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August 6, 2019

RECEIVED

AUG 08 2019

S.C. SUPREME COURT

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

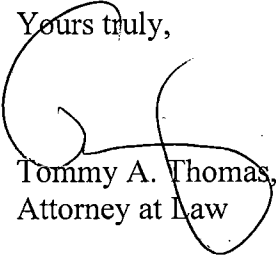
RE: Jacquese Underwood #323347 v. State of South Carolina

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: Janell Gregory, Esq.  
Appellate Defense  
Jacquese Underwood #323347

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

RECEIVED

AUG 08 2019

APPEAL FROM YORK COUNTY  
Court of General Sessions

S.C. SUPREME COURT

Roger L. Couch, Circuit Court Judge

CASE NO.: 2015-CP-46-818

Jacquese Underwood #323347, ..... Appellant,

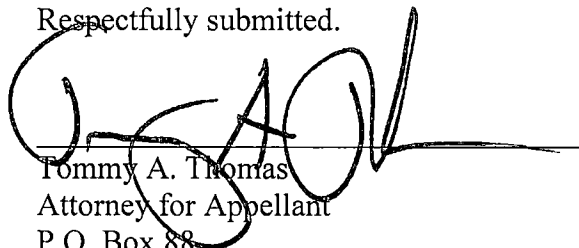
vs.

State of South Carolina, .....Respondent.

NOTICE OF APPEAL

The Appellant, Jacquese Underwood , appeals the Order of the Honorable Roger L. Couch, dated August 21, 2018. A Motion to Alter or Amend pursuant to Rule 59 (e) was timely filed and an Order Denying Applicant's Motion Pursuant to Rule 59 (e), SCRCPP was signed by The Honorable Roger L. Couch on June 26, 2019 and filed on July 9, 2019. Appellant received written notice of entry of this order on July 11, 2019.

Respectfully submitted.



Tommy A. Thomas  
Attorney for Appellant  
P.O. Box 88  
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August 6, 2019

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM YORK COUNTY  
Court of General Sessions

Roger L. Couch, Circuit Court Judge

CASE NO.: 2015-CP-46-818

RECEIVED

AUG 08 2019

S.C. SUPREME COURT

Jacquese Underwood #323347, ..... Appellant,

vs.

State of South Carolina, ..... Respondent.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, Secretary to Tommy A. Thomas, Esq., certify that I have served a copy of a Notice of Appeal by depositing a copy of it in the United States Mail, postage prepaid and the return address clearly shown on said envelope to:

Janell Gregory, Esq.  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211-1549



Jacquelyn E. Miller  
Tommy A. Thomas, Esq.  
Attorney at Law  
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P.O. Box 88  
Irmo, S.C. 29063  
(803) 732-5507

August 6, 2019

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )  
)  
)  
Jacquese T. Underwood, 323347, )  
)  
Applicant, )  
)  
v. )  
)  
State of South Carolina, )  
)  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE SIXTEENTH JUDICIAL CIRCUIT

2015-CP-46-818

**ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief filed on March 16, 2015, by Jacquese T. Underwood (Applicant). The State (Respondent) filed a Return on August 12, 2015, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on November 8, 2016, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Tommy Thomas, Esquire. Assistant Attorney General Justin J. Hunter from the South Carolina Attorney General's Office appeared on behalf of the State. At the hearing, Applicant testified on his own behalf. Vanessa Simpson (mother of Applicant), Leah Moody, Esquire, and Assistant Solicitor Matthew Shelton of the Sixteenth Circuit Solicitor's Office testified during the hearing. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application.

**PROCEDURAL 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 order of commitment. Applicant was indicted during the May 2014 term of the York County Grand Jury for trafficking in cocaine, 400 grams or more (2013-GS-46-2073). Applicant was represented by Leah Moody,

Esquire. Assistant Solicitor Matthew Shelton of the Sixteenth Circuit Solicitor's Office prosecuted the case. On September 2, 2014, Applicant appeared before the Honorable Lee S. Alford and pled no contest to the lesser included offense of trafficking cocaine between 28 and 100 grams, second offense. Pursuant to negotiations between Applicant and the State, Judge Alford sentenced Applicant to imprisonment for twelve years and six months. Applicant did not appeal his conviction or sentence.

### SUMMARY OF FACTS

On October 30, 2012, an officer from the Drug Enforcement Agency Task Force, Frank Finch, was called to the UPS facility on Mount Gallant Road in Rock Hill, South Carolina in reference to a suspicious package. (Plea Tr. 13-14.) Agent Finch and his K9 are trained in package drug detection. (Plea Tr. 14.) Both Agent Finch and his K9 responded to the package location where a line-up of five packages was provided to the pair. (Plea Tr. 14.) The K9 alerted on the package during the line-up. (Plea Tr. 14.) There were also indicators visible on the package that suggested there was illegal contraband inside. (Plea Tr. 14.)

A search warrant was obtained and executed at the UPS facility and inside the package was what officers estimated to be a kilogram of cocaine. (Plea Tr. 14-15.) The cocaine was taken out of the package and placed into evidence and imitation cocaine was placed in the box and sealed for officers to conduct a "controlled delivery." (Plea Tr. 15.) The package was addressed to Sharika White at 1162 Shenandoah Circle, Rock Hill, South Carolina. (Plea Tr. 14.) Officers were able to confirm that Ms. White was in fact the resident of that house. (Plea Tr. 14.)

An agent out of Lexington County dressed in full UPS uniform went undercover in a white panel van and conducted the controlled delivery. (Plea Tr. 15.) Another officer, Leland

Handwritten signature and initials, possibly "JAC" and "P2", in black ink.

Harrelson, from the task force was already in the neighborhood conducting surveillance. (Plea Tr. 15.) During his surveillance, he observed Duane Harrison, Applicant's co-defendant, conducting counter-surveillance around the residence. (Plea Tr. 15.) Harrison followed the delivery van once he was in the neighborhood and then followed him out of the neighborhood. (Plea Tr. 15.) Applicant exited the residence to retrieve the package only after Mr. Harrison returned and drove slowly in front of the residence. (Plea Tr. 16.) Once he retrieved the package, Applicant put the package in the truck of the vehicle that was parked in the garage and then backed it out onto the driveway. (Plea Tr. 16.) Officers with the Drug Unit moved in on the residence to effect an arrest. (Plea Tr. 16.) As officers approached, Mr. Harrison fled the scene in his vehicle and officers pursued him. (Plea Tr. 16.) Applicant was outside at this time and Mr. Harrison alerted him to the officers' presence by blowing the horn. (Plea Tr. 16.) Mr. Harrison exited the vehicle on foot and continued to run from officers. (Plea Tr. 16.) As Mr. Harrison fled on foot, he threw a couple of cell phones into the woods that were recovered by law enforcement. (Plea Tr. 16.)

Applicant attempted to flee out of the rear of the residence but was met by a law enforcement officer. (Plea Tr. 16.) Applicant then locked himself in the residence, however, he eventually opened the residence for officers. (Plea Tr. 16.) Officers had an anticipatory search warrant for the residence. (Plea Tr. 16.) Officers located the package in the trunk of the car. (Plea Tr. 16.) Applicant's cell phone was located in the front seat of the vehicle. (Plea Tr. 16.) Applicant's cell phone number matched the phone number saved as "Jacq" in one of the recovered cell phones that was tossed by Mr. Harrison. (Plea Tr. 16.) A series of text messages between Mr. Harrison's phone and Applicant's phone were located that appeared to be dealing with the package delivery to Ms. White's residence. (Plea Tr. 17.) The suspected cocaine was



tested by a certified chemist and the test returned positive for cocaine. (Plea Tr. 17.) The exact weight of the cocaine was determined to be nine hundred and sixty-five grams. (Plea Tr. 17.)

Prior to Applicant's plea hearing, Applicant's counsel filed numerous motions that led to a two day pre-trial hearing that started on August 25, 2014. The motions were as follows: 1) "I would ask the Court to limit any testimony coming from Dalmicos Hemphill as it relates to my client and only use his testimony, if necessary, for rebuttal purposes"; 2) "...[L]imit the text messages prior to October 30, 2012"; 3) [Prevent] any testimony from State's witness [Sharika] White regarding any prior knowledge of [Applicant's] criminal history." (Pretrial Hearing Tr. 5.) The State agreed with counsel as to the third motion, which related to limiting testimony from Sharika White regarding Applicant's criminal history. (Pretrial Hearing Tr. 5-6.) Additionally, Applicant's counsel testified to the State that she was going to challenge the search warrant for the suspicious parcel that was intercepted by law enforcement. (Pretrial Hearing Tr. 28.)

In response to these challenges, the State proffered testimony from numerous witnesses regarding the parcel interdiction, drug trafficking, and potential rebuttal that would implicate Applicant and his co-defendant in the incident. The judge took the motions under advisement and stated he would rule on those motions on "Tuesday" [September 2, 2014]. However, on September 2, 2014, Applicant chose to enter a plea of No Contest and received a negotiated sentence of twelve and a half years. (Plea Tr. 5.) The posture of the court went from a jury trial to a guilty plea, however, the judge went on the record to discuss the admissibility of the text messages and other evidence that would have been offered by the State had the jury trial moved forward. (Plea Tr. 19-26.) In his summary, the judge indicated text messages between Applicant and his co-defendant prior to October 30, 2012 would be admissible, although "somewhat prejudicial," the probative value was determined to outweigh the prejudicial effect in the

balancing test. (Plea Tr. 20.) Additionally, the text messages would be admissible under Rule 404(b) to show identity and common scheme or plan of Applicant and his co-defendant.<sup>1</sup> (Plea Tr. 22-23.)

Applicant's no contest plea was accepted by the court as the court found "substantial evidence...based on pretrial information that came in as evidence" to accept the plea from Applicant. (Plea Tr. 28.) The negotiated sentence of twelve and a half years was also accepted. (Plea Tr. 29-30.)

### **ALLEGATIONS RAISED**

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea

### **SUMMARY TESTIMONY FROM EVIDENTIARY HEARING**

At the evidentiary hearing, Counsel testified she represented Applicant from the beginning of his case. (PCR Tr. 6.) She testified Applicant had the opportunity to accept a plea agreement from the State up until the pre-trial hearing. (PCR Tr. 7-8.) According to Counsel, the State offered a reduction in the charge and would have sentenced him to no more than ten years; his sentence would have been around seven years if he testified for the State against his co-defendant. (PCR Tr. 8.) Applicant did not want to testify for the State and did not accept the offers. (PCR Tr. 8.) She testified she talked to Applicant "a lot" and they went over his "voluminous" discovery. (PCR Tr. 11.) She testified, based on the State's theory of a

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<sup>1</sup> The court also cited State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009), State v. Clasby, 385 S.C. 148, 682 S.E.2d 892 (2009), State v. Martucci, 380 S.C. 232, 669 S.E.2d 598 (Ct. App. 2008), State v. Tuffour, 364 S.C. 497, 613 S.E.2d 814 (Ct. App. 2005), State v. Edwards, 373 S.C. 230, 644 S.E.2d 66 (Ct. App. 2007), and State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001) regarding the admissibility of the text messages.

conspiracy, she wanted to have the text messages suppressed. (PCR Tr. 11.) She stated if the phone records were not suppressed, “it wasn’t gonna look good for [Applicant].” (PCR Tr. 12.)

Ultimately, Applicant’s co-defendant accepted a plea offer from the State. Counsel stated the co-defendant’s plea “sent everything into a tizzy” since they did not know if he was going to testify against Applicant. (PCR Tr. 42.) Further, counsel for the co-defendant told Applicant’s counsel that, according to the co-defendant, Applicant was aware there were drugs in the package even though Applicant maintained to his counsel that he did not know. (PCR Tr. 42.) According to Counsel’s testimony, Applicant decided to accept the same no contest plea offer as his co-defendant. (PCR Tr. 42.) During the plea proceeding, Applicant signed a plea waiver form, which Counsel testified she went over with him. (PCR Tr. 47.)

Applicant testified on his own behalf during the post-conviction relief hearing. Applicant maintained his innocence and testified he believed books were in the package. (PCR Tr. 59-61.) Applicant further testified he pled no contest based on the advice from his counsel. (PCR Tr. 73.) On cross-examination, Applicant conceded he remembered telling the judge he was satisfied with his counsel, but testified he was responding “Yes, sir” to the judge because that is what Counsel told him to say. (PCR Tr. 78.) He testified he met with Counsel several times, but they mostly discussed payment. (PCR Tr. 82.) Applicant testified he did not believe Counsel was prepared for trial in his case and that influenced her recommendation to accept the plea in this case. (PCR Tr. 77.)

Assistant Solicitor Matthew W. Shelton of the Sixteenth Circuit Solicitor’s Office testified for the State at the hearing. (PCR Tr. 94.) Mr. Shelton testified the only plea offer made to Applicant by the State was for twelve years conditional upon Applicant testifying against his co-defendant, and Applicant would have to admit guilt. (PCR Tr. 95.) Mr. Shelton

testified, according to the State's investigation, numerous text messages between Applicant and his co-defendant showed a pattern of behavior which led to the conspiracy charge. (PCR Tr. 97.) Mr. Shelton further testified the State's theory was the co-defendant was the "mastermind" and Applicant was a "secondary player." (PCR Tr. 99.) Mr. Shelton stated he was approached by counsel for the co-defendant after the judge indicated the text messages would be admissible. (PCR Tr. 99.) Mr. Shelton testified the judge's decision regarding the text messages "re-sparked" plea negotiations. (PCR Tr. 99.) According to Mr. Shelton, the co-defendant offered to testify against Applicant and Mr. Shelton felt that was unfair to Applicant. (PCR Tr. 99.) Mr. Shelton testified he, Solicitor Brackett, and the Commander of the York County Drug Unit decided to offer both parties twelve and a half years. (PCR Tr. 99.)

Additionally, Mr. Shelton explained at length the connection made during the State's investigation between Applicant and his co-defendant. (PCR Tr. 110-112.) According to Mr. Shelton's testimony, Applicant sent co-defendant a text message providing him with his current phone number. (PCR Tr. 111.) That phone number was found on the co-defendant's cell phone with Applicant's phone number stored under the name "Joc." (PCR Tr. 111.) The State's investigation showed numerous text messages between the cell phones known to belong to Applicant and the co-defendant, which led to law enforcement being able to uncover the conspiracy. (PCR Tr. 111-112.) Mr. Shelton testified the "most significant text outside of the broader conspiracy" was from the co-defendant to Applicant giving him the address where the package was delivered, which is where Applicant was arrested. (PCR Tr. 111.)

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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



accordingly. Further, this Court has reviewed the Clerk of Court's records regarding the subject convictions, the pretrial transcript, the plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

In a post-conviction relief action, the 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 the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order 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. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel,



the applicant must show 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, 59 (1985).

*Ineffective assistance of counsel for failing to prepare for trial*

Applicant alleges Counsel was ineffective because she was not prepared to go to trial. This Court finds trial counsel was not deficient in her handling of either the pretrial hearing or the plea negotiations. Applicant has failed to establish any ineffectiveness of counsel as to this allegation.

Counsel testified at the evidentiary hearing that she had sufficient time to prepare Applicant's case for trial. Counsel also testified in preparation for trial, she filed several pretrial motions. Counsel testified the case was practically tried in pretrial motions. During the two-day pretrial hearing, Counsel made motions to limit testimony from two State witnesses, and suppress text messages prior to the date of the incident between Applicant and his co-defendant. Counsel argued the evidence the State was seeking to use against the Applicant was more prejudicial than probative under Rule 403, SCRE. Counsel testified her goal was to suppress the text messages to negate the State's theory that there was a conspiracy between Applicant and his co-defendant.

Ultimately, the court indicated the text messages would not be suppressed, and Applicant's co-defendant accepted a plea offer from the State, which indicated Applicant's co-defendant would testify against him at trial. At that time, Counsel felt a no contest plea was in the best interest of Applicant. Counsel's credible testimony shows she thoroughly reviewed all evidence and discovery material with Applicant and was in a trial posture up until the motion to suppress the text messages was unsuccessful. Applicant has failed to present credible evidence of

any way Counsel should have better prepared for trial and thus has failed establish either deficiency of counsel or prejudice. Therefore, this allegation is denied and dismissed with prejudice.

***Ineffective assistance of counsel by advising Applicant to plead no contest***

Applicant alleges Counsel was ineffective for advising him to plead no contest. This Court finds Applicant has failed to establish any ineffectiveness of counsel as to this allegation.

An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969).

The record reflects Applicant was fully advised of the charges against him, his constitutional rights, and the consequences of entering a plea. This Court finds Applicant has failed to show Counsel was ineffective in this regard. On the morning of trial, Judge Alford informed the parties he intended to admit the cell phone records. This Court finds the judge's decision, coupled with the substantial evidence linking Applicant to the retrieval of the drug package, resulted in Counsel recommending Applicant accept the plea offer instead of proceeding with trial. This Court finds Counsel was not deficient in her handling the plea negotiations.

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This Court finds the plea waiver form, signed and initialed by Applicant, clearly states Applicant agreed to plead no contest to conspiracy to traffic cocaine. The waiver form explains Applicant was pleading to a negotiated sentence of twelve years and six months. After reviewing the plea hearing transcript, this Court finds no deficient performance by Counsel during Applicant's plea. This Court also finds Counsel's ability to negotiate a no contest plea after pretrial motions had been heard resulted in a substantially lower sentence than Applicant was facing should he be convicted at trial, which was a benefit to Applicant. Finally, this Court finds the plea was voluntarily and intelligently entered into by Applicant. Applicant has failed to prove Counsel's performance was deficient or that he was prejudiced by Counsel's actions. Accordingly, this allegation is dismissed.

#### CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Further, this Court finds Applicant entered the plea voluntarily and intelligently. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.


The Court notes Applicant must file and serve a notice of appeal within thirty days from post-conviction relief counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if

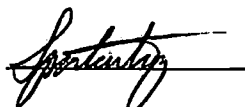
Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. The application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 21<sup>st</sup> day of August, 2018.

  
\_\_\_\_\_  
ROGER L. COUCH  
Presiding Judge  
Sixteenth Judicial Circuit

  
\_\_\_\_\_, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )  
 )  
Jacquese T. Underwood, #323347 )  
Applicant, )  
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v. )  
 )  
State of South Carolina, )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE SIXTEENTH JUDICIAL CIRCUIT

Case No. 2015-CP-46-818

**ORDER DENYING APPLICANT'S  
MOTION PURSUANT TO RULE  
59(e), SCRPC**

This matter comes before the Court by way of Applicant's Motion pursuant to Rule 59(e), SCRPC, to alter or amend its order of dismissal denying the application for post-conviction relief.

**Procedural History**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to the York County Clerk of Court's order of commitment. During the May 2014 term of the York County Grand Jury Applicant was indicted for trafficking in cocaine, 400 grams or more (2013-GS-46-2073). Applicant was represented by Leah Moody, Esquire (Plea Counsel). Assistant Solicitor Matthew Shelton of the Sixteenth Circuit Solicitor's Office prosecuted the case. On September 2, 2014, Applicant appeared before the Honorable Lee S. Alford and pled no contest to the lesser included offense of trafficking cocaine between 28 and 100 grams, second offense. Pursuant to negotiations between Applicant and the State, Judge Alford sentenced Applicant to imprisonment for twelve years and six months. Applicant did not appeal his conviction.

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DAVID HAMILTON  
C.C.P.S. & O.S.  
YORK COUNTY, S.C.

## II. Current Post-Conviction Relief Action

Applicant subsequently filed his post-conviction relief application on March 16, 2015. Respondent made its Return on August 12, 2015. Applicant raised the following issues in his application:

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea

A hearing into this matter was held on November 8, 2016, at the Moss Justice Center in York, South Carolina before the Honorable Roger L. Couch. Applicant was present at the hearing and represented by Tommy A. Thomas, Esquire (Counsel). Assistant Attorney General Justin Hunter of the South Carolina Attorney General's Office represented Respondent. Through an order filed August 27, 2018, Judge Couch denied and dismissed the application. On September 13, 2018, Applicant filed a "Motion to Alter or Amend." The Respondent made its Return to the Motion on December 31, 2018.

A hearing on Applicant's motion was held on May 6, 2018, at the Richland County Courthouse. Applicant was present and represented by Tommy A. Thomas, Esquire. Assistant Attorney Janell Gregory of the South Carolina Attorney General's Office represented the State. Applicant proceed only on the following issues:

- 1) On December 12, 2017, Applicant provided this Court with an affidavit of Gregory Parker (Parker) and that matter needs to be addressed.
- 2) Applicant requests the order of dismissal be amended to adequately address Applicant's allegation of ineffective assistance of counsel for failure to investigate Sharika White (White).
- 3) Applicant requests the order of dismissal be amended to adequately address the issue of ineffective assistance of counsel as it pertained to the substitution of imitation drugs prior to the controlled delivery of the package.

At the hearing, Counsel explained Parker came forward after the November 8, 2016,



### III. Applicant's Motion to Alter or Amend is Denied

This Court has carefully reviewed the record and considered Applicant's motion and the arguments presented by both parties and based upon careful reconsideration of all the evidence in this case this Court is not persuaded to alter or amend the judgment.

#### *Affidavit of Gregory Parker*

This Court will not reopen Applicant's record in order to consider and address the affidavit of Parker. If Applicant wishes to raise an argument regarding the Parker affidavit as newly discovered evidence, he should Applicant should file a subsequent post-conviction relief application.

#### *Amendments Regarding Sharika White*

This Court reviewed the record and was aware that White owned the house where the drugs were sent and that the package was addressed to her and not Applicant. The record also shows Applicant and Plea Counsel were aware of these facts as well. This Court knew and considered these facts prior to denying Applicant's application for post-conviction relief. This Court finds that considering those facts further would not have changed the outcome of this Court's decision.

#### *Amendments Regarding the Imitation Drugs*

In order for the State to prove Applicant was guilty of trafficking cocaine the State had to prove intent. This Court finds Applicant's actions showed intent. Applicant picked up the package after receiving signals from his co-defendant, and Applicant's behavior after the police approached further indicated Applicant knew there were drugs in the package. Based on the totality of the circumstances, this Court finds the plea was justified. This Court considered the





issues raised by Counsel when issuing the order of dismissal. This Court finds that considering these issues further would not have changed the outcome of the Court's decision.

Having carefully reviewed the record in this matter and arguments presented, this Court finds there is no basis for altering or amending its prior ruling. Therefore, this Court hereby denies Applicant's motion in its entirety, and affirms the previous order of dismissal.

This Court notes if Applicant wishes to seek appellate review of this order and the order of dismissal, a notice of appeal must be filed and served within thirty days of the service of this order. Applicant is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

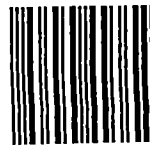
AND IT IS SO ORDERED this 26<sup>th</sup> day of June, 2019.

  
\_\_\_\_\_  
Roger L. Couch  
Presiding Judge  
Sixteenth Judicial Circuit

  
\_\_\_\_\_, South Carolina



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

