

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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JUN 04 2013

Appeal from Greenville County

S.C. Supreme Court

Edward W. Miller, Circuit Court Judge

LAMONT V. POOLE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000427

APPENDIX

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STATE OF SOUTH CAROLINA)	COURT OF GENERAL SESSIONS
)	
COUNTY OF GREENVILLE)	Case No(s) : 2008GS2309133,
)	2008GS2309134,
State of South Carolina,)	2008GS2309136,
)	2010GS2301307,
Plaintiff,)	2008GS2301309
)	
-VS-)	
)	
Lamont Valentino Poole)	TRANSCRIPT OF RECORD
)	
Defendant.)	
)	

June 17, 2010
 Greenville, South Carolina

B E F O R E:

HONORABLE ROBIN B. STILWELL, Judge.

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

KATRINA B. SALISBURY, Esquire
 Assistant Solicitor

PATRICK MANGRUM, Esquire
 Attorney for the Defendant

Recorded by: Mary DiGirolamo
 Circuit Court Reporter

Transcribed by: Teresa B. Johnson
 Circuit Court Reporter

I N D E X

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EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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PLAINTIFF EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

1
2 **THE CLERK:** Your Honor, this is case
3 number 2010-GS-23-1307, Lamont Valentino Poole,
4 indictment for Possession of Cocaine with
5 Intent to Distribute. It's a wai -- uh,
6 pleading, uh, the same. Uh, it is a waiver.

7 2010-GS-23-1309, indictment for Possession
8 of Marijuana with Intent to Distribute.
9 Pleading to Possession with Intent to
10 Distribute second offense. It is a waiver.

11 2008-GS-23-9133, indictment for Possession
12 of Cocaine with Intent to Distribute. Pleading
13 to Possession with Intent to Distribute second
14 offense. It is a true bill.

15 2008-GS-23-9134, indictment for Possession
16 of Marijuana with Intent to Distribute.
17 Pleading to Possession with Intent to
18 Distribute second offense. It is a true bill.

19 2008-GS-23-9136, indictment for Unlawful
20 Conduct towards a Child. Pleading to the same.
21 It is a true bill.

22 Would you raise your right hand to be sworn
23 in.

24 **(WHEREUPON, the defendant is duly sworn.)**

25 **THE COURT:** Mr. Mangrum, you've had the

1 opportunity to discuss with Mr. Poole his
2 constitutional rights and the maximum possible
3 penalty that he could receive under the law for
4 the offenses to which he's pleading guilty?

5 **MR. MANGRUM:** I have, Your Honor.

6 **THE COURT:** And is it your understanding
7 that he understands the ramifications of his
8 plea, he understands his rights, wishes to
9 waive the same and proceed with his plea of
10 guilty today?

11 **MR. MANGRUM:** I do, Your Honor.

12 **THE COURT:** All right. And you agree with
13 that decision?

14 **MR. MANGRUM:** I do agree with that
15 decision.

16 **THE COURT:** Mr. Poole, you recognize, sir,
17 you have the right to a jury trial on these
18 charges?

19 **MR. POOLE:** Yes, sir.

20 **THE COURT:** And you recognize that if you
21 had a jury trial, that the State would have the
22 burden of proving you guilty beyond a
23 reasonable doubt to a jury of 12 of your peers.

24 **MR. POOLE:** Yes, sir. I understand.

25 **THE COURT:** And you understand that in

1 that proceeding you would not have the burden
2 of proving yourself innocent. You have a
3 constitutional right to remain silent which
4 means you don't have to do, say or prove
5 anything. You understand?

6 **MR. POOLE:** Yes, sir.

7 **THE COURT:** And even though you have that
8 right to remain silent, you could, if you
9 wanted to, take the stand and you could testify
10 and tell the jury your side of the story. You
11 would also have the opportunity to present
12 evidence and witnesses. You could present
13 legal defenses. You could make motions before
14 the Court to protect your constitutional and
15 legal rights and you could cross-examine any of
16 the State's witnesses to include those persons
17 who are accusing you of these crimes. You
18 understand, sir?

19 **MR. POOLE:** Yes, sir.

20 **THE COURT:** You also have the right to
21 have at least a part of these, uh, indictments,
22 1307 and 1309, 9136 presented to a Grand Jury
23 for a true bill. You understand that right?

24 **MR. POOLE:** Yes, sir.

25 **THE COURT:** Knowing all these rights, do

1 you want to waive them and proceed with a plea
2 of guilty today?

3 **MR. POOLE:** Yes, sir.

4 **THE COURT:** All right, sir. In Indictment
5 2008-9133, you are charged with Possession with
6 Intent to Distribute second offense. What does
7 that carry?

8 **MRS. SALISBURY:** 5 to 30, Judge.

9 **THE COURT:** 5 to 30?

10 **MRS. SALISBURY:** Yes, Judge.

11 **THE COURT:** Okay. You understand that
12 that carries between 5 and 30 years?

13 **MR. POOLE:** Yes, sir.

14 **THE COURT:** And how do you wish to plead
15 to that offense?

16 **MR. POOLE:** Guilty.

17 **THE COURT:** In Indictment 2008-9136, you
18 are charged with unlawful neglect of a child or
19 helpless person. That's up to 10 years?

20 **MRS. SALISBURY:** Up to 10. That's
21 correct, Judge.

22 **THE COURT:** You understand you could
23 receive an additional consecutive 10 years for
24 that, sir?

25 **MR. POOLE:** Yes, sir.

1 **THE COURT:** And how do you wish to plead?

2 **MR. POOLE:** I plead guilty.

3 **THE COURT:** And on all of these, you
4 understand on all five charges to which you are
5 pleading guilty, the time could be in addition
6 to one another so that it could all run
7 together so that it could be an aggregate
8 sentence. Do you understand?

9 **MR. POOLE:** Yes, sir.

10 **THE COURT:** Okay. In Indictment 2008-
11 9134, you are charged with Possession with
12 Intent to Distribute Marijuana second offense.
13 Is that 10?

14 **MRS. SALISBURY:** Up to 10. That's
15 correct, Judge.

16 **THE COURT:** Okay. You understand you can
17 get an additional consecutive 10 years for
18 that?

19 **MR. POOLE:** Yes, sir.

20 **THE COURT:** All right. How do you wish to
21 plead to that?

22 **MR. POOLE:** Guilty.

23 **THE COURT:** All right. Indictment 2010-
24 1309, charged with an additional count of
25 Possession with Intent to Distribute second

1 offense. You understand you can get an
2 additional 10 years on that, sir?

