THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

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2018-CP-23-01442

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Larry Coleman, ..................... Appellant,
v.
The State, ........................... Respondent.

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NOTICE OF APPEAL

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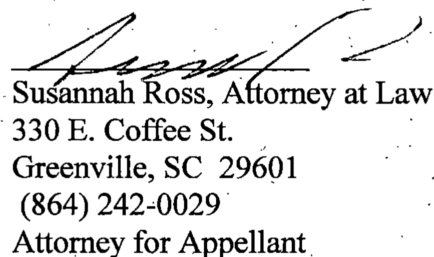
Larry Coleman appeals the Honorable Edward W. Miller's Order of Dismissal filed May 6, 2020.

This 12 day of May, 2020.



Susannah Ross, Attorney at Law
330 E. Coffee St.
Greenville, SC 29601
(864) 242-0029
Attorney for Appellant

Other Counsel of Record:
Lillian Meadows, Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3970
Attorney for Respondent

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| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF GREENVILLE | ) | FOR THE THIRTEENTH JUDICIAL CIRCUIT |
| | ) | C. A. No. 2018-CP-23-01442 |
| Larry Coleman, #333008, | ) | |
| | ) | |
| Applicant, | ) | |
| | ) | **ORDER OF DISMISSAL** |
| v. | ) | |
| | ) | |
| State of South Carolina, | ) | |
| | ) | |
| Respondent. | ) | |

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Paul Wickensimer CCC GVL SC

ENTERED COMPUTER

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 22, 2016, and amended on February 12, 2019, by Larry Coleman (Applicant). On May 21, 2018, the State (Respondent) served its return and partial motion to dismiss, seeking summary dismissal of all claims beyond whether counsel was ineffective for advising him to enter the written plea agreement waiving his rights to challenge his conviction through post-conviction relief pursuant to the written plea agreement pursuant to Sanders v. State, 412 S.C. 611, 617, 773 S.E.2d 580, 583 (2015). On October 26, 2018, a hearing on Respondent's partial motion to dismiss was held before the Honorable Alex Kinlaw, Jr., at the Greenville County Courthouse. At the conclusion of the hearing, Judge Kinlaw denied Respondent's partial motion to dismiss and ordered the matter be set for a full evidentiary hearing. An order to this effect was filed on November 7, 2018. Thereafter, on March 8, 2019, Respondent filed an Amended Return, Partial Motion to Dismiss, and Motion for a More Definite Statement.

An evidentiary hearing commenced on October 22, 2019, before the undersigned at the Greenville County Courthouse. Applicant was present at the hearing and represented by Susannah Ross, Esquire. Assistant Deputy Attorney General Lindsey A. McCallister of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified

on his own behalf. Elizabeth P. Wiygul, Esquire, Applicant's plea counsel, testified on behalf of Respondent. This Court also had before it a copy of the records of the State Grand Jury Clerk of Court, records from the South Carolina Department of Corrections, the PCR application, Respondent's Return, the plea transcript, and Applicant's appellate records. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof, denies relief, and dismisses this application.

## PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for the State Grand Jury. On October 22, 2015, the State Grand Jury of South Carolina indicted Applicant for his involvement in two separate multi-count, multi-defendant drug trafficking rings throughout the State of South Carolina. Under indictment 2015-GS-47-08, Applicant was indicted for trafficking in methamphetamine (conspiracy) (400 grams or more). Under indictment 2015-GS-47-07, Applicant was indicted for trafficking in methamphetamine (conspiracy) (400 grams or more), trafficking in cocaine (conspiracy) (400 grams or more), possession with intent to distribute methamphetamine, trafficking in cocaine (28-100 grams), possession of a firearm during the commission of or attempt to commit a violent crime, possession of a stolen pistol, and possession of methamphetamine. Elizabeth P. Wiygul, Esquire, represented Applicant. Assistant Attorney General Joshua R. Underwood of the South Carolina Attorney General's Office, prosecuted the case.

On November 21, 2016, Applicant entered into a written plea agreement, in which he agreed to "fully and truthfully cooperate with the Office of the Attorney General of South Carolina, and any local, state and federal law enforcement agents in their investigation of

importation, possession, and distribution of controlled substances and related unlawful activities," in exchange for a recommended sentence range of an aggregate thirteen to eighteen years imprisonment and allowing Applicant to plead to lesser-included offenses of two counts of trafficking in methamphetamine (conspiracy) (28-100 grams), trafficking in cocaine (conspiracy) (28-100 grams). As part of this plea agreement, Applicant expressly waived his right to a direct appeal ("The Defendant, Larry Eugene Coleman (A.K.A. "Bubba"), agrees that as a part of the consideration for this plea he will not appeal his plea of guilty or any sentence he receives in General Sessions Court in South Carolina. The Defendant, Larry Eugene Coleman (A.K.A. "Bubba"), acknowledges that he understands that he has a right of direct appeal of his guilty plea or sentence and that he knowingly, voluntarily and expressly waives this right of direct appeal."). Applicant also waived his right to file a post-conviction application to challenge anything other than counsel's advice to enter into the plea agreement. ("Additionally, the Defendant, Larry Eugene Coleman (A.K. A. "Bubba"), understands that he has a right to file a post-conviction relief (PCR) action in this case but agrees to knowingly and voluntarily waive any post-conviction relief action except for claims that directly attack the effectiveness of advice to agree to this waiver."). Applicant initialed each page of this written plea agreement and signed this plea agreement, as did his attorney.

On the same day, Applicant appeared in the Greenville County Court of General Sessions before the Honorable Perry H. Gravely, and, pursuant to the signed plea agreement, pleaded guilty to two counts of the lesser-included offense of trafficking in methamphetamine (conspiracy) (28-100 grams), trafficking in cocaine (conspiracy) (28-100 grams), possession with intent to distribute methamphetamine, possession of a firearm during the commission of or

attempt to commit a violent crime, possession of a stolen pistol, and possession of methamphetamine. Judge Gravely accepted Applicant's plea and deferred sentencing.[1]

On August 25, 2017, Applicant again appeared before Judge Gravely for a sentencing proceeding. At this hearing, Judge Gravely sentenced Applicant to an aggregate seventeen years imprisonment. Applicant did not file a notice of appeal. However, Applicant filed the instant PCR action in direct violation of his plea agreement.

## SUMMARY OF FACTS SUPPORTING PLEA

Between January 2011 and October 2015, one of Applicant's co-conspirators, Sandra Duncan, operated a methamphetamine trafficking organization in Pickens, Spartanburg, Greenville, Berkeley, and Charleston counties. Tr. p. 17. Duncan imported the methamphetamine from Georgia and then distributed it to other drug dealers around the State. Tr. p. 17. Applicant was one of the dealers who routinely purchased methamphetamine from Duncan. Tr. p. 18. Additionally, Applicant would purchase cocaine and methamphetamine from another co-conspirator, Jorge David Martinez, to redistribute in Greenville and Pickens counties. Tr. pp. 18-19.

On March 3, 2014, deputies with the Greenville County Sherriff's Office executed a search warrant on Applicant's home. Tr. p. 19. During the search, officers seized 3.1 grams of methamphetamine and 41.82 grams of cocaine, along with a stolen pistol and other firearms. Tr. p. 19. Finally, on June 12, 2014, officers seized less than a gram of methamphetamine from Applicant's person after a traffic stop. Tr. pp. 19-20.

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[1] At the same hearing, Applicant also pled guilty to a litany of other charges stemming from indictments from the Greenville County Grand Jury that were prosecuted by the Thirteenth Circuit Solicitor's Office. Applicant was represented on these charges by Chase Harbin, Esquire. Applicant has **not** challenged these pleas or sentences in his application for post-conviction relief.

## ALLEGATIONS RAISED

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

1. Ineffective assistance of counsel
   a. Failure to object to negotiated plea of 12 years
   b. Failure to file a motion for reconsideration
   c. Failure to file motion to appeal sentence

As his requested relief, Applicant seeks "the negotiated plea agreement for 12 years, or less."

On February 12, 2019, Applicant, through counsel, served an amended application adding the following grounds for relief:

> (1) failing to investigate;
> (2) failure to move to quash the indictment arguing that the underlying statute did not have the force of law under Article III, Section 18 of the South Carolina Constitution and Article I, Section 23 of the South Carolina Constitution and lack of extraterritorial jurisdiction; and
> (3) Due Process violations due to lack of constitutionality and enforceability of Section 44-53-375 SC Code Ann.

Additionally, Applicant submitted *pro se* amendments at a hearing on February 19, 2019, which his counsel adopted, as follows:

1. Counsel was ineffective for not investigating the indictment for conspiracy charges because if she had, she would have discovered no drugs were found on Applicant when he was arrested and that he did not know the co-conspirators prior to indictment;
2. Counsel was ineffective for failing to investigate the amount of drugs in the conspiracy case;
3. Counsel was ineffective for failing to investigate the amount of actual drugs found on Applicant;
4. Counsel was ineffective for not investigating Rule 6 of criminal procedures to ensure the drugs were tested by a certified SLED agent;
5. Counsel was ineffective for failing to investigate to see if there were any guns on Applicant's person or at his residence;
6. Counsel was ineffective for failing to move to withdraw the plea when the State told the plea judge that Applicant had failed to cooperate in the trial of a co-defendant;
7. Counsel was ineffective for not preparing for a trial or a defense, including only spending 1 and ½ hours reviewing discovery with Applicant;

8. Counsel failed to move for dismissal based on the lack of the great seal from a 1993 version of the drug trafficking statute.

At the evidentiary hearing, Applicant proceeded on all of his claims, including the *pro se* amendments of February 12, 2019, which were adopted by his PCR counsel.

## SUMMARY OF TESTIMONY PRESENTED AT EVIDENTIARY HEARING

Applicant testified Counsel did not investigate his case and instead relied only on hearsay and intangible evidence. Applicant stated he reviewed some discovery with Counsel, but he did not understand anything they reviewed. According to Applicant, he never saw any evidence regarding drugs being found on his person, and the evidence against him came from statements made by other co-conspirators. Applicant testified Counsel should have investigated those people in order to "eliminate" Applicant. However, Applicant testified there was nothing specific if asked Counsel to do, and he relied upon her to know what should be done.

Applicant testified he did not want to plead guilty and only did so because he knew he did not do these things, and he wanted someone to find out where "all of this" was coming from. Applicant recalled sitting in Counsel's office and reviewing discovery, but he testified he did not understand it. Applicant testified he and Counsel reviewed the discovery one time, several months before the plea, and the meeting lasted an hour to and an hour and a half. Applicant stated he did not receive a paper copy of the discovery because Counsel told him there was a gag order.

Applicant testified he thought he would receive a ten-year sentence if he pleaded guilty, and he did not know about the State's thirteen-year recommendation. Applicant acknowledged the plea agreement paperwork stated the statutory sentencing range was seven to twenty-five years, but he testified he did not understand the paperwork meant that he could face up to twenty-five years. Applicant testified if he had understood this, he would have waited for the

"right" evidence or for different plea counsel because he is innocent of the drug conspiracy charges. Applicant later testified he did not understand he was facing up to twenty-five years, and he wished to accept the twelve-year offer[2] made by the State. Applicant stated he did not understand he would have to serve eighty-five percent of his sentence, and if he had known, he would have insisted on going to trial. Additionally, Applicant testified he did not understand the portion of the plea agreement waiving his appellate rights, and he did not realize he was doing so by signing the agreement. On cross-examination, Applicant agreed his signature was on a document directing Counsel to reject the twelve-year plea offer, but he testified he did not recognize the document. Applicant also testified he and Counsel reviewed the written plea agreement he entered into with the State, but he did not understand the document. Applicant further agreed the plea court explained the agreement, including the State's recommendation of a sentencing range of thirteen-to-eighteen years, but he did not inform the plea court he did not understand the agreement or about his belief he would receive a ten-to-twelve year sentence.

Applicant testified he now realizes there is another statute – section 44-53-420 – which specifically deals with drug conspiracies and only carries half of the maximum sentence. Applicant stated half of twenty-five years would be twelve-and-a-half years "plus house-arrest time." Applicant testified Counsel told him he would get credit for time on house arrest, and she asked the judge to give him credit for it, but the judge declined to do so. Applicant testified he believes he should have been sentenced under the common law conspiracy statute rather than the trafficking statute.

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[2] Throughout his testimony Applicant alternatively referred to a ten-year sentence and twelve-year sentence. It appears Applicant believed he received an offer at some point in time, which when combined with house-arrest credit, would work out to a ten-year active sentence. Applicant's testimony was often unclear as to what offer he was referring to.

Applicant also testified, in his opinion, Counsel should have researched whether the indictment was valid because it did not allege he "knowingly" participated in the conspiracy. Applicant further stated he was in SCDC during 2011, and Counsel should have investigated the timeframe of the allegations further because he "felt like" he was still in SCDC at the time the crimes were alleged to have been committed. Additionally, Applicant testified Counsel should have investigated the circumstances surrounding the search warrant obtained for his property. According to Applicant, police entered the property claiming they needed to look for a person who had been hurt, but then began running vehicle identification numbers, some of which turned up stolen vehicles. Applicant explained he ran a mechanic shop on the property, and the officers used a "bogus" warrant that they printed at Applicant's house to gain access. Applicant testified he believed the drugs should have been suppressed, and he would not have pleaded guilty if Counsel had challenged the warrant. Finally, Applicant testified he believed Counsel should have researched Rule 6, SCRCrimP. Applicant testified the drugs found in his possession were not tested, nor was he given a drug test to see if drugs were in his system. Applicant testified he could not recall whether he asked Counsel about these issues.[3]

Counsel testified Applicant retained her on July 12, 2016, and she downloaded the discovery documents on July 22, 2016. Counsel testified she met with Applicant multiple times, and they partially reviewed the discovery together. Counsel explained Applicant then disappeared for several months and was not in contact with her. Counsel testified she eventually

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[3] Applicant attempted to introduce several exhibits dealing with his allegation that his conviction is invalid because the Great Seal is missing from the statute by which Applicant was charged. However, this Court sustained the State's objections to these exhibits as the exhibits pertained to the 1995 version of the statute at issue, and Applicant was charged under the 2010 version. Applicant did not offer any evidence or testimony regarding the 2010 statute. The State submitted evidence confirming the 2010 version has been stamped with the Great Seal. See State's Ex. 9.

reached Applicant and made an appointment for him to come to her office, but he did not show up. Counsel stated they eventually met on Sunday, November 20, 2016, the day before the plea, to review the discovery. Counsel testified there was no "gag order" in effect, but Judge Gravely had entered a protective order regarding the release of discovery.

Counsel explained the State never made an offer of twelve years; she mistakenly conveyed a range of twelve-to-fifteen years to Applicant, which he refused. Counsel stated she then asked him to sign the paper rejecting that offer, and when she later realized the State's offer was for thirteen-to-eighteen years, she called Applicant to correct her mistake. According to Counsel, Applicant did not want to accept either offer at that time. However, after she and Applicant were finally able to review all of the discovery, Applicant indicated he would accept the State's thirteen-to-eighteen-year offer.

Counsel stated she reviewed the terms of the offer with Applicant, including the sentencing range and the waiver of his appellate rights, and Applicant signed each page. Counsel stated Applicant appeared to understand the terms of the offer. Counsel testified she never promised Applicant a lesser sentence than the range specified in the plea offer. Counsel did not specifically recall talking to Applicant about house arrest, but she testified her usual practice is to tell clients she will ask for the credit, but the judge decides whether to give it. Counsel stated the reason Applicant received a higher sentence than some of his codefendants was because law enforcement wanted him to talk with them and testify against his codefendants, but Applicant did not do that. Counsel testified the plea agreement was not conditioned on Applicant's cooperation, but the State gave him the opportunity to offer help, with the understanding that any such cooperation would be conveyed to the sentencing judge. Finally, Counsel testified Applicant never asked her to file a motion to reconsider his sentence or a notice

of appeal. Counsel stated Applicant's seventeen-year sentence was within the range recommended by the State.

Counsel testified Applicant's only options were to accept the State's plea offer or proceed to trial. Counsel stated Applicant told her from the first day of her representation that he did not want a trial. Counsel further testified she reviewed the discovery, particularly Applicant's statements in which he gives details of drug transactions, with Applicant extensively. Counsel testified Applicant told her everything he said in the statement was true, and she did not see any viable defenses or bases on which to challenge the statement's introduction or the evidence from the traffic stop in a trial. According to Counsel, Applicant told her he wanted her to speak with someone about him receiving a lighter sentence. Counsel further testified if Applicant had wanted a trial, she would have further explored potential ways of suppressing the evidence against Applicant. Counsel stated Applicant never asked her to investigate any specific facts giving rise to the charges, nor did he give her any potential defenses or witnesses to investigate.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the evidence presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony and evidence accordingly in its discussion below. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the plea agreement and transcript, and the exhibits entered into evidence. This Court has also considered the legal arguments made by the attorneys. This Court finds the combined record of the plea agreement and transcript and the testimony from the evidentiary hearing establishes Applicant received effective assistance of counsel, and this application should be denied. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2014).

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 "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, 300 S.C. 115. 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, 300 S.C. 115. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

1. Failure to investigate and prepare a defense; failure to review discovery with Applicant

Applicant alleges Counsel failed to properly investigate his case and prepare a defense by (1) failing to investigate the indictment for conspiracy charges because if she had, she would have discovered no drugs were found on Applicant when he was arrested and that he did not know the co-conspirators prior to indictment; (2) failing to investigate the amount of drugs in the conspiracy case; (3) failing to investigate the amount of actual drugs found on Applicant; (4) failing to investigate Rule 6 of criminal procedures to ensure the drugs were tested by a certified SLED agent; and (5) failing to investigate to see if there were any guns on Applicant's person or at his residence. Applicant also alleges Counsel failed to prepare a defense in his case and did not spend sufficient time discussing the evidence and discovery with Applicant. This Court finds these allegations are without merits and should be dismissed with prejudice.

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012), reversed on other grounds by Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

Further, to establish Counsel failed to adequately prepare the case, Applicant must present evidence of what Counsel could have discovered or what other defenses could have been pursued had Counsel more fully prepared. See Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (finding trial counsel not ineffective for failing to timely request discovery because the contents of the documents were not presented at the PCR hearing); Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 217, 481 S.E.2d 129, 133 (1997) (finding applicant was not entitled to relief where no evidence was presented at the PCR hearing to show how additional preparation would have had any possible effect on the result at trial). Applicant's mere speculation about what Counsel would have discovered is insufficient to support his burden of proof.

Here, Counsel testified she and Applicant spent "a lot of time" reviewing the statement he gave to law enforcement, in which he admitted to various drug transactions and reported details including the names of buyers and quantities sold. See State's Ex. 3. The cumulative weight of the admitted sales totaled over 400 grams. According to Counsel, Applicant admitted everything contained in his statement was true, and she did not see any way to challenge his statement or the other evidence against him. Counsel also testified in detail about her difficulty communicating with Applicant in the months leading up to his guilty plea, and her attempts to review discovery and discuss the case with him, which were thwarted by Applicant repeatedly missing appointments with Counsel. Counsel credibly testified she and Applicant eventually reviewed all of the discovery and evidence on the Sunday prior to the plea, and Applicant was afforded the opportunity to look at anything he wanted and ask any questions he had.

Counsel also credibly testified Applicant never offered any potential defenses or witnesses and never asked her to investigate any particular facts giving rise to these charges. Counsel also credibly testified Applicant never wanted to pursue a trial and directed her to focus solely on negotiating a favorable plea bargain. While Applicant offered vague testimony regarding potential avenues of investigation Counsel could have pursued, Applicant's burden requires him to do more than merely speculate. Applicant did not offer any credible evidence or witnesses to support his claims that Counsel was deficient in her investigation of his case.

Accordingly, because Applicant has shown neither deficiency nor prejudice, all allegations regarding Counsel's alleged failure to investigate and adequately prepare Applicant's case are dismissed and relief is denied as to any of these grounds.

2. Involuntary Guilty Plea

In his original application, Applicant alleges Counsel was constitutionally ineffective because she "failed to object to negotiated plea of 12 years." After hearing Applicant's testimony, this Court interprets this allegation as one of an involuntary guilty plea because Applicant did not understand the plea agreement he was entering into, specifically as to the sentence. Based on the combined record of the plea transcript, plea agreement, and testimony at the evidentiary hearing, this Court finds any allegation Applicant entered his guilty plea unknowingly or involuntarily to be without merit and denies relief on this ground.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court

and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "'[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.'" Dalton, 376 S.C. at 138, 654 S.E.2d at 874 (quoting Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)).

"In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Id. at138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)). Respondent submits the transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, [an Applicant's] right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Statements made during a guilty plea should be considered conclusive, unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975), overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir. 1985).

Applicant has presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing, as Applicant did not offer any credible evidence he entered into the plea agreement unknowingly or involuntarily. This Court finds Applicant's testimony he did not understand the agreement and believed he would receive a

sentence in the range of ten-to-twelve years, based on representations from Counsel, to be not credible. Moreover, this Court finds credible Counsel's testimony she thoroughly reviewed the discovery and evidence with Applicant, who chose to avail himself of the State's offer rather than risk a substantially longer sentence if convicted at trial. See State's Ex. 4 and Ex. 6. The Court also finds credible Counsel's testimony Applicant changed his mind about accepting the State's thirteen-to-eighteen year plea offer after they had a chance to review all of the discovery together, as well as Counsel's assertion Applicant understood the sentencing range recommended by the State. Further, the Court has reviewed the plea agreement, which Applicant signed, and the plea transcript and finds the record confirms Counsel's testimony. The plea agreement clearly states the thirteen-to-eighteen year sentencing recommendation, and the plea judge repeatedly explained the statutory sentencing range, as well as the State's recommendation, to Applicant. Applicant never indicated he did not understand the agreement or what he was doing by entering into it. See Tr. pp. 6-7, 14. Finally, Counsel credibly testified Applicant never asked her to file a motion to reconsider his sentence, and in any event, she did not believe she had any credible basis for such a motion as the sentence Applicant received was within the recommended range.

Based on all of the foregoing, this Court finds Applicant's allegations in his original application that Counsel "failed to object to negotiated plea of 12 years" and failed to a motion for reconsideration or appeal of his sentence are without merit. Relief is denied, and the allegations are dismissed.

3. Great Seal and indictment issues

Applicant alleges Counsel was constitutionally ineffective because she failed "to move to quash the indictment by arguing the underlying statute did not have the force of law under Article III, Section 18 of the South Carolina Constitution and Article I, Section 23 of the South

Carolina Constitution. . . ." Essentially, Applicant argues the 2010 drug trafficking statute by which he was charged did not have the force of law because the 1993 version of the statute is missing the impression of the Great Seal. This Court finds this allegation wholly without merit, denies relief on this ground, and dismisses the allegation with prejudice.

As an initial matter, this Court finds the 2010 version of the statute, the version by which Applicant was actually charged with these offenses, has the impression of the Great Seal, and there is no defect which would have rendered the statute ineffective or unenforceable. See State's Exhibit 9. Although Applicant attempted to introduce evidence showing the 1993 version of the statute lacks the Great Seal, that version is irrelevant to Applicant's case. Therefore, because the 2010 version of the statute has the impression of the Great Seal, this Court finds Counsel was not deficient for failing to move to quash on this ground.

In any event, even if the Great Seal is somehow defective on the 2010 version, Applicant cannot prove any prejudice. The South Carolina Supreme Court has held absolute literal compliance is not essential to valid legislation, but substantial compliance is sufficient. Smith v. Jennings, 67 S.C. 324, 45 S.E. 821, 824 (1903). Furthermore, under the enrolled bill rule, an act is deemed to be properly passed when it has been ratified by the presiding officers of the General Assembly, approved by the Governor, and enrolled in the Office of Secretary of State. Medical Soc. of South Carolina v. Medical Univ. of South Carolina, 334 S.C. 270, 278, 513 S.E.2d 352, 356 (1999); Beaufort County v. Jasper County, 220 S.C. 469, 487, 68 S.E.2d 421, 430 (1951); State v. Town Council of Chester, 39 S.C. 307, 17 S.E. 752, 755 (1893) ("when the bill . . . is deposited in the department of state, according to law, its authentication as a bill that has passed congress is complete and unimpeachable). Additionally, the South Carolina Supreme Court has upheld the appointment of an officer whose commission lacked the Great Seal as required by

law. State v. Toomer, 7 Rich. 216, 229, 41 S.C.L. 216, 229 (1854). The Court explained if the State excused the delinquency of the officer and cured the defects, then the title has related back to the time of the election. Id. Moreover, section 2-7-45 of the South Carolina 1976 Code states:

> The Code of Laws of South Carolina, 1976, which contains the permanent laws of general application through the 1975 session of the General Assembly and which was presented to the members of the General Assembly during the 1977 session is hereby adopted as the Code of Laws of South Carolina, 1976, and is declared to be the only general statutory law of the State as of January 1, 1976.

The South Carolina Supreme Court has held codification of an act will cure a constitutional defect, and is part of the general statutory law of the State. South Carolina Tax Comm'n v. York Elec. Co-op., Inc., 275 S.C. 326, 333, 270 S.E.2d 626, 629-30 (1980). As noted above, this Court finds the 2010 Act fully complied with the requirements of the law, and it is certainly in substantial compliance. Therefore, the 2010 law is enforceable, and Applicant was not prejudiced by Counsel's failure to challenge it on this basis.

Applicant also alleges Counsel was ineffective for failing to move to quash the indictment because, he asserts, there is another conspiracy statute which was applicable. However, the Court disagrees and finds the statute Applicant argues he should have been charged is not applicable. In any event, the prosecutor has discretion regarding charging decisions, and Applicant has not presented any evidence the Assistant Attorney General prosecuting the case abused that discretion in any way. See Bordenkircher v. Hayes, 434 U.S. 357, 364 (1978) ("[S]o long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, **and what charge to file or bring before a grand jury**, generally rests entirely in [the prosecutor's] discretion." (emphasis added)); United States v. Washington, 109 F.3d 335, 338 (7th Cir. 1997) ("If one person shoots and kills another, a prosecutor may charge anything between careless

handling of a weapon and capital murder."); State v. Burdette, 335 S.C. 34, 40, 515 S.E.2d 525, 528-529 (1999) ("Choosing which crime to charge a defendant with is the essence of prosecutorial discretion[.]"). See also State v. Crenshaw, 274 S.C. 475, 477, 266 S.E.2d 61, 62 (1980) (explaining an indictment is sufficient if "the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and acquittal or conviction to be placed in bar to any subsequent conviction"); S.C. Code Ann. § 17-19-20 ("Every indictment shall be deemed and judged sufficient and good in law which, in addition to allegations as to time and place, as required by law, charges the crime substantially in the language of the common law or of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood and, if the offense be a statutory offense, that the offense be alleged to be contrary to the statute in such case made and provided."). The Court finds this allegation is without merit and denies relief on this ground as well.

## CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations which would require this Court to grant his application. 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, 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), SCRCP, provides that if Applicant wishes to

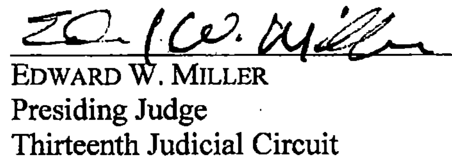
seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

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 23 day of March, 2020.



EDWARD W. MILLER
Presiding Judge
Thirteenth Judicial Circuit

Copy mailed to
Attorney General / Susannah Ross
on 5 / 6 / 2020.