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March 28, 2019

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

RE: Jerome Baker #362559 v. State of South Carolina

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.
Jerome Baker #362559
Appellate Defense

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Post Conviction Relief

Walton J. McLeod, IV., Circuit Court Judge

RECEIVED
APR 01 2019
S.C. SUPREME COURT

Case No.: 2015-CP-32-4261

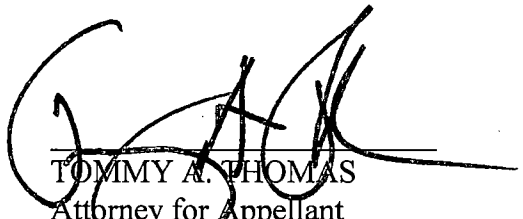
Jerome Baker #362559,..... Petitioner,

vs.

State of South Carolina, ...Respondent.

NOTICE OF APPEAL

Jerome Baker #362559 appeals the Order of the Honorable Walton J. McLeod, IV, dated and filed on February 22, 2019. Appellant received written notice of entry of this order on March 1, 2019.



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Irmo, South Carolina
March 28, 2019

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Post Conviction Relief

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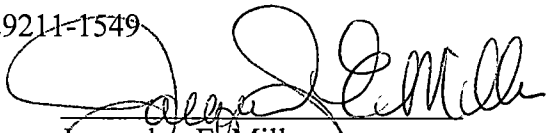
CERTIFICATE OF SERVICE

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



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Irmo, SC
March 28, 2019

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) FOR THE ELEVENTH JUDICIAL CIRCUIT

2019 FEB 22 AM 11:38

LISA M. COSIER
CLERK OF COURT
LEXINGTON, SC

Jerome Baker, #362559,) 2015-CP-32-04261
Applicant,)

v.) **ORDER OF DISMISSAL**

State of South Carolina,)

Respondent.)

This matter comes before this court by way of an application for post-conviction relief filed on December 3, 2015, by Jerome Baker (Applicant), and later amended on July 17, 2018, through retained counsel Tommy A. Thomas. An evidentiary hearing was held on January 23, 2019, before this court at the Lexington County Courthouse. Applicant was present and was represented by counsel Thomas. The State of South Carolina (Respondent) was represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson of the South Carolina Attorney General's Office. At the hearing, testimony was taken from plea counsel Robert T. Williams, Sr. and Applicant.

Following a thorough review of the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this court finds Applicant has failed to meet his requisite burden of establishing any constitutional violations and denies this application with prejudice.

PROCEDURAL HISTORY

The records before this court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for the South Carolina State Grand Jury. On November 13, 2013, the South Carolina State Grand Jury indicted Applicant for Trafficking in Marijuana (Conspiracy) (100 to 2,000 pounds) and Trafficking in Marijuana (10 to 100 pounds) (2013-GS-47-0023). The charges stem from a joint

federal and state narcotics investigation that began with a cooperating witness providing the Drug Enforcement Administration (DEA) with information regarding Applicant trafficking large quantities of illicit drugs into South Carolina. He was represented by Robert T. Williams, Sr., Esquire. Assistant Attorney General Lawrence Wedekind of the South Carolina Attorney General's Office prosecuted the case.

On October 20, 2014, Applicant appeared in Lexington County before the Honorable Thomas A. Russo, circuit court judge, and pled guilty to Trafficking in Marijuana (10 to 100 pounds) pursuant to a written plea agreement that included the dismissal of the accompanying conspiracy trafficking charge and other drug-related offenses in Lexington and Richland Counties in exchange for Applicant waiving presentment to the Richland County Grand Jury and entering a plea at a later date to trafficking in marijuana (10 to 100 pounds) (second offense) for a negotiated sentence of five to ten years imprisonment. Sentencing was deferred pursuant to this plea agreement.

