LAW OFFICE OF

Kristy Grafton Goldberg, LLC

ATTORNEY AT LAW

December 14, 2018

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

Re: David Walter Coon, SCDC # 371019
Docket Number 2017-CP-19-135

Dear Mr. Shearouse,

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

By copy of this letter I am informing the Office of Appellate Defense of this Appeal. I was **appointed** to represent Mr. Coon Gunter on his PCR, and I would ask that Appellate Defense open a file to represent Mr. Coon in this case.

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

Respectfully,

Kristy Goldberg

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

David Walter Coon, SCDC # 371019
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

The Honorable Charles Reel
Clerk of Court
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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM EDGEFIELD RICHLAND COUNTY
Court of Common Pleas

Walton J. McLeod, IV, Circuit Court Judge

Case No. 2017-CP-19-135

David Walter Coon, SCDC # 371019, ... Appellant

v.

State of South Carolina, ... Respondent.

NOTICE OF APPEAL

Applicant David Coon hereby appeals from the Order of the Honorable Walton J. McLeod, IV, presiding Judge for the 11th Judicial Circuit, filed December 10, 2018 and received by counsel for the Applicant on December 14, 2018 in the matter of David Coon v. State of South Carolina, Case No. 2017-CP-19-135.

December 17, 2018

Kristy Goldberg
Attorney for Plaintiff

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Other Counsel of Record:
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Office of the Attorney General
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Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA
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APPEAL FROM EDGEFIELD RICHLAND COUNTY
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Walton J. McLeod, IV, Circuit Court Judge

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David Walter Coon, SCDC # 371019, ... Appellant

v.

State of South Carolina, ... Respondent.

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

She is the counsel of record for Applicant;
Service by mail is proper in this instance; and
She has served the NOTICE OF APPEAL on the following party on December 17, 2018 by depositing one copy in the U.S. Mail, postage prepaid:

Assistant Attorney General, Kelly Oppenheimer
Office of the Attorney General
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Other Counsel of Record:
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EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL

STATE OF SOUTH CAROLINA COUNTY OF EDGEFIELD	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT
2018 DEC 10 PM 2:28	
David Walter Coon, #371019, Applicant, v. State of South Carolina, Respondent.	Case No. 2017-CP-19-135 **ORDER GRANTING POST-CONVICTION RELIEF IN PART AND DENYING ALL OTHER CLAIMS**

This matter comes before this Court by way of an application for post-conviction relief filed May 2, 2017, by David Walter Coon (Applicant). The State (Respondent) made its return and partial motion to dismiss on July 13, 2017, requesting an evidentiary hearing be held on Applicant's allegations of ineffective assistance of counsel. Thereafter, through his counsel, Applicant filed an amended application for post-conviction relief on October 16, 2018. An evidentiary hearing into the matter was convened on November 7, 2018, at the Marc H. Westbrook Judicial Center before the Honorable Walton J. McLeod, IV. Applicant was present at the hearing and represented by Kristy G. Goldberg, Esquire. Assistant Attorney General Kelly Oppenheimer of the South Carolina Attorney General's Office represented Respondent.

Following a thorough review of the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant's application with respect to indictment number 2016-GS-19-252 (receiving stolen goods less than $2,000) should be granted, as Applicant's three year sentence for this indictment is beyond the statutory limits. With respect to all other indictments and allegations, this Court further finds, Applicant has failed to establish any constitutional violations and denies this application with prejudice.

THE ABOVE IS A TRUE COPY OF THE ORIGINAL
WHICH IS ON FILE IN THE OFFICE OF THE
CLERK OF COURT OF EDGEFIELD COUNTY, SC

Charles L. Reel

12-10-18
DATED

CHARLES L. REEL, CLERK OF COURT
OF GENERAL SESSIONS AND
COMMON PLEAS, E.C.S.C.

PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Edgefield County Clerk of Court. During its April 2016 term, the Edgefield County Grand Jury indicted Applicant for two counts of receiving stolen goods, more than $2,000 but less than $10,000 (2016-GS-19-101; -105), three counts of possession of an unlawful firearm (2016-GS-19-102; -103; -104), one count of possession with intent to distribute (PWID) marijuana (2016-GS-19-109), one count of trafficking methamphetamine, more than 400 grams (2016-GS-19-110), and one count of receiving stolen goods, less than $2,000 (2016-GS-19-252). Subsequently, during its January 2017 term, the Grand Jury indicted Applicant for two additional counts of receiving stolen goods, more than $2,000 but less than $10,000 (2017-GS-19-072; -073). Erik J. Drylie, Esquire, represented Applicant on these charges. On January 10, 2017, Applicant proceeded to a jury trial before the Honorable John C. Hayes, II. On the third day of trial, January 12, 2017, and after the State rested, Applicant entered a guilty plea to all charges.[1] Judge Hayes accepted the pleas and sentenced Applicant to a term of imprisonment of twenty-five years for trafficking methamphetamine, five years for PWID marijuana, three years for each count of receiving stolen goods,[2] and ten years for each count of possession of an unlawful firearm. The sentences were to be served concurrently.

On March 20, 2017, Applicant filed a *pro se* notice of appeal. By written order dated December 1, 2017, the South Carolina Court of Appeals dismissed Applicant's appeal for failing to timely serve the notice of appeal as required by Rule 203(b)(2), SCACR. The remittitur was issued on December 20, 2017.

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[1] Applicant pled guilty as indicted to all charges.

[2] Including indictment number 2016-GS-19-252, an indictment for receiving stolen goods, less than $2,000.

STATEMENT OF FACTS

After being arrested for possession of a stolen vehicle, receiving stolen goods, and possession of methamphetamine in Aiken County, Walter Brian Wade informed law enforcement he had information which would be beneficial to Edgefield County officers. Trial Tr. 159-60, 201. Thereafter, Wade spoke with Investigator Jimmy Smith, and he informed Investigator Smith he had gotten methamphetamine from Applicant. Trial Tr. 161-62, 194. He also told Investigator Smith Applicant would trade cars for money or methamphetamine. Trial Tr. 163. Wade also described an instance, on December 6, 2015, where he went to Applicant's home with Applicant and his girlfriend, where he observed a variety of different guns and vehicles and also shot a sawed-off shotgun with Applicant at a van parked in Applicant's front yard. Trial Tr. 164-72, 185-88.

Based on the information Wade provided, Investigator Smith prepared an affidavit for a search warrant of 32 Rain Forest Lane[3], in which he described the property for which he was looking as: guns, explosives, illegal narcotics, and other things involving criminal enterprise. Trial Tr. 203-05. Investigator Smith took this affidavit to the magistrate and supplemented it with oral testimony, in which he relayed the information he had received from Wade and other deputies, as well as identified the sources of the information. Trial Tr. 203, 205-06. The magistrate then issued the search warrant for the residence on December 15, 2015. Trial Tr. 208.

Later, on December 22, 2015, law enforcement officers executed the search warrant at Applicant's residence. Trial Tr. 209, 212. At the residence at that time were multiple vehicles, including a red Chevrolet truck, a white camper trailer, a van parked in the front yard which had been shot up, an Electra Glide style motorcycle, and a Sportster-size Harley Davidson

[3] Applicant and his daughter were renting that residence. Trial Tr. 195, 198, 245.

motorcycle.[4] Trial Tr. 216-17. Several unlawful weapons were also found, including three sawed-off shotguns. Trial Tr. 217, 231-37. In addition to the weapons and vehicles, methamphetamine[5], prescription pills[6], and marijuana[7] were found inside a plastic ammunition container. Trial Tr. 223-24, 327.

As a result, Applicant was taken into custody. Agent Ricardo Prince, of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, spoke with Applicant on January 4, 2016, and January 27, 2016, because Applicant requested to speak with him. Trial Tr. 243-44. In these interviews, Applicant told Agent Prince he had a sawed-off shotgun, but it was over the legal limit. Trial Tr. 246. Applicant also took ownership of the digital scales which were found at his house, explaining he had them so he would not get cheated when making drug transactions. Trial Tr. 246-47.

CURRENT APPLICATION

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

> 1. That Applicant was denied his 4th and 6th amendment rights, which counsel failed to evaluate the balanced assessment of a confidential informant, because of the error in the affidavit that pertain[s] to probable cause; Applicant's outcome would have been different[;]
> 2. Applicant's substantial and procedural rights was [sic] violated, when trial counsel was ineffective for not investigating and challenging the Respondent inmate confidential informant prior to going to trial, Applicant's outcome would have been different[; and]
> 3. Nol [sic] pros/initialing vindictive prosecution.

