met with him at court and otherwise communicated by letters and a phone call. Applicant claimed Counsel did not review and discuss with him the elements of the offense charged, what the State had to prove, what the sentencing range was, what constituted the basis for the "third offense" classification, or any collateral consequences. Applicant felt Counsel's only concern was that Applicant would get less time pleading guilty than he was already sentenced to serve.[2] Applicant testified Counsel never mentioned any defenses or anything about trial.

However, Applicant did admit that Counsel discussed the validity of the roadblock. Applicant recalled Counsel advised the roadblock was legitimately set up for the purpose of

[1] Any such reference herein refers to the hearing of October 1, 2018. Though a transcript of the prior hearing is before the Court, it is of no value in light of the Supreme Court's ruling and remand.
[2] Applicant is serving a concurrent sentence of 10 years on an unrelated cocaine trafficking conviction.

opinion that the roadblock was unreasonable. Counsel filed a supplemental Rule 5 motion and received documentation to justify the roadblock. That documentation, introduced as a State's exhibit, declared plans by the South Carolina Highway Patrol and the Berkeley County Sheriff's Office to establish a sobriety checkpoint at College Park Road on the date in question due to a substantial number of DUI collisions in the area in the previous year. Corporal "C. Pearson" was identified as the on-site supervisor of the planned checkpoint, and a report was produced of the checkpoint's impact: 73 vehicles were stopped resulting in one DUI and one "alcohol case" among six total cases for seven citations. Despite the justification for the roadblock, Counsel recalled researching to try and find other means of suppressing the search and seizure, and specifically cited to State v. Tindall, 388 S.C. 518, 698 S.E.2d 203 (2010) and State v. Jihad, 347 S.C. 12, 553 S.E.2d 249 (2001). Counsel recalled telling Applicant he could attempt to challenge the search, but the plea offer would have expired in the process. Counsel also recalled getting a second letter form Applicant in which he specifically asked for a three year deal. Counsel firmly reported Applicant did not wish to go to trial. Counsel affirmed he explained the elements of the charge against his client, and explained to Applicant all of his constitutional rights.

The Court finds no deficiency on the part of Counsel, nor any prejudice to Applicant. First, and most simply, the Court finds Applicant never wanted to go to trial, but only wished to secure a favorable plea deal, as evidenced by the multiple letters he wrote to the solicitor's office and to Counsel. Applicant got the exact deal he requested—an exceedingly generous three year sentence, given the quantity of marijuana at issue and the strength of the case against him. Additionally, Applicant himself testified he never would have gone to trial with Counsel, despite the thorough efforts of research and preparation demonstrated by Counsel at the evidentiary

hearing. Applicant made note of his unfortunate breadth of experience as a criminal defendant and still could not offer a reason why he did not seek Counsel's removal if he were so displeased with his performance. As such, the Court finds little credible in Applicant's varied allegations of failures on Counsel's part. Counsel regularly communicated with Applicant, demonstrated familiarity with the facts of the case, researched the relevant caselaw, and provided and explained discovery. The Court sees no reason to permit Applicant to deviate from his testimony during the plea proceeding, and finds Applicant was fully aware of the elements of the offense charged, his sentencing exposure, the collateral consequences of his plea, and his constitutional rights including, but not limited to, his right to a jury trial, his right to remain silent, and his right to confront the witnesses against him.

Second, the Court finds Counsel fully investigated the issues raised by Applicant to the PCR court. The Court finds Counsel reported his analysis of the search and seizure to Applicant and Applicant wisely chose to plead guilty. Based on the testimony at the evidentiary hearing and the exhibits entered indicating law enforcement's planning, justification, and impact of the checkpoint, the Court agrees with Counsel's judgment that the sobriety checkpoint was validly established and operated, such that an attempt to challenge the validity of the checkpoint would not have been successful. The Court also observes no basis for arguing the stop was unduly extended—unlike in Tindall, it does not appear Applicant was strung along by an endless parade of questions, but was undone by the odor of marijuana. Applicant offered that the officer couldn't have smelled the trafficked package, but that argument doesn't pass the smell test—there's nothing in the law to say the odor of marijuana must be connected to the quantity trafficked to justify law enforcement's suspicions, nor anything in the record to suggest the cloying sent of marijuana did not emanate from Applicant himself. Put simply—Counsel

investigated what there was to investigate, and properly advised Applicant in accord with his accurate analysis.

For all of these reasons, Applicant has failed to meet his burden of showing either prong of Strickland by way of this allegation, and his request for relief is **DENIED**.

2. Failure to Adequately Meet with Applicant

Applicant alleges Counsel was ineffective in briefly meeting with him only twice. "The brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation. Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012) (citing Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008)). As noted in the previous section, Applicant must offer evidence to show how additional preparation or communication would have resulted in a different outcome. Id. (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998); Skeen v. State, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997)).

The Court finds no deficiency on the part of Counsel, nor any prejudice to Applicant. As noted in the review of the evidence in the previous section, Applicant denied during the plea colloquy that he needed any additional time with Counsel or that there was anything else Counsel could have or should have done. Though both Applicant and Counsel testified that they only physically met twice, both times at the courthouse, this fact alone is inadequate to support a finding of ineffectiveness. The Court finds Counsel adequately communicated with Applicant by other means, including by written letters and phone communications. Under the circumstances, meeting twice was adequate. Finally, as with the prior allegation, the Court finds Applicant did not wish to proceed to trial and would not have proceeded to trial given more time in consultation with Counsel—Applicant only ever wished to plead in exchange for a favorable

plea deal, which he received. Accordingly, Applicant has not met his burden as to either prong of Strickland, and his request for relief by way of this allegation is **DENIED.**

3. Improper Rush to Plead Guilty

Applicant alleges Counsel was ineffective in leaping straight to the conclusion that Applicant should plead guilty, and in only ever pushing him to do so. With reference back to the factual summation set forth in Section II.A.1, above, the Court finds no deficiency on the part of Counsel, nor any prejudice to Applicant. The Court finds Counsel did not rush to push Applicant to plead guilty, but properly and diligently reviewed the facts and law pertinent to Applicant's case and advised him accordingly before proceeding with a guilty plea. The Court finds Applicant, if anybody, leapt to the conclusion that he should plead guilty, and always desired to do so. Accordingly, Applicant has not met his burden of showing either prong of Strickland, and his request for relief by way of this allegation is **DENIED.**

[*Conclusion and signature on following page*]

III. 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, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP 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 9 **day of** Nov, **2018.**

MICHAEL G. NETTLES
Presiding Judge
Ninth Judicial Circuit

Florence, South Carolina

ALAN WILSON
ATTORNEY GENERAL

November 13, 2018

The Honorable Mary P. Brown
Clerk of Court, Berkeley County
Post Office Box 219
Moncks Corner, South Carolina 29461-0219

Re: **Samuel Brown, #254907 v. State of South Carolina**
2014-CP-08-2566

Dear Ms. Brown:

Enclosed please find the original **Order of Dismissal** signed by the Honorable Michael G. Nettles in the above-captioned case, for filing in your office.

In addition, please forward proof of service and a time stamped copy back to our office for our file.

Sincerely,

Johnny E. James, Jr. on behalf of
Assistant Attorney General

JEJ/jj

cc: Lance S. Boozer, Esquire

STATE OF SOUTH CAROLINA	)	IN THE SUPREME COURT OF SOUTH CAROLINA
	)	
COUNTY OF BERKELEY	)	
	)	Case No.: 2014-CP-08-2566
	)	
SAMUEL BROWN,	)	
Applicant.	)	
	)	
-versus-	)	REQUEST FOR REPRESENTATION ON APPEAL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

On behalf of the request of the above-named Applicant, to be represented by the South Carolina Commission of Indigent Defense, Appellate Division (SCCID), the undersigned attorney would show unto this Honorable Court that:

1. He is the attorney for the Applicant-Appellant in the above captioned case. The Applicant-Appellant was in custody during and taken into custody immediately following the Post Conviction Relief (PCR) hearing and was not available to personally sign this request;

2. The Applicant-Appellant was represented by the undersigned attorney as an indigent, pursuant to a contract with the SCCID;

3. The Applicant-Appellant has been informed that he may request assistance from the SCCID Appellate Division in perfecting his appeal;

4. A timely Notice of Intent to Appeal has been filed on the Applicant-Appellant's behalf;

5. The Applicant-Appellant has been informed that nothing requires SCCID Appellate Division to pursue this appeal unless that office's Chief Attorney is satisfied that there is arguable merit to this appeal and that he cannot afford to hire an attorney.

At this time, the Applicant-Appellant requests the aid of the SCCID Appellate Division in perfecting his appeal to the South Carolina Court of Appeals.

FILED
2018 DEC 13 AM 11:13
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

Respectfully Submitted,

Rodney D. Davis
South Carolina Bar #: 12396

12/12, 2018
Charleston, South Carolina.

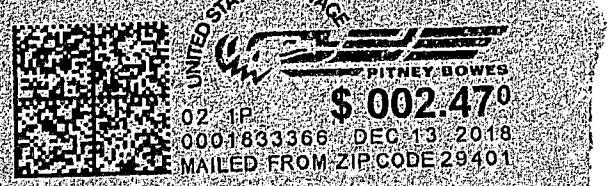
STATE OF SOUTH CAROLINA)
) **VERIFICATION**
COUNTY OF BERKELEY)

PERSONALLY appeared before me, Rodney D. Davis, attorney for Samuel Brown, being first duly sworn, deposes and says that he has read the foregoing *Request for Representation on Appeal* and the same is true of his knowledge except those matters alleged on information and belief, and as to those matters, he believes them to be true.

Rodney D. Davis
South Carolina Bar #: 12396

SWORN to and subscribed to me
this 12 day of Dec., 2018.

Notary Public for South Carolina
My Commission expires 4/4/28



Rodney D. Davis
101 Meeting Street, 5th Floor
Charleston, SC 29401

The Honorable Daniel E. Shearhouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211