

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

—————
Certiorari to Spartanburg County

Honorable G. Thomas Cooper, Circuit Court Judge

—————
BENNIE LEE GRIFFIN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000142

—————
APPENDIX
—————

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

CHELSEY MARTO
Assistant Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

RECEIVED

Aug 12 2020

S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 COUNTY OF SPARTANBURG) 2017-GS-42-4292
)
)
)
 STATE OF SOUTH CAROLINA)
) PLAINTIFF)
 vs.) TRANSCRIPT OF RECORD
)
 BENNIE LEE GRIFFIN)
)
) DEFENDANT)

February 27, 2018
 Spartanburg, South Carolina

B E F O R E:

THE HONORABLE GRACE G. KNIE, Judge.

A P P E A R A N C E S:

JAMES HUNTER, ESQ.
 Attorney for the State

LARRY CRANE, ESQ.
 Attorney for the Defendant

APRIL HERRON
 Official Court Reporter

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BENNIE GRIFFIN

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There were no exhibits.

» > o < «

Certificate of Reporter 15

BENNIE GRIFFIN-EXAMINATION BY THE COURT

1 THE CLERK: Can you please raise your right
2 hand.

3 Bennie Griffin, after being duly sworn,
4 testified as follows:

5 THE COURT: Yes.

6 MR. HUNTER: Your Honor, standing before you
7 today is Bennie Griffin, he's here on one indictment,
8 2017-4292, true bill indictment for trafficking
9 cocaine over 200 grams. He's pleading to trafficking
10 cocaine 28 to 100 grams, second offense, Your Honor,
11 with a negotiated 15 year sentence. He's here with
12 his attorney, Larry Crane. He does have some other
13 charges, which was a search warrant, those charges
14 are being dismissed as part of this plea, Your Honor.

15 THE COURT: Okay.

16 EXAMINATION

17 BY THE COURT:

18 Q Good afternoon, sir, you Ben Griffin?

19 A Yes, ma'am.

20 Q Okay. I'm going to ask you to speak up for me,
21 all right?

22 A Yes, ma'am.

23 Q All right. Thank you, sir. Have you been
24 sworn?

25 A I have.

BENNIE GRIFFIN-EXAMINATION BY THE COURT

1 Q All right. Sir, there are some questions that I
2 need to go over with you before we proceed any further
3 with your plea. I understand that this is coming before
4 me as a negotiated sentence; is that correct, 15 years?
5 So, the way that this will work, sir, that if I find
6 during my hearing the facts and statements from the
7 solicitor and from your lawyer, that I simply can't go
8 along with that, I will allow you all to stand down and
9 you can take it front of another judge on another day, if
10 I find that I can't go along with it; do you understand?

11 A Yes, ma'am.

12 Q All right, thank you, sir. Sir, do you
13 understand that the purpose of your being here this
14 afternoon is for you to enter a guilty plea and that would
15 be opposed to you having a trial on the charges against
16 you?

17 A Yes, ma'am.

18 Q When you do that, sir, you waive very important
19 constitutional rights, okay? Not only are you waiving
20 your right to a trial by jury, but you also waive your
21 right to confront witnesses against you and your right to
22 remain silent; do you understand?

23 A Yes, ma'am.

24 Q Sir, if you were to have a trial, a jury trial,
25 or a bench trial, the burden of proof would not be on you

BENNIE GRIFFIN-EXAMINATION BY THE COURT

1 and Mr. Crane, the burden of proof is on The State, on the
2 solicitor to prove every element of every charge against
3 you beyond a reasonable doubt. And you're presumed to be
4 innocent until proven guilty; do you understand?

5 A Yes, ma'am.

6 Q And sir, if you were to have a jury trial, all
7 members of the jury, everyone of those members of your
8 jury panel, would have to agree to find you guilty; do you
9 understand that?

10 A Yes, ma'am.

11 Q Knowing all of that, sir, is it still your wish
12 that you go forward on pleading guilty this afternoon?

13 A Yes, ma'am.

14 Q All right. I have a true billed indictment and
15 this a indictment number 2017-GS-42-4292, The State vs.
16 Bennie Lee Griffin, indictment for trafficking in cocaine
17 in violation of South Carolina Code Section 44-53-370.
18 And you are actually pleading guilty to the offense of
19 trafficking in cocaine, 28 to 100 grams, second offense,
20 with a potential penalty of seven to 30 years and a fine
21 of \$50,000 in violation of South Carolina Code Section
22 44-53-370(e)(2)(d)(2). So sir, first let me ask, do you
23 understand the offense that you're pleading guilty to?

24 A Yes, ma'am.

25 Q All right. And do you understand that this

BENNIE GRIFFIN-EXAMINATION BY THE COURT

1 offense is classified as violent and serious?

2 A Yes, ma'am.

3 Q Do you have any questions about that of your
4 lawyer, Mr. Crane or for me?

5 A No, ma'am.

6 Q All right.

7 Now, counsel can y'all approach just one
8 second?

9 (WHEREUPON, a bench conference was held.)

10 BY THE COURT:

11 Q And just so we're clear, Mr. Griffin, even
12 though you initialed your sentencing sheet, indicating
13 that this had not been presented to the grand jury, it
14 actually had been indicted. And this is a true billed
15 indictment; do you understand?

16 A Yes, sir.

17 Q Apparently, your lawyer was trying to cover all
18 the basis, which is a good thing, but this has already
19 been indicted, okay. Do you understand that?

20 A Yes, ma'am.

21 Q And sir, do you understand that if you're
22 pleading to -- the offense that you're pleading guilty to
23 is a lesser-included offense of the offense which you were
24 actually charged.

25 Because the original amount was 200 grams?

BENNIE GRIFFIN-EXAMINATION BY THE COURT

1 MR. HUNTER: Yes, Your Honor.

2 BY THE COURT:

3 Q And you're pleading to 28 to 100 grams; do you
4 understand that?

5 A Yes, ma'am.

6 Q All right. Has anybody threatened you or
7 coerced you or in any way intimidated you to get you to
8 enter this guilty plea today?

9 A No, ma'am.

10 Q Now, don't be offended, sir, I ask everybody the
11 next question. Were you at any time during your
12 communications with your lawyer or are you today under the
13 influence of alcohol, drugs or any intoxicant that would
14 impair your judgment?

15 A No, ma'am.

16 Q Do you suffer from any mental or physical
17 infirmity that would effect your ability to understand
18 what we're doing today?

19 A No, ma'am.

20 Q Do you take any prescribed medication?

21 A Yes, ma'am.

22 Q What do you take?

23 A I take three or four things.

24 Q Okay. Well, let me try to be as clear as I can.
25 For what reasons are these medications prescribed for you?

BENNIE GRIFFIN-EXAMINATION BY THE COURT

1 A I have diabetes.

2 Q Okay.

3 A High blood, cholesterol.

4 Q Okay. And have you taken those medications as
5 prescribed in this last three days?

6 A Yeah, I take them every day.

7 Q Okay. When you take them as they are
8 prescribed, do they interfere with your ability to think
9 and reason mentally, sir?

10 A No, ma'am.

11 Okay. Mr. Crane, have you had the
12 opportunity to talk to Mr. Griffin today?

13 MR. CRANE: Yes, ma'am.

14 THE COURT: And have you had an opportunity to
15 speak with Mr. Griffin in the past?

16 MR. CRANE: Yes, ma'am.

17 THE COURT: And sir, do you have any concerns
18 about going forward today and proceeding with the
19 plea hearing?

20 MR. CRANE: No, ma'am.

21 BY THE COURT:

22 Q Mr. Griffin, sir, it is your wish that we
23 proceed today?

24 A Yes, ma'am.

25 Q All right. Mr. Griffin, are you satisfied with

BENNIE GRIFFIN-EXAMINATION BY THE COURT

1 the services of your legal counsel?

2 A Yes, ma'am.

3 Q Do you wish to enter your plea at a time, sir?

4 A Yes, ma'am.

5 Q And how do you plead, guilty or not guilty?

6 A Guilty.

7 Q Are you doing so freely, knowingly and
8 voluntarily, sir?

9 A Yes, ma'am.

10 Q Lastly, please be advised that in the event that
11 you wish to appeal any aspect of your plea hearing today,
12 you only have 10 days to do so in writing to this court;
13 do you understand?

14 A Yes, ma'am.

15 THE COURT: All right. I will accept your plea,
16 sir. I need for you to listen to the statements of
17 the solicitor.

18 Yes, sir, Mr. Hunter.

19 MR. HUNTER: Thank you, Your Honor, may it
20 please the Court?

21 THE COURT: Yes, sir.

22 MR. HUNTER: On January 24th, 2017, officers
23 with the Spartanburg County Sheriff's Office
24 Narcotics Unit executed a search warrant at ■ Price
25 Street in Inman, South Carolina here in Spartanburg

1 County, which was the residence of the Defendant.
2 They observed the Defendant through a closed glass
3 storm door, demanded he open the door. Took a step
4 towards the door then started going towards the
5 kitchen. Officers broke open the door, entered the
6 residence. He was detained in the kitchen and a
7 Kelly Lyles was located in the master bedroom.

8 When asked if he had any illegal substances in
9 the house, he admitted to having six to seven ounces
10 of cocaine, pills and marijuana in the kitchen.
11 Officers also located U.S. currency on his person and
12 he claimed to have more in the bedroom. Total
13 officers located 221.98 grams of cocaine, multiple
14 baggies. They also located Hydrocodone, Alprazolam,
15 Quazepam, Diazepam pills, along with over 150 grams
16 of marijuana. Also located over \$9,000 in U.S.
17 currency. Some of which had drug residue on it. The
18 defendant did write a statement claiming these items.

19 His prior record is a 1987 possession of
20 cocaine. 1997, an attempt to conspiracy the drug
21 laws. 2012 possession with intent to distribute
22 crack, possession with intent to distribute cocaine,
23 possession with intent to distribute marijuana. And
24 in 2016, it looks like a cocaine half mile charge,
25 Your Honor.

1 THE COURT: Okay. Thank you.

2 MR. HUNTER: Yes, ma'am.

3 THE COURT: Was discovery shared with Mr. Crane?

4 MR. HUNTER: Yes, Your Honor. Mr. Crane is his
5 second lawyer on the case and Mr. Crane did receive
6 discovery.

7 THE COURT: Okay.

8 Mr. Crane, sir, did you have an opportunity to
9 review that evidence and discovery with your client?

10 MR. CRANE: Yes, ma'am.

11 THE COURT: All right. I'm happy to hear from
12 you. But if you would give me, on the sentencing
13 sheet, there was a couple of things that aren't
14 completed, and I just thought I would go ahead while
15 I got it. How old is Mr. Griffin?

16 MR. CRANE: Fifty-nine.

17 THE COURT: And why don't you have him maybe
18 write down his date of birth?

19 MR. CRANE: Here it is right here. Judge, I
20 asked the solicitor if he needed all that, he told me
21 no.

22 MR. HUNTER: Well, you asked me the social.

23 MR. CRANE: Okay.

24 THE COURT: Okay. Bear with me one moment.

25 MR. CRANE: Yes, ma'am.

1 THE COURT: Okay. Thank you. All right
2 Mr. Crane, excuse the interruption, sir, be happy to
3 hear from you.

4 MR. CRANE: Thank you, Judge. When I listened
5 to the solicitor give the prior record of
6 Mr. Griffin, I tried to think back how long I've
7 known him. He came to court for drugs in '97 and
8 also in 2006. I represented him the past. We got to
9 know each other quite well. I consider him a friend
10 of mine as well as a client. He's been a real good
11 client. He has sent me other clients. And I was --
12 I've been with him since '97, I don't know. But it's
13 been a long time. This a bad day for me. I mean,
14 I'm pulling for him, I know he's going to jail and he
15 and I talked and I think the solicitor and I talked
16 about a month ago, maybe more. And the deal was
17 already cut when I got into this. As solicitor said
18 there was a first attorney. Then I talked to
19 Mr. Griffin about that. And I said, the best I can
20 do is the 15 year deal.

21 He's been dealing with it. He's known for about
22 a month that today was the court date, he's here,
23 he's ready to do it, he knows what he did was wrong.
24 It's a situation, Judge, where Mr. Griffin decided to
25 be 59 years old and he recently -- his wife recently

1 died within the last six months? Six months. He
2 actually has 10 children. He went through the 11th
3 grade. He did some yard work on the side but he done
4 one thing, Judge, and he's been in the drug business
5 for a while. Unfortunately, this time he got caught
6 with a lot of stuff. He tells me the stuff wasn't
7 his but that's neither here nor there, he had it,
8 he's pleading guilty. And we would ask that you go
9 along with the 15 years.

