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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Florence County

Honorable George M. McFaddin, Circuit Court Judge

RONNIE M. DRAKE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000125

APPENDIX

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South Carolina Commission on Indigent Defense
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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE	)	2015-GS-21-01143
	)	
	)	
	)	
	)	
State Of South Carolina	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Ronnie M. Drake	)	)
DEFENDANT	)	December 5, 2016
		Florence, South Carolina

B E F O R E:

THE HONORABLE D. CRAIG BROWN, JUDGE.

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

JOHN JEPERTINGER, DEPUTY SOLICITOR
Attorney for the State

RALPH WILSON, ESQ.
Attorney for the Defendant

KESHIA REED
Official Court Reporter

I N D E X

(WHEREUPON, no witnesses were called.)

THE COURT: I'm going to go over everyone's constitutional rights with you. When you plead guilty, you give up certain important constitutional rights. Each of you have a right to a jury trial. I tell the jury that you are presumed innocent, that the State has to prove you guilty beyond a reasonable doubt. You have the right to question witnesses against you. You have the right to remain silent. And if you did, I tell the jury that they could not hold that against you. You have the right to present a defense although you're not required to do so. You have a right to present a defense if you made any incriminating... You not required to make a defense, but you have a right to do so. If you made any incriminating statements, you have to challenge the admissibility of those statements. Does anyone in here not understand those rights? When you plead guilty, you give up those rights. Is anyone in here not understand that when they plead guilty they give up those rights?

Now, some of you may come before this court waiving presentment of your charge to the grand jury. Please understand that you have a right to have your charge or charges presented to the grand jury for them to determine whether or not there's sufficient evidence to bring your case into this court. However, you may waive that right, proceed here today and plead guilty. Does

anyone in here not understand their right to have their charge or charges presented to the grand jury? Does anyone in here not understand they may waive that right, proceed here today and plead guilty?

(WHEREUPON, this begins the guilty plea.)

MR. JEPERTINGER: May it please the Court, Your Honor, standing in front of you is Ronnie Drake on 2015-1143. He is pleading to a trafficking in cocaine 10 to 28 grams, taking it as a second offense theoretically. And in all truth it is a third offense, but it would be a lesser offense, Your Honor, 10 to 28 grams second offense, Your Honor. We negotiated 12 years.

THE COURT: Sir, if you'll raise your right hand. You swear to tell the truth, the whole truth and nothing but the truth so help you God?

THE DEFENDANT: Yes, sir.

THE COURT: You Ronnie Miquel Drake?

THE DEFENDANT: Yes, sir.

THE COURT: You can put your hand down. You ever been treated for alcohol abuse, drug abuse or mental illness?

THE DEFENDANT: I'm treated for mental illness, sir.

THE COURT: When was that?

THE DEFENDANT: Recently. I been on medication

since 2009.

THE COURT: Okay. Does that in anyway affect your ability to know and understand what you doing here today?

THE DEFENDANT: No, sir.

THE COURT: Within the last 24 hours, have you taken any medication, drugs or alcohol?

THE DEFENDANT: Yes, sir.

THE COURT: What have you taken?

THE DEFENDANT: (Inaudible).

THE COURT: Doctor prescribed medication?

THE DEFENDANT: Yes, sir.

THE COURT: Does that in any way affect your ability to know and understand what you're doing here today?

THE DEFENDANT: No, sir.

THE COURT: Are you aware of any physical, emotional or nervous problem that would prevent you or keep you from understanding what's going on here today?

THE DEFENDANT: No, sir.

THE COURT: The State indicates you're pleading guilty to trafficking in cocaine 10 grams or more but less then 28 grams second offense; is that right?

THE DEFENDANT: Yes, sir.

THE COURT: You understand it carries a minimum

of five years up to 30 years?

THE DEFENDANT: Yes, sir.

THE COURT: The State's indicated they negotiated a plea or negotiated a sentence with your lawyer for 12 yeas. Is that your understanding?

THE DEFENDANT: Yes, sir.

THE COURT: You understand under negotiated plea I can either except it or I can reject it and let you plead on a different day in front of another judge possibly. You understand that?

THE DEFENDANT: Yes, sir.

THE COURT: You want me to accept this negotiated sentence and impose a sentence of 12 years upon you here today?

THE DEFENDANT: Yes, sir.

THE COURT: Now, were you in here when I went through everyone's constitutional rights with them earlier?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand those rights?

THE DEFENDANT: Yes, sir.

THE COURT: You need me to go over them again with you?

THE DEFENDANT: No, sir.

THE COURT: You understand when you plead

guilty, you give up those rights?

THE DEFENDANT: Yes, sir.

THE COURT: Understanding your rights and understanding that when you plead guilty you give them up, how do you plead here today guilty or not guilty?

THE DEFENDANT: Plead guilty, sir.

THE COURT: You represented by Mr. Wilson. You satisfied with his representation.

THE DEFENDANT: Yes, sir.

THE COURT: You talk to him enough?

THE DEFENDANT: Yes, sir.

THE COURT: Understood all your talks with him?

THE DEFENDANT: Yes, sir.

THE COURT: Need any more time to talk to him?

THE DEFENDANT: No, sir.

THE COURT: Sir?

THE DEFENDANT: No, sir.

THE COURT: Have any complaints about him?

THE DEFENDANT: No, sir.

THE COURT: Has anyone promised you anything or held out any hope of reward to get you to plead guilty here today? Sir?

THE DEFENDANT: You said ---

THE COURT: Has anyone promised you anything or held out any hope of reward to get you to plead guilty?

THE DEFENDANT: No, sir. No, sir.

THE COURT: Has anyone used any threats, force, pressure or intimidation to get you to plead?

THE DEFENDANT: No, sir.

THE COURT: Has anyone mistreated you in any way whether it be law enforcement or the Solicitor's office?

THE DEFENDANT: No, sir.

THE COURT: You had enough time to make up mind as to whether or not you want to plead guilty or go to trial on this charge?

THE DEFENDANT: Yes, sir.

THE COURT: What do you wish to do?

THE DEFENDANT: Plead guilty, sir.

THE COURT: Are you pleading guilty of your own free will?

THE DEFENDANT: Yes, sir.

THE COURT: You understood my questions?

THE DEFENDANT: Yes, sir.

THE COURT: Mr. Jepertinger.

MR. JEPERTINGER: Your Honor, back on May 3rd 2015, over at the Cruisers convenience store, the police had received a complaint that there was a subject at the store at the corner of East Palmetto and Church Street here in Florence County with marijuana in his hand. The complainant stated the subject was driving a tan Chevy

Impala. Agent Brown of the narcotics unit responded to the location. Upon his arrival there, he observed a black male subject later identified as the defendant in a neon yellow shirt standing beside a tan Chevy sedan. As he pulled in the parking lot, Drake began getting in the vehicle. Drake began backing out of his parking space, but stopped and put the vehicle back in park because a male subject by the name of Ronald Johnson was walking up to the vehicle.

Agent Brown pulled up behind the Chevy and exited his vehicle. He approached the vehicle. He advised Johnson to step away from the vehicle. Johnson backed away from the vehicle. And he advised Drake that his name was Agent Brown with the Florence Police Department. Agent Brown was in plain clothes, but his badge was around his neck and visible to them. He then asked Drake if he had his ID. Drake had a very nervous look on his face and he shook his head no. Then he as Drake if he had a valid driver's license and he shook his head yes.

Suddenly, Drake pushed the window button and the driver's window began going up. At that point Agent Brown opened the driver's door and attempted to detain Drake for further investigation due to the nervousness and his attempt the close the window on him. As he opened the

door, he observed in the door handle clear baggy in plain view contain a large amount of white powder substance that he believed to be cocaine. He asked Drake to step out of the vehicle. As he did, he turned his back to him and grabbed the baggy out of the door handle. He grabbed Drake's arm at that point and he snatched away from Agent Brown.

Brown advised him stop or he would be the tased. Drake turn and began running. At that time Agent Brown deployed his taser and one probe connected, but the other did not, so Drake continued running. They gave chase behind Drake as he ran south bound through the parking lot. They were on a hill at that point. There was a wall that dropped down to another parking lot. There was also a shed close too. The opening between the wall and the shed was approximately three or four feet wide. Drake ran to the wall and jump down into the opening but hit the shed before landing on the ground. And Brown jumped down behind Drake and grabbed him. He told Drake to put his hands behind his back and stop resisting. Drake seem to be trying to stuff something into his pants. He grabbed Brown's taser and told Drake that he would be excuse me -- Brown grabbed his own taser and told Drake that he would be tased again if he did not stop resisting.

Drake continued to keep his hands under his body

trying to stuff something in his pants. Again, he yelled at Drake to stop resisting or he would be tased but still Drake continued to resist. He would not put his hands behind his back. At that point stun Drake in his back and he complied and put his hands behind his back. Once Drake complied, that was pretty much the situation. Another officer arrived on scene. Brown had lost his handcuffs during the scuffle and the other officer gave him his cuffs. Once he was in handcuffs, they executed a search of his person and immediately located a baggy sticking out the front of his jeans. The baggy contained approximately what turned out to be according to this 11 grams of suspected cocaine base. When they sent that to SLED for analysis, that came back 9.13 grams of crack cocaine. We're not charging him with that, Your Honor. A further search of his person yielded a larger baggy of suspected cocaine which after analysis tested positive for cocaine scheduled two drug at 27.62 grams, so that's within the range between 10 and 28 grams.

They also found a baggy of suspected marijuana located in the front of his underwear and $365 of cash in his right pants pocket. Brown and another two officers with the Florence Police Department helped search the vehicle. They located a digital scale with white residue on it in the center console which is always indicative to

the State of sale of drugs at least weighing of the drugs, but normally for sale purposes. They read Drake's his Miranda rights. He said he understood his rights and wouldn't answer any questions that he had. He advised him that he stopped at Cruisers to get a Dutch cigar he used to smoke marijuana. He stated that he got fronted on his own which is credited an ounce of cocaine and approximately 10 grams of crack from a subject out of Lamar. He advised that he met the subject near intersection of Dargan Street and Laurel Street near some apartments. And he advised he left the location and made a quick 25 sale of cocaine base to a female and that's when he entered the Cruisers gas station. He was advised that he was under arrest for trafficking cocaine and the trafficking cocaine base which turned out to be PWID cocaine base and simple possession of marijuana and resisting arrest. I think they handled that in municipal court that resisting arrest, Judge. That's pretty much it.

Now, in terms of record for the enhancement aspect of this, he's had obviously some significant record but of the drugs he had a possession of cocaine base in 2006. He had another possession of cocaine in 2010. He also had a trafficking cocaine base second in 2010. He's had other records such as a strong arm robbery and failure

to stop for a blue light and conspiracy. Judge, when I discussed this case with the narcotics agents, they viewed him as being problematic.

Normally, I have very good working relationship with them. I was informed by Joe Nada that he was okay with this 12-year sentence. He told me, John, that's as far as you should go with this. If not, we're going to go to trial with this in January. And I fully support my officers in that view of things. That's it, Judge. Thank you.

THE COURT: Mr. Drake, you heard the facts stated by the prosecutor as it relates to this charge. You agree with those facts?

THE DEFENDANT: Not quite, sir. All of it wasn't true what was said.

THE COURT: I understand you may not agree with all of it, but do you agree that you were within the possession of 10 grams or more of but less than 28 grams of cocaine base ---

MR. JEPERTINGER: Cocaine.

THE COURT: Cocaine excuse me.

THE DEFENDANT: Yes, sir.

THE COURT: And are you in fact guilty of trafficking cocaine?

THE DEFENDANT: Yes, sir.

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THE COURT: And how do you plead guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: All right. I find that there's substantial factual basis for this plea. I also find defendant's decision to plead has been entered into freely, voluntarily, knowingly and intelligently. That he's had advice and counsel of an attorney with whom he's indicated he is completely satisfied with. I'll accept his plea. Happy to hear from you, Mr. Wilson.

MR. WILSON: Thank you, Your Honor. Your Honor, I'll be fairly brief. Ronnie is 28 years of age and he is a life-long resident of Florence County. And obviously he's had some prior contact with law enforcement over the years and that has not gone well for him, which is what got him to the place that he's at today. In addition to that, Ronnie has very limited amount of education. He has a tenth grade education, but when you speak with him, I'm not sure he acts that he has a full tenth grade education. Does he understand these proceedings, yes. Does he understand pleading guilty, yes. We had him evaluated by state hospital and they said he has no major mental illness. And that he was faming a lot of the symptoms that he exhibited prior to the Court send him for the evaluation.

Be that as it may, I would say, Your Honor, that he certainly in my estimation slower than a lot of people that I've run into and his understanding is not as quick. And it takes a long time to get him to fully grasp, you know, statements that you make to him. Does he understand these proceedings, yes. And I'm not in any way trying to ameliorate that. I'm just trying to explain to you that he does have some -- I don't want to call it retardation because I'm not sure if that's what it is, but he is to some degree slow in his thinking in how he handles things. He is on some medication. My understanding of that medication is that it's to help him try to focus and that kind of thing. But he's been in jail, Your Honor, now for, I think, it's 179 days -- I'm sorry 183 days, 183.

THE COURT: Is there a bench warrant, Mr. Jepertinger?

MR. JEPERTINGER: His bond was revoked, Judge. His bond was revoked, Judge, initially by Judge Russo. There was a question when he was represented by Mrs. Parham and the allegation was that he wanted to die. And for his safety, Judge Russo revoked his bond.

THE COURT: I didn't mean to interrupt.

MR. WILSON: No, that's all right, Your Honor.

THE COURT: I want to make sure he's getting credit.

MR. WILSON: Your Honor, it's my understanding that he's been in jail since June 20th of 2016 to present and then prior to that from May 4th to May 14th I think is when he got out originally and that's of 2015.

THE COURT: And you calculated it to be 183 days?

MR. WILSON: Yes, sir. Your Honor, I just ask the Court to give him credit for his time and I understand that this is a negotiated plea. And if the Court accepts the plea and the Court's bound by the agreement.

THE COURT: Thank you.

Mr. Drake, anything you want to tell me, sir?

THE DEFENDANT: Yes, sir. I like to apologize to the Court first and foremost. I made a very bad mistake. Not only that, I was -- obtain the drugs at a young age. I got a good family, that's important. It's like I was playing hide-go-seek one time and I was hiding in the bushes and I found a gun in the bushes what led me going to DJJ. And when I found the gun in the bushes, I was over excited and I took it to school and that's when I was forced to use cocaine in DJJ.

Ever since then, it was a monster that created those drugs that I had. I didn't have the money to pay for it. I just got out of jail. I ain't been out of jail 30 days. I wasn't taking my medicine and I end up going

back to using drugs, sir. But like you said using drugs is a future back to jail. I only been out like 33 days. If you would take a look right here, sir, I was shooting cocaine in my veins. It ain't an excuse, but once you got to have it and once you get that habit, it's kind of strong. It's very strong. It overrides your thinking. It wasn't even my drugs. It was getting for the party that I was attending to and they use my for a crash dummy to go get it. And I been stupid enough to go get it because I was chasing after a high. And also I was handed a little something -- a little bit of money to go get it, so I was fresh out of jail, sir, and I was trying to feed a habit -- an old habit that I had got.

Right now I been praying to God and I been asking God to change my ways. I got baptized. I got save in Effingham county. I got pictures of proof that I got save. I been change. I been clean ever since I got caught with the drugs. I ain't been using drugs since. I ain't caught no more charges. Usually, when I was on drugs like he said I would catch a lot of charges and I was catching drug charge after drug charge chasing after drugs. Sir, I ain't a bad person. I got four children. I got four kids. One is a stepdaughter and I love her just like I love the rest of them. And I just ask you to have mercy, sir. I understand you got the 12 negotiate

plea, but if you can find mercy in your heart, sir, and please find mercy in your heart, sir, to give me under 12. I truly appreciate it.

THE COURT: They negotiated 12. I either got to go along with the 12. I got to go along with it, that's what they negotiated here. You understand that?

THE DEFENDANT: Sir, yes, sir, but I was also -- for the record, I also was promise eight years.

MR. JEPERTINGER: Your Honor, so there's clarification. He was given an offer of eight years back when Mrs. Parham represented him, but it's my understanding he did not want to plead to those eight years. I don't make the same offer twice, Judge.

THE DEFENDANT: May I speak, sir? It's not that I wouldn't take the eight years, sir. I ain't been taking my medicine and I didn't say I didn't want to take the eight years. What I said was I rather be dead than miss my new born being born into this world. She was my future wife having a baby less then three four days away. And I was asking for a continuance until then. Once I ask for that continuance, I was sent to the evaluation center -- was sent to Effingham to the evaluation center. It wasn't that I didn't want to take eight years. I got sent to the evaluation center cause I said I rather be dead and not see my new born being born in this world. Only thing I'm

asking, sir, forgiveness and mercy, sir. I'm begging you, I'm pleading for mercy. I get on my knees right now. I'm begging, sir. I got four children out there.

Like you just been whatever the case maybe, I don't want to talk about his case, but a father just did some ill stuff to his daughter. I don't know what can happen in the future to mine. I was addicted to drugs. I can't lie about that and I admit to it. I was wrong for having the drugs, but 12 yeas is kind of hard, sir. I'm 28 yeas old. I been in and out of jail since DJJ and I started my drug habit in DJJ, so it's like -- it created -- DJJ created the drug habit. I ain't -- I been force into -- Lord have mercy Lord.

THE COURT: All right. Thank you, sir.

THE DEFENDANT: I ask you to have mercy on me, Your Honor, please.

THE COURT: Ma'am, anything you want to tell me? Tell me your name?

TIFFANY CAIN: Tiffany Cain I'm his mother.

THE COURT: Anything you want to tell me, ma'am?

TIFFANY CAIN: I just want you to have mercy on his soul. He got all these children out here.

THE DEFENDANT: Your Honor, please. Please, Your Honor.

THE COURT: Well, you know, I've accepted the

plea and I explain to him it was either 12 or nothing, that's what the lawyers have worked out here. Mr. Drake, it's unfortunate that you face -- in reality, you looking at up to 30 just on this charge, up to 30. Obviously, from the facts that I heard during the plea, there were some other charges.

Mr. Jepertinger, is that right, some other charges that could have been are being dismissed?

MR. JEPERTINGER: Judge, what we had potentially since this was theoretically a third offense -- not theoretically, it was a third offense. He was looking at 25 to 30 mandatory minimum of 25 to 30.

THE DEFENDANT: Sir, can I say one more thing, sir, please before you give your recommendation please? I been also charge with three first degree burglaries I had nothing to do with back in couple months -- couple years ago. I ain't had nothing to do with that.

MR. JEPERTINGER: They were dismissed.

THE COURT: And they were dismissed according to Mr. Jepertinger.

THE DEFENDANT: No, I pled guilty.

THE COURT: To burglary first?

THE DEFENDANT: Three first degree burglaries I pled guilty to at that time, sir. I'm just asking for mercy.

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THE COURT: No way you pled guilty to burglary first and got time served because they 15 to life.

THE DEFENDANT: It's in the paperwork, sir.

THE COURT: Well, on indictment 2015-GS-21-01143, defendant's committed to state department of corrections for period of 12 years, given credit for 183 days. Good luck to you, Mr. Drake.

MR. WILSON: Thank you, Your Honor.

END OF REQUESTED TRANSCRIPT

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed paged, numbered 1 through 22, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of General Sessions for Florence County, South Carolina, on the 5th day of December, 2016.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 22nd day of September 2017.

Keshia Reed, Court Reporter

FORM 5

20 17 CP 21 576

STATE OF SOUTH CAROLINA)
)
County of FLORENCE)
)
RONNIE MICKELL DEAKE # 318461)
Full name and prison number (if any) of Applicant)
)
v.)
)
State of South Carolina)
)
)
)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2017 JUN 12 PM 2:30
CLERK OF COURT
FLORENCE COUNTY, SC

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.

1. Place of detention Lee Correctional Institution

2. Name and location of Court which imposed sentence Court of General Sessions, 180 N. Irby St. MSC-E, Florence SC 29501

3. Name(s) of co-defendant(s) (if any) None

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) _____

(b) _____

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) DECEMBER 5, 2016 ; 12 YEARS

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty YES

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

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

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

i. SOUTH CAROLINA COURT OF APPEALS

ii. _____

iii. _____

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

i. DISMISSED

ii. _____

iii. _____

(c) the date of each such result:

i. 4-28-17

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

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

(a) INEFFECTIVE ASSISTANCE OF COUNSEL

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10): INVOLUNTARY PLEA

(a) [redacted]

(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? Yes

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

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. NOTICE OF APPEAL

ii. _____

iii. _____

iv. _____

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

i. S.C. COURT OF APPEALS, COLUMBIA SC. 29211

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. Dismissed

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. 4-28-17

ii. _____

iii. _____

iv. _____

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

i. _____

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?

MY APPELLATE ATTORNEY DIDNOT TELL ME

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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) _____

(b) _____

(c) _____

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

(a) your arraignment and plea? Yes

(b) your trial, if any? YES AT GUILTY PLEA

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? [redacted] NO

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

NO

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. ROSEMARY PARNAM, 541 W. EVANS STREET FLORENCE, SC. 29501

ii. RALPH J. WILSON, 1323 THIRD AVE., P.O. BOX 1827, CONWAY SC 29526

iii. _____

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

i. ARRAIGNMENT, PLEA

ii. PLEA, SENTENCING, EVALUATIONS

iii. _____

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

REVERSAL

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

NO

STATE OF SOUTH CAROLINA)
)
County of Florence S.C)

VERIFICATION

I, ~~Florence~~ R.D Ronnie M. Drake, 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.

Ronnie M. Drake

SWORN to and subscribed before me this 6 day of June, 2017.

Debra Courtney (L.S.)
Notary Public

My Commission Expires: 3/3/2024

FILED
2017 JUN 12 PM 2:30
CLERK OF COURT
FLORENCE COUNTY, SC

Revised 3/2003

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

I, Ronnie M. Drake, 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.

Ronnie M. Drake
Applicant

SWORN or affirmed to and subscribed before me this 6 day of June, 2017.

Debra Eastridge
Notary Public

My Commission Expires: 3/3/2026

FILED
2017 JUN 12 PM 2:30
JEANETTE O'HARA
CLERK OF COURT
FLORENCE COUNTY, SC

ALAN WILSON
ATTORNEY GENERAL

November 9, 2017

The Honorable Doris Poulos O'Hara
Clerk of Court, Florence County
180 N Irby St MSC-E Rm B11
Florence, SC 29501-3456

Re: **Ronnie M. Drake, #318461 v. State of South Carolina**
2017-CP-21-1576

Dear Ms. O'Hara:

Enclosed please find the original **Return and Motion for More Definite Statement** of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,

Lindsey A. McCallister
Assistant Attorney General

LAM/dgr
Enclosure

cc: Jonathan D. Waller, Esquire

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE	)	IN THE COURT OF COMMON PLEAS IN THE TWELFTH JUDICIAL CIRCUIT
Ronnie Mikell Drake, # 318461, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2017-CP-21-1576 **RETURN AND MOTION FOR MORE DEFINITE STATEMENT**

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on June 12, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In October 2015, the Florence County Grand Jury indicted Applicant for possession with intent to distribute ("PWID") cocaine base and trafficking cocaine, 10-28 grams (2015-GS-21-1143). Ralph Wilson, Esquire, represented Applicant. Deputy Solicitor John Jepertinger, Esquire, prosecuted the case. On December 5, 2016, Applicant pleaded guilty as indicted to all charges the lesser included offense trafficking cocaine, 10-28 grams, second offense before the Honorable D. Craig Brown. The PWID charge was dismissed. Pursuant a negotiated sentence, Judge Brown sentenced Applicant to imprisonment for twelve years.

Applicant filed a timely notice of appeal. However, the South Carolina Court of Appeals dismissed Applicant's appeal by order filed April 28, 2017, for failure to provide sufficient explanation as required by Rule 203(b), SCACR. The Remittitur was returned to the circuit court on May 16, 2017.

Attached to this Return and incorporated by reference herein are the records of the Florence

County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the plea transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective Assistance of Counsel
   a. "Involuntary guilty plea."

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), SCRCP. 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, SCRCP. 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), SCRCP.

III.

Respondent submits 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 "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 (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, 466 U.S. at 688. First, Applicant must prove counsel's performance was deficient. Id.; 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 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, 106 (1985).

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

IV.

Applicant also asserts his plea was involuntary. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Lockhart, 474 U.S. at 56. Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, a criminal inmate's right to contest

the validity of such a plea is usually, but not invariably, foreclosed. Dalton, at 137–38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that

Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VI.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel and involuntary guilty plea.

VII.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VIII.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel and involuntary guilty plea.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LINDSEY A. MCCALLISTER
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

11/9, 2017

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE Ronnie M. Drake, #318461 Applicant, vs STATE OF SOUTH CAROLINA, Respondent,	IN THE COURT OF COMMON PLEAS **2017-CP-21-1576** AFFIDAVIT OF SERVICE BY MAIL

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 and Motion for More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan D. Waller, Esquire
Giese Law Firm
1315 Blanding Street
Columbia, SC 29201

DATED this the 9th day of November, 2017.

Deonna Rogers, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE	COURT OF COMMON PLEAS 2017-CP-21-01576
Ronnie M. Drake vs. State of South Carolina DEFENDANT	TRANSCRIPT OF RECORD September 1, 2021 Florence, South Carolina

B E F O R E:

THE HONORABLE GEORGE M. MCFADDIN, JR.

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

JONATHAN D. WALLER, ESQ.
Attorney for the Applicant

MICHAEL D. DAVIDSON, ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

KESHIA REED
Official Court Reporter

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Ronnie Drake				
Mr. Waller	5		31	
Mr. Davidson		22		
Ralph Wilson, Sr.				
Mr. Davidson	33		49	
Mr. Waller		46		49
Certificat of Reporter	52			

THE COURT: Are we ready, ladies and gentlemen?

MR. WALLER: We are, your Honor.

THE COURT: All right. You are, Mr. Drake?

MR. DRAKE: Yes, sir.

THE COURT: Okay. Thank you. I am ready, Mr. Waller. Sorry, you want to call the case. I always forget to do that please forgive me.

MR. DAVIDSON: Thank you, Your Honor. May it please the Court. This is the case of Ronnie Drake vs. The State of South Carolina docket number 2017-CP-21-1576. Applicant was indicted in October of 2015 for possession with intent to distribute cocaine base and trafficking cocaine ten to 28 grams. He was represented on those charges by Mr. Ralph Wilson. On December 5th 2016, applicant pleaded guilty to the trafficking charge before Judge Brown and the possession charge was dismissed.

Pursuant to a negotiated sentence, Judge Brown sentenced applicant to imprisonment for 12 years. Applicant filed a timely notice of appeal. However, the South Carolina Court of Appeals dismissed applicant's appeal and the remittitur was returned to the circuit court on May 16th of 2017. This PCR was filed June 12th of 2017. Applicant alleges his guilty plea was involuntary. Applicant is present and he's represented by Mr. Jonathan Waller. And your Honor the State is ready to

proceed.

THE COURT: All right, sir.

Ready, Mr. Waller?

MR. WALLER: Thank you, your Honor. I just want to, I guess, put on the record that Mr. Drake has made claims of ineffective assistance of counsel regarding his guilty plea. As Mr. Davidson mention to the Court, it was for a voluntary guilty plea specifically. Certainly share this with the State was that Mr. Drake believes that his counsel failed to investigate the facts and circumstances regarding not only the incident itself, but his personal situation has been a rough situation that lead to his pleading not freely and voluntarily entered into.

Judge, as part of this case, he was evaluated by the department of mental health for criminal responsibility. I believe your Honor was just e-mailed a copy of that evaluation report. And as apart of his underlying criminal case which Mr. Wilson represented to him, he was evaluated for competency. Again, I believe by the department of mental health, but he did have a competency evaluation done back sometime ago your Honor.

THE COURT: Yes, sir.

MR. WALLER: All right. Your Honor, I call Ronnie Drake.

THE COURT: All right.

THE CLERK: Mr. Drake, put your left hand on the Bible, raise your right hand as much as you can. Do you swear or affirm that the testimony you give be the truth, the whole truth, and nothing but the truth so help you God?

MR. DRAKE: Yes, ma'am.

THE CLERK: Thank you.

THE COURT: All right. Mr. Waller, whenever you're ready, sir.

MR. WALLER: Thank you, your Honor.

WHEREUPON,

Ronnie Drake,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

Q Good afternoon, Mr. Drake. How are you today?

A All right, sir.

Q All right. Mr. Drake, I want to take you back in time if I can to when you were arrested on the drug charges that brought us here today. Do you remember that time?

A Yes, sir.

Q Okay. When you were first arrested, did you have a lawyer?

A When I first got arrested?
Q Or shortly thereafter? When you got arrested, did you get a lawyer?
A Yes, sir.
Q Okay. Who was your lawyer?
A Mrs. Rose Mary Parham.
Q Okay. So you hired Mrs. Parham. And what specifically was she representing you for?
A The trafficking charge.
Q Okay. Was she retained for the whole case, for your bond hearing do you remember?
A My whole case.
Q The whole case, okay. At some point Mrs. Parham didn't represent you anymore, is that right?
A No, sir.
Q Okay. Well, you hired another lawyer after that, is that right?
A Yes, sir.
Q Okay. And who did you get to represent you?
A My mother hired Ralph.
Q Ralph Wilson?
A Yes, sir.
Q Out of Conway I believe?
A Yes, sir.
Q Okay. Now, were you in the detention center or had

you bonded out during these charges being pending?
A I was -- my bond being revoked and I was sent back to the detention center about a year later.
Q Okay. So you were out on bond for a time and your bond was revoked?
A Yes, sir.
Q Okay. Was that before or after Mr. Wilson started representing you?
A Before.
Q Okay. So you were in the detention the entire time he represented you that you recall?
A Yes, sir.
Q Okay. Now, I'm not going to talk about Mrs. Parham or really ask you much about that one. I want to focus on the time Mr. Wilson represented you, okay?
A Yes, sir.
Q All right. When Mister -- when your mother hired Mr. Wilson to represent you, were you able to meet with him?
A When he came to -- because we retain Barr -- Charles Barr first.
Q Okay.
A And somehow it been a mishap with the money situation and he said that he didn't get it, but he got it. So my mother then went and got Ralph. And he came and talk to

me for a second or two. I sign some papers for him to be the lawyer.
Q Okay.
A And then like a day later Barr came and he ask me was I gone continue to go with Ralph or was I gone finish paying him the money. And I told him it's up to my mama them.
Q Okay. Well, let's not worry about Mr. Barr right now. Let's talk about Mr. Wilson. So you said he came and visited with you at the detention center?
A Yes, sir.
Q Okay. And you all talked for a few minutes you said?
A Yes, sir.
Q Do you remember what you all talked about?
A A payment plans and that's about it and what I was charge with.
Q Okay. So that was the first time you all had a chance to meet, and so he didn't know much about your case then, is that right?
A Yes, sir.
Q Okay. Did you -- later on did you have a chance to meet with him again?
A Not until I went to court.
Q Okay. Did you have a chance to -- did you receive any discovery in your case, any of your Rule 5 materials?

A No, sir.
Q Okay. Did you ever have a chance to talk to Mr. Wilson about the charges you were facing?
A Yeah, I ask him for my Rule 5. I think I got it right here. I wrote him about the Rule 5. I never receive any Rule 5 or nothing.
Q Okay. Did you know what the State was alleging that you -- what crime you committed?
A Did I know?
Q Yes, sir. I mean, did you know what the State was saying you did wrong?
A Yes, sir.
Q Okay. Did you and Mr. Wilson have a chance to talk about that?
A Pretty much a little bit.
Q Okay.
A About the charge and anything I should plead guilty.
Q Okay. Did you all have a chance to talk about your constitutional rights at all?
A Constitutional rights. He told me what I was facing.
Q Okay. Did you talk about your right to remain silent?
A No.
Q Okay. Did you talk about your right to a jury trial?
A I requested a jury trial and I demand for a jury

trial before.
Q Okay. So you knew that you were able to have a jury trial if you wanted one?
A Yes, sir.
Q Okay. Did you give Mr. Wilson any information that you wanted him to investigate or anything like that?
A My mental health issues and my mental health records and my school records and my -- I asked him to get my records from the DSS office and the social security office.
Q Okay. Why did you want him to get those things?
A Because at the time I went to the court to get the -- to Columbia to get evaluated and the lady lied and said that I wasn't taking no kind of mental health medication or I wasn't bipolar and I have taken bipolar medication ever since the early 2000.
Q All right. So when you said when you went to Columbia was that while Mr. Wilson was representing you?
A Yes, sir.
Q Or was that before the incident took place?
A Well, it started out Rose Mary sent me to get evaluated, but in the midst, I fired her and I was still in the process of going to get evaluated. And Ralph Wilson was taking up in the midst of me still getting evaluated.

Q Okay. So it happen during the course of his representation of you though?
A Yes, sir.
Q Okay. What -- you asked him to get some things regarding your mental health treatment and history, is that right?
A Yes, sir.
Q Okay. Do you know if he ever got those things?
A No, I don't think he received any of it.
Q Okay. Do you know if that was ever produced as part of the evaluation that the evaluator might have had any of those items?
A The evaluator when she come she just said I had no mental health history. There wasn't nothing wrong with me. I been faking mental illness those things of that nature.
Q Okay. But you testified a minute ago, I believe, that you been taking medication since the early 2000s?
A Yes, sir.
Q What -- when were you first treated for mental health issues?
A I started out with Ritalin and that was when I was like what 14 or 15. I started out with Ritalin. Then I went from Adderall. And then like later on down the line I was in prison when I started bipolar medication and

Remeron and my PTSD medication.
Q Okay. Was that -- you say you were in prison, that wasn't for this but for something else?
A Yes, sir.
Q Okay. So that was before this incident took place?
A Yes, sir.
Q Okay. And you had been released from prison shortly before this incident took place, is that right?
A Yes, sir.
Q About how long was that?
A I got out 2015 and I only been out like 33 days before I was basically tricked and set up. I was at a convenient store and I got hand a bag to take to a F-150. And once I took the bag out there, the guy pull off. I got inside the car -- well, I looked inside the bag, I noticed money and I was fresh out jail. I only been out of jail 33 days and my medicine ran out. I kind of -- I didn't know I was being set up. I got the money out of the bag. And once I got inside the car, I look further in the bag and I notice drugs. It had drugs, chips, cookies, honeybuns and drugs. And before I knew it, this big black truck pull up, the guy -- well, it was a SLED agent got out. He was wearing street clothes. And at that point I didn't know he was a SLED agent. I was thinking this was the guy to come and get his drugs or coming to get his

bags because I was at a convenience store. And once he came to the car, he ask me for license registrations. And I ask him who he was and he said he was a narcotics investigator.

Q Let me back up just a little bit. So when you were in prison in the department of corrections before this incident before you got released, how did you get your medication? I believe you testified you were on Remeroll (sic), is that right?

A I was on Remeron.

Q Remeron.

A And I was on Profintazine (sic). I can't really pronounce it.

Q What are those treat?

A Remeron is for like depression and the 49/41 pink pill what I was taking it, but it's got -- it upping the dose, but it was -- that was a four milligrams, but now I'm taking eight milligrams, that was bipolar medication.

Q Okay. So when you were in the department of corrections, how did you get your medicine?

A I use to go to the pill line every day.

Q Okay. It was just there for you every day?

A Yes, sir.

Q Prescribe by a doctor obviously within the department of corrections?

A Yes, sir.
Q Okay. When you got out, I believe you testified it was 33 days from when you got released until this incident happen. How did you get your medication after you got released?
A I ran out of medicine that I came home with. I had a 30-day supply. Once I got released, I went to the family psychology doctors right here on Evans Street and my doctor prescribed me medicine, but which I never got the -- what that thing call?
Q The prescription.
A Prescription. He didn't never give me the prescription because I still had 30 something days worth of medicine that was still prescribed to me. And he said once the prescription run out, once the medicine run out, come back and he gone fill me a prescription to get further in treatment. And I was gone be pointed to Pee Dee Mental Health, which I never really even got.
Q Okay. So just to kind of make sure that the judge understands the time line here. So you were released from the department of corrections and you had some -- they gave you some medication, you know, so you would have some when you got released, is that right?
A Yes, sir.
Q Okay. And then you went to see the doctor and you

still had some of that medication, so he didn't give you a refill?
A Not at the moment he didn't give me a refill.
Q Okay. And then you got to the end of the 30 days, you obviously ran out of medication and then there was some sort of gap before you were able to get your prescription refill, is that right?
A Yes, sir.
Q So at the time this incident took place 33 days after you been released, were you taking your medication?
A After I been released?
Q Yes, sir.
A After I been release from the ---
Q I'm talking about on the day that you were arrested had you been taking your medication for the couple days prior to that or were you out?
A The doctor that I had been prescribed -- been appointed to, they said something about he retired or something like that. When my parents when we went back to the family psychologist place that I had seen him at, they said he retired.
Q Okay. And I understand that, but my question was were you had -- had you run out of your medication the day you were arrested?
A Yes, sir.

Q Okay. Do you know how long you had been out of it when you were arrested?
A Like three days.
Q Okay. Did you tell Mr. Wilson about that you been out of your medication?
A Yes, sir.
Q Okay. Did you ask him to get any information to do any follow up about, you know, your mental health or anything like that?
A Yes, sir.
Q Okay. What did you ask him to do?
A I ask him to contact the social security office about the doctor that who tried to help me get my medicine, I ask him to contact school officials about my mental health records. And the doctor that diagnosed me with bipolar and other mental illness.
Q Okay. Now, you mentioned earlier when you were testifying that you thought you were set up, is that right?
A Yes, sir.
Q I don't want to put words in your mouth, is that what you said?
A Yes, sir.
Q Okay.
A I didn't think I know I was.

Q Did you tell Mr. Wilson, you know, what happened that day?
A I told Rose Mary and him, yes, sir.
Q Okay. What -- did you ask him to try to locate the person you might have set you up?
A I ask him to get the films from the store. Well, not just only him, Rose Mary she was my lawyer because she was my lawyer the whole time before Ralph was. He just came along like the last 60 days when I was in the county jail.
Q Okay. Do you know if that video was ever obtained?
A No, sir. Rose Mary she had got me to -- well, she had me sit down before the SLED agents and all. They wanted me to cooperate and be informant for the narcotics investigator to set up other people up to buy drugs for me to get weekend time and drug court. She say that I could get weekend time and drug court, but I didn't -- I couldn't get the guys who the solicitor -- I mean, not the solicitor. The SLED agent wanted me to get two specific individuals and I couldn't meet his standards to getting those two individuals.
Q Okay. How about when Mr. Wilson was representing you though? Did you talk to him about the video?
A I ask him could he locate the video of the people who gave me the bag at the convenient store.
Q What was his response when you asked him that?

A It was really wasn't no response but plead guilty.
Q Do you know if he ever saw the video himself?
A I have no idea.
Q Okay. Now, I think you testified earlier that you insisted and demanded on a jury trial, is that right?
A Yes, sir.
Q Okay. At some point though that changed and you ultimately pled guilty, is that right?
A Yes, sir.
Q What conversations did you and Mr. Wilson have that led you to that decision?
A Well, it wasn't Mr. Wilson, it was more my mother. She just kept saying that they gone -- they just told her that if I don't plead guilty, that I was gone get two different 30-year sentences if I don't plead guilty today. And I kept saying I don't want to plead guilty. I ain't trying to plead guilty to something I ain't had nothing to do with, that wasn't really mine and they was saying that I got caught with the drugs. So I kept trying to explain those weren't my drugs. I been in the convenience store and man hand me the bag and I was thinking I was doing a good deed and wind up being a set up.
Q Okay. But your mother's not your lawyer though, right. So what did you talk to your lawyer about before you entered a guilty plea?

A I kept telling him I don't want to take no plea. And Jepertinger told me if I go and tell the judge what I told Judge Seals about I been promising I been threatened again, he told me if go and tell Judge Seals on Judge Brown what I told Judge Seals, he gone make sure I get two separate 30 years. And my mama was right there while he was saying those things. I guess she kept -- when I went to the bathroom, I don't know what her and Ralph Wilson speak about, but she told me Ralph told her it would be best if she help me stand before the judge and she whispered in my ear kept telling me say, yes, sir, no, sir to everything the judge was -- what she think the judge wanted me to say yes, sir or no, sir to it. And at the time I was going through so much stress and not being able to get my proper medication because at the county jail didn't know exactly the name of my medication, my bipolar medication and other medication. They only prescribe me one of them that I knew the specific name of which was my Remeron. So I'm sitting there going through these mix emotions and distress and duress. And I was -- I didn't think my mama was tricking me because she kept telling me they gone get you some help. They gone get you some mental health help. I was telling my mama like, no, I don't trust them. I don't trust them, but at the time I was sitting there and I wanted to tell the judge that I

was promise and I was threaten. But my mama she just kept saying, no, she grab my hand squeezing my hand telling me say yes, sir and say no, sir, and she kept whispering in my ear.

Q Okay. And you had tried to plead guilty one time before. You gone in front of the judge one time before, is that right? Had you gone in front of the judge before and the judge would not accept your plea?

A Yes, that's Judge Seals when I told him I was promise and I was threaten.

Q Okay. And that was just very shortly before this, is that right?

A Yes, sir.

Q Okay. You pled guilty to a negotiated sentence. Did you understand what negotiated meant?

A At the time I was under duress and I just -- I wanted to make -- I didn't want to give my mama the stress and I didn't want to mess her up.

Q Okay. Did you understand what a negotiated sentence meant?

A Ralph told me that, you know.

Q All right. Mr. Drake, you made some allegations that Mr. Wilson did not do certain things you asked him to get your mental health records, investigate the videotape, your medication. Are those things that you think would

have changed your decision your outcome on what you decide to do?

A Well, I feel like my plea wasn't knowingly and intelligently made because had I been on my proper medication, I probably could have made the decision for myself, then my mother making the decision for me whispering in my ear because I told Judge Seals before which got me kicked out the courtroom that I was promise and that I was threatened.

Q If Mr. Wilson had done the things you asked him to do, would you have still pled guilty or would you have gone to trial?

A He would have give me different advice and, I guess, we would have went to trial.

Q Okay. All right. Mr. Drake, I've asked you all the questions that I have for you. Is there anything that you think I've left out or neglected to the ask Judge McFaddin needs to be aware of Mr. Wilson's representation of you not Mr. Barr not Mrs. Parham, but Mr. Wilson's representation?

A Yes, sir. Yes, sir.

MR. WALLER: Okay. All right. Please answer any questions Mr. Davidson has for you.

CROSS-EXAMINATION

BY MR. DAVIDSON:

Q Good afternoon, Mr. Drake.

A Good afternoon.

Q So you testified earlier that you had originally retained Rose Mary Parham, correct?

A Yes, sir.

Q And eventually you decided to have Mr. Ralph Wilson represent you, correct?

A Yes, sir.

Q Okay. And you testified that you asked Mr. Wilson for discovery, but he never gave you any, correct?

A No, sir.

Q Did Mrs. Parham ever give you discovery?

A I ask her as well and she never gave me a Rule 5 either, that's why I wind up firing her.

Q But she did go over some of it with you, right?

A No, sir.

Q Did you watch the video with her?

A No, sir.

Q When you were represented by Mrs. Parham, I think you testified that SLED wanted you to be an informant?

A Yes, sir.

Q And in exchange for you being an informant, what was the State offering to do?

A They was offering to give me weekend time and drug

court if I could get the two individuals was Melvin Daniels, which is nonfederal. He's locked up in federal. And I think the name Dequan Lynch, I think, Lynch, but I'm not sure his last name. But they wanted me to get those two in exchange for weekend time and drug court. But once I couldn't meet that agreement, I was offered 85 nonviolent. And when I was off of that 85 nonviolent, I kind of felt like if they could have give me weekend time and drug court to get those two individuals, but I couldn't reach they time and fashion to get them. And so I actually ask them could they give me a little bit more time to get them and Jepertinger told me no. Either I'm gone plead to the eight years 85 that day or I'm gone wind up doing 30 years. And I told him -- I ask him, well, why I got to do eight years when they offered me weekend time and drug court to get these guys, but I ain't had a chance to do that type of stuff right then and there because once I got set up with drugs, I got set up with everybody is in Florence seem to know about it. And so after that, I had said I rather be dead than go to jail. And Rose Mary she ask to get me evaluated to go see mental health officials, but she was gone get me to see my mental health psychologist on the streets in society, but Jepertinger had said, no, he want my bond revoked and he won't me in jail because he thought I was gone run or either flight

risk or whatever. He said he wanted me to see the evaluation people in Columbia, which me personally my belief I was thinking the people in Columbia was more help the court's then help -- not just basically being neutral in the situation. It is like they more trying to help the court's than being neutral not saying I wanted them to help me, but I just wanted them to tell the truth.

Q Okay. So backing up to the things that SLED wanted you to do for the weekend time or drug court, at that time you were trying to comply with that?

A Yes, sir.

Q So you would have wanted to plead if you could have successfully exchanged the drugs with those two individuals?

A At first I told Mrs. Rose Mary I didn't feel comfortable doing it because I told her I felt like I been set up the same kind of similar way, but then she told me it was my freedom involved. You know what I'm saying, I don't want to go back to jail, this would be the best thing in my interest, but once I called the SLED agent, I think Brown I called him a few times and he told me he was busy. And I was telling him like man those guys they out right now. I see him out in the streets right now in the drug area in the neighborhood. And I told him one time before I called him and told him that if he was to go over

there now with some people, they may be able to get some drugs because I know they been out there selling drugs in his grandma yard. And, I guess, that time when I called him, they all went over there and they got him with drugs or whatever. And then one time I told them about them, you know, apartments say Seal Test (sic), apartment complex Seal Test one of his cousins or girlfriends or something like that and I told them about that apartment because I got information that they be cooking drugs up at that house, so I told Brown about that. And that's where they wind up getting caught cooking drugs up at -- and that's what got them in the federal penitentiary right now, but it's like I ain't never get no credit for it because he said that I didn't come and get a confidential informant number or some sort.

Q Okay. And so after that you're offered eight years and you did not want to take that, correct?

A Well, I ask Jepertinger why he got to be so harsh on me and I told him I rather be dead. And I ask Rose Mary what happened the informant deal.

Q Okay. And after you said that you rather be dead, that's when you fired Rose Mary?

A No, sir. I went to -- I got my bond. Jepertinger had me to go in front of Judge Brown, but they said it was Judge Russo afterwards. Well, he had me to go in front of

Judge Brown and they revoked the bond that I was on and I was sent to the county jail. And in the midst of me being in the county jail, Barr came up there to see another individual and I asked him could I talk to him about similar things. And I told him I wanted to fire Rose Mary and could I retain him. And he told me he couldn't talk to me about that right now he said I have to fire Rose Mary first. So once I fired her, and we contacted Barr. And somehow my mama and my fiancé they give him like $2,500, but somehow he said that nobody never gave him no money. And so my mama them thinking he was scamming or whatever. So they was telling me, yeah, we gave him the money. He gave us a receipt. He scammed us or whatever and they had the receipt so. He told them like he don't have nothing to document about him getting no money from them. So they went and hired Ralph and they said that Charles Barr was a scam. But in the midst of going to hire Ralph, Charles wind up finding the receipt and he came up there and I told him that my mama them went and hired Ralph already.

Q Okay. So Ralph was then hired?

A Yes, sir.

Q Okay. And when Ralph was hired, did you get evaluated after that by Columbia or in Columbia?

A Yeah, Ralph once he got hired ---

Q Before or after you got evaluated?
A I was -- I ain't get evaluated yet. I was still in the county jail.
Q Okay. So he was representing you at the time you got evaluated?
A Yes, sir.
Q So he was aware of your potential mental health issues?
A Yes, sir.
Q Okay. And you testified earlier that while Ralph said you should plead guilty or else you might face 30 years, it was mostly your mom that wanted you to plead guilty?
A He -- I guess, my mama right there. He told her to get me to plead guilty.
Q Okay.
A Which he got her to coerce me into pleading guilty. And at the time I wasn't on my proper medication, so in my mind I was saying I didn't want to plead, but my mom I didn't expect for her or none of that to be tricked. So I just went with the flow because she told me to say yes, sir and no, sir.
Q Okay. So if I'm understanding your testimony, it's that you're saying that Ralph tricked your mom into convincing you to plead guilty?

A Pretty much.
Q Okay. And you testified that you wanted to tell the judge that there were people promising or threatening you, but your mom said no. Who was threatening you?
A Jepertinger is.
Q And he was threatening you with?
A I kept telling him I want to go to trial and he kept saying, no, either you gone take the plea or end up getting 30 or 30 plus 30. And I say, well, they ain't my drugs, I'm going to trial. And I kept telling him that. And he just like kept yelling, slamming his papers in front of me and kept yelling me. And like me being under all this medication, my thoughts was telling me to do something ill to him, but then, again, I was trying to keep myself calm not to. And my mom was telling me like, no, don't do nothing crazy. I think you should just plead guilty and I kept telling her I ain't trying to plead guilty because I been being set up.
Q Okay. And then earlier you testified that you eventually decided to plead guilty because you were under a lot of stress. And you didn't want to give your mom any more stress, is that correct?
A I mean, I was under stress when I was duress. Being under duress, yes, I was sitting right there getting pound and getting threatened and seeing my mama in tears. You

know, I ain't wanted to just -- I thought she had my best interest because Ralph was on one side and she was on one side. She whispering in my ear. You got Jepertinger one side and I was just in mixed emotions at the time.

Q And did you partly want to relieve your mom of any more stress?

A Yes, but at the same time I got right here proof right here where I demand a jury trial right here. And then I got proof that I never did sign -- I never did sign for the record. I never did sign the plea agreement, period, that's not my signature or my handwriting. And you can do a hand analysis writing, it's not my signature on the sentencing sheet. I got other things that I signed for, that's like court initial appearance. My first initial appearance that I sign for. My bond hearing that I sign for and numerous of papers that I sign for and the plea to me was fragile because I never signed it.

Q Okay. And what you just testified to about your demand for a jury trial, you do understand that you didn't have to plead guilty if you did not plead guilty that day you could have gone to trial, right?

A Like I said here earlier, sir, I was under duress and then keep being yelled at and constantly yell at. And it's like I did multiple times got sent back to the county jail when I was asking for a jury trial. And I kept being

sent back to the county jail every time I ask for a jury trial. And then when I keep coming back to court and I can't get basically what I'm asking for and I'm getting sent back to Effingham and it's cold in there. And I'm not eating because I don't eat that type food that they be serving and sometimes they send me to max for the simplest little things, so I been being punish.

Q Okay. And the last question I have is do you recall at your plea hearing telling the -- or telling the judge that you hadn't taken your prescribed medicine that day?

A Yes, sir. I told him I was I took Remeron, but that wasn't all my medication that I was taking. I was suppose to have been on like I told you earlier Paphenazine (sic). And I was suppose to have been on like two other pills that I can't pronounce.

Q Okay.

A Like I take like my four different kind psychiatric medications right now to this day. I take bipolar medication. I take Remeron. I take ---

Q Were you on all four of those at the time of your plea or were you just on two?

A No, I was only on Remeron.

Q Okay. And you had taken it that day?

A Yes, sir.

MR. DAVIDSON: Okay. Thank you nothing further.

THE COURT: Mr. Waller.

MR. WALLER: Briefly, your Honor.

REDIRECT EXAMINATION

BY MR. WALLER:

Q Mr. Drake, you testified that Mr. Wilson -- your own conversations with him were about pleading guilty. That all happen kind of in one day or was that over a course of time or how did that happen?

A I can't hear you, sir.

Q You testified earlier that the only conversations you really had with Mr. Wilson was about pleading guilty, is that right?

A Yes, sir.

Q Okay. Was that all in one day? Was that spread out over the course of multiple conversations or what was that like?

A Well, I only seen Ralph Wilson maybe three times out of the whole. He was only my lawyer for like 60 days maybe 70 before I went to court.

Q Okay. So we know one time was when he came to the jail to sign you up. One time was obviously in court.

A I told Judge Seals I was promise and threaten. And then I came again after that and I was telling him I didn't want to plead. I didn't want to plead and I got sent back to the county jail. And then I got came back

and Ralph -- Jepertinger was telling me, well, if you try what you tried the last time when you told Judge Seals you been promise and you been threaten, I'm gone make sure you get 30 years consecutive in each trial.

Q So you were telling Mr. Wilson you want go to trial, is that right?

A Yes, sir.

Q And he's telling you you need to plead guilty?

A Can I say this on record, I got a paper right here where I demand a jury trial right here.

Q Yes, sir. That's part of the clerk's file and Judge McFaddin has a copy of the entire clerk's file. All right. Mr. Drake, I don't have any further questions for you. Thank you.

A For the record, I never sign the plea agreement period. And it's like I only went in front of the judge because my mama was telling me, well, just stand in front of the judge and I kept saying I don't want to plead guilty. I don't.

MR. WALLER: Thank you, Mr. Drake.

THE COURT: Mr. Davidson.

MR. DAVIDSON: Nothing from the State.

THE COURT: You may step down, sir. Thank you. Do you need to talk to your lawyer?

MR. DRAKE: I was trying...

MR. WALLER: Mr. Drake, I'll talk to you.

THE COURT: You got a good lawyer. He'll tell me what I need to know. And I have your entire file here, sir.

(WHEREUPON, the witness leaves the witness stand.)

MR. WALLER: Nothing further from the applicant, your Honor.

THE COURT: All right, sir. Mr. Davidson.

MR. DAVIDSON: The State calls Ralph Wilson.

THE CLERK: Mr. Wilson, if you'll place your left hand on the Bible and raise your right please. Do you swear or affirm that the testimony you give will be the truth, the whole truth, and nothing but the truth so help you God?

MR. WILSON: I do.

THE CLERK: Thank you.

WHEREUPON,

Ralph Wilson, Sr.

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DAVIDSON:

Q Good afternoon, Mr. Wilson.

A Good afternoon.

Q Mr. Wilson, how long have you been practicing law?

A Since 1977 43 years.
Q And how much of that time was spent doing criminal law?
A All but two years. I was public defender for or at least deputy public defender for five or six years. I was deputy solicitor for four years and I was the elected collected solicitor for eight years.
Q Okay. And for Mr. Drake's case he testified that he -- his mom retained you, was that correct?
A That is correct.
Q Do you recall what date you were retained?
A Well, they actually came to see me in June a month before. June 21st is the first contact I had with his mother. She came back to hire me in July. And I think if I'm making a mistake, I was hired around July 4th or 5th somewhere theres-about.
Q And did you file a notice of representation?
A I did. And we also had to get a substitution of counsel form signed by Mrs. Parham.
Q Okay. And did you and Mrs. Parham speak about the case at all?
A We did.
Q Did she provide you any discovery material?
A She did. She gave me what she said she had.
Q And did you subsequently file a motion for discovery

to get additional discovery materials?

A I did. I don't rely on what the other counsel have. I generally I will file a motion of my own just to make sure that I got everything the State claims that they have.

Q Okay. And do you recall receiving any discovery in response?

A Yes.

Q Was a video part of that discovery?

A No.

Q Okay. And do you recall Mr. Drake ever asking you about obtaining a video?

A First I heard of a video was today.

Q Okay. And I believe Mr. Drake just testified that he only met with you three times. Do you recall how many times you guys met?

A Well, a number of times because we had a number of hearings. My first -- my initial contact with him as I said I met with his mom twice before I met with him. I met with him initially on July the 11th, which would have been a few days after they retained me and that was at the jail. I spent two and a half hours with him on that initial meeting. I met with him again on September 8th of 2016 to discuss the mental health evaluation that we had receive. We had a hearing that same day before Judge

Brown, a Blare hearing on that report. And then on September 27th of 2016, we had another phone conference where called me for us to discuss his plea. And that's when he brought up the whole thing to me about the eight years and that he thought he was promised eight years and that the problem with the eight year thing was was that according to him, again, the first thing I ever heard about him doing anything for the prosecutor was today. Before he told me, that he tried to exact law enforcement to do some work, but he was unable to contact them or unable to get ahold of them and they didn't call him back. I saw him again on November 1st of 2016 because that day we went in front of Judge Seals and we actually had a Blare hearing. And then I think that was the last time that I saw him before our plea. I saw him on December the 5th before our plea.

Q Okay. So I just want to make sure that I'm clear and it's clear for the judge. When you were hired to represent him, there was no plea offer on the table?

A There was no plea offer. In fact, I didn't know about the eight years initially until he told me about it and because apparently it never panned out. Whatever it was he was suppose to do never panned out or he didn't do what he was suppose to do, so the eight years I don't know what happened with it, but my understanding from talking

to his previous counsel was was that they were still going to do the eight years. They were going to allow him to plead to eight years and when went in there to plead he wouldn't do it. And so that was also going to be negotiated plea, but he would not take the negotiated plea and they withdrew it because they thought he was being difficult and refusing to take it.

Q Okay. And back to the discovery, did you ever go over the discovery with Mr. Drake?

A At the very first meeting as I said I already gotten some of the information from Mrs. Parham and so I went over what I had with him at that time. And I would have gone over the rest of it with him when I met with him September the eighth.

Q Okay. So your recollection you went over all of the discovery?

A Absolutely, I did.

Q Okay. And if you wouldn't mind just giving us a brief overview of what the State's evidence?

A You know, this was not a difficult case unfortunately for him. And the officer was real clear what had happened is the officer according to the information that the State could prove had received a phone call from the convenient store indicating that there was a male there who had a marijuana cigarette in his possession and was either

trying to sell it or trying to give it to other people. So the officer then went to that location to find the suspect or this person. When he gets there, the defendant is in a car or getting in a car. He sees him getting in a car. He walks up to the car, he pulls in behind him, walks up to the car and he says to him show me some identification. At this point the defendant then starts to roll up his window to keep from talking with the officer. As he rolls up the window, the officer gets the door handle and pulls the door open. As he pulls the door open, the drugs fall out onto the ground. The officer gets those drugs and he's trying to place him under arrest at the same time. As he's doing that, the defendant runs. He chases him and tases him in the back. He falls down and as he's down on the ground, he is constantly trying to keep something under him according to the report and according to the officer who has chased him and has him on the ground. The officer is now trying to get his hands behind his back. And as he's doing that, he still -- he refuses to give him his hands. The officer tells him, again, I'm going to tase you again if you refuse to put your hands behind your back. He still refuses. The officer tases him a second time. When he tases him this time, that's when he finally puts his behinds his back and he is cuffed. When the officer gets him up, then the

officer finds the bulge in the front of his pants, which is the second pack of drugs that the officer finds. And, of course, he's then arrested and charged.

Q Okay. And ---

A And also just so it's clear, he gave a statement according to the officer to the officer at the scene admitting that he had purchase the drugs for a young lady who he says belong to some sorority or something and that he was going to -- he was getting them for her for whatever his reasons were and that's why he had the drugs, but that he wasn't buying them for hisself, but that he was buying them to give to her.

Q Okay. So knowing that at the time, did you think of that you had any defenses in this case?

A No, there was no real defense to this, no. The officer caught him with the drugs in his possession. I mean, chased him and got the second portion of the drugs. And the officer had every right to ask him for identification based on the phone call. So I didn't see a real defense available and this would have been a third offense for him which meant that he would have been facing a mandatory 25 to 30.

Q And did you go over all of that with him?

A I absolutely did.

Q Was his mom ever involved in those conversations as

well?
A Some degree, to some degree, yes, but she wasn't present at all of the meetings that we had, no.
Q Okay. So after you went over all of that with Mr. Drake, what did you counsel him with what you thought you should do?
A I was honest with him from the very beginning. And I told him that we had to work out some kind of a plea otherwise he was going to end up getting 25, 30 years in the penitentiary. And he didn't want to go back to jail, that was the big thing with him. His thing was he didn't want to go back to jail. And I'm like, well, I understand that, but the problem is the facts are not in our favor. We don't have much to work with here. And going to trial with these facts, would have been -- I don't want to say stupid, but it would have been dumb and he certainly would have gotten convicted without any real question.
Q Okay. And when you said that -- or you just testified you told him you needed to work out a plea or else he would get or be facing 25 years?
A Yes.
Q Were you threatening him?
A No, but I always told him and not just him. I tell all my clients, look, you always have the right to go to trial. My job as your lawyer is to give you the best

path that I can find for you. Now, whether you take it or not, that's up to you, but what happens unfortunately and is as did in this case, even when you give them the best advice and they take that advice, then they complain later that, well, I shouldn't have taken it. Well, if he hadn't taken it, he would be here serving a 30-year sentence complaining. So, I mean, it is, what it is.

Q Okay. And when you have that conversation about we need to work out a plea deal, what did he say?

A Well, again, he kept going back to that he wanted eight years, that he thought he should get eight years. And the solicitor made it very clear from -- to me from the very out set that that was never going to happen. That he was not going to give him eight years, that that was not on the table. And as I said, when I first took over, there was no offer on the table at all. That offer of eight years was withdrawn when he appeared in front of the judge and refused to take it. It was withdrawn at that point. It was never referred at any point in time.

Q Okay. And so eventually you did work out a plea?

A Yes.

Q Can you explain that to us?

A After a lot of begging and pleading because the solicitor didn't want to do 12 years. He wanted to do 15. It was 20 at first and then finally I got him to 15 and

right at the last minute he agreed to 12, but he made it clear that if did not do it at that time, that he was not going to offer anything else. There were going to be no more negotiations and everything was going to be a trial at that point.

Q Okay. And the day of this plea hearing, he testified that you also spoke to him and his mother?

A Yes, I did.

Q And what was -- what were those conversations?

A That day when we got there that morning and his mom was there and he was in lock up. We got him and talk to him, so that he could understand because I wanted to explain to him, again, even though we had talked about it before what a negotiated plea was and how it worked and how that was very different than a recommendation. And that if he took that, that he was going to get that sentence. That the judge had two choices either accept it or reject it, but that he couldn't change it to help him or to hurt him and that he had to understand that before he went in there. Was there some reluctance on his part, the answer is, yes, it was because he didn't want to go back to jail and I understand that. Nobody wants to be in jail. So, yes, was he reluctant, but he understood, he understand that if he didn't take it, they were going to try him and that there were going to be no more offers,

that's why he ended up taking the offer. And his mom agreed she did. She did talk to him in my presence. And she encouraged him to take it, she didn't make him take it, but she did encourage him. And she said she thought that that was in his best interest.

Q Okay. And so did you believe that this plea deal was in his best interest?

A No doubt in my mind.

Q Okay. And obviously when you took this case, he was ordered to have a mental health evaluation?

A Yes.

Q Did you do any additional investigation into that or?

A Yeah -- well, I talk to him and I talk to his mother about -- and apparently what had been happening is that he been on Ritalin or something, but it had nothing to do with any major mental illness like bipolar or schizophrenia or anything like that. And, in fact, throughout this report, I mean, and his report his evaluation there is nothing to suggest that he has a major mental illness of any type. Yes, did he have depression, but anybody who's in jail probably has some depression, that's not unusual. And the medications that he was getting was not for bipolar or for schizophrenia or anything like that. It was for depression and anxiety, that's what those medications were for. I found nothing

either in my conversations with him, with his mom or reviewing that evaluation that suggested to me that he had major mental illness. In fact, the opposite is probably true because the report suggest that he was faking most of his symptoms.

Q Okay. And did you -- do you recall him requesting you look into his school records or, I think, he said the social security office's records?

A No, I don't remember that, but I probably wouldn't had done it any way based on everything that I knew because it would be no point in it. The doctors went back and in that report they tried to find all of his medical records from the past and include that in his history based on his own references they went back and tried to find those things. So I wouldn't have -- I probably wouldn't have gone back that far because there was nothing that was suggested to me that would say that he had some major mental illness when he was in third grade or fourth grade, that is not reflected in the report.

Q Okay. And as I previously brought up, Mr. Drake admitted on the record to taking his prescription drugs that morning?

A Yes.

Q Knowing that and knowing your relationship, was there anything that occurred at the plea hear that would cause

you to think something was wrong or maybe it was involuntarily?

A No. And we got along good he and I. I mean, we had open communication. Did he always like hearing what I had to say, no. You know, but very few defendants do if you're telling them that they're getting ready to go to jail for a substantial period of time, but he understood the conversations we had. We had feedback about it. We had open discussions about it in presence of his mother. You know, I never had any inkling or impression at any point in time that he did not understand any part of what was going on.

Q Okay. And at the plea hearing you testified that his mom was whispering answers into his ear of what to say, do you recall that?

A No, that is just absolutely not true. You know, I was standing by him when he was talking to the judge and his mom was not standing next to him at that time. Now, she was in courtroom, but she wasn't close enough to him to whisper to him. There's no way she could have done that.

Q And she wasn't close enough to hold his hand and squeeze it?

A No, no.

MR. DAVIDSON: Beg the Court's indulgence.

THE COURT: Yes, sir.

(WHEREUPON, a pause in the proceedings.)

BY MR. DAVIDSON:

Q Just to conclude really quick, who's decision was it to take the guilty plea?

A His.

Q And do you believe he pleaded freely and voluntarily?

A Yes, I do.

Q Had he decided not to plead guilty that day, would you have been prepared or willing to go to trial?

A We were ready to go to trial, yes.

MR. DAVIDSON: All right, thank you.

MR. WILSON: You're welcome.

MR. DAVIDSON: No more questions.

THE COURT: Mr. Waller.

MR. WALLER: Thank you, your Honor. May it please the Court.

CROSS-EXAMINATION

BY MR. WALLER:

Q Good afternoon, Mr. Wilson.

A Good afternoon, Mr. Waller.

Q Mr. Wilson, did you discuss with Mr. Drake medications that he was on, I guess, at the time of the incident?

A Yes.

Q Okay.
A Hold on. At the time that he allegedly committed the crime is that what you're asking me?
Q Yes, sir.
A My understanding was that he wasn't on any medication then. Now, he'd been out of jail for a month, but he apparently he was getting his medication when he was in jail. When he got out, he elected for whatever his reasons were not to get it, so he didn't.
Q And that's exactly what I was asking. Did you do any investigation as to how stopping of depression or anxiety medicine, you know, sudden stops of that might affect somebody's mental health?
A Well, depression doesn't make you buy drugs and sell them. I mean, so arguing that is not going to get you anywhere in any court that I know of saying that you were depressed, so you went out and bought some drugs, that's not a defense. So it wouldn't help me at all even if he was -- let's say for instance that he was suffering from depression, which I don't believe he was, but let's say he was how would that help us in any defense in a criminal trial where he is found in possession of the drugs. It would not.
Q How about the stopping of medication. And I asked a poor question the first one. Did the sudden stop of

medication did you investigator what adverse side effects that might have?

A Well, the problem with suddenly stopping it is that's a choice that you make and if you make that choice just like drinking liquor and getting in a car and drive. You can't complain when you elect not do it that you now do something that you probably wouldn't have done had you had your medication. Unless, you can show that he didn't know right from wrong at that time which, you know, there is absolutely nothing in this record to indicate that he didn't know right from wrong.

Q Did you investigate why he wasn't taking his medication at the time of the incident?

A I'm sure I talk to him about it. I'm sure I did. I don't recall what his answer was to be honest with you, but I'm sure I would have asked him why weren't you taking your medication. And why didn't you go and see another doctor once you got out of prison because you can always go to Waccamaw Mental Health or some other mental health agency for free. So it's not like you can't get it if you need it.

MR. WALLER: Beg the Court's indulgence please.

THE COURT: Yes, sir.

(WHEREUPON, a pause in the proceedings.)

MR. WALLER: Thank you, Mr. Wilson. I have

nothing further.

MR. WILSON: You're welcome.

THE COURT: Mr. Davidson.

MR. DAVIDSON: I just got one, your Honor.

REDIRECT EXAMINATION

BY MR. DAVIDSON:

Q Mr. Wilson, based on the DMH report, he was -- Mr. Drake was found criminally responsible, correct?

A That is correct.

MR. DAVIDSON: Thank you.

THE COURT: Mr. Waller, cross.

MR. WALLER: Just one question.

RECROSS-EXAMINATION

BY MR. WALLER:

Q Mr. Drake wasn't evaluated for criminal responsibility during the course of your representation, is that right?

A Well, what happened as I understand it when he went in front of the judge with Mrs. Parham, the judge ordered that he go and be evaluated. Now, we had a Blare hearing later. And at that Blare hearing, if I make no mistake, and I don't want misquote the doctor that question was asked and the doctor said that that was their opinion that, yeah, that he was competent.

Q But he was competent to stand trial?

A That he was competent to stand trial, that is correct.

Q And so you were not the attorney that had moved for his evaluation?

A I did not, no, sir.

MR. WALLER: Okay. Thank you, Mr. Wilson.

THE COURT: Mr. Davidson.

MR. DAVIDSON: No further questions.

THE COURT: You may step down, Mr. Wilson.

MR. WILSON: Thank you, your Honor. May I be excused, your Honor?

THE COURT: Yes, sir.

MR. WILSON: Thank you, sir.

(WHEREUPON, the witness leaves the witness stand.)

THE COURT: Mr. Davidson.

MR. DAVIDSON: Nothing further from the State, Your Honor.

THE COURT: Okay. All right. Mr. Waller.

MR. WALLER: Nothing further, your Honor.

THE COURT: All right. As I stated in the earlier hearing or perhaps two earlier hearings this week, I have taken lots of notes here. I want to go back and review the file provided. I will do that and issue my ruling probably -- well, most likely by an e-mail ruling

either this week or next week. I have criminal court in Sumter next week, but I will try and endeavor to get this ruling out before Monday. All right.

MR. WALLER: Thank you, your Honor.

THE COURT: Thank you all for your patience and you will hear from me soon. Thank you all.

END OF REQUESTED TRANSCRIPT

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed paged, numbered 1 through 52, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of Common Pleas for Florence County, South Carolina, on the 1st day of September, 2021.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 23rd day of March 2022.

Keshia Reed

Keshia Reed, Court Reporter

****

COVERSHEET FOR DMH AND DDSN EVALUATION ORDERS

1. The Competency to Stand Trial Evaluation orders (SCCA 221 and SCCA 487) and the Criminal Responsibility (McNaughten) Evaluation order (SCCA 222) should **not** be altered. It is important for purposes of compliance with the statutes as well as timeliness, efficiency and quality control in conducting evaluations that the applicable form order be used **exactly** as published, **without alterations or additions** to the terms of the form order.

2. Additional records **must** be attached to the order for a complete evaluation. It is the duty of counsel requesting the evaluation to obtain these records in advance and have them ready at the time the judge signs the order so that the evaluation will not be delayed. Within five (5) days of its issuance, counsel must file the order with the Clerk and serve the order on the examining agency. A list of the necessary records is available on the last page of the order, and may include:

- ☐ Completed DMH/DDSN Outpatient Information Appointment Sheet
- ☐ Copy of the indictments(s)
- ☐ Copy of the arresting agency's incident report
- ☐ Copy of the warrant(s)
- ☐ Law enforcement investigative reports
- ☐ The defendant or juvenile's statements to law enforcement, written or electronically recorded
- ☐ Witness statements to law enforcement
- ☐ Autopsy reports
- ☐ Defendant's school psychological records
- ☐ Defendant's Rule 5(f) notice of insanity records
- ☐ Copy of the Juvenile Petition
- ☐ Special education records, including psychological evaluations and IEPs
- ☐ School records, including disciplinary and attendance records
- ☐ Mental health records, including inpatient and outpatient evaluation and/or treatment

FILED
2016 JUL 25 AM 8:59
CONNIE REEL-SHEARIN
CCP & GS
FLORENCE COUNTY, SC

3. Only **one** Competency to Stand Trial evaluation can be ordered. For Defendants with mental illness, the order is addressed to the Department of Mental Health. For Defendants with mental retardation, the order is addressed to the Department of Disabilities and Special Needs. The order may not be addressed to both agencies. In the event there is a dual diagnosis or uncertainty as to the correct diagnosis, the order is first addressed to the Department of Mental Health, and the examiners will determine whether further referral is necessary. All orders for criminal responsibility evaluation, regardless of the diagnosis, are forwarded to the Department of Mental Health.

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Florence)

The State of South Carolina,)

Plaintiff,)

v.)

Ronnie Mickell Drake,)

Defendant.)

Indictment No.(s): 2015-GS-21-01143
A/Warrant No.(s): _____

ORDER FOR COMPETENCY TO STAND TRIAL EVALUATION PURSUANT TO STATE V. BLAIR

FILED
2016 JUL 25 AM 9:59
CONNIE REEL-SCARBRO
CCCP & GS
FLORENCE COUNTY, SC

EVALUATION BY:
(Select Only One)

__ **Department of Mental Health (Mental Illness)**

OR

__ **Department of Disabilities and Special Needs (Intellectual Disability or Related Disability)**

This matter is before me for an order requiring defendant Ronnie Drake, charged with Drugs/Manufacture, Distribution Cocaine Base, 1st, to submit to an evaluation for competency to stand trial pursuant to State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981) and S.C. Code Ann. § 44-23-410 (1976).

BASIS FOR ORDER. I have considered the showing made in support of the motion requesting this evaluation and have reason to believe defendant may lack the competency to understand the criminal proceedings or to assist with the defense as a result of a lack of mental competence.

This order is issued for the following reasons: Drake previously diagnosed with schizophrenia, Drake hearing voices and having suicidal thoughts

THEREFORE, IT IS ORDERED: Defendant shall be examined and observed at an appropriate facility by two examiners of the Department of Mental Health if suspected of having a mental illness or by two examiners designated by the Department of Disabilities and Special Needs if suspected of having an intellectual disability or a related disability, to render an opinion whether defendant is competent to stand trial.

COMPLIANCE DEADLINE/TRANSPORT FOR EVALUATION. The examining facility shall schedule the ordered examination no later than thirty (30) days from the examining

agency's receipt of this order. If defendant is currently free on bond or personal recognizance, defendant is responsible for making transportation arrangements to attend the examination. In the event defendant does not appear at the scheduled examination, upon written notice of such failure by the examining agency to the Sheriff of the county in which this case arose, defendant shall be taken into custody by the Sheriff and held until an examination can be scheduled and completed, and thereafter shall be released. Defendant's bond or bail is hereby revoked to the extent necessary to carry out the provisions of this order, and upon completion of the examination and release of defendant, any previous bail or bond issued by the Court shall remain in effect. If defendant is in custody at the time of the scheduled examination, the Sheriff is hereby authorized and required to transport defendant to and from the examination, arriving at the examining facility at the time established by confirmed appointment with the staff of the examining facility. In the event defendant is in custody of a law enforcement agency other than a Sheriff's department, nothing herein prevents such agency from carrying out the provisions of this order.

TRANSFER TO ALTERNATE AGENCY. If the initial examination is performed by the Department of Mental Health, and examiners find indications of an intellectual disability or a related disability but not mental illness, the Department of Mental Health shall not render an opinion on mental competency, but shall inform the Court, prosecutor, and defense counsel that defendant is "not mentally ill" and shall provide a copy of such notification and a copy of this order to the Department of Disabilities and Special Needs. Likewise, if the initial examination is performed by the Department of Disabilities and Special Needs, and examiners find indications of mental illness but not an intellectual disability or a related disability, the Department of Disabilities and Special Needs shall not render an opinion on mental competency, but shall inform the Court, prosecutor, and defense counsel that defendant does "not have an intellectual disability or a related disability" and shall provide a copy of such notification and this order to the Department of Mental Health.

In either case, the examining agency shall make copies of any records gathered or created in connection with its examination available to examiners designated by the alternate agency, and the alternate agency shall thereafter designate examiners to evaluate defendant as to competency to stand trial within thirty (30) days of receipt of the notification from the initial examining agency.

FINDING OF DUAL DIAGNOSIS. If examiners of either the Department of Mental Health or the Department of Disabilities and Special Needs find an indication of a dual diagnosis of mental illness and an intellectual disability or a related disability, no opinion on defendant's mental

competency shall be rendered, and the dual diagnosis must be reported to the Court, prosecutor, and defense counsel. The examining agency shall also provide notification of the finding and a copy of this order to the other agency. Thereafter, the Department of Mental Health and the Department of Disabilities and Special Needs shall arrange for an examiner from each agency to further evaluate defendant to render a final report on defendant's mental competency. Both agencies are authorized and required to make copies of all relevant records within their possession or control available to examiners for purposes of completing the dual evaluation.

AUTHORIZATION FOR INPATIENT EVALUATION. In the event examiners from either agency determine defendant requires an inpatient examination, upon written notice to this Court from the director of the examining agency or his designee, defendant shall be committed to an appropriate facility of the requesting agency for no more than fifteen (15) days for examination and observation related to defendant's mental competency to stand trial.

REQUEST FOR EXTENSION. Before the expiration of the examination period or the examination and observation period, the Department of Mental Health or the Department of Disabilities and Special Needs, as appropriate, may apply to a judge designated by the Chief Justice of the South Carolina Supreme Court for an extension of time up to fifteen (15) days to complete the examination or the examination and observation.

DETENTION BEYOND EVALUATION PERIOD. If, in the judgment of the designated examiners, defendant is in need of immediate hospitalization or inpatient treatment, upon written request to this Court from the director of the examining facility or his designee, defendant may be detained by the requesting agency in a suitable facility for so long as deemed clinically necessary or until a hearing required and provided by S.C. Code Ann. § 44-23-430 (1976) may be conducted by this Court. An additional Court order **shall** be necessary for ongoing pre-trial inpatient detention of defendant as discussed in this paragraph.

ISSUANCE AND ADMISSIBILITY OF WRITTEN REPORT. Within ten (10) days of all examinations or the conclusion of the observation period, a written report shall be made to the Court pursuant to S.C. Code Ann. § 44-23-420 (1976). A copy of the report shall also be forwarded to the prosecutor and defense counsel. This evaluation report shall be admissible as evidence in subsequent hearings pursuant to S.C. Code Ann. § 44-23-420(c) (1976); thus, the report is a statutory exception to the rule against hearsay and shall be admissible without need for foundational testimony. However, the report shall be inadmissible in any other proceedings except as expressly

permitted by South Carolina law.

OWNERSHIP AND DISCOVERABILITY OF EXAMINING AGENCY FILES. The examining agency is an independent entity, conducting this evaluation pursuant to Court order, and is not aligned with any party before the Court. To promote full disclosure and to assure the cooperation of defendant during the evaluation process, ownership of the examining agency's files shall be vested with the examining agency, including clinician's notes, staff reports, evaluation documents, memoranda, test results, etc. Neither these files nor any of their contents shall be provided to any party except upon presentation of a Court order authorizing such or a release authorization signed by defendant. In the event the examining agency's evaluation opinion is contested, an examiner may be appropriately and fully questioned as to the basis for the examiner's opinion at any hearing pursuant to S.C. Code Ann. § 44-23-430 (1976). However, examiners and agency staff may not be compelled to testify regarding statements made during the competency examination for any purpose other than to establish competency. Also, statements made during the examination may not be used to impeach defendant at trial. Hudgins v. Moore, 337 S.C. 333, 524 S.E.2d 105 (1999).

MEDICAL PROVIDERS/SCHOOLS MUST RELEASE NECESSARY RECORDS. State agency examiners conducting the evaluation may need clinical and school records concerning defendant to assist in forming an opinion. It is therefore ordered, upon presentation by the examining agency of this order with a written request for specific records attached thereto, that any physician or clinician, licensed health care facility, licensed health care provider, or any school district is hereby authorized and required to furnish copies of all records concerning defendant to the Department of Mental Health or the Department of Disabilities and Special Needs, or both.

COUNSEL REQUIRED TO FURNISH NECESSARY RECORDS. Upon written request from the examining agency, counsel for the prosecution and defense shall furnish to the agency such records and information in counsel's possession as the agency requests, including but not limited to copies of law enforcement reports, investigations, witness statements, statements by defendant (both written and electronic), defendant's medical records, and prior psychiatric or psychological evaluations of defendant. Nothing herein shall be construed to require counsel to divulge any information, documents, notes, or memoranda that are protected by attorney-client privilege or work-product doctrine.

DUTIES OF DEFENSE COUNSEL. Unless the prosecution is the party moving for this

evaluation, defense counsel has the responsibility to file, serve, and transmit this order as outlined in the final paragraph below. Defense counsel does not have the right to attend any clinical interview scheduled pursuant to this Order, nor does defendant have a constitutional right to compel counsel's attendance. State v. Hardy, 283 S.C. 590, 325 S.E.2d 320 (1985). The Court recognizes, however, that circumstances may arise through which the examining agency may request counsel's attendance to facilitate the examination. In the event that such a determination is made, the examining agency may request counsel's attendance in writing, and counsel's level of participation shall be prescribed by the examining agency's written evaluation protocol. In this event, because of the substantial number of individuals awaiting examination, such interviews cannot be rescheduled, postponed, or canceled to accommodate counsel except upon presentation to the examining agency of a written statement from a circuit court judge that counsel's attendance is required in Court at the time the examination is scheduled. Whether or not defense counsel is requested to attend the clinical interview, defense counsel must meet with defendant prior to the interview to discuss this Court order, the evaluation process, the clinical interview, defendant's rights with regard to the clinical interview, and penalties associated with non-appearance and non-cooperation. Failure to comply with these requirements may result in sanctions for defense counsel. Defendant's refusal to participate at the interview because of the absence of counsel will be deemed non-cooperation. Failure of defendant to cooperate or participate in the interview may result in cancellation of the interview, examiners being unable to offer an opinion on competency to stand trial, and the case being called for trial without completion of the evaluation.

FILING, SERVICE, AND TRANSMITTAL OF ORDER. It is the responsibility of counsel for the party requesting the evaluation to file and serve this order as outlined herein. In the event the evaluation has been requested by consent, or the moving party cannot be determined, defense counsel shall be responsible. After being signed by the Court, the original order without attachments shall be immediately filed with the Clerk of Court and a certified copy served upon the opposing party. Further, within five (5) business days, a certified copy of this order, together with the attachments listed at the end of this order, must be served upon the examining agency at the address listed below. To expedite commencement of the evaluation process and scheduling of the clinical interview, counsel is instructed to immediately contact the examining agency to advise of the issuance of this order and forthcoming service upon the agency:

Evaluation Order Service Information

Department of Mental Health

Forensic Evaluation Service Paralegal
S. C. Department of Mental Health
CBHS Forensic Center
7901 Farrow Road
Columbia, S.C. 29203-3220
(803) 935-5540 (Phone)
(803) 935-5544 (Fax)
Email: FES-PARALEGAL@SCDMH.ORG

Department of Disabilities and Special Needs

Office of Clinical Services
Department of Disabilities and Special Needs
Post Office Box 4706
Columbia, S.C. 29240

(803) 898-9694 (Phone)
(803) 898-9660 (Fax)
Email: OBSForensics@ddsn.sc.gov

AND IT IS SO ORDERED.

Presiding Circuit Judge

Thomas A. Russo
Printed Name of Presiding Circuit Judge

Florence, South Carolina

Dated: 7/25/2016

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2016 JUL 25 AM 8:59
CONNIE REEL SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

John J Epertinger
Prosecutor
180 North Irby Street
Address
Florence, SC 29501
City, State, Zip
843-665-3091
Telephone
JJepertinger@florenceco.org
Email

RoseMary Parham
Defense Counsel
541 W. Evans St.
Address
Florence, SC 29501
City, State, Zip
843-407-7757
Telephone
rosemary.parham@sc.rd.com
Email

The following documents must be attached to this order upon submission to the Department of Mental Health or to the Department of Disabilities and Special Needs whichever is applicable:

1. Completed DMH/DDSN Outpatient Information Appointment Sheet
2. Copy of the indictment(s) (if issued)
3. Copy of the arresting agency's incident report
4. Copy of the warrant(s)
5. Law enforcement investigative reports
6. Defendant's statements to law enforcement, written or electronically recorded
7. Witness statements to law enforcement
8. Defendant's school psychological records (if available)
9. Autopsy reports (if applicable)

JCJ
2015-01143

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12TH. JUDICIAL CIRCUIT

State of South Carolina
Department of Mental Health

MENTAL HEALTH COMMISSION:
Allison Y. Evans, PsyD, Chair
Joan Moore, Vice Chair
Beverly Cardwell
Bob Hiott, MEd
Everard Rutledge, PhD
J. Buxton Terry
Sharon L. Wilson

STATE DIRECTOR
John H. Magill

Division of Inpatient Services
G. Werber Bryan Psychiatric Hospital
Forensic Evaluation and Treatment Services
7901 Farrow Road, Building #6
Columbia, SC 29203
Information (803) 935-8588

August 24, 2016

John C. Jepertinger
Assistant Solicitor
180 N. Irby Street, MSC-Q
Florence, SC 29501

Re: The State of South Carolina vs. Drake, Ronnie
DMH CASE #: 203-6911
Florence County, Court of General Sessions

Dear Assistant Solicitor Jepertinger:

In accordance with the court order issued by the Honorable Thomas A. Russo, a competency to stand trial evaluation was conducted by the South Carolina Department of Mental Health, pursuant to S.C. Code Ann. $ 44-23-410 (1976).

Please see the attached report for the results of this evaluation.

This 8 page document is certified to be the original court-ordered evaluation report issued pursuant to S.C. Code Ann. § 44-23-410 (1976).

8/24/16
Date

Allyson M. Sipes, Psy.D
Clinical Director
Forensic Evaluation Services
Department of Mental Health

cc: Ralph Wilson, Attorney at Law, PO Box 1827, Conway, SC 29528

AS/tl

REPORT ON COMPETENCE TO STAND TRIAL
FORENSIC EVALUATION SERVICE
SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH

Name:	DRAKE, Ronnie Mickell
Date of Evaluation:	08/15/16
Date of Report:	08/23/16
Presiding Examiner:	Marla L. Domino, Ph.D., ABPP (Forensic)
Second Examiner:	Marsha DeRosier, LISW-CP
Diagnosis:	Alcohol Use Disorder, Moderate, In a Controlled Environment Cannabis Use Disorder, Moderate, In a Controlled Environment Cocaine Use Disorder, Severe, In a Controlled Environment

Opinion on Competence [Fitness] to Stand Trial: Competent to stand trial.

Identifying & Referral Data: Ronnie Mickell Drake is a 28-year-old (date of birth: [redacted]/88) male. Subsequent to being charges of Drugs/Manufacture, Distribution Cocaine Base, 1st (which allegedly occurred on or about 05/03/15), Mr. Drake was ordered by the Florence County Court of General Sessions to undergo an evaluation of his competence to stand trial because, *"Drake previously diagnosed with schizophrenia, Drake hearing voices and having suicidal thoughts."* He was evaluated on an outpatient basis on 08/15/16 by the above examiners at the South Carolina Department of Mental Health's Forensic Evaluation Service pursuant to *State v. Blair*, 275 S.C. 529, 273 S.E. 2d 536 (1981) and S.C. Code Ann. 44-23-410 (1976). Mr. Drake is awaiting adjudication at the Florence County Detention Center.

Sources of Information:

1. Interview with Mr. Drake on 08/15/16 for approximately 1 hour 40 minutes.
2. State of South Carolina, County of Florence, Court of General Sessions, Order for Competency to Stand Trial Evaluation Pursuant to *State v. Blair* (received 02/12/16).
3. Review of Mr. Drake's current South Carolina Department of Mental Health (SCDMH) Forensic Evaluation Service outpatient chart.
4. Information pertaining to Mr. Drake's current charges including:
    a. Arrest Warrants 2015A2120200794 and 2015A2120200795
    b. Checklists for Magistrates and Municipal Judges
    c. Notice of Date and Time of Initial Appearance for Defendants
    d. Bail Proceeding Form II

e. Acknowledgement by Defendant
f. Power of Attorney
g. Incident Report and Property Listing (case#2015-004020)
h. Case information printout
i. South Carolina Law Enforcement Division Forensic Services Laboratory Report
j. Form A, Report of Analysis for Controlled Dangerous Substances (Substance Found)

5. Mr. Drake's adult criminal record.
6. Florence County Detention Center records (dated 04/29/15 - 06/28/16).
7. South Carolina Department of Corrections records (dated 01/27/11 - 03/23/15).

In addition to the sources outlined above, efforts were made by Ms. DeRosier to contact a member of Mr. Drake's family, with no success.

Notification: At the outset of this evaluation, Mr. Drake was notified of these examiners' role, the purpose of this evaluation, and the limits on confidentiality. Specifically, he was informed about these examiners' neutrality; that he was present for a court-ordered evaluation of his competence to stand trial; that a report would be issued to his attorney, the solicitor, and the judge about this evaluation; and that these examiners may be called to provide testimony about this exam. Upon inquiry, he noted this evaluation to be ordered by "the solicitor and my lawyer and the judge"; he was corrected. He stated this exam was prompted because "I told them I rather be dead than go back to jail"; he was reminded of the nature and purpose of this exam. He identified the "judge ... the lawyer and the solicitor" as recipients of the resulting report. He was reminded about these examiners' neutrality. He declined an offer to telephone his attorney prior to initiating this exam and then indicated a willingness to proceed.

Personal History:

Family and Social History

According to Mr. Drake, he was born in Florence, South Carolina, and raised in the same by his biological parents and grandmother. He described his childhood as "kinda rough" due to sexual abuse by a roommate while at the Department of Juvenile Justice (DJJ), being "in and out of trouble," and using drugs. Mr. Drake became tearful when discussing this abuse and accepted an offer to take a break.

Education History

Mr. Drake initially stated that he terminated his formal education during the 9th grade related to substance use, but later stated he was "kicked out" for reasons he could not recall. He reported repetition of the 4th grade three to four times because "I didn't know the material." When asked what type of grades he obtained, he replied, "I hardly went to school." Mr. Drake acknowledged special education classes through the third grade for difficulty reading. He reported various behavior problems including bringing a gun to school which resulted in placement in DJJ.

Employment History
Mr. Drake acknowledged a minimal employment history and noted he has been paid for "tinting windows and cutting grass." He reported recent receipt of disability based on "the medication I was taking - Remeron [antipsychotic], Ritalin [for ADHD]."

Medical History
According to Mr. Drake, his medical history is positive for a brief loss of consciousness as a young child when he was hit in the head with a bat; he denied that he received medical attention for this injury. He reported asthma as a child and surgery on his knee cap as an adult.

Substance Abuse History
Per Mr. Drake's report, he began drinking alcohol in his mid-teens and most recently consumed on the weekends "until I passed out." However, he denied symptoms of abuse or dependence when asked. He reported using marijuana and crack-cocaine also beginning in his mid-teens, noting most recently he "smoked weed and crack together" on the weekends. He reported a previous addiction to both substances "until I did five years for drugs" in his 20s. He reported first using powder cocaine when in DJJ in his mid-teens and stated he was "addicted" to it up until his most recent arrest. However, he later stated that he has not used any drugs in the past year.

Criminal History
Mr. Drake reported having about 10 arrests and noted his longest incarceration was for eight years for a drug-related charge. His acknowledged at least two placements in the South Carolina Department of Juvenile Justice. His adult criminal record lists convictions for breach of peace (multiple), receiving stolen goods, drug charges (multiple), common law robbery, driving without a license, criminal conspiracy, parole revocation, traffic/unattended vehicle, and failure to stop for a blue light.

Psychiatric History (*per Mr. Drake's report*)
According to Mr. Drake, he attended Pee Dee Mental Health beginning around 7 or 8 years of age "for having the Devil in my closet" stating the he would "get beaten" for not getting out of bed due to his fear of the phenomenon. He stated this image occurred for "a couple years" and he was prescribed "Ritalin" (a psychostimulant) which helped "a little bit." According to Mr. Drake, most recently, he hears "voices" when he is both awake and asleep "say, 'go ahead, try it'" referring to crack-cocaine and noted, "The voices I be hearing trick me into doing things." He reported there to be four to five voices, explaining, "one named Johnny, he my twin - he the one who smoke the crack. He's the one who got us into this situation." Mr. Drake then referred to "Greedy, one of my personalities ... he writes books - but I ain't been past the third grade." He did not report symptoms indicative of depression or mania.
Psychiatric History (*per collateral sources*)

According to SCDMH databases, Mr. Drake was seen at a SCDMH mental health center from September 2000 to January 2001 for symptoms diagnosed as indicative of major depressive disorder, and then again at this same facility from March 2003 - January 2004 for conduct disorder.

South Carolina Department of Corrections records (dated 01/27/11 - 03/23/15) indicate that Mr. Drake attended mental health clinic primarily for mild symptoms of depression for which he was prescribed medication. His symptoms were also noted to reflect attention deficit-hyperactivity disorder and antisocial personality disorder. In May 2015, Mr. Drake reported to staff that he was "seeing things" and that "I'm going crazy" although no further specifics are noted, no antipsychotic medication was offered, and no psychotic disorder was listed.

Florence County Detention Center records indicate that Mr. Drake reported a history of depression and schizophrenia to jail staff in May 2015 although there is no indiction in those records that Mr. Drake has been administered psychotropic medications.

Current Mental Status: A mental status examination performed today revealed a 28-year-old, African-American male who presented with adequate, personal hygiene and clean attire. No auditory, visual, or motor abnormalities were noted. He exhibited good eye contact and his use of mannerisms and gestures was within normal limits. He was cooperative with the evaluation although appeared to be feigning psychiatric symptoms, as noted.

Mr. Drake did not exhibit significant deficits in his immediate memory. He had difficulty recalling two of three words after a brief delay, despite multiple cues; however he did not exhibit long-term memory deficits elsewhere in the exam. Similarly, he had difficulty spelling his last name and two common five-letter words backwards suggesting deficits in his attention and concentration abilities; however, he did not present with such deficits at any other time today. His literal interpretation of two proverbs and his difficulties identify the similarity between concepts suggested deficits in his ability to think in the abstract. He correctly identified the month, day of the week, approximate time, and situation. However, he stated the year to be "2015" [2016] and his location to be "Florence" [Columbia]. Much of his suboptimal performance appeared to be related to intentional, erroneous responding. Mr. Drake's speech was clear, of soft volume, and of slow rate. He presented with goal-directed, linear thinking.

When asked, Mr. Drake described his current mood as "pretty good" and his typical mood as "different kinds." During today's exam, Mr. Drake's affect [observed emotional expression] appeared consistent and within normal limits. He denied current thoughts of wanting to hurt himself or others. He noted his sleep to be good since prescribed an unknown sleep aid four to five days ago. He noted that the medication makes him "real, real hungry" although he denied recent fluctuations in his weight. He stated that his energy has been "kinda regular" since

prescribed the medication. He denied current symptoms of mood disturbance (e.g., depression) or psychosis (e.g., hearing voices) and no overt signs of such were observed.

Diagnostic Impressions: Based on the available data, it appears that Mr. Drake's symptoms are best characterized by diagnoses of Alcohol Use Disorder, Moderate, In a Controlled Environment; Cannabis Use Disorder, Moderate, In a Controlled Environment; and Cocaine Use Disorder, Severe, In a Controlled Environment. The "in a controlled environment" descriptor indicates that Mr. Drake theoretically does not have access to these substances secondary to his current incarceration.

Although Mr. Drake reported hearing "voices" and having "multiple personalities," the available data indicate he is currently feigning such symptoms. Specifically, 1) his description of the onset, frequency, severity, course, and content of his symptoms are atypical and not reflective of genuine mental illness; 2) his description of his symptoms were inconsistent in comparison to his report of psychiatric symptoms to others; 3) his report of symptoms is vague and evasive; and 4) despite his endorsement of on-going psychotic symptoms since childhood, it does not appear these symptoms have caused Mr. Drake significant distress or impairment. It should be noted that, despite Mr. Drake's apparent attempt to feign psychiatric symptoms, this does not necessarily indicate he is free from psychological and/or psychiatric problems.

Information Relevant to Competence to Stand Trial: According to Mr. Drake, he is currently charged with "just the drug charges ... I guess three" which allegedly occurred "April, May [of] 2015." He noted incurring these charges because he is accused of possessing "cocaine and weed and crack." He acknowledged his charges to be serious and provided logical reasoning to support this assertion. After education and when asked later in the exam, he identified his charge as "felonies" and noted "a felony" to be more serious than a misdemeanor. Mr. Drake identified the maximum penalty for his charges in totality to be "30 years." He identified "murder" to be a charge more serious, and "stealing" to be a charge less serious, than his own.

When asked, Mr. Drake identified pleas of "guilty" and "not guilty." He defined guilty as meaning "I did it" after which the defendant may "go to jail." He noted not guilty to mean "you ain't did something." He was unaware of a plea relating to mental illness (Not Guilty by Reason of Insanity) but stated, with prompting, that he could ask "my lawyer" should he wish for more information. After education and when asked at the end of the exam, Mr. Drake reported a plea bargain to be a deal offered by "the solicitor" in exchange for pleading "guilty" in order to get "lesser ... time." Mr. Drake provided several appropriate examples of a plea bargain. He acknowledged his ability to reject any plea bargain offered. In discussing his case today, Mr. Drake voiced several plea preferences and supported these choices with rational and logical reasoning. He appeared motivated to resolve his charges.

Mr. Drake identified the "judge, solicitor, my lawyer ... and me" as individuals typically present in the courtroom. After education and when asked later in the exam, he identified "me" as the defendant (although required these examiners to define "defendant"). According to Mr. Drake, "the lawyer" is his advocate whose job it is to "work for me ... see if I can get probation or some counseling" and to obtain a "not guilty" verdict in a trial. He acknowledged his ability to reject his attorney's recommendations but voiced a desire to follow counsel's advice because "the lawyer's supposed to be helping [me] out with [my] case." Mr. Drake identified his attorney as "Ralph or Ronald ... Wilson" and stated they have met once. When asked of his impressions of counsel, Mr. Drake stated "he all right" and denied having complaints or concerns about Mr. Wilson. He expects his lawyer to "help me ... help me with the solicitor, I guess." His suggestion regarding how he can assist his attorney was somewhat self-defeating, although not reflective of a psychotic thought process. After education and when queried later in the exam, Mr. Drake identified the "solicitor" as against him whose job it is "to make people plead guilty" and who attempts to prove the defendant "guilty" at trial. After education and when asked at the end of the exam, Mr. Drake stated the solicitor represents "the State." He identified the "judge" as in charge of the courtroom who will "give you time [or] let some people go home and is on "neither" side.

Mr. Drake reported having no knowledge of a jury trial and so was told. When queried at the end of this exam, he recalled the following. Should he wish to proceed to trial, Mr. Drake asserted he would have to plead "not guilty." Per his account, the jury will "find me guilty or not guilty"; he had difficulty recalling that the jury is a neutral party. He noted there to be "12" jurors on a jury and "all of them" must agree on the verdict. Mr. Drake stated judges and juries use "evidence" to decide guilt and provided examples of evidence such as "drugs ... the gun, somebody saw you" who he defined as a "witness." Mr. Drake provided a logical assessment of the strength of the solicitor's case against him and stated he could ask "my lawyer" about this. If found not guilty in a trial, per his account, the defendant will go "home"; if found guilty, the defendant will go to "jail" for a length of time typically determined by "the judge." Mr. Drake identified "counseling, probation" as possible penalties other than incarceration and provided several examples of probationary conditions (e.g., "not smoke weed, not use drugs") which an individual may "go back to jail" for violating.

Mr. Drake was asked to comment on several hypothetical situations that might arise during the adjudication of his charges. For example, if confused at any time during courtroom proceedings, Mr. Drake stated he would "ask the lawyer." If a witness lied about him in court, Mr. Drake initially stated he would "say 'you're lying'"; after discussion about the consequences of this, he noted that telling "the lawyer" would be a better course of action. Should the solicitor approach him in the absence of his attorney, Mr. Drake stated he would "talk to 'em" although he acknowledged about the solicitor "he ain't on my side" and could "tell the judge" any information Mr. Drake provided. Per Mr. Drake's account, people in court should behave "normal ... calm" and he was provided information about a contempt of court charge. Although he denied having difficulty with his behavior in court, he acknowledged that

he told his "first lawyer" that he would "rather die than go to jail" which prompted the current exam. As noted above, he denied feeling currently suicidal.

Opinion Regarding Competence to Stand Trial: Pursuant to S.C. Code Ann. §4423410, the legal criteria for determining fitness (competence) to stand trial is as follows: *"[a person] ... is not fit to stand trial because the person lacks the capacity to understand the proceedings against him [her] or to assist in his [her] own defense as a result of a lack of mental capacity ..."*

Regarding his capacity to understand the legal proceedings, the current exam revealed a number of deficits in Mr. Drake's factual knowledge of the legal system. More often than not, he appeared to appreciate corrective information when offered and accurately recalled such information later in the interview, demonstrating an ability to retain newly learned material.

Regarding his capacity to assist in his defense, Mr. Drake's thought processes and speech were logical, coherent, and organized, indicating he should have no difficulties communicating rationally with his attorney, to include disclosure of relevant case-specific information. He demonstrated the ability to reason logically about options related to his case and should be able to do so with counsel. Mr. Drake voiced several plea preferences and supported these choices with rational and logical reasoning. His responses to hypothetical situations indicate he would be able to utilize counsel effectively should he become confused or distressed with legal proceedings. He voiced motivation to work with his lawyer to resolve his charges. He acknowledged appropriate courtroom behavior and his demeanor during today's exam suggests he would be able to exhibit such behavior in the courtroom and attend adequately to related proceedings. His expectations of his attorney, himself, his case's outcome, and the legal system appeared reasonable and logical. His presentation during today's evaluation indicated Mr. Drake would likely testify coherently, should his case proceed to trial. At no time did Mr. Drake demonstrate any delusional beliefs about his charges, legal processes, and/or members of the Court.

In summary, based on the above data, it is my clinical opinion Mr. Drake does not currently lack the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity.

Marla L. Domino, Ph.D., ABPP (Forensic)
Licensed Clinical Psychologist

08/23/16
Date

2017-CP 21-01576

****

COVERSHEET FOR DMH AND DDSN EVALUATION ORDERS

1. The Competency to Stand Trial Evaluation orders (SCCA 221 and SCCA 487) and the Criminal Responsibility (McNaughten) Evaluation order (SCCA 222) should **not** be altered. It is important for purposes of compliance with the statutes as well as timeliness, efficiency and quality control in conducting evaluations that the applicable form order be used **exactly** as published, **without alterations or additions** to the terms of the form order.

2. Additional records **must** be attached to the order for a complete evaluation. It is the duty of counsel requesting the evaluation to obtain these records in advance and have them ready at the time the judge signs the order so that the evaluation will not be delayed. Within five (5) days of its issuance, counsel must file the order with the Clerk and serve the order on the examining agency. A list of the necessary records is available on the last page of the order, and may include:

- ☐ Completed DMH/DDSN Outpatient Information Appointment Sheet
- ☒ Copy of the indictments(s)
- ☐ Copy of the arresting agency's incident report
- ☒ Copy of the warrant(s)
- ☐ Law enforcement investigative reports
- ☐ The defendant or juvenile's statements to law enforcement, written or electronically recorded
- ☐ Witness statements to law enforcement
- ☐ Autopsy reports
- ☐ Defendant's school psychological records
- ☐ Defendant's Rule 5(f) notice of insanity records
- ☐ Copy of the Juvenile Petition
- ☐ Special education records, including psychological evaluations and IEPs
- ☐ School records, including disciplinary and attendance records
- ☒ Mental health records, including inpatient and outpatient evaluation and/or treatment

FILED
2020 DEC 17 PM 12:09
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

3. Only **one** Competency to Stand Trial evaluation can be ordered. For Defendants with mental illness, the order is addressed to the Department of Mental Health. For Defendants with mental retardation, the order is addressed to the Department of Disabilities and Special Needs. The order may not be addressed to both agencies. In the event there is a dual diagnosis or uncertainty as to the correct diagnosis, the order is first addressed to the Department of Mental Health, and the examiners will determine whether further referral is necessary. All orders for criminal responsibility evaluation, regardless of the diagnosis, are forwarded to the Department of Mental Health.

STATE OF SOUTH CAROLINA) COUNTY OF FLORENCE)	IN THE COURT OF COMMON PLEAS TWELFTH JUDICIAL CIRCUIT
Ronnie Mikell Drake, #318461, Applicant,	Case No. 2017-CP-21-1576
VS.	ORDER FOR CRIMINAL RESPONSIBILITY AND CAPACITY TO CONFORM EVALUATION (M'NAUGHTEN)
State of South Carolina, Respondent.	Department of Mental Health

FILED
2020 DEC 17 PM 12:09
DORIS POULOS CHILDS
CCCP & GS
FLORENCE COUNTY, SC

This matter comes before the Court for an order requiring Applicant, Ronnie Mikell Drake, formerly convicted of Trafficking Cocaine 10-28 grams, second offense, to submit to an evaluation for criminal responsibility and capacity to conform conduct to the requirements of the law on or about May 3, 2015 pursuant to S.C. Code Ann. §17-24-10 (1976). One of the following circumstances applies to the issuance of this order: (1) Applicant has requested an evaluation to determine whether the insanity defense may have applied; or (2) prosecution or defendant has requested this evaluation after defendant has affirmatively asserted the insanity defense and give appropriate notice pursuant to Rule 5(f) of the South Carolina Rules of Criminal Procedure; or (3) both parties by consent request this evaluation regardless of whether defendant has asserted the insanity defense.

BASIS FOR ORDER. I have considered the showing made in support of this evaluation and find Applicant's mental state at the time of the alleged crime will likely be at issue in this proceeding.

This Order is issued for the following reasons: Applicant has been treated for various mental heal issues since his childhood; including hospitalizations. Applicant has suffered from personality disorders and other symptoms throughout his mental health treatment and has been declared disabled because of his symptoms. Counsel for the Applicant represents to this court that there are concerns that Applicant may have been unable to conform his conduct to the requirements of the law at the time of the incident.

THEREFORE, IT IS ORDERED: Because the Department of Mental Health has statutory responsibility for custody and control of individuals determined not guilty by reason of insanity, Applicant shall be examined and observed at an appropriate facility of the Department

responsibility for custody and control of individuals determined not guilty by reason of insanity, defendant shall be examined and observed at an appropriate facility of the Department of Mental Health by one or more examiners to determine whether defendant is criminally responsible pursuant to S.C. Code Ann. § 17-24-10(A) (1976) for conduct on or about March 15, 2014.

If defendant is believed to be criminally responsible by the designated examiners, defendant shall be further examined to determine whether, because of mental disease or defect, defendant lacked sufficient capacity to conform conduct to the requirements of the law on or about March 15, 2014 pursuant to S.C. Code Ann. § 17-24-20(A) (1976).

COMPLIANCE DEADLINE/TRANSPORT FOR EVALUATION. The examining facility shall schedule the ordered examination as soon as possible and no later than sixty (60) days from the receipt of this order by the Department of Mental Health, this time being necessary to gather required records. If defendant is currently free on bond or personal recognizance, defendant is responsible for making transportation arrangements to attend the examination. In the event defendant does not appear at the scheduled examination, upon written notice of such failure by the Department of Mental Health to the Sheriff of the county in which this case arose, defendant shall be taken into custody by the Sheriff and held until an examination can be scheduled and completed, and thereafter shall be released. Defendant's bond or bail is hereby revoked to the extent necessary to carry out the provisions of this order, and upon completion of the examination and release of defendant, any previous bail or bond issued by the Court shall remain in effect. If defendant is in custody at the time of the scheduled examination, the Sheriff is hereby authorized and required to transport defendant to and from the examination, arriving at the examining facility at the time established by confirmed appointment with the staff of the examining facility. In the event defendant is in custody of a law enforcement agency other than a Sheriff's department, nothing herein prevents such agency from carrying out the provisions of this order.

PROCEDURE IF LACK OF COMPETENCY IS INDICATED. If, during the course of the criminal responsibility and capacity to conform evaluation scheduled pursuant to this Order, the examiner finds indications that defendant may not be competent to stand trial pursuant to S.C. Code Ann. § 44-23-410 (1976) and State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981), the examiner shall terminate the criminal responsibility and capacity to conform evaluation, issue no report thereon, and by written communication recommend to the Court that a competency to stand trial evaluation

should be ordered. Further, the examiner should state whether, in the examiner's opinion, such lack of competency is due to a mental illness or, in the alternative, an intellectual disability or a related disability. A copy of this written communication shall be sent to the prosecutor and defense counsel.

AUTHORIZATION FOR INPATIENT EVALUATION. In the event examiners from the Department of Mental Health determine defendant requires an inpatient examination, upon written notice to this Court from the director of the Department of Mental Health or his designee, defendant shall be committed to an appropriate facility of the Department of Mental Health for no more than fifteen (15) days for examination and observation related to defendant's criminal responsibility and capacity to conform. If the examination and observation of defendant has not concluded at the end of the initial inpatient fifteen (15) days, defendant may be kept in the continued custody of the Department of Mental Health for an additional period not to exceed fifteen (15) days, provided the director of the examining facility or his designee notifies this Court in writing. The issuance of an additional Court order allowing for the inpatient commitment(s) discussed in this paragraph is not necessary.

DETENTION BEYOND EVALUATION PERIOD. If, in the judgment of Department of Mental Health examiners, defendant is in need of immediate hospitalization or inpatient treatment, upon written request to this Court from the director of the examining facility or his designee, defendant may be detained by the Department of Mental Health in a suitable facility for so long as deemed clinically necessary or until a hearing on the matter may be conducted by this Court. An additional Court order **shall** be necessary for ongoing pre-trial inpatient detention of defendant as discussed in this paragraph.

ACCESS TO EXAMINER'S REPORT. The Department of Mental Health is an independent entity, conducting this evaluation pursuant to Court order, and is not aligned with any party before the Court. It is the intention of the State of South Carolina to provide defendant an adequate opportunity for mental status investigation when the defendant's mental condition is seriously in question pursuant to Ake v. Oklahoma, 470 U.S. 68, 105 S.Ct. 1087 (1985), either before or after defendant formally asserts the insanity defense.

The purpose of the following provisions controlling access to the examiner's report is to strike a balance between defendant's right to explore the possibility of an insanity defense and prosecution's right to respond if such defense is raised. If defendant is requesting evaluation prior to

asserting the defense of insanity, the evaluation shall be confidential until such time as defendant elects to assert the insanity defense. If defendant or prosecution is requesting evaluation after defendant's formal assertion of the insanity defense pursuant to Rule 5(f) of the South Carolina Rules of Criminal Procedure, or both parties are requesting the evaluation by consent, the evaluation shall **not** be confidential and both defense counsel and the prosecutor shall be provided a copy of the examiner's report. In either case, ownership of the examining agency's files shall be vested with the examining agency.

(A) Ex parte evaluation requested by defendant prior to assertion of insanity defense.

If defendant has requested an evaluation to determine whether the insanity defense may be viable, the examiner's report shall not be provided to the prosecution and shall not be admissible as evidence in any Court proceedings. The prosecution may not discover any portion of the evaluation files. Any written report resulting from the evaluation shall be considered confidential and provided only to defense counsel, and shall be provided within ten (10) days of all examinations or the conclusion of the inpatient examination period. Examiners and agency staff may not be compelled to testify regarding statements made during the criminal responsibility and capacity to conform examination for any purpose unless and until defendant asserts the defense of insanity. However, as a condition of accepting the evaluation provided by the State of South Carolina, defendant expressly waives any and all confidentiality privileges associated therewith if defendant subsequently asserts the insanity defense. In such case, the evaluation shall no longer be confidential, and all parties' access to the evaluation report shall be controlled by paragraph (B) below.

(B) Evaluation requested by either party after assertion of insanity defense.

Because the assertion of the insanity defense places defendant's mental status at issue, either party may discover any portion of the evaluation files upon presentation of a Court order authorizing such or a release authorization signed by defendant. Both the prosecutor and defense counsel shall be provided a copy of the examiner's report within ten (10) days of the conclusion of all examinations or the inpatient examination period. The evaluation report may be admissible as evidence in subsequent hearings concerning defendant's criminal responsibility and capacity to conform. However, the report shall be inadmissible in any other proceedings except as expressly permitted by South Carolina law. Examiners and agency staff may not be compelled to testify regarding statements made during the criminal responsibility and capacity to conform examination

for any purpose other than on the issue of criminal responsibility and capacity to conform. Also, statements made during the examination may not be used to impeach defendant at trial. Hudgins v. Moore, 337 S.C. 333, 524 S.E.2d 105 (1999).

(C) Evaluation Requested by Consent of Both Parties.

By consent, the parties may request evaluation at any time, regardless of whether the insanity defense has been asserted by the defendant. The procedures and rules for this examination shall be the same as outlined in paragraph (B) above; however, in the event defendant does not assert the insanity defense, the examiner's report shall not be admissible for any reason, nor shall the contents of the evaluation files be used for any purpose.

MEDICAL PROVIDERS/SCHOOLS MUST RELEASE NECESSARY RECORDS. Department of Mental Health examiners conducting the evaluation may need clinical and school records concerning defendant to assist in forming an opinion. It is therefore ordered, upon presentation by the Department of Mental Health of this order with a written request for specific records attached thereto, that any physician or clinician, licensed health care facility, licensed health care provider, or any school district is hereby authorized and required to furnish copies of all records concerning defendant to the Department of Mental Health.

COUNSEL REQUIRED TO FURNISH NECESSARY RECORDS. Upon written request from the Department of Mental Health, counsel for prosecution and defense shall furnish to the agency such records and information in counsel's possession as the agency requests, including but not limited to copies of law enforcement reports, investigations, witness statements, statements by defendant (both written and electronic), defendant's medical records, and prior psychiatric or psychological evaluations of defendant. Nothing herein shall be construed to require counsel to divulge any information, documents, notes, or memoranda that are protected by attorney-client privilege or work-product doctrine.

DUTIES OF DEFENSE COUNSEL. Unless the prosecution is the party moving for this evaluation, defense counsel has the responsibility to file, serve, and transmit this order as outlined in the final paragraph below. Defense counsel does not have the right to attend any clinical interview scheduled pursuant to this Order, nor does defendant have a constitutional right to compel counsel's attendance. State v. Hardy, 283 S.C. 590, 325 S.E.2d 320 (1985). The Court recognizes, however, that circumstances may arise through which the Department of Mental Health may request counsel's

attendance to facilitate the examination. In the event that such a determination is made, the Department of Mental Health may request counsel's attendance in writing, and counsel's level of participation shall be prescribed by the Department of Mental Health's written evaluation protocol. In this event, because of the substantial number of individuals awaiting examination, such interviews cannot be rescheduled, postponed, or canceled to accommodate counsel except upon presentation to the Department of Mental Health of a written statement from a circuit court judge that counsel's attendance is required in Court at the time the examination is scheduled. Whether or not defense counsel is requested to attend the clinical interview, defense counsel must meet with defendant prior to the interview to discuss this Court order, the evaluation process, the clinical interview, defendant's rights with regard to the clinical interview, and penalties associated with non-appearance and non-cooperation. Failure to comply with these requirements may result in sanctions for defense counsel. Defendant's refusal to participate at the interview because of the absence of counsel will be deemed non-cooperation. Failure of defendant to cooperate or participate in the interview may result in cancellation of the interview and examiners being unable to offer an opinion on criminal responsibility and capacity to conform. Failure to cooperate may further result in the case being called for trial without completion of the evaluation, and may result in defendant being prohibited from presenting expert testimony on the issue of insanity or waiver of the insanity defense.

FILING, SERVICE, AND TRANSMITTAL OF ORDER. It is the responsibility of counsel for the party requesting the evaluation to file and serve this order as outlined herein. In the event the evaluation has been requested by consent, or the moving party cannot be determined, defense counsel shall be responsible. After being signed by the Court, the original order without attachments shall be immediately filed with the Clerk of Court and a certified copy served upon the opposing party. Further, within five (5) business days, a certified copy of this order, together with the attachments listed at the end of this order, must be served upon the Department of Mental Health at the address listed below. To expedite commencement of the evaluation process and scheduling of the clinical interview, counsel is instructed to immediately contact the Department of Mental Health to advise of the issuance of this order and forthcoming service upon the agency:

Evaluation Order Service Address for the Department of Mental Health

Forensic Evaluation Service Paralegal
S. C. Department of Mental Health

CBHS Forensic Center
7901 Farrow Road
Columbia, S.C. 29203-3220
(803) 935-5540 (Phone)
(803) 935-5544 (Fax)
Email: FES-PARALEGAL@SCDMH.ORG

FILED
2020 DEC 17 PM 12:09
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

AND IT IS SO ORDERED.

Presiding Circuit Judge

Walton J. McLeod, IV
Printed Name of Presiding Circuit Judge

Florence, South Carolina

Dated: 12/17/2020

Michael D. Davidson	Jonathan D. Waller
Prosecutor	Defense Counsel
P.O. Box 11549	1116 Blanding St., Ste. 2B
Address	Address
Columbia, SC 29211	29201
City, State, Zip	City, State, Zip
803-734-8357	803-520-7278
Telephone	Telephone
mdavidson@scag.gov	jonathan@wallergroupsc.com
Email	Email

The following documents must be attached to this order upon submission to the Department of Mental Health:

1. Completed DMH/DDSN Outpatient Information Appointment Sheet
2. Copy of the indictment(s) (if issued)
3. Copy of the arresting agency's incident report
4. Copy of the warrant(s)
5. Law enforcement investigative reports
6. Defendant's statements to law enforcement, written or electronically recorded
7. Witness statements to law enforcement
8. Defendant's school psychological records (if available)
9. Defendant's Rule 5(f) notice of insanity defense (if applicable)
10. Autopsy reports (if applicable)

State of South Carolina
Department of Mental Health

MENTAL HEALTH COMMISSION:
L. Gregory Pearce, Jr., Chair
Louise Haynes, Vice Chair
Alison Y. Evans, PsyD
Bob Hiott

STATE DIRECTOR
Kenneth N. Rogers, MD

Division of Inpatient Services
Forensic Evaluation and Outpatient Services
7901 Farrow Road, Building #6
Columbia, SC 29203
Information: (803) 935-5600

April 14, 2021

Jonathan D. Waller
Attorney at Law
1116 Blanding Street, Suite 2B
Columbia, SC 29201

Re: The State of South Carolina vs. Drake, Ronnie
DMH #: 203-6911
Florence County, Court of General Sessions

Dear Attorney Waller:

In accordance with the court order issued by the Honorable Walton J. McLeod, evaluations of criminal responsibility and capacity to conform were conducted by the South Carolina Department of Mental Health (SCDMH) pursuant to S.C. Code Ann. § 17-24-10 (1976) and § 17-24-20 (1976).

Please see the attached report for the results of this evaluation.

This **10** page document is certified to be the original court-ordered evaluation report issued pursuant to S.C. Code Ann. § 17-24-10 (1976) and § 17-24-20 (1976).

4/14/2021
Date

Kelly Gothard, Ph.D.
Director
Forensic Services
Department of Mental Health

cc: Michael D. Davidson, Assistant Solicitor, PO Box 11549, Columbia, SC 29211

KG/aw

CRIMINAL RESPONSIBILITY AND CAPACITY TO CONFORM EVALUATION
FORENSIC EVALUATION SERVICE
SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH (SCDMH)

DATE OF EVALUATION:	April 2, 2021
DEFENDANT:	Ronnie Mikelle Drake
DATE OF BIRTH:	[redacted], 1988
PRESIDING EXAMINER:	Matthew E. Gaskins, MD Forensic Psychiatrist
SECOND EXAMINER:	Marsha DeRosier, LISW-CP Social Worker
DIAGNOSES:	Antisocial Personality Disorder Alcohol Use Disorder in a Controlled Environment Cannabis Use Disorder in a Controlled Environment Stimulant Use Disorder in a Controlled Environment Malingering

OPINION REGARDING CRIMINAL RESPONSIBILITY

It is opined that Mr. Drake was criminally responsible for his actions on or about May 3, 2015.

OPINION REGARDING CAPACITY TO CONFORM

It is opined that Mr. Drake had the capacity to conform his behavior to the requirements of the law on or about May 3, 2015.

IDENTIFYING INFORMATION

Mr. Drake was seen at Forensic Evaluation Service pursuant to a court order from the Florence County Court of General Sessions. This court order requests an evaluation of his criminal responsibility and capacity to conform his conduct to the requirements of the law on or about May 3, 2015 pursuant to S.C. Code Ann. § 17-24-10 (1976). The defendant is currently charged with Trafficking Cocaine. According to the court order, it was issued for the following reasons:

> Applicant has been treated for various mental heal [sic] issues since his childhood; including hospitalizations. Applicant has suffered from personality disorders and other symptoms throughout his mental health

treatment and has been declared disabled because of his symptoms. Counsel for the Applicant represents to this court that there are concerns that Applicant may have been unable to conform his conduct to the requirements of the law at the time of the incident.

STATEMENT OF NON-CONFIDENTIALITY

Prior to participating in the evaluation, the defendant was warned regarding the limitations of confidentiality. The defendant was informed that the evaluation was court ordered and was not for the purpose of providing treatment. The defendant was informed that the evaluators were employed by the South Carolina Department of Mental Health and were not paid by a defense attorney or the solicitor. The defendant was informed that after the evaluation a report would be submitted to the defense attorney, the solicitor, and the judge in this case. The defendant was also informed that the evaluators could be called to court to testify at a hearing related to capacity to stand trial. Mr. Drake expressed understanding of this information and agreed to participate in the evaluation.

SOURCES OF INFORMATION

1. Florence County Court of General Sessions court order for this evaluation received by the SCDMH Forensic Evaluation Service on January 5, 2021.
2. Sentencing sheet for Mr. Drake dated December 5, 2016.
3. Application for Post-Conviction Relief (PCR) dated June 6, 2017.
4. Arrest warrant 2015A2120200794 for Trafficking Cocaine Base.
5. Arrest warrant 2015A2120200795 for Trafficking Cocaine.
6. Report on Competence to Stand Trial dated August 23, 2016.
7. Records from South Carolina Department of Corrections (SCDC).
8. Records from Florence County Detention Center (partially illegible).

*Note: the purposes of this evaluation are to provide a clinical update and assess Mr. Drake's criminal responsibility and capacity to conform. For additional, background and diagnostic information, the Court is referred to the report from the previous evaluation completed in 2016 briefly summarized below.

PREVIOUS EVALUATION

Competence to Stand Trial 2016

Mr. Drake was referred to SCDMH Forensic Evaluation Service in 2016 to assess his capacity to stand trial. He was evaluated by Marla L. Domino, PhD, and Marsha DeRosier, LISW-CP. The reason for the evaluation according to the report was "Drake previously diagnosed with schizophrenia, Drake hearing voices and having suicidal thoughts" (internal quotation marks omitted).

Dr. Domino writes in her report in the diagnostic section:

> Based on the available data, it appears that Mr. Drake's symptoms are best characterized by diagnoses of Alcohol Use Disorder, Moderate, In a Controlled Environment; Cannabis Use Disorder, Moderate, In a Controlled Environment; and Cocaine Use Disorder, Severe, In a Controlled Environment. The "in a controlled environment" descriptor indicates that Mr. Drake theoretically does not have access to these substances secondary to his current incarceration.
>
> Although Mr. Drake reported hearing "voices" and having "multiple personalities," the available data indicate he is currently feigning such symptoms. Specifically, 1) his description of the onset, frequency, severity, course, and content of his symptoms are atypical and not reflective of genuine mental illness; 2) his description of his symptoms were inconsistent in comparison to his report of psychiatric symptoms to others; 3) his report of symptoms is vague and evasive; and 4) despite his endorsement of on-going psychotic symptoms since childhood, it does not appear these symptoms have caused Mr. Drake significant distress or impairment. It should be noted that, despite Mr. Drake's apparent attempt to feign psychiatric symptoms, this does not necessarily indicate he is free from psychological and/or psychiatric problems.

Dr. Domino later opines in the report that "Mr. Drake does not currently lack the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity."

CLINICAL UPDATE

Florence County Detention Center

The records show Mr. Drake was prescribed Remeron® (mirtazapine), an antidepressant often used for sleep induction, during his time in the detention center. Disciplinary records are included for charges including Bribing, Obstructing, Interfering with or Preventing any Staff from Carrying Out His/Her Duties and Attempting Escape.

SCDC

The records from SCDC include a list of previous convictions including Criminal Conspiracy, Common Law Robbery, Receive Stolen Property, Possession of Meth/Cocaine Base, Trafficking in Crack Cocaine, Marijuana Poss Int/Dist, Selling Weapon, Failure to Stop for Officer, and Armed Robbery. While in custody through various incarcerations he has disciplinary infractions including Fighting without a Weapon, Smuggling/Conspiracy Smuggle Contraband, Sexual Misconduct, Exhibitionism and

Public Masturbation, Refusing or Failing to Obey Orders, Disrespect, Disorderly Conduct, Possession or/Attempt to Possess Cell Phone, Possession of Contraband, Out of Place, Damage/Destroy Property Value at $100 or More, Evading a Security Device, Inciting/Creating a Disturbance, Unauth I/M Organ/Part, Interfering with Count, Possession of Narcotic/Marijuana/Unauthorized Drug/Inhalant, Stealing, and Trafficking and Trading. He has worked in jobs including wardkeeper assistant and general worker.

The medical records state Mr. Drake received treatment in 2014 and 2015 for reported symptoms of depression. The diagnosis was listed as *Unspecified Depression* for most of the encounters. At SCDC he was prescribed medications including Remeron® (mirtazapine) and trazodone, an antidepressant most often used for sleep induction. Of note, the records do not describe observations or reports of psychotic symptoms.

Since his original conviction for his current charge, he has continued to receive mental health treatment at SCDC. The most recent note available for review is dated March 22, 2021 and describes him as compliant. The note describes his depressive symptoms as "significant and unclear" and symptoms of anxiety, substance abuse, impuluse control, psychotic symptoms, suicidality, and manic behavior as "not significant." This appears to be the result of generated text from an electronic medical record utilizing check boxes for each of the possible mental health symptoms. The most recent psychiatric note is dated January 11, 2021 completed by Megan Howard, MD. Dr. Howard writes that he reported he was not depressed and the "[s]taff report he has been doing well overall for the past several months." He denied auditory hallucinations and did not report having multiple personalities. His mental status examination was normal other than he reported "using chicken bones to ward off evil spirits." He did not appear to have had internal conversations or speak to unseen others. Of note, past notes including one on April 1, 2020 he did refer to others including to a *Johnny* who he told providers "tears up the book he tries to write." His medications included Remeron® (mirtazapine), Vistaril® (hydroxyzine), and Trilafon® (perphenazine). The current working diagnosis is unclear as the records provided all list a version of *no change* under the assessments.

Clinical Presentation and Psychiatric History

At the outset of the evaluation, Mr. Drake reported he has multiple personalities. Throughout the interview he repeatedly spoke to unseen others that he said were speaking back with him. He had one half the conversation and referred to the others as part of him. During the interview he repeatedly drew attention to these experiences and made statements indicating that his other personalities were all present and attempting to engage in the conversation. This presentation is not typical of a person experiencing genuine psychotic or dissociative symptoms but is commonly seen in individuals attempting to portray psychiatric symptoms they may have seen in film or on television. Because of this presentation, the genuineness of other information reported by Mr. Drake is questionable. The following is a not an all-inclusive list of statements made but are included here to show the fantastical nature of his presentation.

- He reported he is currently kept in protective custody while at SCDC due to an assault wherein he was stabbed multiple times. He stated he has recreation time, and his pod is open for much of the day. He stated each of his personalities have different preferences for how to spend time during the day including listening to music, writing stories, and coloring with crayons.
- He used multiple names to refer to different people who are part of him. For instance, he referred to *Johnny* who enjoys music and "likes to get us drunk." He provided other names that enjoy different activities or take on different attitudes.
- He frequently used the pronouns *we* and *us* to describe his behavior.
- He stated, "*Johnny* is more dominant and gets us in trouble." He stated that the personalities other than *Johnny* get along well. He said, "We all one in one temple except Johnny who came into our life."
- He said, "I'm Ronnie, I'm the voice that speaks for us."
- He said, "The Don Drake wants to say that it's not our fault that we are locked up." He followed that by referencing the last evaluation by stating, "That lady last time lied on us. She said nothing was wrong with us and we don't take medicine for nothing." He said, "She told all lies. In the courtroom and in the report." He added, "She said lies about smoking crack and we can't trust y'all. They want me to stop talking to you."
- While looking off to the side, he said, "Hold on you'll get your chance to talk." He stated, "I'll tell them if you shut up and let me tell them."

Mental Status Examination

On April 2, 2021, Mr. Drake presented to the evaluation appropriately dressed. He was reasonably well groomed with appropriate hygiene. He avoided eye contact and dramatically looked around the room. This is not believed to be due to nervousness or other symptom of mental illness. He spoke in a normal rate, tone, and volume. He was calm through most of the interview but appeared to get upset when speaking with the unseen others. He was able to quickly calm himself between these other reported conversations raising questions to his true level of agitation. A few times during the interview, he would have an exaggerated shiver. These actions were done when the undersigned was speaking and never while he was speaking to those present or his reported others. Overall, he was uncooperative with the evaluation and sought to repeatedly draw attention to his reported experiences. He did not report suicidal or homicidal ideations. He said his mood was nervous and had a full range affect (observed expression of mood).

DIAGNOSTIC IMPRESSION

It is opined to a reasonable degree of medical certainty that Mr. Drake meets the diagnostic criteria for Antisocial Personality Disorder, Alcohol Use Disorder in a Controlled Environment, Cannabis Use Disorder in a Controlled Environment, Stimulant Use Disorder in a Controlled Environment, and Malingering.

Mr. Drake has had a pervasive pattern of disregard for and violation of the rights of others warranting the diagnosis of Antisocial Personality Disorder. Specific antisocial personality traits evident in the totality of information include failure to conform to social norms with respect to lawful behaviors, deceitfulness, impulsivity, aggressiveness/irritability, consistent irresponsibility, and lack of remorse.

While not discussed during this interview, there is sufficient evidence to show Mr. Drake has had a problematic pattern of alcohol, cannabis, and stimulants (e.g., cocaine) leading to clinically significant impairment and warranting the diagnoses of *Alcohol Use Disorder*, *Cannabis Use Disorder*, and *Stimulant Use Disorder*. The diagnostic modifier *in a Controlled Environment* is added to complete the diagnoses due to his access to such substances being limited due to his current incarceration.

The diagnosis of *Malingering* is used when it is believed a person is feigning or exaggerating symptoms in order to obtain a secondary gain (e.g., get out of work, avoid punishment, obtain disability). Mr. Drake reported symptoms which are not typically seen when compared to individuals with genuine mental illness. Specifically, Mr. Drake attempted to present as a person experiencing Dissociative Identity Disorder (formerly and commonly known as *Multiple Personality Disorder*). Mr. Drake's presentation was atypical for Dissociative Identity Disorder and more characteristic of how the condition is portrayed in the popular media. He repeatedly drew attention to himself speaking with unseen others he identifies as being inside his body. Additionally, when speaking about past wrongs, he would use alternative names attempting to attribute them to different personalities (i.e., denying responsibility for past actions). He attempted to make himself appear less intelligent in the way he spoke which is common among individuals malingering symptoms of mental illness. While it is our opinion Mr. Drake was malingering atypical psychotic symptoms, it does not mean he is free from mental health symptoms. Of note, the presence or absence of a genuine psychotic disorder would not alter the other opinions expressed in this report for the reasons outlined below.

EVENTS OF MAY 3, 2015

Information from Mr. Drake

Mr. Drake's report: In May 2015 he had just been released from prison earlier that year. He returned to live with his mother. He was "33 days out of jail." He was not using narcotics at that time ("I didn't have no drugs"). On the day of his charges, he "was at a convenience store and doing good." While there a man who he did not know gave him a "a brown bag to take to a truck." When he looked in the bag he saw money on top which he put in his pocket. Once he got in the car, he looked at the bag more and saw "scales and drugs." Because of fear, he put some of the drugs in his underwear ("I took the drugs out the bag and placed it in our drawers"). While sitting in the car, he was approached by "a man in street clothes." The man was wearing a red shirt and pulled out a badge. Mr. Drake was asked for his driver's license and was then arrested.

Mr. Drake further reported he believed it was a setup by "someone wanting their time cut." He stated that he does not believe anyone called 911 on him because of how quickly the officer approached him ("It wasn't no 911 call or sheriff's office that got us caught"). He stated he had run out of his prescribed medication because he was only given a 30-day supply when he was released from prison. He identified the medicines as trazodone and Remeron® (mirtazapine). Both medications are antidepressants primarily used for sleep and would not have addressed his reported psychotic symptoms. He said he had not used drugs or alcohol the day of his arrest ("It wasn't our drugs. It was found on us. I thought I was doing good by handing the bag off to the car").

The arrest warrant was reviewed with Mr. Drake. The warrant says he ran from police. To this information Mr. Drake responded, "It was when he opened the door and standing outside the door then we tried to run." When asked for what reason did he run he said, "Bun-C told us to run. I'm telling them you told us to run. We are not gonna sit right here and argue." He referred to *Bun-C* as another of his personalities. At points in the interview, he said *Bun-C* wanted to say something but also stated that *Bun-C* had died when he was stabbed in Lee Correctional Institute.

Throughout the interview he professed his innocence of the charges stating he was setup. He said, "We ain't bad people, we ain't do what they try to make it look like we did" and "We just got caught up in the wrong place at the wrong time." He reported he told his attorney he was innocent ("From the beginning I'm saying we weren't guilty") but was told he had to plead guilty.

Information from the Arrest Warrant

We were not provided incident reports or other investigative information. The arrest warrant states:

> On May 3, 2015, the affiant responded to 304 E. Palmetto St in the city of Florence to a complaint of a subject driving a tan chevy impala holding a bag of marijuana in his hand. When the affiant arrived at the location the Def. was getting into a tan chevy sedan. The affiant made contact with the Def. and identified himself as a police officer. The affiant asked the Def. for his driver's license. The Def. attempted to roll his window up on the affiant, so the affiant opened the door of the vehicle. Inside of the door handle the affiant observed what he believed to be a large amount of cocaine. The affiant attempted to detain the Def. but as he was getting out of the vehicle, the Def. grabbed the suspected cocaine and took off running from the affiant. The affiant deployed his taser but it did not take affect. After a short foot chase the Def. was detained by the affiant. The Def. was placed under arrest and a searched of his person yielded approx. 28.5 grams of cocaine and approx. 7 grams of marijuana, in the front of the Def. underwear. The Def. admitted under Miranda he had just recently gotten the cocaine from a subject out of Lamar, SC.

CRIMINAL RESPONSIBILITY

The S.C. Code Ann. § 17-24-10 states a defendant is not criminally responsible if that defendant "at the time of the commission of the act constituting the offense, the defendant, as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from legal or moral wrong or to recognize the particular act as charged as morally or legally wrong."

We find no evidence of a mental disease or defect that would have substantially impaired his ability to distinguish legal or moral right from legal or moral wrong for the specific acts of possessing cocaine. Mr. Drake's report is that he was essentially setup. He contends he was doing a favor for the person in the truck who gave him a bag. He repeatedly stated he did not know drugs were present. Therefore, there was nothing that caused him to believe it was legally or morally right to have the cocaine in his possession. Further he stated he panicked when he discovered the drugs showing he appreciated the potential consequences he could face if he was found with it. He attempted to hide part of the drugs by putting them in his underwear and tried to flee the police when he had a chance. These acts are clear attempts to avoid detection and apprehension which show he appreciated the wrongfulness of having an illicit substance. While his report of having multiple personalities at the time of his arrest does not appear genuine, the presence of such symptoms would not alter the opinion regarding criminal responsibility. He attributes his decision to run from police to hearing the voice of another personality. This could, in theory, impact an opinion on criminal responsibility for a charge of Resisting Arrest, Failure to Obey Command, or other charge resulting from the specific act of attempting to flee police. However, it would not have caused him to fail to appreciate the wrongfulness of having an illicit substance which he maintains he was tricked into possessing. Therefore, it is our opinion that Mr. Drake would have been criminally responsible pursuant to S.C. Code Ann. § 17-24-10 (1976) for his actions on or about May 3, 2015.

CAPACITY TO CONFORM

The S.C. Code Ann. § 17-24-20 states that a defendant is guilty but mentally ill if a defendant was able to distinguish legal or moral right from legal or moral wrong, "but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law."

We find no evidence that Mr. Drake was suffering from a compulsion, irresistible impulse, delusion, command auditory hallucination, or other symptom of a mental disease or defect that would have impaired his ability to conform his conduct to the requirements of the law for the specific act of possessing cocaine. As described above, he asserts he was tricked into having the drugs in his possession so it was not a question of whether he could conform his conduct. Therefore, it is our opinion that the defendant had the capacity to conform his behavior to the requirements of the law pursuant to S.C. Code Ann. § 17-24-

20 on or about May 3, 2015.

Matthew E. Gaskins, MD

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CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE	IN THE COURT OF COMMON PLEAS FOR THE TWELFTH JUDICIAL CIRCUIT
Ronnie M. Drake, #318461, Applicant, v. State of South Carolina, Respondent.	Case No.: 2017-CP-21-1576 **ORDER OF DISMISSAL**

This matter came before the Court by way of Ronnie M. Drake's (Applicant) action for post-conviction relief (PCR) commenced June 12, 2017. The State made its return on November 13, 2017. The Court convened an evidentiary hearing into the matter on September 1, 2021, at the Florence County Judicial Center in Florence, South Carolina. Applicant was present at the hearing and represented by Jonathan D. Waller, Esquire. Michael D. Davidson, Esquire, of the South Carolina Attorney General's Office, appeared on behalf of the State.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Ralph Wilson, Esquire, ("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 Clerk of Court regarding the subject convictions, the pleadings, and the exhibits introduced at the evidentiary hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the October 2015 term of the Florence County Grand Jury for possession with intent to distribute ("PWID") cocaine base and trafficking cocaine, 10-28 grams (2015-GS-21-1143). Applicant was

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represented by Ralph Wilson, Esquire. Deputy Solicitor John Jepertinger, Esquire, prosecuted the case.

On December 5, 2016, Applicant pleaded guilty to the lesser included offense trafficking cocaine, 10-28 grams, second offense before the Honorable D. Craig Brown. The PWID charge was dismissed. Pursuant a negotiated sentence, Judge Brown sentenced Applicant to imprisonment for twelve years.

Applicant filed a timely notice of appeal. However, the South Carolina Court of Appeals dismissed Applicant's appeal by order filed April 28, 2017, for failure to provide sufficient explanation as required by Rule 203(b), SCACR. The Remittitur was returned to the circuit court on May 16, 2017.

Applicant timely commenced this PCR action on June 12, 2017. Applicant alleges:

1. Ineffective Assistance of Counsel
   a. Involuntary guilty plea

At the evidentiary hearing, PCR counsel explained Applicant intended to proceed on allegations of involuntary guilty plea. Specifically, PCR counsel articulated that Applicant's guilty plea was involuntary based on Counsel's failure to investigate the facts and circumstances regarding the incident itself and personal situation and mental health that led to Applicant's plea being not freely and voluntarily entered.

II. 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 legal arguments made by the attorneys. Pursuant to section 17-27-80 of the South Carolina Code, this Court makes the following findings based upon all of the probative evidence presented.

A. Credibility Findings

The Court finds that the present matter represents an appropriate circumstance to issue broad credibility findings as to the testimony of each of the witnesses at the evidentiary hearing, rather than attempt to parse out in detail which portions of each witness' testimony are credible and which portions are not.

The Court finds Applicant's testimony to not be credible in its entirety and affords it zero probative weight. While in many post-conviction relief actions less-than-credible witnesses can be said to be truthful in at least some respects or as to certain details, Applicant's testimony affords few such opportunities to give credit.

The Court finds the testimony provided by Counsel to be highly credible and affords it substantial probative weight. Counsel was thorough and forthright in each of his answers, and eagerly offered information beyond the narrower scope of the questions asked of him. Counsel's candor to the Court was palpable and informative.

B. Ineffective Assistance of Counsel & Involuntary Guilty Plea

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). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. 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 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*, 540 U.S. 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. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference

between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112. "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 his statements. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

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.

Applicant further claims his plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of the plea and the charges against him or her. *Dover v. State*, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); *see also Boykin v. Alabama*, 395 U.S. 238, 243 (1969) (Courts must make sure defendants have "a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought, and forestalls the spin-off of collateral proceedings that seek to probe murky memories."). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. *See Harris v. Leeke*, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); *Richardson v. State*, 310 S.C. 360, 363, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

1. Failure to investigate the facts and circumstances regarding the incident

Applicant alleges Counsel was ineffective in failing to adequately to investigate the facts and circumstances regarding the incident. This Court disagrees.

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). "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." *Strickland*, 466 U.S. at 690-91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Id.* at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." *Id.*

"The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." *Id.* "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." *Id.* "In particular, what investigation decisions are reasonable depends critically on such information."

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Harris v. State*, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. *Id.* (citing *Davis v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); *Skeen*

v. State, 325 S.C 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.*, 377 S.C. at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

In the present case, Applicant alleges Counsel failed to adequately investigate the incident leading to his arrest. However, this Court disagrees. At the PCR hearing, Applicant testified he thought he was set up, and he asked Counsel to get the film from the store where he was arrested in order to locate the person who gave him the bag of drugs. Counsel testified he received discovery and there was not a video as part of the discovery. Counsel testified Applicant never asked him about a video or asked him to obtain the video from the store.

Counsel explained the State's evidence against Applicant. Counsel testified on the day of the incident, an officer received a phone call from the store that there was a male who had a marijuana joint in his possession, and that the man was trying to sell or give it to others. An officer went to the location, and as the officer pulled up, Applicant was getting into his car. The officer pulled up behind Applicant's car and approached the driver side door to ask Applicant for some identification. Applicant rolled up the window, and the officer proceeded to open the door. Once the door was open, drugs fall onto the ground and the officer attempts to place Applicant under arrest; however, Applicant was able to get past the officer. Applicant began to run away, so the officer tased Applicant. The officer then tackled Applicant to the ground. As the officer tried to place Applicant under arrest, Applicant resisted the officer and tried to keep something under his body. Because Applicant would not place his hands behind his back, the officer tased Applicant a second time. The officer finally got Applicant's hands cuffed and did a search incident to arrest. The officer noticed a bulge in Applicant's pants, which the officer found to be more drugs.

Applicant gave a statement to the officer at the scene admitting he purchased the drugs for some lady at a sorority. Applicant explained he was getting the drugs for the lady and he was not buying the drugs for himself.

Applicant offered that Counsel should have obtained a video from the store on the day of the incident; however, Counsel's testimony clearly refutes that Applicant ever asked him about a video. Applicant offers nothing further that Counsel could have or should have investigated in furtherance of his defense. Counsel, on the other hand, demonstrated through his testimony a thorough command of the facts and circumstances of Applicant's charges, and credibly testified to fully reviewing the evidence against Applicant in its entirety. Based on his review, Counsel's strategy was to attempt to get the best plea offer possible for Applicant. Considering the evidence against Applicant, this Court finds Counsel's strategy to be reasonable.

Accordingly, this Court does not find Applicant's allegations have merit as they do not rise to the level of deficient performance, nor do they prejudice the Applicant in the entry of his plea. "[W]here counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Watson v. State*, 370 S.C. 68, 72, 634 S.E.2d 642, 644 (2006) (citing *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992)). "Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel 'rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" *Smith v. State*, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (quoting *Strickland*, 466 U.S. at 690, 104 S.Ct. 2052). "Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Id.* (citing *Caprood v. State*, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). "Courts must be wary of second-guessing counsel's trial tactics; and where counsel

articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992) (citing *Goodson v. United States*, 564 F.2d 1071 (4th Cir. 1977)). Applicant has produced no probative evidence towards meeting his burden as to either prong of *Hill*; accordingly, his demand for relief by way of this allegation is **DENIED**.

2. Failure to Investigate Applicant's personal situation and mental health

Applicant alleges Counsel was ineffective in failing to investigate Applicant's personal situation and mental health. However, this Court disagrees. In applying the above-cited case law to the testimony presented at the evidentiary hearing, this Court cannot find any reason to believe that Counsel's representation was deficient or prejudicial.

At the PCR hearing, Applicant testified he had a history of mental health issues, and he asked Counsel to obtain records of his treatment history. Applicant testified he did not know if Counsel got his mental health records. Applicant testified prior to his plea, he was evaluated for mental health issues, but the evaluation report indicated Applicant had no mental health issues and that he was faking being mentally ill. Applicant testified he took medication since he was fourteen and that he took Ritalin, then Adderall later in his life. Applicant testified he was on medication for PTSD while in prison. Applicant testified he was placed on Remeron for depression and another medication for bipolar disorder. Applicant testified when he was released from prison on an earlier charge, he was discharged with a thirty-day supply of his medications. Applicant testified on the day of the incident he had been out of his medication for three days. Applicant testified he told Counsel he was out of medication on the day of the incident, and he asked Counsel to contact the social security office about the doctor who helped him get the medication. Applicant also testified he asked Counsel to ask school officials for his mental health records.

Applicant testified Counsel asked Applicant's mother to try to get Applicant to plead guilty. Applicant testified Counsel succeeded in getting his mother to coerce him to plead guilty because at the time he was not on his proper medication, so in his mind, he did not want to plead guilty but did so out of respect for his mother. Applicant clarified he thought Counsel tricked his mother into convincing Applicant to plead guilty. Applicant testified he recalled telling the judge that he had taken his medication the day of the plea and admitted he had in fact taken his medication that day.

Counsel testified regarding Applicant's mental health. Counsel testified he spoke to Applicant and his mother who informed Counsel that Applicant was on Ritalin. Counsel testified Ritalin had nothing to do with bipolar disorder or schizophrenia. Counsel testified Applicant underwent a mental health evaluation and, in the report, there was nothing to suggest Applicant had any major mental illness of any type. Counsel testified the report indicated Applicant was faking most of his symptoms. Counsel testified Applicant never asked him to investigate his school records or the records at the social security office, but even if Applicant had asked, Counsel explained those records would not have been helpful as the doctors performing the mental health evaluation would have attempted to locate those records based on Applicant's own reported history.

Counsel testified after reviewing the evidence in the case, he thought working out a plea would be in Applicant's best interest. Counsel testified he explained this to Applicant honestly and eventually was able to work out a plea deal. Counsel testified the solicitor offered a negotiated plea of fifteen years, but the offer was lowered it to a negotiated twelve-year sentence at the last minute. Counsel testified the solicitor made it clear that there would be no other plea offers after the twelve-year offer. Counsel testified he informed Applicant of the twelve-year offer and

explained that it was a negotiated, not a recommended sentence. Counsel testified he explain to Applicant that because it was negotiated, if Applicant took the plea and the judge accepted it, then the judge would have to sentence him to twelve years. Counsel testified he told Applicant that this would be the last offer and if he did not accept it, then they would have to proceed with a trial. Counsel testified there was nothing that occurred during the plea hearing that led him to believe Applicant's plea was not voluntary. Counsel testified it was Applicant's decision to plead, Applicant pleaded freely and voluntarily, and had Applicant not taken the plea offer, Counsel would have been ready to go to trial.

This Court finds Counsel was not deficient for failing to obtain Applicant's medical records from his school or the social security office, and Counsel's investigation into Applicant's mental health was reasonable under the circumstances. This Court finds credible Counsel's testimony Applicant never asked him to investigate his school records or the records at the social security office, but even if Applicant had asked, Counsel explained those records would not have been helpful as the doctors performing the mental health evaluation would have attempted to locate those records based on Applicant's own reported history. Accordingly, Counsel's alleged failure was not deficient. Additionally, Applicant cannot show prejudice, as he was evaluated prior to the plea hearing and the report found nothing medically wrong with Applicant. Further the report indicated that Applicant was faking most of his mental health symptoms. This Court finds Applicant has failed to produce probative evidence towards meeting his burden as to either prong of *Hill*; accordingly, his demand for relief by way of this allegation is **DENIED**.

3. Involuntary Guilty Plea

Applicant alleges his guilty plea was involuntarily entered due to Counsel's failures outlined above. Furthermore, Applicant testified his plea was involuntary because Counsel tricked

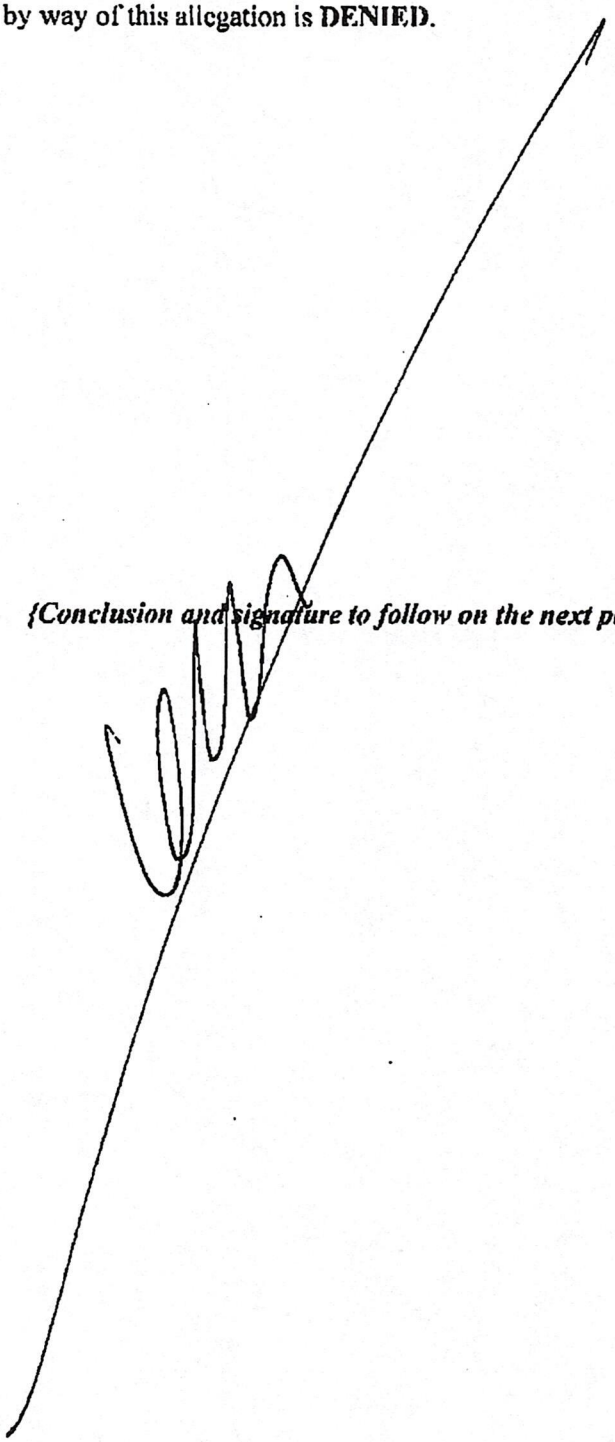
his mother into convincing him to plead guilty. However, this Court finds Applicant's plea was freely and voluntarily entered based on the plea transcript and the testimony presented at the PCR hearing.

The testimony described in the above allegations is applicable in this allegation, as well. When evaluating the voluntariness of a guilty plea, a defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel's performance was deficient and (2) there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty. *Johnson v. Catoe*, 336 S.C. 354, 520 S.E.2d 617 (1999); *Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997); *Satterwhite v. State*, 325 S.C. 254, 481 S.E.2d 709 (1997). As this Court has already determined above, Counsel's performance was not deficient. Applicant could not satisfy that burden. Further case law states that,

> in many guilty plea cases, the 'prejudice' inquiry will closely resemble the inquiry engaged in by courts reviewing ineffective-assistance challenges to convictions obtained through a trial. For example, where the alleged error of counsel is a failure to investigate or discover potentially exculpatory evidence, the determination whether the error "prejudiced" the defendant by causing him to plead guilty rather than go to trial will depend on the likelihood that discovery of the evidence would have led counsel to change his recommendation as to the plea. This assessment, in turn, will depend in large part on a prediction whether the evidence likely would have changed the outcome of a trial.

Stalk v. State, 383 S.C. 559, 562, 681 S.E.2d 592, 594 (2009) (citing *Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366 (1985)). Additionally, this Court does not find that any evidence or testimony presented that would amount to prejudice. Counsel thoroughly investigated and prepared for trial and presented his findings and analysis to the Applicant over the course of many meetings. Applicant understood the adversities and options that he faced, and he chose to plead guilty to avoid facing a harsher sentence if he lost at trial. Furthermore, this Court finds the plea transcript clearly establishes that Applicant's plea was freely and voluntarily entered. For these reasons, his

demand for relief by way of this allegation is **DENIED.**



{Conclusion and signature to follow on the next page}}

III. CONCLUSION

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), SCRCP 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 be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 4 **day of** January, ~~2021.~~ 2022

GEORGE M. McFADDIN
Presiding Judge
Twelfth Judicial Circuit

, South Carolina

FILED
2022 JAN 14 PM 2:51
BORIS PONDOS O'HARA
CCP & GS
MARION COUNTY, S.C.

RECEIVED
FEB 08 2022
S.C. SUPREME COURT

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP2101576

Ronnie Mickell Drake		**South Carolina State Of**	
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: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **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.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

		1/14/2022
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on **January 14, 2022**, and a copy mailed first class or placed in the appropriate attorney's box on **January 18, 2022**, to attorneys of record or to parties (when appearing pro se) as follows:

Jonathan D Waller 210 Newberry Street, NW Aiken, SC 29801

Michael D. Davidson 1000 Assembly Street Rembert C. Dennis Building, PCR Division Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P O'Hara

Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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.

WITNESSES

Andron Brown Florence Police Department

John C Jepertinger

ARREST WARRANT NUMBER

2015A2120200794 2015A2120200795

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 10-1-15

VERDICT

142

Foreperson of Petit Jury *Date:*

DOCKET NO. 2015-GS-21-01143

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

OCTOBER TERM 2015

THE STATE

vs.

RONNIE MICKELL DRAKE

Indictment for

POSSESSION WITH INTENT TO DISTRIBUTE COCAINE BASE AND TRAFFICKING IN COCAINE

FILED
2015 OCT -1 AM 11:24
CONNIE REED-SHEARIN
CLERK OF COURT
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

INDICTMENT FOR

POSSESSION WITH INTENT TO DISTRIBUTE COCAINE BASE
AND
TRAFFICKING IN COCAINE

At a Court of General Sessions, convened on OCTOBER 1, 2015 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- POSSESSION WITH INTENT TO DISTRIBUTE COCAINE BASE

That RONNIE MICKELL DRAKE did in Florence County on or about May 3, 2015, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver a quantity of Cocaine Base, a controlled substance under the provisions of Section 44-53-110, et.seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law, and being in violation of Section 44-53-375(B)(3), S. C. Code of Laws, 1976, as amended.

COUNT TWO- TRAFFICKING IN COCAINE

That RONNIE MICKELL DRAKE did in Florence County on or about May 3, 2015, knowingly, sell, deliver, purchase or bring into this State, or did aid, abet, attempt, or conspire to sell, deliver, purchase or bring into this State, or was in actual or constructive possession, or attempted to become in actual or constructive possession of a quantity of Cocaine in an amount of more than ten (10) grams, but less than twenty-eight (28) grams, the same being a controlled substance, all within the meaning of Section 44-53-370, et.seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized, and being in violation of Section 44-53-370(e)(2)(a)(3), S. C. Code of Laws, 1976, as amended, for the crime of Trafficking.

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

E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

144

STATE OF SOUTH CAROLINA)
COUNTY OF Florence)
STATE VS.)
Ronnie Mickell Drake)
AKA:)
Race: Black Sex: M Age: 28)
DOB: [redacted]-1988 SS#: [redacted])
Address: [redacted])
City,State,Zip: Florence, SC 29506-3239)
DL#: [redacted] SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015-GS-21-01143
A/W#: 2015A2120200795
Date of Offense: 5/3/2015
S.C. Code § : 44-53-0370(e)(2)(a)3
CDR Code #: 0147

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Drugs / Trafficking in cocaine, 10 g or more, but less than 28 g - 2nd offense (5-30/50,000)

in violation of § 44-53-0370(e)(2)(a)2 of the S.C. Code of Laws, bearing CDR Code # 0387
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: John C. Pepertinger, John C / 9826 SC Bar# / Defendant / Attorney for Defendant / 6176 SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 12 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____ _____
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 183 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 1000
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 61.6 (Public Def/Probation)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$
§ 14-1-213 (Drug Court Surcharge)	$150	$ 150.00
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 1.50
TOTAL		$ 757.50

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk _____
Court Reporter: _____
Presiding Judge D. Craig
Judge Code: 2160
Sentence Date: 12-5-16

SCCA/217 (07/2016)