

Tommy A. Thomas

ATTORNEY AND COUNSELOR AT LAW

TELEPHONE:
(803) 732-5507
(803) 732-5508

HARRINGTON BUILDING
7588 WOODROW STREET
IRMO, SOUTH CAROLINA 29063

PLEASE REPLY TO:
PO BOX 88
IRMO, SC 29063

FACSIMILE:
(803) 781-4226

February 11, 2019

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INMATE LINE
(803) 732-6542

FEB 15 2019

The South Carolina Supreme Court
Clerk, Daniel Shearouse
P.O. Box 11330
Columbia, SC 29211

S.C. SUPREME COURT

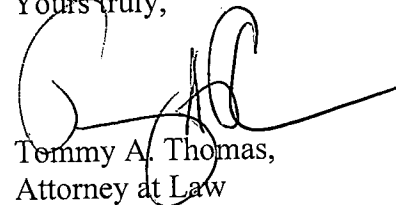
RE: Jason Alan Johnson v. State of South Carolina
Case No.: 2016-CP-46-03388

Dear Sir or Madam:

Enclosed please find for filing an original and a copy of a Notice of Appeal and Certificate of Service.

Kindly return a clocked copy to me in the enclosed envelope. Please feel free to contact me should you have any questions. Thank you.

Yours truly,



Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: Megan Harrigan Jameson, Esq.
Jason Johnson #231457
Appellate Defense

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas
Post Conviction Relief

William A. McKinnon, Circuit Court Judge

Case No.: 2016-CP-46-03388

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S.C. SUPREME COURT

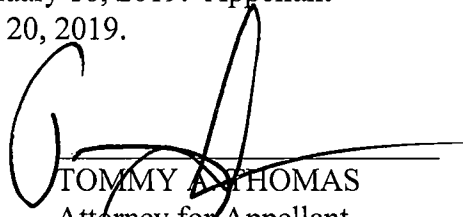
Jason Alan Johnson #231457,..... Petitioner,

vs..

State of South Carolina,Respondent.

NOTICE OF APPEAL

Jason Alan Johnson #231457 appeals the Order of the Honorable William A. McKinnon, dated August 29, 2018 and filed on August 30, 2019. On September 14, 2018 a timely Notice of Motion and Motion to Alter or Amend the Judgment was filed. On November 15, 2019 a Motion to Dismiss 59 (e) was submitted for filing. The Honorable William A. McKinnon signed an Order on January 15, 2019 dismissing the Motion to Alter or Amend. This Order was filed on January 16, 2019. Appellant received written notice of entry of this order on January 20, 2019.


TOMMY A. THOMAS
Attorney for Appellant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Other Counsel of Record:
Megan Harrigan Jameson, Esq.
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
Attorney for Respondent

February 11, 2019

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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FEB 13 2018

APPEAL FROM YORK COUNTY
Court of Common Pleas
Post Conviction Relief

S.C. SUPREME COURT

William A. McKinnon, Circuit Court Judge

Case No.: 2016-CP-46-03388

Jason Alan Johnson #231457,..... Petitioner,

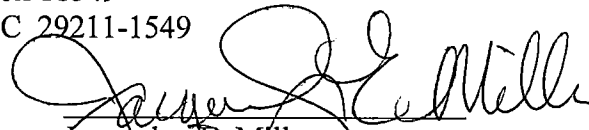
vs.

State of South Carolina,Respondent.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Applicate hereby certify that I placed in the United States Mail, a copy of a Notice of Appeal with postage prepaid and the return address clearly shown on said envelope to Megan Harrigan Jameson, Esq. of the Attorney General's Office, at:

Megan Harrigan Jameson, Esq.
Attorney General's Office
P.O. Box 11549
Columbia, SC 29211-1549



Jacquelyn E. Miller
Secretary to Tommy A. Thomas
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Irmo, SC
February 11, 2018

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)
)
 Jason Alan Johnson, SCDC #231457,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE SIXTEENTH JUDICIAL CIRCUIT

Case No. 2016-CP-46-03388

ORDER OF DISMISSAL

DAVID HAMILTON
 C.C. P. & GS
 YORK COUNTY, SC

2018 AUG 30 AM 10:52

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This matter comes before the Court by way of an application for post-conviction relief filed on November 16, 2016, by retained counsel Tommy A. Thomas, on behalf of Jason Alan Johnson (Applicant). The State (Respondent) served its return on October 17, 2017, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened July 30, 2018, at the Moss Justice Center in York County. Applicant was present at the hearing and represented by counsel Thomas. Senior Assistant Deputy Attorney General Megan Harrigan Jameson from the South Carolina Attorney General’s Office appeared on behalf of the State. After a review of the record and all evidence presented, this Court finds Applicant failed to meet his requisite burden of proof and denies this application with prejudice.