10 THE COURT: Thank you, sir.

11 Mr. Griffin, is there anything you'd like to
12 say?

13 MR. GRIFFIN: No, ma'am.

14 THE COURT: And he spent two days in jail? Just
15 two?

16 MR. CRANE: Yes, ma'am.

17 THE COURT: All right. Okay. With regard to
18 the matter of the State of South Carolina, County of
19 Spartanburg vs. Bennie Lee Griffin, indictment number
20 2017-GS-42-4292, as to the offense of trafficking in
21 cocaine 28 to 100 grams, second offense, in violation
22 of South Carolina Code Section 44-53-370(e)(2)(d)(2),
23 it would be the order of the Court that are based
24 upon the statements of counsel and the Defendant,
25 that I will approve and go along with the negotiated

1 sentence of 15 years. Therefore, the Defendant shall
2 be committed to the State Department of Corrections
3 for 15 years. He will receive credit for time
4 served, which has been represented to the Court to be
5 two days.

6 Good luck to you, Mr. Griffin.

7 MR. CRANE: Thank you, Judge.

8 (WHEREUPON, the proceedings were concluded)

9
10
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19
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25

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Spartanburg)
Beennie Lee Griffin)
 Full name and prison number (if any) of Applicant.)

IN THE COURT OF COMMON PLEAS

v.)
)
 State of South Carolina)

APPLICATION FOR
 POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2018 JUN -8 PM 5:55
 M. HOPE BLACKBEE

1. Place of detention Perry Correctional Institution
2. Name and location of Court which imposed sentence Spartanburg General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) (2017-GS-420-429⁴) Trafficking in cocaine 28-100g "2nd"
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) (February 27, 2018) (15 years sentence)
 - (b) _____

SEARCHED
 SERIALIZED
 INDEXED
 FILED

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty N/A

(c) after a plea of nolo contendere N/A

7. Did you appeal from the judgment of conviction or the imposition of sentence?

No

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. N/A

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. N/A

ii. _____

iii. _____

(c) the date of each such result:

i. N/A

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) Counsel failed to file an Direct Appeal

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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CLERK OF COURT
SPARTANBURG COUNTY
2010 JUN -5 PM 3:55
M. HOPE BLACKLEY

- (a) (See: Attachments)
- (b) _____
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out

in (10):

- (a) (See: Attachments)
- (b) _____
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____

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 CLERK OF COURT
 SPARTANBURG COUNTY
 2019 JUN -5 PM 3:55
 M. HOPE BLACKLEY

10(A) Ineffective assistance of counsel for failure to discharge his duty of due diligence to investigate the evidence, facts, and witness(es) in the case.

(B) Ineffective assistance of counsel for failure to provide a proper defense for physical evidence in the case.

(C) Ineffective assistance of counsel for a involuntary plea.

(D) Ineffective assistance of counsel for his abandonment his client.

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SPARTANBURG COUNTY
2018 JUN -5 PM 3:55
M. HOPE BLACKNEY

11(a)(1) Counsel failed to investigate the Narcotic Investigator informant "Timothy Jackson", to make sure he was registered with "Sled", for a drug trafficking investigation. The informant "Timothy Jackson", was not registered with "Sled", pursuant to Policy 13.30, "use of informants for investigations", and furthermore this investigation was unlawful and illegal. Furthermore, the informant was visiting the Petitioner's house, and using drugs the night before the raid, and the informant witnessed 220 grams of cocaine, and a large quantity of money.

(2) Counsel failed to investigate the informant, and make sure he was not under the influence of narcotics in this case.

(3) Counsel failed to investigate the narcotic investigator's procedure and testimony, involving the issuing of the search warrant, by the magistrate judge. Therefore, by the investigators violating Sled Policy 13.30, and failing to register the informant, then came the improper influencing of the magistrate judge to issue the search warrant. Furthermore, Petitioner's 4th amendment right of privacy was violated by these actions.

- 20
- (4) Counsel failed to suppress the evidence out of the case, pursuant to a violation of "Sled Policy 13.30", by the investigators.
 - (5) Counsel failed to challenge the subject matter jurisdiction of the Petitioner's indictment, pursuant to the investigator's violation of "Sled Policy 13.30", by not registering the informant "Timothy Jackson", for a investigation. Then the investigators improperly influenced the Grand Jury to indict Petitioner with tainted evidence and false testimony. Therefore, the trial court lacked jurisdiction to accept Petitioner's guilty plea.
 - (6) Counsel failed to provide Petitioner with a motion of discovery so the Petitioner could assist and investigate evidence in the case.
 - (7) Counsel failed to request a preliminary hearing so Petitioner could more adequately be informed about the case.
 - (8) Counsel was ineffective for 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's violation of "Sled Policy 13.30, informant agreement."
 - (9) Counsel failed to have a valid strategy for case.
 - (10) Counsel failed to investigate witness(es) and prepare for trial.
 - (11) Counsel provided erroneous advice about Petitioner's sentence, being a turn around at Kirkland, and being released.

16 (A) (B) and (C) Ineffective assistance of counsel: This is the only venue I am aware of for these type of claims.

iv. _____
(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

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 SPARTANBURG COUNTY
 2010 JUN -5 PM 3:55
 M. HOPE BLACKLEY

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) (See: Attachment)
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? ✓
- (b) your trial, if any? N/A
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. (Harry W. Crane)
- ii. _____
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Guilty Plea
- ii. _____
- iii. _____

19. State clearly the relief you seek in filing this application:

(Reverse and Remand)

20. Are you now under sentence from any other court that you have not challenged?

N/A

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2010 JUN -5 PM 3:55
 M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
County of)

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Peru...

SWORN to and subscribed before me this 30
day of May, 2018.

Tamara Conwell (L.S.)
Notary Public

My Commission Expires: September 25, 2021

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CLERK OF COURT
SPARTANBURG COUNTY
2018 JUN -5 PM 3:55
M. HOPE BLACKLEY

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

[Handwritten Signature]

Applicant

SWORN or affirmed to and subscribed before me this
30 day of May, 2018.

[Handwritten Signature]

Notary Public

My Commission Expires: September 25, 2023

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 JUN -5 PM 3:56
M. HOPE BLACKLEY

CLERK OF COURT
SPARTANBURG COUNTY

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
)	
Bennie Lee Griffin,)	Case No.: 2018-CP-42-1906
S.C.D.C. No. 375591,)	
)	
Applicant,)	
)	RETURN
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2019 MAR -4 AM 9:48

In response to the application for post-conviction relief filed by Bennie Lee Griffin (Applicant) on June 5, 2018, Respondent would show this Court:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the August 2017 term of the Spartanburg County Grand Jury for possession with intent to distribute (2017-GS-42-4294) and trafficking cocaine in the range of 200 grams (2017-GS-42-4292).

Originally, James T. Rutherford, Esquire represented Applicant until he was relieved as counsel, and James Hunter, Esquire of the Seventh Circuit Solicitor’s Office, prosecuted the case. Laurence W. Crane began representing Applicant on January 22, 2018. On February 27, 2018, Applicant pled guilty to a lesser included offense of trafficking cocaine in the range of 28-100 grams with a negotiated sentence of 15 years. The possession with intent to distribute charge was dismissed. The Honorable Grace G. Knie accepted the negotiated sentence. Applicant did not appeal.

II. STATEMENT OF THE FACTS

The underlying facts of the convictions for which Applicant is incarcerated were articulated by the State during the plea proceeding as summarized below: (Tr. 9-11).

On January 24, 2017, officers with the Spartanburg County Sheriff's Office Narcotics Unit executed a search warrant at ■ Price Street in Inman, South Carolina in Spartanburg County, which was the residence of the Applicant. They observed the Applicant through a closed glass storm door, and then demanded he open the door. Applicant took a step towards the door, but then detoured to the kitchen. Officers then entered the residence. Applicant was detained in the kitchen. (Tr. 9-11).

When asked if he had any illegal substances in the house, Applicant admitted to having six to seven ounces of cocaine, pills, and marijuana in the kitchen. Officers located United States currency on him and the bedroom. In total, officers located 221.98 grams of cocaine and multiple baggies. They also located Hydrocodone, Alprazolam, Quazepam, Diazepam, and over 150 grams of marijuana. Furthermore, officers located \$9,000 in United States currency. There was drug residue located on some of the United States currency. Applicant wrote a statement claiming these items. (Tr. 9-11).

Applicant's prior record is a 1987 possession of cocaine, 1997 attempted drug conspiracy, 2012 possession with intent to distribute crack, possession with intent to distribute cocaine, possession with intent to distribute marijuana, and 2016 cocaine half-mile charge. Upon inquiry by the Court, Applicant confirmed the above articulated facts. (Tr. 9-11).

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III. CURRENT APPLICATION

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

1. Failure to investigate
 - a. Ineffective Assistance of Counsel for failure to discharge his duty of diligence to investigate the evidence, facts, and witnesses in the case.
 - b. Failed to investigate the Narcotics Investigation information "Timothy Jackson," to make sure he was registered with "Sled" pursuant to policy 13.30" use of informants for investigations and furthermore this investigation was unlawful and illegal.
 - c. Furthermore, the informant was visiting the Applicant's house and using drugs the night before the raid and the informant witnessed 220 grams of cocaine, and a large quantity of money.
 - d. Failed to investigate the informant and make sure he was not under the influence of narcotics in this case.
 - e. Failed to investigate the narcotic investigator's procedure and testimony, involving the issuing of search warrant by the magistrate judge. Therefore, by the investigators violating Sled Policy 13.30 and failing to register the informant, then came the improper influencing of the magistrate judge to issue the search warrant.
 - f. Applicant's 4th Amendment right of privacy was violated by these actions.
 - g. Counsel failed to investigate witnesses and prepare for trial.
2. Involuntary Plea
 - a. Ineffective assistance of counsel for an involuntary plea.
 - b. Applicant's plea was unknowing and involuntary entered into, pursuant to the investigator's violation of "Sled Policy 13.30 informal agreement."
 - c. Counsel provided erroneous advice about Applicant's sentence being a turnaround at Kirkland and being released.
3. Failure to Advise
 - a. Counsel failed to suppress the evidence out of the case, pursuant to violation of "Sled Policy 13.30," by the investigators.
 - b. Counsel failed to provide Applicant with a motion of discovery, so the Applicant could assist and investigate evidence in the case.
 - c. Counsel was ineffective for providing erroneous and incorrect advice to plead guilty instead of challenging the State's evidence through the protections of trial.
 - d. Abandonment of Client
 - e. Counsel failed to request a preliminary hearing so Applicant could more adequately be informed about the case.

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- f. Ineffective assistance of counsel for failure to provide a proper defense for physical evidence in the case.
 - g. Counsel failed to have a valid strategy for the case
4. Subject Matter Jurisdiction
- a. Counsel failed to challenge the subject matter jurisdiction of the Applicant's indictment, pursuant to the investigator's violation of "Sled Policy 13.30" by not registering the informant "Timothy Johnson" for an investigation. Then the investigators improperly influenced the Grand Jury to indict Applicant with tainted evidence and false testimony. Therefore, the trial court lacked jurisdiction to accept Applicant's guilty plea.

Applicant requests relief as follows:

- Reversal and Remand

Attached to and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

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IV. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL

Ineffective Assistance of Plea Counsel, Generally

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel's

performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Failure to Investigate

Applicant alleges that Counsel failed to investigate the credibility and registration of a confidential informant. Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the case. Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). However, counsel is presumed to have adequately assisted and exercised reasonable professional judgment in making decisions in the case. Edwards, 392 S.C. at 456, 710 S.E.2d at 64.

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Additionally, Applicant would not pass the prejudicial prong of ineffective assistance of counsel. Applicant alleges that Counsel failed in deploying a strategy to investigate the validity of a confidential informant's role in this narcotics investigation. Specifically, that Counsel failed to confirm whether the confidential informant was registered, under the influence of drugs during the investigation, and whether that effected the search warrant. Importantly, a lawyer's failure to conduct an independent investigation does not constitute ineffective assistance when the allegation is supported only by mere speculation as to the result. Rollison v. State, 346 S.C. 506, 552 S.E.2d 290 (2001). A search warrant affidavit based solely on information provided by a confidential informant must contain information supporting the credibility of the informant on the basis of his knowledge. State v. Robinson, 415 S.C. 600, 785 S.E.2d 355 (2016).

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In this case, the search warrant stated the confidential informant "has seen a quantity marijuana at [Applicant's] residence to be searched. The [confidential informant] knows marijuana by sight, texture, and packaging and has dealt with the drug in the past. The same confidential reliable informant has provided informant in the past to the Spartanburg County Sheriff's Office that has been corroborated to be true and has led to the purchase of illegal contraband." (Aff.).¹ Furthermore, Applicant concedes in his application that the confidential informant observed large quantities of drugs and money the night before a search warrant was executed based upon this information. Therefore, the confidential informant's reliability was

¹ Applicant alleges that Counsel failed through not investigating the investigator's improper use of a confidential informant. This claim is without merit.

sufficient to make this search warrant proper.² As a result, the Applicant was not prejudiced by any failure to suppress evidence in his case.

Subject Matter Jurisdiction

Applicant alleges that counsel was ineffective in failing to challenge a defective indictment. An indictment is a notice document. The primary purposes of an indictment are to put the defendant on notice of what he is called upon to answer, i.e., to apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted.

Edwards v. State, 372 S.C. 493, 496, 642 S.E.2d 738, 739 (2007). A challenge to the indictment on the ground of insufficiency must be made before the jury is sworn. State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005). Applicant did not raise this issue during the plea hearing (Tr. 9). Accordingly, Respondent submits this allegation is without merit.

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Failure to Advise

Applicant alleges that counsel was ineffective in failing to challenge the admissibility of evidence gathered against him through an informant. This allegation is without merit. Assuming *arguendo* that counsel was deficient in failing to file a motion to suppress, Applicant could and would fail the prejudicial prong. Premo v. Moore, 562 U.S. 115, 129 (2011). (“A defendant who accepts a plea bargain on counsel's advice does not necessarily suffer prejudice when his counsel

² Applicant alleges that his right to privacy was violated. Also, Applicant alleges that the Magistrate Judge was “improperly influenced.” These claims are without merit.

fails to seek suppression of evidence, even if it would be reversible error for the court to admit that evidence.”) A search warrant affidavit based solely on information provided by a confidential informant must contain information supporting the credibility of the informant and the basis of his knowledge. State v. Robinson, 415 S.C. 600, 785 S.E.2d 355 (2016).

Here, the search warrant stated this confidential informant “has seen a quantity of marijuana at [Applicant’s] residence to be searched. The [confidential informant] knows marijuana by sight, texture, and packaging and has dealt with the drug in the past. The same confidential reliable informant has provided informant in the past to the Spartanburg County Sheriff’s Office that has been corroborated to be true and has led to the purchase of illegal contraband.” (Aff.). Therefore, any challenge to evidence admissibility would have failed so Applicant was not prejudiced.

Applicant also alleges that Counsel failed to prepare a proper defensive strategy for trial. However, Applicant waived his right to present a defense at trial during the plea hearing. (L. 18-23).

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General Denial

Applicant can satisfy neither requirement of the Hill test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. RESPONSE TO INVOLUNTARY GUILTY PLEA

As to Applicant's claim that his plea was not knowing and intelligent because of counsel’s failure to give adequate advice about the process, this allegation is without merit. Applicant’s involuntary plea deal is a constitutional issue which falls under the ineffective

assistance of counsel claim umbrella. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001).

Assuming *arguendo* plea counsel did not adequately advise Applicant about consequences of accepting a plea, counsel's alleged deficiency was cured by the plea court. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997) (stating that plea counsel's deficient performance can be cured by the plea court's colloquy). The plea court thoroughly explained the consequences of accepting a plea to Applicant during the hearing, and Applicant stated that he understood what the plea court explained to him. (Tr. 4-6).

VI. ASSERTION OF RIGHTS TO NOTICE OF AMENDMENTS, EXPERTS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing.

Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a), (b), SCRPC; Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to

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request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VII. GENERAL DENIAL

Respondent denies each allegation not expressly admitted, qualified, or explained.

VIII. CONCLUSION

WHEREFORE, Respondent respectfully requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JACOB A. ISENBERG
Assistant Attorney General

By: *Jacob A. Isenberg*

ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

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2/28, 2019

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
)
)
 BENNIE LEE GRIFFIN, #375591,)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2018-CP-42-1906

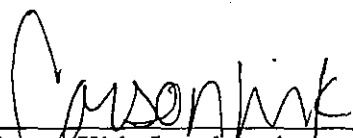
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1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Susannah Conyers Ross, Esquire
Ross & Enderlin, PA
330 East Coffee Street
Greenville, South Carolina 29601

DATED this the 28th day of February, 2019.



 Carson Kirk, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA) IN THE COURT OF
 2) COMMON PLEAS
 3 COUNTY OF SPARTANBURG) OF THE SEVENTH
 4) JUDICIAL CIRCUIT
 5)
 6 BENNIE LEE GRIFFIN,)
 7 Applicant,) TRANSCRIPT OF RECORD
 8 vs.) 2018-CP-42-01906
 9 THE STATE OF SOUTH CAROLINA,)
 10 Respondent.)

11 October 9, 2019
 12 Spartanburg, South Carolina

13 B E F O R E:

14 HONORABLE G. THOMAS COOPER, Judge.
 15

16 A P P E A R A N C E S

17 SUSANNAH C. ROSS, ESQUIRE
 18 For The Applicant

19 JACOB A. ISENBERG, ASSISTANT ATTORNEY GENERAL
 20 For The State

21
 22
 23 Julie A. Cendroski,
 24 Circuit Court Reporter
 25 Seventh Judicial Circuit

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1 BENNIE LEE GRIFFIN VS. THE STATE OF SOUTH CAROLINA

2 THE COURT: All right. Mr. Isenberg, you may
3 proceed.

4 MR. ISENBERG: Thank you, Your Honor, may it
5 please the Court. The next case is Bennie Lee Griffin
6 versus the State of South of Carolina. That's Case
7 Number 2018-CP-42-1906. This case is based upon the
8 application filed by Mr. Griffin on June 5th, 2018.
9 He's currently confined in the South Carolina Department
10 of Corrections pursuant to the orders of commitment from
11 the Spartanburg County clerk of court.

12 He was indicted at the August 2017 term in
13 Spartanburg County grand jury for possession with intent
14 to distribute and trafficking cocaine in the range of
15 200 grams. Originally James C. Rutherford represented
16 him until he was relieved of counsel. And James Hunter,
17 esquire, Seventh Circuit Solicitor's Officer -- Seventh
18 Circuit Solicitor's office prosecuted the case.

19 Lawrence Crane began representing the applicant
20 on January 22nd, 2018. On February 27th of 2018, Mr.
21 Griffin pled guilty to a lesser included offense of
22 trafficking cocaine in the range of 28 to 100 grams,
23 with a negotiated sentence of 15 years. The possession
24 with intent to distribute charge was dismissed.

25 The Honorable Grace Knie accepted the negotiated

1 sentence. Mr. Griffin did not appeal his plea or his
2 sentence. And with that I'll turn it over to opposing
3 counsel to make her case. Thank you.

4 THE COURT: Ms. Ross?

5 MS. ROSS: May it please the Court. This is
6 Bennie Lee Griffin. He's alleged ineffective assistance
7 of counsel. His allegations are that counsel failed to
8 investigate the narcotics informant, Timothy Jackson, to
9 make sure he was registered with SLED for a drug
10 trafficking investigation. In fact, he was not
11 registered pursuant to policy 13.3. He also failed to
12 generally investigate the case and investigate the
13 narcotics investigator's procedure and testimony.

14 THE COURT: Now, which counsel was that?

15 MS. ROSS: This is all -- your allegations are
16 all just against Larry Crane; is that correct?

17 MR. GRIFFIN: Correct. It was against Todd
18 Rutherford.

19 THE COURT: Todd Rutherford?

20 MR. GRIFFIN: That's who I had first.

21 THE COURT: But...

22 MS. ROSS: He had retained ---

23 MR. GRIFFIN: I had retained -- go ahead.

24 MS. ROSS: Go ahead.

25 MR. GRIFFIN: I, I wasn't -- I didn't like the

1 way Charles Rutherford represents me so I hired Mr.
2 Crane.

3 THE COURT: Okay. But your complaint today is
4 against Mr. Rutherford or Mr. Crane?

5 MR. GRIFFIN: Mr. Crane.

6 THE COURT: Okay. Go ahead, Ms. Ross.

7 MS. ROSS: And that was continued, the failure to
8 investigate, the narcotic investigator's procedure and
9 testimony, the issuance of the search warrant, failed to
10 move to suppress the search warrant with a valid
11 suppression subject. Failed to challenge subject matter
12 jurisdiction, and providing erroneous and incorrect
13 advice.

14 Do you want to get up and testify at this point?

15 MR. GRIFFIN: Yes.

16 MS. ROSS: Okay. At this point we'd call Bennie
17 Lee Griffin.

18 THE COURT: Come around, Mr. Griffin.

19 (Witness comes forward.)

20 THE COURT: Mr. Griffin?

21 MR. GRIFFIN: Yes.

22 THE COURT: Place your left hand on that Bible
23 there, please. Raise your right-hand the best you can.
24 Do you solemnly swear or affirm the testimony you're
25 about to give in this hearing will be the truth, the

1 whole truth, and nothing but the truth so help you God?

2 MR. GRIFFIN: Yes, sir.

3 THE COURT: All right. Have a seat in the
4 witness box.

5 BENNIE LEE GRIFFIN,
6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. ROSS:

9 Q. Okay. Mr. Griffin, you understand the remedies
10 in a PCR that you were placed in the position you were
11 in before the plea took place and you were facing 25 to
12 30 years, correct?

13 A. Yes, ma'am.

14 Q. And do you still want to proceed?

15 A. Yes, ma'am.

16 Q. All right. And you've alleged ineffective
17 assistance of counsel. Can you tell the judge why?

18 A. I had the same charge that Loren Williams got
19 fired for, for not having informed and investigated for
20 using SLED policies.

21 THE COURT: Who are you talking about?

22 THE WITNESS: The narcotic agents.

23 THE COURT: Who got fired?

24 THE WITNESS: Loren Williams.

25 THE COURT: Who's he?

DIRECT EXAMINATION OF BENNIE GRIFFIN BY MS. ROSS

1 THE WITNESS: He was a narcotic agent over in
2 Spartanburg County. Exhibit one, Your Honor.

3 THE COURT: Well, do you have co-counsel -- I
4 mean, co-defendant?

5 THE WITNESS: No, I waived my rights.

6 THE COURT: Go ahead, Ms. Ross.

7 BY MS. ROSS:

8 Q. Well, let me see what your exhibit is.

9 A. Exhibit is where Mr. Williams was fired for not
10 using a confidential informant that wasn't registered
11 with SLED policy 1330.

12 Q. Okay. And what is this?

13 A. That's where -- that's an exhibit.

14 Q. But what is, what is this a printout of?

15 A. What happened.

16 Q. Is it a newspaper article?

17 A. Yes, it is.

18 Q. All right.

19 A. And exhibit two here for use and informal
20 agreement for SLED 1330.

21 THE COURT: Just slow down. She's talking.

22 THE WITNESS: Okay.

23 BY MS. ROSS:

24 Q. Okay. And what this newspaper article
25 essentially says is Spartanburg investigator, Loren

1 Williams, was let go after he said in a search warrant
2 affidavit that a CI was registered in SLED and that was
3 a lie. The CI was, in fact, not registered in SLED?

4 A. Correct.

5 Q. And who was the lead investigator on your case?

6 A. Schaffer.

7 Q. Who was -- was Loren Williams involved at all in
8 your case?

9 A. I don't know. I never did know. I mean, I asked
10 my lawyer to see about the informer being registered or
11 not, so I don't have -- I don't know. I didn't have no
12 defense, he said.

13 Q. Okay.

14 A. So I pleaded guilty.

15 MS. ROSS: We'd offer this as Applicant's Exhibit
16 1 at this time.

17 MR. ISENBERG: Your Honor, I would just object
18 based upon relevance. He just testified he doesn't know
19 whether the individual fired in that newspaper article
20 was even involved with his case, so I don't know how a
21 newspaper article about an officer getting fired who may
22 or may not have been involved with his case is relevant
23 to this case.