[4] All of the vehicles found at Applicant's residence were identified at trial by their original owners. Trial Tr. 264, 267, 269-71, 274.
[5] The total weight of the methamphetamine found was 713.57 grams. Trial Tr. 300.
[6] Twenty-two tablets were found. Trial Tr. 299.
[7] The total weight of the marijuana found was 29.5 grams. Trial Tr. 288.

In his amended application for post-conviction relief, Applicant raised the following additional grounds:

1. Ineffective assistance of trial counsel – counsel failed to communicate plea offers to the Applicant[;]
2. Ineffective assistance of trial counsel – counsel was ineffective for improperly coercing the Applicant to enter an involuntary guilty plea[;]
3. Ineffective assistance of trial counsel – counsel was ineffective for failing to sufficiently explain to the Applicant that a guilty plea would constitute a waiver of the legal issues raised and argued in the jury trial[; and]
4. Ineffective assistance of trial counsel – counsel was ineffective for failing to object when the Court sentenced the Applicant to a three year sentence on indictment 2016-GS-19-252 for the charge of Receiving Stolen Goods less than $2,000, an offense which carries a maximum penalty of 30 days in jail pursuant to South Carolina Code Section 16-13-180.

At the evidentiary hearing, Applicant proceeded forward on the allegations raised in his amended application for post-conviction relief, as well as the allegations in his original application concerning the confidential informant and search warrant.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented the testimony of Erik J. Drylie, Esquire (Counsel). This Court also had before it a copy of Applicant's trial and eventual plea transcript, the records of the Edgefield County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the records from this current post-conviction relief application.

During the evidentiary hearing, Applicant testified on his own behalf. Applicant testified he went through the seventh grade in school and can read and write very little. He also testified he has a history of mental illness and has been diagnosed with bipolar disorder and paranoid schizophrenia. He testified he remained in jail the entire time leading up to trial. He further

testified he had never been in trouble before, and he had never been to the Department of Corrections before. He elaborated he had only ever received a speeding ticket and charged with assault and battery prior to his trial, and all of his prior incidents were handled in magistrate's court, without an attorney or an appeal therefrom. Applicant testified he did not understand his appellate rights.

Applicant also testified he was arrested in December of 2015, and Counsel was appointed to represent him. He explained Counsel was the first attorney he has ever had. He further testified he met with Counsel when he went to court for bond hearings, and they also met at the jail. Applicant elaborated he and Counsel would discuss the facts of the case, and Counsel would tell him there were a lot of drugs found at the house and Applicant was facing a lot of time. He further elaborated during these meetings he told Counsel to talk to his girlfriend.

He further testified the only plea offer he ever received was for twenty-five to thirty years imprisonment. He explained he wanted to plead guilty, if he could get less time. He further explained he would have accepted a plea offer for up to fifteen years.

Applicant testified the State obtained a search warrant based on information from a witness who had convictions for giving false information. He further testified he and Counsel discussed this, and Counsel argued this to the trial court. He explained Counsel raised the issue of the confidential informant and that he had lied to the police to the trial court. He also testified Counsel filed the motion to suppress based on the fact Applicant was with his girlfriend at the time of the execution of the search warrant and not at the house. Applicant testified, however, the trial court denied his motion to suppress the drugs based on the search warrant. He elaborated he thought the motion could have been argued better. He further elaborated he was illiterate, so he was taking Counsel at his word. Applicant also testified he wanted to fight the

search warrant issue, and Counsel did not discuss he would not be able to appeal this issue if he pled guilty.

He also testified after two-and-a-half or three days at trial and after he had been advised of his right to testify and to present a defense, he entered a guilty plea. He explained his daughter was also involved, and he was told she would also get twenty-five years. He further explained he pled guilty in order to save his daughter. He elaborated he pled guilty because he was caught up in the mix and because he did not want his daughter to get twenty-five years. Applicant further elaborated he did not plead guilty at the beginning of trial because he put his trust in Counsel. Applicant further testified at the time he pled guilty, the State had not made any offers.

