

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Fairfield County

Honorable Walton J. McLeod, IV, Circuit Court Judge

DONALD V. STEVENSON, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001518

APPENDIX

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ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF FAIRFIELD
4 2016-GS-20-00145

5 State of South Carolina

6 Vs.

7 Donald Stevenson

8

9 Winnsboro, South Carolina

10 February 22, 2017

11 Before the Honorable Brian Gibbons

12 APPEARANCES

13 For the State: Riley Maxwell

14 For the Defendant: Creighton Coleman

15

16 Reported by: Michael C. Watkins

17 Official Court Reporter

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NO EXHIBITS

NO EXHIBITS

1 MR. MAXWELL: This is Donald Stevenson. Mr. Stevenson
2 is represented by Mr. Coleman. Mr. Stevenson has been
3 indicted for distribution of methamphetamine, docket number
4 2016-GS-20-145. He is pleading as indicted to that charge,
5 it is a first offense. Per his guilty plea to that charge
6 another distribution, as well as a PWID and one domestic
7 violence is being dismissed. Another domestic violence
8 incident is remaining pending for the time being. That's
9 going to be a bond matter, we can handle that, I guess,
10 after the guilty plea is accepted, if it is accepted. The
11 State's recommendation at this time is a three year
12 sentence which will remain even through a deferred
13 sentence.

14 THE COURT: All right. Mr. Coleman, you represent Mr.
15 Stevenson?

16 MR. COLEMAN: I do, Your Honor.

17 THE COURT: Do you agree with his decision to plead
18 guilty to this charge?

19 MR. COLEMAN: Yes, sir.

20 THE COURT: All right. How old are you?

21 THE DEFENDANT: Forty-six.

22 THE COURT: Do you understand what you're doing in
23 court today?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand this charge against you?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Distribution of methamphetamine carries up
3 to three years in prison, do you understand?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Understanding that, how do you plead?

6 THE DEFENDANT: Guilty, Your Honor.

7 THE COURT: Has anybody forced, pressured, coerced or
8 made you do that against your will?

9 THE DEFENDANT: No, sir.

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

12 THE DEFENDANT: No, sir.

13 THE COURT: Are you satisfied with your attorney?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Has he answered all of your questions?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Did you and he go over all of your jury
18 trial rights?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You understand you give up those rights
21 when you plead guilty?

22 THE DEFENDANT: Yes, sir, Your Honor.

23 THE COURT: Is that what you want to do?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Are you under the influence of anything

1 today that will make you not understand what's going on?

2 THE DEFENDANT: No, sir.

3 THE COURT: All right. Listen carefully to what the
4 State says happened and then I'll come back to you.

5 MR. MAXWELL: Your Honor, this incident took place on
6 December 16th of 2015. An informant working with the
7 Fairfield County Sheriff's Office narcotics unit conducted
8 a controlled buy operation. On that date the informant
9 went to Mr. Stevenson's residence on Newberry Road here in
10 Fairfield County, met with Mr. Stevenson there and made a
11 purchase of \$50 worth of methamphetamine inside the house.
12 This was recorded on audio and video.

13 THE COURT: Is that what happened?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. The Court accepts your
16 It's my understanding that the State is seeking deferment
17 of sentencing; is that correct?

18 MR. MAXWELL: Through some negotiations with Mr.
19 Coleman we've agreed to defer sentencing until April, I
20 believe it was April 15th, I believe -- 17th is the Monday
21 of the April term of court. We're leaving one domestic
22 violence charge pending, meaning Mr. Stevenson will have to
23 make bond on that. I think it's a \$10,000 surety where
24 he's going to have to be on GPS monitoring, house arrest,
25 only leave to go to appointments with his attorney and

1 church and to handle estate matters. Can't bother the
2 neighbors, can't get in anymore trouble. If he violates
3 the conditions or does anything else wrong, the
4 recommendation of the State can change and he can be facing
5 up to a maximum of 15 years.

6 THE COURT: All right, thank you. Mr. Coleman?

7 MR. COLEMAN: Your Honor, I would go along with the
8 recommendation of the State. I had prepared a consent
9 order, or an order for the Court to review, and in that
10 order I put the special conditions as outlined by the
11 solicitor and I've gone over all of those with my client
12 several times, he is in agreement with that. He knows that
13 if he gets out on this bond and he does anything in
14 violation of the law that the deal is off the table. I
15 specifically asked him to be good neighbors in the
16 neighborhood, refrain from any illegal activities, and to
17 be here on the 17th, which is a Monday, at 9:00 to be
18 sentenced. And he's on house arrest. So I would ask the
19 Court to go along with it.

20 THE COURT: All right. Mr. Stevenson, I want to make
21 sure you understand what's going on here, okay? I've
22 accepted your plea, okay? That means I have found you
23 guilty of this crime charged, okay? I haven't sentenced
24 you yet, and that's significant because it means that I can
25 sentence you anywhere from zero to 15 years, okay? Now,

1 part of this sentencing -- I am going to defer sentencing
2 to April 17th, okay, from my understanding to allow you to
3 wrap up your father's estate and to get things taken care
4 of out at your farm or your house or whatever. I don't
5 have any problem doing that considering that you've been
6 locked up now for a period of many months, and I understand
7 that, okay? So I've agreed to what's called a consent
8 order for bond, okay, as well on the pending charge of
9 domestic violence high and aggravated. You'll be under a
10 \$10,000 surety bond with the following conditions. You'll
11 show up on April 17th at 9:00 a.m. to be sentenced on this.
12 You'll be under house arrest with GPS active monitoring. No
13 criminal behavior. Be a good neighbor. Be able to leave
14 home only for attorneys, church and to manage your father's
15 estate, okay? Do you understand those conditions and
16 restrictions?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: So here is the significant thing you
21 to undeestand, if you violate any of these restrictions or
22 conditions some bad things can happen, okay? First of all
23 you could be picked up for violating your bond, okay? And
24 there's an automatic arrest provision on there as well.
25 That means you can be picked up and detained if they see

1 you in violation of this bond, okay? Then that bond can be
2 withheld and then you can be sitting in jail the way you've
3 been doing the past five, six months, however long you've
4 been in jail. The most significant thing, however, is
5 since I've accepted your guilty plea, if you mess up while
6 you're out prior to you showing up that's going to
7 significantly impact what I do as far as your sentence is
8 concerned, okay?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Now, it's my understanding that the State
11 is recommending a term of --

12 MR. MAXWELL: Three years.

13 THE COURT: The State is recommending three
14 years. Of course, I know your lawyer is going to ask for
15 less than that, I understand that, okay? That's the way
16 the game is played, okay? I'm telling you right now, if
17 you don't cooperate and you violate any of the terms and
18 conditions of this bond or if you get into anymore trouble
19 between now and then there's a pretty good chance I'm going
20 to max you out.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now, then again if you be a good guy or
25 a good citizen and do what you're supposed to do, not get

1 in any other trouble, there's a very good chance that I'll
2 go along with the recommendation, or maybe even less than
3 that. Do you understand?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: The power is in your hands. Sentencing is
6 deferred until April 17th, 2017. I'm ordering that he be
7 released upon the posting of a \$10,000 surety bond with all
8 of those terms and conditions, okay?

9 MR. COLEMAN: Your Honor, the one thing that I think I
10 did not put on the record is sufficient. The main purpose
11 of allowing him to get out is that his father has died
12 recently while I think in November -- December, and while
13 he has been incarcerated, a lot of his equipment, a lot of
14 his family treasures, his mother's jewelry and all of that
15 have been walking off. People have broken in and they have
16 sold some of it. So the purpose of it is to get him home
17 so he can secure it, come back in on April 17th, face his
18 music and move on. So that's the purpose of that.

19 THE COURT: All right. I understand.

20 (End of the hearing.)

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	SIXTH JUDICIAL CIRCUIT
COUNTY OF FAIRFIELD	)	2016-GS-20-0145
	)	
STATE OF SOUTH CAROLINA	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
DONALD VERNON STEVENSON,	)	
JR.	)	
	)	
_____	)	

MAY 14, 2018
CHESTER, SOUTH CAROLINA

BEFORE THE HONORABLE BRIAN GIBBONS

APPEARANCES:

RILEY MAXWELL, ASSISTANT SOLICITOR
WINNSBORO, SOUTH CAROLINA

ATTORNEY FOR THE STATE

CREIGHTON COLEMAN, ESQUIRE
WINNSBORO, SOUTH CAROLINA

ATTORNEY FOR THE DEFENDANT

SHIRLEY BROOM
16TH Circuit Court Reporter

I - N - D - E - X

WITNESSES: DIRECT CROSS RE-DIRECT RE-CROSS
(NO TESTIMONY TAKEN)

E X I B I T SDESCRIPTION:ID.EV.

NO EXHIBITS

1 THE COURT - All right, solicitor, call the case.

2 (WHEREUPON, DONALD VERNON STEVENSON, JR. IS DULY
3 SWORN BY THE CLERK OF COURT)

4 THE COURT - All right, Solicitor.

5 MR. MAXWELL - May it please the Court.

6 THE COURT - Yes, sir.

7 MR. MAXWELL - Your Honor, this is the Donald V.
8 Stevenson, Jr. Mr. Stevenson is represented by Creighton
9 Coleman. Mr. Stevenson entered a plea to distribution of
10 methamphetamine, Docket Number 2016-GS-20-145. That plea
11 date was February the 22nd of 2017. At the time the
12 defense requested that sentencing be deferred due to a
13 death of Mr. -- the death of Mr. Stevenson's father so he
14 could handle the estate. Mr. Stevenson was given a
15 sentencing date of April the 17th of 2017 to appear. He
16 did not appear on that date, fled the jurisdiction, fled
17 the state, ended up down in Florida where -- I think he
18 fled just the day before according to law enforcement prior
19 to the hearing. He was also -- he's also on parole. He
20 was recently extradited back to South Carolina I believe
21 about two weeks ago. He's entered -- so, he's already
22 entered the plea to distribution of methamphetamine and per
23 his plea to that, the State dismissed another distribution
24 of methamphetamine charge, a possession with intent to
25 distribute methamphetamine, domestic violence second

1 degree, and when -- after the sentence today the State will
2 dismiss another criminal domestic violence and that's of a
3 high and aggravated nature.

4 THE COURT - All right, and I -- refresh my
5 recollection. At the time of his plea there was a
6 recommendation, wasn't there?

7 MR. MAXWELL - Had Mr. Stevenson appeared on April
8 17th of 2017, the State was going to recommend three years.
9 He's facing up to 15, and of course due to him not
10 appearing that day, that is not the recommendation. The
11 State would ask for the Court to impose the maximum
12 sentence.

13 THE COURT - I think I said that, didn't I?

14 MR. MAXWELL - I believe so.

15 THE COURT - All right. Mr. Coleman, anything you
16 wish to add?

17 MR. COLEMAN - Yes, Your Honor.

18 THE COURT - Yes, sir.

19 MR. COLEMAN - Mr. Stevenson's 47 years old, went
20 to high school; he's got one child on the way. If you'll
21 recall, his father, Donald Stevenson, Sr. had died while he
22 was incarcerated and waiting to go -- to come to Court. He
23 was close with his father; his father died. They had a
24 farm out on Highway 34 in the Lebanon community, real nice
25 piece of property. He was -- he asked the Court and I

1 asked for the Court to allow him to be sentence deferred so
2 he could go and try to help and get his father's affairs in
3 order. He did that as best as he could. He'd been working
4 down in Florida about 80 hours a week he tells me. He
5 drives a tow truck for Florida Turnpike System. Your
6 Honor, I just want to tell the Court, Don has had a very,
7 very tough life in a lot of different realms. He has
8 served some time. This is his first drug offense. He's
9 not a bad person. He just goes from -- pardon me for
10 saying this -- one screw-up to the other. He tells me he's
11 -- he's tired of this. He's tired of, you know, coming to
12 Court being yanked around like a yoyo, and I would ask the
13 Court to hear from Donald.

14 THE COURT - Yes, sir, Mr. Stevenson.

15 MR. STEVENSON - Your Honor, I meant no disrespect
16 to you or the Court when I left at all. And I deeply
17 apologize. In hindsight it was a really stupid move, and I
18 realized it about a week after it happened. I was dealing
19 with my father's death; I was dealing with a cheating wife;
20 I was dealing with a lot of back-stabbing in the family
21 after land and after money. I was dealing with more than I
22 could handle. I snapped; I got in my truck and I drove,
23 and I didn't stop driving til I run out of highway in Key
24 West, Florida, and if I could've swam, I'd have swam all
25 the way to Cuba. I couldn't have run far enough from my

1 own misery and what was going on in my family, what was
2 going on with me. I put a whole world behind me. I met a
3 wonderful lady down there in Florida. I got rid of my
4 cheating wife. I survived Hurricane Irma on a boat in
5 South Florida, but somewhere along the lines I found peace.
6 I don't know what it was, but I found some peace. I got a
7 good woman and a child on the way now, my first child; I'm
8 starting out late in life. Given the opportunity, I'd go
9 back to my job down there -- and my attorney here has all
10 my pay stubs -- I'm making almost a thousand dollars a week
11 working 75, 80 hours a week driving a tow truck; my job's
12 waiting on me; my lady's waiting on me. We having it tough
13 down there; cost of living's high, but given the
14 opportunity to leave the great State of South Carolina and
15 go back to my job, go back to my lady, whether it be
16 probation, whether to do whatever, my job's waiting on me,
17 I got a family started, I'll never come back to the State
18 of South Carolina again if y'all just let me have the
19 opportunity. I just want to have my family.

20 THE COURT - Thank you, Mr. Stevenson.

21 MR. STEVENSON - Yes, sir.

22 THE COURT - Anything further, Mr. Coleman?

23 MR. COLEMAN - Judge, I -- I really don't know
24 what else to say, just to tell you, got a real nice farm
25 out on Highway 34 and I -- and he sent me the Will of his

1 daddy and all that. He's got a niece trying to take it;
2 they're trying to sell it out from up under him, and he is
3 the beneficiary as long as he is not married to a
4 particular person, which he's not married to. That was the
5 condition in the Will on behalf of his father, so I'm going
6 to try to help him with that. Just a screwed-up situation.

7 THE COURT - You know, Mr. Stevenson, I clearly
8 sympathize with you, and I empathize with you. I'm sorry
9 for the change of circumstances which have led you right to
10 this day. Okay? It is what it is; you've done what you've
11 done. You know, you got to take some responsibility for
12 it. You know, one of the main things that lawyers and
13 litigants, people who come to Court, like to see in a Judge
14 is consistency. Okay? Try to be as consistent as
15 possible, and that's one of the hardest things to do giving
16 all the crap I hear. Okay? But I can tell you I think
17 it's very important, Mr. Stevenson, and I believe you can
18 agree with me, that a man's word is his bond. Do you agree
19 with that?

20 MR. STEVENSON - Yes, sir.

21 THE COURT - And I gave you my word. I was more
22 than willing -- not a -- it was not going to be a problem
23 to go along with the State's recommendation. I mean the
24 State made a huge concession to you to get this plea. I
25 mean I don't know if you'd agree with that or not, but all

1 these other charges against you are dismissed. You have
2 nothing on you except for this. Okay? And I believe that
3 I recall that I said at that hearing, look, I'm going to
4 give you til April 17th against my better judgment, and if
5 you show up, I'll go within the range or the
6 recommendation, maybe even less, but if you don't, I'm
7 going to give you the max. You remember me telling you
8 that?

9 MR. STEVENSON - Sir, I just found out a friend of
10 mine had died a few minutes before I came in Court, and I
11 don't remember much of that day to be honest with you.

12 THE COURT - Well, I think the transcript whenever
13 you pull it, if and when you do, you'll see me saying that
14 so, I'm a man of my word; 15 years. Good luck to you.
15 Credit for time served.

16 MR. MAXWELL - Thank you, Your Honor.

17 THE COURT - All right.

18 (END OF TRANSCRIPT)

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C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 9 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of State of South Carolina vs. Donald Vernon Stevenson, Jr., as taken by me in The Court of General Sessions for the Sixth Judicial Circuit on May 14, 2018, and provided by me this the 22nd day of April, 2019.

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

/s/ SHIRLEY G. BROOM

Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

FORM 5

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

County of FAIRFIELD

2019-CP-20-135

DONALD VERNON STEVENSON, JR.

Full name and prison number (if any) of Applicant

SCDC #237814

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

2019 APR - 9 AM 11:04
FAIRFIELD COUNTY
CLERK OF COURT
JUDY H. BONDSINSTRUCTIONS - 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 SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, (ALLSTATE CORRECTIONAL INSTITUTION)
2. Name and location of Court which imposed sentence FAIRFIELD COUNTY COURT, WINNABORO, SC. (MAY-15-2018) IN CHESTER COUNTY BUT PLEAD IN FAIRFIELD COUNTY
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) UNKNOWN
 - (b) UNKNOWN

2) I WAS ARRESTED, CHARGED, AND PLEAD
IN FAIRFIELD COUNTY, BUT WAS SENTENCED
IN CHESTER COUNTY, TO 15 YEARS
301-08-40-MO.S

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) MAY 15 2018 SENTENCED TO 15 YEARS NON-VIOLEN
- (b) _____
- (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?
~~(NO) I ASK MY ATTORNEY TO BUT HE DID NOT~~
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) I ASK MY ATTORNEY CREIGHTON COLEMAN TO APPEAL AND HE DID NOT. HE HAS DONE NOTHING LIKE I ASK HIM.
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Ineffective Assistance of Counsel
- (a) I signed a Plea To a five (5) year cap ineffective
- (b) Not abiding by signed plea agreement Assistance of
- (c) I WAS MIS GUIDED BY MY ATTORNEY counsel
- (c) I WAS UNDER EXTREME DURESS AT TIME OF Plea
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) I WAS SENTENCED TO THE MAXIMUM OF 15 years
- (b) ATTORNEY TALKED ME INTO THE Plea UNDER DURESS
- (c) JUST AFTER MY FATHER HAD DIED. ~~HE~~
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. _____

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) N/A
 (b) _____
 (c) _____

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

(a) your arraignment and plea? YES
 (b) your trial, if any? _____
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NO

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

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

- i. Craigton Coleman, Winnsboro SC. 29180
 ii. Mike Moore (Moore Legal Solutions)
Winnsboro SC. 29180
 iii. _____

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

- i. Mike Moore AND Craigton Coleman
BOTH Present AT Plea.
 ii. only Craigton Coleman Present AT
sentencing,
 iii. _____

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

I would like to be Resentenced to
The original Plea, or over Turn and go
To Jury TRIAL, I ONLY PLEAD To Deal of 3 years

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

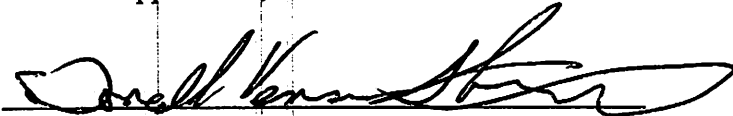
NO

STATE OF SOUTH CAROLINA)

County of FAIR Field)

VERIFICATION

I, DONALD VERNON STEVENSON JR., 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.



SWORN to and subscribed before me this 29
 day of March, 2019.

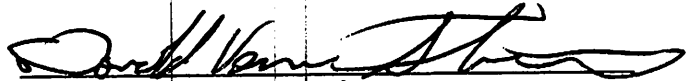
Virginia BWS (L.S.)
 Notary Public

My Commission Expires: 12/12/22

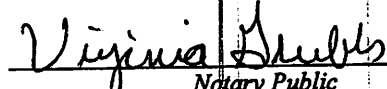
APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, DONALD VERNON STEVENSON JR., 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.~~


Applicant

SWORN or affirmed to and subscribed before me this
29 day of March, 2019.


Notary Public

My Commission Expires: 12/12/22

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FAIRFIELD	)	FOR THE SIXTH JUDICIAL CIRCUIT
	)	
Donald V. Stevenson, Jr., #237814,	)	2019-CP-20-0135
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	(Counsel Appointed)
State of South Carolina,	)	
	)	
Respondent,	)	
_____	)	

In response to Donald V. Stevenson's (Applicant) action for post-conviction relief (PCR) commenced April 3, 2019, the State makes this return:

I. Procedural History

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Fairfield County Clerk of Court. Applicant was indicted at the April 2016 term of the Fairfield County Grand Jury for distribution of methamphetamine (2016-GS-20-145). Applicant was represented by Creighton Coleman, Esquire. Dupty Solicitor Riley Maxwell prosecuted the case.

Applicant pleaded guilty on February 22, 2017, before the Honorable Brian Gibbons to distribution of methamphetamine—first offense. Applicant pleaded guilty with a recommended deferred sentence of three years' imprisonment. Applicant's sentence was to be deferred to April 17, 2017; however, on May 14, 2018, Judge Gibbons sentenced Applicant to serve fifteen years' imprisonment. Applicant did not appeal his conviction or sentence.

II. Facts

On December 16, 2015, Applicant sold methamphetamine to a confidential informant at his residence. (Plea Tr. 5). Applicant pleaded guilty as indicted on February 22, 2017. Applicant's

sentencing was deferred to April 17, 2017. Applicant also had a pending domestic violence charge where he was granted a \$10,000 surety bond and was on GPS monitored house arrest. (Plea Tr. 5-6; 7-8). However, Applicant absconded to Florida but was eventually extradited back to South Carolina. Applicant was sentenced on May 14, 2018. (Sent. Tr. 4-9).

At the sentencing hearing, the State rescinded its three-year recommendation because Applicant did not appear at his April 17, 2017, sentencing hearing. (Sent. Tr. 4-5). The State then asked for Applicant to receive the maximum fifteen year sentence. (Sent. Tr. 5). The plea court sentenced Applicant to the maximum, fifteen years' imprisonment. (Sent. Tr. 9).

III. Current Application

Applicant alleges he is being held in custody unlawfully, alleging:

1. Ineffective assistance of counsel:
 - a. Applicant expected to plead guilty with a five year sentencing cap;
 - b. Applicant was misguided by plea counsel; and
 - c. Applicant was under extreme duress at the time of his guilty plea.

Applicant requests relief to be resentenced or granted a new trial.

Attached to this return and incorporated herein are the Fairfield County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the plea and sentencing transcripts, and the records of this PCR action.

IV. Response to Allegation of Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of plea counsel are without merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989).

The test for determining the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). “[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). “The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To prove prejudice, the applicant must show a reasonable probability he would not have pleaded guilty and would have insisted on going to trial absent plea counsel’s alleged deficiency. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

Strickland requires trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688-689. “Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.” *Id.* at 691. Therefore, judicial scrutiny of counsel’s performance must be highly deferential. *Id.* at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel’s performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). In making a fair assessment of attorney performance, a court must make every effort to “eliminate

the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Strickland*, 466 U.S. at 689.

Applicant cannot satisfy either requirement of *Strickland*. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

V. Any Future Amendments

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 the Uniform Post-Conviction Procedure Act¹ and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)–(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRPC.

VI. Any and All other Allegations

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

¹ S.C. Code Ann. §§ 17-27-10 to -160.

VII. Conclusion

WHEREFORE, the State requests an evidentiary hearing be held on the claims of ineffective assistance of counsel.

Respectfully submitted,

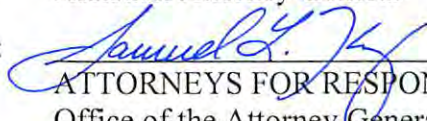
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

SAMUEL L. KEY
Assistant Attorney General

By:



ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

October 21, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FAIRFIELD	)	
	)	
	)	2019-CP-20-0135
	)	
DONALD V. STEVENSON, #237814	)	
	)	
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** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Arthur Kerr Aiken, Esquire
Aiken & Hightower
2231 Devine St. Ste. 201
Columbia, SC 29205

DATED this the 21st of October, 2019.



Kasey Knox, Legal Assistant
For Respondent

**STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD**

**COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT**

Donald V. Stevenson, Jr. #237814 Applicant vs. State of South Carolina, Respondent.	2021 JAN 29 FAIRFIELD COUNTY Case No.: 2019-CP-20-0135 AMENDMENT TO PCR APPLICATION
--	--

The Applicant, Donald V. Stevenson, Jr. (Stevenson), amends his PCR Application filed in the above captioned case as follows:

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

Johnson amends his response to item 10 to add the following:

d. Stevenson's plea counsel's performance was deficient because he did not adequately explain the important constitutional rights that Stevenson was waiving by pleading guilty. Stevenson was prejudiced by this deficient performance in that he would not have entered a guilty plea if he had understood the important constitutional rights that he was waiving by pleading guilty.

e. Stevenson's plea counsel's performance was deficient because he did not file a direct appeal of Stevenson's convictions and sentences. Stevenson specifically requested that his plea counsel file an appeal. Stevenson was prejudiced by this deficient performance in that he had a viable appellate issue because the plea colloquy between the plea Court and Stevenson did not foreclose Stevenson's claim that his plea was not freely and voluntarily entered because he did not understand the important constitutional rights that he was waiving by entering his guilty

plea. Stevenson specifically asserts his right to a belated, direct appeal under the authority of White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

f. Even if Stevenson did not specifically request that his plea counsel file his direct appeal from his guilty plea, plea counsel's performance was deficient because he failed to consult with Stevenson about an appeal. There was reason to think that Stevenson would want to appeal, so a duty to consult about an appeal was triggered. There were non-frivolous grounds for an appeal because the plea colloquy between the plea Court and Stevenson did not foreclose an argument on appeal that Stevenson's plea was not entered knowingly and intelligently because Stevenson did not understand the important constitutional rights that he was waiving by entering a guilty plea. On this ground, Stevenson also specifically asserts his right to a belated, direct appeal under the authority of White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

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

Stevenson amends his response to Item 11 to add the following:

- d. Applicant relies on his response to Item 10(d) above.
- e. Applicant relies on his response to Item 10(e) above.
- f. Applicant relies on his response to Item 10(f) above.

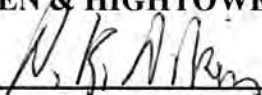
19. State clearly the relief you seek in filing this application:

Stevenson amends his response to Item 19 as follows:

Stevenson prays for an order vacating convictions and sentences and an order granting him the right to pursue a belated, direct appeal from his convictions and sentences.

Respectfully Submitted,

AIKEN & HIGHTOWER, P.A.

BY: _____

ARTHUR K. AIKEN

PO Box 90707

Columbia, SC 29290

Phone: 803-799-5205

Fax: 803-799-5206

Email: art@aikenandhightower.com

ATTORNEYS FOR APPLICANT

Columbia, South Carolina
January 26, 2021

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

) IN THE COURT OF COMMON PLEAS
) SIXTH JUDICIAL CIRCUIT
)
)

Donald v. Stevenson, Jr. #237814

Case No.: 2019-CP-20-0135

Applicant

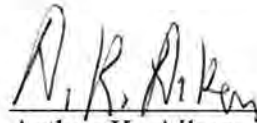
CERTIFICATE OF SERVICE

vs.

State of South Carolina,

Respondent.

I, Arthur K. Aiken, certify that on this date, January 26, 2021, I served Applicant's Amended PCR Application in this case on the State's attorney, Assistant Attorney General Michael D. Davidson, by US Mail addressed to the South Carolina Attorney General's Office, PO Box 11549 Columbia, SC 29211 and by email at michael.davidson@scag.gov.



Arthur K. Aiken
Aiken & Hightower, PA
PO Box 90707
Columbia, SC 29290
Tel 803-799-5205
Fax 803-799-5206
art@aikenandhightower.com

Columbia, South Carolina
January 26, 2021

STATE OF SOUTH CAROLINA - COUNTY OF FAIRFIELD
SIXTH JUDICIAL CIRCUIT

DONALD V. STEVENSON)
) Docket No.
) 2019-CP-20-0135
)
)
V.)
)
) PCR HEARING
STATE OF SOUTH CAROLINA)
)
) RESPONDENT.

February 3, 2021
Fairfield, South Carolina

B-E-F-O-R-E:

HONORABLE WALTON J. MCLEOD, IV.

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

ART AIKEN, ESQ.
Attorney for the Applicant

MICHAEL DAVIDSON, Attorney General
Attorney for the State

Maria DiScioscia, RPR
Official Court Reporter

Donald V. Stevenson V State of South Carolina

1 (Hearing commenced in the above matter)

2

3 THE COURT: This is the case of Donald
4 Stevenson versus the State. This is Case Number
5 2019-CP-20-0135.

6 Mr. Davidson, if you could just give me a
7 very brief background and we'll turn it over to
8 Mr. Aiken.

9 MR. DAVIDSON: May it please the Court.

10 Applicant was indicted in April 2016 for
11 distribution of meth, first offense. He was represented
12 on those charges by Creighton Coleman. Applicant
13 pleaded guilty on February 22nd, 2017, with a
14 recommended deferred sentence of three years before
15 Judge Gibbons. Applicant's sentenced was deferred to
16 April 17th, 2017. However, on May 14th, 2018, Judge
17 Gibbons sentenced applicant to serve 15 years
18 imprisonment. Applicant did not appeal. This PCR was
19 filed April 3rd, 2019, and amended on January 26th,
20 2021.

21 Applicant is present and he's represented by
22 Mr. Art Aiken.

23 Your Honor, the State is ready to proceed,
24 however, we would ask Mr. Aiken to put on the record any
25 allegations that he plans to go forward with.

Donald V. Stevenson V State of South Carolina

1 MR. AIKEN: Art Aiken on behalf of the
2 defendant, your Honor.

3 In his original application, Mr. Stevenson
4 said that he signed a plea to a five-year cap. He's
5 alleged that he was misguided by his attorney and under
6 extreme duress at the time of the plea. In the
7 amendment, I allege that Mr. Stevenson's plea counsels
8 performance was deficient because he did not adequately
9 explain the important constitutional rights
10 Mr. Stevenson was waiving by pleading guilty.
11 Mr. Stevenson was prejudiced by his deficient
12 performance in that he would not have entered a guilty
13 plea if he had understood the important constitutional
14 rights that he was waiving by pleading guilty.

15 Next, I allege that Stevenson's plea
16 counsels performance was deficient because he did not
17 file a direct appeal of Stevenson's convictions and
18 sentences. Stevenson specifically requested that his
19 plea counsel file an appeal. Stevenson was prejudice by
20 his deficient performance in that he had a viable
21 appellate issue because the plea colloquy between the
22 plea court and Stevenson did not foreclose Stevenson's
23 claim that his plea was not really involuntarily entered
24 because he did not understand the important
25 constitutional rights that he was waiving by pleading

Donald V. Stevenson V State of South Carolina

1 guilty.

2 And on that ground, we specifically assert
3 Mr. Stevenson's right to a belated direct appeal under
4 White versus State.

5 The next allegation that I make in the
6 amendment is that even if Stevenson did not specifically
7 request that his plea counsel file his direct appeal
8 from his guilty plea, plea counsel's performance was
9 deficient because he failed to consult with Stevenson
10 about an appeal. There was reason to think that
11 Stevenson would want to appeal, so a duty to consult
12 about an appeal was triggered. There were nonfrivolous
13 grounds for an appeal because the plea colloquy between
14 the plea court and Stevenson did not foreclose an
15 argument on appeal and Stevenson's plea was not entered
16 knowingly and intelligently because Stevenson did not
17 understand the important constitutional right that he
18 was waiving by entering a plea of guilty.

19 On this ground as well, we specifically
20 assert the right to a belated direct appeal under White
21 versus State.

22 THE COURT: That's the crux of what you're
23 seeking today is a belated appeal?

24 MR. AIKEN: On a belated appeal and also on
25 the first ground of involuntary plea because of

Donald V. Stevenson V State of South Carolina

1 ineffective assistance vacating the sentence -- the
2 conviction and sentence.

3 So on the first ground of my amended
4 application, the appropriate relief would be vacation of
5 the conviction and sentence. From the second and third
6 ground, the relief would be a belated appeal under White
7 versus State.

8 THE COURT: Thank you. And do you have one
9 witness today or more than one?

10 MR. AIKEN: I have one, your Honor.

11 THE COURT: Okay. Are you ready to proceed?

12 MR. AIKEN: If I can just make one quick
13 point as an introduction, your Honor.

14 THE COURT: Sure.

15 MR. AIKEN: The reason -- the main reason of
16 why we're here today is because in the plea colloquy,
17 the Court did not go over individually with -- did not
18 go over with Mr. Stevenson his separate constitutional
19 rights to remain silent, for a jury trial, and the right
20 to confront witnesses.

21 With the extent of that -- of a conversation
22 about those rights is on page 4, line 17 through 24 of
23 the transcript of the plea. There's actually two
24 transcripts, Judge. There's one for the plea and one
25 for the sentencing. I'm talking about the plea

Donald V. Stevenson V State of South Carolina

1 transcript of February 22nd, 2017. The Court asked
2 Mr. Stevenson:

3 "Did you and he go over all of your jury
4 trial rights?"

5 The defendant said, "Yes, sir."

6 And then the Court said, "You understand you
7 give up those rights when you plead guilty."

8 Mr. Stevenson responded, "Yes, sir, your
9 Honor."

10 Then the Court says, "Is that what you want
11 to do?"

12 And Mr. Stevenson responded, "Yes, sir."

13 So under *Boykin versus Alabama*, the plea has
14 to go over at least the federal constitutional right to
15 remain silent, the right to have a jury trial, and right
16 to confront the witnesses against you. That's the
17 minimum requirement under *Boykin versus Alabama*.

18 Would you like for me to proceed with my
19 witness, Judge?

20 THE COURT: Yes. Yes, sir.

21 MR. AIKEN: The applicant calls Donald
22 Stevenson.

23 THE COURT: Mr. Stevenson, can you hear me?

24 MR. STEVENSON: Yes, sir.

25 THE COURT: Please raise your right hand.

Donald V. Stevenson V State of South Carolina

1 MR. STEVENSON: Yes, sir.

2 THE COURT: Do you swear or affirm that all
3 the testimony that you will give to me is the truth, the
4 whole truth and nothing but the truth, so help you God?

5 MR. STEVENSON: Yes, sir.

6 THE COURT: Okay. Witness has been sworn.

7 MR. AIKEN: Thanks, your Honor.

8

9 DIRECT EXAMINATION

10 BY MR. AIKEN:

11 Q. Mr. Stevenson?

12 A. Yes, sir.

13 Q. Did you plead guilty to distribution of
14 methamphetamine on February 22, 2017?

15 A. Yes, sir. I did.

16 Q. Had your father died near that date?

17 A. Yes. My father had passed on December,
18 mid-December, just a couple months earlier while I was
19 in the county jail.

20 Q. Were you allowed to go to his funeral?

21 A. No, sir. I was not.

22 Q. Were there any problems with your father's estate
23 following his death?

24 A. Yes. I had a wife that was taking and selling
25 everything, farm machinery, tools, and everything --

Donald V. Stevenson V State of South Carolina

1 vehicles -- she could get her hands on. And there was
2 nothing that I could do about it and nothing law
3 enforcement could do about it. And I was doing anything
4 I could to get out of jail to stop it.

5 Q. Did you have other personal type problems with
6 your wife?

7 A. Yes, sir, I did. Do you want me to elaborate?

8 Q. Yes, please.

9 A. My wife and I had a sketchy marriage to start
10 with. It was -- we both had our share of severe alcohol
11 issues and drugs. I had, obviously, a drug problem all
12 with methamphetamine. But she was constantly calling
13 law enforcement -- having me arrested, saying I did
14 something I didn't, getting me locked up so she could
15 take the truck or she could go sell something -- do
16 something to get me out of the way -- run off with her
17 longtime on-and-off boyfriend and then turn around and
18 file with the sheriff's office 'cause later are
19 affidavits that she lied and she just did it to get me
20 locked up. And that's why I was in the county jail when
21 my father passed and when I was trying to get out on the
22 bond, was another one of her charges.

23 Q. Shortly before your plea on February 22nd of
24 2017, did you find something out about one of your
25 friends?

Donald V. Stevenson V State of South Carolina

1 A. Yes, sir. One of my best friends, he's like a --
2 literally like a brother to me, James Simpson. I had
3 found out as we were in the back of the courtroom, I
4 can't remember if the call came in through Mr. Coleman
5 or maybe Mike Moore, I believe it was Mike Moore's
6 phone. And it was actually my wife -- was calling to
7 tell me that James had just passed. He had a massive
8 diabetic stroke. And that was either at the bond
9 hearing or at that plea hearing. I can't recall which
10 one but I remember we were in the back of the courtroom.

11 Q. Now before your plea, did you sign anything
12 having to do with your sentence?

13 A. Yes, sir. We had -- I was -- I signed a -- for a
14 grievance (sic) and I remember it had -- a five-year cap
15 was on it. But I don't remember. I didn't get copies
16 of most of what I signed. But I had signed for the
17 plea.

18 Q. Ultimately, what sentence did you get on what you
19 pled guilty for, distribution to a methamphetamine?

20 A. Ultimately, I was sentenced to 15 years. I was
21 actually taken from the Fairfield County to Chester
22 County courtroom for a sentencing. But they sentenced
23 me to 15 years for the one charge I pled guilty to for a
24 three-to-five year sentence.

25 Q. Whose idea was it to plea on February 22nd of

Donald V. Stevenson V State of South Carolina

1 2017?

2 A. Creighton Coleman.

3 Q. How did he explain his rational for the plea?

4 A. Mr. Coleman had come down to the jail and he told
5 me -- he said, "the only way you're going to stop all
6 this happening, is you're going to have to get a bond to
7 get out."

8 Well, you cannot get a bond while you were on
9 bond for one violent offense for distribution and then
10 get arrested for a second violent offense, which was the
11 trumped up assault and battery of high and aggravated
12 nature with the wife. So he said, one of those has to
13 go away. Now, the only way we can make that charge go
14 away is if we plea to the charge, then that charge goes
15 away because you plead to it. We can put off sentencing
16 for about 45 days to get your affairs in order and we
17 get you a bond on the other charge that will apparently
18 swept under the rug and gone away with because everybody
19 knows you didn't do it anyway. But that way it covers
20 everybody and it lets you out now.

21 I'm like, "that's the only way I can get out now
22 and stop all this?"

23 "That's the only way. You can't have a bond at
24 all because you're already on bond for one violent
25 offense and then they charged you with another."

Donald V. Stevenson V State of South Carolina

1 So I did the only thing I could sensibly do that
2 Mr. Coleman had said was, I had to get out. At that
3 point my dad was dead. You know, my wife is stealing
4 everything under on him and my world is in shambles.
5 I'm not even thinking clear on anything. All I know is
6 out is out. I want out.

7 That's the whole thing, my lawyer that I trust.
8 He's my family friend and I know him for most my life
9 and I trusted him that that was the way it was going to
10 go and that's the way I went. The problem --

11 Q. Okay -- go ahead. I'm sorry.

12 A. No. Go ahead. Continue.

13 Q. Did -- did Mr. Coleman make any effort to get you
14 out of jail before your plea?

15 A. Yes. We had -- we had one or two bond hearings
16 and it was each the same judge. And apparently they
17 were Citadel buddies or something to that effect. And
18 it was all what about if we did this but it never
19 happened. There wasn't even a bond. He was in constant
20 communication with my wife, Sharon, and he knew the
21 situation and tried to explain how he -- she was taking
22 everything in the world I had. Everything my elderly
23 father had. I did whatever I could to get out and I
24 went with whatever I could.

25 Q. Did you want the plea?

Donald V. Stevenson V State of South Carolina

1 A. No. I wanted to fight the whole thing --

2 (Virtual connection was lost.)

3 Your, Honor --

4 THE COURT: Time-out, time-out. We lost him
5 for like the last ten seconds. Mr. Stevenson, I need
6 you to go back about ten seconds and Mr. Aiken asked you
7 a question and could you try to say it again? Something
8 happened to your computer in the last 30 seconds where
9 the volume has been effected. We need to go off the
10 record for a moment.

11 (A brief discussion was held off the
12 record.)

13 THE COURT: Back on the record.

14 Mr. Stevenson, do you hear me okay?

15 MR. STEVENSON: Yes.

16 THE COURT: Mr. Aiken, I think you can
17 continue.

18 MR. AIKEN: Thank you, your Honor.

19

20 CONTINUED DIRECT

21 BY MR. AIKEN:

22 Q. Mr. Stevenson, on February 22nd, 2017, did you
23 want to plea guilt to distribution of methamphetamine?

24 A. No, sir. I was going on my attorney's -- the
25 only way I could get out of jail was to do that. So

Donald V. Stevenson V State of South Carolina

1 I -- my hands were tied. I had no choice but to get out
2 of jail at any cost and so I went along with what he
3 said. So we went with it.

4 Q. Now --

5 A. And three to five was, you know, making
6 everything go awash. So I was going off everything. So
7 I went along with it. I was the lamb to the slaughter,
8 basically.

9 Q. Mr. Stevenson, who -- who prepared you for the
10 plea?

11 A. Mr. Creighton Coleman. And I think Mike Moore
12 was there. But mostly I stuck with Mr. Coleman

13 Q. Did Mr. Moore or Mr. Coleman advise you before
14 your plea that you have the right to remain silent and
15 if you plead, you would be giving up that right?

16 A. No. That's something the police would have told
17 me when they arrested me but not my attorney.

18 Q. Did Mr. Coleman explain to you that you had the
19 right to not plead guilty and have a jury trial?

20 A. Yes. I had a choice. But the jury trial would
21 have been me sitting in jail for however long.

22 Q. Did either Mr. Coleman or Mr. Moore advise you
23 that you -- that the government would have to bring
24 witnesses and have a trial in open court?

25 A. No, sir.

Donald V. Stevenson V State of South Carolina

1 Q. Did either of them explain to you that you have
2 the right to have your defense lawyer cross-examine all
3 the government's witnesses?

4 A. No, sir.

5 Q. They never explained anything concerning a right
6 to confrontation, did they?

7 A. No, sir, no.

8 Q. If you understood all of those rights, would you
9 have pled guilty?

10 A. Knowing all those things that I had to know, I
11 probably would not have. I didn't want to really do
12 anything. I wanted to just - only course was getting
13 out of there.

14 Q. Now, you pled guilty on February 22nd of 2017.
15 Correct?

16 A. Yes, sir.

17 Q. And you were supposed to come back in April of
18 2017 and be sentenced; is that correct?

19 A. Correct.

20 Q. Instead of coming back, you went to Florida; is
21 that right?

22 A. Yes, sir. I -- I had a complete -- I -- I guess
23 you would call it a midlife criss, complete meltdown.
24 My father had just passed. My wife had been cheating on
25 me and sold and just turned my whole life upside down.

Donald V. Stevenson V State of South Carolina

1 Then during the plea or right before the plea, I find
2 out about my best friend had a stroke and died. And
3 when I got home and saw the disarray, when I bonded out,
4 what was left of the pieces of my family's history and
5 my family farm and property, and I knew I -- I had a
6 meltdown. I really did. I had a complete total snap
7 and I threw my hands up in the air with life and
8 everything else and I jumped in my truck and I just
9 started driving south. And I didn't stop until I hit
10 Key West and crawled into a bottle of whisky. I messed
11 up. They --

12 Q. They brought you back to South Carolina; is that
13 correct?

14 A. Yes, sir, April 2018.

15 Q. Okay. And then on May 14th, 2018, were you
16 sentenced?

17 A. Yes, sir, I was.

18 Q. And you received the maximum sentence of 15
19 years?

20 A. Correct.

21 Q. After your sentencing, did you have any
22 conversation with Mr. Coleman about an appeal?

23 A. Yes, sir. In that instant, the gavel dropped,
24 the judge said that, I spun on him and said, "Appeal
25 this." And then we went into the backroom where the

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1 holding cell was, a little side room I guess the jury
2 room and sat in there for a few moments and talked.

3 After that --

4 Q. During -- continue.

5 A. -- after that. On -- probably two months later,
6 he came to Kirkland R&E and visited me. And that time
7 he stated my father's estate was still in probate, he
8 would help me with that. He never did. Now I have
9 nothing. He said, "Well, we're too late with filing an
10 appeal. I just didn't hear you with other things going
11 on. I'm sorry. File a PCR on ineffective assistance of
12 counsel on myself, you know, Mr. Coleman."

13 I said, "Yes sir."

14 And I went through the processes of filing and
15 now, well, here we are.

16 Q. Did Mr. Coleman spend any time with you
17 explaining your right to an appeal?

18 A. No, sir. No.

19 Q. You never had a consultation about an appeal; is
20 that right?

21 A. Yes, sir. Like I said, the moment the gavel
22 dropped, I turned on him and said, "What? Appeal this."
23 And as we are in the backroom and we talked and there
24 was never an appeal. So I don't know if maybe he
25 thought I couldn't appeal because I took a plea and a

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1 ran, I don't know.

2 Like I said, when he did come to visit me in
3 Kirkland R&E, this would have been somewhere in the
4 neighborhood of June, July of 2018, we discussed things.
5 He said, well -- he said, "We're too late for that now,"
6 but he said, "file the PCR for the ineffective. He said
7 file it against me."

8 "Yes, sir."

9 So he gave me that to go with.

10 Q. That's all I have, Mr. Stevenson. If you would
11 answer any questions Mr. Davidson might have. Thank
12 you.

13 A. Yes, sir.

14 THE COURT: All right. Cross-examination?

15 CROSS EXAMINATION

16 BY MR. DAVIDSON:

17 Q. Good morning, Mr. Stevenson.

18 A. Good morning.

19 Q. At your plea hearing, do you recall agreeing with
20 the facts of the case when the State presented them?

21 A. As far as the distribution?

22 Q. Yes, sir.

23 A. Yes.

24 Q. Okay. And earlier you testified that you didn't
25 want to plead guilty but that you needed to get out to

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1 handle your affairs; right?

2 A. That's correct.

3 Q. And based on the plea that Mr. Coleman came to
4 you with, did that present you the opportunity to get
5 out and handle your affairs?

6 A. Yes.

7 Q. And at your plea hearing, do you recall telling
8 the plea judge that you wished to plea guilty?

9 A. Yes, sir. I do. And if I may, Mr. Davidson, I
10 was told to say "yes" to any questions that I was asked
11 in regards to what the judge would ask me. Otherwise
12 the whole plea and the whole thought of me getting out
13 would just be null and I would go right back to county.

14 Q. Okay. Do you recall the judge explaining to you
15 that what was significant about deferring your sentence
16 to later, was that if you did what you were supposed to
17 do, showed up at the sentencing, that you would
18 likely -- that he would likely go along with the
19 recommended three-year sentence or maybe even give you
20 less time?

21 A. I really don't recall a lot of the -- a lot of
22 that day. As far as -- like I said, I was under a lot
23 of duress, Mr. Davidson. Extreme duress on that day.
24 I've got bits and pieces of it. My life was falling
25 down like a load of bricks at that moment when I was

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1 standing there.

2 Q. Did you know that if you were to leave town and
3 not come back for your sentencing hearing that he might
4 give you a greater sentence?

5 A. No. Actually I was told five-year cap. And I --
6 actually, during my little mind slip up of having my
7 meltdown and leaving, that I figured after a little
8 while, I started thinking of turning myself in. Well
9 worse thing they could do is give me five years. I
10 signed a five-year cap. So I proceeded to just get my
11 life together. But, yeah, the five-year cap was the
12 whole scenario.

13 Q. So you don't recall the judge saying that if you
14 didn't do what you were supposed to do that he was going
15 to give you the max sentence?

16 A. No, sir. Not at all.

17 MR. DAVIDSON: Nothing further, your Honor.

18 THE COURT: Any redirect?

19 MR. AIKEN: No redirect, your Honor.

20 THE COURT: All right. The witness may step
21 down from the this virtual stand.

22 Mr. Attorney General, any witnesses you wish
23 to call?

24 MR. DAVIDSON: Yes, your Honor. The State
25 would call Mr. Creighton Coleman.

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1 THE COURT: Mr. Coleman, good morning. Can
2 you hear me?

3 MR. COLEMAN: Can you hear me?

4 THE COURT: Yes. Now I do. Yes, sir.

5 (Witnessed sworn.)

6 Thank you, sir.

7 The witness is sworn. You may proceed,
8 Mr. Davidson.

9 MR. DAVIDSON: Yes, sir.

10 Thank you, your Honor.

11 DIRECT EXAMINATION

12 BY MR. DAVIDSON:

13 Q. Good morning, Mr. Coleman.

14 A. Good morning.

15 Q. How long have you been practicing law?

16 A. Close to 35 years.

17 Q. And about how much of that has been criminal law?

18 A. When I first got out of law school, my first
19 seven years was exclusively criminal. But since then in
20 private practice, I would say 30 percent.

21 Q. Were you appointed or did Mr. Stevenson retain
22 you to represent him?

23 A. He retained me.

24 Q. And about how many times did you guys meet in the
25 course of your representation?

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1 A. A bunch. I can't tell you but I'd say between
2 five and ten. Probably on the high side, maybe 11. I'm
3 not really sure but a lot.

4 Q. Okay. And if you could please give us a brief
5 overview of what the State's evidence was against
6 Mr. Stevenson.

7 A. It was a CI, confidential informant. It was a
8 control buy. Then I think two days later, if I recall,
9 they executed a search warrant in his home and went in
10 and found a lot of paraphernalia, drug paraphernalia.

11 Q. And when you went over all of this with your
12 client, did you explain the strengths and weakness of
13 the case against him?

14 A. Yes. I mean, Don -- I like Don. Don is a very
15 intelligent guy. But I told him the same thing. I
16 think Don just goes from one screw up to the other. But
17 he is a good guy and I like him. But, you know, he's
18 been in the system a lot. He knows the system. And I
19 was just looking at his prior record. I mean, he has
20 been in the system a lot. So he's -- he's savvy. In a
21 lot of ways, a lot of good ways.

22 Q. And in light of the State's evidence, could you
23 seek of any defenses available to Mr. Stevenson?

24 A. He never told me any -- and when I would go see
25 him, he want to get out of jail bad. And as he said, I

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1 think, I don't know how many times that we went on for a
2 bond reduction and it was mostly before Judge Gibbons
3 and they were just -- they weren't going to let him out.

4 I mean, his case was getting old and it had -- it
5 got some age on it. And we would have then either had
6 to go to trial or work a deal out. And we worked a deal
7 out. I mean, we got it so -- Riley Maxwell was the
8 local solicitor here and he was going to recommend and
9 did recommend three years, which was, in my opinion,
10 based on his prior record and everything else. It was a
11 damn good deal.

12 Q. And when you spoke to Mr. Stevenson about all of
13 that, was the reason you got that or went to the
14 solicitor to get that deal based off of conversations
15 that you had about what he wanted to do?

16 A. Yea. I mean, yes.

17 Q. And did you think that plea was in his best
18 interest?

19 A. Ain't no question about it.

20 Q. And was it his decision to plead guilty or did
21 you tell him to?

22 A. I told him I thought it was in his best interest,
23 but he made up his mind. That is what he wanted to do.

24 Q. If he had wanted to go to trial, would you have
25 been prepared for that?

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1 A. Absolutely.

2 Q. And before the plea took place, did you explain
3 to him all of the constitutional rights that he was
4 giving up?

5 A. Yes.

6 Q. Like his right to remain --

7 A. Right to jury trial. Right -- you know, the
8 State would have the burden of proof. They would have
9 to bring witnesses in. We'd have the right to cross
10 examine, that kind of stuff.

11 Q. Do you recall when that conversation took place?

12 A. I'm sure it took place up at the jail and before
13 we did the plea.

14 Q. Did you discuss his rights to a direct appeal.

15 A. I'll be honest with you, I don't recall if I did
16 or not.

17 Q. Do you recall if he asked you to file an appeal?

18 A. No. I don't recall.

19 Q. But is it your practice to file an appeal if a
20 client asks you to?

21 A. Yes.

22 Q. If he would have asked you, you would have filed
23 one?

24 A. Yes. And I do remember the conversation we had
25 when I went to see him at -- I don't know where he

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1 was -- Kirkland, I think, maybe. He did mention the
2 appeal then. And by that time, the time had expired for
3 the appeal to be filed.

4 Q. Did he give you any inclination that he wanted to
5 appeal?

6 A. When? Are you talking about at the time of the
7 guilty plea?

8 Q. Yes, sir.

9 A. No.

10 Q. And did you see any issues that would have merit
11 on appeal?

12 A. No.

13 Q. But if you had seen any issues that were
14 meritorious, would you have filed an appeal?

15 A. Yes.

16 Q. All right.

17 MR. DAVIDSON: That's all I have, your
18 Honor.

19 MR. COLEMAN: Can I say one thing?

20 BY MR. DAVIDSON:

21 Q. Yes, sir.

22 A. With regard to the estate and all of that, and I
23 had been in touch with Don since he's been in jail. He
24 wanted me to look at -- and this is more of a side
25 issue, but I want to clarify some of the things he said.

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1 He said I didn't do anything with regards to his
2 father's estate. That's not true. He -- he had called
3 me several times after my meeting with him I think at
4 Kirkland and I went over to the courthouse and the
5 probate court and got some information about his estate.
6 And he called me on the telephone and I told him what I
7 found out. And then I told him that I would send him in
8 writing all the information about what happened to his
9 family's land and that sort of stuff. And I sent that
10 to Don and basically what happened is, his father named
11 his sister, Miriam Breckenridge, as his trustee. She
12 had the sole discretion to do with the land what she
13 felt was within the parameters of his will.

14 And I sent that to him and I have not heard from
15 Don since I sent that information to him. So I just
16 wanted to clarify that. He said I didn't do anything,
17 that's not true.

18 Q. Okay. Thank you.

19 MR. DAVIDSON: Nothing further.

20 THE COURT: All right. Cross-examination,
21 please?

22 CROSS-EXAMINATION

23 BY MR. AIKEN:

24 Q. Good morning, Mr. Coleman.

25 A. Good morning.

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1 Q. Have you -- have you reviewed the transcript of
2 Mr. Stevenson's guilty plea?

3 A. I looked at some of it. I haven't read it all
4 the way through. I just sort of scanned it.

5 Q. In that transcript, does it note that the Court
6 explained to Mr. Stevenson his right to remain silent?

7 A. I don't know. I hadn't looked at that part of
8 it.

9 Q. Same question for right to a trial by jury?

10 A. I hadn't looked at it in that area.

11 Q. Same question of right of confrontation?

12 A. Same answer.

13 Q. Mr. Stevenson's father died December of 2016. Is
14 that correct?

15 A. I take your word if that's when it was. I don't
16 know off the top of my head. No.

17 Q. Do you recall on the day of the plea
18 Mr. Stevenson finding out that one of his friends had
19 died?

20 A. You know, I don't remember that. I don't -- I
21 don't recall. You know, I would have remembered that if
22 I would have known, I think. But I don't recall that.

23 Q. Do you recall Mr. Stevenson signing any document
24 about a cap of five years on his sentence?

25 A. I'm sure it would have been on the sentencing

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1 sheet or any recommendations. I don't -- I don't recall
2 the cap of five. I -- I think -- I think if Riley was
3 going to make a recommendation of three years and that's
4 what it was, I don't remember a cap of five. I could be
5 wrong on that.

6 Q. Did you have any conversation with Mr. Stevenson
7 immediately after his sentencing?

8 A. Yes.

9 Q. At that time did Mr. Stevenson request that you
10 file an appeal?

11 A. I don't recall that. My big thing right after
12 that was to tell him and to impress upon him that we got
13 a pretty good deal. The judge gave him what he wanted,
14 time to go home to get his affairs in order and that he
15 better show up on that specific date because the judge
16 made very clear, crystal clear, that if he didn't show
17 up on that day, he was going to get the max. And I
18 impressed that on Mr. Stevenson.

19 Q. After Mr. Stevenson sentencing, did you consult
20 with him at all about an appeal?

21 A. I don't recall.

22 Q. That's all I have. Thank you, Mr. Coleman.

23 A. Thank you.

24 THE COURT: Any redirect?

25 MR. DAVIDSON: No, your Honor.

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1 THE COURT: Witness is excused. Thank you,
2 Mr. Coleman.

3 MR. COLEMAN: Thank y'all. Good to see
4 y'all.

5 THE COURT: If, you know, briefly -- any
6 summations you'd all like to give me, just the main
7 points? I think it's kind of -- Mr. Aiken, I do want
8 to -- you cited a case earlier. Basically give me your
9 case law and the issue with the plea colloquy.

10 MR. AIKEN: Well, your Honor, the most
11 important case on the constitutional requirements for a
12 plea colloquy is the US Supreme Court Case called *Boykin*
13 *versus Alabama*. That's, 395 US 238.

14 THE COURT: Okay.

15 MR. AIKEN: In that case, the Court
16 basically says that when you plead guilty, you're giving
17 up three very important federal rights, which would be:
18 The right to remain silent; the right to jury trial; and
19 the right to confront witness against you.

20 And basically, the Supreme Court says in
21 *Boykin versus Alabama*, that in order to have a global
22 free and voluntary plea, you have to have a waiver of
23 those three constitutional rights. And the US Supreme
24 court cases are clear that when you have a waiver of
25 federal constitutional rights, it has to be an

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1 intentional relinquishment of a known-right.

2 In other words, to waive a constitutional
3 right, you have to know about what it is and its
4 contours before you can constitutionally waive it.

5 So basically what happened in *Boykin*, it was
6 actually a death penalty case. This was back in the
7 1960s in Alabama and the Court -- the defendant was
8 charged with five counts of common law robbery which was
9 then a death punishable offense, believe it or not. He
10 pled guilty to all five indictment -- of the charges in
11 all five indictments. And at the plea, basically the
12 judge had no colloquy with the defendant and the Supreme
13 Court reversed on the grounds that I just mentioned
14 about the waiver.

15 And one of the important things that the
16 Court says is that we cannot presume a waiver of these
17 three important Federal rights from a silent record; in
18 other words, Mr. Boykin was never advised of his
19 constitutional rights that he was waiving; never told
20 what they were; and the significance of them so he could
21 not have waived.

22 And it's important, the Court talks about
23 that you can't presume it from a silent record. In this
24 case, if you look at the plea colloquy, there's no,
25 "Here's what your right is. Do you waive that right?"

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1 Here's what your right is. Do you waive that right," on
2 those three important rights. And the other --

3 THE COURT: I think I understand your point.

4 MR. AIKEN: Okay. Thank you, Judge.

5 THE COURT: And then your other grounds was
6 consultations on the appeal or the duty to consult --
7 okay. All right. Anything else from the Attorney
8 General's Office?

9 MR. DAVIDSON: No, your Honor.

10 THE COURT: I'll have it under advisement
11 and get in touch with you, hopefully not too far into the
12 future.

13 Anything else on the record for this case?

14 MR. AIKEN: No, thank you, Judge.

15 THE COURT: Mr. Stevenson, thanks for your
16 patience. And thank, Mrs. Drowney, for helping you us
17 get the audio and visual set up. Okay. Thank you.

18

19 (Hearing concluded on February 3, 2021.)

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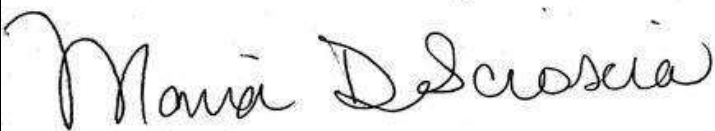
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C E R T I F I C A T E

I, the undersigned Maria DiScioscia, Official Court Reporter for the Sixth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the record of all the proceedings in the captioned case, in the Circuit Court for Fairfield, South Carolina, on the 3rd day of February, 2021.

I do further certify that I am not related, either by blood or marriage, to any of the parties in this action; and that I am in no way interested in the outcome of this matter.

A handwritten signature in cursive script that reads "Maria DiScioscia". The signature is written in dark ink and is positioned above a horizontal dashed line.

Maria DiScioscia
Official Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

Donald V. Stevenson, Jr., #2018-14
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

Case No.: 2019-CP-20-0135

ORDER OF DISMISSAL

This matter comes before the Court by way of Donald V. Stevenson's ("Applicant") action for post-conviction relief ("PCR") filed April 3, 2019. The State made its return on October 23, 2019. The Court convened an evidentiary hearing into the matter via the Cisco WebEx Virtual Courtroom on February 3, 2021. Applicant was present at the hearing and represented by Arthur Aiken, Esquire. Michael D. Davidson, Esquire, of the South Carolina Attorney General's Office, represented the State.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Creighton Coleman, Esquire ("Plea Counsel"), also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript and the transcript of the PCR hearing, the records of the Clerk of Court regarding the subject convictions, the pleadings, and the exhibits introduced at the evidentiary hearing.

Following a thorough review of the record in its entirety, as well as the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional violations and denies this application.

I. PROCEDURAL HISTORY AND BACKGROUND

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Fairfield County Clerk of Court. Applicant was indicted at the April 2016

term of the Fairfield County Grand Jury for Distribution of Methamphetamine (2016-GS-20-145). Applicant was represented by Plea Counsel. Deputy Solicitor Riley Maxwell prosecuted the case.

Approximately ten months later, on February 22, 2017, Applicant pleaded guilty, before the Honorable Brian Gibbons to Distribution of Methamphetamine—First Offense. Applicant pleaded guilty with a recommended sentence of three years' imprisonment. Applicant's sentence was to be deferred to April 17, 2017, based upon an agreement between Applicant and the State to allow him to handle several matters pertaining to his recently deceased father's estate. Applicant was informed of the importance of appearing for his sentencing hearing. Applicant did not appear for sentencing, and instead he absconded, setting up a new life in Key West, Florida. Applicant was ultimately apprehended and returned to South Carolina for sentencing on May 14, 2018. At the sentencing hearing, both Applicant and his attorney had the opportunity to fully address the court. After hearing from the parties, Judge Gibbons sentenced Applicant to serve fifteen (15) years' imprisonment. Applicant did not appeal his conviction or sentence.

Current Application

Applicant timely commenced this PCR action on April 3, 2019. Applicant alleges by and through PCR counsel that he is being held unlawfully for the following reasons:

1. Involuntary Guilty Plea:

- a. Applicant expected to plead guilty with a five-year sentencing cap;
- b. Applicant was misguided by plea counsel; and
- c. Applicant was under extreme duress at the time of his guilty plea.

Applicant amended his application on January 26, 2021, alleging:

2. Involuntary Guilty Plea:

- a. Plea Counsel's performance was deficient because he did not adequately explain the important constitutional rights that Stevenson was waiving by pleading guilty. Applicant was

prejudiced by this deficient performance in that he would not have entered a guilty plea if he had understood the important constitutional rights that was waiving by pleading guilty.

3. Ineffective assistance of counsel for failure to file a direct appeal.
 - a. Plea Counsel's performance was deficient because he did not file a direct appeal of Applicant's convictions and sentences. Applicant specifically requested that his plea counsel file an appeal. Applicant was prejudiced by this deficient performance in that he had a viable appellate issue because the plea colloquy between the plea court and Applicant did not foreclose his claim that his plea was not freely and voluntarily entered because he did not understand the important constitutional rights that he was waiving by entering his guilty plea. Applicant specifically asserts his right to a belated, direct appeal under the authority of White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).
 - b. Even if Applicant did not specifically request that Plea Counsel file his direct appeal from his guilty plea, Plea Counsel's performance was deficient because he failed to consult with Applicant about an appeal. There was reason to think that Applicant would want to appeal, so a duty to consult about an appeal was triggered. There were non-frivolous grounds for an appeal because the plea colloquy between the plea court and Applicant did not foreclose an argument on appeal that Applicant's plea was not entered knowingly and intelligently because Applicant did not understand the important constitutional rights that he was waiving by entering a guilty plea. On this ground, Applicant also specifically asserts his right to a belated, direct appeal under the authority of White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

As relief, Applicant requests that this Court issue an order vacating his conviction, and granting him the right to pursue a belated, direct appeal.

At the evidentiary hearing, Applicant proceeded forward on the allegations as set forth in the January 26, 2021, amendment. Specifically, Applicant went forward with allegations of ineffective assistance of counsel for failure to file a direct appeal and involuntary guilty plea. PCR Tr. 3-4.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court also had before it the records of the Fairfield County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the application, the State's return, the plea transcript, and the transcript from the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has reviewed the plea record from each proceeding and has heard and reviewed the testimony of both Applicant and Counsel. The Court finds Counsel's testimony on these issues to be credible, while also finding Applicant's testimony is not credible. This Court has therefore weighed the testimony accordingly. Pursuant to § 17-27-80 of the Code of Laws of South Carolina, this Court makes the following findings of fact and conclusions of law based upon all of the probative evidence presented.

A. Involuntary Guilty Plea

Applicant alleges Plea Counsel's performance was deficient because he did not adequately explain the important constitutional rights that Applicant was waiving by pleading guilty. Applicant argues he was prejudiced by this alleged deficient performance in that he would not have entered a guilty plea if he had understood the important constitutional rights that was waiving by pleading guilty. However, this Court finds Applicant's plea was knowingly and voluntarily entered.

In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove 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 687; 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 688). 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 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, 104 (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 8; 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, Applicant 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 670. 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.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of the plea and the charges against him or her. Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); see also Boykin v. Alabama, 395 U.S. 238, 243-44 (1969) (Courts must make sure defendants have “a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought, and forestalls the spin-off of collateral proceedings that seek to probe murky memories.”). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

When attempting to determine the voluntary and intelligent nature of a plea, the plea colloquy ordinarily serves as confirmation that a criminal defendant is waiving the right to raise certain constitutional claims by pleading guilty. See Rivers v. Strickland, 264 S.C. 121, 124, 213 S.E.2d 97, 98 (1975) (“The general rule is that a plea of guilty, voluntarily and understandingly made, constitutes a waiver of nonjurisdictional defects and defenses, including claims of violation of constitutional rights prior to the plea. An accused also waives the right to trial and the incidents

thereof and the constitutional guarantees with respect to criminal prosecutions.”). However, “[g]iven the seriousness of the matter, the Constitution insists, among other things, that the defendant enter a guilty plea that is ‘voluntary’ and that the defendant must make related waivers ‘knowing[ly], intelligent[ly], [and] with sufficient awareness of the relevant circumstances and likely consequences.’” United States v. Ruiz, 536 U.S. 622, 629 (2002) (quoting Brady v. United States, 397 U.S. 742, 748 (1970)) (alterations in original). Specifically, “a defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000) (citing State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980)).

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel’s representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for trial counsel’s errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); Richardson v. State, 310 S.C. 360, 363, 362 426 S.E.2d 795, 797 (1993).

In the present case, Applicant alleges Counsel was ineffective, and his guilty plea was not voluntarily entered, because Counsel did not adequately explain the important constitutional rights that Applicant was waiving by pleading guilty. However, this Court disagrees and finds Applicant was aware of—and understood—the rights he was waiving by pleading guilty. Therefore, Applicant’s plea was freely and voluntarily entered and relief must be denied.

At the plea hearing, the judge engaged in the following colloquy regarding Applicant’s constitutional rights:

Q. Did you and [Plea Counsel] go over all of your jury trial rights?

A. Yes, sir.

Q. You understand you give up those rights when you plead guilty?

A. Yes, sir, Your Honor.

Q. Is that what you want to do?

A. Yes, sir.

Plea Tr. 4. At the PCR hearing, Applicant testified Counsel failed to explain the rights that he would be waiving by pleading guilty. PCR Tr. 13–14. Applicant further testified had he understood those rights, he would not have pleaded guilty, but would have gone to trial. PCR Tr. 13. However, Counsel testified he discussed the constitutional rights that Applicant was waiving on two occasions: both at the jail and right before the plea. PCR Tr. 23. Additionally, Counsel explained that Applicant “knows the system” because Applicant “has been in the system a lot.” PCR Tr. 21.

The Court finds the testimony provided by Plea Counsel to be credible and affords it the appropriate probative weight. Plea Counsel was thorough and forthright in each of his answers, and filled any perceived gaps into Applicant’s alleged lack of knowledge. This Court finds Applicant’s testimony not credible. Furthermore, the Court finds Applicant was aware of the rights he was waiving and the consequences of pleading guilty, rather than proceeding to trial, and voluntarily and intelligently relinquished his constitutional rights to a jury trial and all other attendant trial rights during the plea proceeding. See Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000).

Additionally, Applicant asserts that his plea was involuntary, Applicant was misguided by Plea Counsel, and Applicant was under extreme duress at the time of his guilty plea. However, Applicant testified he chose to plead guilty because he “had to get out” to handle personal affairs. PCR Tr. 15–16.

Petitioner's primary basis from vacating his plea, conviction, and sentence is based upon Boykin, but there are distinguishing circumstances that warrant consideration. 395 U.S. 238 (1969). Boykin involved a black male who, in 1966, appeared at an arraignment "for common law robbery – an offense punishable in Alabama by death." At his arraignment, he pled guilty to five robbery charges, and the record showed the judge asked no questions of the defendant, and the defendant did not address the court. The defendant was ultimately sentenced to death on the five charges. Applicant emphasizes the Supreme Court's finding in Boykin that any waiver of a defendant's right of protection from self-incrimination, right to trial by jury, and right to confront one's accuser cannot be presumed "from a silent record."

In the instant case, it is worth noting that Applicant's circumstances are quite different from those in Boykin. Mr. Stevenson's charges were over one year old, and both he and his attorney had negotiated a state recommendation with deferred sentencing to accommodate Mr. Stevenson's personal affairs. The transcript from the pleas, as well as the PCR hearing, indicate that the following subjects were addressed with Mr. Stevenson on the record:

- (1) Additional charges of Distribution, Possession with Intent to Distribute, and Domestic Violence were being dismissed in exchange for the guilty plea.
- (2) The State recommended three (3) years out of a potential fifteen-year sentence.
- (3) Mr. Stevenson understood what he was doing in court that day, and understood the charge of Distribution of Methamphetamine.
- (4) Mr. Stevenson was not forced, pressured or coerced into pleading guilty.
- (5) Mr. Stevenson was not promised anything in exchange for pleading guilty.
- (6) Mr. Stevenson was satisfied with his attorney.
- (7) Mr. Stevenson did "go over" his jury trial rights with his attorney, and he understood he gave up those rights to plead guilty, and that's what he wanted to do. Mr. Stevenson's counsel further testified at the PCR hearing that he explained Mr. Stevenson's constitutional rights to him prior to the guilty plea.
- (8) The State set forth that the case involved a confidential informant, and that Mr. Stevenson purchased the drugs in a "controlled buy" operation which was documented on audio and video – Mr. Stevenson agreed that that was "what happened."
- (9) The plea court informed Mr. Stevenson that if he violated his bond while awaiting sentencing, there was "a pretty good chance I'm going to max you out." Mr. Stevenson responded that he understood.

While this Court can understand Applicant's essential argument that exact compliance with specific plea colloquy verbiage is required to stay within the confines of Boykin, this Court finds the instant record, taken as a whole, is far from "silent." To the contrary, Petitioner appeared to have a full understanding of the plea, admitted the allegations set forth by the State freely, voluntarily, and knowingly. "Although the trial court is not required to direct defendant's attention to each right and obtain a separate waiver, the record should indicate the defendant was fully aware of the consequences of the guilty plea." Roddy v. State, 528 S.E.2d 418, 421, 339 S.C. 29, 34 (2000).

This Court finds Applicant's testimony with regards to why he chose to plead guilty credible and contrary to the assertion his plea was involuntary. Further, the record of the plea transcript establishes that Judge Gibbons thoroughly explained the potential exposure Applicant faced if he did not show up on the date of the sentencing hearing. Plea Tr. 6. This Court finds any misconceptions Applicant had about the sentence he would receive was cured by the colloquy. Any deficiency regarding Plea Counsel's alleged failure to screen Applicant for competence or alleged "pressure" from external parties to plead guilty was cured by the plea colloquy. See Wolfe v. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997) (stating any possible misconceptions due to counsel's alleged deficiencies can be cured by the plea court's colloquy). 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**.

B. Ineffective Assistance of Counsel for Failure to file a Direct Appeal

Applicant argues he is entitled to a belated appeal pursuant to White. This Court disagrees. The United States Supreme Court has rejected a bright-line rule that counsel must always consult with the defendant regarding an appeal. Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000). Instead,

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

The Supreme Court of South Carolina has held there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea, absent extraordinary circumstances. Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). However, “the bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief.” Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995). Instead, a defendant must offer proof that extraordinary circumstances exist such that he should have been advised of the right to appeal. Id. One situation in which extraordinary circumstances arise is when a defendant explicitly inquires about his right to appeal following a guilty plea. Jones v. State, 382 S.C. 589, 596, 677 S.E.2d 20, 23 (2009); Weathers, 319 S.C. at 61, 459 S.E.2d at 839.

In a post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that the [proceeding] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984). 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. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 690. A PCR applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland, 466 U.S. at 688). 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." Id. at 117-18, 386 S.E.2d at 625. To show prejudice in these circumstances, a defendant must demonstrate that there is a reasonable probability that, but for plea counsel's deficient failure to consult with him about an appeal, he would have timely appealed. Flores-Ortega, 528 U.S. at 484.

In White v. State, the Supreme Court of South Carolina held that even if the post-conviction relief court finds that the Applicant never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. 263 S.C. 110, 108 S.E.2d 35 (1974). Therefore, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the Supreme Court of South Carolina, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

Here, Applicant pleaded guilty on February 22, 2017, and was sentenced on May 14, 2018. At the PCR hearing, Applicant testified he chose to plead guilty because he "had to get out" to

handle personal affairs. PCR Tr. 15–16. Applicant testified he asked Plea Counsel to file an appeal immediately after he was sentenced because he thought he was going to get, at most, five years; however, the record of the plea transcript establishes that Judge Gibbons thoroughly explained the potential exposure Applicant faced if he did not show up on the date of the sentencing hearing. Plea Tr. 6–9.

Further, at the PCR hearing, Plea Counsel testified right after the plea hearing, he emphasized that “[t]he judge gave [Applicant] what he wanted, time to go home to get his affairs in order and that [Applicant] better show up on that specific date because the judge made very clear, crystal clear, that if he didn’t show up on that day, he was going to get the max. And [Plea Counsel] impressed that on [Applicant].” PCR Tr. 27. Plea Counsel testified he did not recall discussing with Applicant the right to a direct appeal. Plea Counsel testified he did not recall Applicant asking Plea Counsel to file an appeal after the plea or sentencing, but if he had, he would have done so. Plea Counsel explained that by the time he met with Applicant months later to discuss a different matter, Applicant asked him to appeal, but by that point, too much time had passed to file one. Plea Counsel further testified after Applicant’s plea and sentencing hearings, Applicant never showed any interest in pursuing a direct appeal; however, if Applicant had done so, Plea Counsel would have filed an appeal. Additionally, Plea Counsel testified he saw no appealable issues with Applicant’s guilty plea hearing, but if there had been any meritorious issues, he would have filed a direct appeal. PCR Tr. 23–24. Applicant and Plea Counsel both testified that they did discuss an appeal a few months after sentencing, and Plea Counsel explained it was too late to file an appeal at that time. PCR Tr. 14; 23–24.

This Court finds Applicant has failed to meet his burden of proving he did not voluntarily and intelligently waive his right to appeal. This Court finds credible Plea Counsel’s testimony that

after Applicant's plea and sentencing hearings, Applicant never asked him to appeal and never showed any interest in pursuing a direct appeal until months later, when it was too late. Further, this Court finds credible Plea Counsel's testimony that he saw no appealable issues with Applicant's guilty plea hearing. Accordingly, this Court finds Applicant has failed to satisfy the requirements set forth in the Roe v. Flores-Ortega test and as such, he has failed to show he is entitled to a belated direct appeal under White v. State. Therefore, Applicant's request for belated review of direct appeal issues pursuant to White is hereby **DENIED**, and the application is dismissed with prejudice.

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), SCRPC 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. Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

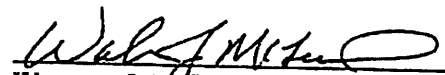
IT IS THEREFORE ORDERED:

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 16 day of JULY, 2021.

Lexington, South Carolina


WALTON J. MCLEOD, IV
Presiding Judge
Sixth Judicial Circuit

**STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD**

Donald V. Stevenson, Jr. #232844,

Applicant,

vs.

State of South Carolina

Respondent.

**COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT**

Case Number: 2019-CP-20-0135

**MOTION TO ALTER OR AMEND AND
FOR RECONSIDERATION WITH
ANNEXED MEMORANDUM IN
SUPPORT**

MOTION

The Applicant, Donald V. Stevenson, Jr. (Stevenson), hereby moves, in accordance with Rule 59(e) SCRPC, to alter and amend and for reconsideration of this Court's Order dismissing his Application in the above captioned post-conviction relief (PCR) case. This Court heard the PCR on February 3, 2021. The subject Order was filed with the Clerk on July 23, 2021, and Stevenson's counsel received written notice of the entry of the subject Order by email on July 23, 2021.

Stevenson bases this Motion on the general grounds that in the Order to be reconsidered, this Court erred in its application of the law to the facts and that the Order does not rule upon a significant argument made by Stevenson's counsel in support of his PCR. For specific grounds for this Motion, Stevenson relies on the issues raised in the Memorandum in Support annexed to this Motion.

WHEREFORE, Stevenson prays that this Court alter its Order dismissing his PCR to rule upon all issues raised in support of his PCR, reconsider that Order, and amend that Order to grant his PCR.

MEMORANDUM IN SUPPORT

FACTS

Stevenson pled guilty to distribution of meth, first offense on February 22, 2017, with a recommended, deferred sentence of three (3) years. Stevenson's sentencing was deferred until April 17, 2017. Stevenson did not appear for his deferred sentencing. Ultimately, Stevenson was sentenced on May 14, 2018. At his sentencing, Stevenson was given the maximum sentence for his crime, fifteen years. Stevenson did not appeal his conviction and sentence. Stevenson timely filed this PCR on April 3, 2019.

By way of Amendment to his Application, Stevenson alleged that his plea was not knowingly and intelligently made and that his attorney, Creighton Coleman (Coleman, rendered deficient performance by failing to see that his plea was knowingly and intelligently made. Stevenson further alleged that this deficient performance prejudiced him in the sense that if Coleman taken the steps to ensure that his plea was knowingly and intelligently made, Stevenson would not have pleaded guilty.

Stevenson further alleges in his Amendment, that Coleman's performance was deficient in that he disregarded Stevenson's explicit instructions to file an appeal or in the alternative failed to consult with him about an appeal. On these grounds, Stevenson asserts that he is entitled to belated appellate review under White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

In the plea colloquy, the plea judge simply asked Stevenson if he and Coleman had gone over all of Stevenson's "jury trial rights." There is no enumeration in the plea colloquy of what these rights are that Stevenson was waiving. The plea judge does ask Stevenson if he understood that he was giving up those rights by pleading guilty. Stevenson asserted that this

deficiency in the plea colloquy rendered his plea involuntary.

At the hearing on this PCR, Stevenson testified that Coleman never explained that in connection with a trial, he had a right to remain silent or a right to confront the witnesses against him. Stevenson further testified that if he had been advised of these rights, he would not have pleaded guilty.

ARGUMENT

I. THE PURPOSES FOR A MOTION UNDER RULE 59(e) SCRPC

A motion under Rule 59(e) SCRPC serves two purposes. First, the motion must be made to preserve for appellate review arguments of the moving party that were made to the trial court but were not explicitly addressed in the trial court's order. Elam v SC DOT, 361 S.C. 9, 602 S.E.2d 772 (2004). Second, the motion may be made to convince the trial court to reconsider the result reached in its order and rule in favor of the moving party. Elam, supra. Clark make his Rule 59(e) SCRPC Motion for both purposes.

II. THIS COURT SHOULD ALTER THE SUBJECT ORDER TO RULE MORE CLEARLY ON ONE ARGUMENT THAT STEVENSONS' PCR COUNSEL RAISED AT THE HEARING.

At the PCR hearing, PCR counsel argued that Stevenson's plea was constitutionally infirm because the plea colloquy did not include advice of the constitutional jury trial rights to remain silent and to confront witnesses as required by the U.S. Supreme Court in Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). In Boykin, the United State Supreme Court reviewed Boykin's conviction and sentence by guilty plea. The plea colloquy had no advisement of Boykin concerning the important constitutional rights that Boykin was giving up by pleading guilty and no affirmative waiver of those rights. The Boykin Court reversed Boykin's conviction and sentence "because the record does not disclose that the defendant

voluntarily and understandingly entered his pleas of guilty.” Boykin, 395 U.S. at 244. This Court should amend its Order to specifically rule upon this argument.

III. THIS COURT SHOULD RECONSIDER ITS DECISION, AMEND ITS ORDER AND GRANT STEVENSON’S PCR.

Applying the holding in Boykin, *supra* to the facts of this case, leads to the conclusion that Stevenson’s PCR should be granted. This Court should reconsider its final Order in this case and amend it such that it grants Stevenson’s PCR Application and vacates the subject conviction and sentence.

CONCLUSION

This Court should reconsider its decision and enter an amended order granting Stevenson’s PCR. Short of that, this Court should alter or amend the Order filed to address more clearly the important argument set forth above.

Respectfully submitted,

AIKEN & HIGHTOWER, PA

By: 

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Columbia, SC 29290

Phone: 803-799-5205

Fax: 803-799-5206

Email: art@aikenandhightower.com

ATTORNEYS FOR APPLICANT

Columbia, South Carolina
August 2, 2021

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Donald V. Stevenson #23781

Case No.: 2019-CP-20-0135

Applicant

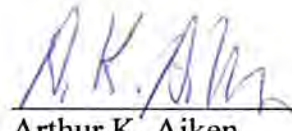
vs.

State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

I, Arthur K. Aiken, certify that on this date, August 2, 2021, I served Applicant's Motion to Alter or Amend and for Reconsideration in this case on the State's attorney, Assistant Attorney General Michael D. Davidson, by US Mail addressed to the South Carolina Attorney General's Office, PO Box 11549 Columbia, SC 29211 and on the trial judge, Circuit Judge Walton J. McLeod, IV, by US Mail addressed to 205 E. Main St., Lexington, SC 29072



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Fax 803-799-5206
art@aikenandhightower.com

Columbia, South Carolina
August 2, 2021

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

2021 AUG 19 AM 11:19
FAIRFIELD COUNTY
CLERK OF COURT
JULY 14 BONDS

IN THE COURT OF COMMON PLEAS
THE SIXTH JUDICIAL CIRCUIT

Donald V. Stevenson, Jr. #237814,

Case No. 2019-CP-20-0135

Applicant,

v.

**ORDER DENYING MOTION TO
ALTER OR AMEND PURSUANT
TO RULE 59(e), SCRCP**

State of South Carolina,

Respondent.

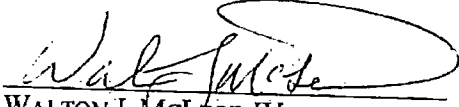
This matter comes before the Court by way of a post-conviction relief (PCR) action commenced by Donald V. Stevenson, Jr. (Applicant). This Court held an evidentiary hearing on February 3, 2021. Applicant was present at the hearing and represented by Arthur Aiken, Esquire. Michael D. Davidson, Esquire, of the South Carolina Attorney General's Office, represented the State. Both the application, and his previous attorney provided sworn testimony at the hearing. An Order of Dismissal was filed on July 23, 2021. Applicant filed a timely Motion to Alter or Amend and for Reconsideration pursuant to Rule 59(e), SCRCP on August 2, 2021.

After careful consideration of the record in this case and the submissions of counsel, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered.

IT IS THEREFORE ORDERED that Applicant's Motion to Alter or Amend and for Reconsideration pursuant to Rule 59(e), SCRCP, is **DENIED**. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

This Court hereby advises Applicant he must file and serve a notice of appeal within thirty days of the service of this Order to secure appellate review. *See* Rule 203, SCACR. Applicant's attention is directed to Rule 227, SCACR, for the procedures following the filing and service of the notice of appeal.

IT IS SO ORDERED.


WALTON J. MCLEOD IV
Presiding Judge
Sixth Judicial Circuit

August 16, 2021

STATE OF SOUTH CAROLINA)

INDICTMENT

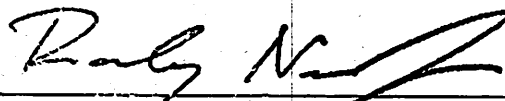
COUNTY OF FAIRFIELD)

At a Court of General Sessions, convened on April 12, 2016, the Grand Jurors of Fairfield County present upon their oath:

DISTRIBUTION OF METHAMPHETAMINE

That Donald V. Stevenson, Jr did in Fairfield County on or about December 16, 2015, distribute, dispense, or deliver methamphetamine, in violation of § 44-53-375(B), *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.



Randy E. Newman, Jr., SOLICITOR

WITNESSES

Melton-FCSO

Burroughs

ARREST WARRANT NUMBER/DOA

2015A2010100633 (DOA-1-11-16)

ACTION OF GRAND JURY

TRUE BILL 12 April 2016

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

92

DOCKET NO. 2016-GS-20-145

The State of South Carolina
County of Fairfield

COURT OF GENERAL SESSIONS

APRIL TERM 2016

THE STATE
vs.

Donald V. Stevenson, Jr.

Indictment for

Distribution of Methamphetamine

SC Code: § 44-53-375(B)
CDR Code: 3014
Class: Felony, D

2016 APR 12 PM 2 27

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

I, Judy M Bonds, Clerk of Court,
Fairfield County, South Carolina, do
hereby certify this is a true copy of
the original on file in this office.

4-3-16 Judy M Bonds
Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Fairfield

VS.

Donald Vernon Stevenson Jr

AKA:

Race: WHITE Sex: M Age: 46

DOB: [REDACTED]-1970 SS#: [REDACTED]

Address:

City, State, Zip: Winnsboro, SC 29180-6595

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: Drugs / Distribution, etc. of methamphetamine, 1st (Excludes manufacturing meth; see CDR Code 3776)

in violation of § 44-53-0375 (B) (1) of the S.C. Code of Laws, bearing CDR Code # 3198

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

ATTEST: [Signature]

Maxwell, Riley J

SC Bar# 74878

Defendant

[Signature] Creighton B. Coler

Attorney for Defendant

SC Bar# 6521

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 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/Probation)	\$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)	\$	\$ 8.25

TOTAL

\$ 283.25

Clerk of Court/ Deputy Clerk [Signature]

Court Reporter: Mike Watkins

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS 93

INDICTMENT/CASE#: 2016-GS-20-145

A/W#: 2015A2010100633

Date of Offense: 12/16/2015

S.C. Code § : 44-53-0375 (B) (1)

CDR Code #: 3198

SENTENCE SHEET 15 yrs

☐ CONVICTED OF or ☒ PLEADS

in violation of § 44-53-0375 (B) (1) of the S.C. Code of Laws, bearing CDR Code # 3198

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

ATTEST: [Signature]

Maxwell, Riley J

SC Bar# 74878

Defendant

[Signature] Creighton B. Coler

Attorney for Defendant

SC Bar# 6521

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§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$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	\$
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TOTAL

\$ 283.25

Clerk of Court/ Deputy Clerk [Signature]

Court Reporter: Mike Watkins

SCCA/217 (07/2016)

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: sentence deferred to 4/17/17

Must comply w/ bond restrictions.

☐ 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 [Signature]

Judge Code: 2108

Sentence Date: 2/22/18

(1/ea)

5/14/18

(sentence)