On December 12, 2014, all parties reconvened before Judge Russo. At this hearing, Applicant waived presentment to the Richland County Grand Jury to trafficking in marijuana (10 to 100 pounds) (second offense) and waived any jurisdictional issues to have the matter disposed of in Lexington County. Pursuant to the negotiated plea agreement between Applicant and the State, Judge Russo sentenced Applicant to ten years for the state grand jury trafficking in marijuana charge and to a concurrent ten years for the Richland County trafficking in marijuana (second offense) charge.

On December 15, 2014, Applicant filed a motion to reconsider his sentence. A hearing on this motion was held on January 14, 2015, before Judge Russo, who took the matter under

advisement. On February 8, 2015, Judge Russo filed a written order denying Applicant's motion to reconsider his sentence.

Applicant did not file an appeal of his negotiated guilty pleas or sentences.

SUMMARY OF FACTS GIVING RISE TO THE CONVICTIONS

This State Grand Jury case involves a joint state and federal investigation that began in 2010 with an informant notifying the DEA that he had information pertaining to Applicant and a co-conspirator, Elma Camarillo, both of whom the informant had known for fifteen years. Law enforcement used phone records to build a case against Camarillo, who was working with the informant to arrange large shipments of various drugs to various locations through the country, including Illinois, Kentucky, and South Carolina. These phone records eventually linked Applicant to the conspiracy. Camarillo, working with Applicant, told the informant to locate a very specific model of Dodge pick-up truck. Surveillance video and bank records show that once the informant found the specific truck, Applicant provided the funds for the informant to purchase the truck. The informant then purchased the truck and drove it to McAllen, Texas as instructed. Unknown to Camarillo and Applicant, the informant was escorted by a surveillance team from the Drug Enforcement Agency and South Carolina Law Enforcement Division (SLED), who had installed a kill switch and GPS tracker on the truck. Once in Texas, the informant was instructed to drop off the truck at a specific location and wait for a call to say it was ready. He then received such a call and was instructed to drive the truck back to South Carolina. On August 27, 2010, once he arrived in South Carolina, the informant was instructed to drive the truck to a specific location, which he did. At that time, an associate of Applicant got into the vehicle and drove it to another location a short distance way, where he was met by Applicant. Applicant then got into the truck and drove it onto Interstate 20. At that point, law enforcement activated the kill switch and the

truck disabled. Law enforcement approached and Applicant was arrested on older charges. The truck was impounded, and once at the SLED garage, the gas pump was removed and 44 pounds of marijuana were recovered. (Oct. 20, 2014 Tr. p. 12- 18).

Approximately three years later, the Richland County law enforcement executed a search warrant of Applicant's residence on May 23, 2013, where law enforcement found more than 11 pounds of marijuana. (Dec. 12, 2014 Tr. p. 19-20).

CURRENT PROCEEDING

On December 3, 2015, Applicant filed an application for post-conviction relief, alleging he is being held in custody unlawfully based on allegations of ineffective assistance of counsel and involuntary guilty plea, with the supporting facts "That the Applicant failed to receive the benefit of his plea bargain." He states he is seeking a new trial.

On July 19, 2018, Applicant, through counsel Thomas, served an amended application with the following allegations:

1. That trial counsel was ineffective for failure to investigate and to bring to the Court's attention that political forces were at play as a result of the Applicant and his wife's ownership of spice shops in Lexington County.
2. Trial Counsel was ineffective for not bring to the Court's attention statements made by Larry Wedekin in the first plea that the Applicant would be parole eligible and 65%. The Applicant received an 85% sentence.
3. Trial Counsel failed to file a Notice of Intent to Appeal.
4. Trial Counsel failed to provide the Applicant the opportunity to properly review the evidence against his due to restrictions placed on the evidence by the State.
5. That proper venue for this case was Richland County and not Lexington County.
6. Trial Counsel failed to properly investigate and/or object to an improper enhancement of the Applicant's drug charges.
7. Trial Counsel was ineffective for failing to properly advise Applicant as to what charges he was pleading to.
8. Trial Counsel failed to effectively challenge or investigate the weight of the drugs.
9. Trial Counsel was ineffective for the Applicant not receiving the benefit from his plea bargain for five (5) years.
10. Trial Counsel was ineffective for not arguing that all activity was one continuous course of conduct and thus improperly enhanced.