Applicant further testified at the plea, he told the trial court he was satisfied with the services of Counsel, and told the court twice he was satisfied with Counsel. He further testified he agreed with the evidence the State had presented at trial. Applicant also testified he informed the trial court he was pleading guilty because he was, in fact, guilty and no one had promised him anything, held out any hope of reward, threatened, or coerced him in order to get him to plead guilty. Applicant also testified he informed the trial court he was pleading guilty freely and voluntarily. He further testified he was advised of each of his rights at trial by the trial court, and he understood each of those rights. He explained he understood he was giving up those rights by pleading guilty. Applicant further testified at the time of his plea, he wrote a letter[8] to the trial court taking full responsibility for all of the drugs and weapons found at his home.

Applicant testified he did not discuss an appeal with Counsel. He further testified he did not know what an appeal was, but he filed a *pro se* notice of appeal. He explained no one told

[8] A copy of this letter was introduced at the hearing without objection as Defendant's Exhibit #1.

him how to file an appeal, and he just wanted help. He further explained he wanted to challenge the search warrant on appeal.

Following Applicant's testimony, Applicant rested. Respondent then presented the testimony of Counsel. Counsel testified he was appointed to represent Applicant at the end of 2015 or early 2016. He testified he filed *Brady*[9] and Rule 5, SCRCrimP, motions, and reviewed the discovery materials with Applicant. He further testified he reviewed all of the evidence, which law enforcement recovered from Applicant's house with Applicant. Counsel also testified he reviewed the elements of the charges and the State's burden of proof at trial with Applicant. He testified they also reviewed potential sentences Applicant was facing.

Counsel testified in December 2016, the State made a seventeen-year plea offer. He explained he conveyed that plea to Applicant at the jail, which Applicant rejected. He further explained Applicant rejected this offer because it was for too much time, and Applicant wanted to proceed to trial. He further testified Applicant wanted a plea for a twelve-year sentence. Counsel testified he asked the Assistant Solicitor about this possibility, but the Assistant Solicitor told him he would not offer a twelve-year sentence. He explained he attempted to get a better deal than seventeen years, but the State would not budge.

Counsel also testified he and Applicant discussed Applicant's version of the facts, but Applicant's story changed throughout Counsel's representation of him. He explained Applicant initially told him he was not involved, but Applicant later admitted his involvement and wanted to take full responsibility after seeing everyone who would testify against him at trial. Counsel further explained Applicant did not want to plead guilty until immediately before the trial, approximately two to three weeks beforehand. He testified because of this, there were no defenses available, and they would have to present their best case at trial. He also testified he

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

hired a private investigator to help with the case, who interviewed Applicant's girlfriend, who was also in prison. Counsel explained the private investigator interviewed everyone he could, but all of Applicant's co-defendants were represented by counsel, which prevented Counsel and the investigator from talking to the co-defendants.

He testified he moved to suppress the evidence found at Applicant's home based on the search warrant with the confidential informant, which he believed was a good issue. He explained the warrant was supplemented with oral testimony from Investigator Smith. He further explained he argued the information provided by the confidential informant was not reliable, and he raised an issue of the confidential informant's prior record.

Counsel also testified Applicant wanted a trial and also wanted to get out of jail pending trial, so they had many bond hearings. He further testified the case was tried in January 2017 because the Honorable Edgar W. Dickson indicated if the case was not tried by then, then Applicant would be granted bond.[10] Counsel further testified Applicant wanted to hear the witnesses against him, then plead guilty. Counsel explained he told Applicant the decision to wait to plead would hurt their ability to get any plea offers and would also hurt their ability to help Applicant's daughter.

He further testified he explained the consequences of the plea to Applicant. He testified he explained to Applicant there were no conditional guilty pleas in South Carolina, so Applicant would be unable to appeal the search warrant issue after the plea. He further testified he informed Applicant he would have ten days to appeal, and he saw Applicant the next week at his co-defendant's trial, but Applicant never asked Counsel to file an appeal on his behalf. Counsel also testified he explained to Applicant he would not proceed with the trial if Applicant decided to plead guilty and also explained to Applicant he would neither present a defense nor testify if

[10] At the time, Applicant had appeared for multiple bond hearings, and his case had still not been called for trial.

he pled guilty. He testified Applicant appeared to understand what Counsel was explaining to him. He further testified although Applicant was not well educated, Counsel had no issue talking to Applicant; and Applicant appeared to understand their conversations.

