

RECEIVED

Nov 15 2022

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Laurens County

Honorable R. Kirk Griffin, Circuit Court Judge

BRYAN L ROEKER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000284

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ZACHARY W. JONES
Assistant Attorney General
P.O. Box 11629
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED FEBRUARY 20, 2018	1
INDICTMENTS AND SENTENCE SHEETS.....	15
APPLICATION FOR POST-CONVICTION RELIEF FILED FEBRUARY 12, 2019	24
RETURN AND PARTIAL MOTION TO DISMISS FILED APRIL 25, 2019	32
AMENDED APPLICATION FOR POST-CONVICTION RELIEF FILED FEBRUARY 6, 2020.....	42
SECOND AMENDED APPLICATION FOR POST-CONVICTION RELIEF FILED OCTOBER 19, 2021.....	49
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED OCTOBER 26, 2021	55
ORDER OF DISMISSAL FILED FEBRUARY 21, 2022	145

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

Proceedings 4

Certificate Page. 14

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
------------	--------------------	-------------	--------------

No exhibits marked during proceeding.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 11:15 a.m.)

THE COURT: All right, Solicitor.

MR. TODD: May it please the Court: Judge, this is Bryan Lee Roeker, represented by Ivan Toney of the Greenville bar -- Spartanburg or Greenville.

MR. TONEY: It's Greenville.

MR. TODD: It's the Greenville bar. It's my understanding he is here to enter a guilty plea on possession with intent to distribute meth, first; malicious injury to personal property; and resisting arrest. This was going to be a trial-docket case for next week. But it's a negotiated 15 years, active time.

THE COURT: Okay. All right. Madam clerk, would you swear in Mr. Roeker?

BRYAN LEE ROEKER, having been first duly sworn, testified and/or stated as follows:

THE COURT: All right. Mr. Toney, you represent Mr. Roeker on these three charges?

MR. TONEY: Yes, I do, sir.

THE COURT: And have you had an opportunity to explain the charges to him, his constitutional rights he's giving up as a result of the plea, maximum punishment he could receive?

1 MR. TONEY: I have. And we've actually discussed this
2 case on about 40 or 50 separate occasions.

3 THE COURT: Okay.

4 MR. TONEY: So -- so extensively.

5 THE COURT: And -- and do you believe he had
6 understood your explanation?

7 MR. TONEY: There's no question. He had substantial
8 ---

9 THE COURT: Okay.

10 MR. TONEY: --- input.

11 THE COURT: Okay. And I've got three charges before
12 me: a malicious injury to property, a resisting arrest,
13 and possession with intent to distribute methamphetamine.
14 How does he plead?

15 MR. TONEY: He's pleading guilty, sir.

16 THE COURT: Okay.

17 THE DEFENDANT: Guilty.

18 THE COURT: And as his attorney, do you agree with
19 that decision to plead guilty?

20 MR. TONEY: I -- I agree with it. And we -- we
21 negotiated it strenuously over ---

22 THE COURT: Okay.

23 MR. TONEY: --- a substantial period of time.

24 THE COURT: Okay. All right. Mr. Roeker, I'm going
25 to ask you a series of questions. You pay close attention

1 to the questions I ask you. And when you respond, speak up
2 loud enough so we can hear you. Okay?

3 THE DEFENDANT: Yep.

4 THE COURT: All right. You are Bryan Lee Roeker?

5 THE DEFENDANT: Yes.

6 THE COURT: And how old are you, sir?

7 THE DEFENDANT: Thirty-five.

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

9 THE DEFENDANT: GED.

10 THE COURT: Okay. You -- now, you just heard your
11 attorney tell me you're pleading guilty to three charges:
12 possession with intent to distribute methamphetamine, first
13 offense; malicious injury to property; and resisting
14 arrest. Is that correct?

15 THE DEFENDANT: That's correct.

16 THE COURT: Are you pleading guilty because, in fact,
17 you are guilty?

18 THE DEFENDANT: Yes.

19 THE COURT: Anyone force you, coerce you, promise you
20 anything, done anything whatsoever to get you to plead
21 guilty today against ---

22 THE DEFENDANT: No, sir.

23 THE COURT: --- your will?

24 THE DEFENDANT: No, sir.

25 THE COURT: You pleading guilty today freely ---

1 THE DEFENDANT: Yeah.

2 THE COURT: --- voluntarily ---

3 THE DEFENDANT: Voluntary.

4 THE COURT: --- and intelligently?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Have you taken anything, any substance --
7 alcohol, drugs, medication -- that would not only affect
8 your ability to understand these proceedings, but also
9 affect your ability to make decisions?

10 THE DEFENDANT: No, sir.

11 THE COURT: You suffer from any problem or condition,
12 whether it's physical, mental, or emotional, that would not
13 only affect your ability to understand these proceedings,
14 but also affect your ability to make decisions?

15 THE DEFENDANT: No, sir.

16 THE COURT: All right, Solicitor.

17 MR. TODD: Judge, back on July 17, 2017, police --
18 sheriff's department dispatched to 233 East Liberty Springs
19 Road, Cross Hill, South Carolina, in reference to a victim
20 who does not want to be named. I've got on your sheet, but
21 observed a white male matching Mr. Roeker's description as
22 removing a motion-activated light from a tree in her back
23 yard. She walked inside; immediately called 911; gave them
24 the breakdown of what Mr. Roeker was wearing and the
25 direction he was heading.

1 After law enforcement cleared the scene at the
2 victim's house, they head back. And they come across the
3 Cross Hill Park and see a person matching that description,
4 wearing the clothes and everything else, there. Deputies
5 stop, get out, and try to approach Mr. Roeker.

6 He then takes off running toward the Cross Hill
7 Volunteer Fire Department; goes inside the fire department,
8 out the other one -- out the back door, which is where
9 officers were able to tackle him. And they did find on his
10 person a white, clear substance that was tested for
11 methamphetamine.

12 And SLED bounced back, saying it was a -- a positive
13 test for the methamphetamine; weighed a little under 40
14 grams. So it was a trafficking. As you can see from his
15 record, this will be his first drug offense, believe it or
16 not, with that kind of methamphetamine, which went into
17 bringing that to a PWID.

18 And with that plea, a driving under suspension and a
19 failure to stop for blue light and, then, a burg-third for
20 going in the volunteer fire department and coming back out
21 of the volunteer fire department are going to be dismissed
22 for the 15 years' active.

23 THE COURT: Okay. Is that a correct statement of the
24 facts, Mr. Roeker?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You understand that this is a negotiated
2 plea, which means I either or accept it or I reject it;
3 there's no room for me to go under or above the negotiated-
4 plea amount. You understand that?

5 THE DEFENDANT: I do, Your Honor.

6 THE COURT: Okay. Now, you understand that when you
7 plead guilty, Mr. Roeker, you give up certain
8 constitutional rights that you have. I'm going to go
9 through those with you. You have the right to a jury
10 trial. You want a jury trial on these charges?

11 THE DEFENDANT: No, sir.

12 THE COURT: You understand, when you plead guilty, you
13 give up your right to remain silent. You understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You understand that when you plead guilty,
16 you give up the right for your attorney, on your behalf, to
17 make legal arguments, put up legal challenges, file legal
18 motions concerning any evidence that the state may have, as
19 well as to confront and cross-examine the state's
20 witnesses. You understand that?

21 THE DEFENDANT: Yes, sir, I do.

22 THE COURT: And when you were arrested on these
23 charges, you were automatically presumed to be innocent.
24 And that presumption of innocence is carried with you all
25 the way up till today. But when you plead guilty, you're

1 no longer entitled to that presumption of innocence. You
2 understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And when the state elected to bring
5 criminal charges against you, they took on what is called a
6 burden of proof to prove each and every element of these
7 three charges beyond a reasonable doubt standard. That's
8 the highest standard that we have in the -- in the law.
9 However, when you plead guilty, they no longer have that
10 burden of proof. All they have to is present sufficient
11 facts to base your guilty plea on. You understand that,
12 sir?

13 THE DEFENDANT: I do.

14 THE COURT: Are you satisfied with Mr. Toney's legal
15 representation in this case?

16 THE DEFENDANT: I am.

17 THE COURT: Has he done everything you've asked him to
18 do or expected that he would do in your behalf?

19 THE DEFENDANT: He has.

20 THE COURT: Do you need any more time to just sit down
21 and discuss these charges with him?

22 THE DEFENDANT: No, sir.

23 THE COURT: Have you had full opportunity to review
24 and discuss with Mr. Toney the discovery file; in other
25 words, all the documents/evidence that the state has and

1 has provided to your attorney?

2 THE DEFENDANT: I have.

3 THE COURT: You understand, Mr. Roeker, that if you
4 have any legal basis to challenge this guilty plea you're
5 making today, that you only have ten days to file notice of
6 intent to appeal with a higher court. You understand that?

7 THE DEFENDANT: I do, Your Honor.

8 THE COURT: Have you understood all the Court's
9 questions?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All your answers truthful?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. Thank you.

14 Let the record reflect that there is a factual basis
15 for this plea. The plea has been made freely, voluntarily,
16 and intelligently by Mr. Roeker. And he's done so with
17 competent counsel with whose services he expresses
18 satisfaction with.

19 Mr. Toney, I'll be glad to hear from you, sir.

20 MR. TONEY: Well, I've had many interactions with him
21 and meetings. And the thing that impresses me most about
22 Bryan is he's a perfect gentleman. He's not at all
23 difficult to deal with.

24 He's polite; he's respectful. He goes over everything
25 with you. His answers are intelligent. He's very well-

1 spoken.

2 And he doesn't use that well-spokenness [sic] to try
3 to be slick or -- or, you know, just unnecessarily verbose.
4 He just handles his business well; carries himself very
5 well. He -- he -- he could be doing a lot, lot more with
6 his life. He could be running something, in charge of
7 something. And it's unfortunate that he's put himself in
8 this situation because his potential is a thousand times
9 more than what he's doing.

10 It's a long sentence, 15 years. It's in a dangerous
11 place. SCDC is very dangerous and violent. And -- and I
12 talked to him about this. And, you know, I -- I want him
13 to do well when he -- when he gets out, if the -- if the
14 Court accepts his sentence. I'd ask the Court to accept
15 it.

16 THE COURT: Okay.

17 MR. TONEY: It was great dealing with the solicitor.
18 You know, we -- it -- it took a while to get to where we're
19 at. It's his first drug offense.

20 THE COURT: Okay.

21 MR. TONEY: He -- he has family here today. They
22 don't wish to speak. But ---

23 THE COURT: Okay.

24 MR. TONEY: --- he has people that love him. He has
25 two children.

1 THE COURT: Okay. All right. Mr. Roeker, I will
2 accept your negotiated plea.

3 On the resisting arrest and malicious injury to
4 property, it'd be a time-served sentence. On the
5 possession with intent to distribute methamphetamine, the
6 sentence of the Court is you be committed to the state
7 Department of Corrections for a period of 15 years; credit
8 for 212 days that you have been incarcerated. Good -- good
9 luck to you, sir.

10 THE DEFENDANT: Thank you, sir.

11 (Whereupon, the proceeding was concluded at 11:25
12 a.m.)

13 **--- END OF TRANSCRIPT OF RECORD ---**

14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR LAURENS COUNTY, SOUTH CAROLINA, ON THE 20TH
DAY OF FEBRUARY, 2018.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

FEBRUARY 25, 2019

WITNESSES

Thomas Boyd

Laurens County Sheriff's Department

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

November Term, 2017

Indictment # 17GS30- 1936

I hereby waive presentment to the Grand Jury.

Defendant



WARRANT NUMBER

2017A3010400112

THE STATE

vs.

BRYAN LEE ROEKER

Witness:



Foreman of the Grand Jury

Date: 11/27/2017

VERDICT

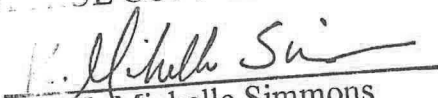
INDICTMENT FOR

Trafficking Methamphetamine
SC Code: § 44-53-375(C)

CDR: 0392

Foreman

TRUE COPY OF ORIGINAL


K. Michelle Simmons
Laurens County CCCP & GS

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

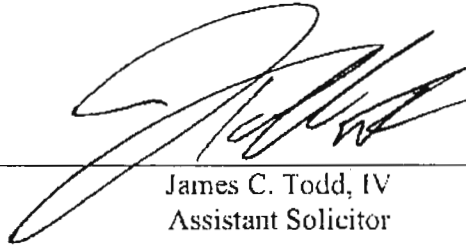
INDICTMENT FOR

Trafficking Methamphetamine
§44-53-375(C)

At a Court of General Sessions, convened on the 27th day of November, 2017, the Grand Jurors of Laurens County present upon their oath:

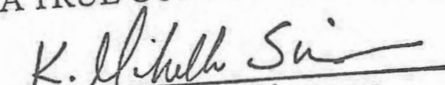
The defendant, Bryan Lee Roeker, did on or about July 17, 2017, in Laurens County, South Carolina, knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of twenty-eight (28) grams or more of methamphetamine as defined and otherwise limited in Section 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2), all in violation of 44-53-375(C), Code of Laws of South Carolina (1976, as amended).

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



James C. Todd, IV
Assistant Solicitor

A TRUE COPY OF ORIGINAL



K. Michelle Simmons
Laurens County CCCP & GS

WITNESSES

Thomas Boyd
Laurens County Sheriff's Department

THE STATE OF SOUTH CAROLINA**COUNTY OF LAURENS****COURT OF GENERAL SESSIONS**

November Term, 2017
Indictment # 17GS30- | 939

WARRANT NUMBER

2017A3010400115

True Bill

Richard Patton

Date: 11/27/2017
Foreman of the Grand Jury

VERDICT

Foreman

THE STATE

vs.

BRYAN LEE ROEKER

INDICTMENT FOR

Malicious Injury To Property
SC Code: § 16-11-0510(A)

CDR: 3415

I hereby waive presentment to the Grand Jury.

Defendant

[Signature]

Witness:

A TRUE COPY OF ORIGINAL

K. Michelle Simmons
K. Michelle Simmons
Laurens County CCCP & GS

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

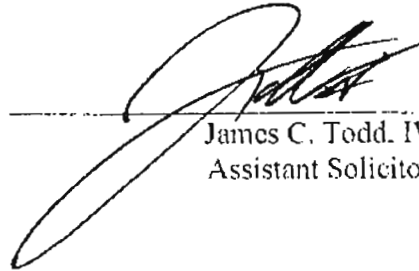
INDICTMENT FOR

Malicious Injury To Property
§16-11-0510(A)

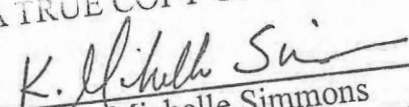
At a Court of General Sessions, convened on the 27th day of November, 2017, the Grand Jurors of Laurens County present upon their oath:

The defendant, Bryan Lee Roeker, did on or about July 17, 2017 in Laurens County, willfully, unlawfully and maliciously do damage to personal property described as security lights and cameras, the damage being Two Thousand Dollars (\$2,000.00) or less. All in violation of 16-11-0510(A), Code of Laws of South Carolina, (1976), as amended.

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



James C. Todd, IV
Assistant Solicitor

A TRUE COPY OF ORIGINAL

K. Michelle Simmons
Laurens County CCCP & GS

WITNESSES

Thomas Boyd

Laurens County Sheriff's Department

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

November Term, 2017

Indictment # 17CS30-1940

WARRANT NUMBER

2017A3010100736

THE STATE

v.s.

BRYAN LEE ROEKER

Trevor Bill

Richard Patton

Foreman of the Grand Jury

Date: 11/24/2017

VERDICT**INDICTMENT FOR**

Resisting Arrest

SC Code: § 16-09-0320(B)

CDR: 0236

Foreman

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

A TRUE COPY OF ORIGINAL

K. Michelle Simmons
K. Michelle Simmons
Laurens County CCCP & GS

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

INDICTMENT FOR

**Resisting Arrest
§16-09-0320(B)**

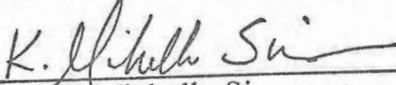
At a Court of General Sessions, convened on the 27th day of November, 2017, the Grand Jurors of Laurens County present upon their oath:

The defendant, Bryan Lee Roeker, did in Laurens County, on or about July 17, 2017, knowingly and willfully assault, beat or wound Darrin Boyd with the Laurens County Sheriff's Department while Darrin Boyd was engaged in serving, executing, or attempting to serve or execute a legal writ or process; or did assault, beat, or wound Darrin Boyd when resisting an arrest being made by Darrin Boyd and knew or reasonably should have known Darrin Boyd was a law enforcement officer, all in violation of Section 16-9-320(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 cases made and provided.


James C. Todd, IV
Assistant Solicitor

A TRUE COPY OF ORIGINAL


K. Michelle Simmons
Laurens County CCCP & GS

COUNTY OF LAURENS

STATE VS.

BRYAN LEE ROEKER

AKA: _____

Race: White Sex: M Age: 35DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED] RoadCity, State, Zip: Clinton, SC 29325DL# [REDACTED] SID# _____*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

☐ CONVICTED OF or☒ PLEADSTO: Possession with Intent to Distribute Methamphetamine 1st OffenseIn violation of § 44-53-375(B) of the S.C. Code of Laws, bearing CDR Code # 3198☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

____ (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation,☒ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

James C. Todd, IV, Assistant Solicitor 101402
SC Bar #[Signature]
Defendant[Signature] 2460
Attorney for Defendant SC Bar #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 Service 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. Credit 212 Days☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

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: _____

Recipient: _____

*Fine: P.D. fee \$ 40.00

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

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

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

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

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

3% to County (if paid in installments) \$ \$ 8.05TOTAL \$ 393.05☐ Appointed PD or appointed other counsel,

Proviso §61.6 requires \$500 be paid to Clerk

during probation and shall be collected before

any other fees.

Clerk of Court/Deputy Clerk: [Signature]Court Reporter: [Signature]

SCCA/217 (07/2016)

Residing Judge: [Signature]Judge Bar ID: 2535Sentence Date: 2/20/18K. Michelle Simmons
Laurens County CCCP & GSJudge Co dc: 2167

COUNTY OF LAURENS

STATE VS.

BRYAN LEE ROEKER

AKA:

Race: White

Sex: M

Age: 35

DOB: [REDACTED]

SS#: [REDACTED]

Address: [REDACTED] Road

City, State, Zip: Clinton, SC 29325

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

☐ CONVICTED OF or☒ PLEADSTO: Malicious Injury To Property

In violation of § 16-11-0510(A) of the S.C. Code of Laws, bearing CDR Code # 3415

INDICTMENT/CASE#: 17GS30-1939

A/W: 2017A3010400115

Date of Offense: 07/17/2017

S.C. Code §: 16-11-0510(A)

CDR Code #: 3415

SENTENCE SHEET

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

ATTEST:

James C. Todd, IV, Assistant Solicitor

101402

SC Bar #

Defendant

Attorney for Defendant

2460

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☒ County Detention Center, for a determinate term of 212 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ 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.

Credit 212 Days TS

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

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: _____

Recipient: _____

*Fine: _____

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

§14-1-211 (A)(2)(DUI Surcharge)

\$100

§56-5-2995 (DUI Assessment)

\$12

§56-1-286 (DUI Breath Test)

\$25

Proviso 61.6 (Public Def/Prob)

\$500

§14-1-212 (Law Enforce. Funding)

\$25

§14-1-213 (Drug Court Surcharge)

\$150

§50-21-114 (BUI Breath Test Fee)

\$50

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

3% to County (if paid in installments)

\$

TOTAL

\$100.00

Clerk of Court/Deputy Clerk: _____

Court Reporter: _____

SCCA/217 (07/2016)

Presiding Judge: _____

Judge Bar ID: 2535

Sentence Date: 2/20/18

Judge Code: 2167

K. Michelle Simmons
Laurens County CCCP & GS

COUNTY OF LAURENS

STATE VS.

BRYAN LEE ROEKER

AKA:

Race: White Sex: M Age: 35

DOB: SS#:

Address: Road

City, State, Zip: Clinton, SC 29325

DL# SID#

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

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

☐ CONVICTED OF or☐ PLEADSTO: Resisting Arrest

In violation of § 16-09-0320(A) of the S.C. Code of Laws, hearing CDR Code # 0326

SENTENCE SHEET

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

ATTEST:

James C. Todd, IV, Assistant Solicitor 101402 SC Bar #

Defendant

Attorney for Defendant 2460 SC Bar #

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☒ County Detention Center, for a determinate term of 212 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

*Fine: \$ _____

Substance Abuse Counseling ☐

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

Random Drug/Alcohol Testing ☐§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

Fine may be pd. in equal consecutive weekly/monthly

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

pmts. of \$ _____ Beginning _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

\$ _____ Paid to Public Defender Fund

§56-1-286 (DUI Breath Test) \$25 \$ _____

Other: _____

Proviso 61.6 (Public Def/Prob) \$500 \$ _____

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

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

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

☐ Appointed PD or appointed other counsel,

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

Proviso §61.6 requires \$500 be paid to Clerk

3% to County (if paid in installments) \$ \$ 3.75

during probation and shall be collected before

TOTAL \$ 128.75

any other fees.

Clerk of Court/Deputy Clerk: Lynne W. Prosser

Presiding Judge: _____

Court Reporter: _____

Judge Bar ID: 2535Judge Code: 2167

SCCA/217 (07/2016)

Sentence Date: 2/20/18

K. Michelle Simmons
Laurens County CCCP & GS

FORM 5

STATE OF SOUTH CAROLINA

County of LaurensBryan Lee Rucker

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2018 CP30-114

APPLICATION FOR

POST-CONVICTION RELIEF

LAURENS COUNTY
CLERK OF COURT
2019 FEB 12 PM 3:44
LYNN W. LANCASTER

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Currently in SCDC originally detained in Laurens County South Carolina
2. Name and location of Court which imposed sentence Eighth Judicial Circuit Court Laurens County South Carolina
3. Name(s) of co-defendant(s) (if any) None

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

- (a) 17 GS 30-1936 Trafficking methamphetamine 2017 A 3010400112
- (b) 17 GS 30-1938 possession with intent to distribute 2017 A 3010400114

(c) _____

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

(a) Feb 21 2018 negotiated plea excepted for me to serve 15 years non violent plea

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty Judge excepted terms of plea and sentenced me.

(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?

I am appealing from the conviction in this application

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

(a) I was wrongfully convinced by my attorney and I can prove I was not represented fairly under SC. - Bar statutes and expectations

(b) _____

(c) _____

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

- (a) chain of custody was broken and never logged properly
- (b) Attorney never allowed me client confidentiality that during co
- (c) the evidence that is suppose to be against me is not accounted for nor documented nor logged properly
- State concisely and in the same order the facts which support each of the grounds set out

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

- (a) Officer SUGARS INCUMBENT with witnesses to weight of drugs and analogues of PC
sized sugars B7C was reported after arrest and there is no further about of drug difference.
- (b) I was never released from custody during any of the case, my attorney never discussed any of
my case with me in any way. Before he sent me letter to take the plea, I was never
in private to speak with him about any thing until my scheduled plea date
he informed me to take PC/Mail
- Prior to this application have you filed with respect to this conviction:

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? _____

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. no
- ii. _____
- iii. _____
- iv. _____

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

- i. None prove to this filled
- ii. _____
- iii. _____
- iv. _____

10.F) Attorney never filed motion to suppress evidence like I told him to At which he agreed to do while he was on 3 way call with my wife. 27

11.F) He said that later he spoke with a ~~the~~ Alcedo expert And they said it would be denied he never told me or documented that he filed like we agreed. never even said who expert was if thought he was my expert
12.C) evidence not properly logged nor is it ever proven to be accounted for chain of custody for Auk b never filed nor was I aware to the fact.

11.E) Attorney never meet with me At All after he agreed to Annun And which I paid in full only other communication was a recorded jail phone

11.C) 2 days after I had already been booked in a cde officer came and tried to get me to sign the second Booking hist for property that never came to Jail with me that is supposed to be the Book Bag they found the drugs in there is no picture of a Book Bag in my motion nor was there one in my property when I was transferred ~~there is~~ in fact in the officers first statement a Book Bag was never mentioned he said the ~~drugs~~ drugs come off my persons. Several days later he wrote another statement And said he fought me to the ground forced handcuffs on me ~~behind~~ behind my back with a Alcedo Back pack on and at that time he searched me in cuffs and found in my Back pack I'm supposed to be cuffed with the drugs they are saying is mine where is the Back pack.

11.E) Attorney promised several times to come and meet with me in jail to discuss my case and devise a plan every time was recorded on spartan Bury county global toll call that I had to pay for I could not speak freely or about anything about my case because recorded He forced me to plead guilty to 1st degree murder on 25 if I didn't on 25

(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?

no this is the first attempt to resolve this matter on my behalf.

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) my attorney IVAN toni never informed me of any of my rights except
 (b) how and when to pay him in which I did in full
 (c) in sprattonbury county Ga there is no way to do any legal research.

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

- (a) yes your arraignment and plea? IVAN toni paid attorney P. D. Chelsea Mcneil
 (b) your trial, if any? _____
 (c) yes your sentencing? IVAN toni Ey 600 East Washington St suite 616 Greenville SC 29601
 (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 "yes" to one or more parts of (17), list:

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

i. Chelsea Mcneil Laurens County public defender's office

ii. IVAN Tony Espinoza 864-298-0077
600 East Washington St suite 616 Greenville 29601

iii. _____

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

i. Chelsea Mcneil represented me through my arraignment

ii. IVAN Tony represented me through out the entire case from point of bail being posted in which I only transferred jail I was never released to the street.

iii. _____

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

I want to hold my attorney responsible for my representation in the amount of 3500.00 paid in full and I want my case overturned due to his misrepresentation and how enforcements abuse of legal procedure. I want the officer reprimanded and penalized for getting a wrongful sentence imposed and a pillage for doing so printed in the Laurens County Advertiser saying so just like it was when I was convicted.

No I am not under any other courts sanctions in which I have not challenged.

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Laurens)

I, Byron Roeker, 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.

By Roeker

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

Regina A. Shock (D.S.)
Notary Public

My Commission Expires: March 24, 2021

LAURENS COUNTY
CLERK OF COURT
2019 FEB 12 PM 3:44
LYNN W. LANCASTER

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

I, Bryan Lee Becker, 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.

I am incarcerated.

Bj Becker
Applicant

SWORN or affirmed to and subscribed before me this
8 day of February, 2019.

[Signature]
Notary Public

My Commission Expires: March 24, 2027

LAURENS COUNTY
CLERK OF COURT
2019 FEB 12 PM 3:44
LYNN W. LANCASTER

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

Bryan Lee Roeker, #341043

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

2019-CP-30-114

**RETURN AND PARTIAL
MOTION TO DISMISS**

The State (Respondent), making its Return to the application for post-conviction relief filed on February 12, 2019, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Laurens County Clerk of Court. During the November 2017 term, the Laurens County Grand Jury indicted Applicant for trafficking methamphetamine (2017-GS-30-1936). Ivan J. Toney, Esquire (Counsel) represented Applicant at trial. Assistant Solicitor James C. Todd, IV prosecuted the case. On February 20, 2018, Applicant pled guilty as indicted before the Honorable Donald B Hocker. Pursuant to a negotiated sentence between the State and Applicant, Judge Hocker sentenced Applicant to imprisonment for fifteen years along with credit for time served for 212 days. Applicant did not appeal his conviction or sentence.

II. Factual Summary

On July 17, 2017, police were dispatched to a residences in Cross Hill after a woman observed a white male removing a motion-activated light from a tree in her backyard. (GP Tr. 7.) The woman provided deputies with a description of the man and officers observed Applicant in the area matching that description. (GP Tr. 7.) Deputies attempted to make contact with Applicant

LAURENS COUNTY
CLERK OF COURT
2019 APR 25 AM 9:24
LYNN W. LANCASTER

and he fled. (GP Tr. 8.) Applicant ran into the Volunteer Fire Department building and deputies were able to catch up to him when he exited the back door. (GP Tr. 8.) Deputies located a white substance on Applicant that field tested positive for methamphetamine. (GP Tr. 8.) A SLED report later confirmed Applicant was in possession of ~ 40 grams of methamphetamine, which was enough for a trafficking charge. (GP Tr. 8.)

III. Current Application

In his application for post-conviction relief, Applicant alleges numerous grounds to support his contention that he is being held in custody unlawfully. Respondent has interpreted those grounds as ineffective assistance of counsel and involuntary guilty plea for the following reasons:

Ineffective Assistance of Counsel

1. "Chain of custody was broken and never logged properly"
2. "Attorney never allowed me client confidentiality at all . . . all evidence that is supposed to be against me is not accounted for nor documented nor logged properly"
3. "Officer swears on warrant with witnesses to weight of drug and . . . sled swears bag was reopened after sealed and . . . I was never released from custody during any of this case, my attorney never discussed any of my case with me in any way before he sent me letter to take the plea, I was never in private to speak with him about anything until my scheduled plea date he informed me to take by mail."
4. "Attorney never filed motion to suppress evidence like I told him to at which he agreed to do while he was on 3way call with my wife"
5. "He said that later he spoke with an alleged expert and they said it would be denied he never told me or documented that he filed like he agreed. Never even said who expert was I thought he was my expert."
6. "Evidence was not properly logged nor is ever proven to be accounted for chain of custody for rule 6 never filed nor was I aware to the fact"
7. "Attorney never meet with me at all after he agreed to amount and which I paid in full only other communication was a recorded jail phone."
8. "Two days after I had already been booked in lcdc officer come and tried to get me to sign the second booking hist for property that never came to jail with me that is supposed to be the bookbag they found the drugs in there is no picture of a bookbag in my motion nor was there one in my property when I was transferred in fact in the officers first statement a bookbag was never mentioned he said the drugs come of my persons. Several days later he wrote another statement and said he fought me

to the ground, forced handcuffs on me behind my back with a alleged backpack on and at that time he searched me in cuffs and found in my backpack I'm supposed to be cuffed with the drugs they are saying is mine where is the back pack."

Involuntary Guilty Plea

9. "Attorney promised several times to come and meet with me in jail to discuss my case and devise a plan every time was recorded on Spartanburg county globel toll call that I had to pay for I could not speak freely or about anything about my case because recorded he forced me to plea . . . I would do 25 if I didn't plead"

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

IV. Response to Allegations of Ineffective Assistance of Counsel

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney

provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. At the outset of the guilty plea hearing, Counsel made Judge Hocker aware that he had discussed this case with Applicant forty to fifty times and Applicant had “substantial input” in his case. (GP Tr. 5.) Additionally, Applicant testified he was satisfied with Counsel and that Counsel had done everything he had asked him to do in his case. (GP Tr. 10.) Applicant further testified he had enough time to meet with Counsel to review the discovery file in his case. (GP Tr. 10-11.) However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. Response to Allegations of Involuntary Guilty Plea

Applicant asserts his guilty plea was involuntarily entered, however he fails to state with any specificity why his guilty plea was involuntary. The records from Applicant’s plea proceeding fully support that Applicant’s guilty plea was entered freely, voluntarily, and knowingly. This allegation is without merit.

In post-conviction relief cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing: (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging his or her guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985).

"A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). "Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea." Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see Jamison v. State, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea"). Statements made during the plea should be considered conclusive unless the defendant presents reasons why she should be allowed to depart from the truth of those statements. Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

In Applicant's case, the record fully supports the knowing and voluntary nature of Applicant's plea. Applicant indicated he was pleading guilty voluntarily because he was guilty.

(GP Tr. 6 -7.) He also testified no one forced, coerced, or promised him anything in exchange for his guilty plea. (GP Tr. 6.)

Accordingly, the record conclusively refutes Applicant's allegation his plea was involuntary. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

VI. Summary Dismissal Based on Direct Appeals Issues

Applicant has numerous allegations that address issues with chain of custody and evidence not being properly logged. These allegations raise a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal, and his failure to do so has waived this allegation as grounds for relief.

This allegation should be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.... Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.

S.C. Code Ann. § 17-27-20. Further, section 17-27-20(B) expressly states PCR “*is not a substitute for . . . direct review of the sentence or conviction.*” (emphasis added). PCR relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). “In a direct appeal, the focus generally is upon the propriety of rulings made by the circuit court in response to a party’s motions or objections. In PCR, the focus usually is upon alleged errors made by trial or plea counsel. Therefore, when asserting the erroneous admission of evidence, a violation of a constitutional right, or other errors in a proceeding, the applicant generally must frame the issue as one of ineffective assistance of counsel.” Id. at 363-64, 527 S.E.2d at 747.

Accordingly, Respondent hereby moves for summary dismissal Applicant’s allegations relating to chain of custody pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis these allegations should be dismissed as a matter of law as they are direct appellate review issues which are not cognizable in a PCR action.

VII. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All

claims should be made well in advance of the evidentiary hearing. Because Applicant has an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCF. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCF.

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

VIII. Response to 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.

IX. Request for an Evidentiary Hearing

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

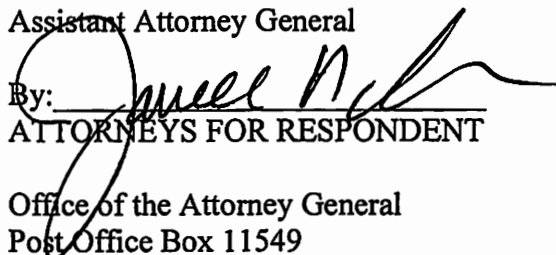
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JANELL H. GREGORY
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

April 23, 2019

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

BRYAN LEE ROEKER, #341043,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2019-CP-30-114

AFFIDAVIT OF SERVICE BY MAIL

LAURENS COUNTY
CLERK OF COURT
2019 APR 25 AM 9:28
LYNN W. LANCASTER

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

Ashley A. McMahan, Esquire
McMahan & Taylor, Attorneys, LLC
Post Office Box 5501
West Columbia, South Carolina 29169

DATED this the 23rd day of April, 2019.


Caroline Collins, Administrative Coordinator
For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOR THE 8 th JUDICIAL CIRCUIT
COUNTY OF LAURENS	)	Case No.: 2019-CP-30-00114

Bryan Lee Roeker, #341043,
Applicant,

v.

State of South Carolina.

AMENDED POST-CONVICTION
RELIEF APPLICATION

LYNN W. LANCASTER
2020 FEB -6 PM 2:54
LAURENS COUNTY
CLERK OF COURT

The Applicant, by and through his undersigned attorney, hereby amends his
PCR application filed on February 12, 2019, to add the following:

1. Ineffective Assistance of Counsel of Ivan Toney:

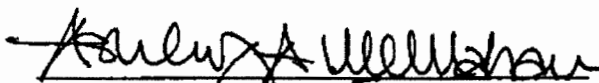
a. Failure to object to faulty chain of custody. The SLED report on the drugs has a notation that the "BEST evidence kit was not properly sealed when submitted." Counsel failed to argue the chain of custody was irreparably broken. *See State v. Pulley*, 423 SC 371 (2018). The drugs were field tested allegedly weighing 43.5 grams. When SLED received the evidence the drugs weighted 36.25 grams.

b. Counsel stated during the plea hearing that he met with the Applicant on 40 or 50 separate occasions. *See Transcript*, page 5, lines 1-2. Given that counsel was retained on or about November 10, 2017, Counsel would have had to have met with the Applicant almost every single business day (or at least every other) available between the date he was hired and the date of the plea, February 20, 2018.

c. Counsel further stated at the plea hearing that he "negotiated strenuously over a substantial period of time." *See Transcript* page 5, lines 20-23. Applicant ended up pleading to a negotiated plea of 15 years. The offer by the solicitor to the public defender was 16 years, which was reoffered again to Mr. Toney in December 2017. *See letter* attached dated December 15, 2017. The second offer was for 15 years, which Counsel told Applicant he would do 8 years. *See letter* attached dated February 13, 2018. Applicant did not get the letter about the plea offer until just before he was taken to court on February 20, 2018, and when Applicant had gotten to court this was the first time Applicant had spoken to Counsel in person except for the date he hired Counsel.

Furthermore, Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. *See Simpson v. Moore*, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



ASHLEY A. MCMAHAN, ESQUIRE

McMAHAN & TAYLOR ATTORNEYS ^{LLC}

PO Box 5501

West Columbia, SC 29171

803-219-1110

ashley@macvance.com

SC Bar No. 71676

ATTORNEY FOR APPLICANT

LAURENS COUNTY
CLERK OF COURT

2020 FEB - 6 PM 2:54

LYNN W. LANCASTER

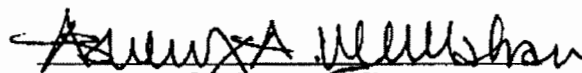
February 3, 2020

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Janell H. Gregory
Assistant Attorney General
jgregory@scag.gov

This 3rd Day of February, 2020.



ASHLEY A. MCMAHAN, ESQUIRE

Attorney for Applicant

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

HENRY D. MCMASTER
Governor



MARK A. KEEL
Chief

Thomas D. Boyd
Laurens County Sheriff's Office
P.O. Box 68
Laurens, SC 29360

DRUG ANALYSIS
November 03, 2017
SLED LAB: L17-11282
Your Case No: 17010045
Incident Date: 07/17/2017
[S] Bryan Roeker

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

- Sub # 1 On July 26, 2017, items were received in B275739 from J.E. Kimbrell of the Laurens County Sheriff's Office.
BEST kit was not properly sealed when submitted.
- Item: 1.1 Sealed evidence bag containing plastic bag containing crystal substance.
RESULTS:
Methamphetamine (C-II) found in the sample tested; 1 tested. Net weight: 36.25 +/- 0.01 grams (559.41 +/- 0.15 grains). Confidence level for the weight is 99.7%.



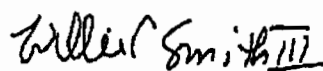
AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

November 03, 2017
L17-11282

Page 2

This report contains the conclusions, opinions and interpretations of the analyst whose signature appears below.


Willie C. Smith, III
Forensic Scientist



AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014
P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

FORM A

**REPORT OF ANALYSIS FOR
CONTROLLED DANGEROUS SUBSTANCES
(Substance Found)**

I, Willie C. Smith, III, am a Forensic Scientist employed by the South Carolina State Law Enforcement Division (SLED), certified by SLED as a Forensic Scientist qualified to perform testing and analysis for controlled and/or dangerous substances prohibited by law in this State by Title 44, Chapter 53 of the Code of Laws and Rule 61-4 of the Department of Health and Environmental Control.

I have 17 years and 4 months experience as a Forensic Scientist. During that period, I have been qualified as an expert witness and testified in court no less than 85 times. I have received the following training as a Forensic Scientist.

B.S. Chemistry, University of South Carolina, Columbia, SC, 1995
B.S. Biology, University of South Carolina, Columbia, SC, 1991
Drug Enforcement Administration, Forensic Chemist Seminar, 2004
Training in Forensic Drug Analysis, South Carolina Law Enforcement Division, 2001
Basic Law Enforcement Training, South Carolina Criminal Justice Academy, 2000

Sub # 1 On July 26, 2017, items were received in B275739 from J.E. Kimbrell of the Laurens County Sheriff's Office.

I tested the above item(s) using the following legally reliable forensic laboratory procedures approved by SLED:

☒ Chemical Test
☐ Microscopic Exam
☐ Infrared Spectroscopy
☐ Visual Examination

☒ Gas Chromatography
☒ Mass Spectroscopy
☐ Physical Test
☐ Published Literature

See Drug Analysis Report L17-11282 for Results.

Forensic Scientist

Willie C. Smith, III
Willie C. Smith, III

Date: November 03, 2017



AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014
P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

Issuing Authority: Quality Manager



SLED Forensics Form # DDA 020, November 2013
Page 1 of 1

Ivan Toney
600 East Washington Street, Suite 616
Greenville, SC 29601
Ph: (864) 298-0071
IvanToney@Hotmail.com

Friday, December 15, 2017

Inmate: Bryan Roeker
Spartanburg County Detention Center
950 California Ave
Spartanburg, SC 29303

Re: Defendant: Bryan Roeker
Warrant No.: 2016A4210204009, - 4101

Dear Bryan:

The solicitor made an offer to you of 16 years. When I told this to you the other day, you said that you already had received this offer and that is why you fired your public defender. I think you and I should meet and discuss a much more reasonable offer, something involving minimal time.

Sincerely,



Ivan Toney
Enclosure

Ivan Toney
600 East Washington Street, Suite 616
Greenville, SC 29601
Ph: (864) 298-0071
IvanToney@Hotmail.com

Tuesday, February 13, 2018

Inmate: Bryan Roeker
Spartanburg County Detention Center
950 California Ave
Spartanburg, SC 29303

Re: Defendant: Bryan Roeker
Warrant No's.: 2017A3010100540, 541, 2017A3010100736,
2017A3010400112, -113, 114, 115 (your Laurens county charges)

Dear Bryan:

The solicitor has made you a new offer of PWID first offense, negotiated to 15 years, which is nonviolent. You would do 8 years and get credit for all your time served. I have told him that is a fair offer. I recommend that you take it. You are probably going to get some time on your Spartanburg charges. This case is coming up for trial in a few days. I strongly recommend you take the offer.

Sincerely,



Ivan Toney

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)
Bryan Lee Roeker, #341043,)
Applicant,)
v.)
State of South Carolina.)

K. MICHELLE SIMMONS
7071 OCT 15 PM 12:07
LAURENS COUNTY
CLERK) COURT
COURT OF COMMON PLEAS
FOR THE 8th JUDICIAL CIRCUIT
Case No.: 2019-CP-30-00114

SECOND
AMENDED POST-CONVICTION
RELIEF APPLICATION

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on February 12, 2019, to add the following:

1. Ineffective Assistance of Counsel of Ivan Toney:

a. Mr. Toney wrote a letter regarding plea offers for Mr. Roeker and indicated Mr. Roeker's co-defendant got probation, except Mr. Roeker did not have a co-defendant. (Please see attached.)

b. Mr. Toney told the Applicant he would serve 8 years. (Please see attached.)

c. Mr. Toney was given trial notice in December but did not contact the Applicant to prepare for trial adequately beforehand. (Please see attached.)

Furthermore, Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,

Ashley A. McMahon

ASHLEY A. MCMAHAN, ESQUIRE

McMAHAN & TAYLOR ATTORNEYS LLC

PO Box 50536

Columbia, SC 29250

803-219-1110

ashley@macvance.com

SC Bar No. 71676

ATTORNEY FOR APPLICANT

October 8, 2021

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Michael J. Neubauer
Assistant Attorney General
michaelneubauer1@scag.gov

Lindsey A. McCallister
Assistant Attorney General
lmccallister@scag.gov

This 8th Day of October, 2021.



ASHLEY A. McMAHAN, ESQUIRE
Attorney for Applicant

K. MICHELLE SIMMONS
7/21 OCT 15 PM 12:17
LAURENS COUNTY
CLERK OF COURT

Ivan Toney
600 East Washington Street, Suite 616
Greenville, SC 29601
Ph: (864) 298-0071
IvanToney@Hotmail.com

Monday, December 11, 2017

Attention: Jonathan Clark, Esquire
Laurens County Solicitor
Judicial Square - 100 Hillcrest Sqaure.
Laurens, SC 29360

Re: Defendant: Bryan Roeker
Warrant No's.: 2017A3010100540, 541, 2017A3010100736, 2017A3010400112,
-113, 114, 115

Dear Jonathan:

My client has authorized me to plead to the above to time served. He has done 5 months in the county. Most of that was in laurens but he had a hold on him the whole time and could not make bond so I consider that as part of the time he has done. The codefendant has plead to probation. I believe this is fair.

Sincerely,



Ivan Toney
Enclosure

Ivan Toney
600 East Washington Street, Suite 616
Greenville, SC 29601
Ph: (864) 298-0071
IvanToney@Hotmail.com

Tuesday, February 13, 2018

Inmate: Bryan Roeker
Spartanburg County Detention Center
950 California Ave
Spartanburg, SC 29303

Re: Defendant: Bryan Roeker
Warrant No's.: 2017A3010100540, 541, 2017A3010100736,
2017A3010400112, -113, 114, 115 (your Laurens county charges)

Dear Bryan:

The solicitor has made you a new offer of PWID first offense, negotiated to 15 years, which is nonviolent. You would do 8 years and get credit for all your time served. I have told him that is a fair offer. I recommend that you take it. You are probably going to get some time on your Spartanburg charges. This case is coming up for trial in a few days. I strongly recommend you take the offer.

Sincerely,



Ivan Toney

The State of South Carolina

OFFICE OF THE SOLICITOR
EIGHTH JUDICIAL CIRCUIT

Abbeville
Greenwood
Laurens
Newberry



DAVID M. STUMBO
SOLICITOR

January 4, 2018

TRIAL NOTICE

Tel: (864) 942-8800
Fax: (864) 942-8830
www.scsolicitor8.org

Suite 203, Park Plaza
600 Monument Street
Post Office Box 516
Greenwood, SC 29648-0510

Ivan Toney, Esq.
IvanToney@Hotmail.com

RE: *The State v. Brian Roeker*
Trafficking Methamphetamine 17GS30-1936
Possession with Intent to Distribute 17GS30-1938

Dear Mr. Toney:

I sent this notice to you back in early December, 2017 with your discovery packet for the above referenced case, however it had Mr. Roeker's former attorney listed. Just as a matter of housekeeping, I have removed her name and replaced your name – I just wanted the correspondence to have uniformity.

Please be advised that a trial for the above captioned matter has been scheduled for the January 29, 2018 term of court in Laurens County at 9:00 a.m. Please be advised that a back-up date of February 19, 2018 has been scheduled as well. **Failure to appear will result in a trial in your absence.** If you have any questions or concerns, please feel free to call the Solicitor's Office at (864)-984-2202.

Sincerely,

James C. Todd IV
Assistant Solicitor

Delivered electronically

The State of South Carolina

OFFICE OF THE SOLICITOR
EIGHTH JUDICIAL CIRCUIT

Abbeville
Greenwood
Laurens
Newberry



DAVID M. STUMBO
SOLICITOR

December 11, 2017

TRIAL NOTICE

Tel: (864) 942-8800
Fax: (864) 942-8830
www.scsolicitor8.org

Suite 203, Park Plaza
600 Monument Street
Post Office Box 516
Greenwood, SC 29548-0516

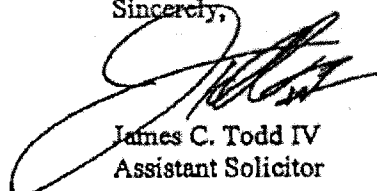
Chelsea McNeill
Laurens Public Defender's Office

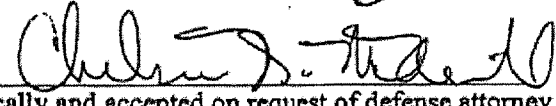
RE: *The State v. Brian Roeker*
Trafficking Methamphetamine 17GS30-1936
Possession with Intent to Distribute 17GS30-1938

Dear Ms. McNeill:

Please be advised that a trial for the above captioned matter has been scheduled for the January 29, 2018 term of court in Laurens County at 9:00 a.m. Please be advised that a back-up date of February 19, 2018 has been scheduled as well. Failure to appear will result in a trial in your absence. If you have any questions or concerns, please feel free to call the Solicitor's Office at (864)-984-2202.

Sincerely,


James C. Todd IV
Assistant Solicitor

Received in person 
Delivered electronically and accepted on request of defense attorney

State of South Carolina)	In the Court of Common Pleas
County of Laurens)	Eighth Judicial Circuit
	2019-CP-30-00114

Bryan L. Roeker,	)	
	)	
Applicant,	)	
	)	
vs.	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
	)	

October 26, 2021
 HEARING CONDUCTED REMOTELY
 VIA WEBEX VIDEOCONFERENCE

B E F O R E:

The Honorable R. Kirk Griffin, Judge

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

Ashley A. McMahan, Esquire
 Attorney for Applicant

Michael J. Neubauer, Assistant Attorney General
 Attorney for Respondent

Maryann S. Nevers, CVR-M-CM, RVR, RVR-M
 Circuit Court Reporter
 Certified Verbatim Reporter - Master
 Certificate of Merit
 Realtime Verbatim Reporter - Master

I N D E X

Proceedings 4

TESTIMONY - WITNESS

Bryan Roeker,

Direct Examination by Ms. McMahan. 10

Cross-Examination by Mr. Neubauer. 31

Redirect Examination by Ms. McMahan. 37

Recross-Examination by Mr. Neubauer. 39

Ivan Toney,

Direct Examination by Ms. McMahan. 41

Cross-Examination by Mr. Neubauer. 65

James Todd,

Direct Examination by Mr. Neubauer 78

Cross-Examination by Ms. McMahan 80

Bryan Roeker,

Direct Examination by Ms. McMahan. 84

Cross-Examination by Mr. Neubauer. 85

Certificate Page. 90

E X H I B I T S

NO.	DESCRIPTION	I.D.	EVID.
-----	-------------	------	-------

No exhibits were offered during proceeding.

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 3:41 p.m.)

THE COURT: Good afternoon, everyone. Are we ready to proceed on Case No. 2019-CP-30-114? That would be *Bryan L. Roeker v. the State*.

MR. NEUBAUER: Yes, Your Honor.

MS. MCMAHAN: I am ready, Your Honor.

MR. NEUBAUER: The state's ready to proceed, Your Honor.

THE COURT: All right.

Mr. Roeker, am I pronouncing your last name correctly?

THE APPLICANT: Yes, sir, you are.

THE COURT: All right, sir. Could you raise your right hand for me, sir, please.

THE APPLICANT: (Complied.)

BRYAN ROEKER, having been first duly sworn, testified and stated as follows:

THE COURT: All right. You can put your hand down.

THE APPLICANT: (Complied.)

THE COURT: Mr. Roeker, as you can see, we are proposing to conduct your postconviction-relief hearing via videoconference due to the COVID-19 pandemic. Courts are not still fully operational. And in an effort to keep these cases moving, we are conducting these types of hearings via videoconference.

1 Do you consent to having your postconviction-relief
2 hearing held via videoconference?

3 THE APPLICANT: I do.

4 THE COURT: And do you waive your right to in-person
5 court appearance?

6 THE APPLICANT: I do.

7 THE COURT: And do you likewise specifically consent
8 to all other interested parties in this matter, whether
9 they be your lawyer, the attorney general, or any witnesses
10 who may testify, will you allow them to participate via
11 videoconference as well?

12 THE APPLICANT: I do.

13 THE COURT: All right. I find he's made a knowing and
14 intelligent waiver of his right to in-person court
15 appearance and specifically consented to all interested
16 parties participating in this hearing via videoconference.

17 And now I recognize Mr. Neubauer to give the
18 procedural history in this case.

19 MR. NEUBAUER: Thank you, Your Honor. May it please
20 the Court. During the November 2017 term, the Laurens
21 County Grand Jury indicted applicant for trafficking
22 methamphetamine. That was Indictment No. 2017-GS-30-1936.
23 Ivan J. Toney, Esq., represented applicant, and Assistant
24 Solicitor James C. Todd, IV, prosecuted the case.

25 On February 20th, 2018, applicant pled guilty as

1 indicted before the Honorable Donald B. Hocker pursuant to
2 a negotiated sentence between the state and applicant.
3 Judge Hocker sentenced applicant to imprisonment for 15
4 years, along with credit for time served of 212 days.
5 Applicant did not appeal his conviction or sentence.

6 Applicant then filed application for postconviction
7 relief, alleging he was being held in custody unlawfully
8 for the following reasons: ineffective assistance of
9 counsel, claiming chain of custody was broken and never
10 logged properly; the attorney never allowed me client
11 confidentiality; all evidence that is supposedly against me
12 is not accounted for, nor documented; officers swore on
13 warrants with witnesses to the weight of drugs and SLED --
14 (audio loss) -- bags were opened and -- or reopened and
15 then resealed; his attorney never filed a motion to
16 suppress evidence like he was requested; his attorney
17 indicated that he spoke with an expert that said that a
18 motion to suppress would be denied and he never confirmed
19 that he'd filed a motion to suppress; evidence was not
20 properly logged or proven to be accounted for in a chain of
21 custody.

22 His attorney never met with him after he agreed to the
23 -- pay the amount that was owed and claiming that two days
24 after he was booked into the Laurens County Detention
25 Center, officers came in and tried to have him sign a

1 second booking list, which included a bookbag that
2 contained the drugs that were found. Additionally, he
3 alleged an involuntary guilty plea, stating that his
4 attorney promised several times to come meet with him in
5 jail to discuss a case and devise a plan. Everything went
6 to court on Spartanburg County global toll call. And he
7 was not allowed to speak freely or about anything involving
8 his case because it was recorded and claims he was forced
9 to plead guilty because he was informed he would be
10 sentenced to 25 years if he did not plead guilty in this
11 case.

12 Additionally, applicant filed a -- or amended
13 application for postconviction relief ---

14 MR. NEUBAUER: Beg the Court's indulgence.

15 THE COURT: Yes, sir.

16 (Off the record briefly.)

17 MR. NEUBAUER: --- alleging ineffective assistance of
18 counsel, failure to object to the faulty chain of custody;
19 SLED report of the drugs has notification that the BEST
20 evidence kit was not properly sealed; and counsel failed to
21 argue the chain of custody was irreparably broken. Counsel
22 stated during the plea hearing that he'd met with applicant
23 40 to 50 separate times and they claim counsel would've had
24 to have met with applicant almost every single business day
25 between the time he was hired and the date of the plea.

1 Counsel stated he negotiated strenuously over a substantial
2 period of time.

3 Applicant ended up pleading guilty to a negotiated
4 plea of 15 years. The offer by the solicitor to the public
5 defender was 16 years, which was reoffered again with Mr.
6 Toney in December 2017. Applicant did not -- or second
7 offer was for 15 years, which counsel told applicant he
8 would do 8 years of a sentence.

9 And applicant did not get a letter about a plea offer
10 until just before he was taken to court on February 20th,
11 2018. When applicant had gotten to court, this was the
12 first time applicant spoke with counsel in person, except
13 for the date that he hired him.

14 Additionally, counsel filed a -- or applicant, through
15 counsel, filed a second amended postconviction-relief
16 application, alleging ineffective assistance of counsel,
17 stating Ivan Toney wrote a letter regarding a plea offer,
18 indicating that Mr. Roeker's codefendants got probation and
19 Mr. Roeker did not have any codefendants in this case. Mr.
20 Toney told applicant that he would only serve 8 years. And
21 Mr. Toney was given trial notice in December, but did not
22 contact applicant to prepare to -- for a trial adequately
23 beforehand.

24 At this point I will pass to Ms. McMahan to determine
25 which of these allegations they intend to go forward with.

1 THE COURT: All right. Thank you, Mr. Neubauer.

2 Ms. McMahan, be happy to hear from you.

3 MS. MCMAHAN: Yes, Your Honor. We plan on going
4 forward on all of these applications. If, during the time
5 of examination of Mr. Roeker, we decide to withdraw one, I
6 will let you know at that time.

7 THE COURT: Okay.

8 And just for the record, Mr. Neubauer, you -- you
9 indicated that he pled guilty as indicted. But I thought
10 he pled guilty to possession with intent to distribute
11 methamphetamine instead of trafficking; is that -- is that
12 -- am I correct?

13 MR. NEUBAUER: You are correct, Your Honor. I
14 apologize. That was a misstatement on my part.

15 THE COURT: Okay. So I just wanted to make sure that
16 I had correct in my mind, since this was a guilty plea that
17 -- that he did -- did plead to a lesser-included instead of
18 trafficking. And that -- I mean, it doesn't necessarily
19 change anything. But I just wanted to make sure that --
20 that I had it clear in my mind. I thought I had read that
21 in the -- in the packet. So ---

22 MR. NEUBAUER: And I apologize, Your Honor. There
23 were two additional charges out of this incident that Mr.
24 Roeker pled guilty to. One would be resisting arrest,
25 Indictment No. 2017-GS-30-1940. Applicant was given credit

1 for time served for this offense.

2 Additionally, he pled guilty to malicious injury to
3 property, Indictment No. 2017-GS-30-1939. Applicant was
4 given credit for time served for this.

5 THE COURT: All right. Thank you, Mr. Neubauer.

6 Ms. McMahan, I'll be happy to hear from you -- or you
7 may call your first witness.

8 MS. MCMAHAN: Yes, Your Honor. The applicant calls
9 Mr. Roeker.

10 THE COURT: All right. Mr. Roeker, if you could --
11 could sit up in your chair and get as close as you can to
12 the microphone so we can make sure we have an accurate
13 record in this case. I remind you that you are still under
14 oath, and answer the questions that your lawyer has for
15 you.

16 THE APPLICANT: Uh-huh.

17 DIRECT EXAMINATION

18 BY MS. MCMAHAN:

19 Q Mr. Roeker, did you file this PCR application?

20 A I did.

21 Q And do you understand that if the Court grants your
22 application today, you will go back and receive the
23 possibility of a new trial?

24 A Yes.

25 Q And is that what you want today?

DIRECT EXAMINATION BY MS. MCMAHAN - BRYAN ROEKER

11

1 A Yes.

2 Q Okay. So let's start from the beginning. Who was
3 your first attorney prior to Mr. Toney?

4 A My first attorney was the public defender.

5 Q And who -- do you -- was that Ms. McNeill?

6 A Yes, it was.

7 Q And then, how long Ms. -- did Ms. McNeill represent
8 you?

9 A Till the first time I met with her.

10 Q And ---

11 A Couple of months.

12 Q Okay. And then, did you hire Mr. Toney?

13 A Yes.

14 Q And how did you find out about Mr. Toney in order to
15 hire him?

16 A One of my friends spoke highly of him.

17 Q Was it a friend of yours from home or somebody that
18 you met within the detention center or ---

19 A Somebody from home.

20 Q And were you out on bond while all this was going on?

21 A No.

22 Q So how -- how did you -- were you able to get in touch
23 with Mr. Toney?

24 A I called him collect from -- jail call. Well, I paid
25 for the call, but I called from jail call.

1 Q Okay. And did any members of your family go up and
2 meet with him or anything?

3 A Originally, no.

4 Q And so what do you mean, originally?

5 A He came and met with us at the county, me and a
6 partner of mine, and then came back the next day to meet
7 with one my partner's family -- (audio loss) -- who had the
8 money. Signed the contracts with us to represent ---

9 Q Was this -- you -- (audio loss) -- you came back with
10 who the next day?

11 A He came back and met one of the my friends'
12 grandfathers that paid him. And then ---

13 Q Okay.

14 A --- he came in and signed the contracts to represent
15 us together, me and my friend of mine that was in the
16 county.

17 Q Was that friend a codefendant?

18 A No.

19 Q Did you have a codefendant in this case?

20 A No.

21 Q Okay. So your friend's grandfather ended up paying
22 for your representation by Mr. Toney and you guys had
23 initially met at the detention center?

24 A Yes.

25 Q Were you ever out on bond -- (audio loss) -- any point

1 during this -- the pending of your case?

2 A The only bond I had, I paid the bond and transferred
3 from Laurens County to Spartanburg County. I was never
4 released to the street.

5 Q Okay. So where were you most of the time, in
6 Spartanburg County or Laurens County?

7 A About half and half. I think I did three months in
8 each one.

9 Q Which one were you in first, Spartanburg or Laurens?

10 A Laurens.

11 Q Okay. And so at the time of this plea, were you
12 brought from Spartanburg County or from Laurens County?

13 A I -- from Spartanburg County.

14 Q Okay. And did you meet with Mr. Toney in Laurens
15 County or Spartanburg County?

16 A Laurens.

17 Q The first time?

18 A Laurens.

19 Q Okay.

20 A It was the ---

21 Q So the ---

22 A --- only time.

23 Q --- time he -- (audio loss) -- and that -- that -- he
24 never saw you in Spartanburg ---

25 A No.

1 Q --- at any time?

2 A No. Except for ---

3 (Indistinguishable cross-talk)

4 Q --- were you -- okay. And what hearing was that?

5 A That hearing was to get my bond reinstated for
6 Spartanburg.

7 Q Was that a successful hearing?

8 A No.

9 Q Did Mr. Toney represent you on both the Laurens
10 charges and the Spartanburg charges at the same time?

11 A Yes. He -- well ---

12 Q And -- and today, just -- I'm sorry. Go on.

13 A Yes. I guess so. They're -- they kind of ran all in
14 together.

15 Q Okay. And so just for clarification, your PCR today,
16 we are just challenging the Laurens charges.

17 A Right.

18 Q Correct?

19 A Right.

20 Q Okay. And so you indicated that you had met with Mr.
21 Toney that first time in Laurens and the only other time
22 you saw him was at a bond hearing in Spartanburg. How did
23 ---

24 A Yes.

25 Q --- you communicate with him between the time you

1 hired him and the time that you went to do this guilty
2 plea?

3 A Collect calls, three-way through my fiancée.

4 Q And how many of those did you think you had?

5 A Numerous one. I couldn't keep up with all of them.
6 It was a lot.

7 Q So you just had a lot of three-way calls between you
8 and your fiancée and Mr. Toney?

9 A Yes.

10 Q Do you remember what you guys were talking about?

11 A Mostly trying to get a -- an appointment set where he
12 could come down and go over my case with me.

13 Q And to see you in either Laurens or Spartanburg?

14 A Yes.

15 Q Okay. Did you talk about anything of substance about
16 your case in all those phone calls that you had together?

17 A I spoke with him about filing a motion to suppress my
18 evidence and tampered with.

19 Q Okay. And what were the -- what was the conversation
20 around that about?

21 A I -- he brought it to my attention that the BEST kit
22 was not properly sealed. And I asked for him to file a
23 motion to suppress. He said that he spoke to some
24 professionals. And he said that they felt they would go
25 forward with it anyway so there was no need to file a

1 motion.

2 Q Did he ever tell you who he talked to about that?

3 A No.

4 Q Did he ever file the motion to suppress that you asked
5 him to file?

6 A Not to my knowledge.

7 Q Okay. And so you never met with him in person,
8 though, other than that first time?

9 A (No audible response.)

10 Q Did he ever talk to your fiancée about anything?

11 A No.

12 Q And what are your main issues with Mr. Toney and his
13 representation of you?

14 A One, I never got to -- to build my case with him so we
15 could figure out what we wanted to do. And two, he never
16 filed my motion to suppress. And three, he pretty much
17 just got my cases mixed up and didn't really put any
18 thought into the situation.

19 Q Okay. So when you say "never got to build a case with
20 him," was that because you never really saw him at all?

21 A I was never afforded a -- a confidential call to speak
22 with him. Everything is recorded. I couldn't speak freely
23 about my case or what I wanted to do with my situation.

24 Q So you -- so you wouldn't have been able to call him
25 from the jail yourself because all those calls are

1 recorded?

2 A Right.

3 Q So were you waiting for him to call you or at least
4 come visit you?

5 A No. I was waiting for him to come see me. Scheduled
6 many times to come see me ---

7 Q Okay.

8 A --- but never ---

9 Q And he ---

10 A --- did.

11 Q --- never -- okay. And how many times do you think he
12 said he was scheduled to see you but never called -- but
13 never came?

14 A He told me at least ten or fifteen times he was going
15 to make it down there to see me and never did.

16 Q Did you ever have any discussions with him about
17 whether or not you wanted a trial or a guilty plea?

18 A Not really. Really, because the only things he sent
19 was he sent me a letter, saying that if I didn't plead
20 guilty, that he felt like I would get the maximum to the
21 sentence. He did tell me one time on the phone that he
22 didn't feel like he could win the case; that it'd probably
23 be my best interest to take a guilty plea.

24 Q Okay.

25 MS. MCMAHAN: Court's indulgence, Your Honor. I got

1 some fire trucks going back.

2 THE COURT: That's fine.

3 (Off the record briefly.)

4 MS. MCMAHAN: Okay. Thanks.

5 Q Okay. So let's just go through the issues that you
6 wrote in your PCR application and -- you know, and the ones
7 we have amended for you. So you talk about the chain of
8 custody was broken and never logged properly. Did you have
9 a conversation with Mr. Toney about that? Is that how you
10 learned about that?

11 A No. I actually didn't know what a chain of custody
12 was till I came to prison and I read about it.

13 Q Okay. So he never had a conversation with you about
14 the chain of custody?

15 A No. The only -- the only conversation we had about
16 ---

17 Q And ---

18 A --- (audio loss) -- was the BEST kit wasn't properly
19 sealed. That was it.

20 Q And so because the BEST kit wasn't properly sealed,
21 therefore, at some point the chain of custody had been
22 broken?

23 A That -- he never explained to me about the chain-of-
24 custody part of it. No.

25 Q Okay. And -- you already said that. What was the

1 issue with the second booking list?

2 A The second booking list was they brought a bookbag up
3 there and tried to get me to sign, saying it was my
4 property; saying that that's what they found the drugs in.
5 And for -- the bookbag disappeared for two days, from the
6 time I got booked. I don't understand. I got booked with
7 just shorts and a T-shirt. And two days later, the rest of
8 property followed somehow with -- (audio loss) ---

9 Q So was it -- you got booked with shorts and a T-shirt
10 on, and they came to your two days later and say: "Hey,
11 look, all this other stuff was also with you" ---

12 A Yes.

13 Q --- "when you came in"? Is that what they were --
14 (audio loss) -- tell you?

15 A Uh-huh.

16 Q Okay.

17 A Right. The ---

18 Q Did you bring that up with Mr. Toney?

19 A No. I didn't catch it until I came down the road. I
20 didn't really get a chance to study my case or understand
21 any legal parts of my case. I came down the road and
22 studied Westlaw library.

23 Q Okay. And so that's when you kind of learned about
24 all those ---

25 A Right.

1 Q --- issues?

2 A Right.

3 Q So were they alleging that the drugs that were found
4 and that you were ultimately convicted of having come from
5 a bookbag that you had allegedly brought with you to the
6 detention center?

7 A Correct.

8 Q Did you have a bookbag with you when you were
9 arrested?

10 A They said in the motion that I was wrestled to the
11 ground, handcuffed, and searched; and, in my bookbag that I
12 had on my property, they found the narcotics while I was in
13 the handcuffs.

14 Q Were you carrying the bookbag when they arrested you?

15 A Yes.

16 Q Okay. But that bookbag never came with you to ---

17 A No.

18 Q --- the jail?

19 A No.

20 Q Okay. So let's get to your amended applications. The
21 first one, we've already talked about the chain of custody
22 and the BEST evidence kit was not properly sealed when
23 submitted. And there is a SLED report that indicates that,
24 right?

25 A Yes. And it also indicates the ---

1 (Indistinguishable cross-talk)

2 A It also indicates that the weight went from ---

3 (Indistinguishable cross-talk)

4 A --- 43.5 to 36.7.

5 Q Okay. And did you get a copy of that report from Mr.
6 Toney?

7 A Yes. In my motion.

8 Q Okay. When did you get that motion -- your discovery
9 from him?

10 A Around December or -- yeah -- around -- around
11 December, I believe.

12 Q And when you got it in December, did he indicate to
13 you that you were set to go to trial in February?

14 A We got that in January, actually.

15 Q Okay. So he told you in January that you were ---

16 A I ---

17 Q --- going to trial in February?

18 A I received a letter around the end -- either around
19 the end of December or the beginning of January, saying
20 that my second trial notice was scheduled for the beginning
21 of February sometime.

22 Q Okay. Had you, at this point, ever talked to Mr.
23 Toney about going to trial?

24 A Not in person.

25 Q Okay. And so was it your understanding from Mr. Toney

1 that you were trying to get a better plea offer than the
2 one you had originally gotten from Ms. McNeill?

3 A The -- that's -- that's the reason why I hired him.
4 He said that he could do better than what she did to begin
5 with. Her first plea offer initially was 15. So I fired
6 her, and we hired him. And my first plea offer he offered
7 me was 16.

8 Q So you hired Mr. Toney because he had told you he
9 could do better with getting you a plea offer?

10 A Yes.

11 Q What -- what did he tell you he could do for you, as
12 far as a plea offer went?

13 A Really, he said if everything went the way I said it
14 did, that he could get me home. That's pretty much what he
15 said.

16 Q So, like, right after you pled guilty or after a
17 certain amount of time or ---

18 A He wasn't specific about that part.

19 Q But he said he would get you home?

20 A Yes.

21 Q Okay. And at the -- at your guilty-plea hearing, when
22 Mr. Toney indicated he had met with you on 40 or 50
23 separate occasions, was that accurate?

24 A I never met with him but one time, when I paid him.

25 Q Other than the -- other than the phone calls?

DIRECT EXAMINATION BY MS. MCMAHAN - BRYAN ROEKER 23

1 A Other than the phone calls, I never me with him except
2 for the court. If I seen him in ---

3 Q Okay.

4 (Indistinguishable cross-talk)

5 Q So when you consider meeting with somebody, do you
6 consider the phone calls part of meeting with him or just
7 meeting ---

8 A No.

9 Q --- in person as ---

10 A I -- I ---

11 Q --- in met?

12 A I can't -- I can't speak legally about my case over a
13 recorded phone call. That -- so I don't consider that
14 meeting.

15 (Off the record briefly.)

16 Q Okay. So when did you get the -- the -- the second
17 15-year offer from Mr. Toney?

18 A The 15-year offer that I got from him was around a
19 couple weeks before I went to court to get it. Wasn't far.

20 Q Okay. So he had notified you that there was a 15-year
21 plea offer just before you were scheduled to go to court in
22 February?

23 A Right.

24 Q And so did he send you that letter on or about
25 February 13th, 2018?

1 A Yeah. That's -- it's -- the letter's there, but yeah.
2 I'm pretty sure that's around the date. I don't have it in
3 front of me, but I'm pretty sure.

4 Q Okay. And since you don't have the letter in front of
5 you, but you did get a copy of his file, correct?

6 A Yes.

7 Q And that letter was in the copy of the file ---

8 A Yes.

9 Q --- sent to you, correct?

10 A Yes, ma'am.

11 Q And did you have a copy of that letter prying -- prior
12 to receiving a copy of his file?

13 A No. Well, yeah. Yeah. The one he sent me
14 originally. Yes. I still have the original.

15 Q Okay. So the letter that's attached, these are true
16 and accurate letters -- copies of ---

17 A Yes.

18 Q --- true and accurate letters that he sent you?

19 A Yes.

20 Q Okay. And in that letter he told you, you would get
21 15 years but you would serve 8.

22 A Yes.

23 Q Did you have a discussion with him about it, about the
24 15 and serving 8 prior to you walking into the courtroom
25 and pleading guilty?

1 A I did have a discussion with him on the phone call.
2 And he told me -- I told him that -- I asked him was that
3 the best he could do. He said that he felt like, if I
4 didn't take that guilty plea, that I would be found guilty
5 and get 25 years and he couldn't beat the trial.

6 Q Okay. Did he discuss with you what the minimum amount
7 of time was that you could serve?

8 A No.

9 Q With what you were charged with, did he ---

10 A Say again?

11 Q So you guys -- so you guys never sat down and had a
12 discussion about: "This is what you're charged with and
13 this is the amount of time you could be facing"?

14 A No. I mean, I -- I already knew the maximum I could
15 receive was 25 years because the of the trafficking. But I
16 never knew what the minimums could be or what it could be
17 broke down to.

18 Q So did he ever tell you that the minimum for that
19 trafficking charge was 7?

20 A No.

21 Q And did you ever have a conversation with Ms. McNeill
22 about the minimums and the maximums you could be facing?

23 A Ms. McNeill told me basically that the best plea she
24 could get me was 15 years, 85 percent. She said she didn't
25 have my motion of discovery in front of me, but she said

1 that from the looks of my record, that was the best she
2 could probably get for me. And basically, that was the
3 whole conversation we had.

4 Q Okay. And -- and then, you hired Mr. Toney, right?

5 A Yes.

6 Q Okay. So at what point did you decide to accept the
7 plea for 15 years?

8 A I really was pretty much told if I didn't take it, I
9 would get the 25. So I really didn't have a choice to
10 accept it. I mean, for the time I -- from ---

11 (Indistinguishable cross-talk)

12 THE COURT: Whoa, whoa, whoa. We're -- we're getting
13 into the talking over each other. So, Mr. -- Mr. Roeker,
14 let her finish her question in full and then you can
15 answer. Okay?

16 THE APPLICANT: Yes, sir.

17 THE COURT: So Ms. -- Ms. McMahan, go ahead and -- and
18 restate your question.

19 Q Mr. Roeker, I'm sorry. There is a little bit of a
20 delay between when we talk. So that's why sometimes we're
21 kind of talking over each other.

22 But what was -- the conversation you had about -- with
23 Mr. Toney about the plea offer and whether or not you
24 should take it?

25 A The conversation we had was he -- the same thing what

DIRECT EXAMINATION BY MS. MCMAHAN - BRYAN ROEKER

27

1 he put in that letter. It said that if I didn't take the
2 plea for 15 years, he felt like that was a good offer; that
3 I would receive the maximum, which is 25 years. And he
4 said that he could not win the case. So that's it.

5 Q Okay. And did you have a prior record at all?

6 A For drugs? No.

7 Q But you had a rap sheet for some other things, right?

8 A Yes.

9 Q But you had nothing on your record that would make
10 that trafficking a second offense; is that right?

11 A That's right.

12 Q So also, you got some other letters from Mr. Toney.
13 And -- and one indicated that you had a codefendant. Is
14 that letter correct? Do you have a codefendant?

15 A No, ma'am.

16 Q Have you ever had a codefendant in this charge?

17 A No, ma'am.

18 Q When did you get notice of the trial from him? And I
19 think you might've already said this, but you didn't know
20 until you got that plea offer that you might be going to
21 trial at the same time?

22 A Right. It was around -- it was around January when I
23 received it, saying I was going to court in February.

24 Q Did you know that Mr. Toney had been notified of that
25 possibility of being a trial in December of 2017?

1 A No.

2 Q Did you -- when you got a copy of his file, did you
3 learn that?

4 A Yes.

5 Q Had you ever seen a copy of that 2017 trial notice?

6 A Say again?

7 Q Did you ever receive a copy of that 2017 trial notice
8 from Mr. Toney?

9 A When I received my lawyer files when I filed this
10 hearing. But before that, no. I had never seen his file.

11 Q Okay. What else do you want the Court to know today
12 about how you feel about Mr. Toney's representation?

13 A Other than what we've covered today, I mean, there was
14 no really -- no -- to me, it felt like there was no
15 representation. I never got to meet with him and speak to
16 him privately about my case. And when I did ask him to
17 file a motion, it was never filed. I feel like that I was
18 just blowed off and I wasn't represented to the best of his
19 ability. That's all I got to say.

20 Q Were you frustrated at all with his representation of
21 you?

22 A I mean, yes. That I was constantly calling to ask for
23 -- for him to come meet me, and he said he was; he was; he
24 was; and he never did.

25 Q Did you feel like you could adequately prepare for

DIRECT EXAMINATION BY MS. MCMAHAN - BRYAN ROEKER 29

1 your case with the amount of time that you were able to
2 speak with Mr. Toney about it?

3 A No. Because there's no way to research my -- my case
4 in the county jail. There's no way to know my legal rights
5 in the -- in the county jail unless you speak to your
6 attorney. I can't speak freely to an attorney if it's
7 recorded.

8 Q Did you feel like you were sort of pushed into this
9 guilty plea because your case is set for trial and you have
10 no notice of it?

11 A Very much so. I only had him for a couple of months
12 before they threw me to the trial. Yeah. I very much so
13 feel that way.

14 Q Okay. Do you remember your guilty plea?

15 A Yes.

16 Q Do you remember the judge asking you questions, like
17 if the plea was freely and voluntarily made?

18 A I do.

19 Q And do you remember the Court asking you if you were
20 satisfied with Mr. Toney?

21 A I do.

22 Q Were you satisfied with him at the time?

23 A I really felt that at that point, it didn't matter
24 what I said. It was either get that and go with the plea
25 that they were offering or get 25 that he told me I would

1 get. So I said that I ---

2 Q Okay.

3 A --- was satisfied.

4 Q Were you actually satisfied with his representation?

5 A No.

6 Q Do you remember Mr. Toney saying he met with you
7 extensively?

8 A Yes, I do.

9 Q Was that an accurate representation to the Court of
10 how many -- how often you guys had met?

11 A No, ma'am. Not at all.

12 Q Do you remember telling the Court that you were
13 guilty?

14 A Yes.

15 Q Was whether or not you were guilty of a drug charge
16 ever in dispute between you and Mr. Toney? Was the issue
17 really a guilty-plea offer?

18 A We -- can you rephrase that?

19 Q So was the issue of whether or not you were guilty of
20 a drug crime at -- an issue with you and Mr. Toney, or was
21 it you were always in a position of wanting to get a plea
22 offer?

23 A We never actually discussed whether it was in my best
24 interests to plead guilty or to take a trial. We never
25 discussed that.

CROSS-EXAMINATION BY MR. NEUBAUER - BRYAN ROEKER 31

1 Q So other than that letter he sent you about telling
2 you, you should take the deal, you never had a conversation
3 with him about whether or not you should plead guilty or go
4 to trial?

5 A No. Not until -- not until he sent me that letter and
6 I called to speak with him about it. And he said the same
7 thing that letter said.

8 Q Okay. I have no further questions. Ask -- oh, wait.
9 Is there anything else you want the Court to know today?

10 A Not really.

11 Q Answer any questions Mr. Neubauer may have for you.

12 A Okay.

13 THE COURT: All right. Mr. Neubauer, cross-
14 examination?

15 MR. NEUBAUER: Thank you, Your Honor. May it please
16 the Court?

17 THE COURT: Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. NEUBAUER:

20 Q Good afternoon, Mr. Roeker. How are you doing?

21 A All right.

22 Q Awesome.

23 So you'd indicated that you only met with Ivan Toney
24 one time at the Spartanburg jail; is that correct?

25 A No. Never met with him in Spartanburg jail.

1 Q I apologize. You -- you said you met with him one
2 time. I must've misunderstood where you said you met with
3 him.

4 A When -- in Laurens County when I hired him, he came
5 and met with me.

6 Q Yes, sir. I apologize for the confusion there.

7 And -- but you said that you talked on the phone with
8 him a good amount, correct?

9 A Yeah.

10 Q And you had your fiancée on the phone as well?

11 A Yes.

12 Q Do you ever remember him indicating to you that having
13 a third party on the phone could compromise attorney-client
14 privilege and confidential communication?

15 A It's a recorded phone call. It's compromised anyway.

16 Q You said that you never reviewed discovery with him,
17 correct?

18 A Correct.

19 Q Do you remember, at your plea hearing, the judge
20 asking you if you had a full opportunity to review the
21 discovery file and you stated yes?

22 A So, basically, yeah.

23 MR. NEUBAUER: I'd draw the Court's attention to trial
24 -- or plea transcript page 10, line 23 through page 11,
25 line 2.

1 Q Did you -- did you and Mr. Toney ever discuss any
2 possible defenses in this case?

3 A No. Because the only thing I ever discussed with him
4 is that he was going come see me about the case, which he
5 never did.

6 Q And I -- do you -- so you guys discussed potential
7 plea offers. He initially came to you with a 16-year plea
8 offer, I believe; is that correct?

9 A No. He sent me a letter, saying that the solicitor's
10 office sent a recommendation of a 16-year plea offer, he
11 said, which he refused because he knew that he could do
12 better than that and we need to get together and discuss
13 something that included minimal time.

14 Q Did you ever suggest a possible plea offer to him that
15 he -- or that you wanted him to pursue?

16 A Not for that charge. No.

17 Q Did -- do you remember having discussion with him
18 about a 15-year, nonviolent offer?

19 A Yes. When he sent me the letter, I called him and
20 spoke with him about the letter he sent. Yeah.

21 Q Okay. And do you recall the judge reviewing the
22 maximum sentence for these charges?

23 A Say again?

24 Q Did -- did the judge or did Mr. Toney ever tell you
25 the maximum sentence that you could face for these charges?

1 A Yes. The judge did.

2 Q Okay. Do you recall waiving your constitutional
3 rights at your plea hearing?

4 A I do.

5 Q Do you recall the judge telling you that you had the
6 right to remain silent, the right to a jury trial; you had
7 the right to put up any legal challenges concerning
8 evidence that the state may have?

9 A I do.

10 Q Did you feel at that point that you did not want to
11 pursue this possible issue with the BEST evidence kit?

12 A I was informed by my attorney that it was pointless to
13 -- to -- to follow that up. So ---

14 Q But ---

15 A --- I mean, until I was -- realized that I could
16 relearn for myself, that's the best knowledge I knew of the
17 situation, what he told me.

18 Q And you remember the judge asking you if you were
19 satisfied with your attorney

20 A Yes, I do. Uh-huh.

21 Q And again, you had stated that you did say that Mr.
22 Toney had done everything that you asked or expected that
23 he would do on your behalf?

24 A Did I say that?

25 Q The judge asked you: "Has Mr. Toney done everything

1 that you've asked him to or you expected he would do on --
2 on your behalf?" And you indicated that he has. Do you
3 recall that?

4 A I agree with that. Yeah.

5 Q Do you remember the judge asking you if you needed
6 more time to sit down and discuss these charges with Mr.
7 Toney?

8 A Yes.

9 Q Do you recall telling the judge that you did not need
10 more time to discuss these charges?

11 A Yes, I do.

12 Q Do you recall telling the judge that no one was
13 promising you anything, threatening you, or coercing you to
14 make you plead guilty in this case?

15 A Yes.

16 Q Do you recall being told that you have the right to
17 appeal your guilty plea if you'd wanted to?

18 A Yes.

19 Q And ---

20 MR. NEUBAUER: Beg the Court's indulgence for a
21 moment.

22 THE COURT: Yes, sir.

23 (Off the record briefly.)

24 Q Now, one of your allegations was that Mr. Toney told
25 you that you would only end up doing eight years on the

1 charge that you pled guilty to; is that correct?

2 A Yes.

3 Q And you were sentenced in February of 2018; is that
4 correct?

5 A Yes.

6 Q Do you know when your projected max-out date on this
7 charge is?

8 A Yeah. 2024.

9 Q Would that be less than eight years from the time that
10 you were sentenced?

11 A Yes.

12 Q All right. And you and -- you claim you and Mr. Toney
13 never talked about issues with the chain of custody?

14 A I said -- say that again?

15 Q Did you and Mr. Toney ever talk about issues with the
16 chain of custody or the BEST evidence pack for the drugs in
17 this case?

18 A Yes, we did. We discussed that the chain of custody
19 was -- was broken because there's no evidence if it's been
20 tampered with. That's the whole reason why I told him to
21 file a motion to suppress the evidence.

22 Q And you indicated that you never received a trial
23 notice in December, correct?

24 A I received it at the end of December.

25 Q Okay.

REDIRECT EXAMINATION BY MS. MCMAHAN - BRYAN ROEKER 37

1 MR. NEUBAUER: Beg the Court's indulgence, Your Honor.

2 THE COURT: Yes, sir.

3 MR. NEUBAUER: Bouncing between a few different sets
4 of allegations.

5 (Off the record briefly.)

6 MR. NEUBAUER: I believe those are all the questions I
7 have at this point, Your Honor.

8 THE COURT: All right. Thank you, Mr. Neubauer.

9 Ms. McMahan, any redirect?

10 MS. MCMAHAN: Just briefly, Your Honor.

11 THE COURT: Yes, ma'am.

12 REDIRECT EXAMINATION

13 BY MS. MCMAHAN:

14 Q When -- in your conversations with -- with Mr. Toney,
15 did you ever say you could challenge the chain at a trial?
16 Did you ever have a conversation about: "Hey, our defense
17 could be challenging the chain of custody on this fungible
18 evidence at a trial," and trying to get it kicked out that
19 way?

20 A The only conversation we had was the -- about the BEST
21 kit. And I said to file that the evidence was tampered
22 with. I wanted a motion to suppress it. That's the only
23 discussion we had about the chain of custody or anything of
24 that nature. I didn't even know what a chain of custody
25 was till I came to prison.

1 Q So he never sat down and said: "Here's why we have to
2 prove the chain of custody"?

3 A No.

4 Q And so he never told you: "Hey, I can file the motion
5 to suppress or request it just before a trial"?

6 A No. That was my idea to file it.

7 Q Okay. And can your max-out date change based on your
8 good-time credits and all that kind of stuff ---

9 A Yes.

10 Q --- at SCDC?

11 A Yes.

12 Q Okay. And when he told you, you would serve eight
13 years, did he also explain to you that you -- you were
14 charged with an offense that you'd have to serve 85 percent
15 on your original offense?

16 A Originally, yeah. He said I was charged with
17 trafficking, and he said 25/85. Yeah.

18 Q Okay. But did he say, on the one that you were
19 pleading to, whether or not it was an 85 ---

20 A No. He said it was ---

21 Q --- percent charge?

22 A --- a nonviolent -- that's -- it says in the letter --
23 it says it's a nonviolent, 15-year plea, which I would
24 serve 8 years old.

25 Q Okay. But he didn't say anything about whether it was

RECROSS-EXAMINATION BY MR. NEUBAUER - BRYAN ROEKER 39

1 a no-parole or an 85 percent charge, right?

2 A No. He said nonviolent.

3 Q Okay. And had you had time to meet with Mr. Toney and
4 discuss defenses to your case and go over your discovery
5 and everything like that, would your guilty -- your
6 decision to plead guilty change?

7 A Yes.

8 Q Okay. Would you have wanted to go to trial?

9 A Yes.

10 Q Would you have wanted to go to trial so you can
11 challenge that chain of custody on the drugs?

12 A Yes.

13 Q Okay. Anything else you want the Court to know today?

14 A No.

15 THE COURT: Any ---

16 MS. MCMAHAN: I have no further questions.

17 THE COURT: --- recross, Mr. Neubauer?

18 MR. NEUBAUER: Just briefly.

19 RECROSS-EXAMINATION

20 BY MR. NEUBAUER:

21 Q When you discussed with Mr. Toney the nonviolent
22 sentence, did he indicate that you would have to serve 65
23 percent of the 15 years?

24 A No. He put in black and white in the letter that's
25 included in my PCR that says: It would be -- I would

1 receive a 15-year, nonviolent, and I would serve 8 years

2 ---

3 (Indistinguishable cross-talk)

4 Q --- ultimately, was it your decision to plead guilty
5 in this case?

6 A My lawyer had informed me that if I didn't plead
7 guilty, I would get 25 years at 85 percent.

8 Q But you ultimately made the decision, instead of going
9 to trial, challenging any evidence, confronting any of your
10 accusers, presenting any defense on your own, you chose to
11 forgo a trial and plead guilty in this case?

12 A My lawyer informed me he would lose at trial. Of
13 course, I -- I -- I accepted the 15.

14 Q But -- so you, in fact, did make the decision to plead
15 guilty freely? Nobody forced you or threatened you.

16 A If you consider that freely, yes, sir, I did.

17 MR. NEUBAUER: No further questions.

18 THE COURT: All right. Thank you, Mr. Neubauer.

19 Ms. McMahan, you may call your next witness.

20 MS. MCMAHAN: Your Honor, the applicant calls Mr.
21 Toney.

22 THE COURT: All right. Mr. Toney, if you would raise
23 your right hand for me, sir.

24 MR. TONEY: (Complied.)

25 IVAN TONEY, having been first duly sworn,

DIRECT EXAMINATION BY MS. MCMAHAN - IVAN TONEY

41

1 testified as follows:

2 THE COURT: All right. Thank you, sir. You may put
3 your hand down.

4 MR. TONEY: (Complied.)

5 THE COURT: Answer any questions Ms. McMahan may have
6 for you.

7 DIRECT EXAMINATION

8 BY MR. NEUBAUER:

9 Q Mr. Toney, you were retained to represent Mr. Roeker;
10 is that right?

11 A Yes.

12 Q And you were retained while he was still in the
13 Laurens County Detention Center?

14 A Yes.

15 Q And did you meet with him in person at the Laurens
16 County Detention Center?

17 A Yes. I met with Mr. Roeker in the jail on November
18 the 9th for 2 hours; on November the 10th of 2017 for 1 1/2
19 hours -- let's see -- on January the 10th for 1 1/2 hours.
20 There was a court hearing on 2/20. I'm not sure which
21 county. But I met -- I think it was Laurens. So I met
22 with him then at the court hearing and before. So that's
23 like four -- four times I met with him in this case.

24 On 2/28 I met with him for half an hour. And then, I
25 met him in the jail ---

1 Q I'm sorry. What was ---

2 A --- the same day for 15 minutes -- 30 -- 20 minutes.

3 So that's twice on that day. And that same day ---

4 Q Can we go back ---

5 A --- I have ---

6 Q --- just a minute?

7 A Well, I have a right to answer the question. You
8 asked have I met with him. That's been a big subject in
9 this thing. And I -- I met with him. You know, so I've --
10 I've met with him on several occasions.

11 Q Mr. Toney, I just -- I just didn't hear you. I was
12 going to ask, after 1/10, what were the dates again?

13 A Do you want me to repeat what I just said?

14 Q Everything ---

15 THE COURT: Okay. Let ---

16 Q --- after ---

17 THE COURT: --- let's ---

18 Q --- 1/10. Yes, sir.

19 THE COURT: --- let's -- let's try and remember the
20 civility oath we've all taken.

21 MR. TONEY: Yes, sir.

22 THE COURT: If you could -- could repeat the dates.
23 She said that she didn't hear you after you referenced the
24 date on January the 10th. So if you could repeat those
25 dates.

1 MR. TONEY: Okay.

2 A I -- do you want me to repeat the dates -- all the
3 dates that I met with him or just after January the 10th?

4 Q I have 11/9, 11/10, and 1/10. So anything after that,
5 I'd -- I apologize -- I did not hear very well.

6 A 11/9, 11/10 ---

7 Q Did you just continue ---

8 A --- and then 1/10; and then 1/26, I met with him in
9 the jail 2 hours. And, you know, we had court on 2/20.
10 And I know I met with him then. I would've taken the time
11 to meet with him for another hour then. I'm trying to
12 remember when our plea was.

13 I met with him on 2/28 two or three times and later.
14 But I think that may have been with the Spartanburg case.

15 Q Okay. And he had a -- a pending Laurens charge and a
16 pending Spartanburg charge; was that correct?

17 A Yes.

18 Q And was the Spartanburg charge, was that a drug charge
19 too, or was that something totally different?

20 A I haven't prepared for it. I can't really remember.
21 I don't have the file in front of me. It's been three
22 years. This wasn't part of the PCR.

23 Q Did you meet with him in Laurens County after he left
24 and went -- I mean, before he went to Spartanburg, other
25 than the 11/9, 11/10, and the 1/10 -- let me back up. Let

1 me -- let me strike that.

2 So you were representing him on two different charges.
3 Was the goal to try to get those charges to run concurrent
4 with each other, the -- with the Laurens charge?

5 A Well, I didn't really have -- if you're saying did I
6 have a goal to have two charges run concurrent, I don't
7 really see that as my role. My role is not to say: "Well,
8 this is my goal for what my client should do. He should
9 plead to these two charges and run them concurrent."

10 I see it as one case at a time. And each one is
11 individual. And you do the best you can with the
12 negotiations. You give it to the -- the client. And then,
13 the client makes the choice.

14 So if your question is, Did I have a goal for my
15 client, that he would plead to two separate charges? the
16 answer is no.

17 Q And when you met with him on 11/9 and 11/10, did you
18 have any of the discovery at that time?

19 A I can't remember. I know I filed discovery. And they
20 did send it to me. But I think I had his discovery.

21 He had it with him. As he says, I gave him discovery.
22 And he's also received it a couple of times since then, I
23 think.

24 But I also believe, at the first meeting we had, he
25 had discovery, so -- or at the first or maybe the second

1 meeting. So at least on one of those first two meetings,
2 I'm pretty sure he had discovery. But I can't be for
3 certain. No.

4 Q And -- and that would've been the discovery you'd
5 gotten from Ms. McNeill, correct? And you guys would've
6 just gotten over it at that ---

7 A I mean, I ---

8 Q --- time?

9 A --- would assume he got it from Ms. McNeill. But I
10 didn't verify that.

11 Q Okay. And during your first meeting, do you recall
12 what you guys discussed? Was it just general matters
13 regarding hiring you or ---

14 A No.

15 Q --- anything ---

16 A We ---

17 Q --- like that?

18 A --- would've talked about the case. Because I talk --
19 everybody about their case right off the bat. When people
20 call me on the phone to hire me, I start talking about the
21 facts of the case right off the bat.

22 So I don't really recall what we talked about. But I
23 -- I do actually recall quite a bit. But, you know, I -- I
24 -- I recall talking about the case right away. Because ---

25 Q And would that have been ---

1 A --- the main thing, talking about the actual facts of
2 the case.

3 Q And on 11/9 and 10, that's when you were initially
4 hired. So when you were talking about the facts of the
5 case, was that the facts as Mr. Roeker was presenting them
6 to you?

7 A Well, you asked if I -- if he had discovery. And my
8 answer was, basically, I think so. So the question -- the
9 answer would be: If he had the discovery, I would've read
10 the discovery and we would've talked about the facts in the
11 discovery. Or if he didn't have discovery, we would've
12 talked about his recollection of the facts.

13 Q Did he have a rap sheet that would've made any of
14 these drug charges be second ---

15 A Yeah. If I ---

16 Q --- or thirds ---

17 A --- could send ---

18 Q --- that you ---

19 A --- a copy ---

20 Q --- recall?

21 A --- to you and to the judge, I've got some other
22 letters, like the letters he talked about. I -- my -- I've
23 -- I'm ready to e-mail them right now, if that's okay,
24 unless anyone has any objection. I -- I think that's --
25 I've got to testify about these issues. So yes. I --

1 there was a rap sheet.

2 MR. TONEY: Okay. I've sent it to everybody, and the
3 Court can basically take it and admit it or not, if -- if
4 the Court wishes, I guess.

5 A But yes. There's a rap sheet. It's in your file.
6 And that was important in this case.

7 Q Well, and why was that important?

8 A Well, anytime you go to trial, one of the main issues
9 is: Can your client get up and testify without getting
10 crucified? And in this case, Bryan had -- I mean, Bryan --
11 Bryan spent, I think, ten years in prison right before he
12 got out. He was out of jail about two or three weeks, and
13 he got arrested with this stuff, to my recollection.

14 But he'd just got out of a ten-year bid. And he had
15 other charges, many other charges. But they were charges
16 for fraud and forgery. And all that -- not all of it, but
17 a lot of it could've come out in trial.

18 So his rap sheet -- the record goes with you. And if
19 you take the witness stand -- and obviously, if you have a
20 terrible criminal record, if you're, like, a career
21 criminal or something, you -- you would want to take that
22 into account in whether or not you go to trial or whether
23 you make a plea.

24 So it goes to the credibility of the witness, their
25 believability. And since the admissible parts of the

1 criminal record would be heard by the jury -- and in this
2 case, the jury would hear, you know -- the jury wouldn't
3 understand that he'd been in jail for ten years, gotten
4 out, and then, three weeks later, got a bunch of serious
5 charges.

6 I think a jury would've been very possibly moved by
7 that. They would've -- if the jury had looked closely at
8 the rap sheet, a jury could've said: "You know what? This
9 is no good here. We don't like this."

10 And -- and another factor is: If you go to trial --
11 and that circuit, David Stumbo's circuit, is well-known for
12 handing out harsh sentences. You go up there all the time.
13 People are getting 40 years/50 years/life. And I don't
14 mean on murder cases either. I mean on, you know,
15 burglary/robbery. I mean, they're -- they're just going
16 down forever.

17 And in this case, if he was found guilty at trial, you
18 know, he -- he had enough, you know, to -- to get, what, 25
19 on the -- the trafficking and more on the other stuff. So
20 he could've easily gotten 40 years in prison. So that has
21 to account -- that has to be a factor in your deliberations
22 as to whether or not you take a plea or not.

23 You know, when you go to trial, if you're facing 30
24 days or a hundred-dollar fine, that's one thing. If you're
25 facing 40 years, that's another.

DIRECT EXAMINATION BY MS. MCMAHAN - IVAN TONEY

49

1 Now, when the judge looks at the record if he's
2 sentenced and the judge looks at his record and the
3 solicitor gets up and says: "You know, Judge, he just did
4 ten years. He got out; he was out three weeks. And
5 already, he's trafficking huge amounts of drugs," and then
6 he gets another set of charges in Spartanburg.

7 "I'm just going to max you out." A judge is very
8 liable to say something like that.

9 And the stakes were very, very high for Bryan Roeker.
10 And that was an -- an important consideration.

11 Q And so just to reference the rap sheet again, were you
12 concerned about whether or not his priors would be used for
13 impeachment on Mr. Roeker?

14 A Yes. It would be which ones are -- are brought in.
15 But yes. You know, felonies within ten years ---

16 Q And ---

17 A --- things like that. Whatever -- I'd have to look at
18 it a little more closely. But whatever is -- fits within
19 the impeachable offenses would be something.

20 Q And would Mr. Roeker have had to have testified in
21 this trial, you believe, in order to be successful?

22 A Well, I will say this: There were two main issues in
23 that case. One was whether the drugs would be admissible.

24 But if he went to trial, and if it made it past that
25 motion, that was a slam-dunk conviction. I mean, they

1 caught him red-handed with the drugs in his bag on his
2 back. I mean, I suppose he could testify, I don't know how
3 they got there.

4 But they had probable cause to stop him. He was
5 wandering around someone's backyard, stealing lights. They
6 called the cops on him. He ran into the woods. And for
7 some unknown reason that I'll never figure out, instead of
8 -- instead of ditching the drugs, he takes his knapsack and
9 wanders over to a picnic station near the fire station -- a
10 picnic table.

11 The cops locate him. They run him to the ground after
12 he runs through the fire station, committing a burglary,
13 and they wrestle him to the ground. He's charged with
14 resisting arrest. And they find this huge quantity of
15 drugs on him.

16 So they had the probable cause or reasonable suspicion
17 to stop him. I mean, they -- he was caught in the act of
18 stealing lights. And -- and then he ran from the police
19 and he ran through the building.

20 So, you know, they caught him with the drugs. So in
21 my opinion, he was red-handed. So if it made it past that
22 motion, he was going to get maxed out, in my opinion.

23 Q Okay. And did you have any discussions with Mr.
24 Roeker about him testifying at trial; that -- you know,
25 like, the good and the bad about it?

1 A Well, we had discussions on that. And the way I
2 explained it to him, I don't know if it was that good a way
3 of explaining. But I said this was like a -- I believe the
4 first way I explained it, this was like a -- a derivatives
5 contract or a hedged bet or some kind of bet where you
6 looked at the various factors. And you had to weigh the
7 consequences. And on the one hand, it's what could you get
8 at a plea versus what could you get at trial.

9 So we had discussions on that. And I specifically
10 remember me mentioning derivatives contract, and I don't
11 think he understood it. And then I explained it the other
12 way. So not only would it have been normal for me to do
13 that, but I remember our conversations. Yes.

14 Q Okay. And do you recall specifically on which date
15 you may have talked to him about that?

16 A No.

17 Q Okay. And do you recall which date you discussed with
18 him about the BEST evidence kit being open when it got to

19 ---

20 A No. But ---

21 Q --- SLED?

22 A --- as he says, I did discuss it with him. And I
23 brought it up.

24 Now, here's the issue with the BEST evidence kit. And
25 this is why -- this BEST evidence kit was why I was able to

1 get such absolutely fantastic results for him and why his
2 case was such a great success: The previous offer, as you
3 have, was 16 years, violent. Now, by my calculations, 85
4 percent time on the -- Chelsea McNeill's plea, the other
5 was for 13 and some change -- 13 years and some change.

6 The reason we were able to have such amazing success
7 in this case and get it down to 15 years -- by the way, I
8 just want to say this: He's been in three years and some
9 change. And now he is parole-eligible as of 10/18/21. So
10 he could be out of jail within weeks. And he was looking
11 under the public defender and almost on the trial docket at
12 a plea of 13.6 years, which would've put him getting out in
13 the 2030s.

14 So the reason was this BEST evidence kit. And it's --
15 it's kind of a trap. It's a tricky issue. And it was
16 confusing enough for the solicitor to where we were able to
17 make a lot of headway with it.

18 The actual kit was open. But the drugs inside were
19 still sealed. Now, the case law on these things is -- is
20 -- is pretty clear. And that is that it doesn't have to be
21 perfect. But it -- it -- it's really, this kind of issue
22 would be a question for the jury.

23 But it was enough to sort of give the solicitor pause
24 to where he dropped his minimum time from 13.6 years to the
25 minimum sentence he has now, which is, you know, just a

1 little over 3 years. He can get out right now.

2 And it was enough to lop 10 years off his sentence.

3 And that is the issue that I talked to Mr. Todd about. And
4 he was nervous about it. And so yes. That is -- I raised
5 the issue of the BEST evidence kit.

6 If you look at the -- the letters -- hang on for a
7 sec. Give me a minute, please.

8 The -- the letter dated February -- December 15th,
9 which is in the judge's and your inbox, says (as read):
10 "Dear Bryan, the solicitor made an offer to you of 16
11 years. When I told this to you the other day, you said you
12 already received this offer; that's why you fired your
13 public defender. I think you and I should meet and discuss
14 a much more reasonable offer."

15 That was 15 years, violent. The offer that I was able
16 to get him on February 13th, in only eight weeks, was (As
17 read): "Dear Bryan" -- that's in the -- one of the
18 letters; should be Exhibit B, I think. I forget. Exhibit
19 -- it's in your e-mail. It's in Exhibit F.

20 That says (as read): "The solicitor has made you a
21 new offer of PWID first offense, negotiated to 15 years,
22 which is nonviolent. You would do 8 years" -- which is
23 basically exactly what it is -- the max-out time is -- "and
24 get credit for all your time served. I told him that's a
25 fair offer. I recommend that you take it. You're probably

1 going to get some time on your Spartanburg charges. This
2 case is coming up for trial in a few days. I strongly
3 recommend you take the offer."

4 It was all due to this problem with the BEST evidence
5 kit, which I think a judge would've allowed in. Now, can I
6 guarantee that a judge would allow that -- drugs into
7 evidence? Absolutely not. But I -- the fact is, it's a
8 factor in the negotiations.

9 And that's why we -- (audio loss) -- in the
10 negotiations, because the matter was sort of up in the air
11 a little bit.

12 Q And have you looked up Mr. Roeker recently on the SCDC
13 web page?

14 A Yeah. The other day I looked up his max-out date.
15 And I looked up his parole-eligibility date. And it was
16 like 10/18/21. He's eligible right now.

17 MS. MCMAHAN: Your Honor, I would just -- (audio loss)
18 -- Your Honor, I would just ask the Court to take judicial
19 notice under Rule 40 that his projected parole-eligibility
20 date as of now is 10/20/22.

21 A Okay. I'm sorry. I made a mistake. But it's still
22 -- I thought that was the date I looked at the other day.
23 But it's still a lot less than the 13.6 years, which is the
24 minimum he would've got on the one offense, in -- in my
25 opinion, if he'd gone to trial.

DIRECT EXAMINATION BY MS. MCMAHAN - IVAN TONEY

55

1 So it's substantially better than his previous offer
2 beyond ---

3 Q And are ---

4 A --- any question.

5 Q --- you guaranteed parole?

6 A What?

7 Q I'm sorry.

8 A Well, you'd ---

9 (Indistinguishable cross-talk)

10 Q --- to get parole at -- (audio loss) -- I mean asking
11 you.

12 A Well, obviously, you're not. But you're eligible. So
13 it increases ---

14 Q If someone ---

15 A --- your chances.

16 Q Okay. And did you have a discussion with him about
17 how much he would probably serve before he would get out on
18 parole, if he got parole?

19 A No. I didn't discuss parole. What I told him was in
20 the letter, which is where I said the offer would be 15
21 years nonviolent, of which he would do 8 and get credit for
22 time served. I don't normally discuss ---

23 Q What was ---

24 A --- parole ---

25 Q --- his first ---

1 A --- eligibility.

2 Q --- offer -- was his first offer from Ms. McNeill, was
3 it -- you said it was 13, but that was to what he -- to the
4 trafficking offense?

5 A It was 16 years. That's in the first letter. That's
6 16 to the trafficking. That's violent.

7 Q Well, earlier in your testimony, sir, you said 13, so
8 I was asking for clarification.

9 A No. I said 15, but I said it would work out to about
10 13 and some change after you did the calculation at 85
11 percent.

12 Q And -- and that was on the charge that he was charged
13 with, the trafficking, right?

14 A He had several charges. One was trafficking meth, 28
15 to 100. The other one was distribution near a school. The
16 other one was burglary-third. The other one was malicious
17 injury to property. And the other one was resisting
18 arrest.

19 Q And then, your offer was the 15 years to the lesser
20 offense, PWID ---

21 A That wasn't ---

22 Q --- which is ---

23 A --- my offer ---

24 Q --- a 65 percent charge; is that correct?

25 A That was the solicitor's offer. That was me conveying

1 it. It was not my offer.

2 Q That was the solicitor's offer that he gave to you; is
3 that correct?

4 A Yes.

5 Q Okay. So the different was not only the different
6 charges, but also the amount of time you would have to
7 serve on those?

8 A The difference is huge. A violent crime is very
9 serious in the justice system. Not only that, I mean, this
10 is not something I would've mentioned. But it puts you in
11 with a different category of people.

12 You're liable to get killed if you're in with all the
13 violent people. You go down to Evans or one of these
14 places. But I don't discuss that with the inmates.

15 But it -- it changes where you're -- you're
16 incarcerated.

17 Q And you had indicated to Mr. Roeker that you spoke to
18 some experts -- and I'm using the term in quotes --
19 regarding the BEST-evidence issue and whether or not it
20 would still be able to go forward. Do you recall who you
21 consulted with on that?

22 A Is that a statement or a condition? Are you saying I
23 consulted with experts? Is that a question?

24 Q You indicated that you had.

25 A No, I never ---

1 Q You indicated ---

2 A --- said that.

3 Q --- you had in your earlier testimony.

4 A No, I didn't.

5 Q Mr. Roeker indicates you have.

6 A Exactly.

7 Q Did you consult with any experts?

8 A No, I did not consult with any experts. I did run it
9 by a few friends of mine. But I don't think we have -- I
10 don't think any -- any of them are -- are experts in
11 criminal law. They're just people who are experienced in
12 it.

13 You know, I looked at the case law. I run it by
14 myself. I sort of go over it in my mind. And on occasion,
15 when it's kind of iffy like this, I run it by some of my
16 buddies. That's not the same as hiring experts.

17 Q And was the ultimate conclusion your friends that it
18 probably wouldn't make a difference because the interior
19 bag was still intact?

20 A I don't recall what they said. But there was no
21 conclusion or ultimate conclusion. It was an issue -- it
22 was more -- it was like the scales of justice. It was a
23 set of competing factors. It was no conclusiary [sic]
24 decision as to how a judge would rule.

25 I really even, to this day, could not give you an

1 opinion as to what one judge versus another judge would do.
2 It's one of those issues that's like life itself. It's
3 like, who do I marry? you know. What kind of -- where do I
4 go to eat tonight? It's one of those very nebulous sort of
5 decisions. It's got a lot of ---

6 Q Would you have discussed -- I'm sorry. Continue.

7 A Go on.

8 Q Would -- would you have discussed the good and the bad
9 regarding that BEST evidence kit with Mr. Roeker at all?

10 A Would I have discussed it, or did I discuss it?

11 Q Both.

12 A Well, the answer is: I would probably -- I don't
13 know. It would depend on the level of sophistication, the
14 person I'm dealing with. I mean, you can't always sit and
15 discuss complex legal issues with people.

16 But I did discuss that I thought the issue was
17 nebulous. The way he testified was incorrect. He said,
18 you know, that it was no point in going to trial. That
19 wasn't like that at all.

20 The discussion was along the lines of, you know:
21 "This is kind of an up-in-the-air issue. Why don't we use
22 this for leverage and leverage it to a different kind of
23 plea. That's going to be the way I get you where you need
24 to go."

25 So, you know, there was no legal discussion with case

1 law, whatever, with the client. No. But in terms of
2 generally discussing the fact that it's leverage, and that
3 the issue is somewhat nebulous, I did lean one way in my
4 discussions with him. I did tell him that, in my opinion,
5 a judge would let that go forward.

6 Because the drugs were sealed. And the fact is, the
7 seal -- the sealed drugs were never unsealed. And I
8 thought that would go in front of a jury. And I thought a
9 jury would understand. These drugs were never tampered
10 with.

11 Maybe the outside of the bag -- you know, the glue
12 came loose. But it was a bag inside of another bag, a kit.
13 And I thought a jury would understand this actual bag was
14 always safe. And that's what I felt. So I leaned that
15 way.

16 Q Also, so earlier, you -- you gave me the dates that
17 you met with him: 11/9, 11/10, 1/10, 1/26, and 2/20. And
18 -- and you indicated also in your testimony that, you know,
19 one of those could've been for the Spartanburg issue. So
20 -- but in the court you indicated to the judge that you met
21 with Mr. Roeker 40 to 50 times. Was that accurate?

22 A Can you read what's in the transcript? I mean, you're
23 ---

24 Q In the ---

25 A --- just ---

1 Q --- transcript ---

2 A --- testifying.

3 Q --- you specifically said -- no, sir, I am not. You
4 -- the transcript, on page 5, lines 1 through 2, you said
5 you met with the applicant on 40 or 50 separate occasions.
6 Was ---

7 A Well ---

8 Q --- that accurate?

9 A --- I would've meant meeting over the phone. And
10 there were many, many, many phone calls. And I certainly
11 did not intend for that to mean meeting with in person.
12 And the fact is, he did say, when he said, "Did you talk
13 with him on the phone," he said it was innumerable or
14 whatever, too many to count or something like that. We had
15 a lot of phone calls.

16 Q And those phone calls were three-ways with him and his
17 fiancée, correct?

18 A No. Some of the calls were done with the fiancée;
19 some were not. The ones with the fiancée, I told her:
20 "Listen, if you're going to three-way me in, you're going
21 to have to get off the phone and I'm going to have to be
22 satisfied you're not in. Otherwise, we're going to break
23 the privilege."

24 I think he's alluded to that, because he's mentioned
25 that several times, that, you know, I'd lose my

1 confidentiality. And so I made her get off the phone. I
2 said: "Are you off this phone?" And I'd -- I'd test it.
3 So she can't be on this phone; otherwise, it's not going to
4 be confidential.

5 And as he says, you know, this is -- may not be -- you
6 know, they -- they might listen in anyway. A lawyer-client
7 conversation on the phone, they can't listen in on. But I
8 always suspect that they do.

9 So I always tell my clients: "You need to be careful
10 what you say anyways. Because what if the solicitor just
11 decides to listen in anyways?"

12 So, you know, I try to keep my conversations a little
13 bit -- I don't know -- nonspecific. I don't know how to
14 put it.

15 Q But you just don't want to give away the attorney-
16 client-privilege information to a recording? Is that a --
17 a ---

18 A No. I'm ---

19 Q --- good way ---

20 A --- afraid ---

21 Q --- to describe it?

22 A --- of the solicitor violating my client's civil
23 rights and sneaking in conversations that they shouldn't.
24 I'm afraid of them breaking the law.

25 Q So you're afraid that the solicitor would listen to

1 the phone calls of Mr. Roeker and you, even though the
2 solicitor knows it's between an attorney and a client?

3 A Absolutely. I mean, I have no evidence that they do
4 that. But I believe in taking precautions.

5 Q And the times that you met with him in jail, do you
6 recall if they were in the Laurens jail or the Spartanburg
7 jail?

8 A At least four or five of them were in Laurens.

9 Q Well, sir, you told us you met with him approximately
10 five times at a jail and then, the -- the fifth time -- I
11 mean, the sixth time would've been at the courthouse. So
12 are you saying that all five of these times would've been
13 in -- in Laurens?

14 A Are you -- do you want me to comment on the first part
15 of your statement? Is that part of the question? I don't
16 think I said ---

17 Q I'm reiterating ---

18 A --- that exactly.

19 Q --- what you've already testified to.

20 A Look, all I ---

21 Q You said ---

22 A --- can do ---

23 Q --- you met ---

24 A --- is this ---

25 Q --- with him on 11/9 and 11/10.

1 A And I met with him on ---

2 Q You said you -- (audio loss) ---

3 A Look, I'm under oath here. I got to be accurate. I
4 can't just make general statements. The -- I met with him
5 on those ---

6 Q I'm aware ---

7 A --- dates ---

8 Q --- of that, sir.

9 A I met with him on 1/10/2018. I met with him on
10 1/26/2018 for 2 hours. I met with him on -- we had court
11 on 2/20. Now, I met with him on that day.

12 I have a meeting with him on 2/28/2018. I can't
13 remember which case that's about. But the -- the day I was
14 in court with him on that day, that might've been on the
15 bond motion in Spartanburg. I'm not sure.

16 But I would've talked -- I talked with him about the
17 -- the case, I think, on that date. I'm not sure when the
18 plea was. When was the plea?

19 And then, I met with him in jail on 2/28 ---

20 Q The plea was on -- (audio loss) ---

21 A Was on what?

22 Q It was on 2/20.

23 A Okay. So anything after that would've most likely
24 been about the Spartanburg case.

25 Q Okay. And so -- so you didn't meet with him four or

CROSS-EXAMINATION BY MR. NEUBAUER - IVAN TONEY

65

1 five times in the Laurens jail, but you would've met with
2 him in court and then these other times in the Laurens
3 jail; is that your -- is that your ---

4 A How many times ---

5 Q --- is that ---

6 A --- did I ---

7 Q --- what happened?

8 A --- meet with him in the Laurens jail? 11/9, 11/10 --
9 that's two. On 12/1 there was a hearing. I'm not sure
10 whether that was a bond hearing. That might've been in
11 Spartanburg. But we -- we talked about Laurens on that
12 day.

13 I met with him on 1/10 and 1/26. And then, we had
14 court on the 20th. That's -- I've got, like, almost the
15 whole day on that. I met with him a bunch of times on that
16 day, couple of times maybe. So really, it's four or five
17 times, if not six.

18 Q I have no further questions. Answer any questions Mr.
19 Neubauer may have.

20 THE COURT: Mr. Neubauer?

21 MR. NEUBAUER: Your Honor, may it please the Court?

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. NEUBAUER:

25 Q Good afternoon, Mr. Toney. Briefly, how long have you

1 been practicing law?

2 A A long time. Since '96 or '94/'95, something like
3 that.

4 Q And what percentage of your practice has been criminal
5 law?

6 A Well, over the years, it's changed. It was always
7 50/50 with family law. But now it's all criminal, with the
8 odd -- odd other case.

9 Q And you testified Mr. Roeker was originally indicted
10 for trafficking meth, distribution near a school, burglary,
11 malicious injury to property, and resisting arrest,
12 correct?

13 A Yes.

14 Q And ultimately, he pled guilty to a lesser-included
15 possession with intent to distribute and the malicious
16 injury to property and resisting arrest, correct?

17 A Yeah. He not only pled guilty to a lesser-included,
18 but they easily could've come down for -- to 3 to 10 grams
19 or -- of meth or -- or 10 to 28 grams. They went all the
20 way out of the trafficking category into PWID. So they
21 came down, like, three or four levels, just to give him the
22 PWID.

23 Q And when you initially started representing Mr.
24 Roeker, were you guys preparing for a trial or were you
25 attempting to negotiate a plea at that point?

1 A Well, they're sort of one and the same. It's not
2 quite either/or. You don't just take a case and prepare
3 for a plea or prepare for trial.

4 But once the BEST evidence kit came out, I saw that
5 the issue with that -- the -- the BEST evidence kit, I saw
6 that as my way to a good plea. And I discussed it with him
7 a lot. And, you know, that's how we arrived at the
8 decision of, you know, the -- what he took, which is I sent
9 it to him a letter.