11. Trial Counsel was ineffective for his failure to argue that the Applicant's first plea was not a conviction and could not be used to enhance additional charges. There was no sentence imposed at that time of the plea.
12. That sentencing was excessive in light of Co-defendant's sentence.

An evidentiary hearing was held on January 23, 2019, before this court at the Lexington County Courthouse. At the hearing, Applicant proceeded forward on the allegations as set forth in his amended application. Testimony was taken from plea counsel Williams and Applicant. Following the hearing, this court took the matter under advisement.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This court has thoroughly reviewed the record in its entirety. Additionally, this court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented at the evidentiary hearing, which allowed the court to scrutinize the credibility of all witnesses presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80.

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. 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). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that trial counsel was constitutionally ineffective, he 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. at 686

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

under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "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). 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 Petitioner such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified

acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney." Id. at 690.

"A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). "Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea." Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see Jamison v. State, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea").

Based on this standard set forth above, this court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel as to any of his various allegations. Each allegation is addressed fully below:

Counsel's Alleged Ineffectiveness for Failing to Investigate and Bring to the Court's Attention that Political Forces were at Play as a Result of Applicant and his Wife's Ownership of Spice Shops in Lexington County

First, Applicant alleges counsel was ineffective for failure to investigate and to bring to the court's attention that political forces were at play as a result of the Applicant and his wife's ownership of spice shops in Lexington County. In support of this allegation, Applicant testified at the evidentiary hearing that he and his wife owned various businesses that sold legal, synthetic marijuana, commonly referred to as "spice," which upset many politicians and community members in Lexington County. He further asserted that he was vocal about the legality of spice, which resulted in him being targeted by local law enforcement and politicians. He testified he

refused to provide information to law enforcement regarding these spice shops because he believed the business was legal and was irrelevant to his case. He testified he believes this is why he was prosecuted and why he received a ten year sentence.

Plea counsel similarly testified Applicant's wife owned spice shops, which upset many in local law enforcement, and Applicant refused to discuss the business during his proffers with the State because he felt the shops were legal and irrelevant to his case. He testified this upset law enforcement, who indicated to the plea court that Applicant had refused to cooperate about the spice shops, which he felt was unfair. He acknowledged he informed the plea court of this during sentencing and during the reconsideration hearing. He also acknowledged Applicant was sentenced within the range of the plea agreement.

This court finds Applicant has failed to show any ineffectiveness of counsel for failing to investigate circumstances regarding Applicant's wife's spice shop or failing to inform the court that political forces were at play in his case regarding these spice shops. It is readily apparent from counsel's testimony that counsel was aware of the underlying circumstances of the spice shops and argued to the plea court numerous times that Applicant did not own the spice shops and they had no bearing on his case. Counsel was not deficient for failing to investigate and to bring to the court's attention that political forces were at play as a result of the Applicant and his wife's ownership of spice shops in Lexington County

Additionally, Applicant is unable to establish any prejudice from this allegation, as he knowingly, voluntarily, and intelligently pled guilty pursuant to negotiations he entered into with the State allowing him to globally resolve his pending State Grand Jury and Richland County charges for a favorable sentence range of five to ten years. See Garren, 423 S.C. at 12, 813 S.E.2d at 710 (internal citations and quotations omitted) ("A guilty plea is a solemn, judicial admission

of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea."; Jamison, 410 S.C. at 469–71, 765 S.E.2d at 129–30 (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea"). Applicant has failed to establish that he would not have pled guilty but for counsel's acts or omissions, and therefore, cannot establish the requisite prejudice for relief. See Hill, 474 U.S. 52 (holding that with respect to guilty plea counsel, an applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial). This court finds that this allegation must be denied and dismissed with prejudice.

Counsel's Alleged Ineffectiveness for Failing to Correct the Prosecutor's Inaccurate Statements regarding Parole Eligibility

Second, Applicant alleges plea counsel was ineffective for "not bring to the Court's attention statements made by [prosecutor] Larry Wedekin in the first plea that the Applicant would be parole eligible and 65%. The Applicant received an 85% sentence." This court notes this allegation is directly refuted by the record. During the October 20, 2014, plea proceeding, the prosecutor informed the plea court that Applicant's plea would require him to serve 85% of his sentence before being eligible for any sort of early release, and immediately thereafter, Applicant told the court he understood. (Oct. 20, 2014 Tr. p. 12). During the December 12, 2014, plea proceeding, the prosecutor again informed the court that the plea would require Applicant to serve 85% of his sentence before being eligible for any sort of early release, and shortly thereafter, Applicant informed the court he wished to plead guilty. (Dec. 12, 2014 Tr. p. 4, p. 8-9). Accordingly, as Applicant affirmed under oath at two different proceedings that he understood he

would be required to serve 85% of his sentence before being eligible for any sort of early release, he cannot met his requisite burden of proof as to this allegation. This court finds this allegation must be denied and dismissed with prejudice.

Counsel's Alleged Ineffectiveness for Failing to File a Notice of Appeal

Third, Applicant alleges plea counsel was ineffective for failing to file a notice of appeal for Applicant. Applicant has failed to present any evidence to support his allegation that he was desirous of an appeal following the court's acceptance of his negotiated plea. At the evidentiary hearing, he testified he discussed a direct appeal with plea counsel and counsel advised him that an appeal would likely not do any good because they had entered a negotiated guilty plea. He testified counsel recommended he file a post-conviction relief action, which he did and then quickly contacted his current counsel to represent him. Applicant never testified he wanted an appeal or requested counsel to file an appeal.

Counsel testified Applicant did not ask him to file a direct appeal. He testified they discussed the next steps Applicant could pursue, including filing a direct appeal, and Applicant agreed it would be smarter to pursue a sentence reconsideration, which he did. He testified he would have filed a direct appeal if Applicant had asked him to do so but affirmed again that Applicant did not request an appeal. The uncontroverted evidence before this court conclusively establishes Applicant did not request counsel file an appeal. Accordingly, this court finds that this allegation must be denied and dismissed with prejudice.

Counsel's Alleged Ineffectiveness for Failing to Provide Applicant with an Opportunity to Review the Discovery

Fourth, Applicant alleges plea court was ineffective for failing "to provide Applicant the opportunity to properly review the evidence against hi[m] due to restrictions placed on the evidence by the State." In this case, as virtually every State Grand Jury case, the presiding judge

issued a protective order that placed strict conditions on the disclosure of evidence due the secrecy involved in these unique proceedings. See Protective order filed March 25, 2015. Included in this protective order was the following provision:

> The defendant and his or her attorney are prohibited from photocopying, scanning, digitizing, etc. and disseminating copies of any State Grand Jury testimony, interviews of witnesses and any other documents that may be disclosed to the defendant and their attorneys in reference to the above-captioned case. Further, unless otherwise ordered by this Court, all material disclosed pursuant to this Order must remain in the secured custody and control of defense counsel, and not the defendant, at all times, and absent order of the court must be retained in a secure location by defense counsel unless and until it is destroyed pursuant to any applicable rule regarding file retention.