Counsel testified it was Applicant's decision to plead guilty, and Counsel did not force him to plead guilty. In fact, Counsel testified it did not make sense for Applicant to plead guilty at that point in the trial. He also testified he did not threaten Applicant's daughter and also did not discuss her case with Applicant. He explained he told Applicant if he wanted to help his daughter, he would need to help her earlier not later. Counsel further explained he never told Applicant a plea would save his daughter and also never told Applicant if he pled, his daughter would receive a lighter sentence. He further testified Applicant received no benefit from the plea, and he could not understand why Applicant wanted to plead guilty after the State's full case.

Respondent then rested its case, and Applicant again testified in reply. Applicant testified Counsel never conveyed the seventeen-year plea offer to him. He further testified had Counsel conveyed that offer, he would have accepted it.

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 (2017).

Applicant's allegations are two-fold: (1) ineffective assistance of counsel for failing to communicate plea offers, for failing to sufficiently explain to Applicant a guilty plea would

constitute a waiver of the legal issues raised and argued at trial, and for failing to object to the three year sentence on indictment 2016-GS-19-252; and (2) involuntary guilty plea.

Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, at 441, 334 S.E.2d at 813.

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." *Cherry*, at 117, 385 S.E.2d at 625 (citing *Strickland*). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, at 117-18, 386 S.E.2d at 625. In order to satisfy the prejudice prong of this test following a guilty plea, the applicant "must show that there is a reasonable probability that, but for counsel's errors, he

would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

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

Counsel's alleged failure to communicate plea offers to Applicant

Applicant alleges Counsel was ineffective for failing to convey a plea offer. In particular, Applicant alleges Counsel never informed him of the State's December 2016 offer, through which Applicant could plead guilty in exchange for a seventeen-year sentence. In order to prevail on a claim counsel was ineffective for failing to convey a plea offer, the applicant must show: (1) plea counsel's failure to communicate the State's initial plea offer constituted deficient performance and (2) the applicant was prejudiced by the deficient performance, in other words there was a reasonable probability that but for this deficient performance, the applicant would have accepted the original plea offer. *Davie v. State*, 381 S.C. 601, 675 S.E. 416 (2009).

Applicant testified Counsel never conveyed the December 2016 plea offer to him. He testified had he known of such an offer, he would have accepted it. Counsel, however, testified he communicated this offer to Applicant, and Applicant rejected it, stating the offer was for too lengthy of a sentence. Moreover, Counsel testified Applicant would have pled in exchange for a twelve-year sentence, and he attempted to negotiate with the Assistant Solicitor. Counsel further testified, however, the Assistant Solicitor was unwilling to budge from the seventeen-year offer and refused to offer a twelve-year plea. This Court finds Counsel's testimony very credible, whereas Applicant's testimony is not credible. It is apparent Counsel communicated all offers to

Applicant, and Applicant rejected those offers. This Court, therefore, finds Applicant has failed to establish Counsel was deficient.

Similarly, this Court finds Applicant has wholly failed to establish any resulting prejudice from this alleged deficiency. In order to establish prejudice from an alleged failure to convey a plea offer:

> [A] defendant must demonstrate a reasonably probability that: (1) he "would have accepted the earlier plea offer had [he] been afforded effective assistance of counsel;" (2) "the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it," and (3) "the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or sentence of less prison time."

Collins v. State, 422 S.C. 250, 262, 810 S.E.2d 871, 877 (2018) (quoting *Missouri v. Frye*, 566 U.S. 134, 147 (2012)). Here, Counsel testified Applicant did not accept any offers prior to trial because the offer was not for what Applicant was hoping. Moreover, Applicant made the conscious decision to plead guilty after the State had rested its case and after Applicant had seen all of the witnesses who testified against him. Based on the foregoing, there is no indication Applicant would have accepted the plea offer to seventeen years imprisonment. Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to challenge the search warrant

Applicant contends Counsel was ineffective for failing to challenge the search warrant. Specifically, Applicant contends Counsel should have challenged the search warrant on the basis the confidential informant was not reliable, as he had two prior convictions of providing false information to law enforcement.

Applicant admitted Counsel argued this point to the trial court during his motion to suppress the evidence, but believed the motion "could have been argued better." Applicant

wholly fails to set forth what benefit would have been realized if Counsel had argued this motion further and further fails to establish anything further he wanted Counsel to argue. Indeed, during the hearing on his motion to suppress the evidence, Counsel specifically argued the search warrant was defective because law enforcement had never worked with this confidential informant before, had not received any information from him before, and there was no investigation done to corroborate the information given. Trial Tr. 33-34. Counsel further argued there was nothing in the affidavit of the search warrant to establish the information given was reliable. Trial Tr. 39. Furthermore, Counsel highlighted the fact the confidential informant had been convicted in 2014 and 2015 for giving false information to law enforcement. Trial Tr. 39. Based on the foregoing, this Court finds Applicant has failed to establish any deficiency on the part of Counsel.

Similarly, this Court finds Applicant has failed to establish any resulting prejudice from the alleged deficiency. When determining whether probable cause exists to issue a warrant, the Supreme Court of the United States has stated:

> The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

Illinois v. Gates, 462 U.S. 213, 238 (1983). Additionally, "sufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of other." *Id.* at 239. Indeed, "'[A] warrant based solely on information provided by a confidential informant must contain information supporting the credibility of the informant and the basis of his knowledge. However, independent

verification by law enforcement officers cures any defects.'" *State v. Dill*, 423 S.C. 534, 542, 816 S.E.2d 557, 562 (2018) (quoting *State v. 192 Coin-Operated Video Game Machs.*, 338 S.C. 176, 192, 525 S.E.2d 872, 881 (2000)). In addition to the search warrant affidavit, sworn oral testimony is also permissible in determining whether or not probable cause exists. *Id.* (citing *State v. Weston*, 329 S.C. 287, 292, 494 S.E.2d 801, 803 (1997)).

Here, Captain Walsh, of Aiken County, approached Investigator James Smith, of the Edgefield County Sheriff's Office, and told him a subject in the Aiken County Detention Center, Walter Brian Wade, wanted to talk to him about incidents in Edgefield County. Trial Tr. 42. Wade was in the detention center on charges of possession of stolen vehicles and had previously cooperated with the South Carolina Law Enforcement Division (SLED) in retrieving those stolen vehicles, as well as others[11]. Trial Tr. 43-44. After speaking with Wade, Investigator Smith prepared a written affidavit, which he presented to the magistrate along with sworn oral testimony. Trial Tr. 45. In this information, Investigator Smith told the magistrate Wade had been charged in Aiken County on unrelated charges but had also cooperated with them, and the information Wade provided to them helped SLED recover stolen vehicles. Trial Tr. 46-47. Furthermore, Investigator Smith informed the magistrate Wade was an eyewitness to the events he described, specifically that he had been to 32 Rain Forest Lane (the residence), where Applicant, his daughter, and Tim Wheeler lived, on several occasions and had observed numerous firearms and large quantities of methamphetamine and prescription drugs. Trial Tr. 48-49. Wade also described two motorcycles, which were painted over black, a camouflage vehicle, a red pickup truck, and a Nissan van parked in the front yard that had been used for target practice[12] at the residence. Trial Tr. 50. Additionally, the Sheriff's Office had been

[11] The information Wade provided to SLED was proven to be accurate and verified. Trial Tr. 44.
[12] Wade had used the van for target practice with Applicant. Trial Tr. 56.

getting complaints about heavy traffic, including black motorcycles, in and out of Rain Forest Lane. Trial Tr. 50. Based on the complaints received, Sergeant Florida watched the area for a while and observed black motorcycles coming and going from the residence. Trial Tr. 50. Sergeant Florida also observed the van riddled with bullet holes in the front yard. Trial Tr. 56. Moreover, Sergeant Florida went to the residence on December 15th regarding a welfare check, and Applicant, who was there at the time, took Sergeant Florida inside the residence. Trial Tr. 51. After that visit, Sergeant Florida drew a diagram of the residence, which matched Wade's diagram of the residence. Trial Tr. 51.

Because the information Wade had provided to SLED was proven to be accurate and because it did assist them in their investigation, sufficient information was provided Wade was a credible informant. Moreover, Wade specifically described the residence and even drew a diagram of it, which was confirmed by Sergeant Florida's observations of the residence both inside and out. Still further, Wade explicitly described the van and described using it for target practice, which was confirmed through Sergeant Florida's observations. Based on all the foregoing, sufficient information was presented to the magistrate to verify the credibility of Wade and the basis of his knowledge. Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to convey the consequences of the plea

Applicant further alleges Counsel was ineffective for failing to sufficiently explain the consequences of his plea. In particular, Applicant contends Counsel was ineffective for failing to explain to Applicant a guilty plea would constitute a waiver of the legal issues raised and argued at trial, specifically the issue concerning the search warrant and the confidential informant. Conditional guilty pleas are not recognized in South Carolina. *State v. Rice*, 401 S.C. 330, 331,

737 S.E.2d 485, 485 (2013) (citing *State v. Truesdale*, 278 S.C. 368, 370, 296 S.E.2d 528, 529 1982)). "Rather, in South Carolina, a guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." *Id.* at 331-32, 737 S.E.2d at 185-86.

Here, Counsel testified he explained the consequences of the plea to Applicant, specifically highlighting there were no conditional guilty pleas in South Carolina. In conjunction with that conversation, Counsel testified he explicitly informed Applicant he would not be able to appeal the search warrant issue after pleading guilty. Applicant appeared to understand these conversations. Accordingly, this Court finds Applicant has failed to establish Counsel was deficient.

Similarly, this Court finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. Counsel testified it was not until two to three weeks prior to trial that Applicant decided he wanted to plead after the State had rested its case. In fact, Applicant was emphatic he wanted to see everyone who would testify against him prior to pleading guilty. Applicant made a conscious decision to plead guilty after first proceeding to trial, and did so knowing he would not be able to appeal any issues which had been raised and argued at trial. This allegation must be denied and dismissed with prejudice.

Illegal Sentence

Applicant contends his sentence for indictment number 2016-GS-19-252, an indictment for receiving stolen goods, less than $2,000, exceeds the statutory limits for a person convicted of such an offense. The Court agrees. A trial court has broad discretion in imposing criminal sentences within the limits prescribed by law. *State v. Franklin*, 267 S.C. 240, 226 S.E.2d 896 (1976); *Clark v. State*, 259 S.C. 378, 192 S.E.2d 209 (1972). The courts normally have no discretion to correct a sentence given within statutory limits. Here, Applicant was indicted for

and pled guilty to receiving stolen goods, less than $2,000. *See* 2016-GS-19-252. A person convicted of such an offense "must be fined not more than one thousand dollars or imprisoned *not more than thirty days*." S.C. Code Ann. § 16-13-180(C)(1) (emphasis added). Applicant was sentenced to a term of imprisonment of three years for this offense. Such a sentence is well outside the statutorily prescribed limits. Accordingly, this Court finds Applicant's sentence for indictment number 2016-GS-19-252 must be vacated and this case shall be remanded for resentencing.

Involuntary Guilty Plea

Applicant further alleges his guilty plea was not voluntarily made. This Court finds Applicant's guilty plea was freely and voluntarily made. In evaluating issues concerning guilty pleas, this Court will consider the entire record, including the transcript of the guilty pleas and the evidence presented at the post-conviction relief hearing. *Roddy v. State*, 339 S.C. 29, 528 S.E.2d 418 (2000). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *Id.* at 34, 528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Voluntariness of a guilty plea is not merely determined by an examination of a specific inquiry by the plea court alone but rather is determined by the record of both the guilty plea proceeding and the post-conviction relief hearing. *Id.* However, the overarching concept remains "a guilty plea should only be accepted where the record evidences 'an affirmative showing that it was intelligent and voluntary.'" *Boykin v. Alabama*, 395 U.S. 238, 242 (1969) (internal quotation omitted); *Parke v. Raley*, 506 U.S. 20, 29 (1992). This is because "waivers of constitutional rights not only must be

voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences." *Brady v. United States*, 397 U.S. 742, 748 (1970).

Key to the analysis in reviewing a plea for voluntariness is looking to "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *Raley*, 506 U.S. at 29 (quoting *Alford*, 400 U.S. at 31). In order to find a guilty plea was knowingly and voluntarily entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. *Boykin*, 395 U.S. at 244. Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is "usually, but not invariably, foreclosed." *Dalton v. State*, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (citing *Blackledge v. Allison*, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." *Id.* (citing *Crawford v. United States*, 519 F.2d 347 (4th Cir. 1975)); *see also Edmonds v. Lewis*, 546 F.2d 566 (4th Cir. 1976).

This Court finds this allegation is without merit, and Applicant has failed to carry his burden of proving his guilty plea was involuntarily made. This Court finds Applicant's plea was entered into freely and voluntarily. The record before this Court reflects the trial court thoroughly reviewed all of Applicant's constitutional rights with him, including his right to a jury trial. Trial Tr. 348-49. Applicant indicated he understood his constitutional rights and, understanding he would be waiving those rights, entered a guilty plea. Trial Tr. 350. Indeed, at the time Applicant decided to plead guilty, he had already exercised his right to proceed to a jury trial and had also been advised of his right to testify. *See* Trial Tr. 333-36. Applicant further indicated no one had promised him anything, threatened him, or coerced him in order to get him

to plead guilty. Trial Tr. 348. Additionally, Applicant indicated he was entering these guilty pleas freely and voluntarily. Trial Tr. 348.

Additionally, Counsel testified he and Applicant reviewed all discovery materials, the elements which the State would be required to prove at trial, the potential punishments, and his constitutional rights. Counsel further testified after his discussions with Applicant and after initially proceeding to trial, Applicant ultimately made the decision to enter the guilty pleas.

Therefore, this Court finds Applicant had a full understanding of the consequences of his plea and the charges against him, and the plea court correctly found Applicant's plea was freely, voluntarily, and intelligently made. Consequently, this allegation must be denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant's sentence for receiving stolen goods $2,000 was outside the statutorily prescribed limits and the sentence must be vacated and remanded for resentencing. Regarding Applicant's other convictions, sentences, and allegations, this Court finds Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

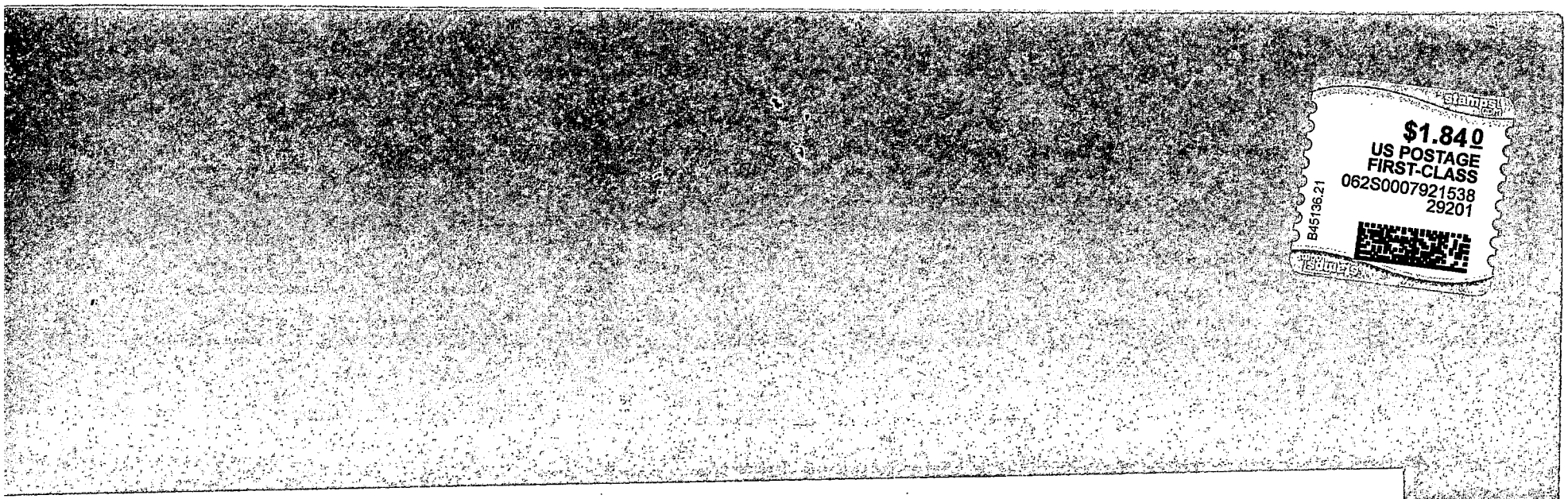
IT IS THEREFORE ORDERED:

1. That Applicant's sentence for indictment number 2016-GS-19-252 be vacated, and the case remanded for resentencing;
2. That this application with respect to all other allegations and convictions for post-conviction relief must be denied and dismissed with prejudice; and
3. The Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED this 5 day of DECEMBER 2018.

WALTON J. MCLEOD, IV
Presiding Judge
Eleventh Judicial Circuit

LEXINGTON, South Carolina



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