24 THE COURT: What's your position?

25 MS. ROSS: I believe his position would be

1 that Mr. ---

2 THE COURT: What's your position?

3 MS. ROSS: My position is that Mr. Williams was
4 an investigator with Spartanburg. He was the head
5 investigator over the narcotics unit and he was at the
6 time of Mr. Griffin's case.

7 THE COURT: He did what? He testified in
8 Griffin's case?

9 MS. ROSS: No. He was the lead investigator in
10 Spartanburg County over the drug issues and would have
11 been involved in all the drug cases.

12 THE COURT: But the -- and this article says that
13 he fired a confidential informant that was not
14 registered?

15 MS. ROSS: No. That he was fired by
16 Spartanburg --

17 THE COURT: Williams was?

18 MS. ROSS: -- County.

19 THE COURT: Williams was fired?

20 MS. ROSS: Williams. Due to a misrepresentation
21 in a search warrant affidavit where he alleged that a
22 confidential informant had been registered in SLEd --
23 with SLED when; in fact, they had not been.

24 THE COURT: It had nothing to do with this --
25 with Mr. Griffin?

1 MS. ROSS: Mr. Griffin's search warrant has
2 another investigator who swore the affidavit.

3 THE COURT: I'll allow it. It has minimal
4 relevance, but I'm gonna allow it to be made a part of
5 the record.

6 MR. ISENBERG: Thank you, Your Honor.

7 MS. ROSS: So offer it as Applicant's Exhibit 1.

8 (Applicant's Exhibit Number 1, Newspaper Article,
9 was marked for identification.)

10 (Applicant's Exhibit Number 1 was entered into
11 the record.)

12 MS. ROSS: Judge, if I may approach?

13 THE COURT: Sure.

14 BY MS. ROSS:

15 Q. Now, did your lawyer look into whether the
16 confidential informant involved in your case was
17 reliable or registered with SLED?

18 A. No, he did not. He told me I didn't have no
19 defense.

20 Q. Did he -- let's talk about just the discovery in
21 your case. Did you get discovery in your case?

22 A. No.

23 Q. Did you review discovery in your case with your
24 -- with Mr. Crane?

25 A. No.

1 Q. Do you feel that had SLED, I mean, the CI, the
2 confidential informant, Timothy Jackson, been -- do you
3 know whether he was registered with SLED or not?

4 A. He wasn't registered.

5 Q. And how do you know that?

6 A. He told me so. He also told me that ---

7 MR. ISENBERG: Objection, Your Honor, this is
8 hearsay.

9 THE COURT: I sustain that objection.

10 THE WITNESS: He did it so he can get his charges
11 dropped.

12 MR. ISENBERG: Objection, Your Honor, this is
13 speculation prefaced upon hearsay.

14 THE COURT: I understand that. When I, when I
15 say I sustain the objection, Mr. Griffin, that means you
16 can't tell me what somebody else told you.

17 THE WITNESS: Okay.

18 THE COURT: You can say what you did and what you
19 saw, but that's called hearsay and that's not allowed in
20 a court of law.

21 THE WITNESS: Yes, sir, Your Honor.

22 BY MS. ROSS:

23 Q. Do you know Timothy Jackson?

24 A. Yes, I do.

25 Q. And how do you know him?

1 A. Him and I was doing drugs together.

2 Q. And what kind of sentence did he get?

3 A. I don't know. I don't know what happened to -- I
4 don't know, but he had charges. I don't know what he
5 got.

6 Q. Now, did counsel ever investigate or tell you
7 what he got on his charges?

8 A. No.

9 Q. Mr. Jackson?

10 A.. No. He didn't investigate Mr. Jackson.

11 Q. Now, as far as a search and seizure issue, this
12 case was a case where there was a search warrant that
13 lead to the discovery of drugs; is that correct?

14 A. Yes, ma'am.

15 Q. Now, did your counsel discuss with you any
16 ability or ideas about suppressing or challenging that
17 search warrant?

18 A. No, ma'am.

19 Q. Did he show you a copy of the search warrant?

20 A. No, ma'am.

21 Q. Did he show you or ask about any SLED policy
22 regarding the requirement that confidential informants
23 have to be registered?

24 A. No, ma'am.

25 Q. Now, had he done these things what would be the

1 change in the outcome of your case?

2 A. Well, I would have asked for a jury trial, under
3 those questions being that the informer wasn't
4 registered with SLED's policy 1330 for a drug
5 investigation.

6 Q. Okay. Now, you've also alleged that counsel
7 failed to challenge the subject matter jurisdiction of
8 the indictment. Pursuant to the investigator's
9 violation of SLED policy 1330, can you explain to the
10 judge how that, that allegation and how that affected
11 the outcome of your case?

12 A. Well, if the counselor would have seen that the
13 informer would have been -- that if the counsel would
14 have checked to see that he wasn't registered, then the
15 drugs that they seized, he could have suppressed it.

16 Q. Okay. And you couldn't look into it because you
17 hadn't seen your discovery; is that correct?

18 A. No, I couldn't.

19 Q. Now, did you have a preliminary hearing in your
20 case?

21 A. No.

22 Q. Did you request a preliminary hearing?

23 A. Yes.

24 Q. Now, that would be more of an allegation against
25 Mr. Rutherford, your initial counsel.

1 A. That's correct.

2 Q. Is that correct?

3 A. Uh-huh.

4 Q. Now, you've made an allegation about counsel was
5 ineffective with providing advice to plead guilty
6 instead of challenging the State's evidence. What is,
7 what is your basis for that allegation?

8 A. Well, if the counsel would have did what he was
9 supposed to do by investigating the informer, then I
10 wouldn't have pleaded guilty. I would have had, I would
11 have had a defense. He said I didn't have any good
12 defense, so I needed to plead guilty or else I get the
13 25 years because there wasn't no defense for that. I
14 had no grounds.

15 Q. Okay. I've got no further questions. Is there
16 anything else you would like to add about your
17 allegations against Mr. Crane and ineffective assistance
18 of counsel?

19 A. Yes, I would like a state of the case.

20 Q. Okay.

21 A. The applicant would like to submit unto this
22 Court that counsel failed to investigate the evidence
23 and discovery in this case. Furthermore, if applicant
24 would have known the informer contemptuous action didn't
25 have any formal agreement through SLED, the applicant

1 would have assist on going through a jury trial and
2 further having trial counsel move for a motion to
3 suppress at pretrial hearing before trial. Then the
4 applicant could have challenged the search warrant on
5 this ground or any other grounds trial counsel failed to
6 advise me on or inform the Court about the defense.

7 And the applicant had a due process right to be
8 aware of any potential defense in this case before
9 entering a guilty plea. Also, the evidence is
10 considered fruit of the poisonous tree and ---

11 MR. ISENBERG: Objection, Your Honor.

12 THE COURT: I couldn't hear you.

13 THE WITNESS: I said, the evidence -- I said, due
14 process of the law or any potential defense in this case
15 before entering a guilty plea. Also, the evidence is
16 considered fruit of the poisonous tree and the
17 investigation was illegal and unconstitutional.
18 Finally, the applicant had a right to have any ruling
19 made by the trial court about the pretrial motion to
20 suppress to be preserved for appellate review.

21 MS. ROSS: Thank you.

22 THE COURT: Mr. Isenberg.

23 MS. ROSS: Please answer any questions from the
24 State.

25 CROSS-EXAMINATION

1 BY MR. ISENBERG:

2 Q. Good morning, Mr. Griffin.

3 A. Good morning.

4 Q. How are you doing today?

5 A. Okay.

6 Q. Good. Good. That, that was a pretty long
7 statement that you just read to the Court, but I noticed
8 at the end that you are alleging that you didn't know
9 you had a right to appeal?

10 A. Didn't have a right to appeal? No, I said I
11 wanted a right to appeal. Did I read that?

12 Q. Okay.

13 A. I wanted to appeal the review.

14 Q. Okay. So you're saying that you didn't get a
15 chance to appeal your plea?

16 A. I pleaded guilty.

17 Q. Right. You didn't appeal it, right?

18 A. No, I haven't. I didn't. I mean, I pleaded
19 guilty. I didn't, I didn't have no ground to appeal.

20 Q. Okay. And you also said your counsel didn't
21 investigate the case?

22 A. That's correct.

23 Q. He didn't tell you that you have any defenses,
24 correct?

25 A. Correct.

1 Q. Okay. And you also said he didn't suppress the
2 search warrant, correct?

3 A. He didn't suppress the evidence in the search
4 warrant.

5 Q. Okay. So why did you tell the Court at the plea
6 hearing that you were satisfied with him?

7 A. He told me I didn't have no defense. Being that
8 I didn't have no defense, if I didn't plead guilty I'm
9 gonna get 25 years if I went to court, if I went to
10 trial.

11 Q. Okay. So you were satisfied with him after he
12 told you that you had no defenses?

13 A. I had no other choice. I either go to court and
14 get the 25 years.

15 Q. Okay. Because the court had enough -- because
16 they had enough evidence against you to the point where
17 they can convict you, correct?

18 A. Well, yes. But if he would have investigate the
19 informer, like I asked him, I would have had a defense.

20 Q. Okay. And so you're also contesting the search
21 warrant, correct?

22 A. I don't know anything about a search warrant. He
23 didn't tell me anything about the search warrant.

24 Q. Okay. And the search warrant was based upon a
25 confidential informant, right?

1 A. I guess.

2 Q. Okay. And you actually alleged in your PCR
3 application that the confidential informant was doing
4 drugs with you the night before your house was searched,
5 correct?

6 A. That's correct.

7 Q. Okay. So if the confidential informant does
8 drugs with you and then turns around and tells the cops
9 that you have drugs at your house where you all did
10 drugs together, what would be the issue with getting a
11 search warrant?

12 A. Cause he the one that went and told it cause he
13 had charges.

14 Q. Okay. So he does drugs with you at your house,
15 correct?

16 A. Uh-huh.

17 Q. He goes and tells the cops that you have drugs at
18 your house, correct?

19 A. Correct.

20 Q. The cops get a search warrant based upon him
21 telling them that you have drugs at your house, correct?

22 A. Correct.

23 Q. The cops execute the search warrant at your house
24 based upon the drugs that he said that you had, correct?

25 A. Correct.

1 Q. And then the cops find drugs at your house and
2 charge you, correct?

3 A. Uh-huh.

4 Q. Okay. I have no further questions for this
5 witness.

6 THE COURT: Redirect?

7 MS. ROSS: Just one.

8 REDIRECT EXAMINATION

9 BY MS. ROSS:

10 Q. You said, because he had his own charges. What
11 is said in the SLED policy 1330 that you named? Are
12 CI's supposed to have charges?

13 A. No. It says too, Your Honor, where all
14 informants must be registered with SLED policy agreement
15 on an investigation, on an narcotic, exhibit two.

16 THE COURT: Huh?

17 THE WITNESS: Exhibit two.

18 THE COURT: Well, you've got to give it to your
19 lawyer.

20 THE WITNESS: Okay. It states there.

21 BY MS. ROSS:

22 Q. Okay. So what is this?

23 A. That' the agreement that says informants must be
24 registered to not have any firearms. They must be filed
25 with informant -- with SLED 1330 agreement.

1 Q. Okay. And that's what it says, but what is this
2 sheet of paper?

3 A. It's a file where they've got to be registered.

4 Q. Okay.

5 A. They've got to have a number.

6 Q. Okay. So it's a SLED policy?

7 A. Correct.

8 (Applicant's Exhibit Number 2, SLED Policy, was
9 marked for identification.)

10 MS. ROSS: I'd offer this as Applicant's Exhibit
11 2.

12 THE COURT: Any objection?

13 MR. ISENBERG: No objection, Your Honor.

14 THE COURT: No objection.

15 (Applicant's Exhibit Number 2 was entered into
16 the record.)

17 BY MS. ROSS:

18 Q. Now, had your lawyer investigated this policy
19 would you have pled guilty?

20 A. I didn't hear. What did you say?

21 Q. Had your lawyer investigated that SLED policy ---

22 A. Would I have pled guilty?

23 Q. Uh-huh.

24 A. No.

25 Q. All right. No further questions.

1 THE COURT: Any recross?

2 MR. ISENBERG: No, Your Honor.

3 THE COURT: All right. You may come down. Thank
4 you very much.

5 (Witness leaves witness stand.)

6 MS. ROSS: At this point the applicant rests.

7 THE COURT: Okay. Anything from the State?

8 MR. ISENBERG: Yes, Your Honor. The State would
9 call Lawrence Crane to the stand.

10 (Witness comes forward.)

11 THE COURT: Mr. Crane, would you place your left
12 hand on the Bible and raise your right hand.

13 (Complies.)

14 Solemnly swear or affirm the testimony you're
15 about to give in this case will be the truth, the whole
16 truth, and nothing but the truth so help you God?

17 THE WITNESS: Yes, sir, Judge.

18 LAWRENCE CRANE,

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. ISENBERG:

22 Q. Good morning, Mr. Crane.

23 A. Good morning, sir.

24 Q. How are you doing today?

25 A. Fine, thank you.

1 Q. Good. Good. How long have you been practicing
2 law?

3 A. 42-3 years, something like that.

4 Q. Okay. So a little bit longer than me, probably.

5 A. Longer than you've been alive.

6 Q. Yeah. And about how long out of that 42 or 3
7 years have you been doing criminal law?

8 A. I've never done anything but criminal law.

9 Q. Okay. So you have been doing criminal law for 42
10 or 3 years?

11 A. Yes, sir.

12 Q. And you're refreshed on all the criminal law as
13 it's changed throughout that time?

14 A. That's correct.

15 Q. Okay. And how did you come to represent Mr.
16 Griffin?

17 A. I've known Bennie Griffin for many years,
18 probably 10 or 15 years. And prior to this case I
19 represented Bennie in Spartanburg County at least twice.
20 I know at least twice. Represented two or three of his
21 children in Spartanburg County, one of them at least
22 twice. Represented some of his wives or girlfriends, I
23 can't remember which they were.

24 Represented Bennie in this case on a monetary
25 forfeiture, which we got money back for him. And all

1 the prior occasions he was lucky enough or we were lucky
2 enough for him to get probation. For whatever reason,
3 when he got arrested for this in 2017, he chose not to
4 hire me and went to see Todd Rutherford in Columbia.
5 From what I understand, gave Mr. Rutherford a lot of
6 money.

7 And Bennie came to see me in December of 2017,
8 maybe early January. I think it was December 2017, and
9 said that he hadn't had much contact with Mr. Rutherford
10 and that Mr. Rutherford called him, I think, the week or
11 two before Christmas and told Bennie, Bennie you need to
12 be in court next week and you're gonna get 15 years.
13 And Bennie said, wait a minute, what's going on? I
14 don't know anything about that. And at that point
15 Bennie came to see me.

16 So I've got a contract in my file. I think it
17 was signed in January where Bennie hired me. And I sent
18 my letters to the solicitor. Or, actually, I sent a
19 letter to Rutherford on January 5th, telling him that
20 Bennie wanted to hire me. Bennie and I entered into a
21 contract for me to represent him on the charges that
22 were pending.

23 So that's how I came to see him. I'm not sure
24 why he didn't come to me initially, but we couldn't have
25 a preliminary hearing because it was too late for that.

1 I had to get into this thing, get the discovery, talk to
2 the solicitors, talk to Bennie, and figure out what we
3 could do. That's how I came to represent Bennie --

4 Q. Right.

5 A. -- on these charges.

6 Q. And in your discussions with Bennie after you got
7 discovery, did you review all the discovery with him?

8 A. Yes, I did.

9 Q. Okay. And did you review the search warrant with
10 him?

11 A. Yes, I did.

12 Q. Okay. And on -- upon your independent review of
13 the search warrant, did you see or spot any issues that
14 were challengeable?

15 A. No, sir, I didn't.

16 Q. Okay. Did you -- so you sufficiently reviewed
17 this confidential informant section of the search
18 warrant?

19 A. I'm not sure what you mean by that.

20 Q. Okay. Just, you reviewed -- when you reviewed
21 the search warrant you didn't see anything wrong with
22 it, did you?

23 A. No. It says that it was based on the actions of
24 the confidential informant who was reliable to the
25 Spartanburg Sheriff's office who had seen marijuana in

1 the house and that they wanted to search for marijuana,
2 that there would probably be more there.

3 Q. Right.

4 A. It might have even said cocaine, too. I don't
5 recall at the moment.

6 Q. Is that something they normally put in search
7 warrants?

8 A. Yes. I mean, they pretty much have to, to
9 establish the credibility of the informant.

10 Q. Okay. So when you saw that, you didn't think
11 there was anything abnormal about it?

12 A. No.

13 Q. Okay. Now, throughout your review of discovery
14 with Mr. Griffin, did you go over any potential defenses
15 yet?

16 A. Sure. We went over defenses and, just like he
17 said, I told him -- well, he says I didn't go over it,
18 but we did. I don't blame Bennie for coming into court
19 today and saying --

20 Q. Right.

21 A. -- what he said because he's trying to get out of
22 this. And quite honestly, I don't think he understands
23 that if a judge grants this he can go to trial he can
24 get 25 years.

25 Q. Right.

1 A. But that's for the judge to decide. But we went
2 over it. We went over the discovery. Bennie -- Ben and
3 I had a real good relationship. Bennie came in and we
4 would laugh and joke and cut up. And he was facing some
5 serious time. And we went over the discovery. We went
6 over the search warrant. I've got some photographs. We
7 went over the photographs.

8 I'm trying to think today whether or not there
9 was a videotape and I just can't recall. I know we've
10 been over a case of Bennie's that had a videotape. That
11 might have been one of the other charges.

12 So we went over all the discovery that I had.
13 Went over the search warrant. Bennie and I talked about
14 it. I've got it in my notes that I made for me that
15 Bennie said he thought he knew who the informant was.
16 Of course, the informant's not mentioned in the search
17 warrant.

18 Q. Right. And that was gonna be my next question.
19 When you received discovery from the solicitor's office,
20 did they name the confidential informant?

21 A. No.

22 Q. Okay. So did you have a basis to investigate any
23 specific individual based upon your review of the
24 discovery?

25 A. No.

1 Q. Okay. So it would be fair to say that you had no
2 basis to investigate Timothy Jackson when you received
3 discovery, correct?

4 A. That's correct.

5 Q. Okay. And based upon all of that, you didn't
6 review Timothy Jackson, did you, or investigate him, did
7 you?

8 A. I did not.

9 Q. Okay. Now, is it traditionally the policy of the
10 solicitor's office to not give you information about the
11 solicitor's confidential informant until after you
12 decline to take a plea offer?

13 A. A lot of the solicitor's office, I don't come
14 over to Spartanburg that much, but particularly in
15 Greenville --

16 Q. Uh-huh.

17 A. -- in Greenville County they will give us that
18 information 72 hours before a trial.

19 Q. Right. So if you take a plea offer,
20 traditionally you don't receive information about the
21 confidential informant, correct?

22 A. That's correct.

23 Q. And you said you've seen that in multiple
24 counties throughout the state?

25 A. Oh, absolutely.

1 Q. Okay. And in this case it was no different,
2 correct?

3 A. That's correct.

4 Q. Okay. Now, in regards to erroneous advice
5 allegation from Mr. Griffin, did you give him sufficient
6 advice about the charges he was going to plead guilty
7 to?

8 A. I did.

9 Q. Okay. And you reviewed with him that the charge
10 he was facing and pleading guilty to was the lesser
11 included offense of the one he was originally charged
12 with, correct?

13 A. That's correct.

14 Q. Okay. And I know that Mr. Griffin pled to a
15 negotiated sentence, correct?

16 A. Yes, sir.

17 Q. Okay. And the benefit or the bargain of that
18 negotiated sentence was, one, the lesser included
19 offense and, two, to dismissal of the other charge,
20 correct?

21 A. That's correct.

22 Q. Okay. And upon your review of that with him, was
23 he satisfied with the plea -- the offer?

24 A. He said that he was. And let me explain a little
25 bit more about it. I've told both you and defense

1 counsel. I think I told defense counsel, but when I
2 came over to talk to Hunter -- what's his first name,
3 the solicitor?

4 Q. It is...

5 A. Anyway, when I came over to talk to the solicitor
6 in their back chambers they had on the wall four names.

7 Q. Uh-huh.

8 A. Bennie's name was there. And they pointed out to
9 me, they said these four people are people that we want
10 to put in jail. And they explained to me that we've
11 offered Bennie 15 years. We've offered this guy 15 and
12 he didn't take it, so now it's up to 18. And if he
13 doesn't take it, it's up to 21. And if he doesn't take
14 it we're going to trial.

15 So I told Bennie, I said, your name's there.
16 They've offered you 15. You've got until whatever date
17 it was to take it. And if you don't take it, it's going
18 up to 18.

19 Q. So to the best of your knowledge, 15 was the best
20 offer he was gonna get?

21 A. That was the lowest they had, yes.

22 Q. Okay.

23 A. That was the best offer. And I tried for less
24 than that. Bennie was not in good health at the time
25 and has been in jail now, I guess, about a year, a

1 year-and-a-half. And, quite honestly, today I think he
2 looks terrible.

3 Q. Right. Now, Mr. Griffin went into great length
4 about an officer working for the Spartanburg County
5 narcotics division. Did you investigate that division
6 at all when representing Mr. Griffin?

7 A. No, I didn't.

8 Q. Okay. Did you feel that you had a basis to
9 investigate them?

10 A. No, I didn't.

11 Q. Okay. And why do you feel like you had no basis
12 to investigate the division?

13 A. Well, I don't know who that guy is that he's
14 talking about. And whoever that guy is, I heard the
15 name. His name was not on any of the paperwork on our
16 case anyway.

17 Q. So you're saying that guy was not a person of
18 interest during your representation of Mr. Griffin,
19 correct?

20 A. No, it wasn't.

21 Q. And because you didn't have the confidential
22 informant stand, you had no basis to investigate the
23 SLED policy with confidential ---

24 A. I've never heard of a SLED policy 13.30. I mean,
25 if it's there it's there, but...

1 Q. Right.

2 A. I've told you more than 42 years. It's 1977 when
3 I got admitted, so however many years that is, but I've
4 never heard of SLED policy 13.30.

5 Q. Right. So you're saying traditionally
6 investigating this SLED policy allegation that he had is
7 not something that you would do in representing someone?

8 A. I would not. Furthermore, this wasn't a SLED
9 case, it was Spartanburg County.

10 Q. Right. Okay. And you, can you tell me, based
11 upon your relationship with Mr. Griffin in the end what
12 his motivation to plead was?

13 A. I don't know that I can tell you what his
14 motivation to plead was other than Bennie's been around
15 a long time. Bennie's been involved in narcotics trade
16 for a long time, as has his family. And Bennie knows
17 what the advantages and disadvantages and risks are.
18 And I think Bennie saw that if he took the 15 it was a
19 sure thing, if he didn't, he didn't know what might
20 happen at trial. And he was facing at least a minimum
21 of 25 years because it was over 200 grams of cocaine.

22 Q. Okay. So you're saying that his motivation came
23 in part because he saw that the 15 years was probably
24 the least amount he was gonna get without going to trial
25 and risking potentially 25?

1 A. That's well put.

2 Q. Thank you. I have no further questions. Please
3 answer any questions for opposing counsel.

4 THE COURT: Ms. Ross.

5 CROSS-EXAMINATION

6 BY MS. ROSS:

7 Q. Hi, Mr. Crane. Now, this was a cocaine case,
8 right, not marijuana?

9 A. No. But I think there was marijuana found at the
10 house, but it was cocaine.

11 Q. Okay. And do you know where it was? Do you
12 recall where it was found in the house?

13 A. I don't. I've got the search warrant. I know
14 that they came to the house. Bennie answered the door,
15 went back in. Bennie eventually opened the door for
16 them. Bennie let them in. They asked them about drugs.
17 Bennie told them where drugs were and where guns were,
18 drugs and money. And while there, Bennie acknowledged
19 that all the drugs found were his.

20 Q. Okay. And then on the search warrant, does it
21 say anything about cocaine or just marijuana?

22 A. I don't know, let me check. I think I've got it
23 up here with me.

24 MR. ISENBERG: I've got it.

25 THE WITNESS: I've got it. I think I've got it.

1 What they were looking for, according to the affidavit
2 was marijuana, a schedule one controlled substance. And
3 the reason for the affiant's belief that it would be
4 found was that someone had seen marijuana in the
5 residence within 72 hours of the date of the search
6 warrant.

7 Q. So nothing about suspecting cocaine was there?

8 A. No.

9 Q. Now, as far as the informant, you said you didn't
10 recall whether there was a video or not?

11 A. I can't recall right now if there was a video.
12 Like I say, I might be getting his other cases confused.

13 Q. Okay. But Bennie knew that the -- knows that the
14 informant was this Timothy Jackson, or so he says?

15 A. I've got on -- when people come in to see me, I
16 take the initial information. I've got, I've got Tim
17 Jackson written down there, so Bennie must have told me
18 that.

19 Q. Okay. So based on that you had some inkling that
20 maybe Tim Jackson was the CI because your client told
21 you he was?

22 A. Right.

23 Q. And did you investigate this Tim Jackson?

24 A. No.

25 Q. Now, as far as the Loren Williams who's the

1 affiant on the search warrant?

2 A. Jay Schaffer.

3 Q. Okay. So it's not Loren Williams?

4 A. No, ma'am.

5 Q. But you are now familiar about the circumstances
6 with Loren Williams that Bennie had been talking about?

7 A. Just what I've heard today.

8 Q. Okay. And you chose not to do a suppression
9 motion in this case?

10 A. We didn't do a suppression motion. We had a
11 deadline to plead guilty. You're a practicing defense
12 attorney and you know that most counties you get your
13 suppression motion when you go to trial.

14 Q. And just briefly related to that, as far as the
15 discovery procedure, the 72 hours?

16 A. Right.

17 Q. That is -- has been disfavored by the Supreme
18 Court, withholding of any discovery matters.

19 A. Right. Right.

20 Q. And did you make that argument in this case
21 asking for information or the name of the CI/?

22 A. No.

23 Q. All right. I've got no further questions. One
24 second. Let me ask. No further questions.

25 A. Thank you.

1 THE COURT: Anything further from the State?

2 MR. ISENBERG: No redirect, Your Honor.

3 THE COURT: You may come down.

4 THE WITNESS: Thank you, Judge.

5 (Witness leaves witness stand.)

6 MR. ISENBERG: Your Honor, I would just ask that

7 Mr. Crane be excused.

8 THE COURT: Without objection?

9 MS. ROSS: No objection.

10 MR. ISENBERG: Thank you, Mr. Crane.

11 (Witness leaves courtroom.)

12 THE COURT: Any other witnesses from the State?

13 MR. ISENBERG: No, Your Honor.

14 THE COURT: All right. Any final argument?

15 MR. ISENBERG: Yes, Your Honor.

16 MS. ROSS: Judge, we would argue that Mr. Crane
17 failed to investigate the CI that led to the basis of
18 the search warrant and failed to have a hearing of an
19 attempt to suppress the drug evidence against Mr.
20 Griffin. The search warrant only relates to marijuana.
21 There is no mention of cocaine in that search warrant.

22 THE COURT: What difference does that make?

23 MS. ROSS: Well, we just argue that it's improper
24 and it should have been investigated.

25 THE COURT: What should have been investigated?

1 MS. ROSS: The circumstances around the issuance
2 of the search warrant. If the search warrant is based
3 just on marijuana, then the State was authorized to
4 search for marijuana.

5 THE COURT: Right.

6 MS. ROSS: It said nothing about cocaine or other
7 evidence of drug activity.

8 THE COURT: I thought I heard that once the the
9 search warrant was executed, the cocaine was in plain
10 view or that your client voluntarily turned over the
11 drugs and guns and money or something to that effect.

12 MS. ROSS: I believe that was the testimony of
13 Mr. Crane, but that was not Mr. Griffin's testimony.

14 THE COURT: Okay. You're right.

15 MS. ROSS: And, therefore, I think if you go
16 under Cole, if he is found to have -- if there's some
17 valid challenge to the search warrant such that a
18 suppression hearing may have gotten -- resulted in the
19 drugs being suppressed, a good outcome from Mr.
20 Williams, therefore he would have had to know he was
21 waiving that good argument when he pled guilty. And I
22 didn't hear testimony of that, so that would be our
23 argument for Mr. Griffin.

24 THE COURT: All right. The State's position?

25 MR. ISENBERG: Your Honor, I guess I recognize

1 three issues that came up throughout the course of this
2 hearing, failure to suppress, the failure to
3 investigate, and the failure to review discovery. The
4 first, the failure to suppress, I would argue, as you
5 pointed out, counsel credibly testified that you
6 reviewed this search warrant, saw information, and saw
7 sort of like, I guess, key words on the search warrant
8 that he had seen in 42 years of practice. Didn't
9 recognize anything abnormal. Didn't see any basis to
10 object to the search warrant. So in reviewing that, he
11 decided that there was no reason to make an objection.

12 And I would say that what he testified to was the
13 accurate review of the search warrant because there was
14 nothing improper about what's stated in the search
15 warrant. And on that note, a magistrate judge reviewed
16 all the information given by police officers, so if
17 there was any issue with the search warrant it would be
18 with the magistrate judge's review and the allowance of
19 what she put about the confidential informant on the
20 search warrant.

21 With failure to investigate, counsel testified
22 that he did not get Timothy Jackson's name from the
23 solicitor in discovery so, therefore, he had no basis to
24 investigate Timothy Jackson.

25 As for prejudice with the investigation of

1 Timothy Jackson, the applicant admitted on the stand
2 that they were doing drugs together the night before and
3 that was the basis for the search warrant. The
4 confidential informant said that he had done drugs and
5 saw drugs from the applicant's house. So any contest of
6 his credibility would have been conceded by the
7 applicant today.

8 As for the failure to review discovery, counsel
9 testified that they reviewed discovery. So I would say
10 the applicant has not overcome his burden of proof to
11 any of these allegations.

12 And as to the prejudice argument, this is a plea.
13 Counsel testified that there was a deadline for 15
14 years. And they had to meet that deadline. And the
15 applicant took the plea because he knew getting the 15
16 years was better than risking 25 at trial. So I would
17 argue that his motivation in taking this plea was to get
18 lesser time that he was going to be exposed to.

19 And so I would argue that there was no prejudice
20 in any of these circumstances. For that reason I would
21 ask that you dismiss his application with prejudice.

22 THE COURT: All right.

23 MR. ISENBERG: Thank you.

24 THE COURT: Thank you very much. I'll accept
25 proposed orders within 30 days.

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MR. ISENBERG: Thank you, Your Honor.

MS. ROSS: Thank you, Your Honor.

(Court concluded at 10:25 a.m.)

--- THIS ENDS REQUESTED TRANSCRIPT ---

1 COURT REPORTER CERTIFICATE

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I, the undersigned Julie A. Cendroski, Court Reporter for the Seventh Judicial Circuit Court of the State of South Carolina, do hereby certify that to the best of my ability the foregoing is a true, accurate, and complete transcript of record of all the proceedings and evidence introduced in the hearing and/or trial of the captioned case, relative to appeal, in the Court Of Common Pleas for Spartanburg County, South Carolina, on the 9th day of October, 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

s/Julie A Cendroski
Julie A. Cendroski
Circuit Court Reporter
Seventh Judicial Circuit

Exhibit 1



Carla Field 
Digital Managing Editor

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SPARTANBURG COUNTY, S.C. — An investigator with an Upstate sheriff’s office has been fired, and now decades worth of cases in which he has been involved are being reviewed, according to the solicitor’s office.

Solicitor Barry Barnette said in a letter Jan. 28 that all cases, present and past, involving Spartanburg County Sheriff’s Office Investigator Lorin Williams are under review.

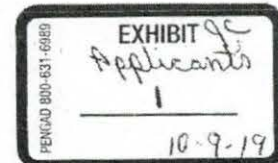


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The investigation comes after Williams was fired after he was found to have lied about getting information from a confidential reliable informant who had been verified as truthful to seize narcotics and make an arrest.

The sheriff's office said the informant was never appropriately registered and the information should not have been used to acquire a search warrant.

“This is a serious violation of Sheriff’s Office policy and has the potential for other serious repercussions,” the sheriff’s office says.



Williams was fired after the violation in connection with the search warrant that was used Jan. 15 was discovered.

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The Spartanburg Herald-Journal reported that Williams served the Spartanburg County Sheriff's Office for 13 years, after five years with the Landrum Police Department and about two years with the Chesnee Police Department.

The number of cases that are in question because of Williams' involvement was not immediately clear.

Barnette's letter said the South Carolina Attorney General's Office has been contacted about the matter.

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Longtime Upstate officer's cases in question after policy violation, firing, solicitor says

Investigator Lorin Williams terminated after improper search warrant, officials say



Updated: 6:41 PM EST Feb 5, 2019

Exhibit 2

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

4400 BROAD RIVER ROAD
COLUMBIA, SOUTH CAROLINA 29210**13.30 USE OF INFORMANTS IN INVESTIGATIONS**

POLICY: 13.30	DATE: JANUARY 1, 1992	REVISION DATE: AUGUST 4, 2017
TITLE: USE OF INFORMANTS IN INVESTIGATIONS		PAGE 1 OF 4

RESPONSIBLE AUTHORITY: APPROPRIATE MAJOR

RELATED STANDARDS/STATUTES/REFERENCES: CALEA 42.2.7 a., b., c., d., f., g.

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

GENERAL PURPOSE: The purpose of this policy is to provide regulations for the control and use of confidential informants (CI).

POLICY: In many instances, a successful investigation cannot be conducted without the use of CIs. While the use of CIs is an effective tool in investigations, it can be undermined by the misconduct of either the CI or the agent utilizing the informant. Therefore, it shall be the policy of this agency to take necessary precautions by developing sound informant control procedures. (CALEA 42.2.7 f.)

SPECIFIC PROCEDURES:**A. Establishment of an Informant File System**

1. The Major for Narcotics, Alcohol and Vice Services or his/her designee shall be responsible for developing, maintaining, and securing master informant files and an indexing system. (CALEA 42.2.7 a., c.)
2. A file shall be maintained on each CI used by agents. Each file shall be coded with an assigned informant control number and shall contain the following information: (CALEA 42.2.7 b.)
 - a. Informant's name;
 - b. Name of agent initiating use of the informant;
 - c. Informant's photograph, fingerprints, and criminal history record;



- d. Briefs of information provided by the CI and its subsequent reliability. If an informant is determined to be unreliable, the informant's file shall be placed in the unreliable informant file;
 - e. Signed informant agreement; and
 - f. Update of active or inactive status of informant.
3. The confidential informant files shall include an indexing system. An informant history summary, coded with the informant control number, shall be prepared to correspond to each informant file, and include the following information. (CALEA 42.2.7 c.)
- a. Special skills, avocations;
 - b. Date of birth;
 - c. Aliases;
 - d. Height, weight, hair color, eye color, race, sex, scars, tattoos, or other distinguishing features;
 - e. Current home address and telephone number;
 - f. Residential addresses over the last five (5) years;
 - g. Current employer, position, address, and telephone number;
 - h. Marital status and number of children;
 - i. Vehicles owned and their registration numbers; and
 - j. Places frequented.
4. Informant files shall be maintained in a secured area. (CALEA 42.2.7 c.)
5. The informant files shall be utilized in order to: (CALEA 42.2.7 b.)
- a. Provide a source of background information about the informant;
 - b. Provide a history of the information received from the informant;
 - c. Enable review and evaluation by the appropriate supervisor of information given by the informant; and
 - d. Minimize incidents that could be used to question the integrity of agents or the reliability of the CI.
6. Access to the informant files shall be restricted to the Chief, Assistant Chief, the Majors, designee(s) for administration of records, and Captains, as necessary. (CALEA 42.2.7 c.)
7. Sworn personnel may only review an individual's informant file upon the approval of the appropriate Captain or higher authority. (CALEA 42.2.7 c., d.)

B. Use of Informants

BY ORDER OF:



Mark A. Keel
CHIEF OF SLED

ATTACHMENT: INFORMANT AGREEMENT

POLICY 13.30, "USE OF INFORMANTS IN INVESTIGATIONS" (CALEA 42.2.9 g)

INFORMANT AGREEMENT

During my association with the South Carolina State Law Enforcement Division (SLED) as an Informant, I, the undersigned, do hereby agree to be bound by the following conditions and procedures while so associated;

1. I agree that I have no police power under the State of South Carolina or any local governmental subdivision and have no authority to carry a weapon while performing my activity as an Informant.
2. I acknowledge that I am associated with SLED as an Informant on a case or time basis as an independent contractor and that any payment I receive from SLED will not be subject to Federal or State Income Tax Withholding or Social Security. All reporting of income is the responsibility of the Informant.
3. I further acknowledge that as an Informant and independent contractor, I am not entitled to ~~Workman's Compensation or Unemployment Compensation from the State of South Carolina~~ and I shall not hold the State of South Carolina liable for any injuries or damage incurred by reason of my association with the State Law Enforcement Division.
4. I further agree not to divulge to any person, except the agent with whom I am associated, my status as an Informant for SLED unless required to do so in court and shall not represent myself to others as an employee or representative of SLED.
5. I further agree not to use SLED or any of its agents as credit references or employment references unless prior approval is obtained from the agent with whom I am associated.
6. I further agree that my association with SLED does not afford me any special privileges.
7. I further agree that I will not attempt to make any purchase of drugs or other contraband except as instructed by the agent with whom I associated and will contact the agent as soon as possible for delivery of such evidence to him.
8. I further agree to maintain a strict accounting of all funds provided to me by SLED as part of my activity as an Informant. I understand that misuse of state funds could be grounds for criminal prosecution against me.
9. Finally, I agree that violation of any of the above enumerated provisions will be grounds for immediate termination and probably criminal charges.

Dated this _____ day of _____, 20____

Informant

Agent

Witness

(INFORMANT AGREEMENT MMR 10-19-00)

(N-028)

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
 Bennie Lee Griffin, S.C.D.C. No. 375591,)	Case No.: 2018-CP-42-1906
)	
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 by Bennie Lee Griffin ("Applicant") on June 5, 2018. Respondent made its return on or about February 28, 2019. The Court convened an evidentiary hearing into the matter on October 9, 2019, at the Spartanburg County Courthouse in Spartanburg, South Carolina. Applicant was present at the hearing and represented by Susannah Ross, Esq. Jacob 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, Lawrence W. Crane, Esq. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Spartanburg County Clerk of Court regarding the subject convictions and the pleadings. After a thorough review of the evidence and credible testimony in the record, this Court finds the application should be DISMISSED with prejudice.

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the August

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2017 term of the Spartanburg County Grand Jury for possession with intent to distribute (2017-GS-42-4294) and trafficking cocaine in the range of 200 grams (2017-GS-42-4292). Originally, James T. Rutherford, Esquire, represented Applicant, and James Hunter, of the seventh Circuit Solicitor's Office, prosecuted the case. Lawrence W. Crane began representing Applicant on January 22, 2018.

On February 27, 2018, Applicant pleaded guilty to a lesser included offense of trafficking cocaine in the range of 28-100 grams with a negotiated sentence of 15 years. The possession with intent to distribute charge was dismissed. The Honorable Grace Knie accepted the negotiated sentence. Applicant did not appeal.

II. STATEMENT OF THE FACTS

The underlying facts of the convictions for which Applicant is incarcerated were articulated by the State during the plea proceeding as summarized below: (Tr. 9-11).

On January 24, 2017, officers with the Spartanburg County Sheriff's Office Narcotics Unit executed a search warrant at ■ Price Street in Inman, South Carolina in Spartanburg County, which was the residence of the Applicant. They observed the Applicant through a closed glass storm door and demanded he open the door. Applicant took a step towards the door then started going towards the kitchen. Officers broke open the door, and the entered the residence. Applicant was detained in the kitchen. (Tr. 9-11).

When asked if he had any illegal substances in the house, Applicant admitted to having six to seven ounces of cocaine, pills, and marijuana in the kitchen. Officers located United States currency on his person and he claimed to have more in the bedroom. Total officers located 221.98 grams of cocaine and multiple baggies. They also located Hydrocodone, Alprazolam, Quazepam, Diazepam, and over 150 grams of marijuana. Also, Officers located \$9,000 United States

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currency. There was drug residue located on some of the United States currency. Applicant did write a statement claiming these items. (Tr. 9-11).

Applicant's prior record is a 1987 possession of cocaine, 1997 attempted drug conspiracy, 2012 possession with intent to distribute crack, possession with intent to distribute cocaine, possession with intent to distribute marijuana, and 2016 cocaine charge. Upon inquiry by the Court, Applicant confirmed the above articulated facts. (Tr. 9-11).

III. CURRENT APPLICATION

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

1. Failure to investigate

- a. Ineffective Assistance of Counsel for failure to discharge his duty of diligence to investigate the evidence, facts, and witnesses in the case.
- b. failed to investigate the Narcotics Investigation information "Timothy Jackson," to make sure he was registered with "Sled" pursuant to policy 13.30" use of informants for investigations and furthermore this investigation was unlawful and illegal.
- c. Furthermore, the informant was visiting the Applicant's house and using drugs the night before the raid and the informant witnessed 220 grams of cocaine, and a large quantity of money.
- d. failed to investigate the informant and make sure he was not under the influence of narcotics in this case.
- e. failed to investigate the narcotic investigator's procedure and testimony, involving the issuing of search warrant by the magistrate judge. Therefore, by the investigators violating Sled Policy 13.30 and failing to register the informant, then came the improper influencing of the magistrate judge to issue the search warrant.
- f. Applicant's 4th Amendment right of privacy was violated by these actions.
- g. Counsel failed to investigate witnesses and prepare for trial.

2. Involuntary Plea

- a. Ineffective assistance of counsel for an involuntary plea.
- b. Counsel was ineffective for 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's violation of "Sled Policy 13.30 informant agreement."

3. Failure to Advise

- a. Counsel failed to suppress the evidence out of the case, pursuant to violation of "Sled Policy 13.30," by the investigators.

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- b. Counsel failed to provide Applicant with a motion of discovery, so the Applicant could assist and investigate evidence in the case.
 - c. Counsel failed to request a preliminary hearing so Applicant could more adequately be informed about the case.
 - d. Counsel provided erroneous advice about Applicant's sentence being a turnaround at Kirkland and being released.
 - e. Ineffective assistance of counsel for failure to provide a proper defense for physical evidence in the case.
 - f. Abandonment of Client
 - g. Counsel failed to have a valid strategy for the case
4. Subject Matter Jurisdiction
- a. Counsel failed to challenge the subject matter jurisdiction of the Applicant's indictment, pursuant to the investigator's violation of "Sled Policy 13.30" by not registering the informant "Timothy Johnson" for an investigation. Then the investigators improperly influenced the Grand Jury to indict Applicant with tainted evidence and false testimony. Therefore, the trial court lacked jurisdiction to accept Applicant's guilty plea.

Applicant requests relief as follows:

- Reversal and Remand

At the evidentiary hearing, Applicant proceeded forward with the following allegations: 1) failure to investigate confidential informant; 2) failure to challenge a search warrant; 3) failure to advise about relevant SLED policy; 4) failure to move forward with preliminary hearing; 5) failure to challenge subject matter jurisdiction; and 6) involuntary plea without knowledge confidential informant violated policy in failing to be registered. The rest of the allegations were not mentioned and are hereby dismissed with prejudice.

IV. SUMMARY OF TESTIMONY PRESENTED AT EVIDENTIARY HEARING

Applicant

Applicant testified on his own behalf. Applicant testified Spartanburg County, South Carolina. Investigator Lorin Williams was fired for lying in a search warrant affidavit case about a confidential informant ("CI") being registered with South Carolina Law Enforcement Division ("SLED") when the CI in fact was not. A newspaper article confirming this fact was admitted into

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evidence as an exhibit. Applicant testified Counsel did not investigate the CI whose information formed that basis for the search warrant in this case. Applicant testified he knew the CI, yet Counsel still did not investigate him. Applicant further testified Counsel did not review the search warrant with him, nor discussed suppressing or challenging the search warrant. Applicant testified Counsel did not review any documents regarding SLED policy and, if Counsel had checked to see if CI was registered with SLED, the case might have been different. Applicant testified he believed the warrant could have been suppressed had the Judge known the CI was not registered with SLED. Applicant testified he requested a preliminary hearing but did not receive one.

On cross, Applicant testified Counsel did not inform him that he did not investigate the case. He testified his Counsel did not discuss suppressing the warrant with him. At the plea hearing, Applicant testified he was satisfied with counsel. During the evidentiary hearing, Applicant testified he felt like he had no choice but to testify that he was satisfied with counsel because he thought he would have received 25 years if he went to trial.

Applicant testified he was doing drugs with the CI the night before the raid. CI informed law enforcement there were drugs at Applicant's home. Thereafter, Applicant testified that law enforcement received and executed a search warrant at the home. Law enforcement found drugs during the search and placed him under arrest.

During re-direct, Applicant testified had Counsel investigated SLED policy he would not have pled guilty.

Counsel

Counsel testified on behalf of Respondent. Counsel testified he has been practicing criminal defense law for forty-three years and had represented Applicant multiple times.

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Counsel testified he reviewed all discovery with Applicant. He testified he reviewed the search warrant with Applicant. Counsel testified he did not identify any issues to challenge in the search warrant. He further testified he did not find anything wrong with the confidential informant. Counsel testified the informant correctly identified marijuana in Applicant's home. Counsel testified he went over potential defenses with Applicant by reviewing photos, the search warrant, and other pieces of discovery.

Counsel testified Applicant did not know the name of the CI because the CI was not named in discovery. Counsel testified Applicant floated a potential name to him but Counsel indicated this name was not listed in discovery as the confidential informant. Therefore, he did not investigate the CI based upon not having a name. Counsel testified, based upon his experience, he could not investigate a CI until it is named in discovery.

Counsel testified the plea offers gradually increased each time he talked with the Solicitor. First it was fifteen years. Then the second was eighteen years. The third time was twenty-two years. Counsel testified the Solicitor refused to go under fifteen years. Counsel testified Applicant pled based upon his previous experiences with the legal process. Counsel testified Applicant realized fifteen years was going to be his best offer and Applicant wanted to avoid exposure to twenty-five years at trial.

Counsel testified SLED policy was irrelevant in this case based on Spartanburg County conducting the investigation.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the

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legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel's performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690).

The Court, in determining deficiency, must affirmatively entertain the range of possible reasons

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counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” Yarborough at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

[In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he/she would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. 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.”). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of the original plea.

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statements. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Cl. App. 2007) (citing Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975)).]

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. Strickland, 466 U.S. at 696. 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. Id. at 696-97.

1. Failure to Investigate the Confidential Informant

Applicant contends Counsel failed to investigate the CI that law enforcement relied on to secure this search warrant. In reviewing a claim that defense counsel failed to properly investigate a defense to a crime, a court's principle concern is whether the investigation "was itself reasonable." Taylor v. State, 404 S.C. 350, 364, 745 S.E.2d 97, 104 (2013). Additionally, Counsel is not deficient in conducting a reasonable investigation as long as they interview potential witnesses "when it is reasonable to do so." Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011).

Counsel testified that the CI was not named in discovery. Therefore, he could not conduct an investigation until the informant was named. He testified the CI was never named because Applicant accepted a plea instead. Therefore, Counsel testified he never had a chance to investigate the CI.

This Court finds Counsel reasonably decided not to investigate a protected witness because he or she was not named in discovery. As a result, Applicant has failed to overcome the burden to prove Counsel was deficient in this regard.

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Applicant contends the confidential informant would have given impeachable testimony. The prejudice prong is dependent on whether counsel's deficiencies "affected the outcome of the plea process." Erierson v. State, 417 S.C. 287, 789 S.E.2d 762 (Cl. App. 2016), *aff'd as modified*, 423 S.C. 257, 815 S.E.2d 433 (2018). To establish it through witness corroboration an applicant "must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. SCRE 801. Mere "speculation" about the details of what a witness would testify about is insufficient to establish prejudice. Dalton v. State, 376 S.C. 130 at 143, 654 S.E.2d 870 at 877.

Applicant admitted he observed this individual using drugs before his arrest. At the evidentiary hearing, Applicant testified he did drugs with the confidential informant. Therefore, this Court finds Applicant has failed to overcome the burden to prove he was prejudiced by a failure to interview this witness.

2. Failure to Investigate Narcotics Investigator

Applicant contends Counsel failed to investigate law enforcement officers who did not follow appropriate procedure to secure a search warrant. In reviewing a claim that defense counsel failed to properly investigate a defense to a crime, a court's principle concern is whether the investigation "was itself reasonable." Taylor, 404 S.C. at 364, 745 S.E.2d at 164. Additionally, Counsel is not deficient in conducting a reasonable investigation as long as he interviewed potential witnesses "when it is reasonable to do so." Edwards v. State, 392 S.C. at 457, 688 S.E.2d at 6.

Here, Applicant testified Counsel should have investigated Lorin Williams. Applicant testified Williams had been recently fired for lying in a search warrant. Applicant testified

Edwards

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Williams lied about the CI's credibility to secure a search warrant. However, Applicant testified Counsel did not conduct any type of investigation into Williams.

On the other hand, Counsel testified the identity of this CI was not turned over in discovery he therefore had no basis to investigate credibility of a CI. Customarily, Counsel testified investigations surrounding a CI begin when a name is provided in discovery. He testified he was aware of Williams' role in law enforcement at the time and Williams was not involved in securing the search warrant in this case. Therefore, Counsel testified he had no reason to investigate Williams.

This Court finds Counsel provided credible testimony on this issue. He had no reason to investigate an officer who was not involved in the case and he had no reason to believe Williams was improperly securing search warrants. Therefore, this Court finds Counsel reasonably decided not to investigate Williams. As a result, this Court finds Applicant has failed to overcome the burden to prove Counsel deficiently failed to investigate Williams.

Applicant contends Williams improperly secured the search warrant at issue. However, Applicant has failed to corroborate this claim. A review of the record provides no indication Williams was involved in securing this search warrant. Moreover, Counsel testified Williams did not play a role in any substantive matter in this case. Therefore, this Court finds Applicant has failed to prove he was prejudiced by a failure to investigate Williams.

3. Failure to Challenge Search Warrant

Applicant contends Counsel failed to challenge the search based upon several factors. However, Counsel testified he reviewed the search warrant and he and Applicant reviewed the search warrant. Counsel did not believe there were any issues to challenge. Moreover, Counsel testified it would not have been appropriate to file a motion to challenge the search warrant while

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negotiating a plea. Instead, Counsel testified these motions are generally saved until trial becomes inevitable. Accordingly, this Court finds Counsel came to a conclusion after reasonable review of the search warrant. Therefore, this Court finds Applicant has failed to overcome the burden to prove Counsel was deficient in this regard.

Applicant contends challenging the legality of this search warrant would have been successful because the CI was not registered with SLED. A search warrant affidavit based solely on information provided by a CI must contain information supporting the credibility of the informant and the basis of his knowledge. State v. Robinson, 415 S.C. 600, 785 S.E.2d 355 (2016). In order to obtain relief on claim that search warrant affidavit contains false statements, a defendant must prove the affiant knowingly and intentionally, or with reckless disregard for the truth, included false statements in the search warrant affidavit. Robinson, 415 S.C. at 606, 785 S.E. at 358.

Here, Applicant inadvertently corroborated the CI's claim of witnessing contraband at Applicant's house. Applicant conceded the confidential informant was at his house on the night in question. Applicant conceded there was contraband at his house when the CI was present. Applicant finally conceded that both of them used this contraband. Taking this into consideration, this Court finds Applicant has not provided sufficient evidence to prove the CI made false statements to secure the search warrant at issue. Accordingly, this Court finds Applicant has failed to overcome the burden to prove prejudice based upon this issue.

3. Failure to Advise about SLED Policy

Applicant alleges Counsel deficiently failed to advise him about SLED requirements in regards to CI's registration requirement. Counsel testified Spartanburg County conducted this

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investigation and therefore, Counsel testified SLED policies and procedures were irrelevant to this case. Counsel testified he did not have any reason, at that time, to discuss SLED with Applicant.

The record reflects this warrant was secured and executed by Spartanburg County law enforcement.

Finally, Applicant has failed to explain the role, relevance, or representation SLED had in his case. Therefore, this Court finds Applicant has failed to overcome the burden to prove Counsel was deficient in not advising him about SLED policy.

Applicant alleges he would not have pled guilty with knowledge of the SLED CP's registration requirements. The question here is whether Applicant, if correctly informed of circumstances surrounding the plea would have pled guilty, not whether counsel would have still advised applicant plead guilty. Turner v. State, 335 S.C. 382, 517 S.E.2d 442 (1999).

Applicant appears to believe SLED conducted the investigation leading to his arrest. However, this is inaccurate. In fact, the Spartanburg County Sheriff's Office conducted this investigation. (Tr. 9-10). The assistant solicitor shared this fact with the plea court. (Tr. 9-10). Counsel testified he was aware of this fact throughout the case. Counsel also testified he reviewed discovery with Applicant. This is corroborated by Applicant's statement to the plea court. (Tr. 11). The record reflects a Spartanburg County Sheriff's Office incident report was included in discovery. An officer from the Spartanburg County Narcotics Unit provided the narrative in this incident report. That narrative reflects that the Spartanburg County Narcotics Unit identified themselves when executing the search warrant. Accordingly, this Court finds credible testimony and evidence to indicate Applicant was aware the Spartanburg County conducted this investigation. Moreover, this Court finds Applicant has not provided any evidence to suggest otherwise. As a result, this Court finds Applicant was correctly informed of the factual basis for

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his negotiated sentence. Therefore, this Court finds Applicant has failed to overcome the burden to prove prejudice.

4. Failure to Request Preliminary Hearing

Applicant alleges he requested a preliminary hearing to Counsel. However, Applicant alleges Counsel failed to formally request one in this case. A defendant must request the preliminary hearing within ten days after notice from the magistrate judge. Rule 2(a), SCRCrimP.

Counsel testified he came on very late in the case and testified he had no such opportunity to make the request. Applicant made his first appearance on January, 25, 2017. During that hearing, the Magistrate Judge informed Applicant both verbally and in writing about the ten day window to request a preliminary hearing. There is no evidence Applicant requested this hearing. Counsel did not begin representing Applicant until January 22, 2018. This was just over a year after Applicant's first appearance. This Court finds Counsel did not represent Applicant during the ten day time period to request the preliminary hearing. Accordingly, this Court finds Applicant has failed to overcome the burden to prove Counsel was deficient in not requesting a preliminary hearing.

Applicant alleges the charges would have been dismissed if Counsel had requested a preliminary hearing. However, a preliminary hearing shall not be held if a defendant is already indicted by a grand jury. Rule 2(b), SCRCrimP; also see State v. Hawkins, 310 S.C. 50, 54-55, 524 S.E.2d 50, 53 (Ct. App. 1992) (holding trial court did not err in refusing to quash defendant's indictments because he did not receive a requested preliminary hearing because he was indicted before a preliminary hearing was held).

The record reflects Applicant was indicted by a grand jury in August 2017. Counsel did not begin representing Applicant until January 2018. At the plea hearing, Applicant affirmed a

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grand jury indicted him on all charges. (Tr. 6). Therefore, this Court finds Applicant would not have been entitled to a preliminary hearing if requested by Counsel. Accordingly, this Court finds Applicant was not prejudiced by any failure to request a preliminary hearing.

5. Failure to Challenge Subject Matter Jurisdiction

Applicant contends Counsel deficiently failed to challenge subject-matter jurisdiction based upon previously-mentioned SLED policy violations. Applicant alleges there was no subject matter jurisdiction after false testimony was provided to a grand jury. Subject matter jurisdiction is satisfied so long as the elements of the offense are sufficiently stated. Thompson v. State, 357 S.C. 192, 593 S.E.2d 139 (2004), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

Applicant provided no evidence of foul play in the grand jury proceedings. Moreover, Applicant failed to substantiate his claim that SLED policy was relevant to this case. The CI worked for Spartanburg County. The search warrant was secured by a Spartanburg County officer. The indictment language refers to contraband collected by the Spartanburg County Narcotics Unit. Accordingly, this Court finds SLED policy would not have been a legitimate reason to challenge subject matter jurisdiction.

Additionally, Counsel reiterated multiples times SLED policy was not relevant to this case. He said it would not have been an appropriate basis for any motion in this case. Therefore, Counsel focused on more important issues such as pursuing a plea offer. Counsel explained fifteen years was the best offer Applicant was going to get. Counsel was satisfied when Applicant accepted the offer. Counsel remembered Applicant being satisfied in avoiding exposure to twenty-five years if he went to trial. Accordingly, this Court finds Counsel gave credible testimony on the

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issue. This Court further finds Counsel reasonably ignored irrelevant issues to focus on diligently pursuing a plea agreement.

Based upon the above findings, this Court finds Applicant has failed to overcome the burden to prove Counsel was deficient. This Court also finds Applicant has failed to overcome the burden to prove he suffered any prejudice from an alleged deficiency.

B. Involuntary Plea

Applicant contends his plea was involuntary based upon having no knowledge the confidential informant violated SLED policy. To find a guilty plea voluntarily and knowingly, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000). Additionally, the plea colloquy can cure any alleged deficiency if counsel did not properly advise an applicant about the consequences of accepting it. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997) (stating that plea counsel's deficient performance can be cured by the plea court's colloquy).

As previously determined, the Spartanburg County Sheriff's Office conducted this investigation. The record reflects Spartanburg County handled the CI in this case. It also reflects Spartanburg County Narcotics' executed the search warrant. Therefore, this Court finds SLED policy information was not relevant to the charges or consequences of Applicant's plea. Accordingly, this Court finds Applicant did not require knowledge of this policy in entering into a knowing and voluntary plea.

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VI. CONCLUSION

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S.C. SUPREME COURT

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application.

Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf.

Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 14 day of January, 2020.

G. Thomas Cooper
G. THOMAS COOPER
Presiding Judge
Seventh Judicial Circuit

 Cooper, South Carolina

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

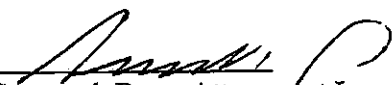
2018-CP-42-1906

Bennie L. Griffin, Appellant,
v.
The State, Respondent.

NOTICE OF APPEAL

Bennie L. Griffin appeals the Honorable G. Thomas Cooper's Order of Dismissal filed January 21, 2020.

This 28 day of January, 2020.


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

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

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JAN 30 2020
S.C. SUPREME COURT

WITNESSES

1. SENTENCE MADE

SCSO

2. REPORT ENDED

3. CARD FILLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND FINE CARD MADE

8. ARREST WARRANT NUMBER

2017A4210100292

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

AUG 18 2017

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

17-GS-42-4292

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 21 2017

TERM

THE STATE

vs.

BENNIE LEE GRIFFIN

Indictment for

TRAFFICKING IN COCAINE

SC Code: 44-53-370

FILED
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SPARTANBURG COUNTY

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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

AUG 18 2017

At a Court of General Sessions, convened on _____, the

Grand Jurors of Spartanburg County present upon their oath:

TRAFFICKING IN COCAINE

That Bennie Lee Griffin did in Spartanburg County on or about January 24, 2017, knowingly sell, manufacture, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or did knowingly actually or constructively possess, or did knowingly attempt to actually or constructively possess more than (200) Two Hundred grams of Cocaine, a schedule II controlled substance, in violation of §44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

SCSO

Kevin [Signature]

ARREST WARRANT NUMBER

2017A4210100296

ACTION OF GRAND JURY

True Bill

CE
Foreperson of Grand Jury **AUG 18 2017**
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. -

17-GS-42-4293

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 21 2017

TERM

THE STATE

vs.

BENNIE LEE GRIFFIN

MP
~~plea agreement~~
griffin jett 4/28/18

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE MARIJUANA

SC Code: 44-53-370

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H. HOPE BLACKLEY
SOUTH CAROLINA
COURT

WITNESSES

SCSO

Kevin [Signature]

ARREST WARRANT NUMBER

DIRECT INDICTMENT

ACTION OF GRAND JURY

True Bill

OE

Foreperson of Grand Jury

Date: **AUG 18 2017**

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO **17-GS-42-4294**

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 21 2017

TERM

THE STATE

vs.

BENNIE LEE GRIFFIN

NP

*for plea agreement
JEH 2/28/18*

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE DIAZEPAM

SC Code: 44-53-370

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M. HOPE BLACKLEY
CLERK OF COURT
SPARTANBURG, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on
Jurors of Spartanburg County present upon their oath:

AUG 18 2017

, the Grand

POSSESSION WITH INTENT TO DISTRIBUTE

That Bennie Lee Griffin did in Spartanburg County on or about January 24, 2017, manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Diazepam, a schedule IV controlled substance, in violation of § 44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.*

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR