STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

FILED

2016 JUL 22 A 11: 10

BETTA A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

Randall Houston Nordan, No. 358103, C/A No.: 2014-CP-3202893

Applicant,

vs.

The State of South Carolina,

Respondent.

OPINION AND ORDER

ORIGINAL

This is a Post-Conviction Relief matter. On December 9, 2013, Applicant Randall Houston Nordan entered guilty pleas to the criminal offenses of leaving the scene of an accident involving death (2011-GS-32-1859) and reckless homicide (2011-GS-32-2625). The pleas were presented to the court without negotiations or recommendation, and were not pleas of nolo contendere or Alford pleas. Applicant was represented by retained counsel at the plea hearing. Applicant received sentences of twenty (20) years of imprisonment suspended to ten (10) years active followed by five (5) years of probation for leaving the scene of an accident involving death and a concurrent sentence of ten (10) years for the reckless homicide.[1]

On August 11, 2014, Applicant filed this action seeking post-conviction relief. Applicant claims he is entitled to post-conviction relief on account of ineffective assistance by Plea Counsel in violation of his rights protected by the Sixth Amendment to the United States Constitution. Applicant asserts, among other things, that his plea counsel was ineffective in conducting a proper investigation into his not being under the influence of alcohol when the

[1] Subsequent to plea hearing, Applicant retained new counsel and, on December 12, 2013, moved the plea judge to vacate the plea or reconsider the sentence. The request was denied. Applicant filed a timely appeal, and his appeal was dismissed pursuant to Rule 203(b)(1)(B)(iv) of the South Carolina Appellate Court Rules on May 29, 2014.

government asserted the same at the plea hearing, failure to properly consult expert opinion as to the physical effects of the prescribed medications he was taking, improperly advising him to enter a plea when the state's evidence did not establish the requisite elements of the offenses, and failure to object and move to withdraw the plea when no factual basis exists to support the plea.

On January 11, 2016, the Court held an evidentiary hearing. At that hearing, Applicant challenged Plea Counsel's investigation of the facts and circumstances, his deficient review of the applicable law, and his decision to allow Applicant to enter a guilty plea.

Having had an opportunity to carefully consider the evidence[2] and applicable law, Applicant's petition is **GRANTED** because (1) Plea Counsel was ineffective in allowing Applicant to plead guilty when Plea Counsel knew Applicant was impaired during the plea hearing, (2) Plea Counsel's decision to allow Applicant to plead guilty was flawed because there was an insufficient factual basis for the plea, and (3) Plea Counsel's investigation fell below the standard owed to a criminal defendant to advise the client using professional judgment that is informed by the law and to investigate the facts.

STANDARD OF REVIEW

To establish a claim for ineffective assistance of counsel, a post-conviction relief applicant must prove: (1) that counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that the deficient performance prejudiced the applicant's case. Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) (citing Strickland v. Washington, 466 U.S. 668, 687 (1984)). "An applicant may attack the voluntary and intelligent

[2] In addition to the evidence and testimony presented during the January 11, 2016 hearing, the record before this Court consisted of a copy of Applicant's December 9, 2011, guilty plea transcript, the post-conviction relief transcript of the January 11, 2016 hearing, the records of the Lexington County Clerk regarding the convictions, appellate records consisting of the remittitur Order and cover letter from the South Carolina Court of Appeals Clerk, Applicant's records from the South Carolina Department of Corrections, and the pleadings related to the present application.

character of a guilty plea entered on the advice of counsel only by demonstrating that counsel's representation was below an objective standard of reasonableness." Id. (citing Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001)). "Further, the applicant must show that there is a reasonable probability that he would have insisted on proceeding to trial on the matter instead of pleading guilty." Id. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." See Bannister v. State, 333 S.C. 298, 302, 509 S.E.2d 807, 809 (1998).

A post-conviction relief applicant bears the burden of proving ineffective assistance and prejudice. Porter, 368 S.C. at 383, 629 S.E.2d at 356 (citing Bannister, 333 S.C. at 302, 509 S.E.2d at 809). In discerning whether these elements are met, the post-conviction relief court's decision must be supported by probative evidence. Dempsey v. State, 363 S.C. 365, 368, 610 S.E.2d 812, 814 (2005).

FINDINGS OF FACT

A circuit court hearing an application for post-conviction relief must resolve any factual dispute necessary to decide the application. See S.C. Code Ann. § 17–27–70 (2015); Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005). As factfinder, a circuit court must weigh the credibility of witnesses and determine what weight, if any, to give the evidence presented. See Drayton v. Evatt, 312 S.C. 4, 11, 430 S.E.2d 517, 521 (1993). This Court has carefully reviewed the evidence and records presented to it and considering the testimony presented during the hearing, the Court makes the following findings of fact.

In June 2011, Applicant was indicted for leaving the scene of an accident involving a death, a violation of South Carolina Code § 56-5-1210. In October 2012, the State indicted Applicant for reckless homicide, a violation of South Carolina Code § 56-5-2910. Both of the

indictments arise from a tragic truck/moped accident that occurred during the nighttime hours of May 9, 2011. Applicant was the driver of the truck that struck a moped which resulted in the death of the Victim, Hiram Juarez Miller. During the original plea hearing and during the present PCR hearing, it was not contested that the vehicle being driven by Applicant struck the moped. In fact, a surveillance camera from a nearby gas station recorded the actual collision.[3]

The central issues contested in the present PCR focus on Applicant's mental condition at the time of collision and at the time of the plea, his lawyer's knowledge of Applicant's mental condition, and the decisions his lawyer made with that knowledge. Central also is his lawyer's misunderstanding of legal principles and the resulting advice given to Applicant. Also at issue are the deficiencies in the factual investigation performed by Applicant's lawyer.

MISAPPLICATION OF LAW

The State's indictment cited the following predicate acts as the basis for Applicant's reckless conduct:

> (a) Drove a motor vehicle while his license to drive was suspended; (b) drove a motor vehicle while under the influence of alcohol or drugs, or a combination of both; (c) failed to reduce his speed when approaching and crossing an intersection; (d) failed to reduce his speed and/or drive in a reasonable and prudent manner; (e) drove without regard to actual and potential hazards then existing; (f) failed to keep and maintain a proper lookout; (g) failed to keep and maintain proper control of his vehicle; and (h) failed to drive with due care to others on the road.

(Hr. Tr. Ex. 4)

[3] On May 9, 2011, at approximately 2:35 a.m. Victim was riding a moped on Highway 6 and stopped at an intersection for a red light. (Pl. Tr. 11:5-14) After the traffic light turned green, Victim's moped remained stationary in the road. The collision took place approximately 21-22 seconds after the light had turned green. Applicant was driving a truck that struck Victim from behind and proceeded through the intersection. Victim died as a result of the collision and Applicant did not stop the truck at the scene of the collision. Even though the video was reviewed several times by the court, it is not clear whether Victim was seated on or had gotten off of the moped. (See Hr. Tr. Ex. No.14)

During the evidentiary hearing in this matter, Plea Counsel testified it was his belief that any one of these predicate acts, if proven, was sufficient to convict Applicant of reckless homicide. (Hr. Tr. 34:24-35:18) However, after having an opportunity to review the reckless homicide statute, Plea Counsel testified that he advised Applicant about his *criminal* charge by applying *civil* negligence principles:

Mr. Harpootlian:	Okay. So is driving under suspension something that would give rise to recklessness under that statute?
Mr. Simmons:	I don't think so.
Mr. Harpootlian:	Okay. So that's one of the things they relied on. Did you tell Mr. Nordan that that was something that they could not rely on?
Mr. Simmons:	I believe I did. I don't believe it was the basic thing because I -- I explained recklessness to him as compared to just ordinary negligence.
Mr. Harpootlian:	And what -- and what did you tell him?
Mr. Simmons:	That negligence was failure to use due care, that gross negligence meant that you are neglect to the extreme to where it was almost intentional.
Mr. Harpootlian:	Okay.
Mr. Simmons:	And gross negligence equals criminal negligence.

(Hr. Tr. 37:5-20) As will be discussed herein, the Supreme Court has strongly disavowed the connection of civil concepts of negligence to recklessness in criminal cases. State v. Rowell, 326 S.C. 313, 487 S.E.2d 185 (1997). As to the remaining predicate acts on which the State relied in its indictment, Plea Counsel testified that each *could* be an element of reckless homicide, depending on the particular circumstances of the case. (Hr. Tr. 39:19-41:7; 41:25-42:8; 43:3-5)

For example, when asked about the predicate act of failing to keep proper control of the vehicle, Plea Counsel testified:

Mr. Harpootlian:	Okay. Failed to keep a proper control of his vehicle.
Mr. Simmons:	It depends on the circumstances.
Mr. Harpootlian:	Now the video of this collision shows that he's in his lane, he's not weaving.
Mr. Simmons:	Right.
Mr. Harpootlian:	It shows, according to the highway patrol, he was in the range, but maybe being a mile an hour over the speed limit, right?
Mr. Simmons:	Correct.

(Hr. Tr. 41:25-42:8)

APPLICANT'S MEDICAL CONDITION

Applicant is a former Marine who injured his back and knees in a training accident, received an honorable medical discharge, and was placed on disability under the treatment of the Veterans Administration at the time of the collision. (Hr. Tr. 9:19-10:9 & 149:19-150:16; Pl. Tr. 29:16-30:21) Applicant was prescribed medication for severe pain (Hr. Tr. 150:22-24 ("A. Sometimes more than others, but extreme would be a good word, yes, sir.")

At the hearing, Plea Counsel repeatedly testified that Applicant told him he blacked out and could not recall anything about the collision. (See, e.g., Hr. Tr. 8:12-17, 22:12-14 & 67:17-68:1) When he took the stand, Applicant testified that while he recalls "certain parts" of the evening in question, he has never had any memory of the collision itself. (Hr. Tr. 152:11-153:4 ("Q. What about the part where Mr. Miller gets hit and killed? A. No, sir.") Applicant also testified that while he had suffered blackouts before, he had never suffered one to the extent as the night in question. (Hr. Tr. 154:4-8) Plea Counsel agreed that everything Applicant told him

about that evening was consistent with Applicant having suffered a blackout at the time of the collision. (Hr. Tr. 22:24-23:3)

NO RECOLLECTION AT TIME OF COLLISION

Plea Counsel hired a physician, Sean Fuller, M.D., to meet with Applicant and examine Applicant's VA medical records and the medications he was taking at the time of the collision. (Hr. Tr. 9:12-18, 10:15-20 & 153:20-23) Dr. Fuller issued a report indicating he was of the medical opinion that Applicant suffered "some type of cognitive impairment from the medication, particularly with antidepressants, muscle relaxers, [and] insomnia medications" that caused Applicant to blackout and collide with Victim's moped. (Hr. Tr. Ex 1) In other words, Plea Counsel's expert physician was prepared to give a medical opinion at trial that Applicant suffered a medication-induced blackout (Hr. Tr. 15:11-23), which was consistent with what Applicant told Plea Counsel.

At the plea, Plea Counsel represented to the Plea Judge that Applicant had no memory of the night in question. Plea Counsel testified:

Mr. Harpootlian:	Okay. Now, as a matter of fact, you tell the judge during the guilty plea he's got no recollection of hitting anybody that night, correct?
Mr. Simmons:	That's right.
Mr. Harpootlian:	And you represented that to the court as an officer of the court?
Mr. Simmons:	That's right.
Mr. Harpootlian:	And that he had no recollection of committing a reckless homicide or leaving the scene of an accident; isn't that correct?
Mr. Simmons:	Correct. That's correct.

(Hr. Tr. 8:22-9:7)[4] Plea Counsel explained Applicant's culpable acts to the Plea Judge as follows:

> Mr. Simmons: Here's what Houston did wrong: The medications that he took at approximately 11 o'clock that evening included Lisinopril, which was for blood pressure; Tramadol, which is a very mild pain killer; cyclobenzaprine, which is a muscle relaxer and an anti-inflammatory medication. That was the reason that we hired Dr. Shawn [sic] Fuller to give his report.
>
> One of the big problems was the Lisinopril itself can cause blackouts and that's what our defense was. And we started looking at this case and said, you know what, the problem is is the defense could also convict you. Where do you go with this?

(Pl. Tr. 28:17-29:5) Dr. Fuller's report, which this Court has had the opportunity to examine, was presented by Plea Counsel to the Plea Judge as evidence that Applicant's medication caused him to blackout at the time of the collision. (Hr. Tr. 14:16-15:2 & 23:3-8)

APPLICANT WAS MEDICATED DURING THE PLEA HEARING

Moreover, during Applicant's plea colloquy, the following exchange occurred:

> The Court: Are you under the influence of any drugs or alcohol today?
>
> Defendant: No, Your Honor.
>
> Mr. Simmons: He is under medications.
>
> The Court: Okay. And what type of medication is that, sir?
>
> Defendant: Tramadol, sir, psycho -- Baclofen and meloxicam, Your Honor.

[4] Plea Counsel also told the Plea Judge that Applicant had not been drinking, a fact Plea Counsel corroborated by interviewing Applicant's employer and father, Randy Nordan, who saw his son the morning after the collision and sent him on an errand to pick up supplies from a paint store without noticing any impairment or evidence of alcohol use. (Pl. Tr. 28:10-16; Hr. Tr. 87:18-23; see also Hr. Tr. 163:1-2 (Applicant testifying to the same))

(Pl. Tr. 8:6-13) During the hearing of this application, Applicant testified he had taken 10 milligrams of Ambien the night before to help him sleep, followed by 100 milligrams of tramadol, 20 milligrams of baclofen, and one meloxicam tablet at 8:00 a.m. the morning of the plea. (Hr. Tr. 154:13-155:25) After Applicant's plea was postponed to the afternoon, he returned home and took another 100 milligrams of tramadol around noon. (Hr. Tr. 156:1-19) Plea Counsel testified that he knew to interrupt Applicant's plea colloquy with the Court because Applicant had told him he had taken his medication prior to the plea, although Plea Counsel was unaware of the dose. (Hr. Tr. 73:11-74:13) When asked whether Applicant's use of his medication—medication he described as "very powerful" (Hr. Tr. 78:20-22)—was cause for concern when Applicant took his plea, Plea Counsel answered, "Yes. Yes." (Hr. Tr. 74:14-16)

Plea Counsel's testimony concerning the potency of Applicant's medication was supported by the testimony of Dr. James W. Bartling, a pharmacist with professional training in pharmacology and a professor at Mercer University's College of Pharmacy.[5] (Hr. Tr. 104:14-105:7) Dr. Bartling helped explain a major point of disagreement that repeatedly surfaced during Plea Counsel's testimony:

Mr. Harpootlian:	Okay. Now how about tell the Court, please -- now if I am blacked out, am I laying on the floor?
Dr. Bartling:	Not necessarily, no. You could be walking around just like you are now.
Mr. Harpootlian:	Okay. And what would -- when I say somebody's had a blackout, what does that mean?

[5] Applicant moved, without objection, that Dr. Bartling be qualified as an expert in the area of pharmacology. Having had an opportunity to review Dr. Bartling's *curriculum vita*, consider his background, and observe his testimony, the Court finds him qualified and his testimony helpful to aid the Court in understanding what role Applicant's medication may have played in this matter. The state presented no expert witnesses during the present hearing to counter any expert opinions offered on behalf of Applicant.

Dr. Bartling:	That means that you do not recall that period of time while you're in the blackout.
Mr. Harpootlian:	Okay. So could you make phone calls?
Dr. Bartling:	Yes.
Mr. Harpootlian:	Could you text people?
Dr. Bartling:	Yes.
Mr. Harpootlian:	Could you drive a vehicle?
Dr. Bartling:	Yes.
Mr. Harpootlian:	Could you do -- perform ordinary functions yet not have any recollection of it sometime after these occurrences?
Dr. Bartling:	Yes, that's the definition of a blackout.
Mr. Harpootlian:	Okay. And that is your opinion to a degree of medical certainty, more probably than not?
Dr. Bartling:	Yes, it is.

(Hr. Tr. 107:18-108:13) Based on his examination of Applicant's medical records, Dr. Bartling agreed with Dr. Fuller's conclusion that Applicant could have suffered a blackout on the morning of the collision. (Hr. Tr. 106:25-107:17)

Dr. Bartling also testified about tramadol, baclofen, and meloxicam—the medications Applicant was taking the afternoon of his plea. (Hr. Tr. 109:10-16) He explained tramadol is a strong central nervous system depressant commonly used to treat pain (Hr. Tr. 111:17-22), baclofen is a muscle relaxer and central nervous system depressant (Hr. Tr. 112:4-13), and meloxicam is an anti-inflammatory medication and central nervous system depressant. (Hr. Tr. 112:19-24). Applicant had also taken Ambien, a common sleep aid and central nervous system depressant the night before the plea. (Hr. Tr. 111:8-16; 113:3-6) In Dr. Bartling's opinion, after taking these medications in the doses prescribed to Applicant, Applicant was medically unable to

knowingly and freely exercise the judgment necessary to plead guilty.[6] (Hr. Tr. 113:7-114:8; see also Hr. Tr. 115:9-15 ("...he apparently didn't know he was impaired, but I believe he was.")) Dr. Bartling testified that in his medical judgment, even though Applicant may not have appeared impaired, Applicant was impaired to a cognitive degree that should have precluded him from making an important, life-altering decision such as pleading guilty. (Hr. Tr. 116:23-117:20 ("A. He was not in a position to make that kind of a decision that day."); see also Hr. Tr. 125:22-126:1)

The Court finds Dr. Bartling's testimony persuasive in two respects. First, based on Dr. Bartling's description of the doses and effects of the medication Applicant was taking during his plea, it appears Applicant was medically impaired when he appeared before the Plea Judge. Plea Counsel was concerned enough to interject during the colloquy and correct Applicant's misstatement that he was not under the influence of any drugs. The only medical opinion before the Court is that of Dr. Bartling, which indicates Plea Counsel was correct to be concerned. Second, the Court also credits Dr. Bartling's view that Applicant could have suffered a blackout as a result of the medication he was taking. As explained further below, this testimony is probative because it corroborates the medical opinion of Dr. Fuller who reached the same conclusion and which Plea Counsel had available to him prior to the plea.

The Court also considered testimony from Stephanie Borzendowski, Ph.D., a consultant and an expert in the psychology of human factors, which she explained is the manner in which human beings understand and interact with technology, the environment, and other human beings. (Hr. Tr. 127:4-129:24) Dr. Borzendowski offered the opinion that the fact that Victim's

[6] Dr. Bartling also took issue with the Plea Judge's statement, and Applicant's agreement, that these drugs helped Applicant understand and remain calm, explaining, "That's not what they're designed for, no, sir." (Hr. Tr. 114:19-115:3)

moped was not in motion would not be appreciable to Applicant until a distance that was likely to result in a collision. (Hr. Tr. 132:13-133:1) Dr. Borzendowski opined that a number of factors would contribute to this misperception by a driver in Applicant's position, such as, an unlit roadway, the expectation that traffic would be moving in response to a green traffic light, and the expectation that the moped's single red taillight was actually a distant vehicle with two taillights rather than a much closer vehicle with a single taillight. (Hr. Tr. 133:2-134:10, 135:2-16) In Dr. Borzendowski's view, it would have been difficult for "any driver" in Applicant's position to appreciate the hazard posed by the stationary moped until it was too late and this collision presented "a perfect storm of conditions" caused by the lack of a visual cue on which drivers customarily rely to make decisions. (Hr. Tr. 134:14-135:25; see also Hr. Tr. 142:22-143:16 & 146:20-147:3 (explaining a driver must not only perceive the hazard but also have time to react)) After the gas station surveillance video of the collision was played, Dr. Borzendowski observed, and the Court agrees, that the truck "definitely does not appear to swerve," and that any reduction in speed was "not really detectable in the video." (Hr. Tr. 139:4-10) Based on these observations, Dr. Borzendowski testified it did not appear Applicant ever appreciated the fact that Victim and his moped were stationary in the road. (Hr. Tr. 147:4-7)

INVESTIGATION AND ADVICE OF PLEA COUNSEL

Plea Counsel testified that he assisted Applicant in deciding whether to plead guilty by reviewing different theories over the course of the representation, but that the ultimate decision was made after placing Applicant and Applicant's mother in his conference room with the file and telling him he would plead him guilty or go to trial, "whichever one he wanted." (Hr. Tr. 32:14-33:23) When asked about his review of the file, Applicant told this Court, he had "no idea" what he was doing. (Hr. Tr. 164:1-3; see also Hr. Tr. 164:4-5 ("Q. Have you ever seen a

MAIT report before? A. I do not know what that is.")) Additionally, Applicant told this Court that he told Plea Counsel "on numerous occasions that [he] had confidence -- 100 percent confidence in his judgment," and that Applicant relied on Plea Counsel's advice that he should plead guilty. (Hr. Tr. 164:9-17)

As for Plea Counsel's investigation of the facts, he did not hire an accident reconstruction expert or a human factors expert. (Hr. Tr. 47:5-19) Nor did Plea Counsel review the scene of the collision at the same time of day to determine what the lighting conditions would have been like around the time of the accident. (Hr. Tr. 48:25-49:8) The only weight Plea Counsel gave to the fact Victim was stationary on the moped for approximately twenty-two seconds after the light turned green, was a limited investigation into the possibility Victim died from other causes—a theory bolstered by the fact Victim tested positive for marijuana and a .18 blood alcohol level—however, Plea Counsel abandoned this argument based on the mistaken belief that Victim's cause of death was a head injury. (Compare Hr. Tr. 47:20-48:16, with Hr. Tr. 54:12-14 ("Q. So he -- the primary, what killed him was cardiac arrest? A. Right"); see also Hr. Tr. 49:12-22) Conversely, Victim's cause of death as reported on his death certificate was cardiac arrest. (Hr. Tr. Ex. 7) Plea Counsel did not retain an expert to determine whether Victim suffered cardiac arrest before or after the collision (Hr. Tr. 54:8-11), and conceded he "ha[d] no idea," whether Victim suffered cardiac arrest as a result of the collision. (Hr. Tr. 54:15:17)

Additionally, Plea Counsel made several assumptions of fact that a reasonable attorney would have investigated. Plea Counsel testified that the "one witness [he] wish[ed] [he] would have talked to[,]" was a bartender who had given a statement that she received a phone call from the Victim the night of the collision and that the State claimed she had seen Mr. Nordan that evening. (Hr. Tr. 63:23-64:64:21) Plea Counsel explained that he "didn't see the need to

[interview her] because all she had was a phone call [with the Victim]. There was nothing in there about her seeing [Applicant] in there drinking and, in fact, when you compared that with the bartender from the Wild Hare, the bartender from the Wild Hare didn't see him drinking." (Hr. Tr. 64:22-65:7) When pressed, Plea Counsel conceded that this un-interviewed witness, the last person to speak to the Victim, could have had information probative to Applicant's defense and should have been interviewed, if for no other reason than for possible impeachment purposes at trial. (Hr. Tr. 65:23-66:25 ("A. In hindsight I probably should have, yes.")) Plea Counsel also agreed that his failure to speak to this witness left him unable to challenge the Solicitor's assertion that this witness would swear she saw Applicant drinking:

Mr. Harpootlian:	Okay. You think that affected -- I mean, you heard what the Solicitor said at the plea.
Mr. Simmons:	Yeah.
Mr. Harpootlian:	You don't think it would be important for you to be able to impeach that even at the plea?
Mr. Simmons:	Yeah.
Mr. Harpootlian:	Okay.
Mr. Simmons:	And at that point in time I think that what I should have done was withdraw the plea and then get that straightened out with the solicitor's office and actually contact her.
Mr. Harpootlian:	Okay.
Mr. Simmons:	But you're right. I didn't do that.
Mr. Harpootlian:	And you would have -- you should have withdrawn the plea in your judgment?
Mr. Simmons:	Yeah, I should have.

(Hr. Tr. 67:1-16; see also Hr. Tr. 88:8-13) Nevertheless, Plea Counsel went forward with the plea.

At the hearing of this matter, Plea Counsel made several key concessions that weigh in support of this Court's decision. First, Plea Counsel conceded he was ineffective for pleading Applicant guilty when Applicant did not know whether or not he was guilty. (Hr. Tr. 73:5-10; see also Hr. Tr. 78:2-5 & 79:23-81:2) When confronted with Applicant's inability to remember and Dr. Fuller's medical opinion concerning a likely blackout, Plea Counsel agreed Applicant's inability to know whether he was, in fact, guilty resulted in a failure to make a knowing and intelligent waiver of his rights. (Hr. Tr. 68:2-8). When asked about his plea colloquy, Applicant testified convincingly:

> Mr. Harpootlian: Do you know whether you're guilty or not?
>
> Mr. Nordan: The whole time I've said I don't like using the word "guilty" because I don't know if I did it or not.
>
> Mr. Harpootlian: And that's because you have no memory of it?
>
> Mr. Nordan: Correct.
>
> Mr. Harpootlian: Did you tell Mr. Simmons that?
>
> Mr. Nordan: Correct.

(Hr. Tr. 158:3-159:1) When pressed by his current counsel to explain his responses to the Plea Judge, Applicant's testimony strongly suggested a lack of comprehension at the plea:

> Mr. Nordan: Beforehand I was told to kind of -- I forget the exact words, but something along the lines of "follow my lead", and a lot of times I looked to my left for -- I was getting a nodding of "yes" or a nodding of "no" and that was the answer that I was taking.

(Hr. Tr. 159:4-159:8) Even before the Court had occasion to hear Applicant's account, Plea Counsel had already conceded he should not have pled Applicant guilty. (Hr. Tr. 68:21-69:8; 80:11-81:2)

Second, Applicant's plea was not a plea of no contest, nor one taken pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), as Plea Counsel testified he never explained those doctrines to Applicant (Hr. Tr. 71:17-72:18), and neither option was offered by the State or requested by Applicant. (Hr. Tr. 72:25-73:4)

Third, Plea Counsel testified he knew Applicant was taking very powerful drugs, specifically tramadol, during his plea, that he had taken twice the maximum dose, and that he should not have allowed Applicant to take the plea in that condition. (Hr. Tr. 78:23-79:24 ("Q. -- and you did not interrupt the judge. Was that -- were you ineffective for not interrupting the judge? A. Probably so."); 81:3-6)

CORRECT LAW APPLIED

Finally, Plea Counsel also admitted that if had he been aware of the legal precedent he discussed with Applicant's counsel during the hearing at the time he was representing Applicant, it would have caused him "to hesitate and investigate further," and could have made a difference in the outcome of the case. (Hr. Tr. 79:25-80:10) Specifically, when asked whether his advice to Applicant was based on legal research concerning the elements of reckless homicide, Plea Counsel testified he had researched the matter but did not recall any precedent concerning a defendant unable to remember what happened at the scene (Hr. Tr. 43:20-44:2) and conceded it would have been "important" if he had found such a case. (Hr. Tr. 44:3-5) Applicant's counsel then presented Plea Counsel with a copy of In Interest of Stacy Ray A., 303 S.C. 291, 400 S.E.2d 141 (1991), a case concerning a motorist charged with reckless homicide having no memory of what occurred because of injuries suffered during the collision and the only evidence being the physical evidence from the collision itself. (Hr. Tr. 44:7-45:4) Plea Counsel conceded he never reviewed Stacy Ray A. prior to Applicant's plea and eventually conceded that the facts in

Applicant's case were more favorable than those cited by the Supreme Court's decision reversing the conviction in the Stacy Ray A. case. (Hr. Tr. 50:11-21) In Plea Counsel's view, his ineffectiveness was prejudicial to Applicant such that he believes Applicant deserves a new trial. (Hr. Tr. 102:8-14)

These concessions carry some additional weight because, after having an opportunity to observe Plea Counsel's testimony, the Court is of the opinion that Plea Counsel's admissions he was ineffective were candid and reluctant, but nonetheless truthful. Indeed, taken as a whole, Plea Counsel's testimony was largely adversarial to Applicant as he frequently disagreed with Applicant's counsel during cross-examination. In the Court's view, this lends additional weight to Plea Counsel's concession he was ineffective on allowing Applicant to plead guilty under the circumstances in this case.

CONCLUSIONS OF LAW

The Sixth Amendment's right to counsel exists to protect the fundamental right to a fair trial. Strickland, 466 U.S. at 684 (citing Powell v. Alabama, 287 U.S. 45 (1932), Johnson v. Zerbst, 304 U.S. 458 (1938), and Gideon v. Wainwright, 372 U.S. 335 (1963)). The constitutional guarantee of a fair trial "is one in which evidence subject to adversarial testing is presented to an impartial tribunal for resolution of issues defined in advance of the proceeding." Id. The right to counsel is "crucial" to the adversarial system because it is counsel's skill and knowledge that equips a defendant with the tools to meet and defend the government's claims. Id. Because of the importance counsel plays in a fair trial, the Sixth Amendment guarantees, not simply the presence of a lawyer, but "effective assistance" by a lawyer loyal to the client's cause, who keeps the client informed, and who brings to bear "such skill and knowledge as will render

the trial a reliable adversarial testing process." Id. at 688. This Application implicates the fundamental right to the effective assistance of counsel in three distinct ways.

First, the Court holds Plea Counsel was ineffective in allowing Applicant to plead guilty when Plea Counsel knew his client was impaired as a result of taking the same drugs that Applicant claimed caused him to blackout the morning of the collision. "A plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment." Boykin v. Alabama, 395 U.S. 238, 242 (1969). Because of the gravity of such an act, a trial judge cannot accept a plea without an affirmative showing it was knowing and voluntary. Id. A knowing and voluntary plea is one in which the defendant has a "full understanding of the consequences of his plea and the charges against him." Simpson v. State, 317 S.C. 506, 508, 455 S.E.2d 175, 176 (1995). "In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing." Id. (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

Having conducted such a review, the Court is persuaded that the records before it supports the conclusion that Applicant lacked sufficient capacity to enter a knowing and voluntary plea. Applicant testified he was impaired to such a degree that he had to look to Plea Counsel for assistance in answering the Plea Judge's questions. Applicant's testimony is significantly bolstered by that of Dr. Bartling who offered a credible medical opinion that a person having taken Applicant's medications would be in no position to make a consequential decision such as taking a plea. Finally, Plea Counsel also agrees he was deficient in allowing Applicant to plead guilty given his impaired condition.

Second, and more importantly, Plea Counsel's decision to allow Applicant to plead guilty was flawed because there was an insufficient factual basis for the plea. Two ingredients are

essential to a valid plea: (1) comprehension by the defendant of the charge and consequence, and (2) "that the record indicates a factual basis for the plea." State v. Armstrong, 263 S.C. 594, 598, 211 S.E.2d 889, 891 (1975); Rollison v. State, 346 S.C. 506, 511, 552 S.E.2d 290, 292 (2001); State v. Rikard, 371 S.C. 295, 301, 638 S.E.2d 72, 75 (Ct. App. 2006). See generally Van Sellner v. State, No. 27644, 2016 WL 3595804 (S.C. June 29, 2016) (holding that a defendant may challenge a guilty plea when the State does not have the evidence to demonstrate each element of the charged offense). This means a factual basis for each element of the charged offense. Here, there is no evidence in the record to support the *mens rea* component of the charged crimes, which meant, absent Applicant's personal knowledge of facts contemporaneous with the collision, there was an insufficient factual basis to support Applicant's culpable mental state.

Applicant was charged with leaving the scene of an accident involving a death and reckless homicide. The former requires knowledge of an accident before a defendant has a legal duty to stop. See S.C. Code Ann. § 56-5-1210; State v. Horton, 271 S.C. 413, 414-15, 248 S.E.2d 263, 263-64 (1978) (describing the offense as one involving "moral turpitude" because "[o]ne who leaves the scene of an accident is fraudulently attempting to relieve himself of any liability."). The latter requires the State to prove "the death of a person ensues within three years as a proximate result of injury received by the driving of a vehicle in reckless disregard of the safety of others...." S.C. Code Ann. § 56-5-2910(A).

> Reckless disregard for the safety of others signifies an indifference to the consequences of one's acts. It denotes a *conscious failure* to exercise due care or ordinary care or a *conscious indifference* to the rights and safety of others or a reckless disregard thereof.

State v. Rowell, 326 S.C. 313, 315, 487 S.E.2d 185, 186 (1997) (emphasis added) (citing Tucker, infra). The defendant's culpable mental state is a crucial ingredient because "[t]he gist of the

charge of recklessness was that the collision could have been avoided." State v. Tucker, 273 S.C. 736, 739, 259 S.E.2d 414, 415-16 (1979). "This necessarily implies that the State must prove beyond a reasonable doubt that the actions of the defendant were culpable, which excludes the theories of an unavoidable accident or one brought about by an intervening cause." Id.

For example, it was the absence of any evidence of reckless conduct in In Interest of Stacy Ray A., 303 S.C. 291, 400 S.E.2d 141 (1991)—no evidence of speeding, no witnesses, and a defendant with no memory—that caused the Supreme Court to vacate the defendant's reckless homicide conviction and explain:

> Too many unanswered questions exist in this case, none of which the State has answered. Stacy A. could have blacked out; could have swerved to miss a pedestrian in his traffic lane; or could have had a blown left tire which caused his car to swerve. Instead of presuming any of these scenarios and requiring the State to present evidence making them less probable; the trial judge here has presumed Stacy A. drove recklessly and required him to disprove it. This is a presumption of guilt rather than of innocence, and may not be allowed to stand.

Id. at 294, 400 S.E.2d at 143. Conversely, where eyewitness testimony supports an inference of reckless disregard for the safety of others, the jury decides. See, e.g., Rowell, 326 S.C. at 316-17, 487 S.E.2d at 186-87.

The United States Court of Appeals for the Fourth Circuit's decision in United States v. Mastrapa, 509 F.3d 652 (2007), is nearly indistinguishable on this point. In Mastrapa, the defendant agreed to transport several bags of groceries to a hotel room and was stopped by undercover agents who found drugs in the bags. Id. at 654. The defendant pled guilty to conspiracy to distribute. Id. During the plea colloquy, and again during his sentencing hearing, the defendant admitted that he drove the van and helped carry the bags at the request of his alleged co-conspirators, but that he did not know there was anything other than groceries in the bags. Id. at 655-56. "Before proceeding with the sentencing, the court observed, 'I guess this is

an Alford plea,' and Mastrapa's attorney responded that 'that would be one way of presenting this, yes, sir.'" Id. at 656. Even though the defendant had no grounds for a meritorious appeal, the Fourth Circuit was "[c]oncerned about the adequacy of the factual basis for the guilty plea[,]" and invited the parties to submit briefs. Id. at 656.

The Fourth Circuit vacated the conviction because the defendant lacked any knowledge of the conspiracy or the drug crime and the only evidence in the record was the affidavit of the DEA agent "which likewise failed to provide evidence of *mens rea*." Id. 658.

> The facts that Mastrapa protested the *mens rea* element of the conspiracy offense and that the affidavit failed to fill the gap should have alerted the magistrate judge to explore further the discrepancy between Mastrapa's acknowledgment of his guilt and his understanding of what the crime entailed. As revealed during sentencing, Mastrapa apparently thought that driving the vehicle and carrying the groceries were sufficient to convict him even without knowledge of the persons for whom he was performing those tasks, what they were doing, or the fact that drugs were involved.

Id. The court found it particularly telling that, "Mastrapa never changed his position." Id.

Nor did the sentencing judge's reference to Alford salvage the plea. An Alford plea can be accepted "only if the defendant (1) 'intelligently concludes that his interests require entry of a guilty plea' and (2) '*the record before the judge contains strong evidence of actual guilt.*'" Id. at 659 (emphasis original) (quoting Alford, 400 U.S. at 37). "[A]n Alford plea was never discussed, tendered, or agreed to by Mastrapa." Id. at 659. Even if it had, "the outcome could be no different," because "the court must find a factual basis even for an Alford plea." Id. (citing United States v. Morrow, 914 F.2d 608, 611-12 (4th Cir. 1990)) The defendant's plea was defective because it was predicated on the erroneous belief that the DEA affidavit evidenced the defendant's guilty mind and that the defendant accepted that basis. Id.

The Court finds Mastrapa highly instructive here. As a result of a blackout, Applicant has never known he was "guilty." Like Mastrapa, Applicant consistently told Plea Counsel he had no memory of the collision. Likewise, Plea Counsel never discussed Alford with Applicant.

This is not to say that a blacked-out defendant could not plead guilty to reckless homicide when confronted with other evidence that establishes his recklessness. See Alford, 400 U.S. at 37; Mastrapa, 509 F.3d at 659. Likewise, even in the absence of such evidence, a guilt-ridden defendant with a recollection of his misdeeds could certainly choose to plead guilty. But the absence of either is the circumstance contemplated by Stacy Ray A. Plea Counsel's decision to plead Applicant guilty to leaving the scene and reckless homicide denied Applicant effective representation. To his credit, Plea Counsel admitted as much and shared his view that Applicant should receive a new trial. The Court agrees this defect warrants correction.

At Applicant's plea, all of the participants—Plea Counsel, the State, and the Plea Judge—were aware of the fact that Applicant had no memory of what occurred. Based on this Court's review of the plea transcript, the Solicitor was properly concerned about this as reflected in the following exchange:

Mr. Hubbard:	I have. Your Honor, my only question is if there's a defense of I don't know what happened, I think we need to address that.
Mr. Simmons:	That's not where we're going, Your Honor.
The Court:	Okay. I'll hear you out.

(Pl. Tr. 28:4-9) Plea Counsel should have shared the Solicitor's concern. Instead of assuaging the State and Plea Judge that the plea could go forward, Plea Counsel should have considered the legal consequences of his client's consistent inability to know what had occurred. Faced with such a dilemma, Plea Counsel should not have gone forward with the plea.

Third, the Court holds Plea Counsel's investigation of Applicant's case fell below the standard owed to a criminal defendant to investigate the facts and to advise the client using professional judgment that is informed by the law. A criminal defense attorney is obliged to conduct a reasonable investigation, the scope of which is case specific but at a minimum includes interviewing witnesses and making an independent investigation of the facts. Ard v. Catoe, 372 S.C. 318, 331-32, 642 S.E.2d 590, 597 (2007). In the Court's view, Plea Counsel's investigation was, at best, incomplete as it failed to pursue defense theories that Applicant has demonstrated here would have undermined the State's theory of liability.

Plea Counsel's investigation appears focused on identifying witnesses that might testify they saw Applicant drinking or believed him to have been drinking prior to the collision. One witness, with known biases against Applicant, was never interviewed by Plea Counsel. Nor did Plea Counsel take the statement of a witness who said she saw Applicant at a bar and he was not drinking. This left Plea Counsel unequipped to challenge representations by the State that this witness had changed her story. "[D]efense counsel ordinarily has a duty to investigate possible methods for impeaching prosecution witnesses," such that the failure to do so could give rise to constitutional prejudice. Hoots v. Allsbrook, 785 F.2d 1214, 1221 (4th Cir. 1986). Plea Counsel left other avenues of inquiry entirely unexplored. For example, he failed to speak to the last person who spoke to the Victim the evening before the collision. Based on the evidence presented, the Court cannot say Plea Counsel's assistance was "reasonable considering all the circumstances." See Strickland, 466 U.S. at 688.

The consequence of these lapses in professional judgment was exacerbated by a misunderstanding of the relevant criminal law in two ways. First, Plea Counsel relied on civil negligence concepts to explain criminal recklessness to Applicant and analyze the risk he faced

by the reckless homicide indictment. This was incorrect. In State v. Rowell, 326 S.C. 313, 487 S.E.2d 185 (1997), the Supreme Court explained:

> We clarify today that in a criminal case, the State cannot rely on civil concepts of negligence and recklessness, that is, statutory violations, to meet its burden of proving the defendant's state of mind. The import of the terms negligence and recklessness as used in the civil law and in the criminal law are neither equivalent nor interchangeable. To the extent the confusion about the impact of civil concepts of negligence and recklessness on criminal law stem from dicta in our decision in In the Interest of Stacy Ray A., 303 S.C. 291, 400 S.E.2d 141 (1991), we disavow that discussion.

Id. at 317, 487 S.E.2d at 187 (footnote and citations omitted). Here, Plea Counsel testified that he explained recklessness to Applicant along the spectrum of civil negligence and equated it to "gross negligence." He also testified that, in his view, the indictment's predicate acts, if proven true, were sufficient to convict Applicant of the charge of reckless homicide. Plea Counsel was mistaken. South Carolina Code § 56-5-2910 requires the State to prove the driver acted "in reckless disregard of the safety of others" in order to convict, meaning a "conscious failure" or "conscious indifference" to the safety of others. Rowell, 326 S.C. at 315, 487 S.E.2d at 186; see also S.C. Code Ann. § 56-5-2920 (defining reckless driving as driving a vehicle "in such a manner as to indicate either a willful or wanton disregard for the safety of persons or property.") This has long been held to be a case-specific inquiry that a mere statutory violation, like driving with a suspended license or speeding, does not satisfy. State v. Rachels, 218 S.C. 1, 9, 61 S.E.2d 249, 252-53 (1950) (construing the old reckless homicide statute and explaining recklessness "does not lie in speed alone, but in that and all other attendant circumstances which together show a reckless disregard of consequences."). Plea Counsel's failure to appreciate this standard caused him to advise Applicant of a litigation risk far greater than under a proper reading of the law.

Second, even assuming Applicant was drinking (a fact Applicant disputes), that evidence, without more, does not establish the offense. For example, in State v. Dobson, 281 S.C. 36, 314 S.E.2d 310 (1984), a defendant argued a mechanical malfunction unrelated to his drinking was responsible for the accident. Id. at 38, 314 S.E.2d at 311. The Supreme Court agreed, explaining "when the case rests entirely on circumstantial evidence, a directed verdict is proper when the evidence fails to positively prove the guilt of the accused to the exclusion of any other reasonable hypothesis." Id. (citing State v. Stewart, 278 S.C. 296, 295 S.E.2d 627 (1982)). Since the only evidence of "recklessness" was that the defendant drank beer prior to the accident, and there was no evidence of excessive speed or failure to maintain a proper lookout, "the State failed to meet the circumstantial evidence test in showing that this recklessness was the proximate cause of the accident." Id. According to the surveillance video, Applicant's truck was not swerving. The State's MAIT report suggests a rate of speed between one and nine miles over the speed limit. Road lighting was poor and the Victim was arguably illegally stationary on a small vehicle underneath a green traffic light. See S.C. Code Ann. § 56-5-2510(A) ("No person shall stop, park, or leave standing a vehicle, whether attended or unattended, upon the roadway outside a business or residential district when it is practicable to stop, park, or leave the vehicle off the roadway."). Applicant's position is that he suffered a medication-induced blackout. Even assuming Applicant had been drinking, Plea Counsel failed to appreciate that the circumstantial evidence rule in Dobson would entitle Applicant to a directed verdict in the absence of some evidence he operated the vehicle in a reckless manner. Cf. State v. Tucker, 273 S.C. 736, 737-38, 259 S.E.2d 414, 414-15 (1979) (upholding conviction based on eyewitness testimony defendant was driving fast and weaving in and out of traffic nine-tenths of a mile from the scene).

The Court does not view its role as one to second-guess counsel's strategic choices and has therefore reviewed Plea Counsel's decisions with the utmost deference. "A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland, 466 U.S. at 689. Even affording Plea Counsel due deference, his judgment was guided by an incomplete investigation of the facts applied to a misapprehension of the law. Applicant's consistent assertions he blacked out warranted additional factual and legal inquiry. See id. at 691 (the reasonableness of counsel's actions may be determined or influenced by defendant's own statements or actions). So too did the presence of alternative, exculpatory explanations and the State's misplaced reliance on certain predicate acts in the indictment, which should have prompted Plea Counsel to investigate whether the State could prove proximate cause and a culpable state of mind, or whether this case was akin to Stacy Ray A. and Dobson. The Court cannot say that these errors fall within the realm of sound trial strategy or the exercise of informed professional judgment, and, therefore, holds Applicant received ineffective assistance from Plea Counsel.

* * *

Since the constitution's guarantee of counsel is designed to protect the outcome of the proceeding, deficiencies in counsel's performance must be prejudicial in order to entitle an applicant to relief. Strickland, 466 U.S. at 691-92. The Court holds that the deficiencies outlined above prejudiced Applicant in three ways.

First, had Plea Counsel appreciated Applicant's impaired state at the plea hearing, he would have withdrawn the plea or, at a minimum, sought a continuance until such time as he could be assured either by a medical professional or Applicant's abstention from medication that

he had sufficient capacity to appreciate the decision he was making. Significantly, Applicant testified that, if given the opportunity to do so again, he would not plead guilty. Cf. Harres, 282 S.C. at 133, 318 S.E.2d at 361 (circuit court erred in granting post-conviction relief to applicant who would have pled guilty anyway); Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981) (denying relief to applicant who would plead guilty again if granted a new trial). The Court has already agreed with Plea Counsel's testimony that it was error to plead Applicant guilty given his impaired state, the Court holds this error was prejudicial to the outcome of this matter.

Second, aside from his impairment, Applicant was legally unable to take a plea in the absence of either personal knowledge or independent facts that established he knowingly left the scene of the collision or acted with conscious disregard for the safety of others. Since this defect should have prevented Applicant from taking the plea, it is prejudicial. Again, the plea was not an Alford or no contest plea.

Third, the Court holds Plea Counsel's ineffective factual and legal investigation of Applicant's case was prejudicial. A fuller factual inquiry, like the record considered by the Court here, suggests the State may have had difficulty satisfying its burden. Likewise, Applicant may have had viable factual and legal defenses based on legal precedent that Plea Counsel either overlooked or misunderstood. Plea Counsel conceded that had he been aware of the precedent raised by Applicant in this proceeding, at a minimum, he would have investigated Applicant's options further. While the Court takes no position on the merits going forward, Applicant's inability to consider these options was clearly prejudicial.

For these reasons, Applicant's request for post-conviction relief is **GRANTED** and his request for a new trial is granted. Furthermore, Applicant's criminal case is **REMANDED** to the general sessions court for further prosecution.

IT IS SO ORDERED.

The Honorable J. Mark Hayes, II
Circuit Court Judge

July 19, 2016.
Columbia, South Carolina.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP3202893

Randall Houston Nordan #358103	State of South Carolina
PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

7/27/2016

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on **July 27, 2016**, to attorneys of record or to parties (when appearing pro se) as follows:

Richard A. Harpootlian PO Box 1090 Columbia, SC 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

Patrick Lowell Schmeckpeper PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/kpk

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.