3 MR. POOLE: Yes, sir.

4 THE COURT: How do you wish to plead?

5 MR. POOLE: I plead guilty.

6 THE COURT: On Indictment 2010-1307, you
7 are charged with Possession with Intent to
8 Distribute Cocaine. Powder cocaine?

9 MRS. SALISBURY: That's what I'm showing,
10 Judge.

11 THE COURT: Okay. Second offense. What's
12 the maximum on that?

13 MR. MANGRUM: It's my understanding it's 5
14 to 30.

15 MRS. SALISBURY: 5 to 30.

16 THE COURT: 5 to 30. All right. You
17 understand you can receive an additional and
18 consecutive amount of time between 5 and 30?

19 MR. POOLE: Yes, sir.

20 THE COURT: How do you wish to plead to
21 that?

22 MR. POOLE: I plead guilty.

23 THE COURT: Anyone forced, threatened or
24 made you, in any way, enter these pleas?

25 MR. POOLE: No, sir.

1 **THE COURT:** Has anyone promised you
2 anything in exchange for your pleading guilty?

3 **MR. POOLE:** No, sir.

4 **THE COURT:** Are you pleading guilty of
5 your own freewill because you are guilty, sir?

6 **MR. POOLE:** Yes, sir.

7 **THE COURT:** Are you under the influence of
8 any drugs or alcohol today, sir?

9 **MR. POOLE:** None.

10 **THE COURT:** And do you suffer from any
11 mental sickness that may affect your ability to
12 appreciate and understand what's going on
13 today?

14 **MR. POOLE:** No, sir.

15 **THE COURT:** Have you had the opportunity
16 to speak to Mr. Mangrum about this matter as
17 much as you needed to?

18 **MR. POOLE:** Yes.

19 **THE COURT:** Has he answered all your
20 questions and done everything you've asked him
21 to do?

22 **MR. POOLE:** Yes, sir.

23 **THE COURT:** Has he formed a sufficient
24 investigation of the facts in this case?

25 **MR. POOLE:** Yes, sir.

1 **THE COURT:** Are you satisfied with his
2 services?
3 **MR. POOLE:** Yes, sir.
4 **THE COURT:** Have you understood all the
5 questions that I've asked you today?
6 **MR. POOLE:** Yes, sir.
7 **THE COURT:** Do you have any questions that
8 you would like to ask me or Mr. Mangrum before
9 we proceed?
10 **MR. POOLE:** No, sir.
11 **THE COURT:** All right. Okay. Sir, you
12 have 10 days to appeal any sentence I hand out.
13 Mrs. Salisbury.
14 **MRS. SALISBURY:** May it please the Court,
15 Your Honor. On August 28th, 2008, officers
16 with the Mauldin Police Department executed a
17 search warrant at this defendant's residence.
18 A search warrant was executed -- obtained and
19 executed following a confidential informant's
20 purchase at that residence. Inside, officers
21 found 177 grams of marijuana, 8.6 grams of
22 cocaine, \$624 in cash, a loaded 9 millimeter
23 pistol, digital scale and other paraphernalia,
24 a pistol was found in a kitchen drawer, a
25 three-year-old child resides at the home and

1 was present when officers executed that search
2 warrant.

3 Then, on October 9th, 2009, a Greenville
4 Police Department officer was dispatched to a
5 disturbance at a bar on Laurens Road in
6 Greenville. As the officer approached, she
7 decided to conduct a Terry frisk due to the
8 location and the fact that the incident or that
9 the disturbance was happening after midnight.
10 The officer felt a plastic baggie and asked the
11 defendant if she could pull the baggie out.
12 The defendant agreed and the officer retrieved
13 5 grams of cocaine. The defendant was
14 arrested. During a further search of the
15 detention center, officers discovered 55 grams
16 of marijuana on the defendant's person. Those
17 are the facts as they would be presented at
18 their respective trials, Your Honor.

19 **THE COURT:** All right. Mr. Poole, is that
20 what happened, sir?

21 **MR. POOLE:** Yes, sir.

22 **THE COURT:** All right. I do find that
23 there is a substantial factual basis for the
24 plea. The same is entered freely and
25 voluntarily with the advice of counsel with

1 whom he indicates he is satisfied. I accept
2 the same. Prior record. Excuse me. Prior
3 record and recommendation.

4 **MRS. SALISBURY:** Your Honor, the
5 defendant's prior record, 1996, Possession of
6 Marijuana two counts, Driving Under Suspension;
7 1997, Forgery; 1998, Possession with Intent to
8 Distribute Marijuana, CDV; 2000, Possession
9 with Intent to Distribute Marijuana; and 2006,
10 Shoplifting and False Information to Police.
11 The State is not making a recommendation as to
12 the duration of the sentence, but is, instead,
13 dismissing some distribution and proximity
14 charges in exchange for the defendant's plea to
15 these charges.

16 **THE COURT:** Mr. Poole, does that fairly
17 and accurately represent your prior record,
18 sir?

19 **MR. POOLE:** Yes, everything to me except
20 for the shoplifting. I don't recall ever
21 having a shoplifting. I actually have someone
22 that actually has the exact same name as me. I
23 was talking to my lawyer about it. I think
24 maybe they didn't distinguish between the
25 middle names or whatever. But ---

1 **THE COURT:** Okay.

2 **MR. POOLE:** --- whenever they did my
3 record, but that's not me. I never been
4 arrested for that.

5 **THE COURT:** Okay. Good enough. I will,
6 uh, -- I won't consider any shoplifting charge.

7 **MR. POOLE:** Thank you, Your Honor.

8 **THE COURT:** Okay. Okay. All right.
9 Mr. Mangrum, I'll be happy to hear from
10 you, sir.

11 **MR. MANGRUM:** Thank you, Your Honor. May
12 it please the Court.

13 **THE COURT:** Yes, sir.

14 **MR. MANGRUM:** Your Honor, obviously, you
15 heard Mr. Poole's, uh, criminal history. There
16 were at least two prior drug offenses listed in
17 that recitation. So you know that this is
18 technically a third offense at least. The
19 Solicitor in this matter, Mr. Steinberg, who is
20 the second Solicitor on the case, and I'm the
21 second attorney representing Mr. Pool in this
22 matter. That's why they are -- the '08 cases
23 are kind of old. I don't want you to think
24 we're just sitting around hanging out.

25 **THE COURT:** I understand.

1 **MR. MANGRUM:** But to clarify that. Uh,
2 the '08 cases, Your Honor, essentially, uh, Mr.
3 Poole, he recognizes that they were -- he -- he
4 -- they were undercover buys. Quite frankly,
5 Your Honor, I listened to the audio. Mr. Poole
6 was not present, but I listened to them and
7 discussed them with him. Somebody he knew
8 pretty clearly. Obviously, they may have had
9 some issues and wanted to clear those up. He
10 was the fault guy. That does not mitigate what
11 he did. I just want to be clear.

12 As to the '09 charges, Your Honor, there
13 was an incident at a bar not far from here. He
14 does recognize that he shouldn't have had the
15 stuff on him. He did have it on him.

16 Getting back to the prior record, Your
17 Honor. These have been reduced. Mr. Poole
18 understands that he's facing 5 to 30 years on
19 the most serious charges. Essentially, he
20 would have been facing a minimum 15 years if
21 they were third and above at trial. The
22 Solicitor in this matter did reduce these
23 charges to a second offense so Your Honor
24 could, if Your Honor was willing to give him 5
25 years, you could give him 5 years.

1 I'm not here telling you that the Solicitor
2 -- obviously you heard there's no
3 recommendation, but he clearly is not in here
4 fighting me about what I was going to ask for.
5 I'm here, Your Honor, asking you to consider
6 something in the 5-year range on all of these
7 charges and run them concurrent.

8 He is a high school graduate of Wade
9 Hampton High School here in Greenville, Your
10 Honor. He was a football star there. He
11 played a couple of years at East Tennessee
12 State University. He had some trouble. He
13 came home. Quite frankly, Your Honor, this is
14 a situation where somebody -- he worked at
15 Milliken for about 4 to 6 years. In fact, if
16 he was able to walk out of the door today, they
17 would give him a job back. He's currently
18 working now at Muffin Mam in Simpsonville.
19 This is not somebody that won't work. He's a
20 worker.

21 It's just a surprise -- I've known him and
22 his family for a long time. I'm not going to
23 say it surprises me what anyone does. But he's
24 the kind of guy that I don't think needed to be
25 doing this. He understands it's a major

1 mistake in his life. And he understands he's
2 facing going through that door. And I do want
3 to get to that.

4 There's always a catch. And Your Honor,
5 I'd just ask you to consider this. His
6 mother's sister just died yesterday. And it's
7 the kind of thing that stuff always comes up.
8 Mr. Poole wants me to ask Your Honor to
9 consider allowing him to report to the jail in
10 5 days. I put that before Your Honor for your
11 consideration. I would ask you to give it true
12 consideration in thinking about that.

13 This is a very close aunt of his. He tells
14 me he was just playing cards with her two days
15 ago. These are close people. I know these
16 people. They are a very close family.
17 Obviously, they are here in support of him
18 today.

19 I can talk a long time, Your Honor, but I
20 understand what Mr. Poole is facing and so does
21 Mr. Poole. And he understands he was facing a
22 whole lot more if there was 12 people sitting
23 over there. Quite frankly, Your Honor, he's
24 got about 13, 14 charges. The Solicitor is
25 dismissing quite a few charges. They could go

1 after him time after time after time until they
2 got -- any one of these charges would have had
3 him facing 15 to 30 years. I would ask you to
4 consider, Your Honor, this is a -- it's -- it's
5 -- I know you hear it all the time. Lamont's a
6 good guy. He makes really stupid decisions as
7 it relates to how he's going to make a living
8 and make -- get extra dollars to do something.
9 I think he truly understands now that those
10 days are over.

11 I would ask you again, Your Honor -- I
12 think he does want to say something to the
13 court. I would ask you before he does to
14 consider the 5-year sentence and run it
15 concurrent. I would ask that you allow Mr.
16 Poole to say some -- whatever he has to say.

17 **THE COURT:** All right. Good enough. Mr.
18 Poole, I'll be happy to hear from you, sir.

19 **MR. POOLE:** First of all, I'd like to say
20 I apologize to you and the court. Uh, I just
21 feel like I made a bad -- I made some real poor
22 decisions. I was working. I had things going
23 pretty well. This wouldn't be my first time.
24 I been down doing state time before. I worked
25 since the first day I got out. It's really a

1 matter of, really, me being greedy, you know,
2 wanting something extra when I didn't have to,
3 you know. I understand my consequences. Like
4 I said, I do apologize to the court. And, you
5 know, hopefully, you could be lenient to me
6 best you can.

7 **THE COURT:** Mr. Poole, thank you. I look
8 at you and I -- Mr. Mangrum says you are a good
9 fellow. I don't doubt that. You sound like
10 it. You sound like you had a lot on the ball.
11 You got good work ethic. You're smart. You
12 went to college. Uh, and, you know, you
13 worked. It's just a shame that you did it.

14 You hit the nail on the head. You just got
15 greedy and you just wanted to have more money
16 than what was coming through honest work. It's
17 just a shame. It's just a shame. What I wish
18 I could do is turn back the hands of time and
19 get inside your head before you started doing
20 it and rattle you around a little bit and make
21 you figure out that wasn't a good idea.

22 **MR. POOLE:** Yes, sir.

23 **THE COURT:** But I can't do it. Uh, I
24 recognize everything that you were facing
25 before. And I know that you are looking at --

1 that you are asking me to give you 5 years.
2 Here's the problem, Mr. Poole. If you came in
3 here and you were completely clean, you didn't
4 have any other issues, you came in here, and 5
5 years might be right. But you got some other
6 issues out there. Like Mr. Mangrum said,
7 technically a third. And so I don't know that
8 the minimum is appropriate under these
9 circumstances. Having said that, the maximum
10 is not either.

11 Okay. I'm going to come down on the low
12 side. On your Possession with Intent to
13 Distribute Marijuana second offense, the
14 sentence of the Court is that you be committed
15 to the State Department of Corrections for 8
16 years. Recommend ATU while you are in the
17 Department of Corrections. That's concurrent
18 to -- did he do any time in jail on this yet?

19 **MRS. SALISBURY:** 29 days, Judge.

20 **THE COURT:** 29 days. Credit time served,
21 29 days. On Indictment 1307, 8 years in the
22 Department of Corrections concurrent. Credit
23 for time served, 29 days. On 9134, 8 years
24 concurrent. Credit for time served of 29 days.
25 Unlawful Neglect of a Child, 5 years

1 concurrent. Credit for time served of 29 days.
2 And for Possession with Intent to Distribute
3 Cocaine, 9133, 8 years concurrent. Credit for
4 time served of 29 days.

5 Uh, Mr. Poole, I want to let you go to that
6 funeral. I really do, you know. I am a
7 thinking, caring person. But under the
8 circumstances, I can't let you do that once
9 you've got -- you've received your sentence.
10 You haven't run before now, but it wouldn't be
11 appropriate.

12 It's more of a chance than the State needs
13 to take. If you don't come back, then the
14 State is going to exhaust a lot of resources in
15 getting you here. I suspect that you would.
16 I'm probably like 95 percent sure that you'd
17 come back and you'd show up. But I can't
18 afford the risk of 5 -- the 5 percent chance
19 that you wouldn't.

20 And I'll tell you this as well, I'm not
21 uncaring. I'm not unfeeling. Really, I'm not.
22 But you have to remember that I didn't cause
23 this. Okay. Good luck to you, Mr. Poole.

24 **MR. MANGRUM:** Thank you, Judge.

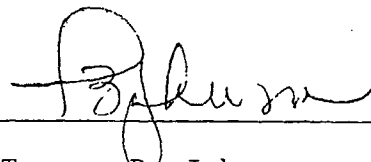
25 **(END OF PROCEEDINGS)**

CERTIFICATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville, South Carolina, on this 27th day of October, 2011.

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



Teresa B. Johnson

Official Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)
County of Greenville)

IN THE COURT OF COMMON PLEAS

Lernand Yulestano Pook #2655891
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

2011-CP-23-03500

2011 MAY 23 P 4:01
CLERK OF COURT
GREENVILLE, SC

INSTRUCTIONS B 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 Steverson Correctional Institution
4546 Broad River Rd., Columbia, SC 29210
2. Name and location of Court which imposed sentence Greenville County
Court of General Sessions, Greenville-SC 29601
3. Name(s) of co-defendant(s) (if any) Tiffany L. Moon
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 08-65-23-9136, 10-65-23-1307, 08-65-23-4133

- (b) 08-65-9134
- (c) 10-65-1309

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

- (a) June 17, 2010 - 8 years
- (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

8. If you answered Ayes@ to (7), list:

- (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
- (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
- (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

- (a) NO appealable issues

(b) _____

(c) _____

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

(a) Ineffective Assistance of Counsel

(b) Involuntary Plea

(c) _____

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

(a) Attorney gave wrong information to get me to plead

(b) _____

(c) _____

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

(a) any petition in a State Court under South Carolina Law? N/A

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A

(d) any other petitions, motions or applications in this or any other Court? N/A

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

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

N/A

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

- (a) _____
- (b) _____
- (c) _____

N/A

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. 100 Williams St.
Greenville, SC 29601
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Plea
 - ii. _____
 - iii. _____

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

Sentence Vacated

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

NO.

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of Greenville)

VERIFICATION

I, Lemont Valentino Poole, 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.

Lemont V. Poole

SWORN to and subscribed before me this 17
day of MAY, 2011.

Rev. R. R. White, Jr. (L.S.)
Notary Public

My Commission Expires: March 23 2011

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

I, Lemont V. Poole, 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.

Lemont V. Poole
Applicant

SWORN or affirmed to and subscribed before me this

17 day of May, 2011.

Rev. Robert L. White, Jr.
Notary Public

My Commission Expires: March 23, 2011

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Lamont Valentino Poole,)
 S.C.D.C. No. 265389,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2011-CP-23-3500

RETURN

In response to the post-conviction relief application filed May 23, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant for possession with intent to distribute (PWID) cocaine (2008-GS-23-9133), PWID marijuana (2008-GS-23-9134), and unlawful conduct towards a child (2008-GS-23-9136). The Applicant waived presentment to PWID cocaine (2010-GS-23-1307) and PWID marijuana (2010-GS-23-1309). Patrick L. Mangrum, Esquire, represented the Applicant.

On June 17, 2010, the Applicant pled guilty. The Honorable Robin B. Stilwell sentenced the Applicant to concurrent terms of eight (8) years for each count of PWID cocaine, second offense, eight (8) years for each count of PWID marijuana, second offense, and five (5) years for unlawful conduct towards a child. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville

County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The plea transcript will be forwarded upon receipt.

II.

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

1. Ineffective assistance of counsel.
 - a. Improperly advising the Applicant to accept the plea.
2. Involuntary guilty plea.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Applicant's assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for

counsel's errors, the Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal 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) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

When determining issues relating to guilty pleas, the court will consider the entire record,

including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248 (1983).

V.

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

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
)
)
 LAMONT VALENTINO POOLE, 265389)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

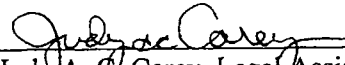
2011-CP-23-3500

AFFIDAVIT OF SERVICE BY MAIL

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

**Lamont Valentino Poole, 265389
 Stevenson Correctional Institution
 4546 Broad River Road
 Columbia SC 29210**

DATED this 20th day of September, 2011.



 Judy A. C. Carey, Legal Assistant
 For Respondent

Respectfully submitted,


ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: 
Attorneys for Respondent

September 20, 2011

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

LAMONT V. POOLE,)
)
 APPLICANT,)
)
 -VS-)
)
 STATE OF SOUTH CAROLINA,)
)
 RESPONDENT.)
 _____)

2011-CP-23-03500

TRANSCRIPT OF RECORD

DECEMBER 20, 2012
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE EDWARD W. MILLER

APPEARANCES:

ATTORNEY FOR APPLICANT:

CAROLINE M. HORLBECK, ESQUIRE

ATTORNEY FOR RESPONDENT:

KAREN C. RATIGAN
ASSISTANT ATTORNEY GENERAL

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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EXHIBITS

NO DESCRIPTION ID EVIDENCE

(No Exhibits Were Presented During This Hearing)

1 **THE COURT:** All right. We got Mr. -- go ahead.

2 **MS. RATIGAN:** Thank you, Your Honor. May it please the
3 Court. This is the case of Lamont Poole versus the State of
4 South Carolina. The docket number is 2011-CP-23-3500.

5 Mr. Poole was indicted for PWID cocaine, PWID marijuana
6 and unlawful conduct towards a child. He also waived
7 presentment to that second count of PWID cocaine and PWID
8 marijuana. He was represented on these charges by Mr.
9 Mangrum.

10 On June 17th of 2010 he pled guilty before Judge
11 Stilwell. He received concurrent sentences of eight years
12 for each count of PWID cocaine, second offense, eight years
13 for each count of PWID marijuana, second offense, and five
14 years for unlawful conduct. He did not file an appeal. And
15 the State is ready to proceed.

16 **THE COURT:** And this -- it's a PWID, second? What does
17 that carry? Twenty-five years?

18 **MS. RATIGAN:** I believe so.

19 **THE COURT:** Twenty-five years. So if you win you're
20 going right back looking at the twenty-five. You understand
21 that?

22 **MR. POOLE:** (Affirmative nod).

23 **THE COURT:** Okay. I mean, I don't know the quality of
24 your case, but just make sure you know what you're asking
25 for. I can't cut the sentence. I can't do anything but

LAMONT POOLE - DIRECT EXAMINATION BY MS. HORLBECK

5

1 send you back and let you contest the original charges
2 again. Okay. Ms. Horlbeck.

3 **MS. HORLBECK:** Judge, we call Lamont Poole.

4 **THE COURT:** Come on around. Come on up and be sworn.

5 **Lamont Poole,** being duly
6 sworn testified as follows:

7 **MADAME CLERK:** Thank you. You may be seated. Please
8 state your full name for the record.

9 **MR. POOLE:** Lamont Poole.

10 **Direct Examination by Ms. Horlbeck:**

11 Q. Mr. Poole, who represented you on these charges?

12 A. Mr. Patrick Mangrum.

13 Q. Did you plead guilty?

14 A. Yes, ma'am.

15 Q. And you received an eight year sentence, is that
16 correct?

17 A. Yes, ma'am.

18 Q. As a result of that sentence did you file a petition
19 for post conviction relief?

20 A. Yes, ma'am.

21 Q. All right. And was Mr. Mangrum retained or was he
22 appointed?

23 A. Retained.

24 Q. All right. Did you and Mr. Mangrum discuss any
25 recommendation of the State?

LAMONT POOLE - DIRECT EXAMINATION BY MS. HORLBECK

6

1 A. Yeah. I was -- I was under the impression that I was
2 going to the courtroom with a plea of five years.

3 Q. Why were you under that impression?

4 A. That's what he told me and my family.

5 Q. All right. Specifically, what is your recollection of
6 what Mr. Mangrum told you about what sentence you would ---

7 A. Well, ---

8 Q. --- you would receive?

9 A. Well, before going to the courtroom he was saying that,
10 you know, if I didn't I would have to go to trial. And if I
11 plead now -- go to trial. I asked him what was the plea.
12 He said, well, we'll try to go in there and get you five
13 years.

14 Q. Okay. Did he say try to go get you five years or ---

15 A. No. He said we're going to plead to five years.

16 Q. Okay. All right. And what did -- what was your
17 understanding of -- of that sentence? I mean, what -- did
18 you think that was a definite or a maybe?

19 A. I thought it was a definite. I mean, if I had of went
20 in -- going in with an open plea knowing that or knowing --
21 I probably -- I probably would have went to trial.

22 Q. All right. Did you hear the court or the Solicitor's
23 Office during the plea inform the court that there was no
24 recommendation?

25 A. Yes.

LAMONT POOLE - DIRECT EXAMINATION BY MS. HORLBECK

7

1 Q. All right. Why did you -- why didn't you say something
2 then when you heard that?

3 A. Right then at that time, I mean, my lawyer at the time,
4 Mr. Mangrum, told me that -- not to say anything. I mean, I
5 kind of nudged him to a certain degree when he -- well, I
6 thought it was going to -- going in with a plea bargain. He
7 said, well, he said, don't worry about. He didn't say
8 anything. So ...

9 Q. Okay. When you nudged Mr. Mangrum did you and he have
10 an opportunity to speak further during -- further about your
11 concerns?

12 A. Yeah, he did. I mean, I talked with him. He figured
13 -- I figured -- I had my trust in him. I figured that he
14 had everything under control.

15 Q. Did you and Mr. Mangrum get to talk during -- during
16 the middle of the plea?

17 A. No.

18 Q. Is that when you nudged him, during the middle of the
19 plea?

20 A. Um-hum (affirmative).

21 Q. All right. That's what I asked you. After you nudged
22 Mr. Mangrum did ---

23 A. Oh, no.

24 Q. --- you and he have an opportunity to talk about your
25 concerns?

LAMONT POOLE - DIRECT EXAMINATION BY MS. HORLBECK

1 A. No.

2 Q. Okay. All right. And did you tell the court that that
3 was not your understanding of the recommendation?

4 A. No, I didn't.

5 Q. And why was that?

6 A. I trusted my lawyer. I thought he, you know, that's
7 what he -- that's what he had already agreed upon.

8 Q. Okay. And was anybody with you when you and Mr.
9 Mangrum talked about the recommendation and the sentence?

10 A. At the time my mother and my girlfriend.

11 Q. Okay. All right. Are there any other issues that you
12 want to bring up to the Court today?

13 A. That's pretty much it.

14 Q. All right. And are you asking that the Court grant
15 your petition?

16 A. Yeah.

17 Q. All right. And you understand that the Court can't
18 reduce your sentence?

19 A. I understand.

20 Q. All right. Do you understand that the Court can only
21 grant or deny your petition?

22 A. Um-hum (affirmative).

23 Q. And do you understand that if the Court grants your
24 petition that we -- you would be re-prosecuted on all these
25 charges or you could be re-prosecuted on all these charges?

LAMONT POOLE - DIRECT EXAMINATION BY MS. HORLBECK

9

1 A. I understand all that.

2 Q. All right.

3 **MS. HORLBECK:** Your Honor, that's ---

4 **THE COURT:** Let me just ask you this. I was looking at
5 this prior record that Ms. Salisbury read into the plea
6 transcript. So this is actually a third offense, is that
7 right?

8 **MS. HORLBECK:** Yes, sir.

9 **THE COURT:** Oh. Well, that changes what the outcome
10 would be. Okay. Sorry.

11 **MS. HORLBECK:** That's correct. Judge, that's all I
12 have. Mr. Poole, answer any questions that the Attorney
13 General may have for you.

14 **MS. RATIGAN:** I don't have any questions for Mr. Poole.

15 **THE COURT:** What -- I'm trying to think here.
16 Possession with intent, third, is that twenty-five to
17 thirty?

18 **MR. MANGRUM:** Yes.

19 **MS. HORLBECK:** Yes, sir.

20 **THE COURT:** Mandatory minimum, twenty-five years. No
21 judge can change that if you get convicted of a third, do
22 you understand that?

23 A. Mandatory minimum possession with intent to distribute,
24 third, I don't -- I don't think I have a third offense.
25 Third offense of what?

LAMONT POOLE - DIRECT EXAMINATION BY MS. HORLBECK

10

1 **THE COURT:** Well, let me ask you this. I'm just -- I
2 just want to be clear about what's going on here. Do you
3 have a 1996 possession of marijuana, two counts?

4 A. Yeah.

5 **THE COURT:** Do you have a 1998 possession with intent
6 to distribute marijuana?

7 A. Um-hum (affirmative).

8 **THE COURT:** Do you have a 2000 possession with intent
9 to distribute marijuana?

10 A. In 2000? I think ---

11 **THE COURT:** Yeah.

12 A. --- so.

13 **THE COURT:** You indicate yes?

14 A. Yeah.

15 **THE COURT:** That makes these thirds.

16 A. Well, I -- I -- I know that if I plead to it, that
17 don't make it a third.

18 **THE COURT:** If you get convicted ---

19 A. It ain't -- it would ---

20 **THE COURT:** Let me just ---

21 A. --- have probably been convicted already.

22 **THE COURT:** Mr. Poole, just so you understand what's
23 going on, if I grant the relief you want, ---

24 A. Um-hum (affirmative).

25 **THE COURT:** --- you go back and get re-prosecuted on

LAMONT POOLE - DIRECT EXAMINATION BY MS. HORLBECK

11

1 these cases, okay?

2 A. I understand that.

3 **THE COURT:** And if you get convicted with a third
4 offense, the minimum sentence you can get is twenty-five
5 years.

6 A. Um-hum (affirmative).

7 **THE COURT:** The minimum sentence. You would -- you'd
8 also have to face your -- the child neglect as well, which
9 is ten years. So that's -- you're looking at forty years,
10 potentially.

11 And are there two counts of the -- the one he's got in
12 the marijuana, possession with intent marijuana, third
13 offense, does that carry twelve? I can't remember.

14 **MS. HORLBECK:** I think it's ten.

15 **THE COURT:** Ten.

16 **MR. MANGRUM:** I think it's ten to thirty.

17 **MS. HORLBECK:** Is it ten? Oh, ten to thirty.

18 **THE COURT:** There you go. You understand all that?

19 A. I understand all that.

20 **THE COURT:** And you want to pursue it?

21 A. Yes, I do.

22 **THE COURT:** Ooh, Okay. I don't have any other
23 questions.

24 **MS. HORLBECK:** I don't either, Judge.

25 **THE COURT:** Okay. You can step down.

SANDRA NESBITT - CROSS EXAMINATION BY MS. RATIGAN

13

1 less.

2 Q. Okay. All right. That's all I have. Please answer
3 any questions that Ms. Ratigan may have.

4 A. All right.

5 Cross Examination by Ms. Ratigan:

6 Q. Did Mr. Mangrum say he was going to try to get him a
7 five year sentence or that he would definitely get a five
8 year sentence?

9 A. He said it wouldn't be over five years.

10 Q. Okay. So the maximum he would get would be five years?

11 A. Yes.

12 Q. Okay.

13 **MS. RATIGAN:** That's all I have, Your Honor.

14 **THE COURT:** So you want your son to win this thing so
15 he can go back and look at a mandatory minimum of twenty-
16 five years, is that right?

17 A. I just wanted him to be able to get the less -- the
18 five years or less, what the -- what he had said.

19 **THE COURT:** Yeah. Okay. Thanks. You can step down.

20 **MS. HORLBECK:** That's all I have, Judge.

21 **THE COURT:** All right.

22 **MS. RATIGAN:** We'll call Mr. Mangrum.

23 **THE COURT:** Okay. Come on around.

24 **Patrick Mangrum, being**
25 duly sworn testified as follows:

PATRICK MANGRUM - DIRECT EXAMINATION BY MS. RATIGAN

14

1 **MADAME CLERK:** Thank you. Please state your full name
2 for the record.

3 **MR. MANGRUM:** Patrick Mangrum.

4 **Direct Examination by Ms. Ratigan:**

5 Q. Mr. Mangrum, do you recall representing Mr. Poole on
6 these charges?

7 A. Yes, ma'am.

8 Q. And did the State ever make any kind of a plea offer?

9 A. Yes.

10 Q. And what was that?

11 A. First of all, let me give you a background.

12 Q. Okay.

13 A. I was the second attorney on Mr. Poole. Mr. Poole was
14 previously represented by David Thomas. And he came to me
15 because he was not satisfied with what was going on with Mr.
16 Thomas. Essentially, he didn't like the plea offer that was
17 made. And the plea offer was never changed.

18 And the plea offer was he would plead guilty to the
19 child neglect, he would plead guilty to -- the State would
20 reduce the PWID marijuana, third offense, to PWID marijuana,
21 second offense, PWID cocaine, third offense, to PWID
22 cocaine, second offense. The State would dismiss the
23 cocaine charge, half mile charge, another cocaine charge,
24 another cocaine charge, half mile charge, and another half
25 mile charge. The reduction to PWID cocaine from third to

PATRICK MANGRUM - DIRECT EXAMINATION BY MS. RATIGAN

15

1 second offense and concurrent sentences on everything else.
2 Exposure would be five to thirty years at eighty-five
3 percent.

4 Please disregard my previous offer of a negotiated ten
5 years. This plea was supposed to have been done by May of
6 2009. That's the plea offer.

7 Q. So that plea offer was in place by the time you took it
8 over from Mr. Thomas?

9 A. Yes.

10 Q. And you had discussed that with Mr. Poole?

11 A. Yes.

12 Q. And did he reject it or did he ---

13 A. He came to me and he wanted me to try to get it
14 reduced. And Mr. Steinberg would never -- he wouldn't budge
15 on the offer.

16 Q. So by the time Mr. Poole pled, he was pleading without
17 any kind of recommendation?

18 A. He still had the ---

19 Q. This was the recommendation?

20 A. There is a recommendation. I think that's kind of a
21 ---

22 Q. I got you.

23 A. --- misstatement that there's no recommendation. When
24 you reduce all those charges and you dismiss multiple
25 charges, there is a recommendation. And it was reduced down

PATRICK MANGRUM - DIRECT EXAMINATION BY MS. RATIGAN

16

1 to a level so -- let's be clear about the five years.

2 Q. Yes.

3 A. It is clear -- it is true that Mr. Steinberg offered --
4 made the offer of five to thirty with the understanding that
5 I would try and argue to the judge to get five years as was
6 Mr. Thomas' understanding. And I clearly made it clear to
7 my client that I would try to get him five years. The judge
8 chose to give him eight years, which was a lawful sentence
9 under the statute.

10 Q. Did you ever tell Mr. Poole that he would absolutely
11 get that ---

12 A. No.

13 Q. --- five years?

14 A. I would never tell any client what they're going to
15 get. Never.

16 Q. Did you ever tell Mr. Poole or anyone in his family the
17 maximum sentence he would receive would be five years?

18 A. No. The offer never changed.

19 Q. Do you recall during the plea Mr. Poole ever nudging
20 you and asking, you know, why they weren't making a five
21 year offer?

22 A. I don't recall that.

23 Q. Okay.

24 **MS. RATIGAN:** That's all I have, Your Honor.

25 **THE COURT:** Cross.

1 **MS. HORLBECK:** I don't have any questions. Thank you.

2 **THE COURT:** Did you say there was a negotiated ten
3 year?

4 A. That was the initial offer from Mr. Steinberg to Mr.
5 Thomas.

6 **THE COURT:** Okay.

7 A. And then Mr. Thomas -- Mr. Steinberg changed that offer
8 to the offer that I related to the Court just a few minutes
9 ago.

10 **THE COURT:** Okay.

11 A. And that offer never changed when I was representing
12 him.

13 **THE COURT:** Okay. And I'm reviewing the transcript.
14 And I don't see anywhere in here that the -- that it was
15 related to the court that all these other charges were
16 pending against Mr. Poole and were dismissed.

17 **MS. RATIGAN:** Page 13, ---

18 **THE COURT:** 13?

19 **MS. RATIGAN:** --- Ms. Salisbury just states -- lines 11
20 and 15. She just says they're not making a recommendation
21 to duration, but instead dismissing distribution and prox
22 charges.

23 **THE COURT:** Right. She -- they never ---

24 A. They weren't itemized.

25 **THE COURT:** They weren't itemized. So the judge didn't

1 know just exactly how much -- how many cases were pending.

2 Okay. I'll -- any other questions?

3 **MS. RATIGAN:** No, Your Honor.

4 **THE COURT:** All right. Thank you.

5 A. Thank you, Judge.

6 **THE COURT:** Anything else from the State?

7 **MS. RATIGAN:** No, Your Honor. The State would rest at
8 this time.

9 **THE COURT:** Any reply?

10 **MS. HORLBECK:** No, sir.

11 **THE COURT:** I tell you what, I'm very tempted to grant
12 you your relief, Mr. Poole. Let you go back and face what
13 you were originally charged with. I'm very tempted to do
14 it. Unfortunately, there's absolutely zero legal grounds to
15 do it. I deny his petition.

16 **MS. RATIGAN:** Thank you, Your Honor.

17 **THE COURT:** Pull your pants up. Walk around like a two
18 year old. Mr. Mangrum, thank you very much.

19 **MR. MANGRUM:** Yes, sir. Thank you.

20 (Hearing Ended at 10:56 am)

21 (End of Requested Transcript of Record)

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Certificate of Reporter

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I, The undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 20th day of December 2012.

10

11

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

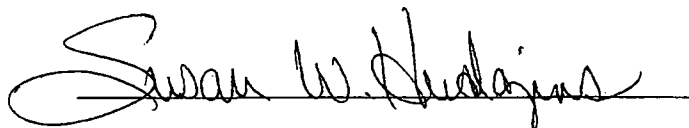
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April 6, 2013

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A handwritten signature in cursive script that reads "Susan W. Hudgins". The signature is written in black ink and is positioned above a horizontal line.

Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Lemont Valentino Poole,)
 S.C.D.C. No. 265389,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2011-CP-23-3500

ORDER OF DISMISSAL

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMMER
 2013 JAN 22 P 1:32

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 23, 2011. The Respondent made its return on September 20, 2011. An evidentiary hearing into the matter was convened on December 20, 2012 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were Sandra Poole Nesbitt and the Applicant's plea counsel, Patrick L. Mangrum, Esquire. The Court had before it the transcript of the guilty plea hearing, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the Respondent's return.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Greenville County Grand Jury indicted the Applicant for possession with intent to distribute (PWID) cocaine (2008-

GS-23-9133), PWID marijuana (2008-GS-23-9134), and unlawful conduct towards a child (2008-GS-23-9136). The Applicant waived presentment to PWID cocaine (2010-GS-23-1307) and PWID marijuana (2010-GS-23-1309). Patrick L. Mangrum, Esquire, represented the Applicant.

On June 17, 2010, the Applicant pled guilty. The Honorable Robin B. Stilwell sentenced the Applicant to concurrent terms of eight (8) years for each count of PWID cocaine, second offense, eight (8) years for each count of PWID marijuana, second offense, and five (5) years for unlawful conduct towards a child. The Applicant did not appeal.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Improperly advising the Applicant to accept the plea.
2. Involuntary guilty plea.

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 has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel/Involuntary Guilty Plea

The Applicant alleges his guilty plea was involuntary and that he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his

allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

The Applicant stated plea counsel told him that he was pleading guilty in exchange for a five year sentence. The Applicant stated plea counsel said that if he did not plead guilty to this five year offer, he would go to trial. The Applicant admitted he did not say anything at the plea hearing when the State said there was no recommendation, but that he did so because plea counsel told him not to say anything.

Sandra Poole Nesbitt, the Applicant’s mother, stated plea counsel told them the maximum sentence the Applicant would receive would be five years.

Plea counsel testified he was the second attorney in this case. Plea counsel testified there was a prior offer for a negotiated ten year sentence, but that it was conveyed before he assumed representation. Plea counsel testified the offer received while he was representing the Applicant was to reduce the charges to second offenses and recommend concurrent time. Plea counsel testified he told the Applicant he would argue for the minimum sentence of five years, but did not say he would definitely receive a five year sentence.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Applicant admitted to the majority of the facts recited by the solicitor were true. (Plea transcript, pp.13-14). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.5-6; p.9; pp.10-11).

This Court finds the Applicant failed to meet his burden of proving plea counsel was ineffective. Plea counsel testified the plea offer from the State did not include a sentence recommendation, but decreased the drug charges to second offenses and recommended concurrent time. Plea counsel testified he explained this offer to the Applicant and, while he stated he would ask for the minimum sentence of five years imprisonment, he did not promise the Applicant he would receive a five year sentence. This Court finds plea counsel's testimony is credible. The guilty plea transcript refutes the Applicant's claim that he believed he was pleading guilty in exchange for a five year sentence. See Stalk v. State, 375 S.C. 289, 300, 652

S.E.2d 402, 407 (Ct. App. 2007). The record reflects, and the Applicant acknowledged in his testimony, that the State said there was no sentence recommendation at the plea hearing and there was no objection from the Applicant. (Plea transcript, p.13). The record also reflects the Applicant was advised of the minimum and maximum sentences he could receive on these charges. (Plea transcript, pp.7-9). While the Applicant may have held out hope that he would receive the minimum sentence of five years, he failed to meet his burden of proving plea counsel promised he would receive a five year sentence. See Holden v. State, 713 S.E.2d 611, 617, 393 S.C. 565, 575-76 (2011) (citing Roddy v. State, 339 S.C. 29, 36, 528 S.E.2d 418, 422 (2000)) (“Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made.”).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel’s performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to

present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

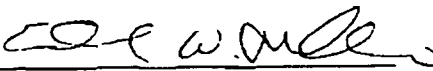
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Furthermore, the Applicant's guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 11th day of January, 2013.


 Edward W. Miller
 Presiding Judge
 Thirteenth Judicial Circuit

Greenville, South Carolina.

WITNESSES

D. Pendergrass

[Handwritten Signature]

Mauldin Police Department

8/28/2008

DOCKET NO. 2008-GS-23-

ARS 009133

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April TERM 2008

THE STATE

vs.

LEMONT VALENTINNO POOLE

DL SUSPENDS

Did Clerk receive driver's license

YES NO

If no, explain.

[Handwritten Signature]

Defendant

ARREST WARRANT NUMBER

1561247

ACTION OF GRAND JURY

TRUE BILL

[Handwritten Signature]

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

0183

POSSESSION OF COCAINE WITH INTENT TO
DISTRIBUTE

VIOLATION § 44-53-0370

Foreperson of Petit Jury

Date:

WITNESSES

D. Pendergrass

[Signature]

Mauldin Police Department

8/28/2008

ARREST WARRANT NUMBER

1561249

ACTION OF GRAND JURY

TRUE BILL

Nicki Cummins

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-23-

ARS

009134

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April TERM 2009

THE STATE

vs.

LEMONT VALENTINNO POOLE

DL SUSPENDS

Did Clerk receive driver's license?

YES _____ NO

If no, explain _____

Lemont V. Poole
Defendant

Indictment for

0186

POSSESSION OF MARIJUANA WITH INTENT TO
DISTRIBUTE

VIOLATION § 44-53-0370

ENTERED
RCCT
10/1

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

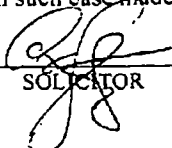
INDICTMENT FOR
POSSESSION OF MARIJUANA WITH INTENT TO DISTRIBUTE

At a Court of General Sessions, convened on **APR 14 2009** the Grand Jurors of Greenville

County present upon their oath:

That LEMONT VALENTINNO POOLE did in Greenville County, on or about the 28th day of August 2008, possess with intent to distribute or aid, abet, or conspire to possess with the intent to distribute a quantity of Marijuana, a controlled substance, such possession not having been authorized by law. This is in violation of §44-53-370 of the South Carolina Code of Laws (1976) as amended.

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



SOLICITOR

WITNESSES

D. Pendergrass *[Signature]*
Mauldin Police Department
8/28/2008

DOCKET NO. 2008-GS-23-
ARS 009136

✓ The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April TERM 2008

THE STATE

vs.

LEMONT VALENTINNO POOLE

ARREST WARRANT NUMBER
1561253

ACTION OF GRAND JURY
TRUE BILL

Nicki Cummings
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

✓
2481

Indictment for

UNLAWFUL CONDUCT TOWARDS A CHILD

VIOLATION § 20-07-0050

Foreperson of Petit Jury

Date:

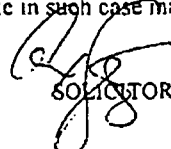
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
UNLAWFUL CONDUCT TOWARDS A CHILD

At a Court of General Sessions, convened on **APR 14 2009** the Grand Jurors of Greenville
County present upon their oath:

That LEMONT VALENTINNO POOLE did in Greenville County, on or about the 28th day of August 2008,
while being the legal custodian, parent, or guardian, place the child, P.D., (1) at unreasonable risk of harm
affecting the child's life, physical or mental health, or safety; or (2) unlawfully or maliciously do or cause to be
done any bodily harm to the child so that the life or health of the child is endangered or likely to be endangered;
or (3) willfully abandon the child. This is in violation of §20-7-50 of South Carolina Code of Laws (1976) as
amended.

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


SOLICITOR

WITNESSES

P Mullinax
Greenville Police Department
10/9/2009

DOCKET NO. 2010-GS-23-
HLS 001307
The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

TERM 2010

THE STATE

vs.

LEMONT VALENTINO POOLE

ARREST WARRANT NUMBER
M380935

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Mangrum
Indictment for
0183

POSSESSION OF COCAINE WITH INTENT TO
DISTRIBUTE

VIOLATION § 44-53-0370

Foreperson of Petit Jury

Date:

IF SUSPENDS
Did Clerk receive driver's license?
YES. NO ✓
If no, explain
Lemont V. Poole
Defendant

RECEIVED

FEB 7 5 2010

Clerk of Court
Greenville County

WITNESSES

P Mullinax

Greenville Police Department

10/9/2009

DOCKET NO. 2010-GS-23-^{HLS} 001309

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

TERM 2010

THE STATE

vs.

LEMONT VALENTINO POOLE

ARREST WARRANT NUMBER

M380944

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

✓
0187

Indictment for

POSSESSION OF MARIJUANA WITH INTENT TO
DISTRIBUTE

VIOLATION § 44-53-0370

Foreperson of Petit Jury

Date:

ENDS
Clerk receive driver's license?
NO ✓
no, explain
Lemont V. Poole
Defendant

RECEIVED

FEB 25 2010

Clerk of Court
Greenville County

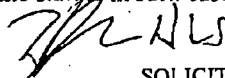
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF MARIJUANA WITH INTENT TO DISTRIBUTE

At a Court of General Sessions, convened on _____ the Grand Jurors of Greenville
County present upon their oath:

That LEMONT VALENTINO POOLE did in Greenville County, on or about the 9th day of October, 2009,
possess with intent to distribute or aid, abet, or conspire to possess with the intent to distribute a quantity of
Marijuana, a controlled substance, such possession not having been authorized by law. This is in violation of
§44-53-0370 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR