Randy Schultz
Q3A209 #298635
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina
29669

PRO SE PETITIONER

SOUTH CAROLINA SUPREME COURT
IN THE CLERK OF COURTS OFFICE
Daniel E. Shearouse, Clerk
Post Office Box 11330
Columbia, South Carolina
29211-1330

RE: FILING OF ENCLOSED PLEADINGS

Mr. Shearouse,

Please find enclosed for filing the following:

(1) Notice Of Motion And Petition For Writ of Mandamus;
(2) Petition To Proceed In the Original Jurisdiction;
(3) Petition For Writ Of Mandamus;
(4) Exhibit(s) [1], [2], [3], [4], [5] & [6]; and
(5) Certificate Of Service.

Please further permit this formal correspondence to address a matter that is of some considerable importance to this matter.

On November 20,2003, I pled guilty to a charge of Trafficking in Cocaine 2nd (44-53-375(c)(1)(c))(Indictment No. #2003-GS-02-1403), in the Court of General Sessions for Aiken County. At the time I was represented by, Robert J. Harte, Esquire, who is now the Clerk of Court for Aiken County. (See attached Sentencing Sheet dated November 20,2003).

During all the proceedings associated to this current criminal allegation, and now pcr matter, I was unaware of the existence of an actual conflict of interest. Mr. Harte is the Respondent, and Clerk of Court in this current mandamus proceeding. I cannot preserve this issue in the petition now before this Supreme Court due to the fact that it has not been previously preserved in the lower circuit court. It is my position that this conflict of interest, where the existence of it can be established by court documentation, is presumed to prejudicial against me or my case; and in the petition I have clearly demonstrated sufficient harm to warrant this claims validity, and the issuance of mandamus. I thought it imperative that this Court be aware of this matter and allegation in consideration of the relief sought within the petition for writ of mandamus. I am of the belief that it warrants this Court's attention.

Furthermore, my PCR counsel, whom I was attempting to relieve has filed a Notice of Appeal; where he is fully aware that I was attempting to discharge him from my case. The Notice was filed April 1,2020. I would ask that no appellate counsel be appointed at this time so that this Court may resolve the issue of the mandamus. I believe it would be a waste of resources, at this moment, and am hopeful this case will be remitted to the

lower court to resolve the pleading that was sought to be filed.

If I may be of any further assistance to this Court, in these matters, please do not hesitate to contact me. Thank you for this Court's time and attention to these matters.

May ____, 2020

Respectfully Submitted,

Randy Schultz

rds/RS

cc: FILE
HARTE
CLERK

Randy Schultz
Q3A209 #298635
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina
29211-1330

PRO SE PETITIONER

FROM:

Randy Schultz # 298635 Q-3
Perry Correctional Inst.
430 Oaklawn Rd
Pelzer SC 29669

U.S. POSTAGE PAID
FCM LG ENV
CLEARWATER, SC
29822
MAY 15, 20
AMOUNT
$3.00
R2305H128052-03

TO:

South Carolina Supreme Court
Clerk of Courts Office
Daniel E. Shearouse, Clerk
P.O. Box 11330
Columbia SC 29211-1330

RECEIVED
MAY 19 2020
S.C. SUPREME COURT

tility Mailer
1/2" x 16"

STATE OF SOUTH CAROLINA)
COUNTY OF Aiken)
STATE VS.)
Roody Schultz)
AKA:)
Race: B/K Sex: Male Age:)
DOB: 9/8/79 SS#: 250-49-4329)
Address: 1032 Parklake Ln)
City, State, Zip Jackson SC 29831)
DL# Sc.090338852 SID#)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 1403 Awo
2003 -GS- 02 - 1405
A/W#: H 25/683
Date of Offense: 4/11/03
S.C. Code §: 44-53-375(C)(1)(C)
CDR Code #: 01 4 1 5 1 2
☐ CASE RESTORED
SENTENCE
☑ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☑ PLEADS TO: Trafficking in Crack Cocaine 2nd in violation of §44-53-375(C)(1)(C) of the S.C. Code of Laws, bearing CDR Code # 01 4 1 5 1 1
☐ NON-VIOLENT ☑ VIOLENT ☑ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☑ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☑ Recommendation by the State.
ATTEST:

John Wheeler — Solicitor
Roody Schultz — Defendant
Robert J. Hartz — Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☑ **State Department of Corrections**, ☐ **County Detention Center**, for a determinate term of 7 ~~days/months~~/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $_____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: $_____ plus 20% fee: $_____
Payment Terms:
☐ set by SCDPPPS
Recipient:

*Fine: $

§14-1-206 (Assessments 107.5%)		$
§14-1-211(A)(1) (Conv.Sur.)	$100	$ 100.00
§14-1-211(A)(2) (DUI Sur.)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§ 35.13 (Public Def/Prob)	$500	$
§73.3, 1B TP (Law Enforce.)	$25	$ 25.00
§33.7, 1B TP (Drug Ct.Sur.)	$100	$ 100.00
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Veh. Assmt)	$40/ea	$
3% to County (if pd.in instl.)		$ 6.75
TOTAL		$ 231.75

PTUP _____
_____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: PAY SURCHARGES WITHIN 90 DAYS FROM RELEASE FROM SCDOC

☐ Appointed PD or appointed other counsel, §35.13 TP Requires $500 be paid to Clerk during probation.

Ann Sanders
Clerk of Court/ Deputy Clerk

Court Reporter: Brenda Segrard

PRESIDING JUDGE James F. Barr
Judge Code: 0 1 1 1 1 0
Sentence Date: 11/20/03

White – Clerk *Green* – Corrections *Canary* – Probation *Pink* – Defendant

SCCA/217 (6/2003)

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
MAY 19 2020
S.C. SUPREME COURT

ORIGINAL JURISDICTION

Randy Schultz #298635 ..... Petitioner,

-vs-

Clerk of Courts Office,
Second Judicial Circuit,
Aiken County, Robert J.
Harte, Clerk ..... Respondent.

CERTIFICATE OF SERVICE

I certify that I have served the following: (1) Notice Of Motion And Petition For Writ Of Mandamus; (2) Petition To Proceed In The Original Jurisdiction; (3) Petitioner For Writ Of Mandamus; (4) Exhibit(s) [1], [2], [3], [4], [5] & [6]; and (5) Certificate of Service, upon Respondent by depositing a copy of the same in the United States Mail, First Class Postage affixed thereon, and addressed as follows:

CERTIFICATE OF SERVICE ADDENDUM SHEETS
PAGE (2), Randy Schultz #298635
May 15 ,2020

CLERK OF COURTS OFFICE, AIKEN COUNTY
FOR THE SECOND JUDICIAL CIRCUIT
Robert J. Harte, Clerk
Post Office Box 583
Aiken, South Carolina
29802-0583; and

SOUTH CAROLINA SUPREME COURT
CLERK OF COURTS OFFICE
Daniel E. Shearouse, Clerk
Post Office Box 11330
Columbia, South Carolina
29211-1330.

May 15 ,2020

Respectfully Submitted,

Randy Schultz

Randy Schultz
Q3A209 #298635
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina
29669

PRO SE PETITIONER

THE STATE OF SOUTH CAROLINA
In The Supreme Court

ORIGINAL JURISDICTION

Randy Schultz #298635 ..... Petitioner,

-vs-

Clerk of Courts Office,
Second Judicial Circuit,
Aiken County, Robert J.
Harte, Clerk ..... Respondent.

NOTICE OF MOTION AND PETITION FOR
WRIT OF MANDAMUS

PLEASE TAKE NOTICE that the undersigned has petitioned the South Carolina Supreme Court for a Writ of Mandamus to be heard in it's original jurisdiction, pursuant to Rule 245, of the

South Carolina Appellate Court Rules, SCACR; and Article V, §5, of the South Carolina Constitution; that is this Respondent has thirty (30) days,, exclusive the date of service, in which to serve and file a Return and/or Answer to the allegations raised in the writ for mandamus relief; or Petitioner shall for default judgment and relief on the pleadings with this Supreme Court.

May ___,2020

Respectfully Submitted,

Randy Schultz

Randy Schultz
Q3A209 #298635
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina
29669

PRO SE PETITIONER

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
MAY 19 2020
S.C. SUPREME COURT

ORIGINAL JURISDICTION

Randy Schultz #298635 ..... Petitioner,

-vs-

Clerk of Courts Office,
Second Judicial Circuit,
Aiken County, Robert J.
Harte, Clerk ..... Respondent.

PETITION TO PROCEED IN THE ORIGINAL JURISDICTION

This matter comes before this State's Supreme Court, pursuant to Rule 245, of the South Carolina Appellate Court Rules, SCACR; and Article V, §5, of the South Carolina Constitution, where this Petitioner seeks to invoke this Courts

original jurisdiction to entertain, and grant the relief sought within the writ of mandamus.

The matter contained within the attached Petition For Writ Of Mandamus is ripe for presentation to this Honorable Court; there is no other available remedy; this Court has competent jurisdiction to entertain this mandamus; and Petitioner is of the position and stance that this Court should compel the Respondent to perform the ministerial duty which he failed to perform.

CONCLUSION

WHEREFORE, Petitioner prays that this Honorable Court grant this petitiion to invoke it's original jurisdiction and entertain the petition for writ of mandamus.

May ____, 2020

Respectfully Submitted,

Randy Schultz

Randy Schultz
Q3A209 #298635
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina
29669

PRO SE PETITIONER

THE STATE OF SOUTH CAROLINA
In The Supreme Court

ORIGINAL JURISDICTION

Randy Schultz #298635 ..... Petitioner,

-vs-

Clerk of Courts Office,
Second Judicial Circuit,
Aiken County, Robert J.
Harte, Clerk ..... Respondent.

PETITION FOR WRIT OF MANDAMUS

Randy Schultz
Q3A209 #298635
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina
29669

PRO SE PETITIONER

STATEMENT OF THE CASE

1). On October 12,2018, Randy Schultz #298635 ("Petitioner"), filed an Application for Post-Conviction Relief ("PCR"), with the Clerk of Courts Office Second Judicial Circuit, (#2018-CP-02-2395). The Law Offices of Aiken & Hightower, P.A., Arthur K. Aiken, Esquire, was appointed to represent this Petitioner in these proceedings.

2). On January 21,2020, an evidentiary hearing would be convened in the Aiken County Courthouse. Petitioner was represented by counsel during these proceedings. At this time, Petitioner would attempt to have PCR counsel (Aiken) to present, and preserve, all claims and issues that were relevant to the allegations within the application. At one point during this proceeding, documentary evidence was attempted to be introduced into the record, but, the Respondents (Attorney Generals Office), objected for vague reasons, and the PCR court refused to permit theis documentation's inclusion. At no time did PCR counsel attempt to argue the necessity of this evidence, where these documents were essential to establishing the preponderance of evidence required to substantially prove the allegation. The evidentiary hearing ended with the case not fully adjudicated.

3). On February 13,2020, Petitioner served a formal correspondence, (see attached hereto and incorporated herewith a true and accurate copy of Exhibit [1]), expressing the desire to have his full bite at the apple. The position taken by this Petitioner was one that: (1) he would only be permitted a single

bite at the apple; (2) that he believed the appellate courts in South Carolina do not recognize the "plain error rule"; and (3) to ease PCR counsel's reservations, in the event that PCR counsel may be of the impression that he could be sanctioned for [any] issue he may believe frivolous, that such was inapplicable to PCR actions. Attached to this correspondence was a document entitled "MUTUAL AGREEMENT' for termination of PCR counsel. This agreement would open the door to permit this Petitioner pro se status by leave of the PCR court, so that he could be afforded the opportunity in which to preserve the issues and claims within his PCR application.

4). On February 21,2020, the Honorable Courtney C. Pope, Circuit Court Judge, who had presided over the evidentiary hearing, issued an "Order of Dismissal" ("Order") denying the relief sought by Petitioner in the pcr application, with prejudice. (See attached hereto and incorporated herewith a true and accurate copy of Exhibit [3], Order of Dismissal).

5). On March 5,2020, PCR counsel served a copy of this Order upon Petitioner. The Order was received, via Institutional Legal Mail Services, on March 10,2020. (See attached hereto and incorporated herewith a true and accurate copy of Exhibit [2]). Please note that the Order served upon this Petitioner was not clock-stamped that it had been filed with the Clerk of Courts Office. PCR counsel in this correspondence informed Petitioner that the Notice of Appeal was due by April 1,2020.

6). On March 24,2020, Petitioner served: (1) Notice Of Motion And Motion To Terminate Counsel; (2) Correspondence addressed to Judge Pope, dated March 24,2020; (3) Exhibit(s) [1] thru [3]; and (4) Certificate Of Service, upon all parties, to

inclue the PCR judge and Clerk of Courts Office.

7). On April 1,2020, the Clerk of Court, Robert J. Harte ("Respondent"), served a formal correspondence upon Petitioner informing him that he could not file such a motion because he was represented by counsel, and the pleadings would have to be filed through counsel. It was at this point that this Respondent failed to perform his obligatory ministerial duty and deprived Petitioner of his statutory right to pro se status. (See attached hereto and incorporated herewith a true and accurate copy of Exhibit [4] and [5]). On April 1,2020, Respondent clock-stamped and cancelled the clock-stamp for the motion to terminate counsel, and all documents attached thereto. Also, the formal notification informed Petitioner as to the justifications for failing or refusing to perform his ministerial duty of filing the pleading. (See attached hereto and incorporated herewith a true and accurate copy of Exhibit [6]).

8). The intentional failure to file the pleadings is a direct violation to this Petitioner's ability to access the courts. This refusal of failure caused an impediment of the entitlement to judicial proceedings. Kocaya v. Kocaya, 347 S.C. 26, 552 S.E.2d 765 (Ct.App. 2001)(It is fundamental that "[p]risoners have a constitutional right of access to the courts")(Fn. 3 - relying on Bounds v. Smith, 430 U.S. 817, 821, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977); 72 C.J.S. §106 (1987)). The failure of this Respondent to file the termination pleading; allowing the judicial machinery to do it's job of determining issues and rights is the very core of due process which protects an individuals' access to the courts. See Article(s) I, §2; and I, §3, of the South Carolina Constitution; and the First, Fifth and Fourteenth Amendments to the United States Constitution;

Moore v. Moore, 376 S.C. 467, 657 S.E.2d 743 (2008)(procedural due process); Clear Channel Outdoor v. City of Myrtle Beach, 372 S.C. 230, 235, 642 S.E.2d 565, 567 (2007)(due process requires: (1) adequate notice; (2) Adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses); and Ogburn-Matthews v. Loblolly Partners (Ricefield Subdivision), 332 S.C. 551, 505 S.E.2d 598 (Ct.App. 1998)(minimum due process requires: (1) notice; (2) opportunity to be heard in a meaningful manner; and judicial review).

The gist of this matter is that this Respondent has a duty to perform a ministerial obligations associated with the filing of pleadings associated with active or docketed cases. Respondent cannot make a determination as to the questions of law concerning the claims or issues within the pleading, nor render a judgment thereon. See, cf., Miller v. State, 377 S.C. 99, 659 S.E.2d 492 (2008)(relying on 21 C.J.S. **COURTS** §338 (2006)("[A] clerk of court cannot ordinarily determine questions of law [or] render judgment"). Miller is instructive in this present case.

In Miller, the Clerk of Court construed a writ of habeas corpus as a Post-Conviction Relief application and failed to file it. The Clerk refused to perform her ministerial duty based on her opinion that the habeas corpus lacked merit or was untimely. In this present case, the Respondent refused to file and record the attached pleading, Exhibits, and formal correspondences because he opined they were being filed in violation to the "hybrid representation" doctrine, due to Petitioner being represented by counsel at the time. It was Respondent's opinion that "Your attorney has to file the proper paperwork with our office". (See Exhibit [6]). Miller established that the duty that Petitioner sought to have performed was not discretionary. For a pleading to be proper "The Clerk has the

ministerial duty to verify the petition contains a case caption, a proper county designation, and the signature of the filing party". (See Exhibit [5]). A close examination of the pleadings will demonstrate that Petitioner has prepared these pleadings consistent with Miller and Rule 11, of the South Carolina Rules of Civil Procedure, SCRCP. These matters should have been filed and recorded with this Respondents office. We must further be mindful of the fact that the "hybrid representation" doctrine is not applicable to this current circumstance. See State v. Stuckey , 333 S.C. 56, 508 S.E.2d 564 (1998).

In Stuckey, this Court examined a claim of hybrid representation, and found that the Sixth Amendment to the United States Constitution provided no right to hybrid representation. It was further held that, "Nothing in this order shall be construed to limit any party's right to file a **pro se** motion seeking to relieve counsel. In this current situation Petitioner invoked the statutory right or entitlement found in S.C. Code Ann. §40-5-80 (Supp. 2002)("This chapter may not be construed so as to prevent any citizen from prosecuting or defending his own cause, if he so desires"). The failure on the part of this Respondent to perform his required ministerial duty has totally obstructed Petitioner's ability to appear in a judicial setting for all intents and purposes for a hearing consistent with the precedence set forth in Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d. 562 (1975)(concurrent with the right to assistance of counsel is the right to self-representation after a knowing and intelligent waiver of the right to counsel).

It is recognized and respected that mandamus is the highest judicial writ, Wilben v. Young, 26 S.C. 430, 205 S.E.2d 174 (1974), and is issued only when there is a specific right to be performed, and no other specific remedy. Willimon v. City of Greenville, 243 S.C. 82, 132 S.E.2d 69 (1963). The primary

purpose of the writ is to enforce and establish a duty created or imposed by law. Id.

To be entitled to a writ of mandamus requiring the perofmrnace of some act, this Petitioner must demonstrate: (1) a duty of the Respondent to perform the act; (2) that the duty is ministerial in it's character; (3) that this Petitioner has a specific legal right for which the discharge of the duty is necessary; and (4) that this Petitioner has no other legal remedy. Redman v. Lexington County School District, 314 S.C. 431, 445 S.E.2d 441 (1994). A ministerial duty is one which a person performs in obedience to a mandate of legal authority without regard to or the exercise of the act to be done. Godwin v. Carrigan, 227 S.C. 216, 87 S.E.2d 471 (1955); Sumter County v. Hurst, 189 S.C. 316, 1 S.E.2d 242 (1939).

The writ has been designed to compel action by the Respondent, and it has been held to be a remedial writ of wide scope available in numerous instances to compel performance of statutory duties. The courts remedy is to direct this Respondents will, so that obedience may be afforded. It's purpose is to enforce rights already established, rather than to establish or declare the rights of this Petitioner. I proceeds in every case upon the presumption that this Petitioner has an immediate and complete legal right to the thing demanded, and that a corresponding duty of an imperative nature rests upon the person to whom the writ is sent. See NUTS AND BOLTS OF SOUTH CAROLINA SUBSTANTIVE AND PROCEDURAL LAW §X.B.6, page 610 (1998), 2nd Ed., Honorable Ralph King Anderson. A petition for writ of mandamus or other writ is not a course of action, but a form of remedy or relief. Plum Creek Development v. City of Camden, 334 S.C. 30, 512 S.E.2d 106 (1999).

With the foregoing facts, evidence, and arguments, it is believed that this case if ripe for mandamus in this within this State Supreme's original jurisdiction, where it is evident that Respondent controls the accessibility of the courts in these matters; has already failed to perform the ministerial duty of filing these pleadings in that Office, without justifiable reasoning; so it is logical to maintain a position that any further attempt to file with that court, in that County, would be met with adversity and be returned, unfiled by this Respondent so that same exact reasons. The obstacle that causes a total impediment of accessing the court, i.e., lower circuit court, demonstrates sufficient cause to invoke this State's Supreme Courts original jurisdiction to entertain this mandamus.

CONCLUSION

WHEREFORE, this Petitioner prays that this Honorable Court to grant the issuance of a writ of mandamus compelling the Respondent to file the pleadings, where the foregoing arguments, evidence and standards require the enforcement by mandamus.

May ____,2020

Respectfully Submitted,

Randy Schultz

Randy Schultz
Q3A209 #298635
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina
29669

PRO SE PETITIONER

Randy Schultz
Q3A209 #298635
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina
29669

PRO SE APPLICANT

Aurthur Aiken, Esquire
Attorney at Law
2231 Devine Street, Suite 201
Columbia, South Carolina
29205

RE: REQUEST FOR MUTUAL TERMINATION AGREEMENT
Schultz v. State, #2018-CP-02-2395

Mr. Aiken,

Please permit this correspondence to serve as a formal communique' with this Firm, where I am seeking this Firm's assistance, or, mutual agreement to terminate as PCR counsel. I am enclosing a mutual agreement for termination of this Firm's representation in this matter. I would ask that this Firm take the opportunity to review and consider the following argument in an effort to resolve this matter by termination, or, by working with me to litigate all issues believed to be relevant to my PCR case.

On October 1,2018, I initiated a post-conviction relief (PCR) Application seeking to have all my claims adjudicated in one run. The Circuit Court Judge appointed this Firm to represent me in this PCR matter.

Exhibit D

On January 21, 2020, I was transported to the Aiken County Courthouse for an evidentiary hearing for the purported reason to have all my PCR issues presented and ruled upon. During this evidentairy hearing it become apparent that this Firm was refusing to present and preserve three issues that I believe were meritorious. I had discussed these matters with this Firm, and had been hopeful that it would utilize its expertise in arguing the points of these matters.

I have formed the opinion that this Firm may have disagreed with my rendition of the claims, and may have feared that it could, possibly, face sanctions, if, it presented a frivolous claim. I would never have requested this Firm to present a claim that I believed would be ruled frivolous, and cause this Firm to face sanctions relating to the purported frivolous claim. But, assuming, arguendo, that the claims I sought to be presented and ruled upon were frivolous ... this Firm could not have faced any form of sanctions or retribution for its presentment of the presumably frivolous claims. See Hiott v. State, 381 S.C. 622, 674 S.E.2d 491 (2009)("Courts treat PCR differently than traditional civil cases. For example, PCR actions are the only type of case which this Court mandates appellate counsel brief all arguable issues, despite counsel's belief the appeal is frivolous. A lawyer knowingly filing a frivolous claim in any other civil case violates Rule 11, SCRCP"). Even if this Firm had argued any issue it believed was frivolous, there was no fear of any sanction. As a matter of fact, it is mandatory that this Firm argue every claim that is applicable to my position relating to the pcr proceedings. See, cf., Bray v. State, 366 S.C. 137, 620 S.E.2d 743 (2005)(counsel on appeal from denial of post-conviction relief is required to brief arguable issues, despite counsel's belief that appeal is

Exhibit E]

frivolous, to safeguard the right to appeal). Without the presentation of these three issues, which require adjudication to be presented and presevered for appeal to the next appeal, is essential to minimum due process rights.

South Carolina appellate courts do no recognize the "plain error rule," under which a court in certain circumstances is allowed to consider and rectify an error not raised below by the party. Dykema v. Carolina Emergency Physicians, P.C., 348 S.C. 549, 554, 560 S.E.2d 894, 896 (2002); Kennedy v. South Carolina Retirement System, 349 S.C. 531, 564 S.E.2d 322 (2001). "Our mandatory preservation requirements make it doubly important that litigants generally are freely to file ...", (see Elam v. South Carolina Department of Transportation, 361 S.C. 9, 25, 602 S.E.2d 772, 780 (2004)) ... it is my position that a motion to amend, and the issues to be amended into the proceedings, should be filed, prior, to the service of the written order.

A motion to amend, at this stage ... and where during the evidentiary hearing the issues were brought forth ... would be an effective mechanism in which to include these claims in this record and have this PCR Court's judicial review as is required by minimum due process. Ogburn-Matthews v. Loblolly Partners (Ricefield Subdivisions), 332 S.C. 551, 505 S.E.2d 598 (Ct.App. 1998)(due process, at a minimum requires: (1) notice; (2) opportunity to be heard in a meaningful manner; and (3) judicial review). Furthermore, Rule 71.1(d), SCRCP, provides that it "shall insure that all available grounds for relief are included in the application and shall amend the application if necessary"). This offers the intent of our Supreme Court in promulgating this Rule 71.1(d), that all grounds for relief are to be as part of the record. This is the reasoning behind the Supreme Courts previously stating that an Applicant get "one bite

Exhibit [J]

at the apple", which means that an individual gets one full opportunity to raise and have judicially adjudicated each and every ground available. This has not occurred in this case.

Enclosed this Firm will find a brief agreement between myself, and this Firm, that will be attached to an upcoming termination pleading. If this Firm does not agree within my wishes to amend the PCR proceedings and therefore, create a complete record of the case, please sign this agreement to sever this Firm from this representation. If this Firm agrees to permit the amendment pleadings and affidavits, further requesting that the PCR Court conduct another evidentiary hearing, or, in the alternative, adjudicate the issues judicially, then I would request that this Firm file the amendment pleadings as soon as I serve them to this Firm.

I am aware of the format and procedures for the filing of an appeal notice, so it is not necessary for this Firm to represent me simply for that purpose. If this Firm decides to opt out of its representation, please notify the Clerk of Courts Office, so that in the vent an order is filed and executed will be promptly served upon me as a pro se litigant.

Furthermore, my wife contacted this Firm, and informed this Firm of my intent in these matters. it was this Firm's position that it was waiting for an Order from the PCR Court. Time is of the essence, and it is imperative that I move "while the iron is hot", so that I can get my issues in, prior to the filing of the order. Please inform me as to this Firm's decision i a reasonable amount of time, so that I may know what my next move consists of.

If I may be of further assistance to this Firm, In tese matters please do not hesitate to contact me. Thank you for this

Exhibit [J]

Firm's time and attention in these matters.

February 13, 2020

Respectfully Submitted,
Randy Schultz

rds/RS

cc: FILE
AIKEN

Randy Schultz
Q3A209 #298635
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina
29669

PRO SE APPLICANT

Exhibit [J]

MUTUAL AGREEMENT TO TERMINATE PCR COUNSEL

Randy Schultz #268635, does hereby respectfully make demand, and agree, to have the attached Motion To Terminate PCR Counsel granted. Applicant is the petitioning party in this Post-Conviction Relief (PCR) matter and seeks to be awarded pro se status. See S.C. Code Ann. §40-5-80 (Supp. 2002).

2/13/2

Randy Schultz

Randy Schultz #268635

Authur Aiken, Esquire, is the appointed counsel of record in this PCR matter; has explained the obligations and dangers of pro se status, i.e., self-representation, and believes that Applicant desires the enjoyment of that status. With this mindset, I would agree to my representation being terminated, at Applicant's request.

Authur Aiken, Esquire

EXHIBIT [J]

AIKEN & HIGHTOWER, PA
Attorneys at Law
PO Box 90707
Columbia, SC 29290
Phone: 803-799-5205
Fax: 803-799-5206

Arthur K. Aiken

A. Bea Hightower (Retired)

March 5, 2020

CONFIDENTIAL
Perry CI
Inmate Randy Schulz #00298635
430 Oaklawn Rd.
Pelzer, SC 29669

Re: Randy Schulz v. State of South Carolina
C/A: 2018-CP-02-02395

Dear Mr. Schulz:

I have enclosed an Order signed by the presiding judge that denies your Application for PCR and dismisses your PCR case. Please advise whether you wish to appeal. The appeal paperwork needs to be mailed for filing by April 1, 2020, so get back to me without delay

Please note our new mailing address above.

Sincerely,

A. K. Aiken

Arthur K. Aiken
art@aikenandhightower.come

Enclosure: as stated

File Stamp
CANCELLED
Date 4-1-2020 By SP
2020 MAR 05 PM
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Deputy Clerk

Exhibit [2]

STATE OF SOUTH CAROLINA COUNTY OFAIKEN	)	IN THE COURT OF COMMON PLEAS FOR THE SECOND JUDICIAL CIRCUIT
Randy Schultz, SCDC #298635	)	Case No.: 2018-CP-02-02395
Applicant,	)	**ORDER OF DISMISSAL**
v.	)	
State of South Carolina,	)	
Respondent.	)	

This matter comes before the Court by way of an application for post-conviction relief filed on October 12, 2018, by Randy Schultz (Applicant). The State (Respondent) filed a Return on February 4, 2019, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on January 21, 2020, at the Aiken County Courthouse. Applicant was present at the hearing and represented by Arthur Aiken, Esquire (PCR Counsel). Assistant Attorney General Brianna L. Schill of the South Carolina Attorney General's Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf. Martin C. Puetz, Esquire, (Counsel), also testified. 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 and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. On February 1 and 17, 2016, Applicant sold crack cocaine to an undercover confidential informant at his residence in Beech Island, South Carolina. Applicant was subsequently arrested for these crack cocaine distributions and indicted by the Aiken County Grand Jury for two counts of distribution of crack cocaine-third

or subsequent offense (2016-GS-02-01059, -01060) and for failure to stop for a blue light (2016-GS-02-01057). Counsel represented Applicant on these charges. Deputy Solicitor Elizabeth B. Young of the Second Circuit Solicitor's Office prosecuted the case.

On December 5, 2017, Applicant's case was called to trial in the Aiken County Court of General Sessions before the Honorable Doyet A. Early, III. Following jury selection, court was recessed for the day. On December 7, 2017, Applicant elected to forgo his jury trial and entered guilty pleas as indicted. Judge Early accepted Applicant's guilty pleas and sentenced him to fifteen years of imprisonment for each drug charge and three years for failure to stop for a blue light, all to run concurrently.

Applicant did not pursue a direct appeal.

ALLEGATIONS RAISED

In his original application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Involuntary guilty plea
2. Ineffective assistance of counsel
    a. "Trial counsel was ineffective for failure to interview the State's key witness (CI) on his behalf"
    b. "Counsel failed to challenge the chain of custody of the alleged drugs"
    c. "Counsel was ineffective for failure to investigate applicant's case"
    d. "Counsel failed to challenge the probable cause in applicant's case"
    e. "Counsel failed to move to suppress the affidavit and search warrant thereby violating applicant's 4th Amendment rights"
3. Motion to Suppress Pursuant to 17-30-110

On May 6, 2019, Applicant filed an amended application alleging the following claims:

1. Ineffective Assistance of Trial Counsel
    a. Schultz's guilty plea was not made with or based on advice of competent counsel.
    b. Schultz's guilty plea was not intelligently made.

Exhibit [3]

c. Trial counsel did not prepare Schultz's case for trial, and Schultz was left with no choice but to plead guilty.
d. Trial counsel did not discuss the elements of the offense or potential defense with Schultz.
e. Trial counsel never discussed the advantages and disadvantages of a trial versus the advantages and disadvantages of a plea with Schultz so that Schultz could make an informed choice of whether to enter a plea or try his case.
f. Trial counsel did not investigate Schultz's case.
g. Trial counsel did not tell Schultz the possible penalty for his offense.
h. Schultz asked trial counsel to appeal from his guilty plea, but trial counsel never filed an appeal.
i. Trial counsel never investigate whether the CI in his case was authorized by any law enforcement agency to serve as a CI.
j. Trial counsel never interviewed the CI.
k. If trial counsel did not know the identity of the CI, then trial counsel was ineffective for failing to move to compel the State to reveal the identity of the CI.
l. Trial counsel did not challenge the admissibility of the evidence secured by execution of a search warrant
m. Trial counsel never reviewed the evidence with [Schultz].

A hearing was held on January 21, 2020. At the outset of the hearing, PCR Counsel indicated Applicant would be going forward only on the allegations set forth in Applicant's amended application.

FACTUAL BACKGROUND

The Solicitor's Office summarized the facts at Applicant's guilty plea hearing as follows:

"Back in February of 2016, Aiken County Sheriff's Office narcotics investigators developed a confidential informant who stated that she would purchase crack cocaine from the defendant, Randy Schultz.

The first buy took place on February 1st, 2016. The confidential informant met with officers. She was equipped with recording equipment and issued document money from deputies. [The informant] went to the defendant's residence [. . .]. On that particular date, the defendant was standing in the door of his truck in a driveway. It was a 2007 F150 Super Crew, white truck. She walked up to him, she exchanged the funds for suspected crack cocaine and she left. She came back and turned that over to the officers. It was tested. It did come back positive for cocaine base .23 grams.

On February 17th, they did another undercover buy utilizing the same confidential informant, utilizing the same procedures, equipping her with the undercover surveillance

Exhibit [3]

equipment and also issuing her documented money. She went again to his residence [. . .]. Again, she exchanged the funds for the suspected crack cocaine. On that particular date, Mr. Schultz was sitting on his step, and with regard to the evidence developed from the undercover videos on that particular date it was extremely clear, that was the date that we were going to proceed to trial to today. They issued warrants for distribution.

In March, Deputy Sharping with the warrants team observed Mr. Schultz driving, leaving a gas station, so [. . .] he started following him on Cary Drive and then they went down to Old Trail Road. Two passengers jumped out of the truck and ran into the yard; and then there was a vehicle chase that lasted for some period and included reckless driving, such as speeding, running stop signs, and driving outside the line periodically. Ultimately, they were able to get him stopped and arrested him for the warrants. He had $1,684 in his truck on that date."

(GP Tr. 30-32).

SUMMARY OF PCR TESTIMONY

Applicant's Testimony

Applicant testified his plea was involuntary. Applicant testified Counsel did not discuss the elements of the crimes for which he was charged. Applicant testified Counsel did not discuss the pros and cons of going to trial versus pleading guilty.

Applicant testified he told Counsel "to do something" after his plea hearing, but they did not discuss an appeal. Applicant testified Counsel did not know the identity of the confidential informant (CI) and did not ask the State to disclose the identity of the CI Applicant testified only one of the two officers who participated in the controlled buys signed the chain of custody form and sent the drugs to the chemical analyst.

Applicant testified he met with Counsel three times in-person prior to his trial/guilty plea hearing. Applicant testified he reviewed the State's evidence with Counsel. Applicant testified he and Counsel did not discuss the elements or defenses to his charges, nor did they discuss the advantages and disadvantages of going to trial versus pleading guilty. Applicant testified he recalled giving up his constitutional rights at his guilty plea hearing. Applicant testified he told the court at his guilty plea hearing that he was not coerced, threatened, or promised anything

Exhibit 3

outside of the terms of the guilty plea for pleading guilty. Applicant testified he told the plea court he was not suffering from any mental disability at the time of his guilty plea hearing. Applicant testified he told the plea court he was satisfied with Counsel's representation. Applicant testified he told the plea court he had enough time to discuss his case with Counsel. After reviewing the plea hearing transcript, Applicant testified he recalled telling the plea court he did not want Counsel to do anything else regarding his case. Applicant recalled telling the plea court he was in fact guilty. Applicant testified he recalled telling the plea court he was pleading guilty on his own free will.

Applicant testified he did not ask Counsel to appeal because he did not know he could appeal his case. Applicant testified he wanted an appeal because he felt that Counsel did not investigate his case.

Counsel's Testimony

Counsel testified he has been practicing law for forty-one years and approximately half of his practice has been in criminal law. Counsel testified he became involved in Applicant's case because either Applicant or his wife retained him. Counsel testified he met with applicant approximately five-to-seven times in person. Counsel testified he discussed the elements and defenses to Applicant's charges. Counsel testified he reviewed the evidence with Applicant.

Counsel testified he knew the identity of the CI by August 2017 because Applicant told him who the CI was. Counsel testified Applicant had a personal connection to the CI. Counsel testified there were two different surveillance videos from two different controlled buys which clearly depicted Applicant as the drug dealer.

Counsel testified his investigation consisted of viewing the videos and still shots from the controlled buys, investigating the background of the CI, and reviewing the drug analysis

Exhibit [3]

documents. Counsel testified Applicant plead straight up to his charges after jury selection. Counsel testified the State asked for twenty years imprisonment, but the judge imposed a fifteen year prison sentence. Counsel testified he believed Applicant expressed an interest in pleading guilty after jury selection because he realized the CI was going to testify.

Counsel testified it is always his client's decision to plead guilty or go to trial. Counsel testified he would have continued trying Applicant's case if Applicant had wanted to finish his trial. Counsel testified he believed it was in Applicant's best interest to plead guilty.

Counsel testified he could not specifically recall discussing Applicant's right to appeal his guilty plea. Counsel testified he subsequently learned that Applicant could get credit for electronic monitoring, so he filed a motion to reconsider Applicant's sentence. Counsel testified the court ultimately gave Applicant credit for 482 days. Counsel testified he did not see any meritorious issues for appeal at the time of Applicant's guilty plea or at the time of Applicant's PCR hearing.

Counsel testified he reviewed the chain of custody documents from both of the controlled buys in preparation for Applicant's trial and did not see anything wrong with either of the documents. Counsel testified there were two distinct controlled buys, which explained why there were different investigator names listed on each sheet.

Counsel testified he and Applicant discussed the possible sentences for each of his charges. Counsel testified they discussed the pros and cons of going to trial versus pleading guilty. Counsel testified he did not believe Applicant had any viable defenses and he told Applicant that he had no viable defenses.

On cross-examination, Counsel testified the CI was an important witness for the State, primarily because the CI would have authenticated the surveillance video. Counsel testified he did not interview the CI. Counsel testified Applicant told him the CI was a crack-addict who was

Exhibit [3]

working off drug charges. Counsel testified he obtained the CI's criminal history and learned that she was prosecuted in federal court in 1996.

APPLICABLE LAW

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, 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. at 443, 334 S.E.2d at 814. 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. at 689. Applicant must overcome this presumption in order to receive relief. *Cherry v. State,* 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. *Id.* at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. *Id.* Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." *Id.* (quoting *Strickland*, 466 U.S. at 688 (1984)). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 117-18, 386 S.E.2d at 625. When there has been a guilty plea, the applicant must prove counsel's representation was below the standard of reasonableness and

Exhibit [23]

that, but for counsel's unprofessional errors, there is a reasonable probability he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart,* 474 U.S. 52, 58-59 (1985); *Roscoe v. State,* 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

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

Involuntary Guilty Plea

In evaluating issues concerning guilty pleas, this Court will consider the entire record, including the transcript of the guilty plea proceeding and the evidence presented at the post-conviction relief hearing. *Roddy v. State*, 339 S.C. 29, 528 S.E.2d 418 (2000). Voluntariness of a guilty plea is not merely determined by an examination of a specific inquiry by the plea court alone but rather is determined by the record of both the guilty plea proceeding and the post-conviction relief hearing. *Id.* In order to find a guilty plea was knowingly and voluntarily 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). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. *Dalton v. State*, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (citing *Blackledge v. Allison*, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid

Exhibit [3]

reasons why he should be allowed to depart from the truth of his statements." *Id.* (citing *Crawford v. United States,* 519 F.2d 347 (4th Cir. 1975)); *Edmonds v. Lewis*, 546 F.2d 566 (4th Cir. 1976).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court viewed 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 records regarding the subject convictions, the plea/trial 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. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

Involuntary Guilty Plea[1]

Applicant alleges his plea was involuntary because he made the decision to plead guilty based on the advice of incompetent counsel.

Applicant testified his plea was not voluntarily and intelligently made because he did not discuss the elements of the offenses, the possible sentences, or the advantages or disadvantages of going to trial versus pleading guilty with Counsel. Counsel testified he discussed the elements of the offenses, the possible sentences, and the advantages and disadvantages of going to trial versus pleading guilty with Applicant. Counsel testified his investigation consisted of reviewing the chain of custody and chemical analysis documents, reviewing the still shots and surveillance videos of the controlled buys, and researching the CI's background. Counsel testified he believed it was in Applicant's best interest to plead guilty, and that it was ultimately Applicant's decision to plead guilty. Counsel testified he would have continued with Applicant's trial had he wanted to.

[1] This section discusses allegations 1(a), 1(b), and 1(e) of Applicant's amended application.

Exhibit [E]

This Court finds the testimony of Counsel as to this allegation very credible, while also finding Applicant's testimony not credible. This Court finds Applicant's plea was entered freely and voluntarily. Counsel's credible testimony shows Applicant wanted to plead guilty and received a great benefit in accepting the State's plea offer. Counsel credibly testified Applicant had all the pertinent information regarding his charges when he decided to plead guilty, including the elements of the offenses, the potential sentences, and the advantages and disadvantages of pleading guilty versus going to trial. Applicant testified at his plea hearing that he was not suffering from any mental disability. (GP Tr. 25). Applicant also told the plea court he was not under the influence of drugs or alcohol at the time of his guilty plea. (GP Tr. 25). Applicant testified at his plea hearing that he was pleading guilty on his own free will. (GP Tr. 25-26). Applicant testified at his plea hearing he was satisfied with his legal services from Counsel. (GP Tr. 25). Based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing that his plea was not entered freely and voluntarily. Therefore, this allegation is denied and dismissed with prejudice.

Ineffective Assistance of Counsel

1. *Failure to Prepare Case for Trial*

Applicant alleges Counsel was ineffective for failing to adequately prepare for a trial.

To establish counsel failed to adequately prepare for trial, the 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); *Moorehead,* 329 S.C. at 334, 496 S.E.2d at 417 (holding trial counsel's failure to conduct an independent investigation does not constitute

Exhibit [3]

ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); *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).

Counsel testified he reviewed the evidence against Applicant in preparation for trial. Counsel testified Applicant ultimately chose to plead guilty because the CI was going to testify against him. Applicant also testified he and Counsel reviewed the State's evidence against him.

This Court finds the testimony of Counsel and Applicant as to this allegation credible. Counsel reviewed the evidence and file pertaining to Applicant's case. Applicant waived his right to a jury trial by pleading guilty. Moreover, as previously discussed, Applicant testified at his guilty plea hearing that he was satisfied with Counsel's representation and that he did not need any more time to discuss his case with Counsel. (GP Tr. 25.) This Court finds Applicant has failed to establish how Counsel was deficient in any way regarding the preparation of Applicant's case. Applicant has also failed to establish any resulting prejudice from Counsel's alleged deficiency, as Applicant has not provided any evidence showing how any additional preparation could have helped his case. Based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Counsel and, therefore, this allegation is denied and dismissed with prejudice.

Exhibit [5]

2. *Failure to Discuss Elements of the Offenses and Possible Defenses*

Applicant alleges Counsel was ineffective for failing to discuss the elements of the offenses and possible defenses with Applicant.

Applicant testified Counsel did not discuss the elements of the offenses and did not discuss or defenses with him. However, Counsel testified he discussed the elements of the offenses with Applicant. Counsel also testified Applicant did not have any viable defenses, and he told Applicant that he did not have any viable defenses.

This Court finds the testimony of Counsel as to this allegation very credible, while also finding Applicant's testimony not credible. This Court finds Applicant has failed to establish how Counsel was deficient in any way regarding this allegation. Counsel credibly testified he discussed the elements of the offenses and any possible defenses to the extent Applicant had any defenses. Applicant has also failed to establish any resulting prejudice from Counsel's alleged deficiency. Based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Counsel and, therefore, this allegation is denied and dismissed with prejudice.

3. *Failure to Investigate*

Applicant alleges Counsel was ineffective for failing to sufficiently investigate Applicant's case.

"[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

Exhibit [3]

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)).

As mentioned above, Counsel testified he reviewed the evidence the State had against Applicant, including but not limited to, witness statements, incident reports, and the drug analysis. Applicant testified he generally did not think Counsel did an adequate job at investigating his case, but provides no specific allegations.

This Court finds Counsel's testimony on this issue credible, while also finding Applicant's testimony not credible. Counsel credibly testified he investigated Applicant's case. Additionally, Applicant has not provided any testimony or evidence showing Counsel would have uncovered any additional evidence by way of additional investigation. Accordingly, this Court finds Applicant has failed to show how Counsel was deficient.

This Court further finds Applicant failed to meet his burden of proof as to prejudice, which requires Applicant to show this Court what further information Counsel would have uncovered through additional investigation. Moreover, Applicant has failed to credibly show there is a reasonable probability he would not have pleaded guilty and would have insisted on continuing his trial. *Hill*, 474 U.S. at 58-59; *Roscoe*, 345 S.C. at 16, 20. Accordingly, this allegation is denied and dismissed with prejudice.

4. Failure to Discuss Possible Penalties

Applicant asserts Counsel was ineffective for failing to discuss the possible penalties with Applicant.

Exhibit [5]

Counsel testified he discussed the possible penalties with Applicant, both under the terms of the plea agreement and if he were to be tried and convicted at trial. Applicant testified Counsel did not discuss the possible penalties for the offenses. This Court finds the testimony of Counsel as to this allegation very credible, while also finding Applicant's testimony on this issue not credible. The credible testimony shows Counsel discussed the possible penalties with Applicant. Therefore, this Court finds Applicant has failed to establish how Counsel was deficient in any way regarding this allegation.

Applicant has also failed to establish any resulting prejudice from Counsel's alleged deficiency. Based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Counsel and, therefore, this allegation is denied and dismissed with prejudice.

5. *Failure to File a Direct Appeal*

Applicant alleges Counsel was deficient for failing to file a direct appeal after Applicant requested an appeal.

Pursuant to *Roe v. Flores-Ortega,* 528 U.S. 470, 480 (2000), "counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." *Id.* Further, "a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings." *Id.*

Exhibit [3]

Applicant testified he told Counsel "to do something" after his plea hearing, but did they did not discuss an appeal. Counsel testified he could not specifically recall whether he discussed Applicant's right to appeal his guilty plea. Counsel testified he subsequently learned that Applicant could get credit for electronic monitoring, so he filed a motion to reconsider Applicant's sentence. Counsel testified the court ultimately gave Applicant credit for 482 days. Counsel testified he did not see any meritorious issues for appeal at the time of Applicant's guilty plea or at the time of Applicant's PCR hearing.

This Court finds Counsel's testimony as to this issue very credible, while also finding Applicant's testimony not credible. This Court finds Counsel was not deficient for failing to file an appeal. In this case, Applicant's PCR arises out of a guilty plea. As Counsel testified, Applicant did not request an appeal. As Counsel testified, there were no possible meritorious issues for appeal. This Court finds Applicant had no legitimate basis for an appeal. Accordingly, this allegation is denied and dismissed with prejudice.

6. Failure to Identify and Interview Confidential Informant[2]

Applicant alleges Counsel was ineffective for failing to investigate whether the CI was authorized to serve as a CI, failing to compel the State to identify the CI, and for failing to interview the CI.

Applicant testified Counsel did not know the identity of the CI and did not ask the State to disclose the identity of the CI. Counsel testified he knew the identity of the CI by August 2017 because Applicant told him the name of the CI. Counsel testified Applicant had a personal connection to the CI. Counsel testified the CI was an important witness for the State, primarily because the CI would have authenticated the surveillance video. Counsel testified he did not

[2] This discussion encompasses allegations 1(i)-1(k) of Applicant's amended allegations.

Exhibit [3]

interview the CI, and that Applicant told him the CI was a crack-addict who was working off drug charges. Counsel testified he obtained the CI's criminal history and learned that she was prosecuted in federal court in 1996. Counsel testified he believed the CI was a legitimate informant used by the State.

This Court finds Counsel's testimony as to this issue very credible, while also finding Applicant's testimony not credible. Contrary to Applicant's testimony, Counsel knew who the CI was because Applicant told him the name of the CI. Counsel investigated the CI's criminal background. The CI was a legitimate informant who partook in a controlled buy that was recorded on videotape and clearly depicted Applicant as the drug dealer. Additionally, Applicant did not provide any evidence of information that would have been uncovered had Counsel personally interviewed the CI. Accordingly, this allegation is denied and dismissed with prejudice.

7. *Counsel did not challenge the admissibility of the evidence secured by execution of a search warrant*

In his amended PCR application, Applicant alleges Counsel was ineffective for failing to challenge evidence secured by a search warrant. Applicant did not provide any evidence in support of this claim. Additionally, Applicant's charges arose from controlled buys, and not as the result of any search warrant. Accordingly, this Court considers this allegation waived and abandoned, and this Court denies and dismisses this allegation with prejudice.

8. *Failure to Review Evidence with Applicant*

Applicant alleges Counsel was ineffective for failing to review the State's evidence with Applicant. Counsel testified the evidence primarily consisted of videos and still shots of the two controlled buys. Counsel testified he reviewed the evidence with Applicant. Applicant also testified he reviewed the evidence with Counsel.

Exhibit [23]

This Court finds Counsel's and Applicant's testimony as to this allegation credible. Counsel and Applicant credibly testified Counsel reviewed the evidence with Applicant. Accordingly, this Court denies and dismisses this allegation with prejudice.

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief pursuant to the Uniform Post Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10 to -160. Counsel was not deficient in any manner regarding his performance, nor was Applicant prejudiced by Counsel's representation. Furthermore, the record and the PCR testimony show Applicant freely and voluntarily entered his plea. Accordingly, all allegations are denied and dismissed with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR (providing the appropriate procedure to perfect an appeal). 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. Further, Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for the appropriate procedures for appealing a judgment in a PCR action

Exhibit [3]

IT IS THEREFORE ORDERED:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice;

2. Applicant shall be remanded to the custody of SCDC.

AND IT IS SO ORDERED.

COURTNEY C. POPE
Presiding Circuit Court Judge
Second Judicial Circuit

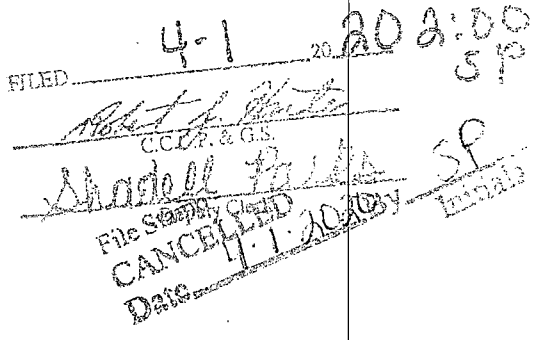
Feb 21, 2020

Exhibit L3

Randy Schultz
Q3A209 #298635
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina
29669

PRO SE APPLICANT

PRESIDING CIRCUIT COURT JUDGE
FOR THE SECOND JUDICIAL CIRCUIT
Honorable Courtney C. Pope, Judge
Post Office Box 583
Aiken, South Carolina
29802-0583



RE: MOTION TO TERMINATE COUNSEL
Schultz v. State, #2018-CP-02-2395

Judge Pope,

Please permit this correspondence to serve as a vehicle, and mechanism, for the foregoing issue of terminating counsel. For the following reasons I would respectfully demand of this Honorable Court the termination of counsel for the following justification.

On October 12,2018, Randy Schultz #298635 ("Applicant"), filed an Application for Post-Conviction Relief ("PCR"), with the Clerk of Courts Office, Aiken County, Court of Common Pleas. (#2018-CP-02-2395). In this PCR application Applicant, inter alia, alleged ineffective assistance of trial counsel claims of various natures.

Exhibit E43

The Law Offices of Aiken & Hightower, P.A., Arthur K. Aiken, Esquire, was appointed to represent this case.

On January 21,2020, Applicant was transported to the Aiken County Courthouse, for all intents and purposes of an evidentiary hearing purportedly relating to the issues and claims within the PCR application. During this hearing Applicant attempted to preserve his claims and issues, to include evidence, for future appellate review. It is this Applicant's opinion that either party, Applicant or Respondent, would appeal any adverse deicision rendered by this Court. PCR counsel failed to object, and did not provide any form of reasonable objection/argument to be placed in the record, where this Court refused to permit into evidence documentation that had been generated by Law Enforcement and was related to the evidence utilized to obtain a guilty plea/conviction. This was detrimental to the claims and issues that were at bar, and has deprived Applicant the most minimal due process protections consistent with well-settled principles of law; statutory provisions and Constitutional protections. It is well-settled that South Carolina does not recognize the "plain error rule", under which a court in certain circumstances is allowed to consider and rectify errors of law not raised in the lower court proceedings by the party, under the realm of appellate consideration. Dykema v. Carolina Emergency Physicians, P.C., 348 S.C. 549, 554, 560 S.E.2d 894, 896 (2002); Kennedy v. South Carolina Retirement Systems, 349 S.C. 531, 564 S.E.2d 322 (2001). Applican takes a stance that failure on the part of PCR counsel to argue a sound and logical justification for exclusion of this evidence, gives rise that PCR counsel is ineffective for not providing the most basic of fundamental rights and protections. for this Applicant.

PCR counsel had a duty and obligation to this Applicant to insure that all claims were preserved in the record that was relevant to the subject matter of the pcr proceedings. One source of this obligation arises in the provisions of Rule 71.1(d), of

Exhibit [J]

the South Carolina Rules of Civil Procedure, SCRCP. (Rule 71.1(d) provides in pertinent part: "... the court shall promptly appoint counsel to assist the applicant ... Counsel shall ensure that all available grounds for relief are included in the application and shall amend the application if necessary ..."). In essence, under these circumstances, the burden of proof is on this Applicant to establish and prove the allegations by a preponderance of the evidence. Frasier v. State, 351 S.C. 385, 570 S.E.2d 172 (2002). There were excluded several documents that were relevant to the claims and issues raised within the PCR application, and were detrimental to Applicant's case, that had been stricken or not permitted to be raised at the evidentiary hearing. And let the record reflect that, if, PCR counsel was of the belief that these issues and allegations were frivolous or meritless, that does not foreclose the assertion, arguing, and/or preserving them in the record or proceeding. Cf., Bray v. State, 366 S.C. 137, 620 S.E.2d 743 (2005)(Counsel on appeal from denial of post-conviction relief is required to brief all arguable issues, despite counsel's belief that the appeal issue is frivolous, to safeguard the right to appeal). Furthermore, such judgment concerning issues that should be raised, or not, should not be left to counsel's discretion because the appellate court's are established to determine such facts and set such precedences.

Due Process, at a minimum, requires: (1) Notice; (2) Opportunity to be heard in a meaningful manner; and (3) Judicial review. Moore v. Moore, 376 S.C. 467, 657 S.E.2d 743 (2008); Ogburn-Matthews v. Loblolly Partners (Ricefield Subdivisions, 332 S.C. 551, 505 S.E.2d 598 (Ct.App. 1998)(establishing the three elements of due process). One more point should be made, when this State's Supreme Court made a ruling as to the elements of due process, the Court further expanded the elements to due process to four elements. Clear Channel Outdoor v. City of Myrtle

Exhibit [illegible]

Beach, 372 S.C. 230, 235, 642 S.E.2d 565, 567 (2007)(the four elements of due process are: (1) Adequate notice; (2) Adequate opportunity for a hearing; (3) The right to introduce evidence; and (4) The right to confront and cross-examine witnesses). The failure of PCR counsel to protect these rights is ineffectiveness of that counsel's representation. Cf., Roberts v. State, Sh. Adv. Sh. Opinion No.# #25870 (September 13,2004)(PCR counsels failure to investigate); Washington v. State, 324 S.C. 232, 478 S.E.2d 833 (1996).

When PCR counsel did not object to the ruling of the introduction of the documents, generated by the arm of the prosecutors for the purpose of introduction into the criminal proceedings; which caused Applicant to enter into a guilty plea; disadvantages Applicant's position in these matters; further interfering with Applicant right to introduce evidence in this matter. Such conduct is, in itself, shocking to universal justice, where S.C. Code Ann. §17-27-80 provides that in a pcr proceeding the record must reflect all grounds ... and "other evidence" that may be necessary to meet the burden of the preponderance of proof. (§17-27-80 provides in pertinent part: ... The Court may receive proof by ... other evidence ..."). It is this Applicant's position that the documentation which was attempted to be entered into the record would have established the allegation raised in the pcr application; was not permitted for such purposes. It was the Respondents position that, since the Law Enforcement [Agency] (or Confidential Informant)(C.I.) that created and generated these documents were not present, so that they could testify, was simply a flimsy excuse to have the evidence kept out of the record. And this Court should further realize that PCR counsel did not offer any objection to the position of Respondent in this matter. The reason that Applicant refers to Respondents excuse to keep this evidence out of the

Exhibit [9]

proceedings was "flimsy" is due to the fact the documents were revealed in the issues within the PCR application, and Respondents and PCR counsel had advance notice prior to the proceeding and should have ensured that the witnesses were available to be cross-examined. Simply because the Respondents refused and/or failed to ensure their witnesses were not in court, for the purposes of testimony, does not foreclose the ability to seek inclusion of the documentation, where it is now demonstrated it was due to Respondents own negligence.

This Court must be mindful of the fact that, Applicant was at the mercy of PCR counsel's discretion due to the "hybrid representation" doctrine. There is no right to hybrid representation either at trial, or on appeal. Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002)(relying on Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989)); Whelchel v. Bazzle, 489 F.Supp.2d 523, **appeal dismissed**, 251 Fed.Appx. 166 (2007)(WL 3024457)(Under South Carolina law, defense counsel cannot serve as a mere conduit for pro se documents in an effort to avoid the prohibition against hybrid representation). Applicant has had to wait until there had been some form of purported [c]losure in the pcr matter.

The reason that Applicant uses the term "purported"is due to the following fact. On February 21,2020, this PCR Court (Honorable Courtney C. Pope, Circuit Court Judge), executed an Order of Dismissal ("Order"), denying the allegations of the application, with prejudice. Please be placed on notice that PCR counsel's correspondence attached to this Order was dated March 5,2020; the actual delivery date to Applicant was March 10,2020, via Institutional Legal Mail Services, here at the Perry Correctional Institution ("PCI"). Applicant's point in this stance rests one the fact that PCR counsel was never served with a "clock-stamped" copy that has been recorded in the Clerk of

Exhibit [4]

Courts Office. See Bowman v. Richland Memorial Hospital, 335 S.C. 88, 515 S.E.2d 259 (1999); Upchurch v. Upchurch, 367 S.C. 16, 624 S.E.2d 643 (2006)("only after the order is filed with the Clerk of Court are the parties given notice of the order"). The Order that has been provided Applicant, and the belief that PCR counsel's copy, has never been filed with the Clerk of Court's Office prior to service. This would undermine the the theory that Applicant, or PCR counsel, has been competently or adequately been served for the purpose of the start date pursuant to Rule 203(b)(1), of the South Carolina Appellate Court Rules, SCACR. (Rule 203(b)(1) provides for a "thirty days" time period for filing the Notice of Appeal, after the proper filing of the Order. It is apparent that PCR counsel did not pay attention to this matter, also.

Furthermore, Applicant respectfully demands that this Court grant the attached "Notice of Motion And Motion To Terminate Counsel"; where S.C. Code Ann. §40-5-80 (Supp. 2002), which permits an individual to act on his own behalf, in any court of this State. (§40-5-80 provides: "This Chapter may not be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires"). At this time, and within this Motion, Applicant would invoke his statutory right to "prosecute or defend his own cause." Applicant would attest to this Court that he is able to prosecute, and/or defend his own cause; he is aware of the dangers of self-representation associated with these types of circumstances; and demands that this Court grant the relief south within the motion.

Applicant would further state, for the purposes of this Motion, that is attached herewith and incorporated herewith, are copies of the correspondence dated March 5,2020; Order of Dismissal dated February 21,2020; and correspondence previously served on PCR counsel dated February 13,2020, in support of his

Exhibit [D]

claims and proof for granting this Motion.

If this Applicant may be of any further assistance, in these matters, please do not hesitate to contact him. Thank you for this Court's time and attention to these matters.

March 24, 2020

Respectfully Submitted,

Randy Schultz

rds/RS

cc: FILE
POPE
CLERK
AIKEN
SCHILL

Randy Schultz
Q3A209 #298635
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina
29669

PRO SE APPLICANT

Exhibit [J]

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)))	IN THE COURT OF COMMON PLEAS FOR THE SECOND JUDICIAL CIRCUIT
Randy Schultz #298635, Petitioner,	)	#2018-CP-02-2395
vs.	)	NOTICE OF MOTION AND MOTION TO TERMINATE COUNSEL
State of South Carolina, Respondents.	)	

FILED 4-1 20 20 2:00 SP
C.C.P. & G.S.
Deputy Clerk
File Stamp - CANCELLED Date 4-1-2020 By SP Deputy

This matter comes before this Honorable Court where, Randy Schultz #298635, pro se Applicant, would respectfully make demand that, THE LAW OFFICES OF AIKEN & HIGHTOWER, P.A., Arthur K. Aiken Esquire, be relieved as counsel of record relating to this present case. Mr. Aiken was appointed to represent this Applicant in a Post-Conviction Relief (PCR) matter. This Motion is brought pursuant to S.C. Code Ann. §40-5-80 (Supp. 2002).

This Motion is not sought as a means to cause undue delay, nor waste the time, resources or economics of any party

Exhibit [5]

associated herewith, to include this Court. This Motion is a proper vehicle, and mechanism, in which to have the granting of termination of counsel. Applicant is aware of the dangers associated with pro se representation, and believes that he is capable, and learned enough, to prosecute or defend his own cause and rights associated with this pcr case. (See attached hereto and incorporated herewith a true and accurate copy of the correspondence addressed to the Court dated March 24,2020). Applicant is of the position and belief that he should be afforded this relief.

CONCLUSION

WHEREFORE, Applicant would respectfully demand of this Honorable Court that PCR counsel be relieved of all duties and obligations to this case; and Applicant be permitted to proceed pro se.

March 24,2020

Respectfully Submitted,

Randy Schultz

Randy Schultz
Q3A209 #298635
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina
29669

PRO SE APPLICANT

Exhibit [5]

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)	IN THE COURT OF COMMON PLEAS FOR THE SECOND JUDICIAL CIRCUIT
Randy Schultz #298635, Petitioner,	)	#2018-CP-02-2395
vs.	)	CERTIFICATE OF SERVICE
State of South Carolina, Respondents.	)	

File Stamp CANCELLED Date 4-1-20 by SP Initials FILED 4-1 at 2:00 SP
CLERK OF C.C.S.
Deputy Clerk

I, Randy Schultz #298635, pro se Applicant, hereby certify's that the following has been served (1) Notice Of Motion And Motion To Terminate Counsel; (2) Correspondence to Judge Pope, dated March 24,2020; (3) Exhibit(s) [1], [2], and [3]; and (4) Certificate Of Service, upon Respondents counsel of record by depositing a copy of the same in the United States Mail, First Class postage affixed thereon, and addressed as follows:

EXHIBIT [5J]

SOUTH CAROLINA ATTORNEY GENERALS OFFICE
Brianna L. Schill, Esquire
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, South Carolina
29211-1549;

Honorable Courtney C. Pope, Judge
Presiding Judge For The Second Judicial Circuit
Post Office Box 583
Aiken, South Carolina
29802-0583;

CLERK OF COURTS OFFICE, AIKEN COUNTY
FOR THE SECOND JUDICIAL CIRCUIT
Robert J. Harte, Clerk
Post Office Box 583
Aiken, South Carolina
29802-0583; and

LAW OFFICES OF AIKEN & HIGHTOWER, P.A.
Arthur K. Aiken, Esquire
2231 Devine Street, Suite 201
Columbia, South Carolina
29205.

EXHIBIT [5]

CERTIFICATE OF SERVICE ADDENDUM SHEETS
PAGE 3, Randy Schultz #298635
March 24,2020

March 24,2020

Respectfully Submitted,

Randy Schultz

Randy Schultz
Q3A209 #298635
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina
29669

PRO SE APPLICANT

EXHIBIT [5]

Aiken County Clerk of Court
P. O. Box 583
Aiken, S.C. 29802-0583
Phone: 803-642-1715

April 1, 2020

Mr. Shultz,

We are sending these papers back to you because since you do have Mr. Aiken as your attorney, you cannot file anything Pro-Se. Your attorney has to file the proper paperwork with our office. We clocked in the document before we realized you had an attorney. Cancelled Stamps have been stamped on the documents so that they cannot be filed in this office. Once Mr. Aiken is no longer you attorney and you become Pro-Se, then you can file your own documents. Please get in touch with your attorney about filing the proper paperwork from his office. Thank you! Have a great day!

Aiken County Clerk's Office.

Exhibit [6]