Id. This order was issued by the presiding judge—not the State. Accordingly, defense counsel was under a court order not to provide a copy of the discovery to Applicant, but rather, Applicant had to come to his office to review the discovery. This protective order was validly issued by the presiding judge to protect the integrity of the case and the State Grand Jury process. S.C. Code Ann. §14-7-1720 generally provides that State Grand Jury material is secret but may be disclosed by order of the court to provide "the defendant with the material to which he is entitled pursuant to Section 14-7-1700," and to comply "with constitutional, statutory, or other legal requirements or to further justice". See S.C. Code Ann. §§14-7-1720(A)(4) and (A)(5). Additionally, defendants are entitled to discovery in criminal cases, pursuant to the constitution, statute, and rule. See Brady v. Maryland, 373 U.S. 83 (1963); Evans v. State, 363 S.C. 495, 61 1 S.E.2d 510 (2005); S.C. Code Ann. § 14-7-1700; Rule 5, SCRCrimP. However, the State Grand Jury statute also provides that disclosure of State Grand Jury evidence and testimony "must be made in that manner, at that time, and under those conditions as the court directs." See S.C. Code Ann. § 14-7- 1720(A). Moreover, the court has the jurisdiction and duty to protect the secrecy and integrity of the grand jury process, and to punish for contempt for violations of orders or process

issued in a State Grand Jury case. See generally S.C. Code Ann. § 14-7-1730; State v. Blanton, 278 S.C. 597, 300 S.E.2d 286 (1983) (in contempt case tor attempting to influence a grand juror, noting that the court has an implied and necessary common law power to punish for contempt). Therefore, pursuant to the court's power to direct the manner and conditions of disclosure, and in order to protect the integrity and secrecy of the State Grand Jury process, the presiding court issued a valid protective order and defense counsel properly complied with its restrictions. This court finds this allegation is without merit and must be denied and dismissed with prejudice.

Counsel's Alleged Ineffectiveness for Failing to Challenge Improper Venue

Fifth, Applicant asserts Richland County was the proper venue, not Lexington County. The record before this court established counsel filed two motions to change the venue from Lexington County to Richland County, which were denied by the court. Because these matters were raised, ruled upon, and not appealed, the ruling is the law of the case and cannot again be challenged on post-conviction relief. "Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court." Flexon v. PHC-Jasper, Inc., 413 S.C. 561, 571, 776 S.E.2d 397, 403 (Ct. App. 2015) (quoting Judy v. Martin, 381 S.C. 455, 458–59, 674 S.E.2d 151, 153 (2009) (citing C.J.S. Appeal & Error § 991 (2008))); see also Bakala v. Bakala, 352 S.C. 612, 576 S.E.2d 156 (2003) (holding that a family court judge could not overrule the prior unappealed order of another family court judge because it had become law of the case); In re Morrison, 321 S.C. 370 n. 2, 468 S.E.2d 651 n. 2 (1996) (noting that an unappealed ruling becomes the law of the case and precludes further consideration of the issue on appeal); Cooper Tire & Rubber Co. v. Perry et al, 261 S.C. 538, 201 S.E.2d 245 (1973) (holding that where a ruling on a demurrer to complaint is not appealed from, it becomes the law of the case); Watkins v. Hodge,

232 S.C. 245, 247–48, 101 S.E.2d 657, 658 (1958) (refusing to consider jurisdictional matter of underlying case where issue had been ruled upon and not challenged on appeal).

Additionally, this court finds counsel took appropriate steps to try to change the venue to Richland County at Applicant's request, which were ultimately denied by the court. Accordingly, this court finds that counsel's performance was not ineffective and this allegation must be denied and dismissed with prejudice.

Counsel's Alleged Ineffectiveness for Failing to Properly Investigate or Object to an Improper Enhancement of Applicant's Richland County Offense as a Second-Offense

Sixth, Applicant argues counsel was ineffective for failing to properly investigate and/or object to an improper enhancement of Applicant's drug charges. Applicant also makes a similar argument in allegation eleven, and therefore, this court addresses both at once. Essentially, Applicant argues counsel was ineffective for failing to challenge his Richland County charge for trafficking in marijuana (10 to 100 pounds) as a second offense. However, this allegation is without merit, as Applicant was properly charged with a second offense for the Richland County trafficking incident because he had already been convicted on the prior State Grand Jury trafficking offense when he entered his prior guilty plea. See S.C. Code Ann. § 44-53-470 ("An offense is considered a second or subsequent offense if: for an offense involving marijuana pursuant to the provisions of this article, the offender has been convicted within the previous five years of a first violation of a marijuana possession provision of this article or of another state or federal statute relating to marijuana possession; . . . [A] conviction of trafficking in marijuana or trafficking in any other controlled substance in violation of this article or of another state or federal statute relating to trafficking in controlled substances must be considered a prior offense for purposes of any prosecution pursuant to this article."). As Applicant had previously knowingly, voluntarily, and intelligently pled guilty to trafficking in marijuana (10-100 pounds) on October 20, 2014,

under the State Grand Jury indictment, his subsequent Richland County charge was a second offense and was properly enhanced to a second offense. Any argument that he had not yet received a sentence for the prior State Grand Jury conviction and therefore it should not have been enhanced is without merit. S.C. Code Ann. § 44-53-470 does not make any reference that requires a defendant to have received a sentence for the prior conviction. See also Padilla v. State, 90 N.M. 664, 666, 568 P.2d 190, 192 (1977) ("Habitual offender proceedings are based by statute on prior felony convictions. Since it is not necessary to impose sentence in order to constitute a conviction, the deferred sentence was of no consequence. It is the conviction that is crucial and not the sentence."). Additionally, Applicant waived presentment to the grand jury on the Richland County charge of trafficking marijuana (10-100 grams)—second offense in exchange for a negotiated sentence between five to ten years of imprisonment, which he confirmed in writing on his sentencing sheet and orally at the December 12, 2014, plea hearing. Moreover, there was a discussion on the record as to whether the Richland County charge was a second offense at the December 12, 2014, plea hearing, after which Applicant indicated he understood it was a second offense, understood the sentencing range, and wished to enter a guilty plea to the charge. (See Dec. 12, 2014 Tr. p. 7-9). Accordingly, this court finds Applicant has failed to meet his requisite burden of proof and that this allegation must be denied and dismissed with prejudice.

Counsel's Alleged Ineffectiveness for Failing to Properly Advise Applicant as to the Charges

Seventh, Applicant alleges counsel was ineffective for failing to properly advise Applicant as to the charges. The record refutes this allegation, as Applicant repeatedly told the court he understood the charges against him and the potential sentences he faced, and that he was satisfied with his attorney. Counsel similarly testified he reviewed the offenses and potential sentences

with Applicant. Therefore, this court finds this allegation must be denied and dismissed with prejudice.

Counsel's Alleged Ineffectiveness for Failing to Properly Investigate or Challenge the Weight of the Drugs

Eighth, Applicant alleges counsel failed to effectively challenge or investigate the weight of the drugs. However, both of Applicant's convictions stem from quantities of marijuana that were well over the minimum weight threshold, and Applicant has not presented any evidence to establish those weights were inaccurate or that he possessed less than ten pounds of marijuana. Accordingly, this court finds that Applicant has failed to meet his requisite burden of proof and that this allegation must be denied and dismissed with prejudice.

Counsel's Alleged Ineffectiveness for Failing to Ensure He Received the Benefit of His Plea Bargain

Ninth, Applicant alleges counsel was ineffective for failing to ensure Applicant received the benefit of his plea bargain for five years. In support of this allegation, Applicant repeatedly testified he believed he would get a five year sentence if he cooperated with law enforcement and would receive a ten year sentence if he did not cooperate. Counsel initially testified similarly and expressed frustration that Applicant received a ten year sentence but eventually acknowledged the plea agreement was consistently for a negotiated sentence of five to ten years imprisonment in exchange for his cooperation. He testified he never promised Applicant he would receive a five year sentence and advised Applicant he could receive up to ten years imprisonment based on the plea agreement.

This court finds Applicant's allegation is directly refuted by the record, as the negotiations between Applicant and the State were for a sentence between five to ten years of imprisonment, not a determinate five years as Applicant now asserts. On the record, Applicant affirmed numerous

times that he understood his plea agreement was for a sentence of five to ten years imprisonment. (See Oct. 20, 2014 Tr. p. 10-11; Dec. 12, 2014 Tr. p. 4, 8, 13, 17). Additionally, this court finds counsel's testimony credible as to this issue and finds counsel appropriately advised Applicant as to the plea agreement, including the possibility he could receive a sentence of ten years imprisonment as a result of the plea. This court finds Applicant's testimony that he was promised a five year sentence if he cooperated is not credible and is refuted by the record. Accordingly, this court finds that this allegation must be denied and dismissed with prejudice.

Counsel's Alleged Ineffectiveness for Failing to Argue the Drug Activity was a Continuous Course of Conduct

Tenth, Applicant alleges counsel was ineffective for failing to argue that all the activity giving rise to these charges was one continuous course of conduct and therefore was improperly enhanced. This court finds this allegation is without merit, as the conduct giving rise to the Richland County offense occurred nearly three years following the conduct giving rise to the State Grand Jury offense. Clearly, these offenses do not arise out of one continuous act, and counsel was not ineffective for not making such an argument. This court finds that this allegation must be denied and dismissed with prejudice.

Counsel's Alleged Ineffectiveness for Failing to Argue His Sentence was Excessive

Finally, Applicant argues his sentence was excessive in light of the sentence received by his co-defendant. This allegation was already addressed by the plea court during the hearing on Applicant's motion to reconsider his sentence. (See Jan. 14, 2015 Tr.) At this hearing, Applicant argued that his co-defendant Camarillo received a lesser sentence of seven years for more egregious conduct, and therefore, asked the court to reconsider his sentence. The court ultimately declined to lessen Applicant's sentence. Additionally, Applicant cannot establish any constitutional depravations as to his sentence, as it is within the proscribed sentence range for the

offense he pled, and the mere fact that his co-defendant relieved a lesser sentence without any showing of "prejudice, oppression, or corrupt motive" does not render his sentence unconstitutional. See Edwards v. State, 392 S.C. 449, 454 n. 1, 710 S.E.2d 60, 63 (2011) ("Although we are troubled by the disparate sentences these co-defendants received from the same circuit judge, we have no power to address that disparity. See State v. Franklin, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976) ("[T]his Court has no jurisdiction to review a sentence, provided it is within the limits provided by statute for the discretion of the trial court, and is not the result of prejudice, oppression or corrupt motive.")). Accordingly, this court finds that this allegation 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 application for post-conviction relief 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 and 243, 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 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 within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 22nd day of February, 2019.

WALTON J. McLEOD, IV
Presiding Judge
Eleventh Judicial Circuit

Lexington, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JEROME BAKER, #362559, Applicant,

v.

STATE OF SOUTH CAROLINA, Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

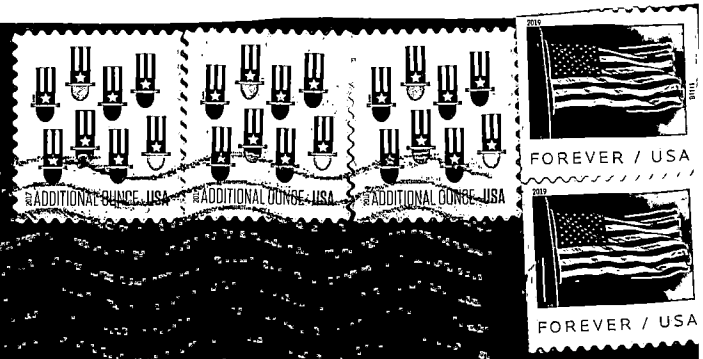
Tommy A. Thomas, Esquire
Post Office Box 88
Irmo, South Carolina 29063

This 28th day of February, 2019.

MEGAN HARRIGAN JAMESON
Attorney for Respondent

SWORN to before me this 28th day of February, 2019.

Notary Public for South Carolina
My Commission Expires: 5/20/2025



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