

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Lawton McIntosh, Circuit Court Judge

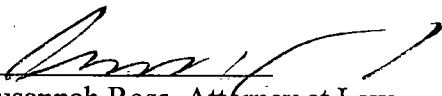
2018-CP-42-3065

Shannon Lancaster, Appellant,
v.
The State, Respondent.

NOTICE OF APPEAL

Shannon Lancaster appeals the Honorable Lawton McIntosh's Order of Dismissal filed May 15, 2020.

This 20 day of May, 2020.


Susannah Ross, Attorney at Law
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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) FOR THE SEVENTH JUDICIAL CIRCUIT
))
Shannon Lancaster, #341546,) Case No.: 2018-CP-42-03065
Applicant,))
))
v.) **ORDER OF DISMISSAL**
))
State of South Carolina,))
Respondent.))

This matter comes before this Court by way an application for post-conviction relief filed September 4, 2018, and amended September 18, 2018, by Applicant Shannon Lancaster. Respondent made its Return on April 18, 2019, requesting an evidentiary hearing be convened. An evidentiary hearing was held on February 20, 2020, at the Spartanburg County Courthouse. Susannah Ross, Esquire, represented Applicant. Assistant Attorney General Jacob A. Isenberg of the South Carolina Attorney General's Office represented Respondent. Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Ricky Harris, Esquire, also testified. Following the hearing, this Court took this matter under advisement.

After a thorough review of all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Specific findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. During the October 2016 term, the Spartanburg County Grand Jury indicted Applicant for distribution of Trafficking in Methamphetamine, Second Offense (2016-GS-42-5068). Ricky Harris, Esquire, represented

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Applicant. Assistant Solicitor James Hunter of the Seventh Circuit Solicitor's Office prosecuted the case.

On March 14, 2017, Applicant pled guilty to one count of trafficking between ten and twenty eight grams of methamphetamine before the Honorable J. Derham Cole. Pursuant to negotiations between Applicant and the State for a sentence of twelve to eighteen years' imprisonment, Judge Cole sentenced Applicant to fifteen years' imprisonment. On March 23, 2017, Applicant filed a *pro se* motion for reconsideration, which was denied by Judge Cole on March 27, 2017.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Robert M. Pachak, Esquire, though filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion, (2018-UP-325). The Remittitur was issued on August 10, 2018. On August 23, 2018, Applicant was denied a motion to suppress by the South Carolina Court of Appeals. On November 16, 2018, another Remittitur was issued.

Statement of Facts

On April 15, 2016, a Spartanburg County Sheriff's Investigator contacted Applicant to purchase methamphetamine.¹ (Plea Tr. 12-13). The investigator picked Applicant up in Gaffney, drove him to a trailer park in Spartanburg, and dropped him off. (Plea Tr. 13). They went "back and forth" for a few hours because the methamphetamine was not ready. (Plea Tr. 13)

Later, the Investigator met Applicant at a Spinx and Burger King. (Plea Tr. 13). The investigator went back to the same trailer park that Applicant had been dropped at earlier. (Plea Tr. 13)

¹ The investigator had previously been introduced to Applicant "as someone who had purchased meth." (Plea Tr. 13).

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that point, Investigator gave Applicant \$1,250 in Spartanburg County Sheriff's Office recorded money. (Plea Tr. 13). Applicant then entered a trailer. (Plea Tr. 13). A Hispanic male then showed up and entered the trailer. (Plea Tr. 13). Subsequently, Applicant returned to the vehicle and gave Investigator almost twenty-eight grams in methamphetamine. (Plea Tr. 13). Applicant was arrested a couple of days later with at least \$140 in marked funds from the Spartanburg County Sheriff's Office. (Tr. 13). Upon inquiry by the Court, Applicant confirmed the above articulated facts. (Tr. 14).

Applicant retained Counsel who met with Applicant on multiple occasions, engaged in discovery with the state, and prepared the Applicant's case for trial. The State initially offered Applicant a recommended sentence of eighteen years as to one of the trafficking charges, dismissing the other charges. Applicant was a candidate for life without the possibility of parole if he decided to go to trial. The prosecutor hinted at this possibility in negotiations, even though they never filed a formal notice to that effect. On March 14, 2017, the Applicant's intention was to go to trial but, instead, took a last minute plea deal to one count of trafficking between ten and twenty-eight grams of methamphetamine with a negotiated range of twelve to eighteen years. The trial court sentenced Applicant to fifteen years total.

Action before this Court

In his PCR application, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. Ineffective Assistance of Counsel (failure to investigate):
 - a. Failure to discharge his duty of due diligence to investigate the evidence and witnesses.
 - b. Failure to investigate the evidence and discovery, to make sure Investigator James Ruane processed an applicant for the interception of wire, electric, or oral communications, for a drug trafficking investigation. Pursuant to S.C. Code Section 17-30-70, the investigator failed to process an application that has to be

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initiated by the Chief of SLED. After reviewing the application the Attorney General may authorize the application to a judge of competent jurisdiction, and the judge may grant in conformity with this chapter. Investigator James Ruane is in violation of S.C. Code Section 17-30-70 application process, for this case.

- c. Failure to investigate the evidence and discovery, to make sure the Investigator James Ruane had a judge of competent jurisdiction enter an ex parte order, as modified authorizing the interception of wire, oral or electrical communications within the territorial jurisdiction of the court in which the judge is sitting, if the judge determines on the basis of the facts submitted by the applicant that: (1) there is probable cause for belief that an individual is committing, has committed, or is about to commit an offense provided in Section 17-30-70, pursuant to S.C. Code Section 17-30-80(D)(1). The investigator James Ruane is in violation of S.C. Code Section 17-30-80(D)(1) authorizing order for the Interception of Wire, Electric or Oral Communications.
 - d. Failure to investigate intercepted communication, and to make sure the said evidence was not illegally disclosed, pursuant to S.C. Code Section 17-30-75. Investigator James Ruane illegally disclosed said evidence in violation of S.C. Code Section 17-30-75.
 - e. Failure to investigate the evidence to make sure the informant "David Brent Goode" was registered with the South Carolina Law Enforcement Division, for a drug trafficking investigation. Investigator James Ruane failed to register the informant "David Brent Goode" with SLED for this investigation. The Investigator James Ruane is in violation of SLED policy 13.30 use of informant in investigations.
2. Ineffective Assistance of Counsel (failure to provide defense):
- a. Failure to have a proper defense for physical evidence in this case.
 - b. Failure to have a valid strategy for this case.
 - c. Failure to request and require as part of discovery that copies of all intercepted communications be provided as they are gathered so that a proper defense for physical evidence can be built as provided for by Section 17-30-105.
 - d. Pursuant to S.C. Code Section 17-30-130, failure to ensure that no impropriety occurred in the reporting of the intercepted communications to the Administrative Office of the United States court as outlined in 18 U.S.C. section 2519.
3. Ineffective Assistance of Counsel (failure to suppress):
- a. Pursuant to S.C. Code Section 17-30-110, failure to move to suppress this illegally gathered evidence and/or advise me of these grounds and/or the exclusive remedy.
 - b. Failure to move for a motion to suppress the unlawful audio/video recording evidence to the S.C. Court of Appeals, pursuant to S.C. Code Section 17-30-110. The motion must be made before the reviewing authority, before the final hearing.

or proceeding. Furthermore, the Applicant has moved to suppress the evidence after his conviction, and the S.C. Court of Appeals has ruled, that motions to suppress are not appropriate on appeal. Applicant filed the motion pursuant to the South Carolina Homeland Security Act.

4. Ineffective Assistance of Counsel (failure to advise):

- a. Failure to advise Applicant and inform the court that none of these subsections in Chapter 30, Title 17, were adhered to, and that these actions and/or lack thereof were illegal pursuant to S.C. Code Section 17-30-20.
- b. Failure to advise the court to take judicial notice that for the purpose of a criminal investigation, that Investigator James Ruane had never obtained any multiple law enforcement jurisdictional agreement as required by S.C. Code Section 23-1-210 and that when Investigator Ruane came to Cherokee County to pick me up for a drug investigation, he had no authority to do so, and acted illegally thus these actions and/or lack thereof constituted entrapment by law enforcement.
- c. Failure by providing erroneous and incorrect advice to plead guilty instead of challenging the State's evidence through the protections of trial. Therefore, Applicant's plea was unknowing and involuntary entered into pursuant to the Investigator violating S.C. Code Section 17-30-80 authorizing order, for the interception of wire, electric, or oral communications.
- d. Failure to advise and/or move for video footage to be excluded due to it being a partial and the whole story not being told and therefore inconclusive, as well as illegally obtained with no valid chain of custody.
- e. Failure to advise me and inform the court, that Investigator James Ruane illegally recorded audio and video, without processing an application or authorizing order, for a drug trafficking investigation, pursuant to S.C. Code 17-30-70 and Section 17-30-80 and also conducted an unreasonable search, that violated Fourth and Fourteenth Amendment rights. Therefore, the audio/video recording and evidence was obtained in violation of Title 17, Chapter 30 of criminal procedures and is considered "Fruit of the Poisonous Tree" (See Exh 1, 2, 3 for Case No. 16040895).

5. Subject Matter Jurisdiction:

- a. Failure to challenge subject matter jurisdiction of Applicant's guilty plea pursuant to the Investigator's violation of S.C. Code Section 17-30-70 application process for this investigation. Furthermore, the Grand Jury was improperly influenced with tainted evidence and false testimony. Therefore, the trial court lacked jurisdiction to accept Applicant's guilty plea.

6. Involuntary Plea:

- a. "Coercing the defendant into a guilty plea."

Further, Applicant alleges that this is the only venue he is aware of for this claim.

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Regarding relief, Applicant requests the case be vacated and remanded.

This Court interprets Applicant's allegations, as addressed at the PCR hearing and in the application, as follows:

1. Counsel was ineffective for:

- a. failure to discharge his duty of due diligence to investigate the evidence, facts, and witnesses.
- b. letting him take an involuntary plea.
- c. failure to have a proper defense for physical evidence.
- d. coercing Applicant into a guilty plea.
- e. failure to properly and fully investigate the case.
- f. failure to make sure investigator James Ruane processed an application for interception of wire, electric, or oral communications, for a drug trafficking investigation pursuant to S.C. Code Section 17-30-70.
- g. failure to make sure a judge of competent jurisdiction entered an order authorizing the interception of communications.
- h. failure to investigate the intercepted communication to ensure it was not illegally disclosed.
- i. failure to request as part of discovery that all copies of intercepted communications are gathered so that a proper defense for physical evidence can be built.
- j. failure to ensure that no impropriety occurred in the reporting of the intercepted communications as outlined in 18 U.S.C. Section 2519.
- k. failure to advise and inform the court that the actions taken were illegal under S.C. Code Annotated Section 17-30-20.
- l. failure to suppress the illegally gathered evidence. Applicant asserts investigator James Ruane's recording of their conversations while riding in a car to facilitate Applicant's drug purchases is in violation of S.C. Code Section 17-30-70.
- m. failure to advise the court to take judicial notice that there was no multiple law enforcement jurisdictional agreement as required by S.C. Code Annotated Section 23-1-210 and that it was unlawful for Investigator Ruane to pick up Applicant in Cherokee County for a drug investigation.
- n. providing erroneous and incorrect advice to plead guilty instead of challenging the State's evidence through the protections of trial, which rendered his plea was unknowing and involuntary.
- o. failure to challenge subject matter jurisdiction of Applicant's guilty plea pursuant to the Investigator's violation of S.C. Code Section 17-30-70 application process for this investigation.
- p. failure to have a valid case strategy.
- q. failure to advise and move for video footage to be excluded due to partial and the whole story not being told and therefore inconclusive and illegally obtained with no valid chain of custody.

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- r. failure to inform the court that the investigator illegally recorded Applicant in violation of federal, state, and constitutional law.
 - s. failure to investigate the evidence to make sure the informant was registered with the South Carolina Law Enforcement Division for a drug trafficking investigation.
 - t. failure to pursue a defense of entrapment. Applicant's assertion stems from law enforcement driving Applicant around to make various drug purchases while promising him employment.
2. Applicant alleges he was illegally picked up by Spartanburg County law enforcement in Cherokee County in violation of federal, state, and local law.
 3. Applicant alleges that this is the only venue he is aware of for these types of claims.²

This Court addresses these allegations below based upon this interpretation of Applicant's allegations.

Summary of Testimony Presented at the Evidentiary Hearing

Applicant's Testimony

At the PCR hearing, Applicant recited the aforementioned allegations listed in his application verbatim. He alleged police and prosecutorial misconduct in getting the phone records without a warrant. He testified that Counsel was ineffective for failing to raise an entrapment claim. He also alleged that the police were acting outside their jurisdiction in staging a drug buy that involved them picking him up in Gaffney and dropping him off in Spartanburg. Applicant stated that Counsel failed to investigate and failed to file a motion to suppress over an alleged search and seizure issue pursuant to the unwarranted phone records seizure.

On cross-examination, Applicant walked through the events on the day of the staged drug buy, resulting in him selling drugs to an investigator that ultimately culminated to him being charged with trafficking methamphetamine. Applicant stated he knew other charges were dismissed because of the plea deal. He stated he took the plea deal because he did not want to go to jail.

² No response is required as to this ground.

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had a defense. Applicant said that he wanted to go to trial on an entrapment defense, but his attorney discussed the plea deal with him, which he ultimately decided to take.

Plea Counsel

Ricky Harris (hereafter "Counsel") also testified at the evidentiary hearing. On direct, Counsel testified that he did not assert an entrapment defense because he did not think it was viable. Counsel testified that he met with Applicant several times leading up to trial. Counsel testified that during these meetings, Counsel discussed the discovery with Applicant, discussed the charges against him, and attempted to temper his expectations concerning the type of deal he would be offered. Counsel stated that Applicant had multiple charges against him and, initially, the Solicitor's Office was offering eighteen years. Counsel said that Applicant wanted a more lenient sentence, and Counsel felt obligated to temper his expectations. Counsel testified that Applicant insisted on trial. Counsel said he knew Applicant would face a chance of life without possibility of parole if it proceeded to trial, even though a formal notice was not given. Counsel said that if a life sentence was not given, Applicant would be looking at least twenty-five to thirty years' imprisonment if the case went to trial.

Counsel said he made Applicant aware that a police officer with firsthand knowledge was going to testify at trial if he did not plead out and, if that happened, his case would be very weak. Counsel testified that the State had multiple cases lined up and Counsel, through experience, knew that if one case failed at trial the State would attempt to prosecute the next one. Counsel said that Applicant was frustrated with this and contended that he thought he was entrapped. Counsel stated that they discussed the entrapment defense at every meeting and that Counsel consistently told him the defense was ineffective because they could not show he had a predisposition.

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Counsel said that, on the day of the trial, the Solicitor's Office gave Applicant an offer of twelve to eighteen years for one count of trafficking methamphetamine. Counsel testified that he told Applicant about the offer, told him again that entrapment was a weak defense, that there were no other defenses available to him, and strongly urged him to take the plea. Counsel stated that ultimately, Applicant did so, presumably because he did not think he had a better option available to him. Counsel acknowledged that the investigator had crossed jurisdictional lines to engage in the drug buy. Counsel stated that he did not check if the discovery videos provided to him from the scene were proper.

Findings of Fact and Conclusions of Law

This Court has reviewed the pleadings, records submitted by the parties, and applicable law. Before this Court are the Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, and the PCR action records. Pursuant to South Carolina Code Annotated, Sections 17-27-70 and -80, this Court dismisses the application based upon the following findings:

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show 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 v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by Sixth Amendment, which the Supreme Court expanded upon through developing the two-pronged test outlined in *Strickland v. Washington*.

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Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by the preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRPC ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant" and the scope limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 692. The court makes this determination based upon the totality of the evidence. *Id.* at 692. Realistically, this matters "only in the rarest case" because "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

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In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. See *Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

For a guilty plea to be valid, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against her. *Dalton v. State*, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Boykin v. Alabama*, 395 U.S. 238, 242 (1969)). Further, an applicant can attack the voluntary, knowing and intelligent character of a guilty plea entered on advice of counsel by showing counsel's advice in taking the plea fell below an objective standard of reasonableness. *Porter v. State*, 368 S.C. 378, 629 S.E.2d 348 (2006). "That a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." *McMann v. Richardson*, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is intelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range

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of competence demanded of attorneys in criminal cases." *Id.* at 771.

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. at 34, 528 S.E.2d at 421 (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)). Further, "guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea." *Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

Invalid Guilty Plea

Applicant argued that his plea was invalidly entered because Counsel coerced him into pleading. However, this Court finds that the plea hearing transcript reflects that the Applicant freely and voluntarily pled guilty after receiving a complete and thorough plea colloquy by the plea court. Specifically, he stated that he discussed his decision to plead guilty with Counsel, he went over the indictment and charges with Counsel, the possible penalties that could be imposed, and the facts surrounding the allegations. (Plea Tr. 5). Applicant stated that he discussed any potential defenses, discovered there were none, and knew he would have to waive defenses when taking the plea. (Plea Tr. 6). Applicant stated that Counsel discussed the constitutional rights he was waiving by entering a plea, including the right to confront witnesses, remain silent, and right to a jury trial. (Plea Tr. 6-7). Other than the sentencing range of twelve to eighteen years, he agreed

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upon, Applicant was not offered or promised anything in exchange for a guilty plea. (Plea Tr. 7-8). At the hearing, Applicant stated "I'm pleading guilty freely and voluntarily" and admitted he was guilty of all the charges pled to. (Plea Tr. 8).

Applicant presented no evidence of coercion from Counsel into accepting the plea. Further, it appears Applicant freely and voluntarily chose to plea instead of facing a potential trial sentence of twenty-five to thirty years, and potential life without the possibility of parole sentence on his other pending charges. Thus, this Court finds that Applicant entered his plea freely, voluntarily, knowingly, and intelligently.

Failure to Investigate

Applicant raised several allegations of failure to investigate, including:

1. failure to discharge his duty of due diligence to investigate the evidence, facts, and witnesses.
2. failure to properly and fully investigate the case.
3. failure to make sure investigator James Ruane processed an application for interception of wire, electric, or oral communications, for a drug trafficking investigation pursuant to S.C. Code Section 17-30-70.
4. failure to make sure a judge of competent jurisdiction entered an order authorizing the interception of communications.
5. failure to advise and inform the court that the actions taken were illegal under S.C. Code Annotated Section 17-30-20.
6. failure to suppress the illegally gathered evidence. Applicant asserts investigator James Ruane's recording of their conversations while riding in a car to facilitate applicant's drug purchases is in violation of S.C. Code Section 17-30-70.
7. failure to investigate the intercepted communication to ensure it was not illegally disclosed.
8. Failure to investigate the evidence to make sure the informant was registered with the South Carolina Law Enforcement Division for a drug trafficking investigation.
9. failure to request as part of discovery that all copies of intercepted communications are gathered so that a proper defense for physical evidence can be built.

The evidence presented at the evidentiary hearing reveals that Counsel properly investigated and prepared Applicant's case for trial. Thus, Applicant fails to meet his burden of proof on all nine of these allegations, as addressed below.

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Regarding the first two allegations, Applicant did not meet his burden of proof in showing that Counsel failed to discharge his duty of due diligence to investigate the evidence, facts, and witnesses in this case and that Counsel failed to properly and fully investigate the case. Specifically, the evidence presented reveals that Counsel properly investigated and prepared Applicant's case for trial. Applicant was facing trial with a sentencing range of twenty-five to thirty years. Counsel negotiated a sentence range of twelve to eighteen years and the dismissal of the other charges. Counsel was prepared to have a trial on the case. Thus, the Court finds that Counsel was not deficient regarding his duty to investigate and present evidence.

Regarding the allegation of failure to investigate a potential witness specifically, Counsel contacted an individual, at the direction of the Applicant, who said if called to testify he would assert his Fifth Amendment right to remain silent. Thus, Counsel was not deficient in investigating the potential witness.

Regarding allegations three through six, Applicant also failed to show Counsel failed to make sure investigator James Ruane processed an application for interception of wire, electric, or oral communications, for a drug trafficking investigation pursuant to S.C. Code Section 17-30-70. Additionally, Applicant did not meet his burden of proof in showing that Counsel failed to make sure a judge entered an order authorizing the interception of communications. Applicant did not meet his burden of proof in showing that Counsel failed to advise and inform the court that the actions taken were illegal under S.C. Code Annotated Section 17-30-20. Additionally, Applicant failed to show that Counsel failed to suppress the illegally gathered evidence.

Applicant asserts investigator James Ruane's recording of their conversations while riding in a car to facilitate applicant's drug purchases is in violation of S.C. Code Section 17-30-20.

Applicant asserted that investigator James Ruane's recording of their conversations while

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riding in a car to facilitate Applicant's drug purchases is in violation of S.C. Code Section 17-30-70. S.C. Code Annotated Section 17-30-15 defines wire and oral communications and Section 17-30-20 defines what acts are prohibited. While 18 U.S.C. Section 2519 requires the reporting of the intercept of oral communication and 18 United States Code Section 2511 prohibits the intercept of oral communications, 18 United States Code Section 2510(2) defines oral communications as "any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation."

No evidence was presented that Applicant had an expectation that his oral communication was not subject to intercept or that the circumstances justified such an expectation. Thus, these communications do not fall under the definition in 2510(2). Further, because the recording of Applicant does not fall under these definitions or the prohibited acts, Counsel was not deficient in failing to investigate into an application by the investigator, to make sure a judge entered an order, to advise to Court of allegedly illegal actions or to investigate a search and seizure issue, because the conduct did not fall under the statute requiring these actions on Counsel's part. Furthermore, through his free and voluntary guilty plea, Applicant waived any right to claim illegal searches and seizures.

Seventh, Applicant did not meet his burden of proof in showing that Counsel failed to investigate the intercepted communication to ensure it was not illegally disclosed. Counsel engaged in discovery, obtained the recordings, and credibly testified he reviewed them. Thus, this Court finds that Counsel did properly investigate for the case and was not deficient on this ground.

Eighth, Applicant did not meet his burden of proof in showing that Counsel failed to

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investigate the evidence to make sure the informant was registered with the South Carolina Law Enforcement Division for a drug trafficking investigation. This Court finds that, regarding this matter specifically, Counsel contacted an individual, at the direction of Applicant, who said if called to testify he would assert his Fifth Amendment right to remain silent. In addition, Applicant did not produce the witness at the hearing. Thus, Counsel was not deficient here.

Finally, Applicant alleged that Counsel failed to request as part of discovery that all copies of intercepted communications are gathered so that a proper defense for physical evidence can be built. For the reasons above, this Court finds this allegation is also without merit.

All allegations concerning failure to present witnesses, assert a defense in favor of Applicant to the court, and failure to suppress allegedly illegally seized communications were waived when Applicant freely, voluntarily, knowingly, and intelligently entered his plea. Additionally, this Court finds Applicant has failed to present a sufficient reason why this Court should disregard his sworn testimony and waiver given at the plea hearing.

Further, to demonstrate prejudice, Applicant was required to present the evidence or witnesses he alleges Counsel did not properly investigate. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Applicant failed to present any evidence or witnesses at the PCR hearing and, thus, this Court finds that Applicant has failed to meet his burden of proof. Therefore, because Applicant has failed to meet his burden of proving either deficiency or prejudice, relief is denied on this ground.

Failure to Present Defenses

Applicant also made several allegations concerning failure to raise a defense, including:

1. failure to have a proper defense for physical evidence in this case.
2. failure to develop a valid case strategy.
3. failure to pursue a defense of entrapment. Applicant's assertion stems from law enforcement driving applicant around to make various drug purchases while providing

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- him employment.
4. failure to ensure that no impropriety occurred in the reporting of the intercepted communications as outlined in 18 U.S.C. Section 2519.
 5. failure to inform the court that the investigator illegally recorded Applicant in violation of federal, state, and constitutional law.
 6. failure to advise and move for video footage to be excluded due to it being a partial and the whole story not being told and therefore inconclusive, as well as illegally obtained with no valid chain of custody.

The evidence presented at the evidentiary hearing and before this Court reveals that Counsel did not act deficiently in neglecting his duty to investigate and present a defense. Thus, Applicant fails to meet his burden of proof on all six of these allegations, as addressed below.

First, Applicant did not meet his burden of proof in showing that Counsel failed to have a proper defense for physical evidence in this case. Applicant presented no argument or evidence of this ground and it is therefore denied. Second, Applicant's ground that Counsel failed to develop a valid case strategy is denied as addressed in the previous section and below.

Third, Applicant's assertion that trial counsel was ineffective for failing to pursue a defense of entrapment. An entrapment defense is available where the "conception and planning of an offense by an officer, and his procurement of its commission by one who would not have perpetrated it except for trickery, persuasion, or fraud of the officer." *State v. Jacobs*, 238 S.C. 234, 244, 119 S.E.2d 735, 740 (1961). This defense is not available to criminal defendants who have a predisposition to commit the crime independent of government involvement. *State v. Johnson*, 295 S.C. 215, 217, 367 S.E.2d 700, 701 (1988). Further, if an officer "merely afford[s] opportunities or facilities for the commission of the offense", an entrapment is not available. *Sherman v. United States*, 356 U.S. 369, 372 (1958). Applicant's assertion of entrapment stems from law enforcement driving applicant around to make various drug purchases while promising him employment. Counsel credibly testified that the issue was discussed with Applicant in depth and Applicant was advised of Counsel's belief that entrapment was not a viable defense in that

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Applicant voluntarily made multiple drug purchases.

Fourth, Applicant did not meet his burden of proof to show Counsel failed to ensure that no impropriety occurred in the reporting of the intercepted communications as outlined in 18 U.S.C. Section 2519. While 18 U.S.C. Section 2519 requires the reporting of the intercept of oral communication and 18 U.S.C. Section 2511 prohibits the intercept of oral communications, 18 U.S.C. Section 2510(2) defines oral communications as "any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation." No evidence was presented that applicant had an expectation that his oral communication was not subject to intercept or that the circumstances justified such an expectation. Therefore, Counsel was not ineffective for ensuring that there was no impropriety because 18 U.S.C. Section 2519 does not require the reporting of this type of electronic audio recording.

Fifth, Applicant did not meet his burden of proof in showing Counsel failed to inform the court that the investigator illegally recorded Applicant in violation of federal, state, and constitutional law. As addressed above, the communication was not intercepted illegally and Counsel was not deficient in investigating, reviewing discovery, interviewing witnesses and otherwise examining potential witnesses. Thus, Counsel was not deficient for failing to obtain intercepted communications to build a defense.

Sixth, Counsel failed to advise and move for video footage to be excluded due to it being only part of the story and therefore inconclusive, as well as illegally obtained with no valid chain of custody. Applicant presented no evidence of this ground at the hearing. Further, it appears Applicant freely and voluntarily chose to plea instead of facing a potential trial sentence of twenty-five to thirty years, and potential life without the possibility of parole sentence on his

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other pending charges.

Further, Applicant explicitly waived his right to assert defenses at his plea hearing and, after explicitly waiving this right, stated on record that he still wanted to proceed with entering the plea. (Plea Tr. 5-6). Thus, based on the combined record of the guilty plea transcript and Counsel's credible testimony at the PCR hearing, this Court finds that the plea was voluntarily, knowingly, and intelligently entered by Applicant and any defenses were waived and cannot be asserted now, Counsel was not deficient in any way. Additionally, because Applicant failed to present any new evidence of factors that would have caused him to change his mind about entering a plea and, instead, would have driven him to proceed to trial, this Court does not find Applicant was prejudiced by Counsel's alleged failure. Thus, Applicant's allegations are dismissed and relief is therefore denied.

Improper Jurisdiction

Applicant makes several allegations concerning lack of or improper jurisdiction, including:

1. Counsel was ineffective for failure to advise the court to take judicial notice that there was no multiple law enforcement jurisdictional agreement as required by S.C. Code Annotated Section 23-1-210 and that it was unlawful for Investigator Ruane to pick up applicant in Cherokee County for a drug investigation.
2. Applicant was illegally picked up by Spartanburg County law enforcement in Cherokee County in violation of federal, state, and local law.
3. Counsel failed to challenge subject matter jurisdiction of Applicant's guilty plea pursuant to the Investigator's violation of S.C. Code Section 17-30-70 application process for this investigation.

Generally, officers cannot act outside their assigned jurisdiction. *State v. Harris*, 299 S.C. 157, 159, 382 S.E.2d 925, 926 (1989) (citing 62 C.J.S. *Municipal Corporations* § 57 (1949 & Supp.1988)). That said, this rule does not "affect an officer's right to act as a private citizen beyond his jurisdiction." *Id.* An officer's actions "are lawful if they could

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undertaken by an ordinary citizen." *Id.*

In *State v. Harris*, police conduct was not unlawful when, acting undercover, officers attached microphones to informants who then crossed jurisdictions and engaged in a drug buy that ultimately led to the arrest of the seller. *Id.* The court concluded this was not unlawful because the only extra-jurisdictional activity officers engaged in was monitoring conversations between Applicant and informants; something the court found could have been done by private citizens. *Id.*

Although Applicant raised the above enumerated grounds for relief on his application and in the hearing, the main thrust of his argument at the hearing was that on at least two of the charges, he was illegally picked up by Spartanburg County Law Enforcement in Cherokee County in violation of federal, state, and local law. All the charges against Applicant resulted from conduct occurring in Spartanburg County. Additionally, there was nothing illegal or improper for the investigator to pick up applicant in Cherokee County and bring him to Spartanburg County for an undercover drug operation. The officers were acting like private citizens while acting outside of their assigned jurisdiction, rendering any extra-jurisdictional activities lawful, as per *State v. Harris*. 299 S.C. at 159, 382 S.E.2d at 926. Much like in *Harris*, giving someone a ride to a house in another county is something private citizens can engage in and, as such, officers did not act unlawfully when doing so while representing themselves as private citizens. Further, all the charges against Applicant resulted from conduct occurring in Spartanburg County. Additionally, because unlawful activity did not occur, Counselor was not ineffective for failing to challenge challenging the jurisdiction nor for bringing jurisdiction to the fact that a multi-jurisdictional agreement did not exist at the time of the arrest. Therefore, this contention is without merit.

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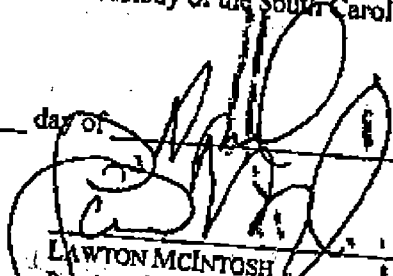
Conclusion

Based on all the forgoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations before or during his trial and guilty plea. This Court finds, as to Applicant's allegations concerning ineffective assistance of counsel, invalid plea, and police misconduct, that Applicant has not met his burden of proof. The Court notes Applicant must file and serve a notice of appeal within thirty days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, Applicant must serve and file a notice of appeal on his own behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The PCR Application be denied and dismissed with prejudice; and
2. Applicant shall remain remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 29 day of May, 2020.


LAWTON MCINTOSH
Presiding Judge
Seventh Judicial Circuit

Anderson
South Carolina.

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AMY W. COX



State of South Carolina
The Circuit Court of the Tenth Judicial Circuit

R. Lawton McIntosh
Judge

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lmcintosh@sccourts.org

May 1, 2020

The Honorable M. Hope Blackley
Post Office Box 3483
Spartanburg, South Carolina 29304-3483

RE: Shannon Lancaster v. State of SC
CA No. 2018CP4203065


Dear Madame Clerk:

Relative to the captioned matter, please find enclosed the an Order of Dismissal which has been signed by Judge McIntosh:

Please file this in your office and provide certified copies as appropriate to the attorneys of record pursuant to your customary procedure.

Thank you for your assistance in this matter.

Sincerely,


Tammy Jennings, Admin Assistant to
R. Lawton McIntosh, Judge
Tenth (10th) Judicial Circuit

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Enclosure

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