PROCEDURAL AND FACTUAL HISTORY

The records before this Court establish Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court’s orders of commitment. On February 27, 2011, Applicant and two co-defendants (Brandi Quinn and Corey Seth Catoe) were arrested at a Best Way Inn in Rock Hill, South Carolina when law enforcement arrived to effectuate an arrest warrant against Quinn for malicious injury to personal property. When officers

knocked on the door, Quinn opened the door then stepped back into the room, causing officers to follow her into the room to complete the arrest. Officers noticed a large quantity of computers in various stages of disassembly and items traditionally associated with illegal drug activity strewn throughout the room. Officers then detained Applicant and Catoe and located a large glass bottle being used to make methamphetamine, commonly referred to as a shake-and-bake laboratory, which was still in the process of making useable methamphetamine. Applicant and Catoe were taken into custody.

During its June 2011 term, the York County Grand Jury indicted Applicant for trafficking in methamphetamine (more than 100 grams) (2011-GS-46-01752) as a third drug offense. The indictment covered the time period from August 2010 through the day of Applicant's arrest on February 27, 2011, covering the time period the State alleged Applicant and Catoe were the masterminds behind a wide-scale methamphetamine production throughout York County. Michael L. Brown, Jr., was appointed to represent Applicant. Assistant Solicitor Jennifer Colton of the Sixteenth Circuit Solicitor's Office prosecuted the case. On January 23, 2011, Applicant, alongside co-defendant Corey Seth Catoe, proceeded to a jury trial in the York County Court of General Sessions before the Honorable Lee S. Alford, circuit court judge. Applicant and Catoe moved to suppress the evidence recovered from the motel room, arguing the officer's entry into the room was warrantless and unlawful because Quinn had already been arrested and that the search warrant subsequently obtained lacked probable cause.

Halfway through the motion to suppress hearing, Applicant's co-defendant Catoe pled guilty to manufacturing methamphetamine as a first offense and was sentenced to five years imprisonment suspended upon the service of two years imprisonment and two years probation.

Applicant initially accepted a plea offer to the lesser-included offense of trafficking methamphetamine (28 to 100 grams) for a cap of eighteen years imprisonment, but immediately moved to withdraw his plea before it was accepted by the court. The court continued forward with Applicant's motion to suppress hearing, denying the motion at the conclusion of the hearing.

Applicant then argued the State needed to elect which conduct it was going forward on over the six month period. The State responded that it was proceeding forward on a conspiracy to traffic methamphetamine between Applicant and Catoe over the six month time period, not merely the arrest from the motel room, and that it planned to tie everything together through the testimony of numerous co-conspirators. The trial court cautioned the State that it must show an agreement and link the activities to the conspiracy. Applicant objected to the State proceeding forward on a conspiracy theory, arguing that he was not indicted for conspiracy, but acknowledged the statute specifically covers conspiracy to traffic.

Applicant then proceeded to trial, during which the State presented testimony from Quinn and the officers who arrested Applicant in the motel room, as well as numerous co-conspirators who testified to the wide-scale operation where Applicant and Catoe had numerous people purchase pseudoephedrine to be used to make methamphetamine. During trial, Applicant argued the entire volume recovered from the glass bottle in the motel room should not contribute towards the weight of methamphetamine, as it was not in a finished state and most was unusable waste product. After hearing arguments from both parties, the Court ruled the total amount of the methamphetamine mixture would qualify towards the threshold amounts from trafficking.

At the conclusion of testimony, the jury convicted Applicant of trafficking methamphetamine (28-100 grams). Judge Alford sentenced Applicant to twenty-eight years imprisonment.

Applicant filed a timely notice of appeal and was represented by Appellate Defender David Alexander of the South Carolina Commission on Indigent Defense-Office of Appellate Defense. On appeal, Applicant argued: argued (1) the trial court erred denying his motion to suppress based on an initial warrantless entry and the subsequent warrant was obtained without probable cause, and (2) the trial court erred in determining the total weight of the liquid was counted towards weight of methamphetamine pursuant to the statute and prohibiting counsel from arguing to the jury that the total weight did not count as methamphetamine. Following briefing and oral argument, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence in a published opinion. State v. Johnson, 420 S.C. 10, 763 S.E.2d 36 (2014). Applicant then petitioned for rehearing, and following the denial of his petition, petitioned for certiorari to the South Carolina Supreme Court. The Supreme Court granted certiorari, and following briefing and oral argument, dismissed certiorari as improvidently granted. The remittitur was returned to the circuit court on November 18, 2015.

ALLEGATIONS RAISED

On November 16, 2016, Applicant, through counsel Thomas, filed an application for post-conviction relief, alleging "ineffective assistance of counsel" without any supporting facts or specific instances of counsel's ineffectiveness. The State made its return on April 5, 2017, requesting an evidentiary hearing. Thereafter, on July 18, 2018, Applicant, through counsel

Thomas, served an amended application with the following specific allegations of ineffective assistance of counsel:

1. Counsel failed to effectively object to an invalid search warrant and the introduction of evidence pursuant to this warrant.
2. Counsel failed to adequately advise Applicant regarding plea offers and to communicate Applicant's acceptance of a plea offer.
3. Counsel moved to have the Applicant's mental health evaluated but failed to follow through on this motion; no evaluation was performed.
4. Counsel failed to challenge the trial of Applicant for both conspiracy to traffic and trafficking in methamphetamine.
5. Counsel failed to effectively argue against the introduction of the gross weight of the methamphetamine which consisted of meth oil.
6. Counsel failed to have the drugs in evidence tested by a private facility to determine the actual weight of the drugs.
7. Counsel failed to effectively argue for the redaction of all video evidence.
8. Counsel allowed the witness, Brandi Quinn to testify to certain matters which allowed the state to introduce evidence which would otherwise have been objectionable under Lvle.
9. Counsel failed to effectively challenge the time line and span of the conspiracy.
10. Counsel opened the door by the use of the term drug addict which put Applicant's character into issue.
11. Counsel failed to properly cross exam witnesses.
 - a. Shelly Pettigre
 - b. Amanda Caudle
 - c. Christopher Matus
 - d. Cassidy Cooper
 - e. Brandy Hager

Applicant proceeded forward on the allegations in his amended application at the evidentiary hearing.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

During the evidentiary hearing, Applicant called trial counsel Michael L. Brown, Jr. (counsel) to testify first. Counsel testified he has been practicing law for thirty-six years and was appointed to represent Applicant. He testified he thinks he was the second attorney to represent Applicant. He testified he believed he had sufficient time to prepare the case and was ready for trial. He testified Applicant was charged with trafficking in methamphetamine following his arrest on February 27, 2011, in a motel room in along with two others when law enforcement came to issue a valid arrest warrant on one of the room's occupants. He testified the room contained a large bottle of unfinished methamphetamine product and the trial court ruled the entire portion could be used towards the weight for trafficking over his objection. He testified he did not have an independent laboratory extrapolate out the methamphetamine from the mixture to determine the percentage of methamphetamine contained in the mixture, which he acknowledged could have been useful in his argument to the trial court. However, he later conceded the trial court ruled that the entirety of the mixture would count regardless of the purity of the methamphetamine within the mixture and the Court of Appeals affirmed this ruling in a published decision.

Counsel testified the indictment covered the time period from August 2010 until the date of Applicant's arrest in the motel room and the State was proceeding forward on a conspiracy theory. Applicant initially testified he should have objected to the State proceeding forward on such a large time span beyond the February 27th arrest, but later acknowledged that he did so object at the outset of trial and repeatedly throughout trial. He also acknowledged that the trafficking statute includes conspiracy and that he repeatedly objected to the State proceeding forward on this theory. Counsel testified his defense strategy was to show Applicant was merely a drug user, not

an elaborate mastermind as the State was attempting to portray him. He testified he did not object to any references to Applicant being a drug addict based on this trial strategy. He testified he also argued that there were two other people in the motel room who could have been the possessors of the methamphetamine mixture in the bottle and the State failed to test the bottle for fingerprints or DNA despite having a technologically advanced laboratory at their disposal. He argued all the co-conspirator witnesses called to testify by the State were "less than credible" and that he believes he did a good job of cross examining them to establish their self-interested motives. He testified the evidence regarding fake identification production and records of pseudoephedrine purchases were admitted as part of the conspiracy over his objections. He testified he thinks this evidence, as well as the testimony of Quinn and other co-conspirators, was impermissible Lyle testimony, which he unsuccessfully argued to keep out to the trial court.

Counsel testified he discussed suppression of the evidence from the motel room with Applicant, but advised him suppression would not be likely based on the facts of the case and the law. He testified the basis for the suppression motion was officers had entered the motel room after Quinn's arrest had been effectuated without a search warrant and the subsequent warrant lacked probable cause. Counsel testified he thoroughly argued the suppression motion to the trial court, made contemporaneous objections to the introduction of the evidence at trial, and the issues pertaining to the search warrant were preserved for appellate review.

Counsel testified the State offered Applicant a plea for ten years imprisonment before trial and for a second offer for more time during the suppression motion. He advised Applicant that a plea offer would be in Applicant's best interest. However, he testified co-defendant Catoe's attorney repeatedly told Applicant and Catoe the suppression motion would likely be successful.

Counsel testified Applicant initially accepted the State's plea offer on the second day of trial, but quickly withdrew his plea based on a faulty assumption the suppression motion would be successful. He testified he moved to have Applicant evaluated once he withdrew his plea purely as a delay tactic to allow Applicant additional time to consider the State's plea offer and to determine if Catoe was going to testify against Applicant. He testified he did not have any competency concerns about Applicant other than his inability to rationally consider the State's plea offer due to his false sense of confidence the evidence would be suppressed. Counsel testified he thinks Applicant made a mistake in not accepting the State's plea offer and in hindsight, he should have "shoved the offer down [Applicant's] throat" and forced him to accept it. He characterized his inability to force Applicant to accept the State's plea offer was his biggest regret. He later acknowledged it is not his choice whether a client accepts a plea offer and it was Applicant's voluntary decision to ignore his advice and continue forward with trial rather than accept a favorable plea offer from the State. He testified co-defendant Catoe elected to forego trial and accept a favorable plea offer from the State for a minimal term of imprisonment.

Counsel testified there was video footage of the arrest at the motel from the law enforcement cruisers and he requested the State redact certain portions of the video. He testified the State redacted all portions he requested.

Counsel testified at first that he did not request jury instructions on any lesser-included offense, but later acknowledged he did request jury instructions on lesser weights of trafficking, distribution, manufacturing, possession with intent to distribute, and possession, and that the trial court agreed to charge all but possession with intent to distribution and possession.

Applicant testified next on his own behalf. He testified he was incarcerated for the entire time prior to trial. He testified he was originally represented by Assistant Public Defender Melissa Inzerillo but that he fired her because she wanted him to cooperate with law enforcement. He testified counsel was then appointed to represent him. He testified he only met with counsel once or twice and did not have enough time to discuss the case with him. He testified he did not realize the extent of the State's case until the second day of his trial. However, he acknowledged he understood the serious nature of the charges.

Applicant testified counsel never discussed defenses with him and counsel was "geared up" for him to accept the State's plea offer. Applicant testified the State offered him a ten year sentence the Friday before trial and Applicant responded he would accept the offer if the State dismissed the charges against Quinn and Catoe. Applicant testified the drugs belonged to Catoe but he was willing to accept responsibility. He testified he originally accepted a plea offer during pre-trial but then decided he did not want to plead guilty once he saw that the trial court wanted him to plead guilty first before Catoe. He testified he was confused about whether to accept the plea offers and he could not recall if he spoke to counsel about whether to accept the offers. He testified he does not think counsel kept him up to date regarding plea offers and the suppression motion. He elaborated that if counsel had done proper research regarding suppression, counsel would have known the evidence would not likely be suppressed. He testified he was confused as to the suppression because two lawyers were saying different things. He elaborated that counsel informed him the drugs likely would not be suppressed, but co-defendant Catoe's attorney told him the drugs likely would be suppressed. He acknowledged that he ultimately listened to Catoe's attorney rather than his own attorney. He testified he thought the evidence would be suppressed

because a written motion had been filed in advance of the suppression motion. He testified counsel did not speak with him during the trial until halfway through when counsel told Applicant "we're getting smashed."

Applicant testified the bottle recovered from the motel room contained only one to one-and-a half grams methamphetamine and the total weight of the mixture should not have been used against him. Applicant testified all the witnesses who testified against him were not credible and he did not know all of the witnesses. He acknowledged he and some of the female witnesses wrote letters back and forth while incarcerated. He testified counsel did a good job of cross-examining these witnesses.

Respondent called Assistant Solicitor Jennifer Colton, who prosecuted Applicant's case. She testified she had been assisting local law enforcement with investigations into methamphetamine trafficking in York County, including investigations into Applicant and his co-conspirators, well before Applicant's February 27, 2011, arrest. She testified officers had been compiling records of pseudoephedrine purchases from Applicant and his co-conspirators, which were eventually provided to counsel and used during Applicant's trial in furtherance of the conspiracy. She testified these records were voluminous and took up at least two full banker's boxes. She testified as a courtesy to counsel, she compiled an easier-to-read spreadsheet of all this data and provided this to counsel. She testified this was provided well in advance of trial, and the co-conspirator witnesses who testified were listed in this material, so counsel was aware of all potential witnesses before trial. She testified the investigation into Applicant and his co-conspirators likely would have continued longer, but once an arrest warrant was obtained for Quinn and Applicant's subsequent arrest, indictments were sought for the entire timeframe of the

conspiracy (August 2010 until Applicant's arrest on February 27, 2011). Colton testified the trafficking indictment was not based solely on the bottle found in the motel room, but all acts in furtherance of the conspiracy. She testified it was her prosecutorial discretion to indict Applicant for trafficking under a conspiracy theory rather than for conspiracy outright. She elaborated that even if the trial court had granted Applicant's motion to suppress the evidence found in the motel room, she still would have proceeded forward on the trafficking indictment based on all other evidence in furtherance of the conspiracy. She testified counsel objected to the State proceeding forward on a conspiracy theory and the trial court significantly limited the evidence she intended to present to only those times when Applicant and Catoe were acting together in concert within the specific time period alleged in the indictments (August 2010 to February 27, 2011). She testified that in addition to the testimony of co-conspirators, she used the pseudoephedrine purchase records and fake identification cards Applicant and his co-conspirators used to bypass pseudoephedrine purchase limits.

Colton testified counsel moved to suppress the evidence collected from the motel room based on grounds that the initial entry into the room was warrantless and beyond the scope necessary for Quinn's arrest and that the subsequently obtained search warrant lacked probable cause. She testified there was always a chance the trial court would suppress the evidence collected from the hotel room, and in the event that happened, she would still proceed forward because the indictment was based on conspiracy for the entire time period of August 2010 until February 27, 2011. She testified the trial court denied this motion and counsel contemporaneously objected to preserve this issue for appellate review.

Colton testified counsel also objected to the entire weight of the bottle recovered from the hotel room being used to meet the weight requirements for trafficking methamphetamine, arguing the entire mixture was mainly comprised of waste product that would not yield useable methamphetamine. Colton testified the entire volume of the mixture within the bottle was not collected by law enforcement due to safety concerns. She testified the chemical process had already completed when the bottle was recovered and the methamphetamine was suspended in methamphetamine oil. However, she reiterated the indicted amount of trafficking more than 100 grams was based on Applicant's actions during the pendency of the conspiracy, not simply the amount recovered from the bottle. She testified she cited to the statute and legal authority to support her position that the entire mixture counted towards the total weight for trafficking and the trial court ultimately agreed with her argument. She testified counsel contemporaneously objected to preserve this issue for appellate review and the Court of Appeals affirmed the trial court's ruling in a published opinion.

Colton testified Applicant always maintained he was not interested in any plea offers from the State unless it was for a term of less than five years imprisonment, which the State was not willing to offer based on Applicant's prior record and lack of cooperation. She testified co-defendant Catoe received a more favorable plea offer from the State because he was not as culpable as Applicant and did not have as significant of a prior record as Applicant. She testified Applicant turned down two plea offers, including one during the suppression hearing. She testified Applicant appeared to be competent and was the mastermind behind the operation, continuing to orchestrate things while incarcerated, including trying to dissuade witnesses from testifying against him.

Colton testified a video made from the police cruisers present when Applicant was arrested at the motel and she introduced it a trial subject to Applicant's redactions. She testified counsel made a list of all redactions he wanted and she complied with every suggested redaction. She testified she also voluntarily redacted other potentially damaging information to Applicant from the video, including his comments pertaining to his white supremacist ideology.

Colton testified Quinn and the other co-conspirators testimony was offered as to Applicant's role in the conspiracy, not evidence of prior bad acts or Lyle evidence as Applicant now suggests. She testified counsel objected numerous times throughout the trial when he believed the testimony strayed away from the time frame in the indictment or when Catoe was not present with Applicant. She testified the trial court made it clear that she must stay within the time limits and parameters of the conspiracy when eliciting testimony from the co-conspirators. She testified everyone who testified was a methamphetamine user and counsel vigorously cross-examined all witnesses regarding their drug use and self-interested motivations in testifying against Applicant.

Colton testified that although Applicant was indicted for trafficking in methamphetamine more than 100 grams, she asked the trial court to only charge the jury on trafficking in methamphetamine 28 to 100 grams to alleviate any confusion regarding the sample recovered from the bottle found in the motel room. She elaborated the trial court was already going to charge the lesser-included amount for trafficking. She testified the trafficking amounts could have been established from the amount recovered from bottle or the total amount of methamphetamine made during the course of the conspiracy, or a combination thereof. She testified the sentencing range was the same for trafficking in methamphetamine more than 100 grams and trafficking in

methamphetamine 28 to 100 grams, so she made the decision to reduce any possible confusion for the jury from having so many lesser-included options.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearings. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. 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).

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

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, 466 U.S. 668. 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, an 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 an 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.

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds Applicant has failed to carry his burden of proof and had not established any ineffectiveness of counsel. Below are the findings in regards to each specific allegation of ineffective assistance of counsel raised by Applicant:

Allegation: Ineffective assistance of counsel for failing to effectively object to an invalid search warrant and the introduction of evidence pursuant to this warrant

Applicant asserts counsel was ineffective for failing to effectively object to the search warrant obtained for the Best Way Inn motel room rented by Brandi Quinn where Applicant was arrested alongside Quinn and co-defendant Catoe and for failing to object to the introduction of the evidence seized from this motel room during Applicant's trial. This Court finds this allegation is directly refuted by the record and wholly without merit. Counsel objected to the search warrant and moved to suppress the evidence obtained from the motel room based on both the initial warrantless entry into the motel room, arguing the arrest of Quinn had concluded and there was no

reason for officers to enter the motel room, and the search warrant, subsequently obtained after the officers had conducted a protective sweep of the room during the initial entry, was lacking probable cause. The trial court conducted a lengthy and thorough pre-trial hearing and denied Applicant's motion to suppress. Counsel then contemporaneously objected when the evidence was introduced during the State's case, thereby preserving the issue for appellate review. On appeal, Applicant's appellate counsel again challenged the search warrant, arguing the trial court erred in denying Applicant's motion to suppress. The Court of Appeals affirmed the trial court's ruling, finding exigent circumstances justified the protective sweep of the motel room and probable cause existed to justify the issuance of the search warrant. State v. Johnson, 410 S.C. 10, 763 S.E.2d 36 (Ct. App. 2014). This Court finds Counsel properly challenged the search warrant and preserved the issue for appellate review, and therefore, Applicant cannot establish any deficiency of counsel. Moreover, as the Court of Appeals properly affirmed the trial court's ruling as to the search warrant, Applicant cannot establish any requisite prejudice. This Court finds this allegation must be denied and dismissed with prejudice.

Allegation: Ineffective assistance of counsel for failing to properly advise Applicant regarding plea offers

Applicant asserts counsel was ineffective for failing to properly advise Applicant regarding plea offers. Applicant testified he was willing to accept a plea offer if the State would dismiss all charges against Quinn and Catoe, but later testified he rejected plea offers from State against counsel's advice because he believed the motion to suppress would be granted based on advice from Catoe's counsel. Counsel testified he advised Applicant of all plea offers and advised Applicant it was in Applicant's best interest to accept the State's plea offers because the suppression motion would not likely be successful based on the facts of the case and current law.

Additionally, the record shows Applicant began a plea colloquy with the court but then asked to withdraw his plea and continue forward with his trial, even after Catoe accepted a favorable plea offer from the State. This Court finds Applicant has failed to meet his requisite burden of establishing any deficiency of counsel, as counsel timely conveyed all plea offers to Applicant, advised him it was in his best interest to accept a plea offer from the State, and Applicant made a knowing and voluntary decision to ignore the advice of counsel and proceed to trial with the hope that the suppression motion would be granted or he would be acquitted. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

Allegation: Ineffective assistance of counsel for failing to follow through on his motion to have Applicant evaluated

Applicant asserts counsel was ineffective for failing to have Applicant evaluated after moving to have him evaluated during pre-trial motions. The record establishes that following Applicant's failed attempt to enter a guilty, counsel moved to have Applicant evaluated based on his purported concerns about Applicant's competency following his rejection of the plea offer. (Tr. pp. 167-169). Counsel simultaneously moved to be relieved as counsel. The trial court denied both motions, noting:

Well it may be difficult, Counselor, but I don't see any need to relieve you. You're well prepared, we're ready, we put a lot of time this afternoon in this case already got the jury coming in and hear this case so we need to proceed on with it. I haven't seen anything to indicate that he is not competent and understands what's going on and be able to assist you once we actually get started with the trial and pretrial for that matter. And so the fact that you all don't have no meeting of the minds on how to proceed in this, wouldn't mean that he would need a mental evaluation and he would not require it. Often times attorneys and a defendant are not in agreement on how to proceed on a case but we need to proceed on today with the trial.

(Tr. 168-169).

When questioned at the evidentiary hearing as to why he moved to have Applicant evaluated, counsel testified he had no concerns about Applicant's competency but was merely trying to delay the proceedings to give Applicant additional time to consider plea offers and determine whether Catoe was going to testify against him. This Court finds this testimony credible and finds Applicant has failed to establish any deficiency of counsel. Moreover, this Court finds Applicant has failed to establish any prejudice, as he failed to present any evidence that he was not competent to proceed forward with his trial. Therefore, this allegation must be denied and dismissed with prejudice.

Allegation: Ineffective assistance of counsel for failing to challenge the State proceeding forward on both conspiracy to traffic and trafficking

Applicant asserts counsel was ineffective for failing to challenge the State proceeding forward on theories of conspiracy to traffic methamphetamine and trafficking methamphetamine. Essentially, Applicant argues the State should have only been able to present evidence pertaining to the methamphetamine recovered from the motel room during his arrest on February 27, 2011, because he was indicted for trafficking in methamphetamine and not specifically for conspiracy to traffic in methamphetamine.

Counsel initially testified he should have objected based on these grounds, but eventually acknowledged that he did challenge the State proceeding forward on both theories at trial and that he continuously objected to the State's conspiracy theory throughout Applicant's trial. Assistant Solicitor Colton testified the State's theory was always based on Applicant's continuous conspiracy to traffic methamphetamine with co-defendant Catoe from August 2010 until the date of his arrest on February 27, 2011. She also testified Applicant was properly indicted for the entire time frame and the indictment included conspiracy language. This Court finds this allegation is

without merit, as counsel continuously objected to the State proceeding forward under a conspiracy theory at trial. Moreover, this Court finds Applicant was properly indicted for his role in the conspiracy over the proper time period. This Court finds Applicant has failed to meet his burden of establishing any ineffectiveness of counsel and that this allegation must be denied and dismissed with prejudice.

Allegation: Ineffective assistance of counsel for failing to effectively argue against the introduction of the gross weight of the methamphetamine which consisted of meth oil

Applicant asserts counsel was ineffective for failing to effectively argue the total weight of the methamphetamine mixture recovered from the bottle recovered at the motel where Applicant was arrested should not be considered for purposes of meeting the weight requirements from trafficking because the mixture contained unusable methamphetamine oil. This Court finds this allegation is directly refuted by the record and with wholly without merit. Counsel specifically objected to the entire weight of the mixture being used and the trial court ultimately ruled the weight of the entire mixture could be used over counsel's objections.

Counsel then contemporaneously objected when the evidence was introduced during the State's case, thereby preserving the issue for appellate review. On appeal, Applicant's appellate counsel again challenged the trial court's ruling that the entire mixture could be used to meet the threshold weight requirements for trafficking. The Court of Appeals affirmed the trial court's ruling, finding the statute explicitly provided the weight of all the mixture that contained methamphetamine should be used. State v. Johnson, 410 S.C. 10, 763 S.E.2d 36 (Ct. App. 2014). This Court finds Counsel properly challenged the weight argument and preserved the issue for appellate review, and therefore, Applicant cannot establish any deficiency of counsel. Moreover,

as the Court of Appeals properly affirmed the trial court's ruling as to the weight issue, Applicant cannot establish any requisite prejudice. This Court finds this allegation must be denied and dismissed with prejudice.

Allegation: Ineffective assistance of counsel for failing to have the drug evidence tested by a private facility to determine the weight of the drugs

Similar to the allegation immediately proceeding this one, Applicant also asserts counsel was ineffective for failing to have an independent laboratory analyze the mixture and extrapolate out the exact amount of methamphetamine within the mixture. As discussed above, the Court of Appeals ruled in a published opinion that the entire mixture containing methamphetamine counted towards the total weight. Therefore, any such testing would have been fruitless and would have had no impact on Applicant's trial. This Court finds this allegation is denied and dismissed with prejudice.

Allegation: Ineffective assistance of counsel for failing to effectively argue for the redaction of all video evidence

Applicant argues counsel was ineffective for failing to effectively argue for the redaction of all video evidence. Counsel and Assistant Solicitor Colton both testified the video evidence was fully redacted to comply with all requests made by counsel. Applicant has failed to present any additional material he wanted redacted from the video and similarly failed to present the video to this Court to argue how additional redaction would have yielded a different result. Therefore, Applicant has failed to meet his requisite burden of proof and this allegation must be denied and dismissed with prejudice.

Allegation: Ineffective assistance of counsel for failing to object to testimony from Brandi Quinn to acts that were objectionable under Lyle

Applicant argues counsel was ineffective for failing to object to the testimony of co-conspirator Brandi Quinn regarding other acts that Applicant submits were improper pursuant to Lyle. Applicant argues the testimony of Quinn beyond the events surrounding his arrest on February 27, 2011, was improper evidence of prior bad acts and therefore, was inadmissible. This Court finds this allegation is without merit, as the testimony from Quinn (and the numerous other co-conspirators) was admissible to establish the conspiracy between Applicant and Catoe to traffic in methamphetamine. See State v. Wilson, 315 S.C. 289, 294, 433 S.E.2d 864, 868 (1993) (“The State is entitled to prove the whole history of the conspiracy, from its commencement to its conclusion, as well as overt acts done in furtherance of the conspiracy since from those overt acts, an inference may be drawn as to the existence and object of the conspiracy. Further, the State is permitted great latitude in the introduction of circumstantial evidence to establish the existence of a conspiratorial agreement. Accordingly, we find no error in using evidence of the amount of drugs involved in various transactions as proof of the scope of the conspiracy for the purpose of establishing the elements of the crime of conspiring to traffic under S.C. Code Ann. § 44-53-370(e)(1) & (2) (Supp.1992).”) (internal citations omitted). Accordingly, as the testimony was proper, this Court finds counsel was not ineffective for failing to object and this allegation is denied and dismissed with prejudice.

Allegation: Ineffective assistance of counsel for failing to effectively challenge the timeline and span of the conspiracy

Applicant argues counsel was ineffective for failing to effectively challenge the timeline and span of the conspiracy. Applicant was indicted for his role in a conspiracy to traffic more than

100 grams of methamphetamine throughout York County between August 2010 and February 27, 2011. The record conclusively establishes counsel objected repeatedly to the State proceeding forward on a conspiracy theory and any testimony beyond the scope and time limit of this conspiracy. Assistant Solicitor testified based on these objections and the trial court's ruling, she was limited in the presentation of evidence in furtherance of the conspiracy. Additionally, Applicant has not specifically argued what additional arguments counsel could have made to further limit the timeline or scope of the conspiracy. This Court finds this argument is without merit and must be denied and dismissed with prejudice.

Allegation: Ineffective assistance of counsel for opening the door to the use of the term drug addict which put Applicant's character in issue

Applicant argues counsel was ineffective for using the term drug addict, which opened the door to the State admitting evidence of Applicant's character. The record reveals that the trial court admonished counsel about potentially opening the door to evidence of Applicant acting as a drug dealer during periods outside the indictment timeframe by arguing Applicant was merely a drug addict feeding his habit. (Tr. pp. 548-551). However, the State never walked through the open door and kept all evidence narrowly confined to the time frame as set forth in the indictment. Therefore, Applicant cannot establish any ineffectiveness of counsel, and this allegation must be denied and dismissed with prejudice.

Allegation: Ineffective assistance of counsel for failing to properly cross-examine co-conspirator witnesses

In his amended application, Applicant alleges trial counsel was ineffective for failing to properly cross-examine numerous witnesses who all testified in furtherance of the conspiracy between Applicant and Catoe to manufacture and traffic methamphetamine. However, during the

evidentiary hearing, Applicant conceded counsel did a good job of cross-examining these witnesses. Additionally, the record establishes counsel thoroughly examined all witnesses regarding their own self-interested motives in testifying against Applicant. This Court finds this allegation is without merit and must be denied and dismissed with prejudice.

CONCLUSION

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

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record 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), SCRCR, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

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


WILLIAM A. MCKINNON #2761

York, South Carolina

Presiding Judge
Sixteenth Judicial Circuit

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
JASON A. JOHNSON,)
)
Applicant,)
)
v.)
)
STATE OF SOUTH CAROLINA,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2016-CP-46-3388

ORDER

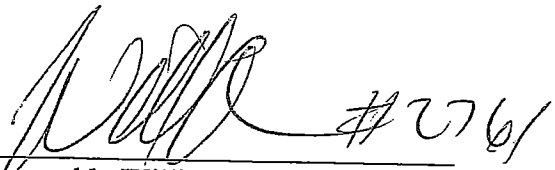
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2019 JAN 16 AM 8:47
DAVID HAMILTON
C.C.P. # 69
YORK COUNTY, SC

This matter is now before the Court pursuant to the Applicant's Motion to Dismiss 59 (e). That an Order of Dismissal in the above referenced case was received by counsel on September 5, 2018. A timely Notice of Motion and Motion to Alter or Amend was filed with the Court. The purpose of the Motion was that Counsel had been unable to speak with his client due to the ongoing lock up status at Lee Correctional Institution and counsel was scheduled for surgery and wanted to protect his client's ability to alter or amend the court's order as necessary.

Counsel has now reviewed the order and spoken with his client and is informed and believes that there is no necessity to alter or amend the court's order.

THEREFORE, based on counsel's Motion to Withdraw 59 (e), the Court dismisses the Motion for 59 (e) and as such the Court's Judgment entered on August 29, 2018 is hereby made final as of the date of this Order.

AND IT IS SO ORDERED.


The Honorable William A. McKinnon
Judge of the Sixteenth Judicial Circuit

January 15, 2019

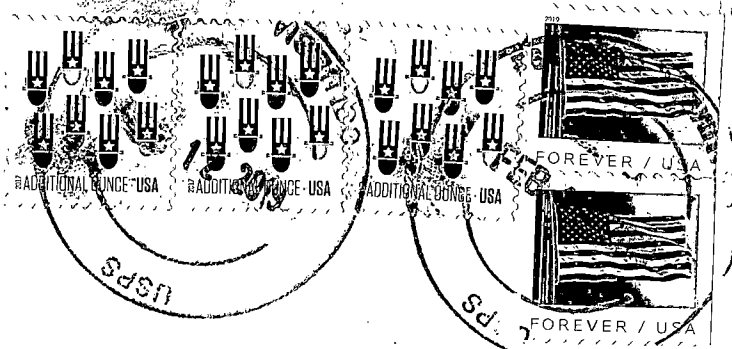
Tommy A. Thomas, P.C.

ATTORNEY AND COUNSELOR AT LAW

HARRINGTON BUILDING

POST OFFICE BOX 88

IRMO, SOUTH CAROLINA 29063



The South Carolina Supreme Court
Clerk, Daniel Shearouse
P.O. Box 11330
Columbia, SC 29211