10 And he -- he saved his life by making that -- whatever
11 foolish things he's done up till then -- and obviously,
12 it's a lot -- he was wise in his plea and he made a great
13 decision. And although it is not guaranteed that he can
14 get out on parole, he's probably a good candidate for it.
15 And they are paroling a lot of people because of COVID. He
16 could get out in the next few weeks or months.

17 If he was to go back on the trial docket, he might get
18 out when he's 70. So, you know, it's -- the thing is, he
19 really made the best decision, in my opinion. Of course,
20 everybody has a right to do what they want. So ---

21 Q Now, prior to this plea, did you ever discuss with Mr.
22 Roeker his constitutional rights: that he could go to
23 trial; he doesn't have to testify if he doesn't want to;
24 you guys can challenge the BEST evidence kit; you can and
25 try and get the drugs suppressed?

1 A Yes. All of it.

2 Q All right. And you guys had a chance to go over
3 discovery and the state's evidence in this case?

4 A Yes. And then, as he testified, we discussed that.
5 So what -- the -- the main issue -- I mean, the evidence
6 was horrible. I mean, he was at a picnic table after he'd
7 stolen something, and he was identified. And he ran
8 through a firehouse. Okay?

9 So all the witnesses against him would've been fireman
10 and cops. It would've been impossible. This whole
11 firehouse full of fireman would've gotten up and said:
12 "There's the guy. He's the one; he's the one that
13 committed a burglary. He ran through."

14 And then they wrestled him to the ground. And then,
15 boom, he's got the drugs on him. It's as slam-dunk a case
16 as Michael Jordan playing with one of those four-foot
17 basketball nets that they make for 3-year-olds. It's a
18 complete slam-dunk.

19 So the evidence was completely against him. But there
20 was an important issue, which was this bag that was open in
21 which the drugs were located in a sealed bag. And that was
22 enough leverage to get this from a situation where he's
23 looking at maybe spending, who knows, most of his life in
24 prison versus getting out, you know, November of this -- or
25 next year or whenever it is -- I mean, whenever his parole

1 date is. I mean, I -- I can't recall looking at it that --
2 that closely. But it's not too much longer.

3 So those were your issues.

4 Q Now, when you discussed the evidence, the -- his
5 constitutional rights, the time that he could've been
6 facing, did you ever feel or did he ever indicate to you
7 that he did not understand the discussions that you guys
8 had?

9 A Well, he never indicated that he didn't understand.
10 And I think he had quite a bit of understanding. I mean, I
11 just do. I just -- his questions were too good. He had
12 good questions. They were smart.

13 So I think Mr. Roeker is a very intelligent man, who I
14 happen to -- to like a lot. And I think he's very smart
15 and he knows what he's doing.

16 Q Now, did you and -- or other than challenging the
17 drugs in the BEST evidence kit, did you guys ever discuss
18 any other possible defenses in this case?

19 A Well, not really. Because it was so overwhelming. I
20 mean, you know, there were just all these people at the
21 firehouse, and he ran through the fire thing. And then
22 they caught him with the drugs in the bag. And, you know,
23 they just had him cold.

24 I mean, they -- this is not like one of these cases
25 where they throw down the drugs and, you know, the drugs

1 are 50 feet away and did he do it. I mean, he was caught
2 red-handed.

3 And the -- the lady that called it in and saw him, I
4 mean, it was an -- an absolute citizen who did this.
5 Right? I mean, she saw him there, screwing with the light
6 bulbs to the -- the floodlights and stealing them, which
7 I'm not sure why he would run around with a huge pile of
8 drugs and be doing petit larceny. But, you know, all I can
9 say is the meth must've been keeping it -- keeping him up
10 too long.

11 But they just had him cold.

12 Q All right. So you entered plea negotiations and you
13 said prior to your representation, the solicitor had
14 offered Ms. McNeill a 16-year, violent -- or a 16-year
15 plea. Did you -- I assume you brought this to Mr. Roeker.
16 Did you counter the state's offer with any offers of your
17 own or any offers that Mr. Roeker brought to you?

18 A Not until I got my discovery. And I found the thread
19 I could pull that would unravel their case. But once I
20 figured out the weakness -- no, this is not like just:
21 "Well, you offer this, and I offer this."

22 You've got to have something on them, a way to make
23 them scared. And the way you do that is you get into the
24 evidence and you find the weaknesses. And then, you start
25 pushing and needling.

1 And there was needling back and forth. I think he may
2 have even offered, you know, trafficking, what, 3 to 10 or
3 something like that. I'm not sure. I can't testify to
4 that.

5 But we had to work our way down to the PWID. It -- he
6 didn't just give it up. It was -- it had to be sort of
7 took from him.

8 Q And you'd -- there's a letter dated December 11th,
9 2017, where you propose they offer time-served. Was this
10 your decision to -- or counteroffer that ---

11 A No. That was clearly ridiculous. But the client told
12 me to make the offer. And part of my duties is to sort of
13 follow the goals of the client. So if they tell me to make
14 a stupid offer, I make it.

15 And obviously, that was, you know -- you're facing 40
16 years in jail and you offer time-served. I mean, it's
17 never going to fly. But I made it anyways.

18 And he was smart. Jim was smart. He knew exactly
19 where that was coming from. And he just ignored it and --
20 as he should've.

21 Q So there was eventually a counteroffer of 15 years,
22 nonviolent. Did you convey to Mr. Roeker what nonviolent
23 meant and that he would serve 65 percent of his sentence in
24 prison if he ---

25 A He -- he understood what nonviolent meant. He'd spent

1 the last ten years in prison, listening to his fellow
2 inmates talk about the difference between violent and
3 nonviolent, which institution you go to. I mean, whereas
4 you and me go to school for seven or eight years, he spent
5 ten years listening to just about the categorization of
6 inmates, which institution you go to, which level, which is
7 violent, which is nonviolent.

8 That's been his whole life, discussing that one issue.
9 He knows more about it than the -- the -- the
10 classification division down at SCDC. He knows.

11 Q Ultimately, do you think it was in his best interests
12 to plead guilty in this case?

13 A He got a fantastic deal. He robbed the bank, you know
14 what I mean? He just made out like a bandit. This guy was
15 stuck two months before trial, when nobody is willing to
16 negotiate. By a miracle, a few weeks before the -- the
17 deal -- and a lot of times, they're not even going to
18 negotiate at this point -- he got this down from 16 years,
19 violent, which would've been 13 years and some change, down
20 to 8 years, nonviolent.

21 So he did great. And absolutely, that's in his best
22 interests. And it's also a huge mistake for him, you know,
23 if he -- if he happens to succeed, in my opinion -- it's
24 only my opinion -- my opinion, this could go very badly for
25 him if he was to sort of retry this thing.

1 Q There's an issue of failure to object to a faulty
2 chain of custody. Did you -- I assume you guys discussed
3 that and the chances of filing a motion to suppress. But
4 did you feel that there was a need to object to -- (audio
5 loss) ---

6 A Well ---

7 Q --- chain of custody for this plea?

8 A You only object if you go to trial. And it would've
9 been too late. But we had -- most of our discussions were
10 on this issue of should we file a motion/shouldn't we file
11 a motion; shall we try to use it for leverage. And that's
12 where this all went to.

13 And, you know, sometimes when you file the motions,
14 they just get their back up to the wall and they -- they
15 won't negotiate. Sometimes they will.

16 But don't forget, I got that offer to him. I was
17 hired on November 9th. By, you know, a few weeks later,
18 February 13th -- that's only a few weeks later. I had
19 already -- we had already arrived at this negotiation.

20 So even if he had -- you know, even if I had wanted to
21 file a motion to dismiss, this happened pretty quickly.
22 Our negotiations happened over a period of weeks. I had to
23 wait for the discovery.

24 So the thing is: I got my discovery. And then,
25 that's when I started picking it to Jim Todd, saying:

1 "Hey, what you going to do with this? What if a jury" --
2 and then, he started coming out with his cases and I came
3 out with mine.

4 I said: "What are you going to do if the jury doesn't
5 understand that, Jim? Blah, blah-blah, blah-blah."

6 And -- and that's when we came to this. So, you know,
7 it's possible, if he'd have turned me down, that I would've
8 filed that motion. I'm sure I would've.

9 But, you know, he made the -- I gave him the offer.
10 And he accepted. And out of his wisdom, he made a choice.
11 And that choice was to take a small amount of time, as
12 opposed to possibly 25 years and some more time.

13 And he made a choice freely and voluntarily. And he
14 made a great choice.

15 Q There's one other -- or just few more questions.
16 There's one allegation that you were given trial notice in
17 December. Do you recall receiving a trial notice for -- or
18 in December?

19 A No. The trial notice -- and he has my entire file --
20 hand on --- is Exhibit B in the stuff that I've given His
21 Honor and you and Ms. McMahan. And that trial notice is
22 dated January the 4th. It says "trial notice."

23 It says (as read): "Dear Ivan, I'm setting this" --
24 it says: "I sent this notice back to you in early December
25 2017." I didn't see that in the file.

1 So the only thing I have here is January the 4th.

2 Q And once ---

3 A So ---

4 Q --- he was -- I apologize.

5 (Indistinguishable cross-talk)

6 A --- with the discovery packet. You know, I just can't
7 recall. I don't -- I don't recall seeing in the discovery,
8 though. I could be wrong.

9 But, you know, the fact is we were on the trial docket
10 -- or trial notice.

11 Q And once you received trial notice, you -- did you
12 inform applicant that his case was ready to be called for
13 trial?

14 A Well, this one's a little hard to recall. It's three
15 years ago. I'm going to do my absolute best for you on this
16 one. It seems like there was a trial docket out there.
17 And there was a long list.

18 And I don't -- I don't think they set their cases --
19 like in Greenville, they set four or five a day or
20 whatever, for a week. I think they just have this huge
21 list of, like, 100 people on it -- or maybe 200 or more.
22 And he was way, way down that list.

23 So my recollection is that I think we discussed where
24 he was and how likely he was sometime. I don't know when
25 we discussed that. But would I swear to that under oath?

1 No. This is just sort of my vague recollection. But
2 that's the best I can give you.

3 Q And briefly, one last question regarding the number of
4 times that you met with or -- (audio loss) -- with
5 applicant.

6 MR. NEUBAUER: I'm going to draw the Court's attention
7 to page 5 of the plea transcript, lines 1 through 2.

8 Q You indicated that you discussed this case on about 40
9 or 50 separate occasions. Would you state that that is
10 accurate?

11 A Well, let me see. You know, I record these calls in
12 my time slips. Do I record every call? I think I miss
13 some. I had a meeting on the 9th. That'd be one. That's
14 for 2 hours.

15 I met him in jail on the -- on the -- 11/10. It's a
16 phone call, 11/15; another one on 11/15; another one 11/15.
17 That's six. Another one 11/17, that's seven. There's
18 eight on -- on November the 20th; nine on the -- January --
19 December 1st; December 1st, that'd be tenth call; 11, 12,
20 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27
21 -- okay. I have 27 calls, basically.

22 So I don't -- you know, I wish I recorded every phone
23 call. But I go back and I -- I -- I do them a few hours
24 later I'm sure I missed a bunch of them.

25 But I think I've got 27 documented phone calls with

CROSS-EXAMINATION BY MR. NEUBAUER - IVAN TONEY

77

1 him. And I have -- I think that's 27. And I think there
2 were more. So I would say that's an accurate statement.

3 MR. NEUBAUER: At this point I have no further
4 questions.

5 THE COURT: Ms. McMahan?

6 MS. MCMAHAN: I have no further questions, Your Honor.

7 THE COURT: All right. Any objection to Mr. Toney
8 being relieved of his obligation to participate with us,
9 unless he just wants to stay? From the state or the ---

10 MS. MCMAHAN: No objection.

11 THE COURT: All right.

12 MR. NEUBAUER: No objection, Your Honor.

13 THE COURT: Mr. Toney, you're free to go.

14 MR. TONEY: Thanks. My kid wants me to take him to
15 basketball, so I appreciate that.

16 THE COURT: All right. Thank you very much.

17 MR. TONEY: Thank you very much.

18 THE COURT: Ms. McMahan, any other witnesses for the
19 applicant?

20 MS. MCMAHAN: None, Your Honor.

21 THE COURT: All right. Mr. Neubauer, you may call
22 your first witness.

23 MR. NEUBAUER: Thank you, Your Honor. At this point
24 the state would briefly call James Todd, IV.

25 THE COURT: All right, Mr. Todd. If you could

1 activate your video -- there you go. If you'd raise your
2 right hand for me, sir.

3 MR. TODD: (Complied.)

4 JAMES TODD, having been first duly sworn,
5 testified as follows:

6 THE COURT: All right. Thank you, sir. You may put
7 your hand down.

8 MR. TODD: (Complied.)

9 THE COURT: Mr. Neubauer?

10 DIRECT EXAMINATION

11 BY MR. NEUBAUER:

12 Q Good afternoon, Mr. Todd. Thank you for hanging out
13 with us slightly after five. Just briefly, if you could,
14 tell me: You used to work at the Laurens County
15 Solicitor's -- or the Eighth Circuit Solicitor's Office,
16 correct?

17 A I did.

18 Q And you ended -- or you were the prosecutor on the
19 Bryan Roeker case?

20 A I was.

21 Q Do you remember how plea negotiations began in this
22 case?

23 A If I recall correctly, the -- Chelsea McNeill was the
24 previous counsel for Mr. Roeker. And then, I had extended
25 a offer to Ms. McNeill. I believe at that point, she

1 rejected it or -- or somewhere along the lines, it ended up
2 on the -- on the trial docket. And then, Mr. Toney was
3 hired as the attorney.

4 Q And initially, that same offer was conveyed to Mr.
5 Toney; is that correct?

6 A Correct.

7 Q And do you remember, he countered that offer?

8 A Eventually he did. We were going back and forth
9 regarding the BEST evidence kit and the bag specifically
10 not being sealed. But I do recall that the drugs were
11 sealed, but they were placed into the BEST evidence bag.
12 So they were two sealed bags -- or -- or one was sealed
13 within a bag that was unsealed, which was the BEST pack.
14 And that is essentially what spurred additional
15 negotiations.

16 Q Would it be fair to characterize this as a pretty
17 lengthy negotiation process, as far as guilty-plea offers?

18 A I really don't recall how long the negotiations
19 lasted.

20 Q Okay. And ultimately, did you offer a 15-year,
21 nonviolent, in this case?

22 A I did.

23 Q Do you know what reasoning led to the offer being for
24 a lesser-included and a nonviolent?

25 A I don't recall specifically. But I -- I -- I would

1 assume that the BEST evidence-kit bag would've gone into my
2 consideration if it were today.

3 Q Okay. And there was one brief allegation in the
4 initial application for postconviction relief, claiming
5 that he -- evidence was not properly logged or Rule 6, I
6 guess, chain-of-custody report was never filed. Do you
7 know if everything that your office had was turned over as
8 part of discovery?

9 A Yes. I -- I mean, whatever I had in the file, when I
10 get a Rule 5 motion, you know, it's standard practice. You
11 just make that -- whatever's in the file available and it
12 automatically uploads. So whatever was in the upload was
13 what went to defense counsel.

14 Q So you would've provided Mr. Toney and Ms. McNeill
15 with everything that your office had?

16 A If it was in that file where I uploaded it, yes. So
17 that would've been all I would've had.

18 Q Thank you.

19 MR. NEUBAUER: I have no further questions at this
20 point.

21 THE COURT: Ms. McMahan?

22 MS. MCMAHAN: Just briefly.

23 CROSS-EXAMINATION

24 BY MS. MCMAHAN:

25 Q And -- and you may have already answered this, and I

1 apologize. Was your -- what was the offer that you sent to
2 Chelsea McNeill? Do you recall?

3 A I believe it was -- I want to say it was straight-up
4 to the trafficking or some -- somewhere close to it.

5 Q So you -- you didn't send her a negotiated 16, that
6 you recall?

7 A Maybe I did. I'd have to -- if there -- if there's a
8 letter that I sent that says that.

9 Q And -- and I -- I fully recognize that you are, you
10 know, probably not sitting in front of that prosecutor file
11 right now, so I do apologize.

12 And you had indicated that the offer that you sent to
13 Ms. McNeill was the same offer that you gave to Mr. Toney;
14 is that right?

15 A Initially.

16 Q And -- and so you reduced that offer by a year to 15
17 to the PWID?

18 A If memory serves -- I think it was a trafficking
19 originally, and then we'd reduced it down from the
20 trafficking to a -- a intent-to-distribute.

21 Q And is that a lesser-included offense of the
22 trafficking?

23 A I would think so. It's been a few years.

24 Q No. I understand. I have a chart. That's why I keep
25 that on me.

1 And just one other thing: You said anything that you
2 had available in the file then, you would upload and -- and
3 you would make that available to either Ms. McNeill or Mr.
4 Toney. And what type of program are we talking that you
5 guys were using at that time? Do you recall?

6 A I don't recall. But whatever we would get in the
7 office, basically, the sheriff's department or the police
8 department, whichever one we were dealing with, would drop
9 off a huge stack of case files. And then, one of the
10 assistants would upload all of the documents in there. And
11 if they were anything -- if there was anything else that
12 came in, they would be uploaded and then passed out to the
13 attorneys.

14 Q But the case or the legal assistants are always kind
15 of checking for the -- any new stuff coming in and
16 uploading it accordingly?

17 A Right. Everything had to be scanned in ---

18 Q And ---

19 (Indistinguishable cross-talk)

20 A --- office.

21 Q Okay. And were there any times where stuff -- where
22 you just realized something kind of fell through the cracks
23 or anything and you just kind of uploaded it, or was it
24 . . .

25 A Not that I recall for -- for me specifically. But I

1 have no idea.

2 Q Okay.

3 MS. MCMAHAN: And I have no further questions, Your
4 Honor.

5 THE COURT: Any redirect?

6 MR. NEUBAUER: (No audible response.)

7 THE COURT: Mr. Neubauer, I saw your mouth move, but I
8 didn't hear you.

9 MR. NEUBAUER: I -- I apologize. I thought I unmuted,
10 but I actually muted myself. No, Your Honor.

11 THE COURT: All right. Okay. Is there anything else,
12 Mr. Neubauer?

13 MR. NEUBAUER: No, Your Honor. The ---

14 THE COURT: All right.

15 MR. NEUBAUER: --- the state would ---

16 THE COURT: I -- I want to ask y'all something.

17 And, Mr. Todd, you are certainly free to stay with us,
18 but you are also free to go. So ---

19 MR. TODD: Thank you, Judge.

20 THE COURT: --- couple procedural matters that I need
21 to -- to cover on the record before we adjourn. So you can
22 leave the meeting, Mr. Todd, if you so wish.

23 MR. TODD: Thank you.

24 THE COURT: All right, folks.

25 MS. MCMAHAN: Judge, I ---

DIRECT EXAMINATION BY MS. MCMAHAN - BRYAN ROEKER 84

1 THE COURT: I've got ---

2 MS. MCMAHAN: --- I would like to recall -- (audio
3 loss) ---

4 THE COURT: Okay. I'm sorry. I ---

5 (Indistinguishable cross-talk)

6 MS. MCMAHAN: --- like to recall Mr. Roeker just --
7 (audio loss) ---

8 THE COURT: Okay. Mr. Roeker, you're -- Ms. McMahan
9 is certainly within her rights to recall you as a reply
10 witness. And certainly, I think the rules say it's in my
11 discretion. Even though it's after five, I'm going to
12 allow her to do that.

13 So, Mr. Roeker, you are still under oath. Answer any
14 questions that Ms. McMahan may have for you.

15 THE APPLICANT: Yes, sir.

16 DIRECT EXAMINATION

17 BY MS. MCMAHAN:

18 Q Just very quickly, Mr. Roeker, you heard Mr. Toney's
19 testimony. How much of that was actually true?

20 A None. As far as the parts of coming to meet me, the
21 only times he met with me was when we initially spoke in
22 Laurens County, and then when he came back to get the money
23 and sign the contract. After that, the only other time I
24 physically seen that man was when were in court for a bond
25 hearing in -- in Spartanburg County. Like I said, I was

CROSS-EXAMINATION BY MR. NEUBAUER - BRYAN ROEKER 85

1 never afforded a -- a confidential meeting with him, other
2 than me speaking how much he going to charge and me paying
3 him and signing for it. I never had another face-to-face
4 meeting with him.

5 Q And he did count off the times of the phone calls that
6 he had record of. Would you ---

7 A Right.

8 Q --- say that's an accurate number of times that you
9 attempted to call him?

10 A That's exactly how many times I've tried to get that
11 man to come meet me in the county so I could speak about my
12 case. That's exactly what it was.

13 MS. MCMAHAN: Okay. I have no further questions, Your
14 Honor.

15 THE COURT: Any cross as to those issues, Mr.
16 Neubauer?

17 MR. NEUBAUER: Just briefly, one question.

18 CROSS-EXAMINATION

19 BY MR. NEUBAUER:

20 Q Do you think there is -- is it possible that there
21 were any more phone calls that occurred between you two
22 that were not listed off?

23 A Yeah. There's probably more phone calls than 27. I
24 would say there's more than 27, considering I called him at
25 least once every other day to see why he hasn't came to see

1 me yet. Yeah.

2 MR. NEUBAUER: Nothing further, Your Honor.

3 THE COURT: All right. Any other reply testimony, Ms.
4 McMahan?

5 MS. MCMAHAN: None, Your Honor. We rest.

6 THE COURT: All right, folks. Before we conclude
7 today, Mr. Toney did send an e-mail, I'm assuming, to all
8 of us. However, he's not necessarily a party to this
9 action. He is a witness. I have not opened any of the
10 attachments that he sent to me.

11 And I intend to only consider his testimony. Because
12 like I said, he is not a party. I don't believe he has --
13 in his role in this matter, I don't believe he has the
14 authority to offer exhibits. I have not reviewed them.

15 I'll be happy to hear from both you with regard to
16 that issue. I have not even forwarded them to the court
17 reporter to ask her to make them exhibits. I -- I don't
18 think that that action was necessarily proper, given his
19 role as a witness and not a party to the action.

20 So, Mr. Neubauer, I'll be happy to hear from you.

21 MR. NEUBAUER: Yes, sir. Your Honor, I -- he sent me
22 those a few hours ago. I had a chance to review them. One
23 -- almost all the documents that he sent are already a part
24 of the record, either through the SCDC -- either through
25 the clerk's records or Ms. McMahan's amended applications.

1 It was letters between the applicant and Mr. Toney. It was
2 a copy of the -- pardon me, Your Honor. I just wanted to
3 pull this up. That way, I can say I'm speaking accurately.

4 I would -- I'd ask to make them exhibits. We have
5 most of them in the record. But if you would not object to
6 making them exhibits in this case, two of them are letters
7 between Mr. Roeker and Mr. Toney. One is a criminal
8 record.

9 THE COURT: Well, I'm certainly not going to make --
10 I'm certainly not going to make an NCIC report part of the
11 record. I think that is improper under the NCIC rules,
12 based upon my recollection of that training I used to have
13 to receive every year. So I'm not going to make that -- I
14 just think, Mr. Neubauer, that, you know, as you stated,
15 many of the documents he sent were included in the return
16 and a part of the record. I'd -- I'd just feel more
17 comfortable not making anything that was sent in that e-
18 mail from Mr. Toney a part of the record. I think ---

19 MR. NEUBAUER: I ---

20 THE COURT: --- it's -- it's cleaner that way, given
21 the fact that he was a witness and not a party to this
22 action.

23 MR. NEUBAUER: Yes, Your Honor. I completely
24 understand your stance on this. I would just make the
25 state's request that we move Exhibit A, which is a copy of

1 the arrest warrant; Exhibit C, a copy of the incident
2 report from the police; Exhibit E, which is a letter from
3 Mr. Toney to Bryan Roeker; and Exhibit F, which is a copy
4 of a letter from Ivan Toney to Mr. Roeker, exhibits.
5 However, I understand that it is ---

6 THE COURT: Yeah. I'm -- I'm going ---

7 (Indistinguishable cross-talk)

8 THE COURT: --- make my decision based upon the --
9 what was included in the packet and based upon the
10 testimony I heard today. I just -- you know, I -- I -- I
11 just don't think that making -- making e-mails from a
12 witness while a hearing is in progress, I just don't think
13 that's proper course of action for the Court to take.

14 So -- but I did want that on the record.

15 Mr. Roeker, I don't know how -- how much of this --
16 what this means to you. But what I'm trying to say is:
17 Ordinarily, the attorneys would be the ones that would
18 submit -- submit documents to be included in the official
19 court record. However, you know, Mr. -- Mr. Toney is an
20 attorney; he's not acting as an attorney for purposes of
21 your PCR hearing. He is acting as a witness.

22 So I -- but I did want to put this on the record. I
23 didn't want you to think that, you know, anything that was
24 not made a part of the record would be considered as I make
25 my decision in your case. So that's ---

1 THE APPLICANT: I appreciate ---

2 THE COURT: --- why ---

3 THE APPLICANT: --- that.

4 THE COURT: That's why we're covering this before we
5 adjourn.

6 Is there anything else with regard to Mr. Roeker's
7 matter that needs to be placed on the record?

8 MS. MCMAHAN: No, Your Honor, other than you --
9 obviously, you know, I -- I will touch base with you
10 afterwards about some administrative issues.

11 THE COURT: All right.

12 (Whereupon, the proceeding was concluded at 5:28 p.m.)

13 --- END OF TRANSCRIPT OF RECORD ---

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE

I, the undersigned Maryann S. Nevers, CVR-M-CM, RVR, RVR-M, Official Court Reporter (Retired) for the Eighth 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 hearing of the captioned cause, relative to appeal, in the Circuit Court for Laurens County, South Carolina, on the 26th day of October, 2021.

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



Maryann S. Nevers, CVR-M-CM, RVR, RVR-M
Official Court Reporter

Leland, North Carolina
May 21, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS	)	FOR THE EIGHTH JUDICIAL CIRCUIT
	)	
Bryan Lee Roeker, #341043	)	Case No.: 2019-CP-30-114
	)	
Applicant,	)	
	)	
v.	)	
	)	ORDER OF DISMISSAL
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
	)	

K. MICHELLE SIMMONS
 2022 FEB 21 AM 11:10
 LAURENS COUNTY
 CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed by Bryan Lee Roeker ("Applicant") on February 12, 2019. Respondent made its return on or about April 25, 2019. The Court convened an evidentiary hearing into the matter on October 26, 2021, via the WebEx Virtual Courtroom of the Honorable R. Kirk Griffin. Applicant was present at the hearing and represented by Ashley A. McMahan, Esq. Michael J. Neubauer, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Ivan J. Toney, Esq. ("Counsel"), and Assistant Solicitor James C. Todd, IV of the Eighth Circuit Solicitor's Office, also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Laurens County Clerk of Court regarding the subject convictions, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is currently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Laurens County Clerk of Court. In November 2017, the Laurens

County Grand Jury indicted Applicant for trafficking methamphetamine (2017-GS-30-1936). Ivan J. Toney, Esquire represented Applicant. Assistant Solicitor James C. Todd, IV of the Eighth Circuit Solicitor's Office prosecuted the case. On February 20, 2018, Applicant plead guilty as indicted before the Honorable Donald B. Hocker. Pursuant to a negotiated sentence between the State and Applicant, Judge Hocker sentenced Applicant to imprisonment for fifteen years. Applicant was given credit for time served. Applicant did not appeal his conviction or sentence.

II. FACTS

On July 17, 2017, police were dispatched to a residence in Cross Hill after a woman observed a white male removing a motion-activated light from a tree in her backyard. GP Tr. p. 7. The woman provided deputies with a description of the man and officers observed Applicant, who matched the provided description, in the surrounding area. GP Tr. p. 7. Deputies attempted to make contact with Applicant, but Applicant fled. GP Tr. p. 8. Applicant ran into the Volunteer Fire Department building and deputies were able to catch up to him when he exited the back door. GP Tr. p. 8. Deputies located a white substance on Applicant that field tested positive for methamphetamine. GP Tr. p. 8. A SLED report later confirmed Applicant was in possession of approximately forty grams of methamphetamine, which was enough for Applicant to be charged with trafficking methamphetamine. GP Tr. p. 8.

III. PRESENT APPLICATION

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

1. "Ineffective Assistance of Counsel"
 - a. "Chain of Custody was broken and never logged properly."
 - b. "Attorney never allowed me client confidentiality at all... all evidence that is supposed to be against me is not accounted for nor documented nor logged properly."

- c. "Officer swears on warrant with witnesses to weight of drug and ... sled swears bag was reopened after sealed and... I was never released from custody during any of this case, my attorney never discussed any of my case with me in any way before he sent me letter to take the plea, I was never in private to speak with him about anything until my scheduled plea date he informed of to take by mail."
 - d. "Attorney never filed motion to suppress evidence like I told him to at which he agreed to do while he was on 3way call with my wife."
 - e. "He said that later he spoke with an alleged expert and they said it would be denied he never told me or documented that he filed like he agreed. Never even said who expert was I thought he was my expert."
 - f. "Evidence was not properly logged nor is ever proven to be accounted for chain of custody for rule 6 never filed nor was I aware to the fact."
 - g. "Attorney never meet with me at all after he agreed to amount and which I paid in full only other communication was a recorded jail phone."
 - h. "Two days after I had already been booked in LCDC officer come and tried to get me o sign the second booking list for property that never came to jail with me that is supposed to be the book bag they found the drugs in there is no picture of a book bag in my motion nor was there one in my property when I was transferred in fact in the officers first statement a book bag was never mentioned he said the drugs come of my persons. Several days later he wrote another statement and said he fought me to the ground, forced handcuffs on me behind my back with a alleged backpack on and at that time he searched me in cuffs and found in my backpack I'm supposed to be cuffed with drugs they are saying is mine where is the back pack."
2. Involuntary Guilty Plea
- a. "Attorney promised several times to come and meet with me in jail to discuss my case and devise a plan every time was recorded on Spartanburg county globel toll call that I had to pay for I could not speak freely or about anything about my case because recoded he forced me to plea... I would do 25 if I didn't plea."

On February 3, 2020, Applicant through Counsel, filed an amended application for post-conviction relief alleging Applicant is being held unlawfully for the following reasons:

- 1. Ineffective Assistance of Counsel of Ivan Toney:
 - a. "Failure to object to faulty chain of custody. The SLED report on the drugs has a notation that the 'BEST evidence kit was not properly sealed when submitted.' Counsel fialed to argue the chain of custody was irreparably broken. *See State v. Pulley*, 423 SC 371 (2018). The drugs were field tested allegedly weighing 43.5 grams. When SLED received the evidence the drugs weighted 36.25 grams."
 - b. "Counsel stated during the plea hearing that he met with Applicant on 40 or 50 separate occasions. *See* Transcript, page 5, lines 1-2. Given that counsel was only retained on or about November 10, 2017, Counsel would have had to have met with

the Applicant almost every single business day (or at least every other) available between the date he was hired and the date of the plea, February 20, 2018.”

- c. “Counsel further stated at the plea hearing that he ‘negotiated strenuously over a substantial period of time.’ See Transcript page 5, lines 20-23. Applicant ended up pleading to a negotiated plea of 15 years. The offer by the solicitor to the public defender was 16 years, which was reoffered again to Mr. Toney in December 2017. See letter attached dated December 15, 2017. The second offer was for 15 years, which Counsel told Applicant he would do 8 years. See letter attached dated February 13, 2018. Applicant did not get the letter about the plea offer until just before he was taken to court on February 20, 2018, and when Applicant had gotten to court this was the first time Applicant had spoken to Counsel in person except for the date he hired Counsel.”
2. “Further, Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).”

On October 8, 2021, Applicant through Counsel, filed a second amended application for post-conviction relief alleging Applicant is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel of Ivan Toney
 - a. “Mr. Toney wrote a letter regarding plea offers for Mr. Roeker and indicated Mr. Roeker’s co-defendant got probation, except Mr. Roeker did not have a co-defendant.”
 - b. “Mr. Toney told the Applicant he would serve 8 years.”
 - c. “Mr. Toney was given trial notice in December but did not contact the Applicant to prepare for trial adequately beforehand.”
2. “Further, Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).”

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the

attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

Direct Appeal Issues

This Court finds claims 1a, 1f, and 1h, are direct appeal issues that are not cognizable under the Uniform Post-Conviction Procedure Act¹ (the Act). An applicant may seek PCR upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A). However, because an application for post-conviction relief is not a substitute for a direct appeal, and because of the modern simplification of criminal jurisdiction jurisprudence in South Carolina, the *overwhelming* majority of cognizable claims fall under the broad umbrella of “ineffective assistance of counsel,” a contention under the Sixth Amendment of the United States Constitution, Applicant’s allegations are direct appeal issues that are not cognizable claims under the Uniform Post-Conviction Procedure Act. *See Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (noting that allegations of trial court error are not

¹ S.C. Code Ann. § 17-27-10 to -160.

cognizable on PCR); *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1975) (finding that alleged trial errors and sufficiency of evidence are direct appeal issues that are not cognizable PCR claims); *see also Stepney v. State*, 278 S.C. 47, 292 S.E.2d 41 (1982) (explaining that issues that could have been raised on direct appeal cannot be considered in PCR application absent claims of ineffective assistance of appellate counsel).

An applicant “may allege constitutional violations in PCR proceedings . . . *unless the issue could have been raised by direct appeal.*” *Gibson v. State*, 329 S.C. 37, 41, 495 S.E.2d 426, 428 (1998) (citing S.C. Code Ann. § 17-27-20(a)(1)); *Simmons*, 64 S.C. at 423, 215 S.E.2d at 885 (“Generally, post-conviction hearing statutes do not afford relief in the case of alleged errors for which remedies were available before and during the original trial, or by review on motion for a new trial or on appeal. These statutes were not intended to afford a procedure to operate as a substitute for a motion for a new trial, or for an appeal or writ of error; and ordinarily a judgment of conviction may not be challenged on grounds which could have been raised by a direct appeal.”).

Here, claims 1a, 1f, and 1h, alleged in the application are direct appeal issues that do not support a cognizable claim for post-conviction relief under any of the statutory grounds. *See, e.g., Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) (“[PCR] is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal.”); *cf. Hyman v. State*, 278 S.C. 501, 502, 299 S.E.2d 330, 331 (1983) (finding that direct appeal issues which could have been reviewed on appeal and were not objected to at trial or during guilty plea proceeding may only be presented to support a claim of ineffective assistance of counsel, not as a separate ground for relief). Accordingly, Applicant’s request for relief by way of these allegations are denied and dismissed with prejudice.

A. Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196

(2011); *Harrington v. Richter*, 562 U.S. 86, 109-10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; see also *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

1. Counsel never allowed attorney client confidentiality

Applicant's allegation of ineffective assistance of counsel due to Counsel not allowing Applicant attorney-client confidentiality is without merit.

The attorney-client privilege is based upon a public policy that the best interest of society is served by promoting a relationship between the attorney and the client whereby utmost confidence in the continuing secrecy of all confidential disclosures made by the client within the relationship is maintained. *Wilson v. Preston*, 378 S.C. 348, 359, 662 S.E.2d 580, 585 (2008). No doubt exists that, under normal circumstances, an attorney's advice provided to a client, and the communications between attorney and client are protected by the attorney-client privilege. *In re Grand Jury Proc.*, 102 F.3d 748, 750 (4th Cir. 1996). In order to establish the privilege, it must be shown that the relationship between the parties was that of attorney and client and that the communications were of a confidential nature. *State v. Love*, 275 S.C. 55, 59, 271 S.E.2d 110, 112 (1980). This privilege belongs to the client and not the attorney, and may be waived by the client. *Id.* A client may waive attorney client privilege by discussing privileged communications with a third party. "The attorney-client privilege, though, does not protect communications with non-clients." *Marshall v. Marshall*, 282 S.C. 534, 539, 320 S.E.2d 44, 47 (Ct. App. 1984).

At Applicant's evidentiary hearing, Applicant testified he had many conversations with Counsel between the time he hired Counsel, and the time Applicant plead guilty. Applicant testified that these conversations were predominantly three-way calls between Applicant, Counsel, and Applicant's fiancé. Applicant testified the majority of his conversations involved Applicant trying to arrange a time for Counsel to come meet with Applicant in person. Applicant testified he spoke with Counsel regarding the substance of his case, and the possibility of succeeding on a motion to suppress the drug evidence due to the BEST evidence kit not being properly sealed.

Applicant testified he was not provided a confidential call to speak with Counsel because all of his communications with Counsel were by recorded phone calls while Applicant was incarcerated in Spartanburg. Applicant testified he was never able to speak freely with Counsel due to the jail recording his phone calls. Applicant testified he attempted at least ten times to have Counsel meet with Applicant in person, however Applicant alleges Counsel never came to meet with him. On cross-examination, when asked if he knew the confidentiality of his conversations with Counsel were compromised by the presence of his fiancé, Applicant stated "the calls were recorded, so it was compromised anyway."

At the evidentiary hearing, Counsel testified he met with Applicant in person at the Laurens County Detention Center on November 9th, and November 10th. Counsel testified he spoke with Applicant on the phone innumerable times. Counsel testified Applicant's fiancé was a part of a three-way call for multiple of his conversations with Applicant, however Counsel testified he did have conversations with Applicant without Applicant's fiancé present. Counsel testified he told Applicant's fiancé that if she were helping set up a phone call between Applicant and Counsel that she would have to get off the phone once Applicant connected to avoid breaking their attorney-client privilege. Counsel testified he was concerned with the Solicitor's Office listening in on his conversations with Applicant, though he had no evidence to suggest that the Solicitor's Office has eavesdropped on confidential conversations between an incarcerated defendant and their attorney. Counsel testified he met with Applicant at least four times while Applicant was incarcerated in the Laurens County Detention Center. Counsel testified he also met with Applicant before his bond hearing.

Applicant has failed to establish how Counsel was ineffective in this matter. Counsel credibly testified he spoke with Applicant in private as well as on three-way phone conversations

with Applicant and Applicant's fiancé. Counsel testified he informed Applicant that any conversations between Counsel, Applicant, and Applicant's fiancé would not be privileged, and if they were to talk regarding confidential matters that Applicant's fiancé would have to leave the call. Though Applicant alleges he had no opportunity to have a privileged conversation with Counsel because all of their conversations were conducted through recorded jail phone calls, Counsel credibly testified he met with Applicant multiple times in person, and Applicant and Counsel had an opportunity to discuss Applicant's case prior to Applicant pleading guilty. Applicant has failed to demonstrate how Counsel was ineffective by not allowing for attorney client confidentiality, or how Applicant was prejudiced as a result of Counsel's actions. Therefore, we find Counsel's performance was not ineffective and this allegation is denied and dismissed with prejudice.

2. Counsel Did Not Meet with Applicant to Discuss Case with Applicant Prior to Guilty Plea²

Applicant's allegations Counsel was ineffective for failing to meet with Applicant, and for failing to discuss the specifics of Applicant's case with Applicant are without merit. As an initial matter, Applicant, at his evidentiary hearing testified he was originally represented by a public defender, who he only met with one time. Applicant testified he hired Counsel in November of 2017 after a friend recommended Counsel to Applicant. Applicant testified he spoke with Counsel a lot, and discussed Counsel coming to see Applicant in jail, along with discussion of a potential motion to suppress. Applicant testified he never met with Counsel in jail after Applicant agreed to hire Counsel and paid Counsel for his services. Applicant testified he only saw Counsel one time after Applicant was moved to Spartanburg³, and that was for an unsuccessful bond hearing.

² Allegations 1c, 1g, Amended Allegation 1b.

³ At the time Applicant was incarcerated in the Laurens County Detention Center he had additional charges pending in Spartanburg County.

Applicant testified he spoke with Counsel on the phone “a lot” and the majority of his conversations with Counsel were spent trying to get Counsel to come visit Applicant so they could discuss the case in person. Though Applicant testified he did not discuss the chain of custody with Counsel, Applicant testified he spoke with Counsel regarding the BEST evidence kit which contained the drugs that were found on Applicant’s person when he was arrested. Further, Applicant testified he spoke with Counsel regarding possible plea deals, including a fifteen year offer that Counsel received from the Solicitor’s office in February of 2018. Applicant testified he never spoke with Counsel regarding possible defenses Applicant could raise. However, Applicant testified he remember telling the judge at his guilty plea hearing that Applicant had an opportunity to discuss discovery with Counsel prior to pleading guilty. Applicant testified if he had more time to discuss defenses and review discovery with Counsel that Applicant would not have plead guilty.

Counsel testified he was retained by Applicant for these charges while Applicant was incarcerated in the Laurens County Jail. Counsel testified he met with Applicant in person on November 9, 2017, November 10, 2017, January 10, 2018, and January 26, 2018 as well as at a court hearing on February 20, 2018, and twice on February 28, 2018. Further, Counsel testified he spoke with Applicant over the phone countless times prior to Applicant’s guilty plea. Counsel testified he filed a discovery request, but Counsel believes Applicant had already received a copy of his discovery before he was retained to represent Applicant. Counsel testified he would have spoken with Applicant regarding the facts of the case, and the discovery that Applicant had received during their first few meetings in November of 2017⁴. Additionally, Counsel testified he

⁴ Counsel testified he was unsure if Applicant had received discovery prior to their first meetings in November of 2017, however Counsel testified if they did not have discovery they would have discussed Applicant’s version of the facts surrounding his arrest, and they would have discussed the discovery at a later time.

discussed issues with the chain of custody due to the BEST evidence kit being partially opened. Counsel further testified he spoke with Applicant regarding his prior record and the impact that may have on Applicant's ability to testify at trial. Counsel testified he spoke with Applicant regarding possible plea offers, including Counsel's belief that the issue with the BEST evidence kit was best used as a tool to facilitate a better plea offer for Applicant instead of the basis for a motion to suppress.

Hill makes clear that the prejudice prong ordinarily requires "something more" than simply a defendant's assertions that but for counsel's deficient performance he would not have plead guilty but would have gone to trial. *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009) (citing *Hill*, 474 U.S. at 58-59). Counsel credibly testified he met with Applicant in person on multiple occasions prior to Applicant pleading guilty. Additionally, Counsel testified he reviewed the discovery with Applicant, and discussed the facts of Applicant's case as well as possible defenses and motions Applicant could have used in his defense. This Court does not find credible Applicant's claims that Counsel never met with Applicant in person, that Counsel never reviewed the discovery with him, and that Counsel never discussed the case with Applicant. Applicant further failed to specify what, if anything, could have been achieved had Counsel spent more time with him in consultation regarding the contents of his discovery. See *Smith v. State*, 404 S.C. 493, 500-01, 745 S.E.2d 378, 382 (Ct. App. 2012) (noting that an applicant must present evidence to show how additional time spent in consultation regarding discovery would have resulted in a different outcome; mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief).

Accordingly, Applicant's claim regarding Counsel's failure to meet with Applicant in person, along with Applicant's allegations Counsel never discussed the specifics of Applicant's case with Applicant are without merit and are therefore denied and dismissed with prejudice.

3. Failure to File Motion to Suppress⁵

Applicant's allegation Counsel was ineffective for failing to file a motion to suppress the drug evidence found on Applicant's person is without merit. Applicant alleges he asked Counsel to file a motion to suppress while on a phone call with Counsel and Applicant's fiancé. However, Applicant claims Counsel never filed a pretrial motion to suppress.

When a person claims ineffective assistance based on counsel's failure to file a suppression motion, we apply a "refined" version of the *Strickland* analysis. With respect to the performance prong, we ask whether the unfiled motion would have had some substance. If the motion would have had some substance, then we ask whether reasonable strategic reasons warranted not filing the motion. To satisfy the prejudice prong, the defendant must show that: (1) the [suppression] motion was meritorious and likely would have been granted, and (2) a reasonable probability that granting the motion would have affected the outcome of his trial.

United States v. Pressley, 990 F.3d 383 (2021) (internal citations and quotations omitted).

At Applicant's evidentiary hearing, Applicant testified Counsel informed him that the BEST evidence kit that contained the drug evidence in Applicant's case was not properly sealed. Applicant testified he asked Counsel to file a motion to suppress the drug evidence due to the issue with the BEST evidence kit. Applicant testified he did not know what a chain of custody was prior to arriving in prison, and that he was relying on Counsel's advice regarding the chain of custody and the admissibility of the drug evidence. Applicant alleges Counsel stated he spoke with an expert regarding the BEST evidence kit, and Counsel told Applicant the expert did not believe that a motion to suppress would be successful. Further, Applicant testified Counsel stated he believed the court would allow the drugs in regardless, and there was no need to file a motion to suppress.

⁵ Allegations 1e, 1f

Applicant testified Counsel told Applicant he had spoken with an expert, and based on his conversations Counsel believed the court would deny a motion to suppress the drug evidence. Applicant testified his only conversations with Counsel regarding the chain of custody or any issues with the BEST evidence kit were Applicant's requests to move to suppress the evidence. Applicant testified it was his idea to file a motion to suppress the drug evidence, and to the best of his knowledge no motion to suppress was ever filed.

At Applicant's evidentiary hearing, Counsel testified one of the issues with the State's case against Applicant was whether the drug evidence would be admissible. Counsel testified if Applicant was not successful on a motion to suppress, Counsel felt the State's case against Applicant was a "slam dunk." Counsel testified he does not recall when he discussed the issues regarding the BEST evidence kit with Applicant, but Counsel does remember discussing this issue with Applicant. Counsel testified he did not speak with an expert regarding the BEST evidence kit issue, but he may have discussed it with a few friends in the legal community. Counsel testified he never told Applicant that he had spoken with an expert regarding this issue. Counsel testified he would look at case law while going through the issues in his head, and if he was still "iffy" he would consult some friends who are also experienced in criminal law. However, Counsel testified this is not the same thing as hiring an expert to consult regarding this issue. Counsel testified the issue with the BEST evidence kit is why Counsel was able to obtain a favorable plea deal for Applicant in this case. Counsel testified the issue with the BEST evidence kit was a "tricky" issue, and was confusing enough for the solicitor that Counsel was able to make headway in plea negotiations as a result of this issue. Counsel testified the BEST evidence kit had been opened, but the bag containing the drugs was still sealed. Counsel testified he felt this issue would not be successful in a motion to suppress, because the issue regarding the BEST evidence kit being

tampered with would be an issue for the jury, not for a suppression motion. Counsel testified he spoke with Applicant and informed him that the issue with the BEST evidence kit was “an up in the air issue, let’s use it for leverage on a plea.” Counsel testified he did not discuss case law or the legal issues regarding the BEST evidence kit with Applicant, but he did talk about the facts of the issue with Applicant, and informed Applicant this issue would be good leverage for plea negotiations. Counsel testified he spoke with Applicant thoroughly about filing a motion to suppress the drug evidence, but was hesitant to file a motion because it may have ended all plea negotiations with the State. Counsel testified Applicant agreed to plead guilty prior to a motion to suppress being filed. Counsel testified that if Applicant had declined to plead guilty, Counsel would have likely filed a motion to suppress prior to trial.

Applicant has failed to establish any evidence to support his assertion that Counsel was ineffective for failing to file a motion to suppress. Though Applicant testified he was the one who proposed filing a motion to suppress the drug evidence due to the issues with the BEST evidence, Applicant testified he did know what a chain of custody was prior to arriving in prison, and he was relying on the advice of Counsel regarding the admissibility of the drug evidence. Applicant has failed to demonstrate that a motion to suppress would likely have been granted in this case. Counsel testified he review the issue with the BEST evidence kit and felt that it was an issue that would not warrant the suppression of the drug evidence. Further, Applicant has failed to demonstrate that this motion to suppress would have changed the outcome of Applicant’s case. Counsel testified he spoke with Applicant regarding the motion to suppress, and Applicant agreed that the issue should be used to help negotiate a more favorable plea offer. Counsel testified he believed that by filing a motion to suppress while attempting to negotiate a plea deal for Applicant, the State may end all plea negotiations. Counsel further testified if Applicant decided he did not want to plead guilty,

Counsel would have sought to suppress the drug evidence. We find Applicant has failed to show how Counsel was deficient, or how Counsel's performance prejudiced Applicant. Therefore, this allegation is denied and dismissed.

4. Failure to Explain the Plea Negotiations

Applicant's allegation of ineffective assistance of counsel due to Counsel failing to communicate plea offers to Applicant until one week before Applicant plead guilty is without merit. In his amended application for post-conviction relief, Applicant alleges he was told about a sixteen year plea offer in December of 2017, and was informed by letter of a second plea offer for fifteen years on February 13, 2018. Applicant plead guilty on February 20, 2018, and alleges this is the first time he spoke with Counsel regarding the fifteen year plea offer.

"[A]s a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." *Missouri v. Frye*, 566 U.S. 134, 145 (2012). Further, ineffective assistance is given "[w]hen defense counsel allow the [plea] offer to expire without advising the defendant or allowing him to consider [the plea]." *Id.* at 145.

When determining prejudice for failure to convey a plea, a case-by-case determination is made "assessing whether but for counsels deficient performance a defendant would have accepted the State's proposed plea bargain and that he would have benefited from the offer.'" *Bell v. State*, 410 S.C.436, 443, 765 S.E.2d 4, 7 (2014). Prejudice is found if applicant "would have taken the plea offer had [he] been afforded effective assistance of counsel", if "the plea would have been entered without prosecution canceling it or the trial court refusing to accept it", and "the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time." *Collins v. State*, 422 S.C. 250, 262, 810 S.E.2d 871, 877 (2018)

(quoting *Frye*, 566 U.S. 147) (quotations omitted). Presumed prejudice is reserved to limited situations. *Bell*, 410 S.C. at 443, 765 S.E.2d at 7.

At Applicant's evidentiary hearing, Applicant testified he hired Counsel because he believed Counsel could get a better plea deal for Applicant that Applicant's public defender had obtained. Applicant testified he first received a fifteen year plea deal from public defender Chelsea McNeil, and Applicant proceeded to fire Ms. McNeil and hire Counsel. Applicant testified Counsel stated he could do a better job negotiating than Ms. McNeil, but came back with an initial plea offer of sixteen years. Applicant testified Counsel stated he could get Applicant released from incarceration without serving any additional time. Applicant testified the second plea offer he received from Counsel was for fifteen years on February 13, 2018. Applicant testified Counsel stated Applicant would only serve about eight years if he plead guilty pursuant to this offer. On cross-examination, Applicant testified he told Counsel to reject the initial sixteen year offer because they believed they could do better and they needed to get together and discuss a possible counter offer. Applicant testified he never suggested a possible plea offer he wanted Counsel to present to the solicitor in this case. Applicant testified he did not learn about the fifteen year non-violent plea offer until he received a letter from Counsel on February 13, 2018, the week before Applicant's scheduled court date. Applicant testified Counsel informed Applicant in his February 13, 2018, letter that Applicant would only serve eight years of his fifteen year sentence.

At the evidentiary hearing, Counsel testified he was able to use the issue with the BEST evidence kit to get Applicant a better plea offer. Counsel he initially received a sixteen year offer where Applicant would have to serve eighty-five percent of his sentence before he would be eligible for release. Counsel testified he was able to negotiate with Assistant Solicitor Todd and get Applicant a fifteen year non-violent offer, which would only require Applicant to serve sixty-

five percent of his sentence. Counsel testified by his calculations, Applicant would only serve approximately eight years in prison if he plead guilty to the fifteen year non-violent offer. Counsel testified he informed Applicant of the first plea offer he received on December 15, 2017. Counsel testified he received a second offer for fifteen years, non-violent, six weeks after Counsel received the initial plea offer. Counsel testified he felt it was a fair offer, and he recommended Applicant accept it. Counsel testified the plea offer he received in February of 2018 was for Applicant to plead to the lesser included charge of Possession with Intent to Distribute Methamphetamine, and Applicant would receive a fifteen year non-violent sentence. Counsel testified he felt the differences in the initial plea offer, and the plea offer he was able to negotiate for Applicant were drastic. On cross-examination, Counsel testified he sent a letter to Solicitor Todd on December 11, 2017, at Applicant's request, suggesting Applicant plea to time served.

Assistant Solicitor Todd testified he prosecuted the case and began plea discussions with Ms. McNeil while she was representing Applicant. Assistant Solicitor Todd testified he extended a sixteen year offer to her which was rejected shortly after. Assistant Solicitor Todd testified Applicant's case was placed on a trial docket before Counsel was retained to represent Applicant. Assistant Solicitor Todd testified he initially offered the same plea deal to Counsel, and Counsel eventually responded with a counter offer. Assistant Solicitor Todd testified the issue with the BEST evidence kit is what spurred additional plea negotiations in Applicant's case. Assistant Solicitor Todd testified he ultimately offered Applicant a non-violent fifteen year plea, and he assumes the issue with the BEST evidence kit would have gone into his considerations while discussing plea offers.

Applicant has failed to demonstrate that any plea offers were presented to Counsel that were not relayed to Applicant. Though Applicant comments that he was not informed of the final

non-violent fifteen year plea offer until a week before his court date on February 20, 2018, Counsel informed Applicant of all available plea offers that were presented. Additionally, Counsel countered plea offers at Applicant's request, and negotiated through the entirety of his representation of Applicant. This Court finds that Applicant has failed to demonstrate any plea offers that were not shared with Applicant, and that Applicant has failed to show that he would have accepted a different plea offer had it been presented to him. This Court finds Applicant has failed to show how Counsel was deficient, or how Counsel's performance prejudiced Applicant. Therefore, this allegation is denied and dismissed.

6. Counsel Indicated Applicant had a Codefendant

Applicant, in his second amended application for post-conviction relief alleges that during plea negotiations, Counsel incorrectly stated Applicant had a co-defendant. This allegation is without merit.

At Applicant's evidentiary hearing, Applicant testified Counsel sent a letter to Assistant Solicitor Todd during plea negotiations stating Applicant had a codefendant who received time served for his involvement. Applicant testified he did not have a codefendant for this charge, and Counsel was aware of this. Applicant testified Counsel represented Applicant on this charge along with other charges stemming from Spartanburg County. Applicant testified during the course of Counsel's representation of Applicant, Counsel kept confusing the facts of Applicant's Abbeville charge and Spartanburg charges, and that Counsel did not put any thought into Applicant's cases.

Counsel testified he spoke with Applicant at length about plea negotiations. Counsel testified he presented an offer to Assistant Solicitor Todd for time served at the request of Applicant. Counsel testified that Assistant Solicitor Todd never responded to Counsel's offer of a sentence of time served for Applicant's guilty plea. Counsel testified the next plea offer he received

from Assistant Solicitor Todd was the fifteen year non-violent sentence that Applicant ultimately plead guilty to. During Counsel's testimony, Counsel did not deny sending a letter to Assistant Solicitor Todd stating that Applicant's codefendant had received time served.

This Court finds Applicant has failed to establish how he was prejudiced by Counsel's performance. In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813. To establish prejudice in this matter, Applicant must establish that 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. Though Applicant is correct that Counsel incorrectly stated that Applicant had a codefendant during plea negotiations, Applicant has failed to demonstrate how Counsel's inadvertent reference to a non-existent codefendant prejudiced Applicant, or altered the results of Applicant's proceedings. Though Applicant sought a sentence of time served, Applicant was never offered a plea deal near his desired sentence. Despite Counsel's incorrect statement that Applicant had a codefendant, Counsel was able to continue to negotiate with Assistant Solicitor Todd, and ultimately received a plea offer of fifteen years non-violent, which ultimately lead to Applicant's guilty plea. Applicant has failed to demonstrate how these comments by Counsel affected the negotiations between Counsel and Assistant Solicitor Todd, or how Counsel's performance affected the results of these proceedings. We find Applicant has failed to show how Counsel was deficient, or how Counsel's performance prejudiced Applicant. Therefore, this allegation is denied and dismissed.

7. Counsel told Applicant he would only serve eight years if he plead guilty

Applicant alleges Counsel informed Applicant he would only serve eight years in prison if he plead guilty to the fifteen year non-violent plea offer. This Court finds this allegation is without

merit.

At his evidentiary hearing, Applicant testified he remembers received a letter from Counsel in February of 2018 indicating Applicant received a plea offer for fifteen years non-violent, and that Applicant would only “do eight years and get credit for time served.” Applicant testified he spoke with Counsel prior to pleading guilty one time, and Counsel informed Applicant if he did not plead guilty he would likely receive twenty five years if he were convicted at trial. Applicant testified he did not know that the minimum sentence he could receive if convicted at trial was seven years. Applicant testified he decided to accept the plea offer when he was told he would get twenty five years if convicted at trial. On cross-examination, Applicant testified he was sentenced in February, and his expected max out date was in 2024, which would have be less than eight years after Applicant was imprisoned. Applicant testified Counsel did not explain the difference between non-violent and violent sentences, and the impact that this would have on sentencing. Applicant testified Counsel did not explain that his original sentence would require him to serve eighty five percent of his sentence in prison. Applicant testified Counsel did not explain that by pleading to a non-violent charge he would only have to serve sixty five percent. Applicant testified Counsel only told Applicant that he would get a fifteen year sentence non-violent, and he would only serve eight years.

Counsel testified he received a fifteen year plea offer from Assistant Solicitor Todd in February of 2018. Counsel testified once he received this offer, he informed Applicant of the fifteen year non-violent plea offer in a letter indicating that Applicant would only serve eight years of this sentence, and Applicant would get credit for time served. Counsel testified he did not explain to Applicant what the non-violent aspect of his charge would mean, and that he would only have serve sixty five percent of his sentence because he plead to a non-violent charge. However,

Counsel testified he believed Applicant understood what it meant, and that the non-violent nature of the charge was the reason Applicant would only serve eight years. Counsel testified he did not discuss with Applicant when he could be released on parole, but he did discuss with Applicant the amount of time that he would serve in prison if he accepted the State's fifteen year non-violent offer.

This Court finds Applicant's allegation to be without merit. Applicant testified he was aware that he was pleading guilty to a negotiated sentence of fifteen years. Applicant discussed with Counsel the amount of time that he would likely serve if he plead accepted the State's fifteen year non-violent offer. Applicant plead guilty in February of 2018, and is projected to max out his sentence in July of 2025. From the evidence presented to this Court, it appears Applicant was properly advised of the amount of time he would likely serve if he accepted the negotiated fifteen year non-violent plea offer. Applicant has failed to demonstrate how these comments by Counsel affected the negotiations between Counsel and Assistant Solicitor Todd, or how Counsel's performance affected the results of these proceedings. This Court findss Applicant has failed to show how Counsel was deficient, or how Counsel's performance prejudiced Applicant. Therefore, this allegation is denied and dismissed.

8. Failure to Prepare

Applicant alleges Counsel was ineffective for failing to prepare for trial. Specifically, Applicant alleges Counsel was given a trial notice in December of 2017, but did not contact Applicant at that time to adequately prepare for trial beforehand. This Court finds this allegation is without merit.

At his evidentiary hearing, Applicant testified he hired Counsel in November of 2017. Applicant testified he met with Counsel one time while Applicant was imprisoned in Laurens

County, and did not meet with Counsel in person again unless Applicant had a court appearance. Applicant testified he communicated with Counsel over the phone on countless occasions, however they usually discussed times where Counsel could come meet with Applicant in person to discuss Applicant's case. However, Applicant claims Counsel never came to see Applicant while he was incarcerated. Applicant testified Counsel discussed an issue with the BEST evidence kit in Applicant's case, and as a result of this conversation, Counsel and Applicant discussed filing a motion to suppress the drug evidence. Applicant testified Counsel did not explain what a chain of custody was, and Counsel never discussed possible defenses with Applicant. Applicant testified he received a letter in late December or early January informing him that his trial was scheduled for February of 2018. Applicant testified he did not have a chance to talk with Counsel in person regarding the trial notice, or whether Applicant wanted to proceed to trial or plead guilty. Applicant testified if he had time to discuss defenses with Counsel, and if Counsel had reviewed discovery with Applicant that Applicant would not have plead guilty, but would have went to trial to challenge the chain of custody.

At Applicant's evidentiary hearing, Counsel testified he first met with Applicant in the Laurens County Detention Center on November 9, 2017 and then again on November 10, 2017. Counsel testified he cannot recall if he had discovery in Applicant's case at this point, however Counsel testified he would have talked about the facts of Applicants case in this first meeting with Applicant. Counsel testified he believed Applicant had a copy of the discovery in his case at the time that Counsel was hired. Counsel testified he believes Applicant received a copy from his initial attorney Chelsea McNeil, and Counsel would have discussed this discovery when he first met with Applicant. Counsel testified he started preparing for trial and negotiating a guilty plea simultaneously. Counsel testified he reviewed Applicant's prior criminal record, and discussed

with Applicant the issues with Applicant testify at trial and the possibility of his testimony being impeached. Counsel testified he discussed with Applicant the possible issues that may arise if Applicant testified at trial. Counsel testified he discussed discovery with Applicant, along with Applicant's constitutional rights if he went to trial and Applicant appeared to understand their discussions. Counsel testified he remembers discussing issues with the BEST evidence kit with Applicant prior to Applicant's guilty plea. Counsel testified he reviewed case law, and spoke to colleagues and friends with criminal law experience about possible issues with the BEST evidence kit as Counsel prepared to dispose of Applicant's charges. Counsel testified he relayed his findings to Applicant while they were deciding how to proceed in Applicant's case. Counsel testified he did not discuss any defenses with Applicant other than the issues with the BEST evidence kit because he did not see any defenses that would benefit Applicant in this case. Counsel testified he reviewed the issue with the chain of custody and possible issues with the BEST evidence kit which contained the drugs found on Applicant at the time of his arrest. Counsel testified he discussed the advantages of pleading guilty and the advantages of proceeding to trial in this case. Counsel testified he informed Applicant that a judge would likely let the drug evidence in if Applicant proceeded to trial, and if the evidence was admitted, Applicant would likely be convicted at trial. Regarding notice of a trial date, Counsel testified he does not recall receiving a trial notice in December. Counsel testified he does not dispute that Applicant's case was on the trial docket. Counsel testified he cannot recall if he informed Applicant that he had to be ready for his case to be called during the next term of court. Counsel testified he discussed where Applicant was on the trial docket and how likely it was that Applicant's case would be called during the next term of court. However, Counsel testified he only has a vague recollection of these discussions.

As an initial matter, this Court finds Applicant failed to overcome the "strong presumption

that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case.” *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*, 466 U.S. 668). “A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). “[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.” *Ard*, 372 S.C. at 331–32, 642 S.E.2d at 597 (internal quotation marks omitted) (emphasis omitted).

However, our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel’s duty to investigate. *See, e.g., id.* at 331, 642 S.E.2d at 597 (“Without a doubt, [a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation.”). “[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation.” *Strickland*, 466 U.S. at 690–91; *see id.* (“In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.”). Thus, in applying the *Strickland* standard to a claim of failure to investigate, counsel’s decision not to undertake a particular investigation must be evaluated with heavy deference to counsel’s judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 63 (Ct. App. 2014).

To prevail on a claim of ineffective assistance based on failure to investigate or prepare for

trial, a PCR applicant must ordinarily present some evidence "that would have affected counsel's advice to [him] to accept the plea bargain offered or that would have caused [him] to decline to accept it." *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009); see, e.g., *Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (reversing the PCR court's grant of relief where the applicant failed to "present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial").

Applicant has not presented any evidence that would suggest Counsel could have further prepared for Applicant's case. Counsel discussed the discovery with Applicant prior to receiving Applicant's trial notice. Counsel discussed all possible issues with Applicant, including the chain of custody, and the issues with the BEST evidence kit. Counsel discussed the possible issues that would arise if Applicant were to testify at a jury trial. Counsel discussed Applicant's constitutional rights with Applicant, and believed that Applicant understood the extent of their conversations. Applicant has failed to present any evidence that Counsel did not investigate, nor has Applicant presented any information or rights that Counsel failed to discuss with Applicant. As Applicant has failed to present any additional information or evidence that Counsel could have discovered if he were to have prepared further, this Court finds Applicant has failed to show how Counsel's performance was deficient, or how Applicant was prejudiced by Counsel's performance. Therefore, this allegation is denied and dismissed with prejudice.

B. Involuntary Guilty Plea

In Applicant's initial application for post-conviction relief, Applicant alleges his guilty plea was involuntary. Specifically, Applicant asserts Counsel failed to meet with Applicant in person to discuss Applicant's case, and to devise a plan to handle Applicant's case. Applicant alleges

Counsel forced him to plead guilty by telling Applicant if he went to trial he would be sentenced to twenty five years in prison. This Court finds this allegation is without merit.

In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. 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."). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *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)).

For a plea to be valid, the applicant must have been aware of the nature and crucial elements of the offense the maximum and minimum penalties, and the rights he is waiving by accepting the plea. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 29 (2000). A plea is not knowing or voluntary if a defendant "lacks knowledge of material evidence in the prosecution's possession." *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999).

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. at 34, 528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "[T]he

voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874 (quoting *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). Further, “guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea.” *Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

At his evidentiary hearing, Applicant testified he primarily spoke with Counsel over the phone while preparing his case. Applicant testified he and Counsel discussed issues with the evidence in his case, and though Applicant wanted to move to suppress the evidence, Counsel did not believe that it would be successful. Applicant testified Counsel informed him that if he went to trial he would not win, and Applicant would be sentenced to twenty five years. Applicant testified he did not know the minimum sentence he could receive prior to his decision to plead guilty. Applicant testified he decided to plead guilty after Counsel stated Applicant would be sentenced to twenty five years if he went to trial. Applicant testified he did not want to plead guilty, instead he wanted to go to trial and challenge the State’s evidence. Applicant testified if he had time to sit down with Counsel and discuss discovery, and discuss possible defenses, he would not have plead guilty but would have gone to trial. On cross-examination, Applicant testified he remembers the plea judge informing him of the maximum sentence for the charge he was pleading guilty to, and his constitutional rights, including his right to challenge the evidence the state may present at trial. Applicant testified he recalls informing the court he was satisfied with Counsel’s services, and that he did not need more time to discuss this case with Counsel prior to pleading guilty. Applicant testified he recalls telling the court nobody forced him or coerced him into

pleading guilty, and that he was pleading guilty because he was in fact guilty. Applicant testified he recalls the court informing him of his right to appeal his conviction or sentence.

Counsel testified he discussed discovery with Applicant in their first two meetings, and that Applicant had an opportunity to explain the facts of his case. Counsel testified he discussed Applicant's constitutional rights with Applicant, and he believed that Applicant understood their conversations. Counsel testified he discussed the advantages and disadvantages of proceeding to trial versus pleading guilty. Counsel testified he believed that if Applicant went to trial there was a high likelihood that Applicant would be convicted due to the fact Applicant was spotted in a yard stealing lights, and was then found by police and lead police on a chase through a volunteer fire department which was full of firefighters. Counsel testified he believed that if the drug evidence that was found on Applicant was not suppressed that Applicant would have received a maximum sentence if he were convicted. Counsel testified he discussed all of the issues regarding the State's evidence with Applicant, and informed Applicant of his belief that Applicant would likely be convicted if he went to trial. Counsel testified he prepared for Applicant's case while negotiating a possible guilty plea for Applicant. Counsel testified he believed that the final offer of fifteen years non-violent was a fair offer, and that Applicant would end up spending substantially less time in prison if he accepted this plea offer. Counsel testified he did not coerce Applicant to plead guilty, and that Applicant freely and voluntarily made the decision to plead guilty.

This Court finds Applicant has failed to establish how his plea was not freely and voluntarily entered. During Applicant's guilty plea, Applicant was informed of his constitutional right, including his right to a jury trial, his right to remain silent, and his right to confront his accusers and challenge the state's evidence. Tr. p. 9, l. 6- p. 10, l. 12. Applicant stated he was satisfied with Counsel's services, that Counsel has done everything that Applicant wanted, and

that he did not need any more time to speak with Counsel before he plead guilty. Tr. p. 10, l. 14-22. Further, Applicant stated he had an opportunity to review discovery with Counsel, and that by pleading guilty, he and his counsel would not be able to challenge any of the evidence the State had collected in this case. Tr. p. 10, l. 23- p. 11, l. 7. Applicant stated he was not under the influence at the time of guilty plea, and the he had not been promised anything, threatened, or coerced into plead guilty. Tr. p. 6, l. 16- p. 7, l. 15. Though Applicant asserts he was threatened by Counsel that he would receive twenty five years if he did not plead guilty, Applicant testified to the court at his guilty plea hearing that he was pleading guilty because he was in fact guilty. Tr. p. 6, l. 16-18. The record clearly shows that Applicant's plea was made voluntarily, and the testimony shows that Applicant made the decision to plead guilty after a thorough review of the case and thorough plea negotiations with the State. Applicant has failed to show that but for Counsel's performance he would have proceeded to trial. Further, Applicant has failed to show that he was unaware of the charges he was pleading guilty to, the evidence the State was prepared to use against him at trial, or the possible penalties Applicant could receive if he went to trial or if he plead guilty. Therefore Applicant has failed to show that his guilty plea was not freely, voluntarily, or intelligently entered. As such, this allegation must be denied and 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.

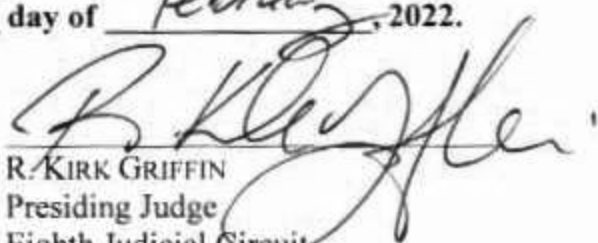
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the

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), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 16th day of February, 2022.


 R. KIRK GRIFFIN
 Presiding Judge
 Eighth Judicial Circuit

Sumter, South Carolina