

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to York County

Honorable Grace Gilchrist Knie, Circuit Court Judge

MAURICE L. ROBINSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2022-000074

APPENDIX

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State of South Carolina.,) In the Court of General
) Sessions for York
)
 County of Beaufort.,) Case No.: 2018-GS-46-00950
 2018-GS-46-00951

State of South Carolina.,)
)
 Plaintiff.,)
)
 -vs-) Transcript of Record
) Trial/Plea
 Maurice Lavoue Robinson.,)
)
 Defendant.)
)
 _____)

July 11th, 2018
 York, South Carolina

B E F O R E:

The Honorable Roger L. Couch, Judge.

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1

I-N-D-E-X

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E-X-A-M-I-N-A-T-I-O-N

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WITNESSBY:PAGE NO.

4

No witnesses were called.

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
Ct.1	Extraction Report		
	██████████-3581) ██████████-8404)		
	SMS Messages (22)		P.67
Ct.2	SMS Messages (3)		P.67
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Court Reporter's Note: All Exhibits were filed with the
York County Clerk of Court's Office.

1 (COURT IN SESSION WEDNESDAY, JULY 11, 2018 AT 11:23
2 A.M., IN THE MATTER OF *STATE VERSUS MAURICE ROBINSON*.)

3 SOLICITOR HAMILTON: Your Honor.

4 THE COURT: Yes.

5 SOLICITOR HAMILTON: The jury is supposed to be here
6 at 11:00.

7 THE COURT: All right.

8 SOLICITOR HAMILTON: Would you mind maybe taking a
9 break so I can sort of gather some things?

10 THE COURT: All right. We'll take a short recess.
11 Just let me know when they're ready.

12 SOLICITOR HAMILTON: He is signing up the Defendant on
13 the HTO charge right now.

14 THE COURT: So he is gonna plead?

15 SOLICITOR HAMILTON: He's going to plead to the HTO;
16 defer sentencing until the conclusion of the trial for
17 possession.

18 THE COURT: Okay. Very good. That's fine.

19 SOLICITOR HAMILTON: Thank you.

20 (COURT AT EASE AT 10:55 A.M./BACK IN SESSION AT 11:23
21 A.M.)

22 THE COURT: Thank you very much. Please be seated.

23 MR. NIELSON: Thank you, your Honor. Your Honor, may
24 I approach?

25 THE COURT: You certainly may.

1 MR. NIELSON: Opposing counsel and court reporter both
2 already have copies of this.

3 THE COURT: Okay.

4 (DOCUMENTS RECEIVED UP BY THE COURT.)

5 MR. NIELSON: Just Motions in Limine and potential
6 Voir Dire and Witness List, your Honor.

7 THE COURT: My understanding the Defendant wished to
8 enter a guilty plea on one charge; is that correct?

9 MR. NIELSON: Your Honor, before we enter the guilty
10 plea he would like to discuss Motion in Limine No. 1
11 because it has to do with him potentially getting some more
12 time. Should you - if you accept that motion that will
13 obviously end what we're doing here today. If you do not,
14 then he will enter the plea yes.

15 THE COURT: Well that's not really a Motion in Limine.
16 That's a Motion for a Continuance.

17 MR. NIELSON: I understand, your Honor. I put it
18 first so that we could remember to do it at the beginning.
19 He is - my client would like to move at this point forward
20 a continuance. He would like some time. Yesterday he went
21 and hired somebody to handle his case but obviously they
22 could not take that. They refunded his money yesterday
23 afternoon when that attorney found out that he was on the
24 trial docket for this week and specifically for this
25 morning.

1 THE COURT: Okay.

2 MR. NIELSON: As I kind of thought that they would,
3 but I would -- but my client would like a chance to pursue
4 paying an attorney to handle this case for him and he comes
5 before the Court this morning asking your Honor to allow
6 him to do that.

7 THE COURT: Let me hear from the State regarding that
8 request.

9 SOLICITOR HAMILTON: The State would oppose that, your
10 Honor. We feel that nothing would change at this point
11 with him hiring another attorney. We're still going to
12 trial, he's still facing the same time and we believe that
13 this attorney Mr. Devin Nielson is perfectly capable to
14 proceed to trial at this point.

15 THE COURT: All right. I'll ask since the Defendant
16 is asking for this I will hear from him.

17 Sir, if you'll stand and we want to put your under
18 oath concerning what you're about to tell me.

19 (WHEREUPON, MAURICE ROBINSON,
20 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

21 THE COURT: Yes, sir, Mr. Robinson, you indicated
22 through your lawyer apparently that you want to change
23 attorneys. Let me ask before I talk to him about this,
24 this case has been on the Docket for how long?

25 SOLICITOR HAMILTON: We have actually had it on the

1 trial schedule for two terms before this term so he has
2 been aware that this is going to trial.

3 THE COURT: So it's been at the top of the docket for
4 a month or better?

5 SOLICITOR HAMILTON: Yes, your Honor.

6 MR. NIELSON: Its been a backup trial of the
7 previously two terms and then this term it moved closer to
8 the top, your Honor.

9 THE COURT: Well you know if it's a backup it could be
10 called.

11 MR. NIELSON: I understand, your Honor.

12 THE COURT: That's the way the world works. But it's
13 been on the docket for better than a month. Would you
14 agree, Counsel?

15 MR. NIELSON: Yes, your Honor.

16 THE COURT: Okay. Mr. Robinson.

17 MR. ROBINSON: Yes, sir. I had ask that you to have
18 him relieved because he's not representing me to the best
19 of my interest.

20 THE COURT: And in what regard?

21 MR. ROBINSON: I mean not doing what I've ask him to
22 do for me.

23 THE COURT: Tell me specifically.

24 MR. ROBINSON: I mean I hadn't had no pretrial. Not a
25 pretrial. Like a motion. I hadn't really seen all that.

1 THE COURT: But he's filed Motions this morning.

2 MR. ROBINSON: Yeah, I told him to see all that before
3 hand you know. And prior to that I just been in rehab.
4 That's the only reason I didn't have a lawyer at the time
5 before because I been in rehab trying to get my life on
6 track, you know. And I'm just now finding a job. I got my
7 kid, one of my child's a six year old child --

8 THE COURT: Mr. Robinson, let me explain to you what
9 I'm listening for and I'm not hearing it yet, okay.

10 I need to know what specifically this lawyer has not
11 done that he should have done that justifies him being
12 relieved and giving you the opportunity to hire another
13 lawyer? I'd like to know specifically what the other
14 lawyer can do that this lawyer can't do for you in this
15 situation.

16 MR. ROBINSON: I just feel like --

17 THE COURT: Now let me finish talking.

18 MR. ROBINSON: Okay. I'm sorry.

19 THE COURT: So what I'm listening for because this
20 case has been on the docket for some time, this is the
21 first time I think that you have brought this issue up to
22 the court. When was he arrested on this?

23 SOLICITOR HAMILTON: November 29th, 2017, your Honor.

24 THE COURT: Okay. So it's been on the docket for
25 better than half a year and we haven't heard anything about

1 hiring a new lawyer. Your attorney came to a pretrial
2 conference yesterday with the State's attorney. He
3 indicated that you said you had hired a lawyer already and
4 I indicated to him that lawyer needed to be here and be
5 present ready to go to trial ---

6 MR. ROBINSON: I don't --

7 THE COURT: --- because the case is on the docket for
8 trial.

9 MR. ROBINSON: I didn't even know he attempted to --
10 what this week, that the trial --

11 THE COURT: You didn't know that?

12 MR. ROBINSON: Yeah, he didn't really tell me like
13 that. I didn't really --

14 THE COURT: Counsel, tell me about what you've told
15 him about the case being on the docket.

16 MR. NIELSON: Your Honor, we prepared for the trial in
17 May. As early as May we were told it could have been
18 tried, brought him in on Friday before that week. I did
19 not believe it was gonna go. The Solicitor indicated to me
20 we were pretty far back still at that point but we talked
21 about the possibility then. I prepared for trial at that
22 point. Later on he came and saw me at least two times
23 during the month of June; both times I told him he was not
24 the trial docket and the case could be tried. I offered to
25 show him every bit of discovery; I've offered to show him

1 videos; I've offered to show him the rips off of his cell
2 phone and he has told me he does not need to see them and
3 I've offered to prepare him in every way possible. I am
4 prepared to move forward with having looked at those things
5 this morning and I'm ready to move forward if your Honor so
6 chooses. I also I'm more than happy to step aside if your
7 Honor chooses to let someone else take a look at it.

8 THE COURT: All right. Again, I told you what I'm
9 listening for. So I'll give you an opportunity to tell me
10 about what specifically has this lawyer not done that he's
11 supposed to do in your opinion, or, what is it that he
12 can't do that this new lawyer can do?

13 MR. ROBINSON: Okay. I just feel like he's not
14 representing me to my best interest. He's not doing
15 everything I ask him to do for me, sir.

16 THE COURT: I've ask for specifics.

17 MR. ROBINSON: We hadn't really - I mean you just now
18 telling me to come up here when I hadn't been up since May
19 because I hadn't been up here none in June, the whole month
20 of June.

21 THE COURT: The case wasn't called for trial in June.

22 MR. ROBINSON: He told us in May but in June I hadn't
23 been up here since May.

24 THE COURT: Okay, something changed since May.

25 MR. ROBINSON: I guess. I don't know. All I know I

1 got a letter from him like two weeks ago to come up here.
2 No, a week ago to come up here like two days ago.

3 THE COURT: Okay. Mr. Robinson, I'm not hearing the
4 specifics that I ask for. You are not required to use
5 anyone in particular as your attorney; you have the right
6 to hire someone if you wish to do so, but the case is on
7 the docket and I see no reason for it to be continued at
8 this time.

9 MR. ROBINSON: I don't --

10 THE COURT: Let me finish talking. So I am going to
11 deny the motion for a continuance. If you wish to relieve
12 this gentleman as your lawyer you can do that. And then
13 you'd have to proceed with another attorney or you can
14 proceed representing yourself. How do you want me to
15 proceed, Mr. Robinson?

16 MR. ROBINSON: I guess I'll have to go with this man.
17 I guess that's the only choice I got if I keep him
18 like that.

19 THE COURT: All right, sir. We'll proceed then with
20 him acting as your attorney in the case. Thank you very
21 much.

22 MR. NIELSON: Thank you, your Honor.

23 THE COURT: Now we're back to the - I think you wanted
24 me to address that. And it does appear to me, and it's not
25 binding, that one of the motivations for this motion to

1 change attorneys appears to be to delay the case and I'm
2 not gonna allow that to happen.

3 All right, now, that's my findings, Mr. Robinson.

4 MR. ROBINSON: Yes, sir.

5 THE COURT: Now does your client wish to plead on one
6 of the charges?

7 MR. NIELSON: My understanding is my client at this
8 point is going to plead to the habitual traffic offender
9 charge and we will proceed on the possession with intent to
10 distribute marijuana charge.

11 THE COURT: I see. Okay. Is the State ready to
12 proceed on the HTO I believe it is?

13 SOLICITOR HAMILTON: Yes, your Honor.

14 THE COURT: All right. Just one second, let me get
15 the paperwork. Thank you.

16 Mr. Robinson, I remind you that you remain under oath
17 concerning your discussions with me at this time. Do you
18 understand that you're still under oath?

19 MR. ROBINSON: Yes, sir.

20 THE COURT: Mr. Robinson, the charge before the Court
21 is habitual traffic offender, that's case No. 18-951. That
22 carries a possible sentence of up to five years in prison.
23 It was indicted by the Grand Jury, it's presented to me
24 without recommendations or negotiations by the State. That
25 means I will have the right to sentence you anywhere from

1 zero time up to the maximum. Do you understand that?

2 MR. ROBINSON: Yes, sir.

3 THE COURT: All right, now, you're here with your
4 attorney, you've already indicated to me that you wish to
5 hire another attorney but now you have decided since I'm
6 going forward with the case to retain this attorney. Is
7 there anything else you need to discuss about this charge
8 with your lawyer?

9 MR. ROBINSON: No, sir.

10 THE COURT: Is there anything else you feel he ought
11 to do for you in relationship to this charge before we
12 proceed with the plea?

13 MR. ROBINSON: No, sir.

14 THE COURT: All right. Now, Mr. Robinson, do you
15 suffer from any conditions that would affect your mental
16 abilities today?

17 MR. ROBINSON: No, sir.

18 THE COURT: Have you taken or used any drugs that
19 would
20 affect your mental abilities today?

21 MR. ROBINSON: No, sir.

22 THE COURT: So do you understand what you're doing?

23 MR. ROBINSON: Yes, sir.

24 THE COURT: Are you able to handle this plea today?

25 MR. ROBINSON: Yes, sir.

1 THE COURT: All right, sir. Now as to this charge you
2 have the right to plead either guilty or not guilty. We
3 have a jury present, you can be tried today if you wish to
4 have a trial. How are you pleading?

5 MR. ROBINSON: I plead guilty.

6 THE COURT: And, Counselor, have you discussed this
7 plea with your client?

8 MR. NIELSON: Yes, your Honor.

9 THE COURT: Have you gone over with him the charge,
10 the consequences of a plea, the statutes under which he's
11 been charged; the defenses he may have had to this charge
12 if any, so have you discussed those matters with him?

13 MR. NIELSON: Yes, your Honor.

14 THE COURT: Based on your knowledge of the case and
15 the discovery you've received from the State do you agree
16 with his decision to enter a guilty plea on this charge?

17 MR. NIELSON: I do, your Honor.

18 THE COURT: Now, Mr. Robinson, my information is that
19 you are thirty-eight years of age. Is that true?

20 MR. ROBINSON: Yes, sir.

21 THE COURT: How far did you go in school?

22 MR. ROBINSON: I went to like the 10th. I went to
23 jail and I got my GED while I was in prison in 2006.

24 THE COURT: Okay. So you have a GED?

25 MR. ROBINSON: Yes, sir.

1 THE COURT: Now are you currently married?

2 MR. ROBINSON: Yes, sir.

3 THE COURT: Children?

4 MR. ROBINSON: Yes.

5 THE COURT: How many?

6 MR. ROBINSON: Three.

7 THE COURT: And what ages are they?

8 MR. ROBINSON: Six, fifteen and fifteen.

9 THE COURT: Do they live at your home?

10 MR. ROBINSON: Two of 'em do.

11 THE COURT: All right. Now do you have a job, Mr.
12 Robinson?

13 MR. ROBINSON: I was currently been getting a job.
14 Before the rehab I got a job.

15 THE COURT: So you don't have a job today?

16 MR. ROBINSON: No, sir.

17 THE COURT: Okay. What kind of job do you anticipate
18 getting?

19 MR. ROBINSON: A warehouse job or just any type of job
20 to work.

21 THE COURT: Okay. All right. Now, Mr. Robinson, has
22 anyone in any way threatened you; put pressure on you,
23 tried to intimidate you, use violence against you, used
24 violence against you? Has anyone done something to try to
25 force you to give me this plea?

1 MR. ROBINSON: No, sir.

2 THE COURT: So are you giving it to me of your own
3 free will?

4 MR. ROBINSON: Yes, sir.

5 THE COURT: Have you had enough time to think about
6 the charges?

7 MR. ROBINSON: Yes, sir.

8 THE COURT: And have you had enough time to think
9 about the facts in the matter?

10 MR. ROBINSON: Yes, sir.

11 THE COURT: Now, has anyone made any promises or
12 guarantees to you about any matters including but not
13 limited to such things as pardon, parole, probation, early
14 release or length of sentence?

15 MR. ROBINSON: No, sir.

16 THE COURT: If I accept your plea, Mr. Robinson, you
17 give up your constitutional rights as they relate to this
18 charge.

19 MR. ROBINSON: Yes, sir.

20 THE COURT: I have to be sure you understand those
21 rights so I'm going to go over them with you now and if you
22 have a question you can discuss it with your lawyer and you
23 can ask me about these matters. You have the right to have
24 the case considered by a Grand Jury and that's already
25 happened. They issued a True Bill. You have a right to an

1 attorney; he's present and available to you if you wish to
2 consult with him. You have a right to have this case tried
3 by a jury. As I indicated the jury is in the courthouse at
4 this time and we can arrange for that trial to occur.

5 At the trial you would be presumed to be innocent of
6 this charge; that presumption would continue until such
7 time as the State proved your guilt and the State would do
8 that by proving the elements of this crime to the jury by
9 proof beyond a reasonable doubt. You would not have to
10 prove anything at a trial. You are presumed innocent so
11 you're not required to present a defense at a trial unless
12 you choose to do that.

13 Now at the trial if there were witnesses' to this
14 issue that you felt needed to be present you could have
15 subpoenas issued to those witnesses' and if they were
16 properly served they could be required to attend the trial.

17 You would have the right at the trial to examine or
18 cross-examine any witness who testified. You would have
19 the right to confront those witnesses as well. At the
20 trial you could present any defense you might have to these
21 charges. And you would be given the opportunity to try to
22 suppress the State's evidence against you; that includes
23 statements you might have previously made.

24 At all times, Mr. Robinson, you have the right to
25 remain silent and if you chose at a trial to remain silent

1 the judge handling that trial is required to instruct the
2 jury that your silence could not be used against you in any
3 matter in their reaching a verdict in the case. In other
4 words it would not prejudice your case if you did not speak
5 at the trial.

6 Now do you understand the rights I just went over?

7 MR. ROBINSON: Yes, sir.

8 THE COURT: Do you have any questions about those
9 rights?

10 MR. ROBINSON: No, sir.

11 THE COURT: All right. Now, do you understand that if
12 I accept your plea on this at that time you will have
13 waived or given up those rights?

14 MR. ROBINSON: Yes, sir.

15 THE COURT: Does the fact that you will be giving up
16 those rights if I do that does that make you want to change
17 your plea now?

18 MR. ROBINSON: No, sir.

19 THE COURT: You're still pleading guilty?

20 MR. ROBINSON: Yes, sir.

21 THE COURT: Are you pleading guilty to habitual
22 traffic offender because you are guilty of that?

23 MR. ROBINSON: Yes, sir.

24 THE COURT: Madam Solicitor, tell me the facts that
25 you intend to show.

1 SOLICITOR HAMILTON: Thank you, your Honor. On
2 November 29th of 2017 officers pulled over the defendant
3 driving his 2009 white Infiniti. He was driving on Spruce
4 Street within York County. Upon initiating a traffic stop
5 and running the defendant's record they found that he was
6 actually declared a habitual traffic offender. He has
7 three violations; driving under suspension, driving under
8 suspension, and unlawful alcohol concentration making him
9 an habitual traffic offender. He was sent notice of that
10 on 12/27/2017. That habitual traffic offender status ended
11 on April 20th, 2018.

12 THE COURT: Mr. Robinson, did you hear what she told
13 me about your driving situation?

14 MR. ROBINSON: Yes, sir.

15 THE COURT: Was that information true?

16 MR. ROBINSON: As far it was my car, it was my wife's
17 car.

18 THE COURT: Okay. But you were operating the vehicle?

19 MR. ROBINSON: I was.

20 THE COURT: Okay. Now, have you been truthful with me
21 today, Mr. Robinson?

22 MR. ROBINSON: Yes, sir.

23 THE COURT: Anybody tell you how to answer my
24 questions?

25 MR. ROBINSON: No, sir.

1 THE COURT: The answers you've given therefore would
2 be your own; is that right?

3 MR. ROBINSON: Yes, sir.

4 THE COURT: Is there any part of what we've discussed
5 about this case that you would like to go back and change
6 what you told me?

7 MR. ROBINSON: No, sir.

8 THE COURT: All right, I'm going to accept the plea.

9 I find that its been freely and voluntary given. The
10 Defendant is aware of the charge and the penalties and had
11 the advice of counsel. He's satisfied with that advice and
12 there is a factual basis for that plea.

13 I do intend to handle sentencing on this plea once
14 we've completed the trial on the other charges before the
15 court so that sentencing can occur all at one time. So I
16 will hold the sentencing discussion in abeyance until such
17 time as the trial of the other case before the Court has
18 been completed, but the plea has been accepted at this
19 time.

20 Thank you very much, you can be seated, sir.

21 SOLICITOR HAMILTON: Thank you, your Honor.

22 MR. NIELSON: Thank you, your Honor.

23 THE COURT: Yes, sir.

24 SOLICITOR HAMILTON: Your Honor, would you like me to
25 call the case at this time?

1 THE COURT: Yes, ma'am, pleas do.

2 SOLICITOR HAMILTON: Your Honor, the Defendant is
3 currently charged with possession with intent to distribute
4 marijuana third offense. Its Maurice Lavoue Robinson; he
5 is represented by Mr. Devin Nielson from the Public
6 Defender's Office. He has stated that he is pleading not
7 guilty to the Indictment No. 2018-GS-46-00950. The Grand
8 Jury has True Billed this Indictment as of February 22nd,
9 2018.

10 THE COURT: All right. For the defense of your client
11 has pled not guilty to the charge; is that correct?

12 MR. NIELSON: Yes, your Honor.

13 THE COURT: And does he still plead not guilty as of
14 this time?

15 MR. NIELSON: Yes, your Honor.

16 THE COURT: I assume he's been arraigned on the
17 charges; is that correct?

18 MR. NIELSON: He was indicted, your Honor. I don't
19 know that he's been arraigned but he's been indicted.

20 THE COURT: Is he familiar with the charges?

21 MR. NIELSON: Yes, your Honor.

22 THE COURT: And does he waive formal arraignment ---

23 MR. NIELSON: Yes, your Honor.

24 THE COURT: --- on the indictment? Okay. Now I think
25 I received the witness list already and requested voir

1 dire; I reviewed that and I'll ask the questions that I
2 feel that are appropriate and give you a chance to ask for
3 additional questions once I've completed my voir dire.

4 MR. NIELSON: Thank you, your Honor.

5 THE COURT: Now are there any other matters from your
6 motion list that need to be addressed before we go into
7 jury selection?

8 MR. NIELSON: No, your Honor.

9 THE COURT: Okay. All right, we're ready to begin
10 with jury selection then bring in the panel. Thank you.

11 (JURY PANEL ENTERS COURTROOM AT 11:47 A.M.)

12 THE COURT: All right. Good morning, ladies and
13 gentlemen. It seems like I saw you a long time ago this
14 week and I'm happy to see you again at this time. We are
15 about to begin the trial of a case. That case is the State
16 of South Carolina versus Maurice Robinson. I'm going to go
17 over some matters with you that are specific to this case
18 at this time and I'm going to be asking questions in a
19 fashion very similar to our jury qualification on Monday.
20 I'll be asking questions, I'll be asking that you stand if
21 you have a response, I'll call on you individually and of
22 course I'll need your name and your juror number before we
23 discuss any response you might have to the questions that I
24 ask.

25 Now, the first thing I'm going to do with you though

1 is to go over with you the Indictment in this case and let
2 me explain, an indictment is a document that brings the
3 case before the Court issued by a Grand Jury. It is not a
4 piece of evidence, it is simply an informational document.
5 It informs this court of the charge that's to be tried; it
6 informs the Defendant of the charge that has been lodged
7 against him, so it's not evidence in the case, it can't be
8 used as evidence in the case but I am going to go over it
9 with you because it does have some information that might
10 help you later on to more fully and completely answer the
11 questions I'm about to ask you about this matter.

12 So the Indictment that I have been presented is in
13 Case No. 2018-GS-46-950. The Indictment is for the offense
14 of possession with the intent to distribute marijuana. The
15 Indictment states in the body that the Defendant Maurice
16 Lavoue Robinson did on or about November 29, 2017 in York
17 County, South Carolina manufacture, distribute, dispense,
18 deliver, purchase, aid, abet, attempt or conspired to
19 manufacture, distribute, dispense, deliver or purchase, or
20 possess with the intent to manufacture, distribute,
21 dispense, deliver or purchase marijuana a schedule I
22 controlled substance all in violation of Section 44-53-370
23 of the Code of Laws of South Carolina 1976 as amended
24 against the peace and dignity of the state in contrary to
25 the statute in such case made and provide.

1 Now that's the indictment that's before the court,
2 again, its not evidence; it can't be used by you in any
3 fashion in determining guilt or innocence of the Defendant
4 but it sets forth the charge that's been presented; when
5 and where it occurred, and the people that are alleged
6 involved. So that's the reason I have gone over that
7 document with you at this time.

8 Also I want you to have some additional information
9 before you answer my questions. I want the attorneys
10 involved in this case to introduce themselves to you and in
11 the case of the Defendant I would ask that the Defense
12 attorney introduce his client to you.

13 So from the State.

14 SOLICITOR HAMILTON: Thank you, your Honor.

15 THE COURT: Yes, ma'am.

16 SOLICITOR HAMILTON: Marina Hamilton from the York
17 County Solicitor's Office.

18 THE COURT: Yes, sir.

19 SOLICITOR HAMILTON: Thank you, your Honor. Bryan
20 Newkirk from the York County Solicitor's Office.

21 THE COURT: For the Defense.

22 MR. NIELSON: My name is Devin Nielson, I'm an
23 attorney here in York County in South Carolina and this is
24 my client Mr. Maurice Robinson ---

25 THE COURT: Sir, if you would stand so that they can

1 put a face to that name.

2 (DEFENDANT STOOD.)

3 THE COURT: Thank you, sir.

4 MR. NIELSON: --- to my left who is my pleasure to
5 represent.

6 THE COURT: Thank you, sir, you can be seated.

7 Now, ladies and gentlemen, again it's important that
8 the information you provide at this time is truthful,
9 honest and complete information because it will be used by
10 the Court in determining your eligibility to serve on this
11 case. And it will also be used by attorneys in exercising
12 the strikes that by law they have the right to exercise in
13 picking a jury in this case. So again, the information you
14 are about to provide or may provide is important.

15 I'm going to ask that the Clerk again place you under
16 oath concerning your responses to the Court at this time in
17 this case so if you would place the jury under oath please.

18 If you'll stand and raise your right hand.

19 (WHEREUPON, THE JURY, BEING
20 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

21 THE COURT: Please be seated. Now if there was any
22 member of the jury who either failed or refused to take the
23 oath that was just administered by the Clerk I'd ask that
24 you stand at this time.

25 The record will reflect that all potential jurors have

1 now been placed under oath concerning the responses they
2 are about to give.

3 (ALL JURORS AFFIRMED ACKNOWLEDGMENT OF THE JURY OATH.)

4 THE COURT: My first question is, is there any member
5 of this jury panel who has ever been related by marriage,
6 or are you related by blood to the defendant Maurice
7 Robinson? If that's true please stand.

8 (NO RESPONSE.)

9 THE COURT: Now is there any member of this jury panel
10 who has ever had a close personal or a social, or a
11 business relationship with the defendant Maurice Robinson?
12 If that's true please stand.

13 (NO RESPONSE.)

14 THE COURT: Now as to the attorneys involved in this
15 case, has any member of this jury panel ever been
16 represented by any of the attorneys involved in this case,
17 or, have they ever appeared on the other side of a legal
18 matter from you? If that's true, please stand?

19 (NO RESPONSE.)

20 THE COURT: Is there any member of this jury panel who
21 has ever been related by marriage, or are you related by
22 blood, or have you had a close social or personal or
23 business relationship with any of the attorneys that are
24 involved in this case? If that applies to you, please
25 stand?

1 (NO RESPONSE.)

2 THE COURT: Now at this time I'm going to go over a
3 list of names that has been provided to me as people who
4 are potentially witnesses' in this case. I'm going to go
5 over all of the names at one time; if I've been provided
6 information concerning where they work I'll give you that
7 information and then I've got some questions concerning
8 these individuals, so listen carefully to these names as I
9 call them out.

10 First of all, Officer Andres Maldonado with the Rock
11 Hill Police Department. Next, Officer Dalton Taylor with
12 the Rock Hill Police Department. Next is Officer Daniella
13 Gatti with the York County - is that Detention?

14 SOLICITOR HAMILTON: Drug Enforcement.

15 THE COURT: Drug Enforcement Unit. That's right,
16 that's what you call that here. Thank you.

17 Next is Rebecca Pryor with the Rock Hill Police
18 Department Drug Analyst and Evidence Technician and Officer
19 Brooks Felmet with the Rock Hill Police Department.

20 Next is Reneta, R-e-n-e-t-a Robinson and of course the
21 Defendant Maurice Robinson. Now as to the people that I
22 have been informed are potential witnesses in this case as
23 to those individuals is there any member of this jury panel
24 who has ever been related by marriage, or are you related
25 by blood to any of those individuals? If that's true

1 please stand.

2 (NO RESPONSE.)

3 THE COURT: Now is there any member of this jury panel
4 who has ever had a close social, personal, or business
5 relationship with any of the people that I identified as
6 possible witnesses' in this case? If that's true, please
7 stand?

8 (NO RESPONSE.)

9 THE COURT: Has any member of the jury panel, or a
10 member of your immediate family ever been convicted of a
11 drug offense? If that is true please stand?

12 (NO RESPONSE.)

13 THE COURT: Is there any member of the jury panel or
14 members of your immediate family who has suffered from a
15 drug addiction in the past? If that is true please stand?

16 (BLACK MALE STANDS.)

17 THE COURT: Sir, I need your name and number.

18 A. Dre'Quan Starr, Juror No. 216.

19 THE COURT: Yes, sir, what did you want to tell me?

20 JUROR NO. 216: My family got convicted of a drug
21 offense.

22 THE COURT: All right. Now would that fact, the fact
23 that occurred, would that affect your ability to be fair
24 and impartial concerning the issues in this case if you
25 were seated on the jury?

1 JUROR NO. 216: No, sir.

2 THE COURT: I'm sorry.

3 JUROR 216: No, sir.

4 THE COURT: Is that a yes?

5 JUROR 216: No, sir.

6 THE COURT: No, sir? Okay. Thank you. You can be
7 seated.

8 Yes, sir, name and number.

9 (WHITE MALE STANDING.)

10 A. Jamie Jeffcoat, No. 109.

11 THE COURT: Yes, sir.

12 JUROR NO. 109: My uncle, my dad's brother, I don't
13 know if you can consider that immediate family but --

14 THE COURT: Well that's someone who has been involved
15 with an addiction or had a conviction?

16 JUROR NO. 109: I'm sure he has.

17 THE COURT: Okay. Would the fact that you've had a
18 family member who's had those problems would that affect
19 your ability to be fair and impartial if you were on the
20 jury?

21 JUROR NO. 109: No.

22 THE COURT: Thank you. Sir, name and number?

23 (BLACK MALE STANDING.)

24 A. Davonta Blake, Juror No. 18.

25 THE COURT: Yes, sir.

1 JUROR NO. 18: My cousin got convicted ---

2 THE COURT: I see.

3 JUROR NO. 18: --- of a drug charge.

4 THE COURT: Would that fact affect your ability to be
5 fair and impartial if you were seated on this jury?

6 JUROR NO. 18: No.

7 THE COURT: Okay. Thank you, sir, you can be seated.
8 Ma'am, name and number.

9 (WHITE FEMALE STANDING.)

10 A. Hannah Huffman, Juror 103.

11 THE COURT: Yes.

12 JUROR 103: My cousin has an addiction.

13 THE COURT: I see. Now would that fact affect your
14 ability to be fair and impartial if you were seated on this
15 jury?

16 JUROR NO. 103: No, sir.

17 THE COURT: Thank you, ma'am. Anyone else?

18 Sir, name and number?

19 (MALE STANDING.)

20 A. Keith MacGeagh, Juror No. 144.

21 THE COURT: Yes, sir.

22 JUROR 144: My step-daughter has an addiction problem.

23 THE COURT: I see. Would that fact affect your
24 ability to be fair and impartial if you were ---

25 JUROR 144: Possibly.

1 THE COURT: --- seated on the jury? Sir?

2 JUROR 144: Possibly.

3 THE COURT: Okay. So then I'm going to excuse you
4 from the trial of this case. Please be seated and you no
5 longer have to answer my questions in this matter.

6 Anyone else? Sir, name and number?

7 (WHITE MALE STANDS.)

8 A. Edward Hilker, Juror 95.

9 THE COURT: Yes, sir.

10 JUROR 95: I had two cousins that were involved in
11 drugs ultimately lead to their death.

12 THE COURT: I see. Would that affect your ability to
13 be fair and impartial if you ---

14 JUROR NO. 95: No.

15 THE COURT: --- were placed on the jury?

16 JUROR NO. 95: No, sir.

17 THE COURT: Thank you, you can be seated.

18 Anyone else?

19 (NO RESPONSE.)

20 THE COURT: Thank you for that information.

21 Is there any member of the jury panel or a member of
22 your immediate family or a close personal friend of yours
23 who might work for either the Public Defender's Office, or
24 as a private criminal defense attorney, or may work with
25 the York County Solicitor's Office or this circuit's

1 solicitor's office, or also as a -- is either an attorney
2 or is a support staff member? So if you have someone who
3 is either a public defender, a defense attorney, or works
4 in the solicitor's office either as an attorney or a
5 support staff person, please stand?

6 (WHITE MALE STANDS.)

7 THE COURT: Yes, sir, name and number.

8 A. Will Sturgis, 221.

9 THE COURT: Yes, sir.

10 JUROR 221: I know Creighton Hayes. He's been a
11 family friend for a long time.

12 THE COURT: I see. Now would that fact affect your
13 ability to be fair and impartial if you were seated on this
14 jury in this case?

15 JUROR NO. 221: No, sir.

16 THE COURT: Thank you, sir, you can be seated.
17 Appreciate that information. Anyone else?

18 (NO RESPONSE.)

19 THE COURT: Now has any member of the jury panel
20 either presently or in the past been employed or
21 volunteered with any law enforcement agency either civil or
22 military? If that's true, please stand?

23 ((WHITE MALE STANDS.))

24 THE COURT: Yes, sir, name and number.

25 A. Juror 143, Joshua Ludwig.

1 THE COURT: Yes, sir.

2 JUROR 143: I was a air man in the U.S. Air Force.

3 THE COURT: I see. Would that factor affect your
4 ability to be impartial if you were on the jury?

5 JUROR 143: I don't believe so.

6 THE COURT: Well I need to know. Would it?

7 JUROR 143: No, sir.

8 THE COURT: Okay. Thank you very much. You can be
9 seated. Another one.

10 ((BLACK MALE STANDS.))

11 THE COURT: Yes, sir, name and number.

12 A. Richard Lewis, 137.

13 THE COURT: Yes, sir, your situation?

14 JUROR 137: I served with the Department of Defense in
15 Norfolk, Virginia, as a civilian.

16 THE COURT: I see. Now would that factor affect your
17 impartiality in this case?

18 JUROR 137: No.

19 THE COURT: Thank you, sir, you can be seated.

20 Has any member of the jury panel or a member of your
21 immediate family or a close personal friend of yours ever
22 been employed in any victim or witness assistance program
23 either state, county, city or federal? If that's true,
24 please stand?

25 ((NO ONE STANDS.))

1 THE COURT: Now has any member of the jury panel
2 received or gathered any information concerning the issues
3 that might be involved in the trial of the case such that
4 it would have caused you to either form or express an
5 opinion about the issues that might be involved in this
6 trial; so if you've gotten any information about this case
7 that might affect your opinion about this case please
8 stand?

9 (NO ONE STANDS.)

10 THE COURT: Is there any member of the jury panel who
11 is aware of any bias or prejudice that you might have
12 either for or against the State or the Defense in this
13 matter? So if you are aware of such a bias or prejudice
14 that you might have please stand?

15 (NO ONE STANDS.)

16 THE COURT: Is there any member of this jury panel who
17 is a member of or a contributor to any group which has as
18 it's primary concern the promotion of law enforcement and
19 or victim's rights? These groups would include but
20 wouldn't be limited to groups like Mother's Against Drunk
21 Driving, Student's Against Drunk Driving, Citizen's Against
22 Violent Crime, the South Carolina Sheriff's Association,
23 the South Carolina Trooper's Association; so if you are a
24 member of or a contributor to such a group, please stand.

25 (NO ONE STANDS.)

1 THE COURT: Now does any member of this jury panel
2 know of any reason whatsoever why he or she should not
3 serve as a juror in this case with particular emphasis
4 being placed upon your ability to be both fair and
5 impartial to both the State and the Defense? So if you are
6 aware of such a reason please stand.

7 (NO ONE STANDS.)

8 THE COURT: Does the State request any additional
9 questions of the jury panel?

10 SOLICITOR HAMILTON: Nothing from the State, your
11 Honor.

12 THE COURT: Any from the Defense?

13 MR. NIELSON: No, your Honor.

14 THE COURT: All right. I'll declare that the
15 remaining members of the jury panel are qualified then to
16 serve as jurors in this case. Now what we're going to do
17 is we're going to go through a jury selection process;
18 names will be called based on a list that was generated by
19 this little computer program we have here that randomly
20 selects your names up from the group that you're there.
21 When your name is called I'm going to ask that you come
22 forward; we bring them around -- can they come around
23 front? Is that okay?

24 MADAM CLERK: They come and stand by the bailiff.

25 THE COURT: All right. Come over and stand by the

1 bailiff here, face the back door of the courtroom, and at
2 that time the parties will be in a position to exercise
3 their strikes. In this case each side will have five
4 strikes and we'll pick one alternate with the State having
5 one strike; the Defense having two strikes for the
6 alternate.

7 Madam Clerk, you ready to proceed with calling the
8 role? All right, you may proceed.

9 When your name is called bring any personal belongings
10 you have to seat with you up here to the bailiff and face
11 the back of the courtroom. If you're selected to serve on
12 the jury you're gonna have a seat directly in the jury box
13 and you won't be going back to your seat so if you have any
14 purses, pocketbooks, things like that, bring them with you
15 when your name is called.

16 Yes, ma'am, proceed.

17 MADAM CLERK: Juror 122, Jamie Kinsey.

18 (WHITE FEMALE COMES FORWARD.)

19 MADAM CLERK: What say you for the State?

20 SOLICITOR HAMILTON: Please present the juror.

21 MADAM CLERK: Defense?

22 MR. NIELSON: Please excuse this juror.

23 MADAM CLERK: You are excused from this case.

24 No. 163, Mickela Mitchell.

25 (WHITE FEMALE COMES FORWARD.)

1 MADAM CLERK: What say you for the State?

2 SOLICITOR HAMILTON: Please present the juror.

3 MADAM CLERK: Defense?

4 MR. NIELSON: Please seat this juror.

5 MADAM CLERK: Please have A. Seat in the jury box.

6 No. 216, Dre'quan Starr.

7 (BLACK MALE COMES FORWARD.)

8 MADAM CLERK: What say you for the State?

9 SOLICITOR HAMILTON: Please excuse this juror.

10 MADAM CLERK: You are excused from this case.

11 No. 137, Richard Lewis.

12 (BLACK MALE COMES FORWARD.)

13 MADAM CLERK: What say you for the State?

14 SOLICITOR HAMILTON: Please present the juror.

15 MADAM CLERK: Defense?

16 MR. NIELSON: Please excuse this juror.

17 MADAM CLERK: You are excused from this case.

18 No. 103, Hannah Huffmon.

19 (WHITE FEMALE COMES FORWARD.)

20 MADAM CLERK: What say you for the State?

21 SOLICITOR HAMILTON: Please present the juror.

22 MADAM CLERK: Defense.

23 MR. NIELSON: Please seat this juror.

24 MADAM CLERK: Please have A. Seat in the jury box.

25 No. 38, Jared Clay.

1 (WHITE MALE COMES FORWARD.)

2 MR. NIELSON: Madam Clerk, what was the number again?

3 MADAM CLERK: 38.

4 MR. NIELSON: Thank you.

5 MADAM CLERK: What say you for the State?

6 SOLICITOR HAMILTON: Please present the juror.

7 MADAM CLERK: Defense?

8 MR. NIELSON: Please seat this juror.

9 MADAM CLERK: Please have A. Seat in the jury box.
10 No. 174, Tessa Norris.

11 (WHITE FEMALE COMES FORWARD.)

12 MADAM CLERK: What say you for the State?

13 SOLICITOR HAMILTON: Please present the juror.

14 MADAM CLERK: Defense?

15 MR. NIELSON: Please excuse this juror.

16 MADAM CLERK: You are excused from this case.

17 No. 143, Joshua Ludwig.

18 (WHITE MALE COMES FORWARD.)

19 MADAM CLERK: What say you for the State?

20 SOLICITOR HAMILTON: Please present this juror.

21 MADAM CLERK: Defense?

22 MR. NIELSON: Please seat this juror.

23 MADAM CLERK: Please have A. Seat in the jury box.

24 No. 79, Clifton Guffey.

25 (WHITE MALE COMES FORWARD.)

1 MADAM CLERK: What say you for the State?

2 SOLICITOR HAMILTON: Please excuse this juror.

3 MADAM CLERK: You are excused from this case.

4 No. 65, Christopher Fontaine.

5 (WHITE MALE COMES FORWARD.)

6 MADAM CLERK: What say you for the State?

7 SOLICITOR HAMILTON: Please present this juror.

8 MADAM CLERK: Defense?

9 MR. NIELSON: Please seat this juror.

10 MADAM CLERK: Please have A. Seat in the jury box.

11 No. 51, Kimberly Dolde.

12 (WHITE FEMALE COMES FORWARD.)

13 MADAM CLERK: What say you for the State?

14 SOLICITOR HAMILTON: Please present this juror.

15 MADAM CLERK: Defense?

16 MR. NIELSON: Please seat this juror.

17 MADAM CLERK: Please have A. Seat in the jury box.

18 No. 60, Stacy Drnandez.

19 (WHITE FEMALE COMES FORWARD.)

20 MADAM CLERK: What say you for the State?

21 SOLICITOR HAMILTON: Please excuse this juror.

22 MADAM CLERK: You are excused from this case.

23 No. 109, Jamie Jeffcoat.

24 (WHITE MALE COMES FORWARD.)

25 MADAM CLERK: What say you for the State?

1 SOLICITOR HAMILTON: Please present this juror.

2 MADAM CLERK: Defense?

3 MR. NIELSON: Please seat this juror.

4 MADAM CLERK: Please have A. Seat in the jury box.

5 No. 181, Kimberly Pennington.

6 (WHITE FEMALE COMES FORWARD.)

7 MADAM CLERK: What say you for the State?

8 SOLICITOR HAMILTON: Please present the juror.

9 MADAM CLERK: Defense?

10 MR. NIELSON: Please seat the juror.

11 MADAM CLERK: Please have A. Seat in the jury box.

12 No. 18, Davonta Blake.

13 (BLACK MALE COMES FORWARD.)

14 MADAM CLERK: What say you for the State?

15 SOLICITOR HAMILTON: Please excuse the --

16 MADAM CLERK: You are excused from this case.

17 No. 27, William Burkett.

18 (WHITE MALE COMES FORWARD.)

19 MR. NIELSON: I'm sorry, one more time. What's the
20 juror number?

21 MADAM CLERK: 27.

22 MR. NIELSON: Thank you, Madam Clerk.

23 MADAM CLERK: What say you for the State?

24 SOLICITOR HAMILTON: Please present the juror.

25 MADAM CLERK: Defense?

1 MR. NIELSON: Please seat this juror.

2 MADAM CLERK: Please have a seat in the jury box.

3 No, 48, Heather Dakes.

4 (WHITE FEMALE COMES FORWARD.)

5 MADAM CLERK: What say you for the State?

6 SOLICITOR HAMILTON: Please present the juror.

7 MADAM CLERK: Defense?

8 MR. NIELSON: Please seat the juror.

9 MADAM CLERK: Please have a seat in the jury box.

10 No. 2, Justin Almond.

11 (WHITE MALE COMES FORWARD.)

12 MADAM CLERK: What say you for the State?

13 SOLICITOR HAMILTON: Please present the juror.

14 MADAM CLERK: Defense?

15 MR. NIELSON: Please seat the juror.

16 MADAM CLERK: Please have a seat in the jury box.

17 No. 95, Edward Hilker.

18 (WHITE MALE COMES FORWARD.)

19 MADAM CLERK: What say you for the State?

20 SOLICITOR HAMILTON: Please present the juror.

21 MADAM CLERK: Defense?

22 MR. NIELSON: Please excuse this juror.

23 MADAM CLERK: You are excused from this case.

24 No. 77, Hannah Green.

25 (WHITE FEMALE COMES FORWARD.)

1 MADAM CLERK: What say you for the State?

2 SOLICITOR HAMILTON: Please present the juror.

3 MADAM CLERK: Defense?

4 MR. NIELSON: Please seat the juror.

5 MADAM CLERK: Please have a seat in the jury box.

6 This will be for the alternate. No. 35, Taylor

7 Greene.

8 (WHITE FEMALE COMES FORWARD.)

9 MADAM CLERK: What say you for the State?

10 SOLICITOR HAMILTON: Please present the juror.

11 MADAM CLERK: Defense?

12 MR. NIELSON: Please excuse the juror.

13 MADAM CLERK: You are excused from this case.

14 No. 119, Michael Kellum.

15 (WHITE MALE COMES FORWARD.)

16 MADAM CLERK: What say you for the State?

17 SOLICITOR HAMILTON: Please present the juror.

18 MADAM CLERK: Defense?

19 MR. NIELSON: Please seat the juror.

20 MADAM CLERK: Please have a seat in the jury box.

21 THE COURT: Thank you, Madame Clerk.

22 Any objection to the jury selection process from the
23 State?

24 SOLICITOR HAMILTON: Nothing from the State, your
25 Honor.

1 THE COURT: Any objections from the Defense?

2 MR. NIELSON: No, your Honor.

3 THE COURT: All right. Those of you who were not
4 selected on the jury I want to thank you very much for your
5 cooperation. Your presence was obviously necessary here
6 and thank you for your patience with us as well.

7 They're going to take you back downstairs, they'll
8 give you additional instructions at that time. And again,
9 thank you for your presence today. You're free to go,
10 please leave quietly. Thank you.

11 (JURY EXITS COURTROOM AT 12:16 P.M.)

12 THE COURT: All right, ladies and gentlemen of the
13 jury you have been selected as members of the jury in this
14 case. It's not lost on me that we're slightly past noon and
15 I'm going to release you for lunch at this point in time.

16 There's also some matters that I have to take up with
17 the lawyers; procedural matters and some issues that need
18 to be resolved prior to your being involved in the case, so
19 I'm going to give you a long lunch break. I'll ask you to
20 be back in the jury room, let's say about Two o'clock, a
21 little mor than a hour and half from now. The bailiff's
22 will show you how to return and where to go to get back to
23 the jury room.

24 But let me caution you about a couple of things as you
25 leave the courthouse. These are my instructions concerning

1 your behavior. We've gone to a lot of trouble this morning
2 to pick a jury that has no prior knowledge of the case, no
3 information about the case. I hope you realize that it
4 would be a violation of your oath later on when you come in
5 you're gonna take an oath concerning your duties and that
6 oath will be to decide the case based upon the law and the
7 evidence presented in the trial. And that's all you're
8 supposed to consider and the only evidence you're gonna
9 hear in the case will be witnesses' who will testify from
10 the witness stand who are sworn to tell the truth and
11 whatever evidence comes into the record through the
12 testimony of those witnesses.

13 So there is no evidence outside of this courtroom.
14 And I will instruct you concerning the law, so that's where
15 you'll get that information from. So it would be highly
16 improper for you to go out and Google somebody's name
17 that's in the trial or try to gather information about this
18 on your own. It's a violation of your oath for you to do
19 that, so I'll instruct you don't attempt to gather any
20 information about this case from any source outside the
21 courtroom.

22 Also because you have an open mind if you begin to
23 discuss the issues involved in this case or the people that
24 are involved in this case, even among yourselves, you may
25 begin to formulate opinions about the case as a result of

1 those conversations and you haven't heard the first word of
2 testimony in this case yet. So I'm going to urge you don't
3 discuss the case with anyone, even among yourselves until I
4 ask you to begin your deliberations.

5 So during your lunch break if you're talking to a
6 family member or a friend, it's okay to tell them, you
7 know, I've been selected to serve on a jury and I got to go
8 back to the courthouse and that's as far as the
9 conversation should go. If they ask you what the case is
10 about you start talking about the weather; you can start
11 talking about sports, whatever you want to talk about but
12 not this case. So don't discuss it with anyone until I ask
13 you to begin your deliberations in the matter.

14 It is a crime in this state for someone to try to
15 tamper with or influence a jury improper. So if someone
16 tries to contact you about your service on the jury don't
17 talk to them, report that contact immediately when you come
18 back to the courthouse; we'll take the appropriate actions
19 should someone be trying to contact you about your service
20 on the jury. Again, that is very improper for that to
21 happen.

22 I don't expect this case will be reported in the media
23 but I don't control what they put in the media obviously,
24 so, if you happen to be out and there is a radio station
25 that says something about this or a TV station or a

1 newspaper has an article or something, don't read it, don't
2 watch it, don't listen to it. Again, the only information
3 you're supposed to consider in reaching your verdict is the
4 evidence you get in the courtroom and the testimony in the
5 courtroom. So don't listen to, watch, or read any media
6 reports about the case. I don't anticipate that being a
7 problem but just be aware that that's the case.

8 So in a nutshell my instructions, and this will be the
9 case every time you leave the courthouse during the trial,
10 is that you should not discuss the case with anyone. You
11 should not try to gather any information on your own. You
12 should not listen to, watch, or read media reports and if
13 anyone tries to contact you about your service, please
14 report that as soon as possible without discussing it with
15 them.

16 Now the bailiff's gonna take you out. They will show
17 you where to come back. We should be able to start shortly
18 after Two o'clock. Thank you very much and hope you have a
19 good lunch break.

20 (JURY EXITS COURTROOM ON LUNCH RECESS AT 12:21 P.M.)

21 THE COURT: All right, Mr. Nielson, you have several
22 motions. I'll be happy to hear from you.

23 MR. NIELSON: Will you beg my indulgence for just one
24 moment, your Honor?

25 THE COURT: Certainly.

1 (PAUSE.)

2 MR. NIELSON: Yes, your Honor. At this point we would
3 ask the State to say that they have in fact complied with
4 Brady and that we have all, anything that would be
5 applicable under Rule 5 and Brady.

6 THE COURT: Ma'am?

7 SOLICITOR HAMILTON: We have complied, your Honor.

8 THE COURT: Thank you.

9 SOLICITOR HAMILTON: The State request reciprocal that
10 they comply with Rule 5 too.

11 MR. NIELSON: Yes, your Honor.

12 THE COURT: All right. Very good. Now.

13 MR. NIELSON: The Defense at this time would move,
14 there was a great amount of money found in the car in this
15 case, your Honor, and I will -- I would like to pass a case
16 up, actually two cases to both sides, to both you and the
17 Solicitor's office. Mostly relying on *State v. Cherry*
18 because *State v. Moore* is an unpublished opinion. I only
19 hand it up because it kind of outlines how *State v. Cherry*
20 should be -- what should happen under *State v. Cherry*.

21 *State v. Cherry*, there was a large amount of money in
22 this case that came out of this county and it was ruled on
23 by our Court of Appeals, and they basically said that in a
24 case where there's money being used there has to be some
25 sort of connection between that money and what - it being

1 taken and the drugs in question. In Cherry specifically
2 the law enforcement testified on the witness stand that
3 there was a large amount of twenty dollar bills and the
4 twenty dollar bills are what people normally pay and use
5 for crack cocaine.

6 In the discovery in this case I never received any
7 pictures of money. I never received anything that shows
8 the break down of the bills to show that they are
9 attributing to specific amounts or specific types of bills
10 to the sell of marijuana. And just having twenty-one
11 hundred and seventeen dollars in a car does not necessarily
12 attribute it to these drugs in any way shape or form, and
13 there has to be some kind of nexus for the State to be
14 allowed to talk about it.

15 Furthermore in this case if you read the original
16 warrant in the case and if you read the - Officer Taylor's
17 police report who was the lead investigator on the case,
18 you will not find any mention in the warrant about drugs,
19 or I mean not about drugs, but about money. They say that
20 they were -- it was possession with intent to distribute
21 because of loose -- 12.77 grams of loose marijuana, a
22 digital scale, and numerous torn baggies, grocery bags for
23 packaging. It in no where in the warrant does it note --
24 does it mention that there was money that was taken that
25 they thought was part of the presumption of intent to

1 distribute.

2 So what we're asking for, your Honor, is the State not
3 to be allowed to bring up the money in any way shape or
4 form. I don't believe there have been - that there's a
5 proximity and I don't believe there is a nexus. I don't
6 believe there is anything in what we've been noted for in
7 the warrant or in the police report or anywhere else in
8 discovery that tells me that this twenty-one hundred
9 dollars has anything to do with the drugs that were found
10 with Mr. Robinson on that day.

11 THE COURT: I'll hear from the State on that.

12 SOLICITOR HAMILTON: Thank you, your Honor. In
13 regards to State versus Cherry I've not had a chance to
14 fully read this case but it looks like at the top that it
15 has severe negative treatment and was modified at a
16 rehearing November 13th, 2001 which is months after this
17 case -

18 THE COURT: You talking about Cherry now?

19 SOLICITOR HAMILTON: Yes, your Honor.

20 THE COURT: All right.

21 SOLICITOR HAMILTON: So I don't know how it was
22 modified and superceded but it looks like negative
23 treatment on that. But the State's position is kind of
24 going with the res gestae theory that the State needs to
25 have that to present a full context of the crime. It would

1 be different if he just no drugs in the car, money in his
2 compartment, no issues there. But we have torn baggies
3 that are consistent with distribution of marijuana. We
4 have marijuana scattered throughout the car; marijuana that
5 he had been eating to reduce the amount of marijuana within
6 that vehicle. Additionally we have scales and we have a
7 phone found in close proximity to him with text messages
8 regarding distribution; therefore, we believe the money
9 gives context as to how this crime was committed and
10 context as to the elements of the crime in which we have to
11 present which is distribution of marijuana.

12 THE COURT: Well, in looking -- and I've just now
13 looked at Cherry -- they talk in terms of it being in
14 twenty dollar bills and a police officer testified that
15 that was what was normally used to buy, the kind of bagged
16 drugs that were being sold typically. Any evidence about
17 the -- do you intend to present any evidence about the
18 money or the character of the money or what it might
19 somehow show? I don't know what the money was. I know an
20 amount now but I don't know what it was.

21 SOLICITOR HAMILTON: The State was going to present a
22 video, the car video, and you see the officer pull --
23 there's various items of money throughout the car. You
24 have some in his hat, you have some in his wallet, you have
25 some in the car scattered throughout. And then you have a

1 big amount of money that comes from the glove box that you
2 can see the officer pull out on the video and it's a huge
3 ball of twenties and that's all you see. We were just
4 going to show the video and just state that it was twenty-
5 one hundred, approximately twenty-one hundred dollars on
6 his person at the time that he was taken into custody.

7 The jury can do what they want at that time but we
8 believe it's the defense -- the State's gonna present
9 illegally this was in context to him distributing marijuana
10 because we have text messages stating do you have change
11 for a twenty. How many grams do you want? it's ten
12 dollars a gram.

13 So we believe that going with the text messages that
14 are stating that he's selling marijuana for ten dollars, do
15 you have change for a twenty, in addition to the money
16 found in close proximity to the drugs, the scales, all the
17 evidence of distribution this gives context as to the crime
18 that was committed and res gestae essentially that the
19 State is doing -- using this money to show the context of
20 the crime in which it occurred and additionally to meet the
21 elements of possession with intent to distribute which we
22 have to prove.

23 THE COURT: Just give me a moment to look at this.

24 (PAUSE.)

25 THE COURT: What's interesting, Counsel, is that in

1 both of these cases the money was admitted.

2 MR. NIELSON: It was, your Honor. And my point in
3 handing these two cases up is nothing in this case is
4 similar to these two cases. In these cases the police were
5 focused on the amount of the money; the types of bills that
6 were used, and not necessarily the full amount. The one
7 case said that even though there were other types of bills
8 because there were six hundred dollars worth of twenties
9 that it was fine to be used because they were relying on
10 the twenties.

11 What I'm saying is based on the reports that I've
12 read, based on the police reports, based on the warrants
13 themselves, basically the warrants that were written by the
14 police officer's; there's nothing that indicates the
15 officer's were using the amounts and the marijuana sells
16 for this much and -

17 THE COURT: But they haven't testified yet on that
18 point.

19 MR. NIELSON: Absolutely. But there's nothing in
20 their written reports or in warrants that show that that
21 was any part of the focus of their investigation. There's
22 not list in evidence that shows what types of bills were
23 taken from the car, none of that exist. So there's nothing
24 that shows that this money is -

25 THE COURT: Well in writing but the officer's

1 certainly could testify what they saw ---

2 MR. NIELSON: Yes, your Honor.

3 THE COURT: --- when they did it and what they
4 recovered.

5 MR. NIELSON: Yes, your Honor.

6 THE COURT: And I don't know that I could rule in
7 limine that that is not admissible at this point in time
8 since these two cases admitted it.

9 MR. NIELSON: I understand, your Honor.

10 THE COURT: If there was sufficient nexus to either
11 the money, the crime, or it being used in such certain
12 fashion. Certainly to have that kind of money though
13 spread about in various pin locations in a car from what I
14 just heard.

15 MR. NIELSON: Well I think it was in two locations. I
16 think it was in the glove compartment and his wallet, your
17 Honor.

18 THE COURT: I don't know.

19 MR. NIELSON: That's where I -

20 THE COURT: She said about the car. Maybe -
21 Could you help me with that, Ms. Hamilton?

22 SOLICITOR HAMILTON: It was some, I believe, on the
23 seat. We have a five dollar bill on the seat. And I
24 believe there was some found in between the seat. Not a
25 substantial amount of money but its money -

1 THE COURT: The majority was a roll in the glove box?

2 SOLICITOR HAMILTON: Yes, your Honor.

3 THE COURT: Okay.

4 MR. NIELSON: And then there was another fairly large
5 amount in his wallet.

6 SOLICITOR HAMILTON: Yes.

7 MR. NIELSON: And so most of the money was in two
8 different -- two separate locations inside the car.

9 THE COURT: Okay.

10 MR. NIELSON: And so we're simply asking -- we're
11 simply brining this to the Court attention and if I need to
12 make an issue of it later when the cops are testifying we
13 can --

14 THE COURT: Well I'm gonna ask that you make a
15 contemporary -- contemporaneous objection.

16 MR. NIELSON: Okay.

17 THE COURT: And once we've heard how they intend to
18 tie it to the transaction, if at all, and rule on it at
19 that time. Because I do note that the trial judge, this is
20 in the case that's an unpublished more.

21 MR. NIELSON: Yes, your Honor.

22 THE COURT: The trial judge ruled the evidence of the
23 twenty dollar bills would be admissible if an officer
24 testified a single crack cocaine rock typically sells for
25 twenty dollars. Without further testimony however the

1 other money, not the twenties, did not constitute
2 circumstantial evidence and would not be admitted.

3 MR. NIELSON: Yes, your Honor.

4 THE COURT: So what they're looking for is some kind
5 of testimony that somehow ties this to a drug transaction.

6 MR. NIELSON: Yes, your Honor.

7 THE COURT: And that's what I'll be looking for when
8 they testify.

9 MR. NIELSON: And I'm sure you'll be expecting this
10 but I will probably be asking for a proffer when we get to
11 that point in the trial.

12 THE COURT: Okay. We can do that.

13 MR. NIELSON: I understand.

14 THE COURT: It won't be a problem.

15 MR. NIELSON: I understand, your Honor.

16 THE COURT: But I'm not gonna rule on it at this point
17 in time.

18 MR. NIELSON: Thank you, your Honor.

19 THE COURT: All right.

20 MR. NIELSON: This next one is similar to No. 3.
21 Defense Motion No. 4 is text messages of the receipt from
22 the phone. There the State, I believe, is trying to go
23 back two weeks based on my conversations with Ms. Hamilton
24 as far as text messages that were received. I don't
25 believe that there is any nexus between the text messages

1 that was two weeks ago in the drugs that he's on trial for
2 today. I would ask your Honor to limit their use of text
3 messages to the say he was arrested. That will provide
4 them with some of the text messages that Ms. Hamilton is
5 talking about including some that she believes had
6 something to do with drug transactions. But I believe
7 anything further back than the day of the arrest is
8 potentially looking at prior bad acts that were not
9 arrested for. Just because if he dealt drugs three weeks
10 ago or two weeks ago does not mean he was dealing drugs
11 today. It does not mean he intended to deal these drugs
12 that we're talking about today.

13 We're talking about 10.3 grams of marijuana that he
14 had in the car.

15 THE COURT: Ms. Hamilton, what do you have to say
16 about that?

17 SOLICITOR HAMILTON: The State's position is, your
18 Honor, that this is a continuous act. He's continually
19 based on the text messages that we see continuing to daily
20 deal marijuana. It is a continuous act and we have a case
21 State versus Gore which I have handed to the Defense, your
22 Honor. May I approach?

23 THE COURT: Please.

24 SOLICITOR HAMILTON: It's a very brief case ---

25 (DOCUMENTS RECEIVED UP BY THE COURT.)

1 SOLICITOR HAMILTON: --- which speaks on the fact that
2 in this case there was I believe money. Testimony was
3 admissible to establish the element of intent. The
4 evidence that appellate sold cocaine from the trailer on
5 two occasions only one month earlier tends to establish his
6 intent regarding the cocaine in his possession at that time
7 in question. The probative value of this evidence
8 outweighs it's prejudicial effect and we find no error in
9 the trial judge's ruling.

10 In this case we're not even trying to go a month out.
11 We're going to 11-16-2017. This crime occurred - well
12 November 16th, 2017 and this occurred on November 29th,
13 2017. That is not even a month. And it's close proximity
14 and a continuous event. We would argue again the res
15 gestae theory that this is - actually this is not even --

16 THE COURT: So you're saying this shows maybe a course
17 of dealing or intent to do it as well as motive -- mode of
18 doing business that sort of thing?

19 SOLICITOR HAMILTON: Yes, your Honor.

20 THE COURT: Okay.

21 SOLICITOR HAMILTON: And we believe that it is not too
22 far and this case State versus Gore even allowed
23 transactions within a month out. We're not even trying to
24 get it that far.

25 THE COURT: This case you just gave me, Gore, is from

1 a month earlier.

2 SOLICITOR HAMILTON: Yes, your Honor.

3 MR. NIELSON: Yes, your Honor. If you look at State
4 v. Gore it is also if you read the first paragraph in State
5 v. Gore which I also tend to focus on. In that case the
6 appellate specifically said I've never sold marijuana out
7 of that trailer or sold drugs out of that trailer. And
8 they brought in somebody else, somebody to testify against
9 what he had said. So if he was to get on the witness stand
10 and say I never sold drugs in my life then that opens up
11 all sorts of things that the State can then cross-examine
12 him against and they can call another witness to testify
13 too. That doesn't change what they can do in their case in
14 chief. They can't bring up prior bad acts.

15 THE COURT: Now you have seen this - these text
16 messages?

17 MR. NIELSON: Yes, your Honor.

18 THE COURT: All right. She indicates that it is a
19 course of dealing that shows - and she says it was daily
20 for two weeks.

21 Have you got that many, Ms. Hamilton?

22 SOLICITOR HAMILTON: I do. Would you like me to hand
23 them up, your Honor, and you can --

24 THE COURT: No, that's okay. I'm gonna take your word
25 for it unless he disputes --

1 MR. NIELSON: I will point out it was not daily.
2 There were some days that she's talking about text messages
3 where he received messages and never responded. And she's
4 printed out at least on three different days where text
5 messages were sent to his phone and sure he received them
6 but he never responded to them. I don't know how someone
7 asking him for drugs --

8 THE COURT: Well did he ultimately respond to those
9 text messages?

10 MR. NIELSON: Upon further prodding he responded to
11 the same people. But irregardless of all of that it's
12 still prior, it's still -- I don't see how you get around
13 prior bad acts and it being --

14 THE COURT: Well the way you get around prior bad acts
15 is whether or not the probative value outweighs the
16 prejudicial effect. And it can be used to show intent, a
17 course of dealing, a pattern of activity, a pattern of
18 behavior. That's how you get around it. And she's saying
19 that's what she intends to do. And so I'm trying to get to
20 address that part of the issue.

21 MR. NIELSON: Even -- Sorry, your Honor, I don't mean
22 to interrupt.

23 THE COURT: That's okay. I'm trying to get to the
24 question of whether or not for two weeks, a two-week
25 snapshot from his cell phone that is a pattern of

1 communicating with people about drug deals by using text
2 messages; that the people involved are the same people;
3 there's discussion of transactions during that period. I
4 haven't read 'em all but I'm just asking you, do you
5 dispute that that's what it does?

6 MR. NIELSON: I just --

7 THE COURT: I will read 'em if I have to.

8 MR. NIELSON: I understand. I understand and I think
9 maybe, your Honor, you will need to read them. I dispute
10 that they give a pattern of dealing. They give a pattern
11 of people asking him, I will say that.

12 THE COURT: But you said he did eventually talk to ---

13 MR. NIELSON: He did.

14 THE COURT: --- respond to these people.

15 MR. NIELSON: He did.

16 THE COURT: Okay.

17 MR. NIELSON: And I think once or twice when someone
18 said I need a gram he would give a number of some kind and
19 so I do not dispute that he did in fact respond at certain
20 times. But he also ignored or didn't see but I would say
21 ignored large amounts of them that a drug dealer is not
22 going to ignore people wanting drugs if he's dealing drugs
23 if that's the course of his business.

24 THE COURT: Why people don't answer text messages I
25 don't - I don't answer all of 'em I get I know that.

1 MR. NIELSON: I don't either, your Honor, but if your
2 business is -- their showing that intent and a course over
3 time his business is to sell drugs ---

4 THE COURT: All right. Well hand 'em and let me see
5 'em. I'm gonna have to look at 'em.

6 MR. NIELSON: --- he should respond to those.

7 SOLICITOR HAMILTON: Your Honor, the State intends to
8 actually admit the entire rip of the phone, but I have
9 evidence that I'm going to put in front of the jury just to
10 highlight some specific points of this. I hand these up.

11 The State's argument would essentially be why do they
12 know to text him for drugs. I don't -- they know that he
13 has them, they know to get them from him. That is what we
14 are showing with this that we don't randomly text people
15 that we don't know sell drugs. They're texting him because
16 they know that he has a supply and they know that he can
17 meet their demand therefore that is why they are texting
18 him and that is what we are trying to show.

19 MR. NIELSON: Your Honor, I can't cross-examine these
20 people off of a text message as to why they know him.

21 THE COURT: Are you going to let me read them?

22 MR. NIELSON: Yes, your Honor.

23 THE COURT: Thank you.

24 MR. NIELSON: Just in response to what the Solicitor
25 was saying.

1 THE COURT: I understand.

2 (PAUSE.)

3 THE COURT: So the period of time you're talking about
4 is from the 16th to like the 28th that I see. Is that the
5 last one?

6 SOLICITOR HAMILTON: He actually has one from the
7 29th.

8 THE COURT: 29th.

9 SOLICITOR HAMILTON: Thirty minutes before this
10 occurred.

11 THE COURT: I see. That's when the arrest occurred.

12 SOLICITOR HAMILTON: Yes, your Honor.

13 THE COURT: The 29th. I see.

14 Yes, sir, I'll hear from you if there's anything else
15 you want to tell me.

16 MR. NIELSON: No, your Honor.

17 THE COURT: Okay. I do find that the text messages do
18 exhibit what appears to be messages concerning possible
19 drug transactions. They do occur over a period of time but
20 they are -- they occur fairly regularly. For example on
21 the 16th I believe there are on this report looks like six
22 different messages. 17th there's probably -- let me get it
23 right here. Seven through twenty-two so that's about
24 fifteen messages. And the days after that follow the same
25 pattern. I realize that he doesn't respond always directly

1 to the message but it appears from what I can see there's a
2 fairly regular group of people that he's dealing with and
3 he does eventually respond to those people.

4 I'm gonna find that the probative value does outweigh
5 the prejudicial effect; that it could be used to show
6 intent. Also a course of dealing or a method of dealing
7 over a period of time and I'm going to find that it can
8 come in.

9 MR. NIELSON: Thank you, your Honor. And then our
10 last motion in limine is preventing the State from using
11 language such as search for the truth that is prohibited by
12 *State v. Beatty*.

13 THE COURT: I think those cases to that effect and I
14 would urge you not to make those kinds of comments to the
15 jury.

16 SOLICITOR HAMILTON: I will --

17 THE COURT: I try to avoid that myself. But if you
18 hear something like that please object ---

19 MR. NIELSON: Thank you, your Honor.

20 THE COURT: --- and I'll try to do a curative
21 instruction.

22 MR. NIELSON: Thank you, your Honor.

23 THE COURT: All right, any matters from the State
24 before we break for lunch?

25 SOLICITOR HAMILTON: Just briefly, I covered the Rule

1 5 issue that I had. I did want to bring up the possible
2 impeachment offenses. I don't know if you want to address
3 that if he decides to take the stand but he does have three
4 prior felonies that I would just mention that they are
5 felonies and not mention the nature of these offenses.

6 THE COURT: Well, he's listed on the potential witness
7 list but I have not inquired of him concerning his right to
8 remain silent. We'll do that at the appropriate time
9 during the trial. And in the meantime obviously he can
10 consult with his lawyer and anyone else he'd like to talk
11 to about his right to remain silent or his desire to
12 testify.

13 MR. NIELSON: Thank you, your Honor.

14 SOLICITOR HAMILTON: And then one other matter, your
15 Honor. We wanted to request sequestration of the wife
16 during the trial. And we have a case agent who is going to
17 be Officer Taylor in this case.

18 MR. NIELSON: And obviously I am not requesting
19 sequestration but if you sequester I would ask for both
20 sides to be sequestered. I will tell the Court the wife is
21 on my witness list for one very specific reason that will
22 not be tainted by her being in the courtroom but I will
23 leave it in your Honor's discretion.

24 THE COURT: All right. Well generally if it's
25 requested by either side I grant sequestration request.

1 There is -- the case officer can stay and of course the
2 Defendant can stay. I don't know if there's anyone else
3 necessary on the defense side. There are no victims in
4 this case that such that we don't have to worry about that.

5 I would caution anybody who intends to be a witness in
6 the case you should remain outside the courtroom. You
7 should not discuss your testimony either past, present, or
8 future testimony with anyone until the case has been ended
9 and a verdict's been rendered. Anything else?

10 SOLICITOR HAMILTON: Nothing from the State, your
11 Honor.

12 MR. NIELSON: No, your Honor.

13 THE COURT: All right. Then we will reassemble at Two
14 o'clock and hopefully we will have a jury and be ready to
15 proceed at that time.

16 SOLICITOR HAMILTON: Thank you, your Honor.

17 THE COURT: Ma'am, I'm going to have -- Counsel, let
18 me -- Counsel, I'm going to have these documents marked as
19 a Court's Exhibit for purposes of our hearing.

20 MR. NIELSON: Yes, your Honor.

21 THE COURT: At this time they're not admitted into
22 evidence. I'll let you do that later on but it will be
23 held because I think somebody may have to review what I
24 reviewed.

25 SOLICITOR NEWKIRK: Your Honor, may I make a copy of

1 those before we mark them as Court's Exhibits? I can take
2 the Defense with me just to make sure.

3 SOLICITOR HAMILTON: I can still mark it as a State's
4 Exhibit if we have a Court's Exhibit, correct?

5 THE COURT: Sure.

6 SOLICITOR HAMILTON: Yes, your Honor.

7 THE COURT: Right now it is just a Court's Exhibit and
8 later on maybe it will become an exhibit in the trial.
9 We'll see.

10 SOLICITOR HAMILTON: Hopefully.

11 THE COURT: Thank you. All right, we're in recess
12 until Two o'clock. Let me put one other thing on the
13 record. Mr. Robinson, I have not heard from the State that
14 you've been a flight risk during the time the charge has
15 been pending. You have appeared for trial today; I am not
16 going to take you into custody at this point in time. I
17 will tell you that you have pled guilty on a charge and
18 obviously gotten that plea and sentencing is forth coming.
19 We will resume the trial of the case at Two o'clock; should
20 you fail to appear at that time I will issue a bench
21 warrant for your arrest, you will be tried in your absence
22 on the remaining charge and if you fail to appear once a
23 verdict would be rendered in a trial in your absence if you
24 fail to appear I would issue a sentence in both cases.

25 Do you understand what I'm saying?

1 MR. ROBINSON: Yes, sir.

2 THE COURT: So you need to be present otherwise I'll
3 issue a bench warrant but we'll proceed in your absence.

4 Do you understand that?

5 MR. ROBINSON: Yes, sir.

6 THE COURT: All right. Two o'clock. Thank you very
7 much.

8 (WHEREUPON, COURT'S EXHIBIT NO.'S 1 THROUGH 8
9 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

10 (COURT IN LUNCH RECESS AT 12:48 P.M.)

11 (COURT BACK IN SESSION IN THE MATTER OF *STATE VERSUS*
12 *MAURICE ROBINSON*, WEDNESDAY, JULY 11TH, 2018 AT 02:14 P.M.)

13 THE COURT: Thank you very much. You can be seated.

14 All right, we're back on the record in the case of
15 Maurice Robinson. I've received paperwork from the
16 attorneys indicating that Mr. Robinson now wishes to enter
17 a plea. Is that true, Mr. Robinson?

18 MR. ROBINSON: Yes, sir.

19 THE COURT: All right. Mr. Robinson, earlier you were
20 placed under oath concerning your discussions with this
21 court. Do you acknowledge that you're still under oath at
22 this time?

23 MR. ROBINSON: Yes, sir.

24 THE COURT: Okay. Now, Mr. Robinson, the charge
25 that's before me is possession with intent to distribute

1 marijuana. It's a 3rd of subsequent offense. It is a non-
2 violent offense; it was indicted by the Grand Jury. It's
3 presented to me without recommendations or negotiation.

4 I have not looked up the sentencing range on this.

5 Could you help me with that, ma'am?

6 SOLICITOR HAMILTON: Yes, your Honor. It is five to
7 twenty-five years.

8 THE COURT: Okay.

9 MR. NIELSON: Five to twenty isn't it?

10 SOLICITOR HAMILTON: I have twenty-five but you might
11 be --

12 THE COURT: Let's check it out and be sure we tell him
13 correctly.

14 SOLICITOR HAMILTON: It's twenty, your Honor.

15 THE COURT: It's twenty. Okay.

16 SOLICITOR HAMILTON: Sorry.

17 THE COURT: That's okay.

18 SOLICITOR HAMILTON: Mis-typed it.

19 THE COURT: Mr. Robinson, the sentencing range on this
20 particular offense is five years up to twenty years.

21 Do you understand that, sir?

22 MR. ROBINSON: Yes, sir.

23 THE COURT: And it's a drug offense but since this is
24 your third conviction it appears at least for drugs you are
25 aware that the more charges you get the worse the penalties

1 get. Do you understand that this has an enhancement
2 feature? Do you understand that?

3 MR. ROBINSON: Yes, sir.

4 THE COURT: Okay. So if you were to be found guilty
5 of future drug offenses this plea could affect those
6 sentences in the future. Now, you are here with your
7 lawyer. Have you had a chance to discuss this plea with
8 him?

9 MR. ROBINSON: Yes, sir.

10 THE COURT: And have you ask all the questions you
11 need to ask of him concerning this matter?

12 MR. ROBINSON: Yes, sir.

13 THE COURT: Do you need to discuss it with him any
14 further at this point in time?

15 MR. ROBINSON: No, sir.

16 THE COURT: And is there anything that you feel he
17 ought to do in connection with this charge that he's not
18 yet done?

19 MR. ROBINSON: No, sir.

20 THE COURT: All right. Now, Mr. Robinson, earlier I
21 had ask you about your mental capacities. I assume that
22 that has not changed; is that right?

23 MR. ROBINSON: Yes, sir.

24 THE COURT: You're able to handle your plea today, am
25 I correct?

1 MR. ROBINSON: Yes, sir.

2 THE COURT: Okay. Now, Mr. Robinson, as to this
3 particular charge you have the right to enter either a
4 guilty plea or a not guilty plea. How are you pleading?

5 MR. ROBINSON: Guilty.

6 THE COURT: And, Counselor, I'm sure you've discussed
7 this plea now with Mr. Robinson thoroughly, I would think,
8 at this point in time.

9 MR. NIELSON: Yes, your Honor.

10 THE COURT: Are you satisfied that Mr. Robinson
11 understood those discussions you've had with him?

12 MR. NIELSON: Yes, your Honor.

13 THE COURT: He's indicated to me that he has decided
14 to enter a guilty plea on this charge. Based on your
15 knowledge of the case, the discovery you've reviewed, and
16 the laws that you've reviewed, do you agree with that
17 decision?

18 MR. NIELSON: I do, your Honor.

19 THE COURT: Has he been able to assist you in handling
20 his case?

21 MR. NIELSON: He has, your Honor.

22 THE COURT: Mr. Robinson, we talked about this earlier
23 but I'm gonna go ahead and go over it again because we've
24 got to deal with the sentencing both in this case and the
25 HTO case that you've already talked to me about.

1 You're 38 years of age I know. You indicated you are
2 married; is that right?

3 MR. ROBINSON: Yes, sir.

4 THE COURT: And I believe you said you had children?

5 MR. ROBINSON: Yes, sir.

6 THE COURT: All right. How many children, help me with
7 that again?

8 MR. ROBINSON: Three.

9 THE COURT: Three children. That's right. And as far
10 as employment, tell me about any employment you have.

11 MR. ROBINSON: I'm unemployed at the moment.

12 THE COURT: Okay. I think you indicated you were
13 expecting a job in the not too distant future?

14 MR. ROBINSON: Yeah, Monday.

15 THE COURT: Maybe a warehousing job or something of
16 that nature?

17 MR. ROBINSON: Yes, sir.

18 THE COURT: Okay. I think that's what you told me.

19 Now, Mr. Robinson, as far as this charge is concerned
20 has anybody in any way threatened you, put pressure on you,
21 intimidated you, used violence against you, done anything
22 to try to make you enter that plea?

23 MR. ROBINSON: No, sir.

24 THE COURT: So are you doing that of your own free
25 will?

1 MR. ROBINSON: Yes sir.

2 THE COURT: Now I assume you've had enough time to
3 discuss it with your lawyer and anybody else you wanted to
4 talk it over with?

5 MR. ROBINSON: Yes, sir.

6 THE COURT: And did anybody make any promises,
7 guarantees, or assurances to you, about any matters
8 including such things as pardon, parole, probation, early
9 release, or length of sentence to get you to plead?

10 MR. ROBINSON: No, sir.

11 THE COURT: Anybody offered you anything of value to
12 get you to plead?

13 MR. ROBINSON: No, sir.

14 THE COURT: Now you know if you enter the guilty plea
15 you give up your Constitutional rights. We talked about
16 that in the earlier plea, I'll go over it briefly now to be
17 sure you understand it. You have a Constitutional right to
18 have your case indicted by a Grand Jury and that's already
19 happened. You have a Constitutional right to an attorney,
20 he's present, you need to consult with him you certainly
21 have the right to do so at any time.

22 You have the right to a trial by jury. As you are
23 aware we've already selected a jury in this case, they're
24 seated -- they will be seated shortly if we go forward.
25 And of course you have that right to go forward with a jury

1 trial if you wish to do so.

2 If you did go forward the State would have the burden
3 of proof in this case and that burden would be to prove
4 your guilt to that jury by proof beyond a reasonable doubt.
5 And what they would have to prove is prove every element of
6 the crime to the jury by proof beyond a reasonable doubt.
7 In other words, that you possessed marijuana illegally to a
8 certain extent with the intent to distribute that
9 marijuana.

10 You understand that that's what they would have to
11 prove beyond a reasonable doubt?

12 MR. ROBINSON: Yes, sir.

13 THE COURT: Now you wouldn't have to prove anything at
14 the trial because you're presumed to be innocent. You
15 could present a defense if you wished to but you're not
16 required to do that. You have the right to have witnesses'
17 subpoenaed if you wish to do that. You'd have the right to
18 question or confront anyone who testified at the trial.
19 You'd have the right to present any defense you felt was
20 appropriate at the trial, and you'd be given the
21 opportunity to try to suppress the State's evidence against
22 you. We've already talked about some of that information.

23 Now you always have the right to remain silent and if
24 you chose to remain silent during that trial as the trial
25 judge I would instruct the jury that your silence could not

1 be used against in any way.

2 Now, you're familiar then with those right; am I
3 correct?

4 MR. ROBINSON: Yes, sir.

5 THE COURT: And you understand if I accept the plea
6 you've given those rights up?

7 MR. ROBINSON: Yes, sir.

8 THE COURT: Does that fact cause you to want to change
9 this plea now?

10 MR. ROBINSON: No, sir.

11 THE COURT: Are you pleading guilty because you are
12 guilty?

13 MR. ROBINSON: Yes, sir.

14 THE COURT: All right. Madam Solicitor, I'll ask you
15 to please state the facts and then I'll ask Mr. Robinson
16 about those facts.

17 SOLICITOR HAMILTON: Thank you, your Honor.

18 THE COURT: Yes, ma'am.

19 SOLICITOR HAMILTON: On November 29th of 2017 on
20 Spruce Street within York County the Defendant was pulled
21 over for multiple traffic violations. Upon officers
22 approaching the car they noticed that he was eating
23 marijuana. Upon opening the door they found that he had
24 marijuana scattered throughout the car; scattered all over
25 him, and he had marijuana within his mouth.

1 Additionally found in that vehicle was a scale, a cell
2 phone, and baggies, and Two Thousand one hundred and
3 seventeen dollars in cash. The baggie that was found, the
4 baggies that were found were grocery bags that had been
5 torn evidencing possible distribution of the marijuana that
6 was found on his person.

7 Upon -- as we stated in pretrial seizure of the phone
8 search for on the phone we found text messages showing
9 evidence of distribution up to a month prior to this
10 incident. We even have a text message the day of, thirty
11 minutes before he's pulled over stating, in our opinion,
12 Yo, my momma needs a G gram, is what we would have argued
13 in that case. He states Spruce, that he needed spruce.
14 Spruce is ultimately where he was stopped. So, your Honor,
15 we would state that this is possession with intent to
16 distribute marijuana based on that evidence.

17 Additionally the Defendant has multiple convictions
18 but two prior recent marijuana's convicted on 9-16-2013.
19 Possession with the intent to distribute marijuana 3rd
20 offense, and another possession with the intent to
21 distribute marijuana 3rd offense making this a 3rd offense.

22 Additionally, your Honor, the State would like to go
23 into the Defendant's record and take -- would you like to
24 take the State's position at this point as to sentencing?

25 THE COURT: I'll get it in just a moment.

1 SOLICITOR HAMILTON: Okay.

2 THE COURT: I wanted to get the facts at this point in
3 time.

4 SOLICITOR HAMILTON: Okay. Thank you, your Honor.

5 THE COURT: All right. Mr. Robinson, you heard her
6 state the facts surrounding the arrest and what was going
7 on at that time. Did you hear her state that?

8 MR. ROBINSON: Yes, sir.

9 THE COURT: Did you understand what she said?

10 MR. ROBINSON: Yes, sir.

11 THE COURT: Is that information true?

12 MR. ROBINSON: Part of it is.

13 THE COURT: Well tell me what you disagree with.

14 MR. ROBINSON: Eating marijuana and selling really.

15 THE COURT: You deny that you were eating marijuana?

16 MR. ROBINSON: Yeah, I deny that. I deny selling it
17 too but I smoke marijuana.

18 THE COURT: Well you can't deny possession with intent
19 to distribute because that's what you're pleading guilty
20 to.

21 MR. ROBINSON: Yeah, I know it.

22 THE COURT: If you deny that we're going forward.
23 Talk to your lawyer.

24 (PAUSE.)

25 MR. ROBINSON: I don't deny that.

1 THE COURT: I beg your pardon?

2 MR. ROBINSON: I don't deny distributing.

3 THE COURT: So you are denying distributing?

4 MR. ROBINSON: No, I said I do not.

5 THE COURT: You do not deny it?

6 MR. ROBINSON: Yes, sir.

7 MR. NIELSON: Your Honor, and I'll get more into that
8 in mitigation as well.

9 THE COURT: Well I understand that, but if the facts
10 were true that there were scales, baggies, and things of
11 that nature, the indication would be that there was
12 evidence of distribution to me. And he's admitted at least
13 to that much.

14 MR. NIELSON: Yes, your Honor.

15 THE COURT: All right. Is that true, Mr. Robinson?

16 MR. ROBINSON: Yes, sir.

17 THE COURT: Okay. Now, Mr. Robinson, have you told me
18 the truth today about this?

19 MR. ROBINSON: Yes, sir.

20 THE COURT: Anyone tell you how to answer my
21 questions?

22 MR. ROBINSON: No, sir.

23 THE COURT: The answers you've given me were they your
24 own answers?

25 MR. ROBINSON: Yes, sir.

1 THE COURT: Is there any part of this you want to go
2 back over and change at this time?

3 MR. ROBINSON: No, sir.

4 THE COURT: All right. Then I'm going to accept the
5 plea. I find it's been freely voluntarily given, you're
6 aware of the charge, penalties, had the advice of counsel
7 you're satisfied with; there is a factual basis for the
8 plea. At this time I want to hear from your lawyer, Mr.
9 Robinson, and then I'll give you a chance to speak to me if
10 you'd like to do so.

11 Counsel.

12 MR. NIELSON: Thank you, your Honor.

13 THE COURT: Yes, sir.

14 MR. NIELSON: May it please the Court. Its been my
15 privilege to represent Mr. Robinson. I'm speaking both to
16 the HTO and to the PWID at this point.

17 THE COURT: Yes, sir.

18 MR. NIELSON: I'll start with a little bit on the HTO.
19 I believe that Mr. Robinson since he's been arrested for
20 this has learned the importance of this. Every time I've
21 ever met with Mr. Robinson in my office, or here for a
22 docket day, or at any other point, his wife has always been
23 with him partially because she needs to drive him to get
24 here.

25 THE COURT: I understand. That's good. That's what

1 he's supposed to do now.

2 MR. NIELSON: He's taken that seriously I believe
3 since this arrest. He's gotten rides where he's needed to
4 go and have people help him along with that and I believe
5 that it does show some level of contrition after the fact
6 and some level of doing what he's supposed to do.

7 THE COURT: Great.

8 MR. NIELSON: Also since that date he's been enrolled
9 in Keystone here locally. And I believe he is set to
10 graduate either this week or next week from our Keystone
11 Drug Program. He tells me he has been -- it has been some
12 time since he's used anything at all and in anticipation of
13 this being a meaning to turn his life around, a meaning to
14 do it for himself and not needing to do it for a court or
15 not needing to do it for anything else. He enrolled
16 himself in Keystone which is something I never told him to
17 do. This was not on the advice of counsel. This was not
18 on the advice of anything other than Mr. Robinson wanted to
19 get his life straight.

20 THE COURT: Great.

21 MR. NIELSON: He is joined in court today by his wife
22 and his father and his daughter. The daughter -- his
23 daughter told me, who I met for the first time today, she
24 told me that Mr. Robinson has been more a father to her
25 than her biological father. She is Mr. Robinson's step

1 daughter and he loves and cares about her deeply as well as
2 his own two biological children.

3 Mr. Robinson is not -- I don't believe he's a bad man.
4 I believe he's a man who's had an addiction to marijuana.
5 Had we gone to trial he told the cops when they arrested
6 him, or when they pulled him over, I smoke weed and he said
7 that over and over to them and he never denied that.

8 He's tried to get help for that -- treatment for that
9 problem and I believe that he's been successful at it. I
10 would ask your Honor to consider something in the minimum
11 range of what you're required to do by law today and then
12 potentially suspending some more over his head if your
13 Honor feels so inclined to do so.

14 I think five years active is more than enough time for
15 him to pay the price for what he's done today, and then I
16 think he can prove to himself, his family, and the rest of
17 the community that this truly is something that's behind
18 him; that the therapy that he's went and got on his own has
19 taken and has meant something to him. I understand he has
20 a long history and a long past, and you're gonna hear that
21 in a minute from the Solicitor, but we're asking your Honor
22 to consider as well the things that he's done in his life
23 over the last six months to try to mitigate this and to try
24 to do better.

25 THE COURT: Mr. Robinson, anything you'd like to say

1 to me about this situation?

2 MR. ROBINSON: Just try to get my life right, that's
3 all, for my kids.

4 THE COURT: I understand. All right, Madam Solicitor,
5 you indicated you'd go over the record.

6 SOLICITOR HAMILTON: Yes, your Honor. The State does
7 take a position as to sentencing. The State feels -- no,
8 is asking you to sentence him somewhere between ten to
9 fifteen years based on his history, and the fact that he
10 just got out of jail when he committed this offense.

11 He was sentenced on September 16th, 2013 to two counts
12 of possession with intent to distribute marijuana 3rd
13 offense; two counts of that. And a proximity which he
14 served five years on, or sentenced to five years on.

15 He also has a DUI from 2013. Additionally driving
16 offenses: a March 11th, 2013 driving under suspension,
17 July 18th, 2012 driving under suspension. March -- June
18 5th, 2012 unlawful alcohol concentration. March -- Sorry,
19 your Honor. In 2004 he has a trafficking crack more than
20 10 grams, 2nd offense, got an eight-year sentence on that.

21 Distribution of crack 2nd offense and two counts of
22 proximity 2004. 2002 possession of marijuana 1st, a prole
23 revocation; 2001 resisting arrest, assault and battery,
24 damage to property. 2000 driving without a license. 1998
25 possession of crack and two counts of possession of a

1 stolen motor vehicle. 1997 interfering with police service
2 of process and possession of a stolen motor vehicle.

3 The State's position is that the Defendant is unable
4 to conform to the laws of this state as evidenced by his
5 record. The last sentence that he served in 2004, the
6 highest sentence he served, was eight years. I believe
7 somewhere between ten to fifteen; it's the State's position
8 that would be appropriate and that's what we're asking
9 somewhere in that range, your Honor. Thank you.

10 THE COURT: All right. Anything further from the
11 Defense?

12 MR. NIELSON: No, your Honor.

13 THE COURT: Is he claiming any credit for time served?

14 MR. NIELSON: Two days, your Honor.

15 THE COURT: Two days. Mr. Robinson, after listening
16 to your record I doubt that there's much that I could say
17 to you that probably hasn't been already said to you at
18 some point in time by some judge.

19 Perhaps it is an addiction that you have, it appears
20 that way. But it's also convictions in there for
21 distribution of other drugs. You know it's a potpourri;
22 it's a lot of different things over a lot of offenses.
23 There's got to be consequences for your actions and your
24 disregard for the law. And, you know, at some point in
25 time you get to the point where it does not appear that

1 you're interested in trying to straighten things out.

2 Now your lawyer give me some information that
3 indicates, prior to this hearing, that you've done that and
4 I've given you credit in my mind for that. But, you know,
5 at some point in time you've been up here long enough you
6 listen to what people say but you look at what they do and
7 your record is not a good one and you know that. I'm not
8 preaching at you, must stating it.

9 And the efforts you've made recently are applaudable.
10 I'm happy you've done that, but again, there's some other
11 factors here as well.

12 My sentence is not intended necessarily to punish,
13 although it has that aspect, but also to give you an
14 opportunity to get away from where you are and hopefully
15 you'll continue in that effort to try to straighten
16 yourself out and get away from this stuff when you get out.

17 You won't be there forever, but you need to start
18 taking advantage of the opportunities you get to try to
19 straighten it out. All right, I'm through talking.

20 The habitual offender is five years, it's to run
21 concurrent. And I gave you credit for the two days.

22 On the possession with intent to distribute marijuana
23 3rd or subsequent, and how many different distributions of
24 marijuana were there in his record?

25 SOLICITOR HAMILTON: I believe he had -- well

1 marijuana specifically, two, and that was in 2000 -- I
2 believe 2013.

3 THE COURT: Right.

4 SOLICITOR HAMILTON: But he has a distribution of
5 crack. And then he has proximity's ---

6 THE COURT: Right.

7 SOLICITOR HAMILTON: --- within there.

8 THE COURT: Okay. All right. The sentence is 12
9 years but I have suspended that to service of 10 with
10 probation for 2. I recommended you to the addiction
11 Treatment Unit while you're incarcerated. During your
12 probation you'll be subject to substance abuse counseling
13 and random drug testing and I've ordered that you pay your
14 fees, cost, for your attorney during that probation.

15 Mr. Robinson, I hope when you get out, you will get
16 out, that you have taken the opportunities to straighten
17 out that situation and we don't go back here again.

18 Good luck to you, sir.

19 SOLICITOR HAMILTON: Thank you, your Honor.

20 (DEFENDANT EXITS COURTROOM.)

21 THE COURT: Counselor? Counselor, we're gonna have to
22 dismiss the jury.

23 MR. NIELSON: Your Honor?

24 THE COURT: We've got to dismiss the jury.

25 MR. NIELSON: I understand. I'm sorry, your Honor, I

1 was trying to clear the courtroom.

2 THE COURT: I appreciate that.

3 All right, bring the jury in. Close the doors back
4 there please, sir. Tell them to lose the doors.

5 Thank you, sir.

6 (JURY ENTERS COURTROOM AT 02:38 P.M.)

7 THE COURT: All right, the record will reflect the
8 jury has returned to the courtroom. We took a little
9 longer than you expected and I appreciate your patience.
10 In your absence the Defendant has decided to enter a guilty
11 plea. I have accepted that plea and I have issued the
12 sentence in the case so the case you were picked for has
13 now been ended. But your presence is appreciated. Quite
14 often when a jury is present people make decisions that
15 they otherwise wouldn't make when they're faced with going
16 to trial or not going to trial so that case has been ended.

17 And I have another piece of good news for you. That
18 completes the jury list -- jury trial list for this week.
19 We've got other cases we'll be taking pleas on, matters
20 that don't involve juries and that sort of thing, so I'm
21 releasing you from any further responsibility to the court
22 this week.

23 But I want to thank you for being here. You're not
24 aware of it because of where you are but while we've been
25 here this week we've disposed of a good number of cases. I

1 know in my courtroom it's a large number and there was
2 another courtroom operating also and a good many cases have
3 been disposed of in there. I don't know the numbers but I
4 would suspect it would somewhere between fifty and a
5 hundred already this week that have been disposed of.

6 Thank you for your presence. You being here helps us.
7 You know the good news is you don't have to serve again for
8 three years to the circuit court but we do thank you for
9 being here. If it weren't for good citizen's like
10 yourselves who are willing to come forward and serve we
11 couldn't operate the system. So, thank you very much for
12 being here. The bailiff's will show you out. I wish you
13 on Wednesday a happy weekend and everything go well for
14 you. Thank you.

15 (JURY DISMISSED AT 02:40 P.M.)

16 THE COURT: All right. We're in recess I believe
17 probably until 9:30 in the morning. Thank you.

18 (COURT IN EVENING RECESS AT 02:41 P.M.)

19 (END OF TRANSCRIPT OF RECORD.)
20
21
22
23
24
25

CERTIFICATE OF REPORTER

State of South Carolina)

)

County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York, South Carolina, on the 11h day of July, 2018.

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



Wanda S. Nelson, CVR-M
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: July 31, 2019

ARREST WARRANT

2017A4620302450

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
 ROCK HILL

THE STATE

against

ROBINSON, MAURICE LAVOUE

Address: [REDACTED] SPRUCE ST

ROCK HILL SC 29730

Phone: 000-000-0000

SSN: [REDACTED]

Sex: M Race: B Height: 507 Weight: 200

DL State: SC DL#: [REDACTED]

DOB: [REDACTED] Agency ORI #: 460300

Prosecuting Agency: RHPD

Prosecuting Officer: DALTON TAYLOR

Offense: VDL PWID MARIJUANA 2ND OFFENSE

Offense Code: [REDACTED]

Code/Ordinance Sec. 44-53-370 (B)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The Accused
 is to be arrested and brought before me to be
 dealt with according to law.

(L.S.)

Signature of Judge

Date: [REDACTED]

RETURN

A copy of this arrest warrant was delivered to
 defendant MAURICE ROBINSON

on 11-29-2017 @ 1445 HRS

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

HILL MUNICIPAL COURT

L SC 29730

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
 ROCK HILL

Personally appeared before me the affiant DALTON TAYLOR who
 being duly sworn deposes and says that defendant ROBINSON, MAURICE LAVOUE

did within this county and state on 11/29/2017 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of ROCK HILL)
 in the following particulars:

DESCRIPTION OF OFFENSE:

VDL PWID MARIJUANA 2ND OFFENSE - 44-53-370 (B) 0101

I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:
 The Defendant, Maurice Robinson, did willfully and unlawfully violate SC Code of Laws Section 44-53-370; Possession with Intent
 to Distribute Marijuana 2nd & Subsequent Offense. The Defendant had in his possession 12.77 grams of loose Marijuana, a digital
 scale, and numerous torn grocery bags for packaging. The Defendant has previous narcotics convictions on the following;
 9-19-1997; Possession of Crack, 3-3-2002; Possession of Marijuana, 8-5-2004; Trafficking Crack, and 11-2-2012; Manufacturing
 Schedule I, II, III Narcotics. This incident occurred in the 700 Block of South Spruce Street, Rock Hill, York County, South Carolina
 on a lawful traffic stop.

1711290919

Evidence

Body Camera

***THE AFFIANT IS SWEARING TO THIS BASED ON INFORMATION AND BELIEF PROVIDED BY THE ARRESTING
 OFFICER***

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

ROCK HILL

Affiant's Address ROCK HILL MUNICIPAL COURT

ROCK HILL SC 29730

Affiant's Telephone - -

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
 on 11/29/2017 defendant ROBINSON, MAURICE LAVOUE

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of ROCK HILL) as set forth below:

DESCRIPTION OF OFFENSE:

VDL PWID MARIJUANA 2ND OFFENSE - 44-53-370 (B)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
 the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 11/29/2017

(L.S.)

Signature of Issuing Judge

Judge Code: 80101

Judge's Address ROCK HILL MUNICIPAL COURT

ROCK HILL SC 29730

Judge's Telephone 803-329-5695

Issuing Court:

☐ Magistrate☒ Municipal☐ Circuit

ORIGINAL

FILED-RECEIVED
 ENTERED
 2017 DEC -6 PM 3:38
 DAVID HAMILTON
 C.C.C.P. & GS
 YORK COUNTY, SC

CERTIFIED TRUE COPY
 2017 MAR 19 PM 2:15
 YORK COUNTY, SC

ARREST WARRANT

2017A4620302451

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
 ROCK HILL

THE STATE

against

ROBINSON, MAURICE LAVOUE

Address: SPRUCE ST

ROCK HILL SC 29730

Phone: 000-000-0000 SSN:

Sex: M Race: B Height: 507 Weight: 200

DL State: SC DL#: DOB: Agency ORI #: 460300

Prosecuting Agency: RHPD

Prosecuting Officer: DALTON TAYLOR

Offense: HABITUAL OFFENDER - 56-1-100

Offense Code:

Code/Ordinance Sec. 56-1-100

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The Accused
 is to be arrested and brought before me to be
 dealt with according to law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
 defendant MAURICE ROBINSON

on 11-29-2017 @ 1045 HRS

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

County/ ☒ Municipality of
 ROCK HILL

Personally appeared before me the affiant DALTON TAYLOR who
 being duly sworn deposes and says that defendant ROBINSON, MAURICE LAVOUE

did within this county and state on 11/29/2017 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of ROCK HILL)

in the following particulars:

DESCRIPTION OF OFFENSE:

HABITUAL OFFENDER - 56-1-100 0051

I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:
 The Defendant, Maurice Robinson, did willfully and unlawfully violate SC Code of Laws Section 56-1-1020; Habitual Traffic
 Offender. The Defendant was driving a 2009 White Infiniti G37; bearing South Carolina license plate: . The Defendant is a
 Habitual Traffic Offender until April 18th, 2018. The Defendant was the sole occupant of the vehicle. This incident occurred in the
 700 Block of South Spruce Street, Rock Hill, York County, South Carolina on a lawful traffic stop.

1711290919

Evidence

Body Camera

**THE AFFIANT IS SWEARING TO THIS BASED ON INFORMATION AND BELIEF PROVIDED BY THE ARRESTING
 OFFICER**

Signature of Affiant

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of)
 ROCK HILL)

Affiant's Address ROCK HILL MUNICIPAL COURT

ROCK HILL SC 29730

Affiant's Telephone - -

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
 on 11/29/2017 defendant ROBINSON, MAURICE LAVOUE

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of ROCK HILL) as set forth below:

DESCRIPTION OF OFFENSE:

HABITUAL OFFENDER - 56-1-100

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
 the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 11/29/2017

(L.S.)

Signature of Issuing Judge

Judge Code: 801010Judge's Address ROCK HILL MUNICIPAL COURT

ROCK HILL SC 29730

Judge's Telephone 803-329-5695

Issuing Court:

☐ Magistrate☒ Municipal☐ Circuit

ORIGINAL

FILED-RECEIVED
 2017 DEC -8 PM 3:30
 DAVID HAMILTON
 C.C.C.P. &
 YORK COUNTY

CERTIFIED
 2019 MAY 15 PM 2:16
 YORK COUNTY

WITNESSES

RHPD

Witnessing Officer:

Price

ARREST WARRANT NUMBER

2017A4620302450

ACTION OF GRAND JURY

TRUE BILL

Mal Barnett

Foreperson of Grand Jury

Date: 2-22-18

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2018-GS-46-00950

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

FEBRUARY 22, TERM 2018

THE STATE

VS.

MAURICE LAVOUE ROBINSON

INDICTMENT FOR

**POSSESSION WITH INTENT TO
DISTRIBUTE MARIJUANA**

SC Code: § 44-53-370

CDR Code: 0188

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

Maurice Robinson

Defendant

Witness:

Ans. Duke C. spec
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

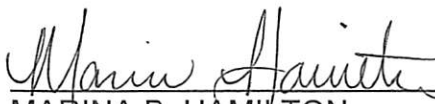
CERTIFIED TRUE COPY
2019 MAY 15 PM 2:15
INDICTMENT
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on February 22, 2018, the Grand Jurors of York County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA

The defendant, Maurice Lavoue Robinson, did on or about November 29, 2017, in York County, South Carolina, manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase marijuana, a schedule I controlled substance, all in violation of Section 44-53-370, Code of Laws of South Carolina (1976, as amended).

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


MARINA B. HAMILTON
ASSISTANT SOLICITOR

WITNESSES

RHPD

Witnessing Officer:

Price

ARREST WARRANT NUMBER

2017A4620302451

ACTION OF GRAND JURY

TRUE BILL

Mr. Barnett

Foreperson of Grand Jury

Date: 2.22.18

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2018-GS-46-00951

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

FEBRUARY 22, TERM 2018

THE STATE

VS.

MAURICE LAVOUE ROBINSON

INDICTMENT FOR

HABITUAL TRAFFIC OFFENDER

SC Code: § 56-01-1100

CDR Code: 0057

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

Maurice Robinson

Defendant

Witness:

Children Court Specialist
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

CERTIFIED TRUE COPY
2019 MAY 15 PM 2:16
INDICTMENT

At a Court of General Sessions, convened on February 22, 2018, the Grand Jurors of York County present upon their oath:

HABITUAL TRAFFIC OFFENDER

The defendant, Maurice Lavoue Robinson, on or about November 29, 2017, in York County, did operate a motor vehicle after having been found to be a habitual offender by the South Carolina Department of Motor Vehicles and while the decision of the Department of Motor Vehicles prohibiting the operation of a motor vehicle was in effect, all in violation of Section 56-01-1100, Code of Laws of South Carolina (1976, as amended).

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


MARINA B. HAMILTON
ASSISTANT SOLICITOR

COUNTY OF YORK
STATE VS.

MAURICE LAVOUE ROBINSON

AKA: Maurice L Robinson, Maurice Lovoule Robinson

Race: Black Sex: M Age: 38

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] Spruce Street

City, State, Zip: Rock Hill, SC 29730-0000

DL# [REDACTED] SID# [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Possession with Intent to Distribute Marijuana 3rd or Sub. Offense

In violation of § 44-53-370 of the S.C. Code of Laws, bearing CDR Code # 0188

INDICTMENT/CASE#: 2018-GS-46-00950

A/W: 2017A4620302450

Date of Offense: 11/29/2017

S.C. Code §: 44-53-370

CDR Code #: 0187

CERTIFIED TRUE COPY

SENTENCE SHEET 15 PM 2:15

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC☐ CONVICTED OF or☒ PLEADS☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Marina B. Hamilton, Assistant Solicitor 80383 SC Bar #

Maurice Robinson
DefendantDana R. Sub
Attorney for Defendant 101444 SC Bar #WHEREFORE, the Defendant is committed 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 10 days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 2
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 7/11/18☒ 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. 2 days☐ The Defendant is to be placed on 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 PTUP _____
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED ☐☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§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/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§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) \$ \$ _____

TOTAL \$ 275.00

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☒Random Drug/Alcohol Testing ☒

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: ATU☒ 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.

Presiding Judge: _____

Judge Bar ID: _____ Judge Code: 213Sentence Date: 7/11/18Clerk of Court/Deputy Clerk: David HamiltonCourt Reporter: Wanda Nelson

SCCA/217 (07/2016)

COUNTY OF YORK

STATE VS.

MAURICE LAVOUE ROBINSON

AKA: Maurice L Robinson, Maurice Lovoule Robinson

Race: Black Sex: M Age: 38

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] S Spruce Street
City, State, Zip: Rock Hill, SC 29730-0000

DL# [REDACTED] SID# [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Habitual Traffic Offender

In violation of § 56-01-1100 of the S.C. Code of Laws, bearing CDR Code # 0057

INDICTMENT/CASE#: 2018-GS-46-00951

A/W: 2017A4620302451

Date of Offense: 11/29/2017

S.C. Code #: 56-01-1100

CDR Code #: 0057

ORIGINAL SENTENCE SHEET

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Marina B. Hamilton, Assistant Solicitor 80383 SC Bar #

Defendant

Attorney for Defendant 101444 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 5 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 Service standard conditions of probation, which
are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 7/11/18
☒ 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 2 days
Department of Corrections.

☐ The Defendant is to be placed on 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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Ordered PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ 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.

Presiding Judge: _____

Judge Bar ID: _____

Sentence Date: _____

Judge Code: 21357-11-18

Clerk of Court/Deputy Clerk: _____

Court Reporter: Wanda Nelson

SCCA/217 (07/2016)

David Hamilton

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§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/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ _____

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ \$ _____

TOTAL \$ 100.00

FORM 5

STATE OF SOUTH CAROLINA)

County of York)MADRICE LAVUE ROBINSON)

Full name and prison number (if any) of Applicant)

#248304)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

2019 MAY 15 AM 8:04

FILED-RECEIVED

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 Mershaw Correctional Institution 4848
Goldmine Highway, Mershaw, South Carolina 29067
2. Name and location of Court which imposed sentence York County Court
of General Sessions, York, South Carolina
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) 2018-PS-46-00750; Possession with Intent to Distribute
 - (b) 2018-PS-46-00751; Habitual Traffic Offense

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) July 11, 2018; Twelve (12) years
- (b) July 11, 2018; five (5) years
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (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, I did
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. September 6, 2018
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unknown
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (d) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 (a) Ineffective Assistance of Plea Counsel
 (b) _____
 (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 (a) Failure to investigate facts of the case.
 (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? No.
 (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. N/A
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. N/A
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

No, they have not.

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

(a) which grounds have been presented:

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

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

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

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)

(10)(a); First Collateral Attack

(b)

(c)

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

(a)

your arraignment and plea? Yes, I was.

(b)

your trial, if any? N/A

(c)

your sentencing? Yes, I was.

(d)

your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes, I was.

(e)

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

N/A

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

(a)

the name and address of each attorney who represented you:

i.

Devon Russell Nielson, Post Office Box 691,
York, South Carolina 29745

ii.

iii.

(b)

the proceedings at which each such attorney represented you:

i.

Plea, Sentencing, and South Carolina Court
of Appeals

ii.

iii.

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

Based on the above, VACATE Sentence, REVERSE
Conviction and REMAND for a New Trial.

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

No, I am not.

STATE OF SOUTH CAROLINA)

County of York)

VERIFICATION

I, Maurice Lavode Robinson, 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.

Maurice Robinson

SWORN to and subscribed before me this 8th
 day of May, 2019.

Carthage A. Cheneau (L.S.)
 Notary Public

My Commission Expires: Dec 27, 2029

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

I, Maurice Lavoye Robinson, 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.

Maurice Robinson
Applicant

SWORN or affirmed to and subscribed before me this

8th day of May, 2019.

Cathie A. Amos
Notary Public

My Commission Expires: Dec 22, 2029

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	THE SIXTEENTH JUDICIAL CIRCUIT
	)	
	)	
Maurice Robinson, #248304	)	Case No.: 2019-CP-46-01703
	)	
Applicant,	)	
	)	RETURN AND MOTION FOR
	)	MORE DEFINITE STATEMENT
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The State of South Carolina, making its Return to the application for Post-Conviction Relief (PCR) filed on May 15, 2019, would respectfully show this Court:

I.PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. In February 2018, the York County Grand Jury indicted Applicant for possession with intent to distribute marijuana, third or subsequent offense ("PWID") (2018-GS-46-00950) and habitual traffic offender (2018-GS-46-00951). Devon Russell Nielson, Esquire, represented Applicant. Assistant Solicitors Marina Bender Hamilton and Ryan Newkirk of the Sixteenth Circuit Solicitor's Office prosecuted the case. On July 11, 2018, Applicant pleaded guilty before the Honorable Roger L. Couch to habitual traffic offender with sentencing to be deferred until the conclusion of the trial for Applicant's possession with intent to distribute marijuana charge. On July 11, 2018, Applicant's trial commenced, but Applicant subsequently changed his plea to guilty after Judge Couch ruled on several pre-trial motions made by Applicant. Judge Couch sentenced Applicant to concurrent sentences of five years' imprisonment

for habitual traffic offender and twelve years' imprisonment for PWID, provided that upon service of ten years the balance would be suspended with two years' probation.

Applicant filed a timely notice of appeal. On September 6, 2018, The South Carolina Court of Appeals dismissed the appeal due to appellant's failure to provide a sufficient explanation for a guilty plea appeal as required by Rule 203(d)(1)(B)(iv) of the South Carolina Court Rules (SCACR). The remittitur was issued on September 25, 2018.

II. STATEMENT OF FACTS

The underlying facts of the crimes for which Applicant is incarcerated were articulated by the State during the plea proceedings as follows:

"On November 29, 2017 on Spruce Street within York County [Applicant] was pulled over for multiple traffic violations. Upon officers approaching the car they noticed that he was eating marijuana. Upon opening the door they found that he had marijuana scattered throughout the car; scattered all over him, and he had marijuana within his mouth.

Additionally found in that vehicle was a scale, a cell phone, baggies, and two thousand one hundred and seventeen dollars in cash. The baggie that was found, the baggies that were found were grocery bags that had been torn evidencing possible distribution of the marijuana that was found on his person.

Upon - - as [the State] stated in pretrial seizure of the phone search for on the phone we found text messages showing evidence of distribution up to a month prior to this incident. [The State] even has a text message the day of, thirty minutes before he's pulled over stating, in [the State's] opinion, Yo, my momma needs a G gram, is what [the State] would have argued in that case. He states Spruce, that he needed Spruce. Spruce is ultimately where he was stopped.

Upon initiating [the] traffic stop and running the [Applicant's] record they found that he was actually declared a habitual traffic offender. He has three violations; driving under suspension, driving under suspension, and unlawful alcohol concentration making him a habitual traffic offender."

(Tr. 74-75; Tr. 19).

III. CURRENT APPLICATION

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 Plea Counsel
 - a. Failure to investigate facts of the case

Applicant lists the following as his requested relief: “Vacate sentence, reverse conviction and remand for a new trial.”

Attached to this Return and incorporated by reference are the records of the York County Clerk of Court regarding the subject convictions, Applicant’s records from the South Carolina Department of Corrections, the relevant transcripts, the appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

IV. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleges counsel was ineffective for failing “to investigate facts of the case.” 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 (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 v. Washington, 466 U.S. 668. 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). The 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 the Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Applicant alleges Counsel was ineffective for failing “to investigate facts” of his case, but fails to mention what facts Counsel failed to investigate. Without this additional information, it is impossible for Respondent to fully respond to this allegation. Accordingly, Respondent moves herein for a more definite statement.

V. MOTION FOR A MORE DEFINITE STATEMENT

In his application, Applicant has wholly failed to set forth with specificity the facts and circumstances upon which his claim of ineffective assistance of counsel is based. The Uniform Post-Conviction Procedure Act requires that the Applicant must “. . . specifically set forth the grounds upon which the application is based.” Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be

scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965).

Applicant has failed to state with any specificity the specific facts giving rise to his allegation that Counsel failed to “investigate facts” of his case. Applicant fails to state what facts Counsel should have investigated but did not. Additionally, this allegation is not supported by any other additional information in the application. Respondent moves pursuant to Rule 12(e), SCRCP, to require Applicant to provide a more definite statement of his allegation of ineffective assistance of counsel. The Uniform Post-Conviction Procedure Act requires applicants to “specifically set forth the grounds upon which the application is based.” S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Therefore, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application

VI. ASSERTION OF RIGHTS TO NOTICE OF AMENDMENTS, EXPERTS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP; Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11,

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.

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

VII. GENERAL DENIAL

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

VIII. CONCLUSION

WHEREFORE, having made its return, Respondent requests Applicant, through his counsel, amend the application to provide the required specificity for the aforementioned allegation of ineffective assistance of counsel. Until Applicant files an amended application, Applicant has not shown sufficient cause to warrant an evidentiary hearing on this application, and Respondent requests a hearing not be scheduled until after an amended application is so filed.

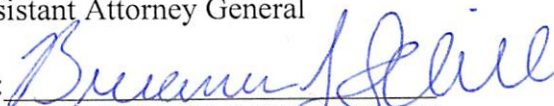
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BRIANNA SCHILL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

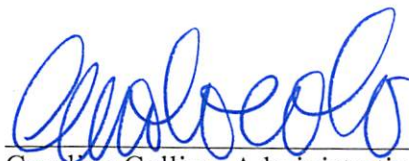
Sept 10, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	
	)	
	)	2019-CP-46-01703
	)	
MAURICE ROBINSON, #248304,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

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
Waller Law Group, LLC
1116 Blanding Street, Suite 2B
Columbia, South Carolina 29201

DATED this the 10th day of September, 2019.



Caroline Collins, Administrative Coordinator
 For Respondent

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF YORK)

SIXTEENTH JUDICIAL CIRCUIT)

MAURICE ROBINSON, #248304)

CASE NO.: 2019-CP-46-01703)

Plaintiff,)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

vs.)

STATE OF SOUTH CAROLINA)

Defendant.)

Plaintiff's Attorney:
Jonathan D. Waller, Bar No. _____
Address:
1116 Blanding Street, Suite 2B
Columbia, South Carolina 29201
Phone: _____ Fax _____
E-mail: _____ Other: _____

Defendant's Attorney:
Brianna L. Schill, Bar No. _____
Address:
Post Office Box 11549
Columbia, South Carolina 29211
Phone: _____ Fax _____
E-mail: _____ Other: _____

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

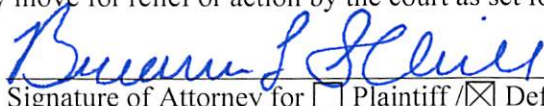
Nature of Motion: _____

Estimated Time Needed: _____

Court Reporter Needed: ☐ YES / ☒ NO**SECTION II: Motion/Order Type**

- ☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☐ Plaintiff / ☒ Defendant

September 10, 2019
Date submitted

SECTION III: Motion Fee

- ☐ PAID – AMOUNT: \$ _____
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
 (check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

- ☐ MOTION FEE COLLECTED: \$ _____
☐ CONTESTED – AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
Maurice Robinson, 248304,	)	AMENDMENT TO APPLICATION FOR
	)	POST CONVICTION RELIEF
Applicant,	)	
	)	
Vs.	)	Case No. 2019-CP-46-01703
	)	
State of South Carolina	)	
	)	
Respondent.	)	

Applicant, by and through his Attorney, Jonathan D. Waller, Esquire, would amend his Application for Post-Conviction Relief filed May 15, 2019, by adding the claims of ineffective assistance of to question 10 and by adding the following specific prayers for relief to his original allegations:

1. As to representation rendered by Devon R. Nielson, Esquire:
 - a. Counsel was ineffective for failing to advise Applicant that his offense was not eligible for parole, thus rendering Applicant's plea unknowingly and involuntarily entered into.
 - b. Counsel was ineffective for failing to object to, or appeal, the non-conforming sentence issued by Judge Couch.

Respectfully submitted,

Jonathan D. Waller
 Waller Law Group
 1821 Hampton Street
 Columbia, South Carolina 29201
 ATTORNEY FOR APPLICANT

FILED-RECEIVED
 2021 DEC -7 AM 10:53
 DAVID HAMILTON
 C.C.P. & GS
 YORK COUNTY, SC

December 2, 2021
 Columbia, South Carolina

Robinson vs. State of SC
 Amendment to PCR Application

1 STATE OF SOUTH CAROLINA

2 -----x

3 MAURICE ROBINSON,

4 Applicant,

5 Case No.

6 -against-

2019-CP-46-1703

7 STATE,

8 Defendant.

9 -----x

10 December 6, 2021

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE GRACE KNIE

15

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

17 MR. JONATHAN WALLER

18 Attorney for the Applicant

19

20 MR. MICHAEL DAVIDSON

21 Attorney for the Respondent

22

23 Aileen Butler

24 Official Court Reporter

25

1	<u>E X H I B I T S.</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
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5		(No exhibits marked.)		
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1	<u>I N D E X.</u>				
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Maurice Robinson				
4	Mr. Waller	9			
5	Mr. Davidson		23		
6	Devon Nielson				
7	Mr. Davidson	30		46	
8	Mr. Waller		40		
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1 THE COURT: We are back on the record. This is a
2 be a post conviction relief petition filed by Maurice
3 Robinson. Civil action number 19-CP-46-1703. Our
4 court reporter is Aileen Butler. I want to make sure
5 our court reporter can hear us. If you give me a
6 thumbs up I know you can.

7 Thank you. All right. And so before we get
8 started let me ask, sir, are you Maurice Robinson?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Okay. Mr. Robinson, I'm going to ask
11 you to speak real loudly for me. Okay. I'm having
12 problems hearing from that monitor.

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Okay. And so, Mr. Robinson, I need to
15 ask you some questions before we begin. Okay?

16 THE DEFENDANT: Yes, ma'am.

17 So I'm going to go ahead and put you under under
18 oath to ask you these questions. If you'll raise your
19 right hand.

20 MAURICE L. ROBINSON, called as a witness, having
21 been duly sworn by the judge, was examined and
22 testified as follows:

23 THE COURT: Mr. Robinson, you can put your hand
24 down. Good morning again. I'm Judge Knie. I am at
25 my chambers in Spartanburg and your legal counsel is

1 is Mr. Waller and Mr. Waller apparently is present in
2 his office and then we have the court reporter present
3 remotely. We have counsel for the State, Mr. Davidson
4 present remotely and of course we have the witness,
5 Mr. Neilson, who is present remotely as well. And you
6 are in the Department of Corrections.

7 Sir, which location are you in at this time?

8 THE DEFENDANT: Perry Correction.

9 THE COURT: Perry Correction. All right. And so,
10 I say all of that to explain that first this were no
11 courtrooms available for me today in Spartanburg.
12 That's why I'm in my office and so this hearing is
13 being conducted via video conference by agreement of
14 counsel. Do you agree to that?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Okay. And do you waive being
17 physically in my presence for the hearing as well as a
18 the physical presence of your lawyer?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: You don't waive that?

21 THE DEFENDANT: No.

22 THE COURT: And I may be confusing you a little
23 bit. But do you wish to go forward with the hearing
24 on Webex?

25 THE DEFENDANT: Yes. Yes.

1 THE COURT: So normally you would be in the
2 courtroom with me. Physically with me with your
3 lawyer, Mr. Waller by your side. Do you waive that?

4 THE DEFENDANT: Yes. Yes.

5 THE COURT: Okay. Okay. And if you want to talk
6 to Mr. Waller. You let me know and we can take a
7 break so you all can talk privately. I am assuming
8 there is a telephone there that could be called for
9 that purpose. Okay?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Okay. So are you ready to go?

12 THE DEFENDANT: Yes.

13 THE COURT: Okay. All right. Thank you. So now
14 what I would like to do is call upon the attorney
15 for the State, Mr. Davidson, sir, to call the case and
16 if you can give me a little bit of procedural
17 background before I turn it over to Mr. Waller.

18 MR. DAVIDSON: Thank you, Your Honor. May it
19 please the Court. This is the case of Maurice
20 Robinson verses the State of South Carolina. Docket
21 number 2019-CP-46-1703. Applicant was indicted in
22 February of 2018 for possession with in intent to
23 distribute marijuana, third offense and for habitual
24 traffic offender. He was represented on those charges
25 by Devon Neilson. Applicant pleaded guilty on July

1 11, 2018 to both charges before Judge Couch. Judge
2 Couch sentenced applicant to 12 years for the drug
3 charge and five years for the habitual traffic
4 offender charge. Applicant appealed. The Court of
5 Appeals upheld his convictions. The Rimititur was
6 issued on September 25th, 2018. This PCR was filed
7 May 15th, 2019 and in its application applicant
8 alleged ineffective assistance of counsel for failing
9 to investigate the facts of the case.

10 On December 2nd, 2021 applicant through counsel
11 amended his PCR application. In his application he
12 alleged counsel was ineffective for failing to advise
13 applicant that his offense was not eligible for parole
14 thus rendering applicant's plea unknowingly and
15 involuntarily entered into and also alleged counsel
16 was effective for failing to object to or appeal the
17 non-conforming sentence issued by Judge Couch.

18 Applicant is present and he is represented by Mr.
19 Waller, and Your Honor, the State is ready to proceed.

20 THE COURT: Okay. Thank you. All right. Good
21 morning, Mr. Waller, sir.

22 MR. WALLER: Good morning, Your Honor.

23 THE COURT: I'm happy to hear from you with any
24 brief introduction that you might want to give before
25 we actually begin with the testimony.

1 MR. WALLER: Sure, Your Honor. Just briefly, I
2 know my amendment was just filed last week. Something
3 Mr. Davidson and I spoke about before the Thanksgiving
4 break. So it certainly was not intended to surprise
5 the State or anything like that.

6 Your Honor, this is a case that we believe is
7 relatively simple and that's why I am okay with doing
8 it video Webex. Certainly have not been quiet about
9 my feelings that it just doesn't work as well but I
10 think this is a prime case where it will work. I
11 think it's a good one for that. So Your Honor, with
12 the court's permission I would call Maurice Robinson.

13 THE COURT: Okay. And Mr. Waller, sir, you said
14 that you amended the petition last week. The
15 documents that I have probably predate that amendment
16 because they with mailed to me and they were received
17 last week, and so is it possible for you to forward to
18 me the via email that amendment.

19 MR. WALLER: Yes, Your Honor. I will send that
20 right now.

21 THE COURT: Okay. Mr. Waller, do you anticipate
22 calling witnesses other than your client?

23 MR. WALLER: No, Your Honor.

24 Your Honor, I just sent it to you so you should be
25 getting it. I sent it directly to you.

1 THE COURT: Okay, thank you. So now I have to
2 build my confidence to try and split my screen. Let
3 me see -- I'll tell you what. Let get my other
4 computer so I can be looking at that as well. Okay.
5 Just bare with me for just one moment. Okay.

6 Yes, sir. I have that know. All right. So
7 anything else before we begin with the testimony Mr.
8 Davidson?

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

10 THE COURT: All right. Mr. Waller, I am happy for
11 you to begin. I've already sworn Mr. Robinson. Okay.
12 And Mr. Robinson I'm not fussing at you. I just want
13 to make sure we get a good record. Okay. So please
14 keep your voice up for me or get a little closer to
15 the monitor. Okay.

16 Miss Butler, if you can't hear let me know. All
17 right. Mr. Waller, sir, your witness.

18 MR. WALLER: Thank you, Your Honor. May it please
19 the Court.

20 DIRECT EXAMINATION

21 BY MR. WALLER:

22 Q Good morning Mr. Robinson. How are you today?

23 A I am doing all right. How about yourself?

24 Q I am doing well. Thank you for asking.

25 Mr. Robinson, I want to take you back kind in time to when

1 you were first arrested on these two charges. Do you recall
2 that?

3 A Yes, sir.

4 Q Okay. When you were first arrested what were the exact
5 charges you were arrested on?

6 A I was charged with possession of marijuana, first
7 offense, and driving without a license.

8 Q Okay. And so, both those charges ended up changing a
9 little bit from the time you were originally arrested to the
10 time you ultimately plead guilty, is that right?

11 A Yes, sir.

12 Q Okay. I will come back to that in just a second. When
13 you were first arrested did you make bond or were you in the
14 detentions center the entire time?

15 A I made bond like two days later.

16 Q Okay. And who -- how did Mr. Neilson come to be your
17 attorney?

18 A Well, I had signed up for a public defender at first
19 and that's how he was appointed to me.

20 Q Okay.

21 A Okay. Go ahead.

22 Q I'm sorry repeat that please?

23 A I had signed up for a public defender when I went to
24 court and that's how he was appointed to me.

25 Q Okay. So when you went to roll call or something along

1 those lines?

2 A Yes.

3 Q Okay. All right. When you -- so you were out and Mr.
4 Nelson was appointed to represent you what did you all talk
5 about when you first met?

6 A We talked about -- basically it wasn't nothing. I
7 tried to explain to him the case that they had. Basically we
8 really just -- he explained to me about, you know, what the
9 solicitor was tell him and he showed me a couple of things I
10 kept telling him I didn't want to take no plea. Told me that,
11 you know, so --

12 THE COURT: Can you repeat that?

13 A Yes. I said we talked about him explaining to me about
14 what the solicitor was offering and how long it will take it to
15 go to court. Just stuff of that nature.

16 Q Okay. Mr. Robinson, I want to kind of unpack that a
17 little bit more. Did you all have a chance to kind of --
18 generally at the beginning, did you all have a chance to talk
19 about any of your constitutional rights when you were first
20 arrested?

21 A Yes.

22 Q Was that a yes?

23 A Yes.

24 Q Okay. And did you all talk about your right to remain
25 silent?

1 A I don't think so.

2 Q Okay.

3 A I don't recall that.

4 Q That's okay. Had you given a statement to law
5 enforcement during the course of your arrest or afterwards?

6 A No, sir.

7 Q Okay. Did you all talk about your right to a jury
8 trial?

9 A Yes, we talked about that.

10 Q Okay. Did you talk about any of the -- and I'm talking
11 about the first meeting here -- but kind of going forward. Did
12 you all talk about any of the evidence that the State had in the
13 case?

14 A No.

15 Q Okay. There was some -- obviously there was some what
16 the State alleged was drugs found in the vehicle. Did you all
17 talk about the weight? The testing of those drugs?

18 A No. We never discussed the weight. I tried to ask him
19 about that because on one report they had one weight. Then they
20 had on another report I got they had a different weight on it.
21 So I tried to discuss that with him. Can you check into those
22 to see why these weights are different, you know. What happened
23 to the other other amount that they had on this first. All of
24 sudden it changed. I tried to explain that to him but he really
25 never -- really said nothing about it. He kept saying what do

1 you want to do? How do you want to do this and stuff of that
2 nature.

3 Q Okay. How -- to the best of your understanding, how
4 did your charge go from simple possession of marijuana, first
5 offense, to possession with intent to distribute marijuana,
6 third offense?

7 A Well, from my understanding they said text message and
8 that's all I know. They said text message found on my phone and
9 that I was a dealer.

10 Q Okay. Were there some other things found in the car
11 that they attempted to use as well?

12 A Well, they tried to say I had a scale in my car. I had
13 some money that did not belong to me, but I didn't have it. It
14 was my wife's car in the glove compartment. It was locked.
15 They found trash bags in the back seat on the floor and they
16 said there was some baggies.

17 Q Okay. So it's my understanding the State alleged that
18 was evidence of you distributing, is that right?

19 A Yes.

20 Q Did you and Mr. Nelson discuss that?

21 A I don't recall.

22 Q Okay. You had some prior drug convictions, is that
23 correct?

24 A Yes, sir.

25 Q Did you and Mr. Nelson discuss how this was enhanced to

1 a third or subsequent offense?

2 A No.

3 Q Okay. Did you ask him about it?

4 A No, I did not. I did not.

5 Q Okay. All right. At some point you made the decision
6 you were going to go to trial on the drug charge, is that
7 correct?

8 A Yes, sir.

9 Q Okay. Tell me about the traffic offense or the
10 habitual traffic offender charge? Is that something you were
11 really fighting or you just kind of it is what it is?

12 A No, I wasn't going to try and fight that charge. It is
13 what it is.

14 Q Okay. So we are here today mostly focusing on the drug
15 offense?

16 A Yes, sir.

17 Q Okay. All right. So at some point you decide that you
18 wanted to exercise your constitution right and go to trial on
19 this offense. What did you and Mr. Neilson discuss in order to
20 make that decision?

21 A Well, I explained to him that when he came to me with
22 the first plea I was like the amount of money I got. I didn't
23 have anything bagged up. I never made a controlled buy or
24 anything of that nature. So how can they charge me possession
25 with intent to distribute when I hadn't done any of those things

1 that. That's why I was explaining I wanted to go to trial. So
2 I feel like that wasn't right they were trying to charge me with
3 distribution. I never distributed anything. Never caught me
4 distributing anything or anything of that nature.

5 Q Okay. You mentioned before text messages?

6 A Yes.

7 Q Did the State have some text message from your phone
8 they allege was evidence of prior dealings from you, is that
9 right?

10 A Yes, sir.

11 Q When I say prior I meaning a span of days or weeks, not
12 you know, ten years before. Is that right?

13 A Yes, sir.

14 Q Okay. Did you and Mr. Nielson discuss how the State
15 obtained those text messages? Was there a search warrant done
16 or what did you all talk about?

17 A No, we never discussed it.

18 Q Okay. Do you know how they were obtained?

19 A My understanding when they pulled me over the police --
20 he stopped me and I asked him a question. Why are you pulling
21 me over? He explained to me, get out of the car. You are under
22 arrest. I said for what? What did you pull me over for? He
23 seen the marijuana spread all over me in my car and he took my
24 phone and went in my phone right then and there and said, oh,
25 he's a dealer. He's a dealer. I'm like, how you going to say

1 I'm a dealer. They just went from there.

2 Q Okay. Did you tell Mr. Nielson, you know, what those
3 sequence of events were?

4 A Yes.

5

6 Q Okay. Did you all discuss potentially challenging that
7 search or of the phone or of the car? Or what did you all talk
8 about when you told him that?

9 A I really didn't -- I brought it to his attention but he
10 really was never really on the same page of the whole thing, you
11 know. It's like what I was saying it really didn't matter. He
12 going along with the solicitor.

13 Q Okay. There was also an issue with the money that was
14 found and the State was also alleging that that was evidence of
15 your distribution. Did you and Mr. Nielson have a chance to
16 discuss that?

17 A Yes.

18 Q Okay. What did you all talk about?

19 A I told him that the car that I was driving was my
20 wife's car and that I told the police the exactly same thing.
21 That money in the glove compartment that's not my money. That
22 belongs to my wife. Money was my father-in-law -- my father
23 because she was going to pay his bill for him for a title that
24 she was going to pay for him and I explained it to him but they
25 were not trying to hear anything. Wouldn't try and hear

1 anything.

2 Q Okay. Mr. Nielson ended up making a motion to exclude
3 the State from using those funds as evidence. Is that your
4 understanding?

5 A Yes.

6 Q Okay. Did you all talk about that before the motion
7 was made? Did you talk about how you were going to attack that
8 element of the State's case?

9 A We talked about it, but I can't remember what we really
10 had talked about it on that issue.

11 Q Okay. Back it up just a little bit. You testified
12 earlier that you made bond after about two days. Were you out
13 on bond the entire time from when you were first made it to when
14 you ultimately plead guilty?

15 A Yes, sir.

16 Q Okay. How many times do you think you met with Mr.
17 Nielson?

18 A Probably about -- I would say around five or six times.

19 Q Okay. Did you all discuss the fact that your charge
20 was a 3rd offense? Did you all discuss what differences that
21 might make in what you were ultimately facing?

22 A No, sir.

23 Q Okay. What did you all talk about as far as potential
24 sentencing if you had been convicted or plead guilty?

25

1 A They were wanting me to plead guilty to six years.

2 Q Okay. What do you mean they wanted you to plead
3 guilty? Explain that.

4 A That was the plea that he offered. That I guess the
5 solicitor that came to him and he came to me with.

6 Q Okay. All right. Do you know any more? Was that a
7 negotiated plea? Was it a recommendation? Do you know any more
8 of the details that you recall?

9 A I think it was a negotiated plea.

10 Q Okay. Did you and Mr. Nielson have a chance to discuss
11 the differences -- the potential differences of a 3rd offense or
12 a second offense or first offense even?

13 A No.

14 Q Okay. You mentioned nonviolent earlier. When you hear
15 that a sentence is nonviolent what does that mean to you? What
16 do you understand that to mean?

17 A Nonviolent it means to me what I read on the guidelines
18 that a nonviolent sentence 44-53-370 that's a parolable offense;
19 first, second or third offense in the statute of marijuana.
20 That's what I read. That's what I'm thinking that is.

21 Q All right. Let me ask you this, Mr. Robinson. When
22 did you read that?

23 A I read that when I came to the yard. I started working
24 on my PCR I seen it. I started working on it then.

25 Q What did you -- what was your understanding before you

1 -- before you plead guilty of what nonviolent meant?

2 A I thought nonviolent meant just I go do half of my time
3 and I have parole date. That's what I thought.

4 Q Okay. You have been in the department of corrections
5 before, is that right?

6 A Yes.

7 Q Had you had a parole hearing or max out your time
8 before you serving complete sentence before?

9 A I never had a full thing.

10 Q All right. So correct me if I'm wrong. So when you
11 heard -- when you were told that sentence was nonviolent you
12 thought that meant it was parolable eligible? You would go do I
13 believe you said half the time and then be out, is that right?

14 A Yes.

15 Q Okay. When did you all talk about that? Early in the
16 case? Late in the case?

17 A We talked about that the day of the trial.

18 A When was that offer you were talking about made to you.

19 A That was offered was around -- about I think around
20 like April, March. April. Somewhere around there.

21 Q Okay. And your plea was in July?

22 A Yes.

23 A Okay. I believe late in the week or even over the
24 weekend before your trial started you attempted to hire another
25 lawyer, is that right?

1 A Yes.

2 Q Leading up to the trial why were you trying to hire
3 another lawyer?

4 A Because me and my family we had discussed when I
5 explained to them when he came to me with the negotiated plea
6 that it felt like there was too much time for me to be getting
7 for what I had got caught with and how they were trying to --
8 you know, hit me with with possession with intent to distribute
9 but I had never distributed anything. You know, I never got
10 caught of that nature distributing to nobody. So my family they
11 were going to help me get a lawyer. See what a real lawyer can
12 do rather than a public defender.

13 Q Okay. You and Mr. Nielson prepared for the trial to go
14 forward?

15 A No. He lied about -- we suppose to do all that but he
16 never did. You know, he told me how we are going to prepare for
17 the trial. Call my witnesses and I was suppose to have that.
18 We would go over it, you know. Like a pretrial before the
19 trial. You know he never did any of it.

20 My wife she was there the whole time. I was going up there
21 and like I told you she was there the whole time and she
22 witnessed everything he was saying. It wasn't adding up.

23 Q Okay. So circle back. You attempted to hire another
24 lawyer over the weekend and that lawyer said they weren't able
25 to represent you because of the short amount of time. Is that

1 right?

2 A Yes, sir.

3 Q Okay. All right. Ultimately you plead guilty in this
4 case, right?

5 A Yes.

6 Q What did you and Mr. Nielson discuss from the morning
7 when you walked into court prepared to start a trial? How did
8 you get to pleading guilty? What did you all talk about?

9 A When I first got there we talked about me trying to
10 hire for me to get a lawyer. We tried on it do that first. The
11 judge he denied it. So we had picked a jury. Got that out of
12 the way and then they did a recess. So after the recess was
13 over when I came back outside the courtroom door he was like,
14 Mr. Robinson, I think you should go ahead and plead because it
15 is a nonviolent sentence and you'll do no more than five years.
16 So now in my mind thinking when he told me that, so okay. So in
17 mind he tell me I'll do no more than five years what I'm
18 thinking it's got to be parolable. That I would do no more than
19 five years so I can go ahead and do it. So, we went into the
20 court and he explained to the judge that I accepted the plea.

21 Q Okay. All right. What have you -- since you have been
22 in the department of corrections, what have you learned about
23 your sentence and parole eligibility?

24 A Well, some of the things I learned was that the
25 paperwork that I have receive from you they violent on it. SCDC

1 has it as violent, but on my sentencing sheet everything is
2 nonviolent and not only that, I know that the third offense
3 marijuana charge is suppose to be parolable and suppose to have
4 work release earn good time and work credit.

5 Q Let me -- I asked a bad question Mr. Robinson. I
6 apologize. Let me ask it this way. What do you understand that
7 your projected release date to be right now?

8 A My projected release date.

9 Q You don't have to be exact. Just ballpark it for me?

10 A I would say 2023.

11 Q That's what you think your release date is now or you
12 thought it would be?

13 A That's what I think it would have been if the sentence
14 would have been correct like I pleaded to.

15 Q What do you know of it right now? What's your
16 anticipated date right now?

17 A It's one twenty-seven.

18 Q Okay. And you started July of 2018?

19 A Yes.

20 Q And you got an a ten year -- it was 12 years suspended
21 on ten years and two years probation, is that correct?

22 A Yes.

23 Q Based on your understanding of parole and what you have
24 experienced in the past, is your correct sentence parole
25 eligible or eligible for an early release?

1 A No.

2 Q Okay. Did you and Mr. Nielson discuss whether or not
3 your sentence was eligible for any sort of is probationary
4 sentence?

5 A No, we never discussed that.

6 Q Okay. All right. Mr. Robinson, obviously hindsight is
7 20/20. Knowing what you know now about your sentence and about
8 the events, would you have still plead guilty or would you have
9 proceeded to trial?

10 A No, I would have proceeded to trial.

11 Q Okay. And everything was ready to go. You already had
12 done a few motions, is that right?

13 A Yes.

14 Q Okay. All right. Mr. Robinson, that's all the
15 questions I believe I have for you. Is there anything that you
16 think I have neglected to tell the judge that's important about
17 Mr. Nelosn's representation of you?

18 A No, sir.

19 MR. WALLER: Please answer any questions Mr.
20 Davidson has.

21 THE COURT: Mr. Davidson, cross examination, sir?

22 MR. DAVIDSON: Thank you, Your Honor.

23 CROSS EXAMINATION

24 BY MR. DAVIDSON:

25 Q Good morning Mr. Robinson?

1 A Good morning Mr. Davidson.

2 Q You testified that you met about five or six times with
3 your attorney prior to your plea?

4 A Yes.

5 Q You also testified that you had a plea offer for I
6 think you testified five or six years, is that correct?

7 A Six years, yes.

8 Q And did you want to take that plea of five or six
9 years?

10 A No, sir.

11 Q Did you inform your attorney that you did not want to
12 take plea deal?

13 A Yes, sir.

14 Q And was there a time when you were scheduled to go to
15 court to either accept or reject that plea deal and you didn't
16 go?

17 A No, sir.

18 Q Okay, so your testimony is that you did not want to
19 take a five or six year plea offer and that plea was never
20 scheduled?

21 A No, it was never scheduled.

22 Q Okay. And did you and Mr. Nielson go over the
23 discovery in the case?

24 A We went over a little bit of the facts, but we didn't
25 really go over it like you are suppose to go over it.

1 Q Did you have a chance to tell him your side of the
2 story about what happened?

3 A Yes.

4 Q Did you guys discuss any possible defenses?

5 A The only thing I'm thinking it was one defense. I
6 can't really remember what it was. I think it was about the
7 weight or something like that or the money they found. That was
8 about it.

9 Q So is you did at least talk about one defense possibly?

10 A Yes.

11 Q Did you give Mr. Nielson any witnesses to investigate?

12 A Yes. My father. My wife.

13 Q Did you give him contact numbers or addresses to locate
14 those witnesses?

15 A Yes.

16 Q And did you know if he did or didn't?

17 A No. He never spoke to my father. My wife as I said
18 she was there the whole time that I went and talked to him.

19 Q Okay. And were those witnesses present at the scene of
20 the crime?

21 A My father was.

22 Q So your father was in the car with you?

23 A No, he was right outside. When they police stopped me
24 it was right in front of my mom's house. It was right there in
25 the street.

1 Q Okay. And when you were at your plea hearing, you went
2 to trial on the drug charge prior to pleading guilty to it,
3 correct?

4 A Yes.

5 Q After the recess you testified that you decided to take
6 a plea?

7 A Right.

8 Q And what was your understanding again of what the State
9 was offering as far as a plea?

10 A Mr. Nielson, he explained to me right before I went
11 back in there after recess, he was like Mr. Robinson I think you
12 should go ahead and take the plea. It's nonviolent offense and
13 you will do no more than five years. So I said, okay, well I
14 can go with that and that's what it was.

15 Q And when you were taking the plea do you recall the
16 judge telling you that she could sentence you anywhere from five
17 to 20 years?

18 A Yes, I remember that.

19 Q And did you say anything to the judge about what Mr.
20 Nielson allegedly told you about only getting five years?

21 A No, I never said anything.

22 Q And do you recall telling the plea judge that you were
23 satisfied with Mr. Nelson's services?

24 A No.

25 Q Okay. Do you recall offering any complaint to the plea

1 judge regarding Mr. Nielson's performance?

2 A I explained to him when we first started that I was
3 trying to fire him because we weren't on the same page for
4 everything that we was discussing. I brought that to his
5 attention.

6 Q But during the plea hearing you didn't bring that back
7 up?

8 A No.

9 Q Okay. Do you recall telling the judge that was no one
10 promising you anything or threatening you to get you to plead
11 guilty?

12 A Yes, I told her nobody was threatening me.

13 Q Do you recall telling the plea judge that you wished to
14 plea guilt?

15 A Yes.

16 Q And do you recall telling the plea judge that you were
17 in fact guilty of the charge?

18 A Yes.

19 Q And do you recall hearing the State present the facts
20 that they were alleging you were guilty of?

21 A Yes.

22 Q Okay, and do you recall eventually agreeing to those
23 facts?

24 A Yes.

25 Q And do you recall admitting to the judge that you

1 didn't just deny distributing the drug?

2 A Well, I didn't deny it but there was a plea. So I just
3 went ahead with the plea. I did try to say that I never did
4 distribute but he told me -- he was like, didn't you just say
5 that you were pleading guilty to that? So I tried when he asked
6 me that question, I was like, well, I'm pleading to it. You
7 know, but I didn't sell to nobody. I didn't distribute
8 anything, but this is what you're pleading to. Okay, I
9 understand what you're are saying now. So I went ahead with it.

10 Q Okay. And I think you testified that you would have
11 gone to trial had it not been for Mr. Nielson's ineffective
12 counsel. However, you just testified that the judge said if you
13 don't -- and correct me if I'm wrong -- but if you don't admit
14 that you were distributing then I can't accept your plea. Is
15 that correct?

16 A I don't remember saying that.

17 Q All right. I'll rephrase it. You just testified that
18 you said something to the judge about disagreeing that with you
19 distributing. Is that correct?

20 A Right. Right.

21 Q And the judge said to you, well, if you don't agree
22 that you were distributing then I can't take your plea.

23 A Well, he said that I had the right to have a trial by
24 jury okay. Basically, yeah, he said that.

25 Q Can you repeat that. I couldn't hear.

1 A I said yes.

2 Q So at that point he could have denied that you were
3 distributing and gone to trial, right?

4 A Yes.

5 Q But instead you admitted it and took the plea?

6 A Yes, because of what my lawyer told me right before we
7 went back in there. That's why. I feel I do no more than five
8 years. I'm suppose to have parole. I will go ahead with it.

9 Q And the only reason you pleaded is because you thought
10 you would get parole?

11 A Yes.

12 MR. DAVIDSON: Nothing further Your Honor.

13 THE COURT: Any redirect?

14 MR. WALLER: Nothing further Your Honor.

15 THE COURT: Okay. Any other witnesses Mr. Waller?

16 MR. WALLER: None from the applicant, Your Honor.

17 THE COURT: Okay. Anything else before I turn to
18 the State's case?

19 MR. WALLER: Nothing from the applicant.

20 THE COURT: Okay. Counsel, I'm happy to hear from
21 you.

22 MR. DAVIDSON: Thank you, Your Honor. The State
23 calls Mr. Devon Nielson.

24 THE COURT: Okay. Good morning sir. You are
25 Devon Nielson, is that correct?

1 MR. NIELSON: I am Your Honor.

2 THE COURT: I need to place you under oath. If
3 you would raise your right hand.

4 DEVON NIELSON, called as a witness, having been
5 duly sworn by the judge, was examined and testified as
6 follows:

7 THE COURT: Direct examination.

8 MR. DAVIDSON: Yes, ma'am.

9 DIRECT EXAMINATION

10 BY MR. DAVIDSON:

11 Q Good morning Mr. Nielson.

12 A Good morning.

13 Q How long have you been practicing law?

14 A I was sworn into the bar in November of 2013. So eight
15 years.

16 Q How much of that time has been criminal law?

17 A One hundred percent.

18 Q Mr. Robinson testified that you were appointed to
19 represent him, is that correct?

20 A Yes, sir.

21 Q And how many times did you meet with him in the course
22 of your representation?

23 A I have listed in my notes that I met with him at least
24 four times, but I believe there was probably one or two other
25 times that did not make it into my notes. So probably five or

1 six times that he listed is probably correct.

2 Q And was he out on bond during that time?

3 A From the time I was appointed until the time he plead
4 he was out on bond, yes.

5 Q Did that effect how your scheduling of meetings with
6 him went?

7 A It was somewhat difficult to get a hold of him. I also
8 had a phone number for his wife it was easier to get a hold of
9 her. She could usually get a hold of him to see me.

10 Q And did you receive discovery in this case?

11 A I did.

12 Q And did the State provide what you would think was
13 pretty much everything that you needed?

14 A Yes, sir.

15 Q And did you review those materials?

16 A I did.

17 Q And did you review them with Mr. Robinson?

18 A I did review them with him to the point that he to the
19 point that he would let me and he was willing to talk about it.
20 Yes.

21 Q And what was the State's evidence against Mr. Robinson?

22 A They -- Mr. Robinson was pulled over on what I believe
23 to be a somewhat questionable stop that we would have challenged
24 at trial. He was pulled over for not putting on a turn signal
25 soon enough before he made a turn at an intersection. We would

1 have challenged that stop had we gone to trial. The -- the --
2 when he was pulled over he had marijuana on his shirt that had
3 spilled out all over his shirt and so there was marijuana
4 strewed in the car. This was also -- the State alleges he had
5 somewhere in the neighborhood of \$2,100 cash in the glove
6 compartment in the car along with a scale. They also had --
7 they also eventually I believe on April 3rd got a warrant to do
8 a cell phone rip of the cell phone that was found and all
9 through that cell phone rip they found various messages that
10 showed whoever was in possession of that phone was in the -- was
11 selling marijuana using what local law enforcement officers in
12 York County at that time to be the believe the slang jargon for
13 what marijuana was called. When I read through the text
14 messages it seemed like a whole bunch of gibberish to me and it
15 would have taken some questioning of the law enforcement
16 officers. But they would have testified that was what they as
17 law enforcement officers in that area knew that marijuana was
18 called by people who were selling it on the streets.

19 Q Okay. And did you ever speak to any witnesses that he
20 gave you in the case?

21 A I know I spoke to his wife a number of times. I
22 believe every time he came in to speak with him she was with
23 him.

24 Q Okay. Did he ever ask you to speak to his father?

25 A Not that I recall. Not that I have note of, but I

1 won't say it didn't happen.

2 Q And to your knowledge was he alone when this traffic
3 stop happened?

4 A Yes.

5 Q Did you explain or discuss the strengths and weaknesses
6 of the State's case with Mr. Robinson?

7 A Yes, I did.

8 Q And what, if anything, did Mr. Robinson tell you about
9 what happened?

10 A He told me essentially the same story he testified to
11 today. He was driving in his wife's car. The money that was in
12 the car was not his. That it was wife's from I believe her job.
13 That she cashed pay checks and the money -- the cash in the
14 glove compartment. I could be wrong about about where that
15 money came from. But it was his wife's money and that he was
16 driving his wife's car and he denied that he was selling. That
17 he was in the drug transactional business. That he was selling
18 any kind of marijuana or anything else. I believe that his
19 story was that any marijuana that he had was for personal use
20 for himself.

21 Q And did that story change after you showed him the text
22 message that allegedly stated that he was coming to deliver
23 drugs to other people?

24 A It didn't change. He never changed his story that
25 that's what was happening, but it changed -- eventually it

1 changed whether or not he wanted to plea.

2 Q Okay. And in light of the State's evidence and Mr.
3 Robinson's recollection of the events did you concede any
4 defenses that he may have?

5 A The defenses that we had was trying to shoot down where
6 the money came from because that was going to be a huge portion
7 of the State's case. Had we gone to trial his wife would have
8 definitely had to take the witness stand to testify that money
9 was her and was not the product of any kind of drug
10 distribution. We talked about the fact that this is a statement
11 from someone who cares about him and someone who he is married
12 to and how a jury might take that evidence. We talked about the
13 -- we talked about the text messages and everything else that
14 showed something slightly different then that. So we talked
15 about leading up to trial, yes, sir.

16 Q And did you think that that was a strong defense?

17 A I did not. I thought it was kind of Hail Mary defense
18 and I told him so before his trial.

19 Q Okay. Mr. Robinson testified that he was fine pleading
20 to the habitual traffic offender offense. Was that your
21 inclination that you got during this time as well?

22 A Yeah, we never really thought much about the habitual
23 traffic offense because we were always talking more years on the
24 drug offense then what the habitual traffic offender maxed out
25 at. I did not believe the judge was going to run anything

1 consecutive in a plea. So he never really worried about the
2 habitual traffic offender charge.

3 Q And Mr. Robinson testified that there was a plea offer
4 prior to trial starting. Do you recall that?

5 A I do.

6 Q And what was that plea offer?

7 A Some time after our first meeting which happened on
8 January 16th of 2018. I received a plea offer of six years. Me
9 and him discussed that plea offer on February 20th of 2018 where
10 he told me he was going reject that plea offer. I asked him to
11 be here on that Friday. To show up to docket so we could
12 officially reject it for the solicitor.

13 Q And did he show up?

14 Q I do have not have written down whether or not he
15 showed up or not. So I do not know the answer to that question.
16 I assume he did.

17 Q And after you started trial, the jury was picked.
18 There was a recess and the record reflects that he took a plea.
19 Is that correct?

20 A Yes. We picked the jury and he did take a plea after
21 the jury was chosen.

22 Q And how did that plea offer come about?

23 A In York County where I was working at the time as a
24 public offender the solicitor's office has a policy that they do
25 not offer plea offers the week of trial. And so there was going

1 to be no offer. So anything we did was going to be pleading
2 straight up before the judge as charged.

3 Q Okay. So there was no offer at that point. It was
4 just a straight up plea?

5 A As far as I remember it was straight up plea.

6 Q Did you explain to Mr. Robinson what straight up meant?

7 A Yes.

8 Q So he knew that he was going to be facing anywhere from
9 five to twenty years?

10 A Yes, sir.

11 Q And did you tell him that he was pleading to a
12 negotiated sentence or a specific set of years that he would
13 get?

14 A No. We talked about -- earlier we talked about a
15 negotiated sentence with regard to the six years that he was
16 originally offered. We did not talk about any kind of
17 negotiation as to the actual plea during trial.

18 Q Okay. And did you clarify to him that this plea was
19 different from the prior offer?

20 A Yes.

21 Q Okay. And whose decision was it to plead guilty?

22 A Ultimately it was his.

23 Q And had Mr. Robinson asked you to take the case to
24 trial, would you have been prepared for that?

25 A I was prepared --

1 THE COURT: Mr. Davidson, can you hear me?

2 MR. DAVIDSON: Yes, I can.

3 THE COURT: All right. Okay. I lost you for just
4 a minute, you and Mr. Nielson but I can hear you now.
5 Mr. Nielson, can we do a test just to make sure I can
6 hear you.

7 MR. NIELSON: Yes, ma'am.

8 THE COURT: Okay. All right. I can hear you.
9 All right. Thank you. I'm sorry to interrupt. Go
10 ahead Mr. Nielson.

11 A I don't remember what the last question you asked me
12 Mr. Davidson.

13 THE COURT: Mr. Davidson if you can restate that
14 question.

15 Q Okay. If Mr. Robinson had asked you to take this case
16 to trial would you have been prepared for that?

17 A Yes.

18 Q Okay. And Mr. Robinson testified that originally he
19 was charged with possession with intent to distribute marijuana,
20 first offense, but then it subsequently changed to third
21 offense. Do you recall how that happened?

22 A I believe he was originally charged with simple
23 possession of marijuana, not even with possession with intent to
24 distribute marijuana. But ultimately when the solicitor got a
25 hold of the case and they did the cell phone rip they sent it to

1 Grand Jury and indicted him for possession with intent to
2 distribute based on his record it was a third offense.

3 Q Based on his record?

4 A Yes.

5 Q And did you guys talk about that?

6 A Yes. He was not happy about it, but yes, we discussed
7 it that if it went to a jury it would be a third offense.

8 THE COURT: Mr. Davidson.

9 MR. DAVIDSON: Yes, ma'am. Yes, Your Honor.

10 THE COURT: Mr. Davidson.

11 MR. DAVIDSON: Yes, Your Honor.

12 THE COURT: I am going to try to rejoin. For some
13 reason I am losing the audio. Okay. Just give me one
14 moment. All right?

15 MR. DAVIDSON: Yes, Your Honor.

16 THE COURT: Okay, I'm back and I think Ashley also
17 moved some people over to be attendees so that might
18 help. And also, I guess if you are not participating
19 if you could turn your camera off that would also
20 help. All right.

21 So Mr. Davidson, I apologize to you and Mr.
22 Nielson. Please continue sir.

23 Q I actually don't recall the last question so I'll just
24 ask a new question Mr. Nielson, if that's okay.

25 A Yes, sir.

1 A Did you guys discuss -- you and Mr. Robinson discuss
2 parole eligibility for this offense?

3 A Yes, we did.

4 Q And what were those discussions?

5 A When we signed the sentencing sheet in this case the
6 sentencing sheet specifically says on it no parole and it also
7 specifically says that he was pleading without negotiation or
8 recommendation. Both of those things were checked on the
9 sentencing sheet. By matter of course I'd been doing criminal
10 defense for nearly five years at this point and I have a routine
11 that I go through on all -- when I fill out all sentencing
12 sheets that includes making sure that my client knows what's
13 written on the sentencing sheet, what the charges that they are
14 pleading to, whether or not it is violent or non-violent,
15 whether or not it's a parolable offense and what the offer is.
16 And as indicated on the sentencing sheet this is a non-violent
17 offense but that does not make it parole eligible. And so we
18 did go over the fact that this is a non-violent offense but that
19 also does not mean that it's parolable and it states on the
20 sheet itself that this is non-parolable offense.

21 Q Okay. And you heard Mr. Robinson's testimony, correct?

22 A Yes.

23 Q Did you ever get the inclination that the only reason
24 he decided to plea was because he was eligible in his testimony
25 for parole?

1 A I don't believe that's the only reason he plead. I
2 believe we discussed that this was a non-parolable sentence.

3 Q Okay. So your testimony -- if I'm hearing you correct
4 is that you informed him that he was not he eligible for parole
5 in this offense?

6 A Yes.

7 Q Okay. And the judge ultimately sentenced him to 12
8 years suspended on ten years with two years probation, is that
9 correct?

10 A Yes.

11 Q And he alleges that you failed to object. Is there any
12 reason why you didn't object to that sentence?

13 A He wanted the least amount of active time possible and
14 ten is less than twelve.

15 Q Okay. All right. Nothing further, Your Honor, from
16 the State.

17 THE COURT: Okay. Cross examination Mr. Waller.

18 MR. WALLER: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MR. WALLER:

21 Q Mr. Nielson, going back to the sentencing sheet you
22 were just discussing, where is it notated on the sentencing
23 sheet that there is no parole eligibility?

24 A Right next to where it says PWID marijuana, third
25 offense it has in parentheses five to twenty years and or zero

1 to \$20,000 fine and then no parole. That is handwritten in on
2 the sentencing sheet that he signed.

3 Q All right.

4 MR. WALLER: Your Honor, I certainly don't
5 disbelieve Mr. Nielson. The sentencing sheet I've
6 been provided does not reflect that. Does not have
7 anything handwritten next to it.

8 A I do apologize, Mr. Waller, I am looking at the wrong
9 sentencing sheet. I do apologize.

10 Q Is it for Mr. Robinson or for a different client?

11 THE COURT: Mr Nielson, we lost the audio.

12 MR. NIELSON: How about now?

13 THE COURT: Yes. Okay, we got you back

14 All right. So, I think the question was are you
15 looking at a different sentencing sheet for a different
16 defendant or was it for this defendant but just maybe
17 an earlier version of it?

18 A I do apologize. I am looking at the sentencing sheet
19 for this defendant but it's a sentencing sheet that was provided
20 to me as proof to the third or subsequent offense. I was
21 looking at the wrong sentencing sheet.

22 Q So it was one of the ones that was used to enhance the
23 charge?

24 A Yes, sir. I do apologize. And looking it at the
25 sentencing sheet for this case that is not written on the

1 sentencing sheet itself.

2 Q Okay. That actually leads me right into my next
3 question. What were his prior offenses that were used as
4 enhancements?

5 A There is a 2013 possession with intent to distribute
6 marijuana and a 2000 -- sorry, I'm having to look back through
7 the file for that question. 2012 possession with intent to
8 distribute marijuana.

9 Q Okay. So it's your understanding that his charge did
10 not qualify for -- I guess for lack of a better way to say it --
11 simple possession, 3rd offense or 3rd offense of PWID where the
12 previously two were simple possession would have been parole
13 eligible or probationary, or didn't qualify for that section of
14 the statute, is that correct?

15 A He did not qualify because they were both possession
16 with intent to distributes.

17 Q Okay. And were you and Mr. Robinson able to discuss
18 that?

19 A I do not believe we discussed it in that level of
20 detail.

21 Q What did you all discuss if you recall about his prior
22 record and how that would affect his sentence?

23 A My recollection was that we discussed that this was --
24 he would not be parole eligible based on his record. Based on
25 the fact that this was -- even though this was not necessarily a

1 violent sentence it's non-parolable because of his record.

2 Q Okay.

3 A And I do not have written down in my file but that's
4 the best of my recollection.

5 Q Okay. You testified -- or there was a question earlier
6 regarding him appearing at a scheduled -- earlier to his plea
7 and that it was to reject the plea. But you don't have anything
8 in your notes as far as him not appearing. Was a bench warrant
9 ever issued in this case?

10 A No, it was not.

11 Q Is that a common practice in York County if a defendant
12 doesn't appear?

13 A If they don't appear for an actual court hearing they
14 will get an bench warrant. If it's a -- if it's just something
15 simple as a plea turn down or something like that its maybe,
16 maybe not.

17 Q Okay. Okay. All right. I believe you testified
18 earlier regarding the number of active years and that's why you
19 didn't object to the suspended sentence. What preparations had
20 you and Mr. Robinson made regarding challenging the traffic stop
21 that you spoke of earlier?

22 A It was simply -- it was simply going have to be officer
23 testimony whether or not they really had a legitimate reason for
24 the stop.

25 A Okay. And its -- what was your evaluation had the

1 trial judge found that the stop was not valid?

2 A Then the case would have had to have been thrown out.

3 Q Did you and Mr. Robinson have a chance to discuss that?

4 A I don't know if we did specifically or not.

5 Q Okay. And you might have testified earlier the text
6 messages and the money and some of the other things found in the
7 car that was your understanding was the reason for the
8 enhancement to possession to possession with intent to
9 distribute?

10 A Yes, sir.

11 MR. WALLER: Your Honor, if I could have a moment
12 with Mr. Robinson briefly?

13 THE COURT: Okay. I'm not sure how to accomplish
14 that other than to have you call them.

15 MR. WALLER: Okay.

16 THE COURT: Mr. Robinson is there something there
17 with you? An officer there with you?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: Why don't we take a few minutes. Why
20 don't we take about ten minutes if we can figure that
21 out for Mr. Waller or maybe Mr. Davidson has a
22 contact. There's a person that is showing up on Webex
23 is Stacy Baber (phonetics).

24 MR. DAVIDSON: Your Honor, I can provide Mr.
25 Waller with the phone number if it would please the

1 Court.

2 MR. WALLER: I know in the past -- and I certainly
3 don't know how to use it -- but I know that Webex has
4 the feature of being able to put Mr. Robinson and
5 myself in a separate virtual room away from everyone
6 else. I don't know how to activate that certainly,
7 but I'll be happy to call if that's easier.

8 THE COURT: Well, let me just ask my
9 administrative assistant. Okay. Just give me one
10 minute. All right. And the phone number did pop up.
11 Give me just one minute.

12 MR. WALLER: I don't know Mr. Robinson can be
13 muted as well.

14 THE COURT: Ashley can mute him.

15 MR. WALLER: Okay. I will just call.

16 THE COURT: Okay. Mr. Robinson, sir, we will take
17 a few minutes and let you talk to Mr. Waller. Okay?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: All right. We will be back with you
20 all in about ten minutes. If you need more time Mr.
21 Waller you just let me know. Okay?

22 MR. WALLER: Thank you, Your Honor.

23 (Whereupon, there was a brief recess.)

24 THE COURT: Mr. Waller, did you have an
25 opportunity to speak with your client?

1 MR. WALLER: I did, Your Honor. Thank you for
2 that.

3 MR. WALLER: Mr. NIELSON, I don't have any further
4 questions. Thank you very much.

5 THE COURT: Okay, any redirect.

6 MR. DAVIDSON: Just a few questions Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. DAVIDSON:

9 Q Mr. Nielson, prior to the judge handing down the
10 sentence that Mr. Robinson received, did you have any knowledge
11 of what the sentence would actually be?

12 A No.

13 Q And do you recall on the record correcting the
14 solicitor regarding the sentencing range that Mr. Robinson was
15 facing?

16 A I believe she -- I haven't reviewed the transcript.
17 But if my memory is correct I think she said it was ten to
18 thirty and it was five to thirty. I could be wrong on that
19 though.

20 Q And Mr. Robinson ultimately received a 12 year sentence
21 but could the judge have given him more time then that?

22 A Yes, the judge could have have given him 20 years and
23 could have ran the HTO five years consecutive to it if she
24 wanted to.

25 MR. DAVIDSON: Okay. No further questions Your

1 Honor.

2 THE COURT: Okay. Anything else from the State?

3 MR. WALLER: No, Your Honor that's all.

4 THE COURT: Okay. Any reply testimony?

5 MR. DAVIDSON: No reply testimony, Your Honor.

6 THE COURT: Okay. Would you all like to make
7 summation, a closing argument?

8 MR. WALLER: Just very briefly, Your Honor. You
9 certainly heard the testimony here today and you have
10 obviously in your role as the judge participated in
11 guilty pleas. Judge I'm not aware of any sort of
12 requirement or anything in the judicial canons
13 regarding a judge specifically notifying a criminal
14 defendant of the parole eligibility of their sentence.
15 But just anecdotally I can't recall observing one or
16 participating in one where it was not presented to the
17 defendant by the judge of this is is a non-parolable
18 offence to make sure that they understand that. That
19 typically something is said along the lines you can
20 plan on doing this sentence day-for-day. Things like
21 that.

22 Judge, I do have a case I would like the Court to
23 consider. It's Brown verses State. Citation is 412
24 S.E.2nd 399. It's a 1991 case and it goes to the
25 parole eligibility. In that case the judge

1 misinformed a defendant of their eligibility. Which
2 is slightly different then the situation we have here.
3 But I think the overall message of the case is
4 applicable.

5 Your Honor, I think what it comes down to is that
6 Mr. Robinson did not have a clear understanding that
7 his offense was not eligible for parole. In reviewing
8 the statute it's 44-53-370(b)(2). Your Honor, it's
9 quite lengthy and there are multiple conditions that
10 effect different -- effects a person's sentence
11 differently based on there prior history or the
12 amounts that they are pleading guilty to or convicted
13 of. So Your Honor, it's a bit of confusing sentencing
14 portion of the statute. So I think it is very clear
15 to see how Mr. Robinson did not have an understanding.
16 And Your Honor, the purpose of Brown is that without
17 nothing that or without having an understanding of
18 that the plea is involuntarily entered into. And so,
19 Your Honor, I would just ask that you consider that
20 case, the statute and obviously your notes here today
21 and the transcript as well. The plea colloquy I think
22 is helpful to the Court.

23 Thank you, Your Honor.

24 THE COURT: Thank you. Mr. Davidson.

25 MR. DAVIDSON: Thank you, Your Honor. The State's

1 position is that based on Mr. Nielson's testimony he
2 testified that he spoke expressly about whether or not
3 applicant was eligible for parole and I would argue
4 that this case is similar if not almost the same as
5 from a Frazier v State which is cited at 351 S.E. 385
6 which came out of the Supreme Court of South Carolina
7 in 2002. And in that case the Supreme Court held that
8 trial counsel actually didn't give any advice as to
9 parole eligibility and therefore the defendant was not
10 induced to plead guilty based on his parole advice
11 prior on the plea which the Court held defendant was
12 not entitled to post conviction relief on the ground
13 that his plea was not voluntarily and intelligently
14 entered into. And while not identical, Mr. Nielson
15 testified that he expressly told Mr. Robinson that he
16 was not eligible for parole on this offense and
17 additionally, he can not prove that his plea was
18 involuntary based on his ideas of parole because he
19 was pleading straight up and Mr. Nielson testified he
20 explained what this meant and that applicant still
21 choose to plead guilty. So the State argues that even
22 if he was misadvised that did not prejudice him in his
23 guilty plea because he actively choose to go before
24 the judge and plead straight up.

25 THE COURT: Okay. Anything else counsel?

1 MR. WALLER: Your Honor, I think in listening to
2 the argument from the State, judge, I think that Mr.
3 Davidson is correct if no advice is given to a
4 defendant regarding parole eligibility or sentencing
5 issues, things of that nature, then he's correct that
6 is not ripe for post conviction relief. But that the
7 information given to the defendant by their counsel or
8 by the Court has to be correct. He just said
9 mis-advice is not -- would not -- would still not be
10 eligible for PCR because he's pleading straight up. I
11 don't think that's what the case law holds. I think
12 the information and advice given by counsel has to be
13 correct if it's given. If it's not given that's a
14 different situation. But I think if it is given it
15 has to be correct.

16 THE COURT: Okay, anything else?

17 MR. DAVIDSON: Your Honor, I would just state that
18 Mr. Nielson's testimony was that the correct advice
19 was given. That he would not be eligible for parole.

20 THE COURT: Okay. Anything else, Mr. Waller?

21 MR. WALLER: Nothing further, Your Honor. Thank
22 you.

23 THE COURT: Okay. All right. Thank you all. And
24 I am just always so pleasantly surprised when we
25 conduct these hearings via video conference and it

1 goes so smoothly. And so I want to thank you all for
2 being prepared and for your efficiently presentations
3 to me and for your professionalism in making your
4 presentations. So let me say this. Let me direct
5 these comments to Mr. Robinson. Okay.

6 Mr. Robinson. Sir, again, I have a lot of
7 paperwork to review and I want to review it all again
8 before issuing my decision. I have the transcript and
9 the transcript is about 86 pages long. Because I
10 think maybe you all had anticipated going to trial and
11 there was some pretrial motions heard and then had the
12 plea. This was a transcript of Judge Couch, Roger
13 Couch. The transcript date is July the 11th of 2018
14 which is the date shown on the sentencing sheet and
15 the court reporter was Miss Nielson. I also have
16 copies of sentencing sheets and I have copies of your
17 petition, your application and the amended application
18 by Mr. Waller and I have a return from the State and
19 so, I also have the Remittitur. And so, I'm going to
20 review everything again, sir, before I issue my
21 decision. I will try do so as quickly as possible. I
22 know that this is very important to you and to your
23 family member. Sir, I wish you the very best in the
24 future. That will conclude the hearing at this time.
25 Thank you again.

1 MR. WALLER: Thank you, Your Honor.

2 END OF TRANSCRIPT

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 6th day of December, 2022.

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

April 24, 2022

s/ *Aileen Butler*

State of South Carolina,
Respondent.

ORDER OF DISMISSAL

FILED-RECEIVED

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does not meet the required standard articulated in Strickland, Butler, and Cherry in which Applicant is required to prove by a preponderance of the evidence that counsel was deficient and that he was prejudiced by any deficiency. Therefore, the Applicant has failed to meet his burden of proof. Specifically, 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 York County Clerk of Court. Applicant was indicted at the February 2018 term of the York County Grand Jury for possession with intent to distribute marijuana, third or subsequent offense ("PWID") (2018-GS-46-00950) and habitual traffic offender (2018-GS-46-00951).. Applicant was represented by Assistant Public Defender Devon Neilson. Assistant Solicitors Marina Bender Hamilton and Ryan Newkirk of the Sixteenth Circuit Solicitor's Office prosecuted the case.

On July 11, 2018, Applicant's trial commenced, but Applicant subsequently changed his plea to guilty after Judge Couch ruled on several pre-trial motions made by Applicant. Judge Couch sentenced Applicant to concurrent sentences of five years' imprisonment for habitual traffic offender and twelve years' imprisonment for PWID, provided that upon service of ten years the balance would be suspended with two years' probation.

Applicant filed a timely notice of appeal. On September 6, 2018, The South Carolina Court of Appeals dismissed the appeal due to appellant's failure to provide a sufficient explanation for a guilty plea appeal as required by Rule 203(d)(1)(B)(iv) of the South Carolina Court Rules (SCACR). The remittitur was issued on September 25, 2018

Current Application

Applicant timely commenced this PCR action on May 15, 2019. Applicant alleges:

1. Ineffective Assistance of Plea Counsel
 - a. Failure to investigate facts of the case

Applicant lists the following as his requested relief: “Vacate sentence, reverse conviction and remand for a new trial.”

On December 2, 2021, Applicant through counsel amended his PCR application, alleging:

1. Ineffective assistance of Counsel for:
 - a. failing to advise applicant that his offense was not eligible for parole; and
 - b. failing to object to, or appeal, the non-conforming sentence issued by judge Couch.

At the evidentiary hearing, Applicant proceeded forward on the allegations as set forth in his original application and the December 2, 2021, amendment.

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. Ineffective Assistance of Counsel

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

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC. 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.

1. Failure to Investigate Facts of the Case

Applicant broadly alleges Counsel was ineffective in failing to adequately investigate his case. “[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)).

Applicant offers nothing 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. Applicant at no point offered any testimony to establish that *but for* Counsel's failure to investigate any particular thing, he would not have pled guilty but would have insisted upon going to trial. Applicant has produced no probative evidence towards meeting his burden as to either prong of *Hill*, and accordingly his demand for relief by way of this allegation is **DENIED**.

2. Failure failing to advise applicant that his offense was not eligible for parole

Applicant alleges Counsel was ineffective in failing to advise him that his offense was not eligible for parole. Normally, parole eligibility is a collateral consequence of sentencing of which a defendant need not be specifically advised before entering a guilty plea. *Randall v. State*, 356 S.C. 639, 591 S.E.2d 608 (2004). If a defendant is actively misinformed about parole eligibility he must prove he relied on this information in order to receive post-conviction relief. *Griffin v. Martin*, 278 S.C. 620, 300 S.E.2d 482 (1983); see *Hinson v. State*, 297 S.C. 456, 377 S.E.2d 338 (1989) (relief granted on this ground); *Brown v. State*, 306 S.C. 381, 412 S.E.2d 399 (1991) (plea vacated where trial judge misinformed defendant about parole eligibility) modified by *Hunter v.*

State, 316 S.C. 105, 447 S.E.2d 203 (1994), *abrogated on other grounds by Simpson v. State*, 329 S.C. 43, 495 S.E.2d 429 (1998) (erroneous parole advice from the bench *could*, on certain facts, mislead a defendant, but relief is not required without something more).

Applicant testified Counsel did not inform him of parole eligibility consequences. In contrast, Counsel testified he did inform Applicant of the parole eligibility consequences, and that the information he gave Applicant was accurate. This Court finds Counsel's testimony to be credible and Applicant's testimony not credible. This Court finds Counsel accurately advised Applicant he was not eligible for parole and therefore, Counsel was not deficient. This Court further finds Applicant presents no evidence to show any relation between Counsel's advice to Applicant that by pleading guilty, he was not eligible for parole, and Applicant's decision whether to plead guilty. Accordingly, Applicant has failed to present any evidence to meet his burden as to either prong of *Hill*, and his claim for relief by way of this allegation is **DENIED**.

3. Failure to object to, or appeal, the non-conforming sentence issued by judge Couch

Applicant alleges Counsel was ineffective, Counsel failed to object to, or appeal, the non-conforming sentence issued by judge Couch. However, Applicant has failed to show any prejudice resulting from Counsel's alleged deficiency as the plea was "straight up" and the Judge could have sentenced Applicant up to twenty-five years.

Accordingly, Applicant has failed to present any evidence to meet his burden as to the prejudice prong of *Hill*, and his claim for relief by way of this allegation is **DENIED**.

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

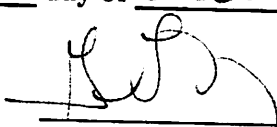
application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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 29th day of December, 2021.


 GRACE GILCHRIST KNIE
 Presiding Judge
 Sixteenth Judicial Circuit

Spartanburg, South Carolina