

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

—————  
Certiorari to York County

Honorable R. Scott Sprouse, Circuit Court Judge  
—————

**RECEIVED**

**Jan 27 2023**

S.C. SUPREME COURT

TRAVIS HUTCHINSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000752  
—————

APPENDIX  
—————

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STATE OF SOUTH CAROLINA

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STATE,

Plaintiff,

Case Numbers

-against-

2018-GS-46-00204,

TRAVIS SEMAJ HUTCHINSON,

2018-GS-46-00205

2018-GS-46-00213

Defendant.

-----x

February 13, 2018

York, S.C.

B E F O R E:

HONORABLE ROGER E. HENDERSON

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

MARINA HAMILTON, Esquire

Attorney for the State

DEVON NIELSON, Esquire

Attorney for the Defendant

Aileen Butler

Official Court Reporter

1 THE COURT: All right, Mr. Nielsen.

2 MR. NIELSEN: Yes, Your Honor. The defense at  
3 this point has brought Mr. Hutchinson, Mr. Travis  
4 Hutchinson into the courtroom. Mr. Hutchinson and I  
5 were discussing in the back what his options today  
6 were. I had explained to him that his options are to  
7 either plead straight up as charge to possession of  
8 heroin, third offense; possession of cocaine --  
9 possession with intent to distribute heroin, third  
10 offense; possession of cocaine, second or third  
11 offense and escape, and plead straight up as charged.  
12 He understands the minimum that he could receive on  
13 those is 11 years at this point and that his other  
14 option we have a jury waiting for trial downstairs and  
15 he wishes to address your Your Honor. At this time he  
16 has refused to either sign the the paper work and go  
17 forward with the plea. Also refused to give the size  
18 of clothing for him to change out of his jail orange.

19 I am asking Your Honor to have a conversation  
20 with him about what he wants to do.

21 THE COURT: Yes, sir, Mr. Hutchinson. What would  
22 you like to say.

23 THE DEFENDANT: I have been trying to get this man  
24 off of the case. It went from good to worse. He  
25 tells me and my wife take, you know, they offer me two

1 years and this two years just went off the table just  
2 like that. All the way up to ten years, 11 years he  
3 is telling me all of this stuff at the end.

4 I know I am guilty. I don't mind doing the time  
5 but he is telling me all of this stuff at the end. I  
6 don't feel like I have been treated right.

7 THE COURT: You didn't show up yesterday afternoon  
8 when you were suppose to be here and that might have  
9 some effect on your case, the fact that you you didn't  
10 show up.

11 THE DEFENDANT: I was here yesterday morning.

12 THE COURT: But you weren't here yesterday  
13 afternoon when you were suppose to be so we could  
14 start a trial yesterday afternoon.

15 THE DEFENDANT: When he was talking about trial I  
16 ain't know that he was talking a trial trial.

17 THE COURT: What else is there besides a trial?

18 THE DEFENDANT: I thought he was talking about  
19 signing for a plea or something. That type of trial.

20 THE COURT: You have enough experience that you  
21 know what a trial means and you know what a plea  
22 means, don't you? You've been in the system for a  
23 while I understand, correct?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. You know the difference between

1 a trial and a plea don't you?

2 THE DEFENDANT: Yes, sir, but I ain't know.

3 THE COURT: Well, this is your day in court. We  
4 are going forward with your case one way or the other.  
5 If you want a trial you have a constitutional right to  
6 have a trial. I got a jury waiting downstairs and can  
7 be brought up here and we will select a jury and get  
8 started this morning or you have the right to enter a  
9 plea.

10 Now, whether you want to wear the right kind of  
11 clothes or not that is up to you. I don't care. But  
12 that would certainly prejudice you with regards to a  
13 jury. They will see you in an orange jumpsuit. You  
14 would be better off if you to put on some decent  
15 clothes that Mr. Nielson has. He has got them  
16 somewhere.

17 MR. NIELSON: Yes, Your Honor.

18 THE COURT: So, you're not getting out of trial.  
19 You are not getting a new lawyer. This is the day.  
20 We are going forward.

21 THE DEFENDANT: I ain't mind going forward.

22 THE COURT: If you don't want to participate in  
23 the trial I will try you in your absence. You have  
24 been informed about that before I'm sure. If you  
25 refuse to cooperate.

1 THE DEFENDANT: I'm going to cooperate. I'm a  
2 grown man just like he is. This man, ain't treat me  
3 with no respect. I mean he's just telling me all  
4 sorts and types of stuff at the end.

5 THE COURT: You realize I told you that a few  
6 minutes ago because this is at the end and you are  
7 responsible for some of what has changed at the end by  
8 not showing up yesterday. I had to issue a bench  
9 warrant to have you picked up. Don't you think that  
10 has some effect on what the State is offering? We had  
11 to go to considerable trouble to get you.

12 THE DEFENDANT: I came here yesterday morning.

13 THE COURT: I understand you came yesterday  
14 morning but were you suppose to be here two o'clock  
15 yesterday Mr. Nielson?

16 MR. NIELSON: Yes, Your Honor.

17 THE COURT: And you weren't here.

18 THE DEFENDANT: I was trying to get my wife home  
19 sir.

20 THE COURT: Well, when you got court here this  
21 takes priority over getting your wife home.

22 THE DEFENDANT: I was trying to make it back up  
23 here yesterday as well.

24 THE COURT: The Court was open until five o'clock  
25 sir and you never showed back up.

1 THE DEFENDANT: They said court ended around one  
2 something when I called back.

3 THE COURT: Well, I told you it's your choice and  
4 your decision now. Either we go forward with a plea  
5 on these charges that have been stated or you go for a  
6 trial and ask for a trial. So you got to make a  
7 decision and let me know what it is.

8 THE DEFENDANT: I will go with a plea.

9 THE COURT: Sir?

10 THE DEFENDANT: I will go with the plea.

11 THE COURT: Do you understand that it's going to  
12 be what is called a straight-up plea. Everything is  
13 going to be left in my discretion. The State is not  
14 making any kind of recommendation. I understand you  
15 understand the plea process.

16 Do you need a few more minutes?

17 MR. NIELSON: We do need to sign paperwork. We  
18 will need to go back.

19 THE COURT: If he changes his mind again I will  
20 call the jury up here and we'll will get started.

21 MR. NIELSON: All right. Thank you, Your Honor.

22 THE COURT: Okay. Thank you sir.

23 (WHEREUPON, there was a brief recess.)

24 MR. NIELSON: Your Honor, I will tell the Court he  
25 actually signed the grand jury part of the one

1 indictment but he signed on both. He signed on the  
2 wrong line the the first time.

3 TRAVIS SEMAJ HUTCHINSON, having been duly sworn by  
4 the clerk, was examined and testified as follows:

5 THE COURT: Yes ma'am.

6 MS. HAMILTON: Thank you, Your Honor.

7 This is Travis Hutchinson, he is appearing today  
8 represented by his attorney, Devon Nielson from the  
9 Public Defender's Office. The defendant is pleading  
10 guilty on true bill Indictments for possession with  
11 intent to distribute heroin, third offense; possession  
12 of cocaine, third offense and escape. He has served  
13 69 days in jail.

14 The State has a recommendation in this case. This  
15 is a straight-up plea. Your Honor, I do want to  
16 address the matter as to the amendment of the CDR code  
17 which the State believes is merely a sentencing  
18 matter. Not anything that would go to the sufficiency  
19 of the Indictment and I want to address that at the  
20 appropriate time.

21 THE COURT: All right. You said possession of  
22 cocaine, third offense?

23 MS. HAMILTON: Yes, Your Honor, possession with  
24 intent to distribute heroin, third offense and  
25 possession of cocaine, third offense.

1           And I did hand up and provide to the defense the  
2 case the State verses Crivin (phonetics) which does go  
3 to the nature of what I just stated as to Indictments  
4 are sufficient to supply -- confer subject matter  
5 jurisdiction on this Court in that the CDR code and  
6 the enhancement of the second or greater offense do  
7 not involve elements of the offense. The State would  
8 just ask the CDR code be amended on the Indictments as  
9 to the sentencing matter at this time.

10           THE COURT: All right. Mr. Nielson.

11           MR. NIELSON: Your Honor, we would object to that.  
12 We had previously asked that he be allowed to go  
13 forward as a second offense. There are some definite  
14 differences sentencing wise and what we can ask for  
15 and what he could get in the Department of Corrections  
16 that are changed by making it a third instead of a  
17 second. I understand his record is such that we have  
18 no argument that it is truly a third. We would just  
19 ask the solicitor to be allowed to plea as he was  
20 indicted or going to let Your Honor decide on that.

21           THE COURT: Okay. Anything else Miss Hamilton?

22           MS. HAMILTON: No, Your Honor.

23           THE COURT: Okay. All right. Miss Hamilton, I am  
24 going to grant your motion to amend. With regards --  
25 this is definitely a sentencing issue with regards to

1           whether it is a second or third. I understand their  
2           could be some issues with the Department of  
3           Corrections Mr. Nielson, but had he gone to trial and  
4           been convicted it still would have come time at  
5           sentence it would still be a third offense and he  
6           would have been sentenced accordingly.

7           MR. NIELSON: Yes, Your Honor.

8           THE COURT: So I will grant the motion Miss  
9           Hamilton.

10          MS. HAMILTON: Thank you, Your Honor. And I  
11          actually have if we could, certified convictions. I  
12          don't know if you wanted to put those in the record in  
13          case there are issues as to him appealing this.

14          MR. NIELSON: Your Honor, she has sent me copies  
15          of four certified convictions that I'm sure she plans  
16          on handing up.

17          MS. HAMILTON: Just so that if he does plan to  
18          appeal this we have this on the record.

19          THE COURT: Sure.

20          MS. HAMILTON: Thank you, Your Honor.

21          THE COURT: It will be admitted as State's one.

22          MS. HAMILTON: Thank you.

23          (State's Exhibit One, Convictions, received in  
24          evidence as of this date.)

25          THE COURT: Anything else before I question Mr.

1 Hutchison?

2 MS. HAMILTON: Nothing from the State.

3 MR. NIELSON: Nothing from the defense Your Honor.

4 THE COURT: All right. Mr. Hutchison, how do you  
5 pronounce your middle name.

6 THE DEFENDANT: Semaj.

7 THE COURT: So you are Travis Semaj Hutchison?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You are 37 years old?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And you live in York County, South  
12 Carolina?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Did these three offenses that I  
15 understand you wish to plead to, did they all take  
16 place in York County, South Carolina?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Now, do you understand that possession  
19 with intent to distribute heroin, third offense,  
20 carries from ten to thirty years in the Department of  
21 Corrections. Do you understand that? That is the  
22 potential sentence do you understand that, ten to  
23 thirty years?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. And do you understand that the

1 possession of cocaine, third offense, carries up to  
2 ten years in prison. Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Speak up.

5 THE DEFENDANT: Yes, sir. Yes, sir.

6 THE COURT: Okay. And then the escape charge to  
7 which I understand you wish to plead, that carries  
8 from one to 15 years in prison. Do you understand  
9 that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: So do you clearly understand what it  
12 is your pleading guilty to?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You had time to talk to your lawyer  
15 about these three offenses, correct?

16 THE DEFENDANT: Right.

17 THE COURT: And you understand what those offenses  
18 are?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: So you clearly understand what you are  
21 pleading guilty to?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Now, knowing the potential sentences  
24 do you in fact wish to plead guilty or how do you wish  
25 to plead to these three offenses; guilty or not

1 guilty?

2 THE DEFENDANT: Guilty?

3 THE COURT: Speak up.

4 THE DEFENDANT: Guilty.

5 THE COURT: To all three?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. Mr. Hutchison, has anybody  
8 threatened you in any way in order to get you to plead  
9 guilty?

10 THE DEFENDANT: No, sir.

11 THE COURT: Has anybody promised you anything in  
12 order to get you to plead guilty?

13 THE DEFENDANT: No, sir.

14 THE COURT: Okay. Are you under the influence of  
15 any alcohol or drugs today?

16 THE DEFENDANT: I was -- I'm just coming down off  
17 of heroin.

18 THE COURT: Okay, just come down.

19 THE DEFENDANT: Coming down off of it.

20 THE COURT: Sir?

21 THE DEFENDANT: Coming down off of it.

22 THE COURT: Coming down off of it. So when did  
23 you last use?

24 THE DEFENDANT: Yesterday.

25 THE COURT: When yesterday?

1 THE DEFENDANT: Morning.

2 THE COURT: Yesterday morning. So it has been  
3 about 24 hours?

4 THE DEFENDANT: I guess.

5 THE COURT: Well, you said you used it yesterday  
6 morning. It's morning time now.

7 THE DEFENDANT: Yes, sir. Morning.

8 THE COURT: So it has been about 24 hours since  
9 you used.

10 THE DEFENDANT: I guess.

11 THE COURT: Correct?

12 THE DEFENDANT: Yes.

13 THE COURT: How long does it normally take you to  
14 get a clear head after using heroin.

15 THE DEFENDANT: I don't know.

16 THE COURT: Sir?

17 THE DEFENDANT: I don't know.

18 THE COURT: Well, how often have you used heroin?

19 THE DEFENDANT: On a day-to-day basis.

20 THE COURT: Well, you should know how long it  
21 takes you to come down then. How long it takes you to  
22 get your head clear. You appear to be able to answer  
23 all of my questions here this morning so far.

24 THE DEFENDANT: Yeah, I can answer questions.

25 THE COURT: So the fact that you used heroin

1           yesterday morning, does that effect your ability right  
2           now to be able to think, reason and understand?

3           THE DEFENDANT: No, sir.

4           THE COURT: So you ever been able to understand  
5           everything we talked about so far?

6           THE DEFENDANT: Yes, sir.

7           THE COURT: Earlier before you came in here to  
8           enter this plea and since we started this plea --

9           THE DEFENDANT: Yes, sir.

10          THE COURT: You've understood everything we talked  
11          about?

12          THE DEFENDANT: Right.

13          THE COURT: Now, understanding you may be coming  
14          down it may cause you to have some sort of physical  
15          problems but mainly you're okay. You are telling me  
16          that?

17          THE DEFENDANT: Yes, sir.

18          THE COURT: Okay. Mr. Hutchison -- and I'm sure  
19          your lawyer has been over this with you and I talked  
20          about it to you earlier -- you have the right to a  
21          trial by jury and if you decide you want a jury trial  
22          you and your lawyer, Mr. Nielson, can participate in  
23          the selection of that jury. In other words you will  
24          have some say so of who sits in judgement of you. If  
25          you decide to go to trial then Miss Hamilton, who

1 represents the State of South Carolina, she would have  
2 the burden of convincing the jury of your guilty  
3 beyond a reasonable doubt and she will have to  
4 convince all 12 jurors. In other words the verdict  
5 would have to be unanimous before you can be found  
6 guilty.

7 If you go to trial then Mr. Nielson has the right  
8 to confront any witnesses that testify for the State  
9 against you in the course of that trial. That means  
10 he can ask them questions or cross examine them during  
11 the trial. Then you have the right after the State  
12 puts up its case, you have the right to put forth a  
13 defense on your behalf. That means you can call  
14 witnesses that you want to call to testify for you.  
15 You yourself can testify if you want to or if you wish  
16 to remain silent which is your constitutional right  
17 you can remain silent throughout the entire trial and  
18 that can not be held against you in any way whatsoever  
19 and the jury would be so informed. And you also have  
20 the right to obtain from the State -- and I am sure  
21 this has already been done -- but you have the right  
22 to obtain from the State any and all evidence that it  
23 has in its position that can benefit you in the  
24 preparation of your defense.

25 Do you understand these rights Mr. Hutchison?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand that by pleading  
3 guilty you give up all of these rights?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: So are you telling me now that you are  
6 freely and voluntarily giving up all of your rights in  
7 order to plead guilty to these three offenses?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. Now you are represented by Mr.  
10 Nielson?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And he has been representing you for  
13 how long?

14 THE DEFENDANT: Since the case going on. Since  
15 August I guess.

16 MR. NIELSON I believe he was represented in  
17 September Your Honor.

18 THE COURT: And during that course of that time  
19 you've had discussions with Mr. Nielson about this  
20 correct, during the course of his representation?

21 THE DEFENDANT: Uh-uh.

22 THE COURT: Are you saying you haven't talked to  
23 him?

24 THE DEFENDANT: No, not in the course of this.

25 THE COURT: Not in what?

1           THE DEFENDANT: Not in the mix of all of this. I  
2           ain't been talking to him like that. I'm just  
3           starting to talk to him at this time.

4           THE COURT: Mr. Nielson, in your representation  
5           you went I'm sure to the jail to talk to him.

6           MR. NIELSON: I did not. There was actually --  
7           and I will correct the record a little bit. Melissa  
8           Inzerillo actually represented him at first and she  
9           helped get to the point of bond.

10           I believe he was in jail for about 70 days and  
11           then the case got transferred to me after that. I  
12           know that we had an investigator meet with him at  
13           least one time while I was in jail. I know Miss  
14           Inzerillo met with both him and his wife while he was  
15           in jail before he bonded out. I met him in my office  
16           on at least two occasions before this week that I can  
17           remember. Once in early January and once last week.  
18           And so we have met. We have talked. We've discussed  
19           the evidence. I've shown him the videos, all of that  
20           and shown the video that I believe was pertinent that  
21           would show the possession of the drugs and that kind  
22           of stuff. So we have talked and I believe we have  
23           talked about the evidence to the point where he  
24           understands what he's facing.

25           THE COURT: So Mr. Hutchison, do you agree that

1 someone else from the public defender's office has  
2 discussed this with you besides Mr. Nielson, another  
3 public defender and an investigator?

4 THE DEFENDANT: You said should they.

5 THE COURT: No, I said, you acknowledge that they  
6 did. Mr. Nielson tells me that these folks did talk  
7 to you.

8 THE DEFENDANT: Yeah, they came. The investigator  
9 came down to the jail but after that I ain't talked to  
10 him. Melissa Inzerillo wasn't on it. I don't know  
11 where that come about. But a couple -- about a week  
12 before, right before this day, he started talking to  
13 me more about the case.

14 THE COURT: Okay. Let me ask you this. Do you  
15 think of anything that Mr. Nielson should have done  
16 for you that he hasn't done for you in his  
17 representation as far as preparation for the trial of  
18 this case or the entry of this plea? Can you tell me  
19 anything that needed to be done that wasn't done?

20 THE DEFENDANT: Well, I was offered two years.

21 THE COURT: I understand about an offer. An offer  
22 has nothing to do with regards to trial preparation.  
23 Do you understand that? As far as trial preparation,  
24 is there anything that he didn't do or he didn't show  
25 you that he should have shown you, or that he should

1 have done for you that you can tell me specifically on  
2 the record now?

3 THE DEFENDANT: No, sir.

4 THE COURT: So, the next question is then he has  
5 done everything he can for you under the circumstances  
6 as your attorney, correct? Disregarding anything  
7 about offers or pleas.

8 THE DEFENDANT: Yeah.

9 THE COURT: We've already covered that you, by  
10 your actions, caused some problems with the offer that  
11 was made. Do you understand that? I talked to you  
12 about that earlier.

13 THE DEFENDANT: Yes.

14 THE COURT: Now you ensconced yesterday in  
15 leaving. Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: But as far as his representation he  
18 has done everything he can for you under the  
19 circumstances, you admit that, correct?

20 THE DEFENDANT: Yes.

21 THE COURT: So then you are satisfied with his  
22 services based on that?

23 THE DEFENDANT: Right.

24 THE COURT: Okay. At this time Mr. Hutchison, I  
25 am going to ask Miss Hamilton, the solicitor, to state

1 to me the facts which support these three charges.  
2 Listen carefully because when she finishes I will have  
3 a couple more questions for you.

4 Miss Hamilton.

5 MS. HAMILTON: Thank you, Your Honor. On  
6 September 15th of 2017, the defendant was pulled over  
7 by Rock Hill PD officers within York County. He  
8 actually was driving under suspension. He was  
9 arrested for driving under suspension. At that time  
10 officers searched him incident to arrest. He did  
11 consent to a search of his person. Upon searching him  
12 officers did find in his pants pocket that he was  
13 wearing at that time 17 bindles of heroin laced with  
14 fentanyl measuring out to be on the drug report point  
15 six grams total of the 17 bags. That's five times the  
16 inference level for heroin. Additionally on his  
17 person in his pocket was point seven -- point three  
18 seven grams of cocaine in his possession. That did  
19 test positive for cocaine on the drug report. He was  
20 arrested for all of those items. He initially had  
21 \$91.35 on his person at that time. He was charged  
22 with possession with intent to distribute due to the  
23 inference level and the packaging of the drugs; 17  
24 separate bags, all measured to approximately the same  
25 weight which is evidence of distribution.

1 He does have multiple drug convictions but the  
2 most recent one to enhance this to a third offense is  
3 possession with intent to distribute a scheduled one  
4 through three controlled substance, second offense,  
5 2015 possession of cocaine second offense. And those  
6 are convictions that I have admitted as State's  
7 Exhibit Number One for the the record.

8 The next charge as to the escape on September 17th  
9 of 2017 when the defendant was being transported from  
10 the Rock Hill Police Department holding cell in a  
11 transport van to Moss Justice Center where we are  
12 currently located the defendant as the officer was  
13 pulling onto Moss Justice Boulevard which is right  
14 outside of this courtroom, within York County, the  
15 defendant did jump out of the back of that transport  
16 van fleeing across the street and into some woods in  
17 the back. Subsequently hiding in a barn about three  
18 quarters of a mile down the road. Less than that.  
19 Canine was subsequently called when the officer  
20 driving the transport vehicle was alerted to the  
21 defendant leaving and jumping out. Canine did track  
22 the defendant from that transport vehicle, steady  
23 track all the way to the location that he subsequently  
24 was found hiding in that barn. When he was found in  
25 that barn he did have Rock Hill issued handcuffs on

1 his person. They were attached and cuffed, both of  
2 them to that one arm. Additionally the suspects in  
3 the back -- not suspects, defendants on other cases,  
4 inmates that were also being transported; a male and a  
5 female, did state that defendant jumped out. One of  
6 them stated the defendant said, "I'm getting out of  
7 here" and proceeded to jump out of the transport van.

8 Your Honor, the State would like you to hear the  
9 full record in this case. Additionally, the State  
10 would be asking over the minimum. We are not giving a  
11 specific number but due to the nature of his crimes  
12 and to his history and his failure to conform to the  
13 laws of this state and what he made -- a bunch of  
14 people -- it was probably 10 to 15 officers I think  
15 responded to the escape charge. So it was a lot of  
16 manpower due to the fact that he decided he just  
17 wanted to run from that van.

18 His prior convictions are 2017 failure to stop for  
19 a blue light. Possession with intent to distribute a  
20 controlled substance, second offense; distribution of  
21 cocaine, second offense; two counts of that,  
22 distribution of cocaine second offense; 2015  
23 possession of cocaine, second offense; 2014 receiving  
24 stolen goods, four counts; 2013 petit larceny  
25 enhanced; 2011 resisting arrest; driving under

1 suspension, third offense; violation of drug  
2 distribution law; 2009 driving under suspension, third  
3 offense; violation of drug distribution law; 2007  
4 possession with intent to distribute cocaine, second  
5 offense; possession of intent to distribute within  
6 proximity of a school or park; possession of  
7 contraband by a prisoner; habitual traffic offender  
8 and receiving stolen goods; 2005 habitual traffic  
9 offender; 2004 possession of marijuana second or  
10 subsequent offense.

11 In 1999 he was revoked on YOA. That YOA was given  
12 to him in 1997 on a burglary third degree, resisting  
13 and three counts of petit larceny. And I think I  
14 misspoke as to the recent 1017 distribution of  
15 cocaine, second offense, two counts. I think I said  
16 possession of cocaine. But the State's position is he  
17 received more than the mandatory 11 in this case and I  
18 will leave that to the discretion of Your Honor.

19 THE COURT: Mr. Hutchison, as far as the facts  
20 that were stated -- forget about the statements  
21 concerning your record -- but the facts that support  
22 these three charges, do you agree that what Miss  
23 Hamilton just said to me is substantially correct?

24 THE DEFENDANT: Yeah, but about the escape no  
25 manpower -- I mean, the van door came open.

1 THE COURT: What?

2 THE DEFENDANT: The back van door came open for  
3 the escape charge. I mean, the back door came open.

4 THE COURT: But you left the van didn't you?

5 THE DEFENDANT: Yeah, so I wouldn't get hurt. I  
6 was withdrawing off of heroin so I mean, I didn't have  
7 no choice.

8 THE COURT: And you ran somewhere and were hiding  
9 in a barn?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: So you don't dispute that statement of  
12 the facts then? You left the van. Nobody made you  
13 leave the van. The other people stayed. You went  
14 somewhere and hid in a barn, correct? And the dogs  
15 had to come after you.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Right. Okay, so you acknowledge that.  
18 Okay. And you agree that the other statement of facts  
19 concerning the two drug charges that statement of fact  
20 is substantially correct too, correct?

21 THE DEFENDANT: Right.

22 THE COURT: Okay. All right. After hearing the  
23 statement of facts and considering all the other  
24 questions that I asked you and taking into  
25 consideration the fact that this is what we call a

1 straight-up plea and any sentence will be in my  
2 discretion. Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Is it still your desire to plead  
5 guilty to these three charges?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Mr. Nielson, do you believe your  
8 client fully understands all of his rights?

9 MR. NIELSON: I do, Your Honor.

10 THE COURT: And are you satisfied as his attorney  
11 that he has been able to fully comprehend and  
12 understand all of my questions here this morning?

13 MR. NIELSON: I am, Your Honor.

14 THE COURT: Okay. Do you also concur in his  
15 decision to plead guilty to all three of these charges  
16 based on the facts and circumstances presented.

17 MR. NIELSON: Based on where we are and facts and  
18 circumstances, yes, but I will get a little more into  
19 that in mitigation.

20 THE COURT: Sure. Okay. I am satisfied that the  
21 facts support the plea to all three charges. I find  
22 that his plea has been entered freely, voluntarily and  
23 intelligently. He has done so with the advice of very  
24 competent counsel with whom he has indicated he is  
25 satisfied. Therefore I am going to accept his guilty

1 plea to all three of these charges; possession with  
2 intent to distribute heroin, third offense; escape;  
3 and possession of cocaine, third offense as well.

4 Now Mr. Nielson, I will be glad to hear from you  
5 sir.

6 MR. NIELSON: Yes, Your Honor. I will tell you  
7 that Mr. Hutchison is a man that cares very deeply  
8 about his family. His family cares deeply about him.  
9 They tried to hire an attorney yesterday to get a  
10 second view of this case and make sure he was doing  
11 the right thing and they were willing to pay money to  
12 do that. I think that shows despite the fact they  
13 don't have a lot of money that they care deeply about  
14 what's happening to him today.

15 His wife is not able to be here today but she was  
16 in out office all morning long yesterday with him and  
17 is in support of him. I would like to go a little bit  
18 into the history of what happened in this case. Mr.  
19 Hutchison has been eluding to it but in mitigation I  
20 would like to talk about it a little bit.

21 This is a case where we were initially offered two  
22 years Your Honor, and Mr. Hutchison has brought that  
23 up many times as he has been trying to talk to you.  
24 That offer was put on the table and we were given a  
25 deadline to accept that offer. I asked the State and

1 they granted me a two week extension on their original  
2 deadline because he is currently on probation and has  
3 ten years hanging over his head on probation. That's  
4 where we got in trouble with the offer, Your Honor,  
5 and me and my client had a misunderstanding and I  
6 understand why he's upset and why he thinks he was  
7 treated unfairly as to that but he was suppose to be  
8 back and he thought I was suppose to call him. And so  
9 when he missed his deadline I tried to call him and he  
10 did not answer his phone and the deadline passed and  
11 they withdraw the offer which is their right. And he  
12 doesn't like that but I think he understands that is  
13 their right if they want to do that.

14 I bring all that up, all that happened within the  
15 last month or so, Your Honor. I believe the original  
16 deadline was somewhere around January 10th if I am  
17 remembering right. It was our first term in January  
18 of this year. I bring all of that up to say that one  
19 month ago that he could have plead and had a  
20 recommendation of two years in jail. I believe that  
21 five and a half times that is plenty to punish  
22 somebody not for exercising their constitution right,  
23 but for the problems he had in the months since then.  
24 As he told you he is a user of heroin. He is a user  
25 of cocaine. He's struggle with it throughout much if

1 not all of his adult life and he will continue to  
2 struggle with it when he gets out of prison and he  
3 knows that the only way he is going to get clean is if  
4 he wants to get clean and wants to stay clean. His  
5 eyes got really big when I said that because I know he  
6 wants to stay clean and I know he wants to get out and  
7 do well for his family.

8 We are asking Your Honor to consider something in  
9 the neighborhood of the minimum time which would be  
10 eleven years and to run any charge on the cocaine  
11 concurrent with whatever you give on the possession of  
12 heroin. He understands that he is going to have to go  
13 to prison and do 85 percent of whatever you give him  
14 on the the heroin charge. And so he's looking at  
15 doing eight and a half years without parole on that  
16 and then he's going to have to do time consecutive to  
17 that on the escape for at least one year.

18 We're asking Your Honor to consider that as being  
19 enough in this case. The longest amount of time he  
20 has ever spent in the department of corrections up  
21 until now is three years. So that 11 years is nearly  
22 four times longer then he has ever spent in the  
23 department of corrections and we ask you to consider  
24 all of those things in sentencing him and we would ask  
25 for the minimum in this case, Your Honor.

1 THE COURT: Thank you Mr. Nielson. Mr. Hutchison,  
2 do you agree with what your lawyer just said?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Is there anything you want to say to  
5 me.

6 THE DEFENDANT: No, sir.

7 THE COURT: Anybody want to speak on your behalf?

8 THE DEFENDANT: No, sir.

9 THE COURT: Okay.

10 MR. NIELSON: I would say his wife would if she  
11 was here Your Honor.

12 THE COURT: All right. Anything else from the  
13 State?

14 MS. HAMILTON: Nothing else from the State.

15 THE COURT: All right. Mr. Hutchison, with  
16 regards to Indictment 2018-GS-46-00205 -- excuse me, I  
17 am sorry -- 00204, the possession with intent to  
18 distribute heroin, third offense, the sentence of the  
19 Court is you be committed to the State Department of  
20 Corrections for a term of 14 years.

21 With regards to Indictment 2018-GS-46-00205,  
22 possession of cocaine, third offense, sentence of the  
23 Court is you be committed to the State Department of  
24 Corrections for a term of five years. This sentence  
25 will run concurrent with the sentence on the

1 possession with intent to distribute heroin, third  
2 offense. And with regards to the escape charge,  
3 sentence of the Court is you be committed to the State  
4 Department of Corrections for a term of one year.  
5 That sentence runs consecutive to the sentence on the  
6 2018-GS-46-00204, the possession with intent to  
7 distribute heroin, third offense. That's a total of  
8 15 years.

9 Good luck to you.

10 MS. HAMILTON: Thank you, Your Honor. And we  
11 would request a lifting of the bench warrant.

12 THE COURT: Yes.

13 MR. NIELSON: Thank you, Your Honor.

14 (END OF TRANSCRIPT)

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 13th day of February, 2018.

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

May 3, 2018

Aileen Butler

STATE OF SOUTH CAROLINA

County of YORK

2020 JAN 29 PM 1:42

TRAVIS SEMAJ HUTCHINSON

Full name and prison number (if any) of Applicant

v.

State of South Carolina

YORK PUBLIC DEFENDER  
OFFICE,  
YORK SOLICITORS OFFICE

APPLICATION FOR  
POST-CONVICTION RELIEF

ART 1, SECT 9 Petition For  
Speedy Remedy

DAVID HAMILTON  
C.C. G. & G.  
YORK COUNTY REC  
2020 JAN 29 AM 11:53

FILED-RECEIVED

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention MCCONMICK CJ

2. Name and location of Court which imposed sentence YORK GENERAL SESSIONS

3. Name(s) of co-defendant(s) (if any) of Travis Hutchinson

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

- (a) 2018 ES 46 201 (PWID Heroin) 3RD, 2018 ES
- (b) 46-2013 (ESCAPE) 2008 ES 46 205 (POSSECOCAINE) 3RD

(c) \_\_\_\_\_  
5. The date upon which sentence was imposed and the terms of the sentence:

(a) FEB 13, 2018

(b) \_\_\_\_\_

(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

(a) after a plea of guilty w/out RECOMMENDATION/NEGOTIATION FNI

(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?  
\_\_\_\_\_

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

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

i. SC COURT APPEALS # 18-000271

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. DENIED

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result: (FOLLOWING DIRECT APPEAL

i. -JUNE 2019 - (for 17-27-USA)

ii. CALCULATION PCK

iii. FILED W/IN ONE YEAR

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

i. NO - CERT. FILED APPEAL DISMISSED

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

(a) NA

(b) \_\_\_\_\_

STRAIGHT UP PLEA WHERE STATE COULD NOT RECOMMEND SENTENCE YET ASKED FOR MORE MINIMUM.

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

(a) \_\_\_\_\_ SEE ATTACHED BRIEF  
(b) \_\_\_\_\_  
(c) \_\_\_\_\_

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

(a) \_\_\_\_\_ SEE ATTACHED BRIEF  
(b) \_\_\_\_\_  
(c) \_\_\_\_\_

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

(a) any petition in a State Court under South Carolina Law? DIRECT APPEAL  
(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? 0  
(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? 0  
(d) any other petitions, motions or applications in this or any other Court? 0

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

(a) the specific nature thereof:  
i. \_\_\_\_\_ N/A  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_  
iv. \_\_\_\_\_  
(b) the name and location of the Court in which each was filed:  
i. \_\_\_\_\_ N/A  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_  
iv. \_\_\_\_\_

(c) the disposition thereof:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

No

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

(a) which grounds have been presented:

- i. NONE
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. NONE
- ii. 1st PCR Filed w/in A YEAR OF
- iii. DELIAC DIRECT APPEAL

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) \_\_\_\_\_ NO \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea? Devon Nelson (YONIC P.D. OFFICE)
- (b) your trial, if any? \_\_\_\_\_
- (c) your sentencing? \_\_\_\_\_
- (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. Devon Nelson - YONIC P.D. OFFICE  
YONIC JUDICIAL CENTER YONIC SC
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. NEGOTIATED @ YR PLEA / NEGLECTED TO  
ACCEPT PLEA AS ACCEPTED / SOUGHT
- ii. EXTENSION ~~TO~~ TO EXPRESS WISHES FOR  
2 YR PLEA AGAINST / STOOD BY AT PLEA
- iii. W/ NO LEGAL ADVICE IE USER DEFENSE  
TO PWED, ACTED TO SIBLOGUE PLEA  
OFFER DEF IMMEDIATELY ACCEPTED OFFER  
BUT FOR JAC WOULD HAD @ YRS BEEN  
RELEASED.

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

to be ALLOW 1st foremost to be ABle to ACCEPT  
SERVE (2) HAS ORDERED - BARREINe THAT RELIEF  
PLEA VACATED AS VIOLATED by SOLICITOR

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

\_\_\_\_\_  
No

STATE OF SOUTH CAROLINA )  
County of MCCORMICK )

VERIFICATION

I, \_\_\_\_\_, 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.

Travis Rutherford

SWORN to and subscribed before me this 23rd  
day of January, 2020.

C.S. Jones (L.S.)  
Notary Public

My Commission Expires: 8/5/2024

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

I, Travis Hutcheon, 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.

Travis Hutcheon  
Applicant

SWORN or affirmed to and subscribed before me this

23rd day of January, 2020.

[Signature]  
Notary Public

My Commission Expires: 8/5/2024

pt 1062 2020 CP 40-338

PCR ISSUES

Issue one Hutchinson V. State

C/A \_\_\_\_\_

2020 JAN 29 AM 11:53  
DREG HAMILL  
C.C.C.P. @  
YORK COU

FILED-RECEIVED

(1) Plea Counsel provided ineffective assistance of counsel pur. to Davies V. State (SC) Lafler V. Cooper (US Supreme Court 2012) 6th AMend, 14th Amend US Constitution where @ pg. 26 line 21 Plea Counsel admits applicant was offered a two year plea deal by the State!

Applicant, a d his wife Latisha Williams being present. Immediately accepted the offer of tow years and wanted actually to plead that same day that the plea was offered.

Plea Counsel was ineffective based on the Sole Dispositive Fact Rather than Immediately Informing the State (etal) that Applicant had accepted the two tear plea offer and wanted to do so Right there on the spot, counsel to notify the State (et.Al.) that I accepted the two year offer and requested a two ~~year~~ <sup>week</sup> extension from the state. I had absolutely no knowledge he had sought an extension and had I known I would have fired him and notified the state personally that yes I did want the two year plea. He did not have my consent to seek an extension, and there was no reason for him to seek an extension.

In between, the time I accepted the two year plea offer (Jan. 10, 2018) and his request to an extension for a two week continuance the state indicted me for enhanced PWID Herion (3rd) and Possession of Cocaine (3rd) upgrading the charges from 2nd offense on Jan. 18, 2018; Therefore, his failure to Immediately Inform the State of my acceptance of the two year plea offer and his request for a two week extension, without my knowledge or consent, prejudiced my case in that the charges were upgraded to third offense when I could pled to second offense.

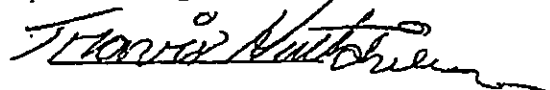
Applicant was prejjudiced As he never admitted to having a "Intent to distribute Herion" and @ pg. 27-24-25 Trial Counsel notified the court "As he told you he is a user of Herion a user of Cocaine" that he struggled with throughout his life.

The Failure of trial counsel and the court obtain a on the record admission of guilt to Intent to distribute Herion is reversible error.

Relief

Offense of PWID Herion be reduced to possession of Herion (As a User).

I Verify these facts



1-20-20

2-62

Issue Two

Trial Counsel was ineffective at the plea hearing, when the plea was entered based upon agreement that the state would not make a recommendation as to sentence pg. 6 L. 12-13 Yet a pg. 23 L.17 the state did make a recommendation and thus did violate the plea contract by stating " but the state's position is he receive more than the mandatory minimum 11 yrs in this case. That is a recommendation. A recommendation that the Judge manifested when he gave applicant 15 yrs.

Trial counsel should have objected the state violated the plea contract. Guilty pleas are governed by contract Law.

Relief

Plea Vacated

Issue Three

Trial counsel was ineffective and the guilty plea involuntary when in violation of Pittman V. State the trial court did not apprise the applicant of the elements of the offense Applicant was charged with possession of cocaine for .37 of gram of white powder \* A sum typical of a user of cocaine not a seller or distributor of cocaine.

Likewise applicant was charged with PWID of Herion for a .6 of a gram a sum typical of a user for a one day supply (or less) about a Half a gram the trial court failure to apprise the defendants of the elements of the crime he is pleading to renders the plea involuntary and trial counsel was ineffective see Boykin V. Alabama- Hill V. Lockhart ( U.S. Supreme Court cases.)

Issue Four

I.A.C. Not moving, trial court consider Burden Shifting Presumption 17 bags containing only miniscule .6 gram Herion were for sale overcome by rule 11 SCRPC counsels representation defendant was user. coupled w/ defendant under oath plea user statement required court to deem presumption overcome accept poss. Herion w/ poss. cocaine plea only as not factual basis exists to accept PWID N.C. V. Alford (1970 US)

Issue Five

SCRE 406 pattern, History York Public Def Allowing Plea Deals to evaporate thru negligence Frank Greene V. State 2008 CP-46  
(Plea Reinstated)

Under Oath I verify

s/ Frank Greene

1-20-20

⓪

STATE OF South CAROLINA )  
County OF YORK )

IN COURT OF Common Pleas  
FOR SIXTEENTH JUDICIAL Circuit

TRAVIS S. Hutchison )  
v. Applicant )

AFFIDAVIT OF APPLICANT  
IN Support of ~~FOR~~  
POST-CONVICTION Relief

STATE )

Respondent

I, TRAVIS S. Hutchison, do hereby AFFIRM UNDER OATH the following TRUE AND ACCURATE FACTS,

FILED-RECEIVED  
2020 JAN 29 11:03  
DAVID HAMILTON  
CLERK, C.P. & GS  
YORK COUNTY, SC

(1) ON SEPT 15, 2015 I WAS ARRESTED CHARGED WITH PWID HEROIN AND OFFENSE, POSSESSION OF COCAINE AND ON SEPT 17, 2015 I WAS CHARGED WITH ESCAPE.

(2) ON JANUARY 10, 2018 Devon Nielson Public Defender Related the STATE plea offer of TWO YEARS to all charges. I immediately INFORMED him I would TAKE the offer OF TWO YEARS AND INSTRUCTED him to INFORM STATE I would PLEAD GUILTY Right NOW ON JAN. 10, 2018

(3) Without my knowledge or consent he went AGAINST my EXPRESS INSTRUCTIONS

RATHER he " ASKED THE STATE FOR A TWO WEEK EXTENSION ~~ON~~ ON THEIR ORIGINAL DEADLINE " PG 27 L. 1

HE GOES ON TO STATE " ME AND MY CLIENT HAD A MISUNDERSTANDING " PG 27. L. 4-5

HE NEGLECTED TO INFORM THE TRIAL JUDGE THAT APPLICANT IMMEDIATELY ACCEPTED THE PLEA OFFER, (WHICH WOULD HAVE BROUGHT HIS EFFECTIVENESS INTO QUESTION)

APPLICANT ASSERTS HIS TRIAL COUNSEL REPRESENTATION FELL WELL BELOW PROFESSIONAL NORMS AND HE WAS PREJUDICED UNDER STRICKLAND V. WASHINGTON 104 SCT 2052 (1984)

COUNSEL HAD A DUTY TO IMMEDIATELY INFORM THE STATE HE ACCEPTED THE TWO YEAR PLEA OFFER AND WISHED TO PLEAD THAT SAME DAY. RATHER HE WENT AGAINST HIS CLIENT EXPRESSED DESIRE TO COMPLETE THE PLEA CONTRACT SEE CLARK V. STATE (SC) AND ASKED FOR A TWO WEEK EXTENSION THAT HIS CLIENT HAD NOT REQUESTED

AT THE SAME TIME HE WAS ASKING FOR THE EXTENSION OF TWO WEEKS HE SHOULD HAVE BEEN ACTUALLY SHOULD HAVE BEEN INFORMING STATE YES MY CLIENT ~~WEEKS~~ ACCEPTS THE TWO YEAR PLEA OFFER

RELIEF UNDER DAVIS V. STATE AND LAFLER V. COOPER AND FRANK GREENE V. STATE (A YORK CO. CASE) APPLICANT IS ENTITLED TO HAVING THE TWO YEAR OFFER ~~ACCEPTED~~ PLACED BACK ON THE TABLE AND HAVING HIS ACCEPTANCE OF THAT OFFER BEING RELATED TO THE STATE BY COMPETENT COUNSEL. THIS WOULD BE A NEGOTIATED PLEA CONTRACT - THAT "BUT FOR" COUNSEL INEFFECTIVE ASSISTANCE HE WOULD HAVE TAKEN ADVANTAGE OF.

③

(5) MY WIFE LATISHA WILLIAMS HUTCHISON WAS PRESENT AND WITNESSED THE JANUARY 10, 2018 TWO YEAR PLEA OFFER BEING PRESENTED AND ACCEPTED BY AFFIANT. AND SHE WITNESSED MY ~~DESI~~ DESIRE TO PLEAD THAT SAME DAY.

(6) I NEXT SPOKE WITH DEVON NIELSON ON FEB. 12, 2018 HE STATED TWO YEAR PLEA OFFER HAD BEEN WITHDRAWN AND I WAS SET FOR TRIAL I TOOK MY WIFE HOME AND COULD NOT MAKE IT BACK TO COURTHOUSE BEFORE 5 PM. THE BONDSMAN PRESENTED Bench WARRANT ISSUED AND I APPEARED ON FEB. 13, 2018 AND BEING DEVON NIELSON HAD FAILED AND REFUSED TO INFORM THE STATE I HAD ACCEPTED THE TWO YEAR PLEA OFFER HAD REVOKED THE OFFER.

(7) DEVON NIELSON INFORMED ME I WOULD EITHER TAKE STRAIGHT UP PLEA 11 YRS TO 55 YRS WITH NO RECOMMENDATION OR GO TO TRIAL BY JURY.

④

LEFT WITH NO ALTERNATIVE I ENTERED  
A STRAIGHT UP PLEA ON THE CONDITION  
OF STATE WOULD MAKE NO RECOMMENDATION  
AS TO THE SENTENCE. YET DURING THE  
PLEA AT PG. 23 LINE ~~17~~ <sup>17</sup> THE  
STATE MADE FOLLOWING STATEMENT,

" BUT THE STATES POSITION IS HE RECEIVE  
MORE THAN THE MANDATORY MINIMUM  
OF (11) ELEVEN YEARS IN THIS CASE "

AND JUDGE WENT WITH THE STATES " POSITION "  
AND GAVE ME ~~17~~ 15 YEARS

TRIAL COUNSEL DID NOT OBJECT TO THE  
STATES " POSITION " WHICH WAS A RECOMMENDATION  
THAT JUDGE WENT ALONG WITH.

HAD I KNOWN STATE WAS GOING TO  
OPPOSE THE MINIMUM I WOULD HAVE NOT  
PLEAD GUILTY.

(8.) AFFIANT WAS A USER OF BOTH HEROIN  
AND COCAINE. ~~HE~~ <sup>I</sup> WAS ARRESTED WITH  
DRUGS THAT WERE BOUGHT FOR MY OWN  
PERSONAL USE THAT WAS LESS THAN  
A ONE DAY SUPPLY

⑤

Devon Nicolson had been informed by me  
 as he stated on the record @ pg 27, L  
 23-24 I was a Heroin and Cocaine user.

⑨ The Trial Judge did NOT inform me  
 of the CRUCIAL ELEMENTS OF THE OFFENSE  
 OF PWID Heroin - HAD HE DONE SO  
I WOULD HAVE TRUTHFULLY INFORMED HIM  
I HAD NO INTENT TO DISTURB THE  
Heroin; my only intention was to  
 feed my addiction so I would not  
 suffer withdrawal sickness. The  
 cocaine charge was for simple possession  
 of drugs I was using, found in the  
 same PERSONAL bag in my front pocket.

Further AFFIANT SAYETH NOT.

NOTARY public

SI [Signature]

Sworn and subscribed  
 before me this 23<sup>rd</sup>

day January 2020

[Signature]  
 NOTARY public

8/5/2024

O/A

STATE of SC )  
 County of York ) IN Court of Common Pleas  
 (- PCR -)

TRAVIS SEMAJ HUTCHINSON )  
 Applicant )  
 - v - )  
 STATE, (ETAL) )  
 Respondent )

FILED-RECEIVED  
 2020 JAN 29 AM 11:54  
 DAVID HAMILTON  
 C. C. P. & CS  
 YORK COUNTY, SC

Record of Lower Court  
 General Sessions Transcript, AND  
 Brief of Appellant (Direct Appeal) ①

Submitted w/ PCR  
~~TRAVIS HUTCHINSON~~

1-24-2020

① DIRECT APPEAL DENIED JULY 2019  
 17-25-415 (A) Secoded LAWS (Adding time PCR)

EXHIBIT A


Chief Public Defender  
Public Defender Office  
PO BOX 691  
York SC 29745

Travis S. Hutchinson  
245544 MCCI  
386 Redemption Way  
29899

Sir:

Pursuant to In matter of RE: Haddox (SC) I am requesting a complete copy of; my attorney client file in State V. Travis S. Hutchinson 2018-GS-46-00204, 00205, 00213 in which Devon R. Nielson (ESQ) represented me at Feb. 13, 2018 plea of guilty. Including any e-mails relative offer of two year plea bargain. A request for extension for two weeks, any letters to/from Solicitor and all evidence, Exhibits (etc.)

I need this as soon as possible.

  
1-20-20

cc:  
Clerk of Court  
w/ PCR Filing

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	FOR THE SIXTEENTH JUDICIAL CIRCUIT
	)	
	)	
Travis Hutchinson #24554,	)	Case No.: 2020-CP-46-338
Applicant,	)	
	)	
v.	)	<b>RETURN</b>
	)	
State of South Carolina,	)	
Respondent.	)	
_____)		

NOW COMES Respondent, the State of South Carolina, making its return to the application for post-conviction relief filed on January 29, 2020, by Applicant Travis Hutchinson (Applicant), Respondent respectfully offers the following in support of its return:

**I. Procedural History**

Applicant is presently in the South Carolina Department of Corrections. During its January 2018, the York County Grand Jury indicted Applicant for possession with intent to distribute heroin (2018-GS-46-00204), possession of cocaine (2018-GS-46-00205), and escape (2018-GS-46-00213). Assistant Public Defender Devon Nielson, Esquire, represented Applicant. Assistant Solicitor Marina Hamilton of the Sixteenth Circuit Solicitor’s Office, prosecuted the case.

On February 13, 2018, Applicant entered into a guilty plea before the Honorable Roger E. Henderson. Judge Henderson sentenced Applicant to fourteen years of imprisonment for the heroin charge, five years of imprisonment for the cocaine charge, and one year of imprisonment for the escape charge. The sentence for the escape charge was to run consecutive to the two drug charges.

Applicant filed a timely Notice of Appeal. An *Anders* brief was filed on behalf of Applicant. By an unpublished opinion, the South Carolina Court of Appeals dismissed Applicant’s

appeal. *State v. Hutchinson*, Appellate Case No. 2018-000271 (S.C. Ct. App. filed June 5, 2019).

The Remittitur was sent June 21, 2019.

## **II. Factual History**

The State summarized the underlying facts at Applicant's guilty plea hearing as follows:

### *Drug Charges*

"On September 15, 2017, [Applicant] was pulled over by Rock Hill PD officers within York County. He actually was driving under suspension. He was arrested for driving under suspension. At that time, officers searched him incident to arrest. He did consent to a search of his person. Upon searching him, officers did find in his pants pocket that he was wearing at that time 17 bindles of heroin laced with fentanyl measuring out to be on the drug report point six grams total of the 17 bags. That's five times the inference level for heroin. Additionally on his person in his pocket was point seven – point three seven grams of cocaine in his possession. That did test positive for cocaine on the drug report. He was arrested for all of those items. He initially had \$91.35 on his person at that time. He was charged with possession with intent to distribute due to the inference level and the packaging of the drugs; 17 separate bags, all measured to approximately the same weight which is evidence of distribution."

(GP Tr. 19-21)

### *Escape Charge*

"...On September 17<sup>th</sup> of 2017 when [Applicant] was being transported from the Rock Hill police department holding cell in a transport van to Moss Justice Center where we are currently located [Applicant] as the officer was pulling onto Moss Justice Boulevard which is right outside of this courtroom, within York County, [Applicant] did jump out of the back of the transport van fleeing across the street and into some woods in the back. Subsequently hiding in a barn about three quarters of a mile down the road. Less than that. Canine was subsequently called when the officer driving the transport vehicle was alerted to [Applicant] leaving and jumping out. Canine did track [Applicant] from that transport vehicle, steady track all the way to the location that he subsequently was found hiding in that barn..."

(GP Tr. 20-21).

## **III. Allegations Raised and Relief Sought in Application**

In his post-conviction relief application, Applicant alleges he is being held in custody unlawfully for several reasons, which Respondent interprets as the following:

- I. Ineffective Assistance of Counsel
  - a. Failure to inform Applicant of a guilty plea offer;
  - b. Failure to "object" to the State's violation of Applicant's "plea contract;"

- c. Failure to inform Applicant of the elements of the offense; and
- d. Failure to object to the factual basis of his possession with intent to distribute heroin charge.

Applicant requests "...1st and foremost to be able to accept serve 2 y[ea]rs offered – barring that relief plea vacated as violated by Solicitor."

Attached to and incorporated herein are the York County Clerk of Court Records regarding the subject convictions, the Applicant's South Carolina Department of Corrections Records, the plea transcript, the appellate records, and the current PCR application. Respondent reserves the right to amend this Return upon receipt of relevant information.

#### **IV. Responses to Claims of Ineffective Assistance of Counsel**

In his application, Applicant asserts various claims of ineffective assistance of counsel. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984); *Taylor v. State*, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). In a PCR action, an applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When the applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "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*, 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*, 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). 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.

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 pleaded 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)).

Respondent submits Applicant cannot satisfy the requirements set forth in *Strickland* for any of his allegations of ineffective assistance of counsel. However, this allegation probably raises

questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. *Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### VI. Assertion of Rights to Notice of Amendments, Experts

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. Rule 11(a), SCRPC. *Pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing a nullity where person was represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) (“Since there is no right to ‘hybrid representation’ that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.”).

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent, or in the alternative continue the matter to permit adequate time to investigate and address the claims. *See Love v. State*, 428 S.C. 231, 242, 834 S.E.2d 196, 201 (2019) (“When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record.”); *see also* Rules 15(a)-(b), SCRPC (explaining how to amend a pleading).

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

#### **VII. All Other Allegations**

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

**VIII. Conclusion**

WHEREFORE, having made its return, the State requests an evidentiary hearing be held on Applicant's claim of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

BRIANNA L. SCHILL  
Assistant Attorney General

By: s/ Brianna L. Schill  
ATTORNEYS FOR RESPONDENT  
Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
Telephone: (803) 734-3737

February 2, 2021


STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	
	)	
	)	2020-CP-46-338
	)	
TRAVIS S. HUTCHINSON, #245544,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

---

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

Ola A. Johnson, Esquire  
 Ola A. Johnson, Attorney at Law  
 Post Office Box 549  
 Lexington, South Carolina 29071

DATED this the 2nd day of February, 2021.

  
 Hannah Bradham  
 Legal Assistant  
 For Respondent

FILED-RECEIVED

STATE OF SOUTH CAROLINA )

2022 APR 25 AM 10:25

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK )

DAVID HAMILTON

SIXTEENTH JUDICIAL CIRCUIT

TRAVIS HUTCHINSON )

DC. C.P. & GS  
YORK COUNTY, SC

CASE NO.: 2020-CP-46-00338

Applicant, )

v. )

AMENDED

POST CONVICTION RELIEF

STATE OF SOUTH CAROLINA, )

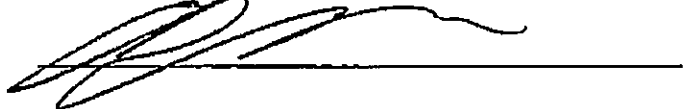
APPLICATION

Respondent. )

Applicant, by and through his undersigned attorney, hereby amends his application for Post-Conviction Relief filed January 29, 2020. This amended complaint adopts and includes all grounds in the original application. Applicant further alleges as additional grounds regarding his claim of ineffective assistance of counsel as to Devon R. Nelson as follows:

1. Prior to the guilty plea, Applicant's counsel failed to explain the details of the Applicants guilty plea and sentencing and the elements of each offense.
2. Applicant's counsel failed to provide a copy of the states evidence to the Applicant
3. Applicant's plea counsel, failed to discuss a defense strategy with applicant or to properly review evidence with Applicant.
4. Applicant's counsel failed to meet with the Applicant a sufficient number of times to review the evidence.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'OLA JOHNSON', is written over a solid horizontal line.

**OLA JOHNSON**

Attorney for Applicant

P.O. Box 549

Lexington, SC 29071

This 31 day of March, 2022.

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS  
CASE NO. 2020-CP-46-00338

TRAVIS HUTCHINSON, )  
 )  
 Plaintiff, )  
 )  
 -vs- )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

TRANSCRIPT OF RECORD

April 13, 2022  
York, South Carolina

B E F O R E:

Honorable R. Scott Sprouse, Judge.

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

Mr. Ola A. Johnson  
Attorney at Law  
Attorney for the Applicant  
Lexington, South Carolina

Mr. Michael J. Neubauer  
Attorney at Law  
Attorney for the State of South Carolina  
Lexington, South Carolina

Shannon E. McGilberry, CVR-M  
Court Reporter

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
----------------	---------------	--------------	-----------------	-----------------

TRAVIS HUTCHINSON

Mr. Johnson 7

Mr. Neubauer 16

Mr. Johnson 31

Mr. Neubauer 32

LETITIA WILLIAMS

Mr. Johnson 34

Mr. Neubauer 42

DEVON NIELSON

Mr. Neubauer 45

Mr. Johnson 60

Mr. Neubauer 68

Closing Arguments

Mr. Neubauer 70

Mr. Johnson 73

Certificate 76

1 THE COURT: All right. Are we ready to proceed on the  
2 next case?

3 MR. NEUBAUER: Yes, Your Honor. May it please the  
4 Court. The next matter is *Travis Hutchinson versus the*  
5 *State of South Carolina*, docket number 2020-CP-338. The  
6 applicant is presently confined to the South Carolina  
7 Department of Corrections.

8 During its January 2018 term, the York County Grand  
9 Jury indicted applicant for possession with intent to  
10 distribute heroin, docket number 2018-GS-46-00204,  
11 possession of cocaine, 2018-GS-46-00205 and escape, 2018-GS-  
12 46-00213.

13 Assistant Public Defender Devon Nielson represented  
14 applicant and Assistant Solicitor Maria -- Marina Hamilton  
15 of the Sixteenth Circuit Solicitor's Office prosecuted the  
16 case.

17 On February 13<sup>th</sup>, 2018, applicant entered into a guilty  
18 plea before the Honorable Roger E. Henderson. Judge  
19 Henderson sentenced applicant to fourteen years imprisonment  
20 for the heroin charge, five years imprisonment for cocaine,  
21 for possessing cocaine, and one year imprisonment for  
22 escape. The sentence for escape was to run consecutive to  
23 the two drug charges.

24 Applicant filed a timely notice of appeal and an Anders  
25 brief was filed on behalf of the applicant. By an

1 unpublished opinion, the South Carolina Court of Appeals  
2 dismissed applicant's appeal in June of 2019 and the  
3 remittitur was issued June 21<sup>st</sup>, 2019.

4 This incident stems from -- or the drug possession  
5 incident or arrest stemmed from an incident on September  
6 15<sup>th</sup>, 2017, when applicant was pulled over by Rock Hill  
7 Police within York County. He was driving under the --  
8 driving under suspension at the time. He was arrested for  
9 driving under suspension and was searched incident to  
10 arrest. He did consent to a search of his person and upon  
11 searching him, officers did find in his pants pockets -- or  
12 pants pockets that he was wearing seventeen bindles of  
13 heroin laced with fentanyl, measuring out to .6 grams per  
14 bindle. Additionally, on his person was point -- .37 grams  
15 of cocaine that field-tested positive for cocaine. He was  
16 charged with possession with intent to distribute due to the  
17 inference level based on the weight and the packaging of the  
18 drugs.

19 On September 17<sup>th</sup> of 2017, while he was being  
20 transported from Rock Hill Police Department in a transport  
21 van to Moss Justice Center, as officers were pulling onto  
22 Moss Justice Boulevard, applicant jumped out of the back of  
23 the transport van, fleeing across the street and into the  
24 woods. He was subsequently found hiding in a barn three-  
25 quarters of a mile down the road.

1           Applicant filed an application for post-conviction  
2 relief, alleging ineffective assistance of counsel for  
3 failure to inform applicant of a guilty plea offer, failure  
4 to object to the State's violation of applicant's plea  
5 contract, failure to inform applicant of the elements of the  
6 offenses and failure to object to the factual basis of his  
7 possession with intent to distribute charge.

8           Additionally, applicant has filed or submitted an  
9 amended application for post-conviction relief, adding  
10 allegations that counsel failed to explain the details of  
11 applicant's guilty plea and sentence and the elements of  
12 each offense, that counsel failed to provide a copy of the  
13 State's evidence to applicant, that counsel failed to  
14 discuss a defense strategy with applicant or to review  
15 evidence with applicant, that counsel failed to meet with  
16 applicant a sufficient number of times to review the  
17 evidence, counsel failed to move to withdraw the guilty plea  
18 when the solicitor enhanced the possession of cocaine and  
19 the possession with intent to distribute charges from a  
20 second to a third offense; counsel failed to request a  
21 continuance. Applicant stated to the Court that he was  
22 coming down from the effects of heroin at the time of his  
23 plea. Applicant claims he was unable to voluntarily waive  
24 his rights and enter a guilty plea; that counsel failed to  
25 object and move to withdraw the guilty plea when the

1 solicitor provided a verbal recommendation of a sentence  
2 following Judge Henderson accepting applicant's guilty plea;  
3 that counsel failed to notify the solicitor that defendant  
4 had accepted the State's offer of two years at a meeting  
5 witnessed by applicant's wife, Latitia Williams and failed  
6 to contact applicant regarding a deadline for the offer and  
7 I believe these are all the allegations applicant intends to  
8 go forward with at this point.

9 THE COURT: All right. Mr. Johnson, any further issues  
10 before the Court?

11 MR. JOHNSON: Judge, just to clarify, I may have  
12 misheard. On the one listed as number 7 on my amended  
13 application, applicant failed or applicant's counsel failed  
14 to object or move to withdraw guilty plea when the solicitor  
15 recommended a sentence for the applicant, after informing  
16 the defense and the Court there was no negotiation or  
17 recommendation as reflected in the sentencing sheets.

18 They may -- Attorney General may have said that. Maybe  
19 I misheard that, but that's how it's written in there and  
20 that's what we have, Judge.

21 THE COURT: So noted. All right. Are you ready to  
22 proceed?

23 MR. JOHNSON: Ready to proceed, Judge.

24 THE COURT: All right. Call your first witness.

25 MR. JOHNSON: Call Travis Hutchinson to testify.

1 MADAM CLERK: If you'll place your left hand on the  
2 Bible and raise your right hand as best you can.

3 (TRAVIS HUTCHINSON, being first duly sworn, was  
4 examined and testified as follows):

5 MADAM CLERK: Thank you. Please be seated.

6 DIRECT EXAMINATION

7 TRAVIS HUTCHINSON BY MR. JOHNSON:

8 Q. Mr. Hutchinson, who represented you for these charges?

9 A. Devon Nielson.

10 Q. Okay. And --

11 THE COURT: Mr. Johnson, stand when you address the  
12 witness.

13 MR. JOHNSON: I'm sorry, Judge.

14 Q. Mr. Hutchinson, you said Devon Nielson represented you.  
15 When he represented you, do you -- tell me about what type  
16 of a plea offer was made and what happened there with the  
17 plea offer?

18 A. Well, like he say, around September the 15<sup>th</sup> I caught  
19 these charges, these three charges, and I pretty much stayed  
20 -- I stayed locked up in the county jail for, like -- like,  
21 sixty-seven days before I bonded out. I bonded out two days  
22 before Thanksgiving and I believe he called me, my first  
23 appearance to come in court was -- was December the 18<sup>th</sup>, I  
24 believe, and so when we went to court the first time he  
25 wasn't available, so I had to come back. He called me to

1 his office and it was around -- it was around December some-  
2 -- probably a couple days before Christmas and he -- and he  
3 say, well, the offer for these drug charges and the escape  
4 charge are two years. He say, Do you accept? So I say,  
5 yeah, I accept. We can go in the courtroom right now if you  
6 want to and he say -- he say -- well, I told him I was on  
7 ten years probation and he said let him get in touch with my  
8 probation officer and see whether they wanted to continue my  
9 probation or throw it out. So he told me to go home, he  
10 would get in contact with me and my wife. Went home, waited  
11 on him to call, never heard from him. Got a call in January  
12 sometime from a -- from a bail bondsman, saying that Devon  
13 had contacted him and he needed me to contact him, so I  
14 contacted him. He wanted me to come -- come into his office  
15 and then that's when he said the offer was -- the two-year  
16 offer was off the table.

17 Q. Okay. Were you informed of any deadlines in January  
18 by your attorney for taking that offer?

19 A. I wasn't informed of no deadlines.

20 Q. Were you informed of any two-week extension of a  
21 deadline---

22 A. No, sir.

23 Q. ---where you had to be in court?

24 A. No, sir.

25 Q. Okay. You didn't receive any letters about that?

1 A. No, sir.

2 Q. And you didn't receive any phone calls?

3 A. No, sir.

4 Q. Did you provide your attorney with address, mailing  
5 address, and phone numbers for you?

6 A. Yes, sir.

7 Q. Okay. So at that point what did they inform you about  
8 the two-year offer?

9 A. He say that it had went -- the deadline -- it was a  
10 deadline, it went off the table and now the two-year offer  
11 is eleven years.

12 Q. Okay. And was your wife present during your  
13 conversation with your attorney?

14 A. Yes, sir.

15 Q. What's her name?

16 A. Letitia Williams.

17 Q. Okay. And following that conversation, what happened  
18 after that? After he told you the offer was gone, what  
19 happened?

20 A. When he told me the offer was gone, he told me he  
21 wanted me to be back in court that Monday. This was a  
22 Friday. He wanted me to be back in court that Monday to  
23 take the -- to take the eleven years.

24 Q. Okay. And then what happened?

25 A. And he showed me, you know, clips of the -- of the --

1 of what went on in the case, what brought this charges and I  
2 -- and he let me go home and I came back Monday morning, me  
3 and my wife, and we asked to talk to somebody that was over  
4 him, the supervisor that was over him, which was Harry Dest.

5 Q. Okay. Do you remember the date of that conversation?

6 A. That was, I believe, February 11<sup>th</sup>.

7 Q. Okay. What happened? What did you tell him?

8 A. We was telling -- we told him about the two-year Devon  
9 Nielson had told me, that the State had offered me two years  
10 due to my case and just short-term it just went off the  
11 table. Two years was snatched back. We was trying to  
12 figure out why was it -- you know, why was it snatched off  
13 the table and we wanted -- we wanted answers. So we came to  
14 him for answers, because we knew he was the, you know, he  
15 was over the public defender's office and he went talking --  
16 he went -- he went talking to Devon Nielson and whoever else  
17 he was talking to, because he wanted to know what happened  
18 to the two years as well and he came back and he wanted us  
19 to go -- he told me it would probably be good that I go in  
20 the chain, well, whatever that is, and ask the judge, I  
21 guess, for leniency.

22 Q. So after that what did you do? Did you go to court  
23 after that?

24 A. Yeah. We went up to the courtroom. My wife that's in  
25 the back now, she -- she had health problems. She don't

1 drive. I drove, because I had license at the time and I had  
2 a car. So I was going to take her home and come back to  
3 court, but I didn't get to make it back on time,---

4 Q. Okay. Was that the --

5 A. ---at that point in time.

6 Q. Was that the day before the plea or how long before the  
7 plea?

8 A. That was -- that was the day of court.

9 Q. The day of court.

10 A. That was on the day of court. Yes, sir.

11 Q. Was that February?

12 A. That was February the 12<sup>th</sup>.

13 Q. Okay. And did you end up going back to court to enter  
14 a plea after that?

15 A. Yes, sir. Well, they put -- he put a warrant. He --  
16 the solicitor office put a warrant out on me after that with  
17 my bail bondsman, had my bail bondsman to come lock me up.

18 Q. You got locked up?

19 A. Yes, sir.

20 Q. And did you go to court the next day?

21 A. Yes, sir.

22 Q. Okay. And that's when they -- you had the hearing and  
23 you entered the plea. Correct?

24 A. Yes, sir.

25 Q. Okay. And during that plea did you have any -- did

1 anyone, your attorney or anybody, your attorney, advise you  
2 of the elements of the offense of intent to distribute  
3 heroin, possession with intent to distribute heroin? Were  
4 you aware of the elements of that charge?

5 A. He was telling me that morning what they carried and --  
6 he was telling me what they carried that morning as he was  
7 trying to get me sign the guilty plea for a straight-up  
8 plea.

9 Q. Did you understand what it meant to be guilty of  
10 possession with intent? Did he explain the elements of that  
11 to you?

12 A. Yes, sir.

13 Q. He did? Well, did you understand that fully when you  
14 entered your plea?

15 A. Yes, sir.

16 Q. Okay. Do you feel like during your plea did you ever  
17 actually admit with having intent to distribute heroin?

18 A. Say that again.

19 Q. Did you intend to admit that you had the intent to  
20 distribute heroin during your plea or something else? What  
21 was --

22 A. No, sir.

23 Q. Okay. What was your intent that you understood?

24 A. I was a user. I never had the intent to sell heroin.

25 Q. Okay. When you entered the guilty plea, was it your

1 intention to plead guilty to possession or possession with  
2 intent?

3 A. Possession.

4 Q. Okay. Do you feel like you had a situation where you  
5 were fully advise of what was going on there and what you  
6 were pleading guilty to?

7 A. Not all -- not everything that morning. No, I didn't.

8 Q. Okay. When you entered the guilty plea, was it your  
9 understanding, according to the sentencing sheet, there  
10 would be no negotiations or recommendations made by the  
11 State?

12 A. I didn't at the time on that.

13 Q. You thought there was no recommendations by the State  
14 as reflected on your sentencing sheet?

15 A. Well, what the judge said was no recommendation from  
16 the State---

17 Q. Okay.

18 A. ---and then once I got, you know, in prison I learned  
19 more about my case. I---

20 Q. Okay.

21 A. ---seen where he said it was a recommendation and it  
22 there was a recommendation, so --

23 Q. Did the solicitor say anything about the sentence that  
24 gave him a number, say, more than eleven years?

25 A. No, she didn't.

1 Q. You don't remember them saying that during the plea,---

2 A. No, sir.

3 Q. ---making a recommendation?

4 A. No, sir.

5 Q. Okay. And do you feel like your plea was involuntary?

6 You didn't -- were you voluntarily entering your plea or  
7 involuntary?

8 A. I was involuntary, but it's like I was pushed.

9 Q. Okay. How were you pushed?

10 A. Because I was guilty of my charges, but like I was  
11 trying to tell the judge, I was offered a two-year plea and  
12 don't feel like I had been treated fairly at the time.

13 Q. Okay. The -- do you feel like your attorney, Mr.

14 Nielson, fully advised you of the details of your plea and  
15 the sentencing and the elements of each offense?

16 A. No, sir.

17 Q. He did not? And did he provide you with a copy of the  
18 evidence?

19 A. No, sir.

20 Q. How many times did he meet with you to review evidence?

21 A. I believe once. Once.

22 Q. Where was that at?

23 A. That was at the public defender's office here.

24 Q. Okay. Did he discuss a defense strategy with you or to  
25 get into what a defense strategy would be at trial in the

1 future?

2 A. No, sir.

3 Q. Did anybody that worked for him sit down and review  
4 evidence with you?

5 A. No, sir.

6 Q. Okay. No investigators from the public defender's  
7 office?

8 A. Well, when I was -- when I -- before I made bond on  
9 these charges, I had Melissa Inzerillo and a investigator  
10 came on her behalf.

11 Q. Okay.

12 A. And then my case was gave over to Devon Nielson.

13 Q. Okay. When the State enhanced the charge from a second  
14 offense to a third offense on the possession with intent to  
15 distribute heroin and the possession of cocaine during the  
16 plea, did you feel that your attorney should have objected  
17 to that or withdrawn your plea? Did you want him to do  
18 that?

19 A. Yes, sir.

20 Q. Did you ask him to do that?

21 A. I didn't ask him.

22 Q. Okay. Did you advise the Court that you were just  
23 coming down off of heroin when questioned by the Court  
24 during your plea?

25 A. Yes, sir.

1 Q. And was that true?

2 A. Yes, sir.

3 Q. Did that effect your ability to understand what was  
4 going on?

5 A. Yes, sir.

6 Q. Okay. And do you feel like your attorney sufficiently  
7 notified the State of the acceptance of your offer? Do you  
8 feel like they did that?

9 A. No. No, sir.

10 Q. Okay. Is there anything else you'd like to testify  
11 about you feel made this an involuntary guilty plea or  
12 anything that you would testify about whether or not your  
13 counsel was effective or not?

14 A. No, sir. That's it.

15 MR. JOHNSON: Your Honor, I believe that's all I have.

16 THE COURT: Okay. Cross-examination?

17 MR. NEUBAUER: Yes, Your Honor. Thank you.

18 CROSS-EXAMINATION

19 TRAVIS HUTCHINSON BY MR. NEUBAUER:

20 Q. Good afternoon, Mr. Hutchinson. So you said initially  
21 you were -- while you were still incarcerated, you had  
22 Melissa Inzerillo as your attorney. Right?

23 A. Yes, sir.

24 Q. And you -- did you ever discuss any discovery or any of  
25 the evidence in your case with her?

1 A. No. She -- she had my case, but during the time that I  
2 was -- before I made bond at the sixty-seven days that I was  
3 in the detention center for these charges, she sent the  
4 investigator, so I -- we talked a little bit about my case,  
5 me and the investigator did,---

6 Q. And --

7 A. ---that works for the public defender office.

8 Q. So an investigator from the public defender's office  
9 came to talk to you?

10 A. Yes, sir.

11 Q. And you guys talked about some of the evidence and  
12 stuff in your case?

13 A. Yes, sir.

14 Q. And then you said you never talked with Devon Nielson  
15 about any of that?

16 A. I never talked to Devon Nielson while I was in jail. I  
17 talked to Devon Nielson in December when he offered the two  
18 years, when he told me it was a two-year offer.

19 Q. And when that two-year offer came up, you told him that  
20 you had a probation viola- -- or probation -- you were on  
21 probation. Correct?

22 A. I told him I was on probation. He said he was going to  
23 contact my probation officer and ask her did she want him to  
24 continue me on probation or terminate my probation and he  
25 never did.

1 Q. Did he explain to you that being on probation, if you  
2 pled guilty, that that could add time to what you'd serve in  
3 jail?

4 A. No, he didn't.

5 Q. That was never explained to you?

6 A. No.

7 Q. And then you said the two-year offer ended up going  
8 away. Did he ever explain why that offer was removed or why  
9 it went away?

10 A. He never -- he just -- he called me in the office, he  
11 say the two years is off the table, it's never coming back  
12 and my -- my question next was why. He never had a answer  
13 for it.

14 Q. And did he tell you -- did he ever give you a day that  
15 you were to show up to court to accept that two-year offer?

16 A. He say that he told me to be back in court the next  
17 day, but he told me to go home and he will call me when to  
18 come back to court.

19 Q. But you said he told you to come back the next day?

20 A. That's what he said.

21 Q. Do you remember him telling you to come back the next  
22 day?

23 A. No, sir.

24 Q. And you didn't come back the next day, did you?

25 A. I didn't come back. I went home and waited on his

1 call, call that I never received.

2 Q. And then you said you and Devon went over some clips.  
3 What exactly -- what clips are you talking about?

4 A. That was the Friday -- the Friday before I went to  
5 court that Monday -- well, that Tuesday. He was showing me  
6 -- he was showing me the videos from -- from the scene where  
7 they got drugs off me from the body cam, with the police  
8 body cam, he was showing me them.

9 Q. Okay. And is that the only thing that he showed you or  
10 you guys talked about as far as evidence or stuff that the  
11 State had?

12 A. Yeah. That was it.

13 Q. Okay. And on February 11<sup>th</sup> you had -- you came up to  
14 the courthouse. That was that Monday. Right?

15 A. Yes, sir.

16 Q. And you said that you were talking to Devon about the  
17 plea and then Harry Dest got involved?

18 A. Yes, sir.

19 Q. And --

20 A. That was Mon- -- that was that Monday morning. Me and  
21 wife came up to -- we came to court, but we had went to the  
22 public defender's office and that's when Harry Dest got  
23 involved.

24 Q. And did any plea offer, did you ever -- or did they  
25 tell you about a plea offer, anything you could plead to

1 that day?

2 A. Devon say they wanted me to plead to eleven years.

3 Q. That day?

4 A. That day.

5 Q. Were you willing to plea to eleven years that day?

6 A. I wasn't willing to plead to it, because we was so  
7 concerned, we wanted to know what had happened to the two  
8 years, why did it go off the table, you know, why did the  
9 State withdraw it.

10 Q. Okay.

11 A. So that's where we were at that time -- at that point  
12 in time, but being that I was guilty of my crime, I pretty  
13 much didn't have a choice.

14 Q. And so you could have pled to eleven years and gotten  
15 eleven years on February 11<sup>th</sup>. Correct?

16 A. Yes, sir.

17 Q. And did they tell you, hey, if you stay here at the  
18 courthouse, you can go in front of the judge in a little  
19 bit, I think, at 2:00 P.M. and you'll be able to plead  
20 guilty?

21 A. No. He didn't tell me that he -- he was just saying,  
22 you know, they want you to plead to eleven years today and  
23 so I had to take my wife home and I was coming back. So I  
24 was supposed to plead to the eleven, being that I knew I was  
25 guilty of the charges.

1 Q. But you didn't end up coming back on the 11<sup>th</sup>, did you?

2 A. I didn't make it back, because I didn't have no ride at  
3 the time, so the solicitor office put a warrant on me.

4 Q. And you say you didn't have a ride. How did you get to  
5 the courthouse, the public defender's office, that morning?

6 A. I drove my car.

7 Q. And so --

8 A. But I knew I was going to get time in prison, so I  
9 didn't want to bring my car up here and leave it out there  
10 in the parking lot and, like I say, my wife, she don't  
11 drive, so I was making sure she got home safe.

12 Q. But you could have -- you had a way to get back to the  
13 courthouse that day. Correct?

14 A. I was trying to make a way to get back to the  
15 courthouse, but I was coming to plead guilty.

16 Q. And you had a license and a car that you could have  
17 brought up here. Correct?

18 A. Yes, sir.

19 Q. All right. And I believe when Mr. Johnson was talking  
20 with you, you said that Devon kind of told you about some of  
21 the elements of the offenses, like, the elements of the  
22 crimes that you were charged with?

23 A. Yeah. He -- let's see. He told me that -- that  
24 Friday. He was talking about it that Friday before court  
25 that Monday.

1 Q. Okay. And do you remember what that conversation  
2 consisted of?

3 A. Of the two years and, like I say, the first time I met  
4 with him he had said that there was videos onto -- to my  
5 charges and he asked me did I have wanted to see them, so I  
6 told him I knew that I was guilty in everything that had  
7 happened, so I really -- it really wasn't no need to look at  
8 them. So that Friday when I -- before that Monday, when he  
9 called me in there, he just all of a sudden pulled the  
10 videos out and let me see them, but---

11 Q. Did you -- I'm sorry. I didn't mean to cut you off.

12 A. Yeah. I was --

13 Q. So you told Devon that you didn't need -- that you were  
14 guilty and you didn't see the evidence --

15 A. Yeah. I didn't need to see the video, but he brought  
16 -- he brought me in there that Friday, before he told me  
17 that the two years was took off the table, and just pulled  
18 the videos out, like, you're guilty.

19 Q. So even though you didn't think you needed to see it,  
20 Devon made sure that you saw the footage of your arrest just  
21 so that you knew what happened?

22 A. Yeah.

23 Q. And do you recall the judge saying at your guilty plea  
24 that it was without recommendation and that was it a  
25 straight-up plea?

1 A. Right.

2 Q. And that you could be sentenced with -- to anything  
3 within the sentencing range?

4 A. Right.

5 Q. And at the end of the -- or after you'd entered your  
6 guilty plea, did Devon get up and tell the judge what he  
7 hoped that you would get as far as time?

8 A. No. He asked for -- if I'm not mistaken, during the --  
9 during the sentencing part, he asked for can I have eleven  
10 years.

11 Q. So he asked for the lightest poss- -- or a light  
12 sentence for you?

13 A. He did ask for eleven years.

14 Q. And the solicitor also asked for what they wanted?

15 A. Right; right. Right.

16 Q. But, ultimately, your plea was without a rec- -- a  
17 formal recommendation, the judge told you that you could  
18 receive anything within the sentencing range?

19 A. The judge told me my plea was a recommendation and then  
20 he went back and said it wasn't a recommendation.

21 Q. Okay. And on your sentencing sheet it doesn't have  
22 marked that there is a formal recommendation. There's no  
23 box checked that says recommendation?

24 A. No, sir.

25 Q. Okay. And so did you go -- just kind of going back to

1 the elements of the offenses, as far as possession with  
2 intent to distribute heroin, did he tell you what could make  
3 it possession with intent to distribute instead of just  
4 possession?

5 A. No, sir.

6 Q. So you never talked about a certain weight would make  
7 it possession with intent to distribute?

8 A. No, sir.

9 Q. He never said, like, an inference weight or anything  
10 like that?

11 A. No, sir.

12 Q. Did he ever talk about the fact that it was in, like,  
13 seventeen different bags, that that would or could lead to a  
14 possessing with intent to distribute?

15 A. He never talked about it.

16 Q. Okay. And so you -- you said you met with him in  
17 December, initially, to talk about your case and he gave you  
18 that plea offer?

19 A. He gave me that plea offer and he said that the State  
20 offered me two years, but as I went back and did my homework  
21 and looked through and read my motion and everything, the  
22 State never offered two years. I don't know where he got it  
23 from.

24 Q. And why do you say that there was no offer of two  
25 years?

1 A. I got -- I did the homework and did all -- got all my  
2 paperwork, far as my transcript, my motion and did the  
3 homework on it and there was nowhere in the motion or the  
4 transcript, nowhere, nowhere that the State offered two  
5 years.

6 Q. And that could have been just kind of a conversation  
7 between him and the State. Would that be correct? That  
8 they could have verbally offered that to him?

9 A. I don't know. I ain't seen nowhere in my paperwork  
10 where it was two years offered.

11 Q. Okay.

12 A. But he offered it to me.

13 Q. Now, did you meet with him any other times other than  
14 that December meeting?

15 A. I met with him on Friday before -- before court. We  
16 went to court that Monday. I met with him on that Friday,  
17 which was -- which would have been a couple days before  
18 January the 11<sup>th</sup>, so --

19 Q. Were there any other --

20 A. -- February.

21 Q. Sorry. Were there any other meetings that were  
22 scheduled for you guys where you should have met and it was  
23 going to happen?

24 A. No, sir.

25 Q. And -- all right. Now, one of your allegations is he

1 didn't meet with you a sufficient number of times to review  
2 the evidence. You told him that you didn't want to review  
3 the evidence, that you were guilty. Right?

4 A. Yes. When he offered to show me the videos, I pretty  
5 much knew what had went on.

6 Q. So you --

7 A. When he offered to show me the videos of the officers  
8 getting the drugs from out of my pocket and all that, I  
9 pretty much had knew what had went on.

10 Q. So how many more meetings do you think you would have  
11 needed to review the evidence if you felt you knew what was  
12 going on?

13 A. I didn't need to -- I didn't need too many more  
14 meetings with him. Like I say, when he called me the first  
15 time and he asked me, that's when we had the talk about the  
16 two years and he say -- he say, The State offering you two  
17 years. He say, Do you want it or not? I say, Yeah, I want  
18 it. I'll go to court right now. And he say, Well, we can't  
19 go right now, and it was almost five o'clock that day we  
20 met. My wife was out in the lobby at the public defender's  
21 office. I said, Well, let me go out here and tell my wife  
22 what's going on, and me and Devon walked out there in front  
23 of -- in the public defender's office in the lobby part and  
24 I was telling my wife what the offer was and she kind of  
25 didn't understand, because she don't know nothing about

1 this, you know, so I was trying to calm her down and let her  
2 know that this is a great deal, you know, compared to my  
3 background and the charges -- and these charges. So he say,  
4 Go home -- well, he say, Well, you done did sixty-seven days  
5 in the county. You'll -- with two years, you'll go and  
6 you'll do ten more months and you'll be back at home with  
7 your family and he said, Well, go home and I'll contact your  
8 probation officer and see do she want to continue on  
9 probation or terminate you and we went home and we waited on  
10 him to call and never heard from him and next time I had  
11 heard from anybody was my bail bondsman, saying that Devon  
12 had contacted him.

13 Q. Okay; okay. And at your -- on February 12<sup>th</sup>, I believe  
14 at the start of the little transcript there, there's  
15 conversation where the judge tells you, If you want to plead  
16 guilty today you can or we're going to go forward with your  
17 trial today. Do you remember that?

18 A. Yes, sir. He was saying as plead guilty to the  
19 straight-up plea or we're going -- or it's a jury waiting  
20 downstairs. Either I plead to the straight-up plea, which  
21 was going to be eleven years or more, or he was going to  
22 call for the jury.

23 Q. And did you want a jury trial at that point?

24 A. No, sir, 'cause I knew I couldn't stand a jury trial.  
25 I was guilty of my charges.

1 Q. And would you want a jury trial now?

2 A. No. I wouldn't want no jury trial now to the charges I  
3 have.

4 Q. Okay. And so right after that conversation goes on,  
5 there's talk about amending the indictments to take it from  
6 a second offense to a third offense. Do you remember that  
7 happening?

8 A. Yes, sir.

9 Q. And do you have multiple prior drug offenses?

10 A. Well, I had simple possession of drug offenses. When I  
11 was -- when I was caught when -- when the officers got the  
12 drugs off me this last time on these charges, they charged  
13 me with a second offense.

14 Q. Okay. And, ultimately, they---

15 A. And that --

16 Q. ---ended up enhancing that before the -- or before your  
17 plea to a third offense. Correct?

18 A. Yes, sir. They was going -- they enhanced it, because  
19 -- they enhanced it from a second to a third, because they  
20 saying that I wasn't in court that Monday.

21 Q. And do you recall Mr. Nielson asking the solicitor to  
22 allow the plea to go forward based on the indictment for a  
23 second offense?

24 A. I believe he did ask. Yeah. I believe he did ask.

25 Q. And do you recall him saying, I understand his record

1 is such, that we have no argument that it is truly a third  
2 offense?

3 A. Yes, sir. He did say --

4 Q. So there was no real basis for him to object to it  
5 being a third offense?

6 A. No, sir.

7 Q. All right. And on the 12<sup>th</sup>, when you showed up to  
8 court, do you remember the judge asking you if you were  
9 under the influence of any drugs or alcohol?

10 A. Yes, sir, I do.

11 Q. Do you remember what you told him?

12 A. I told him that I had just been coming down off of  
13 heroin.

14 Q. Okay. And I believe you told him you used it the  
15 morning before, so the morning of the 11<sup>th</sup>?

16 A. That's right. Yes, sir.

17 Q. And he asked you or he said, you know, You appear to be  
18 -- you appear to be able to answer all my questions here  
19 this morning and you said, Yeah, I can answer your  
20 questions?

21 A. Yes, sir. I remember.

22 Q. And do you remember him asking, The fact that you used  
23 heroin yesterday, does that effect your ability right now to  
24 be able to think, reason and understand?

25 A. Yes, sir. I remember.

1 Q. And you said, No, it doesn't effect it?

2 A. I told him that. Yes.

3 Q. And you told him you understood everything that you  
4 guys had talked about so far that day?

5 A. Yes, sir.

6 Q. And did you understand everything that you'd talked  
7 about that day?

8 A. Yeah, I did, but a lot of it I didn't. I was just --  
9 'cause I was trying to talk to the judge and he wasn't -- it  
10 seemed like he wasn't trying to hear me, so I just wanted  
11 to, you know, get on with the process.

12 Q. And he -- I think he asked you more than one time if  
13 you understood everything. Right?

14 A. He did on certain things. Yeah, he did.

15 Q. And every time you told him yes, that you understand?

16 A. Yes, sir.

17 Q. Okay. And, again, you said you -- you didn't want to  
18 go to a jury trial that day, you wanted to plead guilty.  
19 Right?

20 A. Yes, sir.

21 Q. So when Mr. Nielson gave his recommendation to the  
22 Court, he told the Court, I hope he'll get eleven years, and  
23 then the solicitor said, We hope for something more than  
24 eleven. Did you want Mr. Nielson to say, Whoa, we don't --  
25 they gave a recommendation. We don't want to take this

1 guilty plea, we want to go to trial?

2 A. No. I didn't want him to say we'll go to trial, but I  
3 was hoping that he would tell him we ain't wanting the  
4 guilty plea of eleven, because I was still stuck on the two  
5 years.

6 Q. And you understood that offer was gone at that point.  
7 Your only options on February 12<sup>th</sup> were plead guilty or to  
8 go to trial that day?

9 A. Yes, sir.

10 Q. And the options that you had left, you wanted to plead  
11 instead of taking it to a trial. Correct?

12 A. Yes, sir. I --

13 MR. NEUBAUER: I have no further questions at this  
14 point.

15 THE COURT: Any redirect?

16 MR. JOHNSON: Just briefly, Your Honor.

17 REDIRECT EXAMINATION

18 TRAVIS HUTCHINSON BY MR. JOHNSON:

19 Q. Mr. Hutchinson, how much heroin did you use the day  
20 before the plea?

21 A. Probably about five twenty-dollar bags.

22 Q. Is that a lot?

23 A. At the time, I wouldn't say it was, but most people  
24 might think it is.

25 Q. Was that -- did the plea take place, would you say,

1 twenty-four hours later or a little bit more than that?

2 A. It probably it was less than that. Probably less.

3 Q. Less than that?

4 A. Yeah.

5 Q. Okay.

6 MR. JOHNSON: Those are all my questions, Your Honor.

7 THE COURT: Anything further from this witness?

8 MR. NEUBAUER: Very briefly, Your Honor.

9 RECROSS-EXAMINATION

10 TRAVIS HUTCHINSON BY MR. NEUBAUER:

11 Q. During the conversation with the judge at your guilty  
12 plea, you asked or he asked you when you took it and you  
13 said yesterday morning, so the morning of the 11<sup>th</sup>. Right?

14 A. Right

15 Q. And he asked you, So it's been about twenty-four hours?  
16 And you said, I guess.

17 A. I said I guess, because at the time I couldn't think.  
18 I couldn't think, but now as I look back and remember them  
19 times, it was less than twenty-four hours.

20 Q. And he asked you a few different times, It's been about  
21 twenty-four hours since you used it, said, I guess. He  
22 asked, is that correct? You said, Yeah. Do you remember  
23 telling him that, yeah, it'd been about twenty-four hours?

24 A. I believe I did remember that.

25 Q. So would you have -- and you're saying that you

1 couldn't really think and you couldn't --

2 A. I couldn't really think like that at the time. Like I  
3 say, at the time I was just wanting the -- I was just  
4 wanting to go -- the process to go, 'cause it seemed like  
5 every time I was asking the judge a question or telling him  
6 about the two years, like I say, I was stuck on the two  
7 years and by him trying to give me the eleven years or even  
8 more, like he did, it just really had me all lightheaded. I  
9 couldn't really think at all at that point in time.

10 Q. But you told him on that day that you understood what  
11 he was saying and you understood enough to go forward.

12 Correct?

13 A. Yeah. I told him, yeah, I was -- yeah. I told him  
14 that, because he had already told me it's either you're  
15 going to plead or you're going -- or we going to have a jury  
16 trial. So I knew I couldn't win a jury trial, so I just  
17 told him yeah, you know.

18 Q. So you lied to him to take the plea?

19 A. No. I ain't lied. I just wanted to get the process  
20 over with. I just wanted to get it over with, because it  
21 wasn't going nowhere. We was going back and forth.

22 Q. But at that date you told him you could understand what  
23 he was saying and---

24 A. Yeah.

25 Q. ---understood his questions, but now you're saying that

1 you couldn't really understand what was happening. Correct?

2 A. A lot of stuff I understand and a lot of stuff I  
3 didn't.

4 MR. NEUBAUER: I have no further questions.

5 THE COURT: Thank you, Mr. Hutchinson.

6 THE WITNESS: Thank you.

7 THE COURT: You can step down.

8 MR. JOHNSON: Your Honor, we'd just call his wife,  
9 Letitia Williams at this time.

10 MADAM CLERK: Place your left hand on the Bible and  
11 raise your right hand for me.

12 (LETITIA WILLIAMS, being first duly sworn, was examined  
13 and testified as follows):

14 MADAM CLERK: Thank you. Please be seated.

15 DIRECT EXAMINATION

16 LETITIA WILLIAMS BY MR. JOHNSON:

17 Q. Ms. Williams, do you recall having -- well, what's your  
18 relation to Travis Hutchinson?

19 A. He's my husband.

20 Q. Okay. Do you recall having a conversation or  
21 witnessing a conversation between Mr. Hutchinson and Mr.  
22 Nielson regarding a plea offer?

23 A. Yes, sir.

24 Q. When did that happen?

25 A. That happened back in December and I was there and he

1 offered the two years, but my point is when you offer  
2 someone something and he said something about the two years  
3 and say he was going to call us back and never called back  
4 and said we was going -- he was going to sign papers on the  
5 two years, why -- he didn't sign any papers of the two years  
6 and then we come back, it's off the table. That's unfair  
7 and I -- I still want answers of that today.

8 Q. And when you say December, this was December before the  
9 plea in February. Correct?

10 A. Yes. Correct.

11 Q. And where did the conversation take place with Mr.  
12 Nielson?

13 A. It took place here, public defender's office.

14 Q. Okay. At the courthouse?

15 A. Yes.

16 Q. Okay. And did you witness Mr. Hutchinson making any  
17 statements to Mr. Nielson about making it clear that he  
18 wanted to accept that offer?

19 A. Yes. He wanted to accept it. Yes. He came and talked  
20 to me and we wanted to accept it.

21 Q. And --

22 A. That first time he stated it. First I didn't  
23 understand it, but then it was more clear to me, like, hey,  
24 that's two years. You already did sixty-seven days, you  
25 won't have too much longer to do and he even mentioned,

1 like, hey -- Mr. Nielson even mentioned, like, Mr.  
2 Hutchinson, you know, the escape is, but yes, you know, that  
3 just carried only a year, you know, and he was talking to us  
4 like he was on our side, you know. I never knew he was  
5 against us.

6 Q. Well, when you had conversations about the offer, did  
7 you have any follow-up conversations with Mr. Nielson about  
8 the plea offers?

9 A. No other follow-up conversations about the two years  
10 and he say he was going to call us, call us and, like, my  
11 husband stated, only person called us was the bondsman.

12 Q. Okay. And then what happened?

13 A. Then what happened is that Travis had came back, came  
14 back and spoke with Mr. Nielson on what stuff were. He  
15 wasn't here. During the time we tried to see him, he wasn't  
16 here, so he had to come back and we always waited on that  
17 phone call. He had two numbers, he had my number, Travis  
18 cell phone number. We had two addresses down. So it's no  
19 way that you can find the bondsman's number and not call us.

20 Q. So you never received any letters or phone calls?

21 A. No letters, no anything. I made sure of that.

22 Q. Okay. Nothing regarding the offer or any deadline?

23 A. No deadline, nothing---

24 Q. Okay.

25 A. ---but his word and if it was between him and the

1 State, why it took so long and we couldn't even see the  
2 paperwork of it. I mean, why tell, you know, my husband you  
3 go find something, you know, and it's not in black and  
4 white, you know, why -- we're just still confused on that.

5 Q. When did you have the next conversation with Mr.  
6 Nielson?

7 A. The next conversation, you talking about when he got  
8 bonded out or --

9 Q. Well, after the plea offer was made and you had that  
10 conversation in December, when was the next conversation  
11 with Mr. Nielson that you witnessed?

12 A. December 18<sup>th</sup>.

13 Q. Okay. And was that about the plea offer?

14 A. Yes. That, again, was about the two years. Yes, sir.

15 Q. And did your husband make it clear he wanted to accept?

16 A. Yes.

17 Q. Okay.

18 A. He was wanting to go -- go to the courtroom right now,  
19 just like he stated, sir.

20 Q. Okay. And was there a conversation with Mr. Nielson  
21 after that?

22 A. Conversation after that, no. There wasn't no  
23 conversation after that. He never called us back.

24 Q. And when's the next time you witnessed anything about  
25 this case? Where was it at?

1 A. It was right here.

2 Q. At the courthouse?

3 A. It was at the courthouse in the public defender's  
4 office.

5 Q. Was that in January?

6 A. Around January of 2018. That's when Devon Nielson was  
7 speaking of eleven years, so we was trying to see why you  
8 speaking of eleven years. What happened to the two years?  
9 So he said the two years is off the table. We didn't get no  
10 deadline or nothing about why or, you know, you know how  
11 courts and, you know, the public defenders go with their  
12 clients, like, if this -- if you going to get these two  
13 years, be back in two weeks, do this, do that. We didn't  
14 get no detail information, no letter, no nothing.

15 Q. Okay. Did he state -- did Mr. Nielson state that he  
16 called or sent letters?

17 A. He stated that he called numerous of times. He  
18 couldn't get through. I have voice mails; nothing.

19 Q. Okay.

20 A. Everything was open. I made sure with my family, no  
21 one's called me, just email me or something, because we  
22 looking for a public defender to call. No letters, no  
23 nothing.

24 Q. Okay. Following the conversation with Mr. Nielson  
25 about the eleven years, what happened next?

1 A. After the eleven -- after the eleven years, when he had  
2 said -- when he had mentioned eleven years and we was  
3 wondering what happened to the two years, we came back up  
4 here February 11<sup>th</sup>, 2018, or whatever, and we talked to  
5 Harry Dest before Travis court date was. That was the day  
6 of his court date, so before that time of year of that day,  
7 we talked to Harry Dest to try to see what happened to the  
8 two years. Our minds were so focused on these two years,  
9 'cause I go through heart conditions. I almost died five  
10 times. So Harry Dest, they talked, him and Devon Nielson,  
11 they both talked, or what so for, it wasn't nothing they  
12 could do. Harry Dest wasn't even aware of the two years.  
13 He wasn't even aware of it. He trying to see what's going  
14 on, you know. I wished we would have talked to him sooner,  
15 but we trusted Mr. Nielson so much until it's like why this  
16 happen to my husband. I understand my husband is not  
17 perfect, but he's a good man, you know. Everybody makes  
18 mistakes, but when you get promised something within the  
19 laws, why that have to be broken?

20 Q. Okay. After that conversation with Mr. Dest, what  
21 happened then?

22 A. My husband had to take me home. He had to take me  
23 home. I have heart issues and then my children, they ride  
24 the bus, so I had to get home all but so for. Next time  
25 when I knew we was going home, there goes the bondsman, or

1 what so for, saying the solicitor had a warrant for his  
2 arrest and we told them completely -- my husband told them  
3 completely that he had to take me home, even though I  
4 overheard when I was sitting in the back, the guy right here  
5 was saying, like, okay, you have a car and you have license  
6 and you could have got back, but I couldn't -- he had no one  
7 to bring him back. He tried. I watched. He tried to get  
8 back. Even though a person have a license and a vehicle,  
9 his car would have been sitting out there and it wasn't no  
10 way for nobody to come get it, you know, and we explaining  
11 this to Harry Dest about everything and the next thing you  
12 know, is the bail bondsman calling, saying there's a warrant  
13 for him. You know, we try to be loyal and obey the law. We  
14 ain't trying to get it twisted back around on us to hurt us,  
15 sir.

16 Q. Okay. And when Mr. Hutchinson came up for the guilty  
17 plea, which I think is the 13<sup>th</sup>, according to the record, I  
18 think. I don't want to misstate something. The Attorney  
19 General might have said the 12<sup>th</sup>. I think the transcript  
20 says the 13<sup>th</sup>. So on the 13<sup>th</sup>, did you come up here with  
21 Mr. Hutchinson for a guilty plea?

22 A. No. I wasn't. I was sick during that time.

23 Q. Okay.

24 A. Yes.

25 Q. And did you have any other conversations with Mr.

1 Nielson or hear anything about plea offers at that time?

2 A. Well, I had called up here and he had told me -- he had  
3 told me about his sentencing. He told me, he said, Ms.  
4 Williams, your husband was coming down off heroin, or what  
5 so for, he's living to see fifty years in prison. I'm like,  
6 Okay, very rudely, you know, and that -- and that even put  
7 me more back in the hospital, because I have heart issues  
8 and to have that pressure on me and I'm -- I already have  
9 two children, we have two kids together, two boys together,  
10 you know, and it was just heartbreaking. He's going to  
11 spending fifty years in prison. My husband all in the  
12 newspaper, you know, with all these lies and things, you  
13 know. That's not a good look. Like I say, no, he's not  
14 perfect, but for him to get his name dragged in the ground  
15 like that, that's totally unfair.

16 Q. Okay. Did you have any -- did you witness any meetings  
17 where Mr. Nielson reviewed evidence with Mr. Hutchinson,  
18 talked about the evidence?

19 A. Yes. That was during the time of December. Now, with  
20 the videos and things like that, I wasn't present for,  
21 because, like my husband mentioned, my heart doctor had me  
22 on bed rest and I'm still doing it as of today,---

23 Q. Okay.

24 A. ---or what so for, so I thank God that I was here to be  
25 here for him, offer this support.

1 Q. Okay.

2 A. Even if I had to bring my oxygen tank and heart machine  
3 with me, I wasn't going to miss this for my husband.

4 Q. Okay. Thank you.

5 MR. JOHNSON: I have no more questions, Judge.

6 THE WITNESS: Thank you, Mr. Johnson.

7 THE COURT: Any questions, Mr. Neubauer?

8 MR. NEUBAUER: Very briefly.

9 CROSS-EXAMINATION

10 LETITIA WILLIAMS BY MR. NEUBAUER:

11 Q. Good afternoon, ma'am.

12 A. Yeah, and how are you?

13 Q. Doing just fine. How about yourself? So you were  
14 with Mr. Hutchinson when he met with Mr. Nielson and a two-  
15 year offer first came up?

16 A. Of course, I was.

17 Q. Were you ever told to come back in two weeks or come  
18 back at a specific time?

19 A. No. That's what I was just telling Mr. Nielson -- I  
20 mean, not Mr. Nielson. That's what I was telling Mr.  
21 Johnson, that no, we never came back.

22 Q. You were told to --

23 A. He never told us to come back. That's why, you know,  
24 where we lost at. Still today, I want to know why we wasn't  
25 told to come back.

1 Q. And you were never told about January 10<sup>th</sup>---

2 A. Nothing.

3 Q. ---date?

4 A. Nothing. No phone call, no anything.

5 Q. Okay. And you said you -- in that December meeting,  
6 Mr. Nielson discussed the discovery and the evidence with  
7 you guys?

8 A. Yes.

9 Q. Okay. Do you know if Mr. Hutchinson ever asked for a  
10 copy of the paperwork?

11 A. I don't remember he asked of any copies or anything,  
12 but I know he was told to get a phone call and he wrote my  
13 number down. My number is still the same as this day. He  
14 wrote our numbers down. If you can find it in his file, he  
15 wrote both of our numbers down with addresses.

16 Q. Okay.

17 A. And we accepted -- I say we, 'cause we married, we're  
18 together as one -- he accepted that two years and we was  
19 told to come back up here to sign paperwork. Travis  
20 Hutchinson supposed to sign paperwork, black and white. He  
21 said, I will give you a call. Why call the bondsman when  
22 you feel like someone didn't appear on anything of any  
23 terms, when you mentioned to us about two years?  
24 You could find the bondsman's number, why you couldn't call  
25 me?

1 Q. Okay. Thank you.

2 MR. NEUBAUER: I have no further questions.

3 THE WITNESS: Yes, sir.

4 THE COURT: Anything further from this witness?

5 MR. JOHNSON: No, sir.

6 THE COURT: Thank you, ma'am. You step down.

7 THE WITNESS: You're welcome. Have a good day.

8 MR. JOHNSON: We rest, Your Honor.

9 THE COURT: All right. Applicant has rested. State  
10 ready to proceed?

11 MR. NEUBAUER: Yes, Your Honor. The State would call  
12 Devon Nielson.

13 MADAM CLERK: Place your left hand on the Bible and  
14 raise your right hand.

15 (DEVON NIELSON, being first duly sworn, was examined  
16 and testified as follows):

17 MADAM CLERK: Thank you. Please be seated.

18 THE WITNESS: Thank you very much.

19 MR. NEUBAUER: Pardon me, Your Honor. I have a new  
20 member of the Attorney General's office has come to take  
21 notes with me.

22 THE COURT: That's fine.

23 MR. NEUBAUER: He was letting me why he's walking up  
24 here now.

25 THE COURT: That's fine.

1                                    DIRECT EXAMINATION

2    DEVON NIELSON BY MR. NEUBAUER:

3    Q.    Good afternoon, Mr. Nielson.

4    A.    Good afternoon.

5    Q.    How long you been practicing law, sir?

6    A.    Since November of 2013.

7    Q.    Okay. And what percentage of that has been criminal?

8    A.    One hundred percent.

9    Q.    All criminal. Have you worked primarily with the  
10 public defender's office?

11 A.    I've worked -- I started in Chester, South Carolina at  
12 the public defender's office. I worked there for three  
13 years and then I moved to York, where I've worked for -- for  
14 two years and since I've left York, I've been back in the  
15 Sixth Circuit Public Defender's Office in various  
16 capacities.

17 Q.    Okay. And were you appointed to represent Mr.  
18 Hutchinson?

19 A.    I was.

20 Q.    And do you remember when that would have happened?

21 A.    I was appointed -- the way that they assign cases, it  
22 got a little bit off, because this case was going to be  
23 assigned to another public defender. So he was arrested  
24 sometime in September. I don't believe I received the  
25 appointment until sometime in November.

1 Q. Okay. So you were appointed in November. Do you  
2 remember when you first met with him?

3 A. I first met with him, I believe, -- I believe I first  
4 met with him at his bond returnable, which was in December  
5 of 2017.

6 Q. Okay. And how many times other than that first meeting  
7 did you meet with Mr. Hutchinson?

8 A. I believe we met three times.

9 Q. Three times? And would you have had an opportunity to  
10 go over discovery with him---

11 A. Yes.

12 Q. ---in this? And was it just written reports, body-cam  
13 footage, anything beyond that?

14 A. This case was solely written reports and then body-cam  
15 footage from the officer who made the arrest.

16 Q. And is it your normal course of practice to provide a  
17 defendant with a copy of all the written reports?

18 A. I at least provide the opportunity for them to have it  
19 if they don't -- if they want it.

20 Q. Did he ever indicate to you that he wanted any of the  
21 written reports?

22 A. No. In fact, he -- as he testified before, he said  
23 that he knew what he had done was wrong and he didn't need  
24 to see anything.

25 Q. But you still went over everything just so that he knew

1 what the State had?

2 A. We went over it both when we first met in December when  
3 it was just me and him in the room and then we also went  
4 over it when he came back before the -- the week before the  
5 trial.

6 Q. Okay. And would you have discussed the indictments and  
7 what he was charged with?

8 A. Yes, sir.

9 Q. Would you have talked to him about all the different  
10 elements of each of those charges?

11 A. Multiple times.

12 Q. So there would have been a discussion about why he was  
13 being charged with possession with intent to distribute  
14 heroin?

15 A. Yes.

16 Q. And do you think that he understood those discussions?

17 A. I thought that he did.

18 Q. Did he ever indicate to you that he didn't understand  
19 any of those?

20 A. No.

21 Q. Okay. Were you ever in a trial posture or was it  
22 particularly moving towards a plea deal?

23 A. We didn't -- we got in trial -- I started to prepare  
24 more trial posture once the offer of two years was taken off  
25 the table on January 25<sup>th</sup> of 2018.

1 Q. And the offer -- I'm sorry. That was January 25<sup>th</sup>?

2 A. Yes, sir.

3 Q. And as far as trial posture, did you ever discuss a  
4 strategy with Mr. Hutchinson?

5 A. We -- the only thing that we talked about would have  
6 been in our meeting on February the 8<sup>th</sup> of 2018, where we  
7 talked about we would be asking the judge or the jury to see  
8 this as a simple possession and not as a possession with  
9 intent to distribute.

10 Q. So that was communicated to Mr. Hutchinson?

11 A. Yes, it was.

12 Q. And he understood that that was kind of the only  
13 strategy or theory that you had in this case?

14 A. Yes, sir.

15 Q. Okay. And --

16 MR. NEUBAUER: Beg the Court's indulgence, Your Honor.  
17 I just lost my train of thought.

18 Q. So you get into plea negotiations in this case. Did  
19 you reach out to the solicitor's office for a possible plea?

20 A. The way that -- the way that me and this specific  
21 solicitor worked on -- worked on pleas is, normally, she  
22 would send me a list of plea offers at the first appearance  
23 date, which would have been on November 20<sup>th</sup> of 2017. I  
24 imagine I had her initial plea offer on that date. Like the  
25 -- like Mr. Hutchinson said, I was unavailable that week and

1 so he was told to come back and meet with me at a different  
2 time, but I would have had the plea offer at that point.

3 Q. And that plea offer was the initial two-year offer?

4 A. Yes, sir.

5 Q. And you conveyed that to Mr. Hutchinson?

6 A. I did.

7 Q. And did he tell you that he wanted to accept that  
8 offer?

9 A. He did.

10 Q. And why did he not or when would he have been able to  
11 first accept that offer?

12 A. He -- when he was meeting with me, we could not plea it  
13 the day that he was meeting with me. It was -- it was late  
14 in the day. I don't even know if there was a judge on the  
15 Bench that day, to be completely honest with you. We were  
16 meeting in my office downstairs in this building. He  
17 couldn't -- he was told to be back in January, during our  
18 court term in January, at which point he was told that he  
19 would be pleading at that time.

20 Q. And when did you tell him to come back in January?

21 A. I told him that when it was me and him in my office  
22 together when I gave him the plea offer initially.

23 Q. Did you give him a specific date?

24 A. I told him he had to be back during our January 22<sup>nd</sup>  
25 plea term.

1 Q. January 22<sup>nd</sup> plea term. And did Mr. Hutchinson appear  
2 during that term?

3 A. No. He did not.

4 Q. Did you -- did you send any written correspondence  
5 about when the next plea term would have been?

6 A. I did not. I told him that day when we were meeting in  
7 my office that that was when he needed to be back was on  
8 January 22<sup>nd</sup>.

9 Q. Did he seem to understand that he needed to be back  
10 that day?

11 A. I thought he did.

12 Q. Okay. And so he ended up not showing up. Is that when  
13 the plea offer was pulled?

14 A. I have in my notes from my -- in my file that I  
15 attempted to call him at the number that I had for him on  
16 the January 22<sup>nd</sup>, so the Monday of that week when he did not  
17 show up, and I tried again on January 25<sup>th</sup>, later in the  
18 week before the plea offer was pulled and I was not able to  
19 get it and he did not answer his phone when I tried to call  
20 him.

21 Q. All right. And were you able to leave any messages or  
22 anything for him?

23 A. Had I been able to, I would have, but I can't remember  
24 specifically whether I did or did not.

25 Q. Okay. And that plea offer was ultimately pulled. Was

1 there another offer that was presented to you?

2 A. Ultimately, I was told there would be no offer in this  
3 case. We would be either pleading as charged or proceed to  
4 trial. On the morning of -- and I believe we -- it's been  
5 being said today that it was on February 11<sup>th</sup>. I believe it  
6 was February 12<sup>th</sup>. I believe the 11<sup>th</sup> was a Sunday, but I  
7 believe it was February 12<sup>th</sup>, where he met with my boss at  
8 the time, Harry Dest. Mr. Dest and myself went to the  
9 solicitor's office and convinced the solicitor that if he  
10 was to plead that day, that he would be allowed to plead as  
11 a second offense instead of a third offense. The offer  
12 would still be eleven years, but it would have opened up  
13 other possibilities like parole and other potential things,  
14 had he been able to plea to the second offense.

15 Q. Okay. And you were aware that there was this  
16 outstanding parole issue?

17 A. I was made aware of it by Mr. Hutchinson.

18 Q. And when would you have been made aware of it?

19 A. When I talked to him in December.

20 Q. And so you -- did you reach out to his parole officer  
21 to find out what was happening with that case?

22 A. I did and I was told by them that it would likely be --  
23 that the case -- that they would likely ask to close the  
24 case if he got any kind of SCDC time.

25 Q. Okay. So did you convey that back to Mr. Hutchinson?

1 A. I did not, because I never met with him, 'cause he  
2 never showed up for his plea that week.

3 Q. Okay. And were there any other meetings that you were  
4 supposed to have with him before the February plea date?

5 A. We had -- we had a meeting scheduled for the week  
6 before that he no-showed and I -- and I tried to call him  
7 with no answer. He eventually called me back and set up the  
8 time for us to meet the Friday before the potential trial  
9 date.

10 Q. Okay. And at that point, would you have told him that  
11 parole doesn't want to or parole will close your case and  
12 there won't be any additional time from them if he pled?

13 A. I didn't know if I did or not at that point. He was --  
14 he was -- he was looking at a mandatory minimum of the same  
15 amount of time that he was facing on probation anyway at  
16 that point.

17 Q. And when you told him about that two-year offer and he  
18 told you that he wanted to accept it, did you communicate  
19 that with Marina Hamilton?

20 A. I did.

21 Q. And so she knew that he intended to accept?

22 A. Yes.

23 Q. And you guys knew that it was going to happen the week  
24 of January 22nd?

25 A. Yes, we did.

1 Q. And everything was set up in place for that to go  
2 forward?

3 A. It was.

4 Q. The only person you were waiting on was Mr. Hutchinson?

5 A. Yes.

6 Q. He did not show up then?

7 A. He did not show up.

8 Q. And that's ultimately when the offer was pulled?

9 A. Yes. It was -- and he was supposed to be there on the  
10 22<sup>nd</sup> and it was not pulled until, according to my record,  
11 until the 25<sup>th</sup>. The solicitor did give me a few days to try  
12 to get him into court.

13 Q. So you had, presumably, most of the week or the whole  
14 week to try and track him down?

15 A. Yes, sir.

16 Q. Okay. And then he ended up pleading straight up.  
17 Correct?

18 A. Yes.

19 Q. With no recommendation?

20 A. Yes.

21 Q. But at the end you and the solicitor both kind of told  
22 the Court what you were hoping his sentence to be. Correct?

23 A. Yes. The solicitor made a statement that she wanted  
24 more than the minimum. She did not put a specific number of  
25 years on it, just that she had hoped that he would get more

1 than the minimum and I went in pretty deeply on why I  
2 believed he should be given the eleven-year minimum that he  
3 was facing at that point.

4 Q. Did you feel that there was any reason for you to  
5 object that she gave her opinion of what sentence he should  
6 receive, that you felt that was a recommendation on his  
7 sentence?

8 A. Honestly, I didn't even remember she did it until I  
9 read it in the trial transcript.

10 Q. Okay. And he was -- did he ever indicate that he  
11 wanted to, when she made that statement, he didn't want to  
12 plea, he wanted to go to trial?

13 A. No. He didn't turn to me. He didn't say anything and  
14 our other option at that point was to try the case that  
15 week.

16 Q. Did he ever indicate to you that he wanted to take this  
17 case to trial?

18 A. No. In fact, he specifically told me and the judge on  
19 the record that he did not want to go to trial.

20 Q. So if you would have objected or tried to withdraw the  
21 guilty plea at that point, that would have been against your  
22 client's wishes?

23 A. Absolutely, it would have been.

24 Q. Okay. And as far as the guilty plea, when Ms. Hamilton  
25 was going through the case, she said, The possession with

1 intent to distribute comes not only from the inference  
2 weight, but also the way that the heroin is bagged up.

3 Correct?

4 A. That's what she said in the transcript. Yes, sir.

5 Q. Did you see that there was or did you find any reason  
6 to object to the recitation of the facts, stating why they  
7 charged it as a possession with intent to distribute?

8 A. No, sir.

9 Q. And Mr. Hutchinson was aware that it was with intent to  
10 distribute, not only because of the weight, but because of  
11 the way the heroin was bagged. Correct?

12 A. Yes. We talked about that and he signed the plea  
13 affidavit form that we went over that mor- -- that morning  
14 before the plea, where we talked about the fact that it was  
15 possession with intent to distribute and not simple  
16 possession.

17 Q. And he ultimately felt that or he told you that he  
18 wasn't planning to sell anything, that it was for his own  
19 personal use. Correct?

20 A. He told me that all the way along, that all of this was  
21 just for his own personal use, but we talked about why it  
22 was charged the way it was.

23 Q. And he knew that even though it was just for his  
24 personal use, it did not matter because of the way -- the  
25 way that it was bagged?

1 A. We talked about the fact the jury could infer that and  
2 that we could ask -- we could ask the jury to look at it  
3 otherwise, but that would be what we'd do at trial.

4 Q. And he never asked you to meet with him any more times  
5 to go over the evidence?

6 A. No, sir.

7 Q. And, ultimately, the -- Ms. Hamilton moved to amend the  
8 indictment to reflect that it was a third offense. Correct?

9 A. Yes, sir.

10 Q. And you pushed back on that at the beginning of the  
11 guilty plea?

12 A. Yes. I objected to that and then filed an appeal based  
13 on that.

14 Q. And, ultimately, she was allowed to amend the  
15 indictments to third offense. Correct?

16 A. Yes.

17 Q. Over your objections?

18 A. Yes.

19 Q. And you knew that it was based on his prior record,  
20 based on the fact it was proper for them to be a third  
21 offense?

22 A. Yes. He had more than that on his record.

23 Q. Okay. Did you feel that you should have moved to  
24 withdraw his plea at that time?

25 A. I never felt that way. No.

1 Q. And why would you not have moved to withdraw his plea?

2 A. Because he was -- the facts in this case were that he  
3 had seventeen small bags of heroin in his pocket and had we  
4 withdrawn the plea, we would have been asking to go to trial  
5 and I did not believe it was in my client's best interest to  
6 go to trial. I believe he would have gotten more time if  
7 we'd gone to trial.

8 Q. And he told you distinctly that he didn't want to take  
9 this to trial?

10 A. Yes, more than once.

11 Q. Okay. And were you aware that the day before his  
12 guilty plea he used heroin?

13 A. Yes. He told the judge that on the record.

14 Q. Prior to that, prior to him going in front of the judge  
15 that day, were you made aware of that fact?

16 A. No, sir.

17 Q. Did you have any inkling or reason to believe that he  
18 was under the influence?

19 A. He seemed like the normal Travis Hutchinson that had  
20 met with me a couple of times at that point.

21 Q. And he ultimately went in front of the judge and was  
22 questioned about whether or not he understood what was  
23 happening, even though he was coming down from the effects  
24 of heroin. Correct?

25 A. Yes.

1 Q. And he said that he understood everything?

2 A. Yes.

3 Q. And in your conversation with him before he went before  
4 the judge, did he seem to understand what you were talking  
5 about?

6 A. Yes.

7 Q. So you don't think that he had any issue understanding  
8 what was happening on the 13<sup>th</sup>?

9 A. I don't believe so. No.

10 Q. And I'd just like to -- I apologize. I misstated the  
11 date, it's the 11<sup>th</sup> and the 12<sup>th</sup> initially, but Mr. Johnson  
12 is correct, it was the 12<sup>th</sup> and the 13<sup>th</sup>. And so did you  
13 feel that you could have -- did you feel any need to request  
14 a continuance because he used heroin the prior day?

15 A. No.

16 Q. Do you think that if you'd moved to continue it or push  
17 it to a later day, the judge would have granted that?

18 A. He might have let him plead a day or two later in the  
19 week. I mean, we were only at Tuesday of a court week at  
20 that point and had we asked for it, but we were going to  
21 trial that morning if we -- if we asked for -- if we  
22 withdrew the plea, so he probably wouldn't have even done  
23 that.

24 Q. So it seemed as if -- and he seemed pretty adamant that  
25 his only options were to plead that day or go to trial that

1 day. Correct?

2 A. Yes. If we would have really pushed it hard, he might  
3 have given us until Wednesday. This trial was not going to  
4 take more than a day or two, so we could have definitely  
5 completed it had we pled the case on Wednesday, but -- but  
6 yes.

7 Q. And, ultimately, you think he would have, regardless  
8 of the day that it occurred, he would have chose to plead  
9 guilty?

10 A. He told me all along that he never wanted to go to  
11 trial. We -- he told me that every time we talked to him  
12 about this case.

13 Q. And you did inform the Solicitor Hamilton that that  
14 two-year offer was originally accepted back in December.  
15 Correct?

16 A. Yes, and she gave us time to figure out the probation  
17 issue. She gave us until January 22<sup>nd</sup> to do that.

18 Q. So that's part of the reason why it took over a month  
19 for him to be able to appear before a judge, was to have  
20 time to figure out the probation issue?

21 A. Partially that and it was right before Christmas when  
22 people take off and are hard to get a hold of.

23 Q. Okay. And so everything was scheduled and you  
24 communicated with Mr. Hutchinson that he needed to be back  
25 on the 22<sup>nd</sup>?

1 A. When we were in my office, I told him when he needed to  
2 be back.

3 Q. And was it just you and Mr. Hutchinson---

4 A. I believe --

5 Q. ---in your office that day?

6 A. I believe so. I believe I talked with his wife out in  
7 the lobby of my office, but I could be wrong.

8 Q. Would you have communicated that date with her?

9 A. I'm not sure.

10 Q. But you do remember communicating it with Mr.  
11 Hutchinson?

12 A. Absolutely.

13 Q. Did he tell you that he would be there the week of the  
14 22<sup>nd</sup>?

15 A. Yes.

16 Q. Did he show up the week of 22<sup>nd</sup>?

17 A. No.

18 MR. NEUBAUER: No further questions at this point.

19 THE COURT: All right. Mr. Johnson.

20 MR. JOHNSON: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 DEVON NIELSON BY MR. JOHNSON:

23 Q. Mr. Nielson, you testified that you called -- attempted  
24 to call my client about the plea offer. Well, let's start  
25 when did you first meet with Mr. Hutchinson and advise him

1 of the two-year plea offer?

2 A. It was -- it was -- I -- he -- based on his testimony,  
3 he's saying it was the 19<sup>th</sup>. I have the date on my file  
4 that says December 12<sup>th</sup> of 2017.

5 Q. Okay. And did you have any deadline for that plea  
6 offer that changed? Was it one plea -- you said January  
7 22<sup>nd</sup>.

8 A. He was originally supposed to plead on the -- in  
9 December.

10 Q. Okay. And on page -- I don't know if you have a copy  
11 of the transcript.

12 A. I do.

13 Q. I'm just referencing the conversation and I believe  
14 it's here, starting at the bottom of page 26, going into  
15 page 27, saying, This is a case where we initially offered  
16 two years, Your Honor. Mr. Hutchinson has brought that up  
17 many times, as he's been trying to talk to you. The offer  
18 was put on the table, we were given a deadline to accept the  
19 offer. I asked the State and they granted me a two-week  
20 extension on the original deadline because he's currently on  
21 probation. So what were those two deadlines?

22 A. My notes indicate that the original deadline was mid-  
23 December and it was actually a month deadline, not a two-  
24 week deadline. I was wrong about that in the plea.

25 Q. So it was moved 'til January 22<sup>nd</sup>?

1 A. The week of January, 22<sup>nd</sup>. Yes, sir.

2 Q. Okay. You said on line five, I understand why he's  
3 upset, why he thinks he was treated unfairly as to that, but  
4 he was supposed to be back and he thought I was supposed to  
5 call him and so when he missed the deadline, I tried to call  
6 him and he did not answer his phone and the deadline passed.  
7 Okay. And you testified to that, that you tried to call  
8 him?

9 A. Yes. I tried to call him both on January 22<sup>nd</sup> and on  
10 January 25<sup>th</sup>, according to my notes.

11 Q. Was his wife, Letitia Williams, present during your  
12 meeting in December?

13 A. She was -- I believe -- I spoke with her that day, but  
14 I don't believe I spoke with -- I believe I spoke with him  
15 first in my office and I spoke with her outside in the  
16 foyer.

17 Q. Okay. Did you attempt to call her phone number about  
18 this deadline?

19 A. I did not. She is not my client.

20 Q. Okay. But do you receive contact information from  
21 family members to get a hold of clients?

22 A. Occasionally, I do. Yes, sir.

23 Q. Did you receive any from her?

24 A. I don't know. It's not in my file if I did.

25 Q. Okay. Did you receive a mailing address?

1 A. I have a mailing address on the file. Yes, sir.

2 Q. Did you send them any letters about this offer?

3 A. I did not.

4 Q. Okay. And do you feel like, as he explained it to you,  
5 was he aware of the elements of a possession with intent to  
6 distribute heroin?

7 A. We spoke about it. Yes.

8 Q. Okay. And you -- did you question -- when you heard  
9 the statement about heroin use prior to the plea, did you  
10 stop and ask to speak with your client about how much heroin  
11 he had used and when he had used it?

12 A. I did not. He told the judge it had been about twenty-  
13 four hours.

14 Q. Okay. And did you go over the elements of each offense  
15 with Mr. Hutchinson?

16 A. I did on the meeting we had before -- the Friday before  
17 the trial date.

18 Q. And did you provide him with a complete copy of the  
19 evidence?

20 A. I offered.

21 Q. Okay. Did you actually give any of it to him?

22 A. No.

23 Q. Okay. How many times did you meet with Mr. Hutchinson?

24 A. Three, including the morning of the plea, so two  
25 outside of court and then a third the morning of the plea.

1 Q. Okay. When the solicitor enhanced the possession and  
2 possession with intent to distribute from a second to a  
3 third, why did you fail to withdraw or move to withdraw the  
4 guilty plea at that time?

5 A. I'm sorry. I don't understand the question.

6 Q. Did you move to withdraw the guilty plea at that  
7 time?

8 A. At what time?

9 Q. When the solicitor put on the record they wanted to  
10 amend the indictments up to a third offense from a second.

11 A. No. I knew this was going to turn into a -- I knew  
12 before -- before she did the plea that it was going to turn  
13 into that and the judge ruled that she was going to let him  
14 do that or let her do that.

15 Q. But you objected to it on the record?

16 A. I did and then I appealed after the plea.

17 Q. Okay. So if you objected on the record to it,  
18 why did you not withdraw or make a motion to withdraw the  
19 plea?

20 A. Because we would have been going to trial under a  
21 third.

22 Q. Okay.

23 A. Any withdrawal of the plea was going to turn into a  
24 trial starting that day.

25 Q. Okay. And this was a straight-up plea with no

1 recommendation or negotiation. Correct?

2 A. Yes, sir.

3 Q. And do you ever object when a solicitor expresses their  
4 opinion about how much time someone should receive when  
5 they've got it marked as a straight-up plea, but then they  
6 turn around and they say what the solicitor said? Do you  
7 ever object to that and try to withdraw the plea?

8 A. On a straight-up plea they're still allowed to have  
9 their opinion.

10 Q. Okay. And you feel like if the solicitor is saying  
11 give him more than the eleven years, then that is -- you're  
12 saying that's not a recommendation?

13 A. I would say no. It's not a specific number of years.

14 Q. Okay.

15 A. Now, I don't -- I don't necessarily like it, either,  
16 but I would not say it's a recommendation.

17 Q. Okay. Did you -- how did you communicate to the  
18 solicitor that Mr. Hutchinson wanted to accept the two-year  
19 offer?

20 A. My communications with Marina Hamilton were almost  
21 always by email.

22 Q. Okay. And when you did that, you're saying he failed  
23 to show up on the 22<sup>nd</sup>. Correct? I just want to make sure  
24 I --

25 A. Yes.

1 Q. And then he came back and there was an offer of eleven  
2 years?

3 A. Well, there wasn't an offer of eleven years, he was  
4 facing a minimum of eleven years, but the morning of the  
5 plea -- and that was when he came back the Friday before the  
6 -- before the court term. The morning of the plea, the  
7 morning of the -- the Monday morning when we all came back  
8 and he was on the trial list that week, he spoke with Harry  
9 Dest and Harry Dest went to -- and myself went to both  
10 Marina Hamilton and the head solicitor, Kevin Brackett, and  
11 they agreed to let him plead to a second as long as he would  
12 still get eleven years.

13 Q. Okay. And did he come back on that day for the plea?

14 A. The -- on the 12<sup>th</sup>, Monday the 12<sup>th</sup>?

15 Q. Yeah. Well, the Friday -- whatever the day was before  
16 the actual plea. Was there a day he was supposed to be  
17 back?

18 A. February 8<sup>th</sup>.

19 Q. Was it the 8<sup>th</sup>?

20 A. That's when I met with him in my office. Yes.

21 Q. What was the day he was supposed to be at court for the  
22 plea?

23 A. On January 22<sup>nd</sup>.

24 Q. Okay. But the following date was what?

25 A. The next date was February 12<sup>th</sup>.

1 Q. Okay. Did he appear on February 12<sup>th</sup>?

2 A. He did.

3 Q. Okay. And was there a conversation about him failing  
4 to show up back to the court?

5 A. I have in my notes that both myself and Harry Dest told  
6 him not to leave the courthouse.

7 Q. Okay. So did you attempt to call him after he had left  
8 the courthouse?

9 A. I did not, but there's a note in my office that he did  
10 call my office that afternoon.

11 Q. Did you call him back?

12 A. I don't know.

13 Q. Okay. Do you know if you tried to call his wife?

14 A. I don't know, but by that point the bench warrant had  
15 already been issued.

16 Q. How many days before the guilty plea did that happen?

17 A. The day before.

18 Q. Oh. That was the day before?

19 A. Yes.

20 Q. I'm just trying to keep it straight so I --

21 A. No. You're fine.

22 MR. JOHNSON: Your Honor, I have no more questions.

23 THE COURT: Anything further of this witness?

24 MR. NEUBAUER: Very briefly, just to clarify a few  
25 things.

REDIRECT EXAMINATION

1  
2 DEVON NIELSON BY MR. NEUBAUER:

3 Q. On cross-examine you told Mr. Johnson you knew that  
4 this case could or would be enhanced to a third offense.

5 Correct?

6 A. Yes.

7 Q. Did you communicate that with Mr. Hutchinson?

8 A. Yes.

9 Q. So he was aware that they were going to try to enhance  
10 it to third?

11 A. That's why we were talking about eleven years all the  
12 way along is because we knew they were going to make this a  
13 third.

14 Q. When would you have told him this?

15 A. I would have for sure told it to him on the 8<sup>th</sup>, on the  
16 -- on the February 8<sup>th</sup> date. Before that, we were never  
17 talking about a third, because the plea would have had to  
18 have been to a second to make it -- to make it available to  
19 have it bargained down to the number of years the State was  
20 offering us.

21 Q. And then just to clarify, we talked about the time line  
22 of the February meeting. So you met with him on the 8<sup>th</sup>,  
23 you discuss everything, tell him that he's on the trial list  
24 for the following week. Correct?

25 A. Yes, and that is when we watched the video as well.

1 Q. Yes. So then February 11<sup>th</sup> comes and he meets with you  
2 and Harry Dest. Correct?

3 A. February 12<sup>th</sup>.

4 Q. February 12<sup>th</sup>. I don't know why I keep saying the  
5 11<sup>th</sup>. February --

6 A. I think I told you the 11<sup>th</sup> in one of our meetings.

7 Q. February 12<sup>th</sup>, you -- he comes in and he meets with you  
8 and Harry Dest.

9 A. Yes.

10 Q. And he's told he can plea to eleven years second  
11 offense that day?

12 A. Yes.

13 Q. He leaves the courthouse?

14 A. Yes.

15 Q. He does not come back?

16 A. Yes.

17 Q. He -- you don't call him, but he calls you?

18 A. He -- yes.

19 Q. At that time the bench warrant had already been issued?

20 A. Yes.

21 Q. So then he gets picked up on the bench warrant that  
22 night, I believe.

23 A. Yeah. I believe his bondsman brought him to the jail.

24 Q. And the following day, the 13<sup>th</sup>, he comes in and is  
25 told plea -- you can plead today or you'll go to trial

1 starting today?

2 A. Yes.

3 Q. And that's when he ultimately pled guilty?

4 A. Yes.

5 MR. NEUBAUER: I have no further questions at this  
6 point.

7 THE COURT: Anything further?

8 MR. JOHNSON: No, sir.

9 THE COURT: Thank you, Mr. Nielson. You may step down.

10 MR. NIELSON: Thank you, Your Honor.

11 MR. NEUBAUER: The State has no further witness to  
12 testify.

13 THE COURT: The State's rested. Is there any reply  
14 testimony?

15 MR. JOHNSON: No, Your Honor.

16 THE COURT: All right. Well, gentlemen, I'll allow  
17 each of you to make a summation. The applicant has the  
18 burden of proof, so I'm going to leave Mr. Johnson last  
19 words.

20 Mr. Neubauer.

21 MR. NEUBAUER: Thank you, Your Honor. We believe the  
22 applicant has failed to meet his burden in this case. It  
23 appears that all plea offers were communicated to Mr.  
24 Hutchinson. We've had testimony today that Mr. Nielson told  
25 Mr. Hutchinson to appear the week of January 22<sup>nd</sup> to accept

1 the two-year offer that he received. That was communicated  
2 to him in December, before Christmas, and he did not show up  
3 that week. He was called twice by Mr. Nielson that week,  
4 but he did not appear. It was communicated to the solicitor  
5 that they wanted to accept that two-year offer and the only  
6 thing that needed to happen at that point was for Mr.  
7 Hutchinson to appear the week of 22<sup>nd</sup>. That did not occur.

8         However, beyond that, Mr. Nielson and Mr. Hutchinson  
9 have indicated that they talked about elements of offenses,  
10 they talked about guilty pleas, that Mr. Hutchinson admitted  
11 that he was guilty of this and that he didn't want to take  
12 it to trial, that he wanted to plead guilty. They received  
13 a plea offer that they were ready to take forward. They  
14 discussed -- Mr. Nielson indicated he discussed the trial  
15 strategy or defense strategy with Mr. Hutchinson if they did  
16 not receive another plea offer or he chose to take it to  
17 trial.

18         They did review discovery and despite Mr. Hutchinson  
19 indicating he didn't feel that he needed to see it, that he  
20 knew what he was guilty of. Despite that, he still had an  
21 opportunity to see all the discovery in this case and was  
22 provided an opportunity to obtain the discovery, but he did  
23 not want a copy.

24         Mr. Hutchinson indicated that he wanted to plead guilty  
25 all along, that he didn't want to take this case to trial,

1 so there's no merit for any allegations that counsel failed  
2 to withdraw the guilty plea. That would have been directly  
3 against his client's wishes at the time that he pled guilty.

4 Mr. Hutchinson told the Court on the day of his plea  
5 that he was coming down from the effects of heroin, but that  
6 he understood everything that happened. He told that to the  
7 judge repeatedly. There was no reason for anybody else to  
8 disagree that he was able to understand what was happening.  
9 Though today he's saying that he didn't understand, but he  
10 understood some parts, he's failed to show that it would  
11 have affected the outcome of his case so that he would not  
12 have pled guilty.

13 Additionally, Mr. Hutchinson pled guilty straight up  
14 without any formal recommendation. He was aware that he  
15 could be sentenced anywhere within the sentencing range and  
16 both the defense and the State gave a verbal sentence that  
17 they would seek, or a range that they would seek, however,  
18 it was not a formal recommendation as was indicated by the  
19 judge and the sentencing sheet in this case.

20 Mr. Hutchinson was made aware of the elements of the  
21 defense -- of the offenses, including the elements of  
22 possession with intent to distribute. Though Mr. Hutchinson  
23 has repeatedly said that he is a user, had no desire to sell  
24 or distribute heroin, he was made aware that the way that  
25 the drugs were bagged, along with the weight that -- of the

1 drugs, that the jury could or a jury could infer that he had  
2 intent to distribute. Knowing this, he still made the  
3 decision to plead guilty to these charges. Therefore, he  
4 has failed to show how counsel was deficient or how that --  
5 or how any deficiency prejudiced him in this case.

6 THE COURT: Thank you, Mr. Neubauer. Mr. Johnson.

7 MR. JOHNSON: Thank you, Your Honor, just briefly. The  
8 public defender, Mr. Nielson, testified that he -- I asked  
9 him about contact regarding the offer and the applicant's  
10 wife testified that she had given all phone numbers and  
11 addresses to Mr. Nielson and that was Ms. Letitia Williams.

12 Mr. Nielson testified that he attempted to call the  
13 applicant, but no testimony about actually trying to call  
14 Ms. Williams or if he actually seemed sure that he had her  
15 phone number. So the testimony -- some of the testimony, I  
16 would say, from Mr. Nielson conflicts with also the  
17 transcript. I pointed out about the plea offer deadline and  
18 we quoted the transcript there where he had this  
19 conversation with the Court about the plea deadline  
20 changing, being delayed by two weeks, and he testified that,  
21 well, that was a month. So it went from December to January  
22 22<sup>nd</sup> instead of two weeks and in the transcript he said two  
23 weeks. So based upon his -- the public defender's memory,  
24 if he's testifying today, I'd ask the Court to take that in  
25 consideration. If he's testifying -- he's testified today

1 that he did not call my client's wife to speak with her or  
2 to try to contact Mr. Hutchinson, so I think he indicated he  
3 wasn't sure if he had a phone number from her in the file,  
4 but, of course, found to argue that it was his duty to  
5 maintain clear contact information with the client and with  
6 other possible sources of contact.

7 Applicant's wife testified that she did not witness or  
8 become aware of any phone calls, as well as my client not  
9 receiving any updates and when they found out that there was  
10 this deadline of January 22<sup>nd</sup> had been missed and that the  
11 two-year offer was gone, that they were surprised by that  
12 and they didn't understand it and they went in and talked to  
13 Mr. Harry Dest about that at the public defender's office.

14 There's no written communication offered by Mr.  
15 Nielson, no letters sent to my client, nothing in writing  
16 about this January 22<sup>nd</sup> deadline that's been made part of  
17 the record and I'd point that out as well. The statement  
18 that's in the transcript where clearly the applicant tells  
19 the Court he's just coming down off of heroin. There was no  
20 attempt by Mr. Nielson to take -- step to the side and pause  
21 things and have a conversation about how much heroin was  
22 used and when it was used and try to ask some basic  
23 questions to make sure he was competent to go forward with  
24 the guilty plea. That did not take place. I asked Mr.  
25 Nielson about that. He stated that he -- I believe he

1 stated that based on the comments made, he was basing his  
2 decision on that, that Mr. Hutchinson said that he  
3 understood and wanted to go forward, but I would submit to  
4 the Court that somebody who's in a situation where they're  
5 under the influence of drugs or alcohol, the whole point of  
6 the Court asking that question in every guilty plea, 'cause  
7 there has to be some real determination about whether or not  
8 drugs or alcohol are affecting their ability to waive their  
9 rights and Mr. Nielson could have easily stepped back with  
10 his client and had that conversation during the plea, did  
11 not do that.

12 That's all I have, Your Honor. Thank you.

13 THE COURT: Thank you, Mr. Johnson.

14 Gentlemen, I want to read the transcripts and review  
15 the materials that have been submitted. Thank you for your  
16 presentation. I'm going to take this under advisement and I  
17 will have my law clerk email you this evening.

18 MR. JOHNSON: Thank you, Judge.

19 THE COURT: Thank you.

20 MR. NEUBAUER: Thank you.

21 (END OF REQUESTED TRANSCRIPT)  
22  
23  
24  
25





STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK.	)	
	)	
Travis Hutchinson,	)	Case No.: 2020-CP-46-00338
S.C.D.C. No. 245544,	)	
	)	
Applicant,	)	
	)	<b>ORDER OF DISMISSAL</b>
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

This matter comes before the Court by way of an application for post-conviction relief filed by Travis Hutchinson ("Applicant") on January 29, 2020. Respondent made its return on or about February 2, 2021. The Court convened an evidentiary hearing into the matter on April 13, 2022, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Ola A. Johnson. 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 plea counsel, Devon R. Nielson ("Counsel"), also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the York County Clerk of Court regarding the subject convictions, and the pleadings. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denied and dismissed this application with prejudice. The Court finds as follows:

**I. PROCEDURAL HISTORY**

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the January 2018 term of the York County Grand Jury for possession with intent to distribute heroin, possession of cocaine, and escape (2018-GS-46-00204, 2018-GS-46-00205, and 2018-GS-46-00213). Assistant Public Defender Devon R. Nielson represented Applicant, and Assistant Solicitor Marina Hamilton, of the Sixteenth Circuit Solicitor's Office, prosecuted the case.

On February 13, 2018, Applicant appeared before the Honorable Roger E. Henderson and entered a "straight-up" guilty plea. Judge Henderson sentenced Applicant to imprisonment for concurrent terms of fourteen years on the heroin charge and five years on the cocaine charge<sup>1</sup> and a consecutive term of one year on the charge of escape. Applicant filed a notice of appeal on February 20, 2018, which was dismissed on June 5, 2019, after review pursuant to Anders v. California, 386 U.S. 738 (1967).

#### Factual History

The following summary of the underlying facts is taken from the State's remarks at Applicant's guilty plea hearing:

On September 15, 2017, Applicant was pulled over and arrested by Rock Hill PD officers in York County for driving under suspension. During a search incident to arrest, conducted with Applicant's consent, officers found in Applicant's pants pocket seventeen separate bags of heroin laced with fentanyl, all measured to approximately the same weight and weighing a total of .6 grams, as well as .37 grams of cocaine and \$91.35. He was charged with possession with intent to distribute based on the weight and packaging of the drugs. (Plea Tr. p.20, lines 5-25).

<sup>1</sup> At the plea hearing, the State moved to amend the indictments for each of the two drug charges from a second offense to a third based on Applicant's prior drug offenses. Judge Henderson granted the motion over Counsel's objection. (Plea Tr. p.7, line 15-p.9, line 9).

On September 17, 2017, as Applicant was being transported from his holding cell to the Moss Justice Center in York County, he jumped out of the back of the transport van and fled into the woods. Applicant was found hiding in a barn approximately three-quarters of a mile down the road. He was charged with escape. (Plea Tr. p.21, line 8-p.22, line7).

### Present Application

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

1. Ineffective Assistance of Counsel
  - a. Counsel failed to explain the details of Applicant's guilty plea and sentencing and the elements of each offense;
  - b. Counsel failed to provide a copy of the State's evidence to Applicant;
  - c. Counsel failed to discuss defense strategy or to properly review the evidence with Applicant;
  - d. Counsel failed to meet with Applicant a sufficient number of times to review the evidence;
  - e. Counsel failed to move to withdraw the guilty plea when the solicitor enhanced the drug charges from second offenses to third;
  - f. Counsel failed to request a continuance when Applicant stated to the court that he was just "coming down off of heroin" and Applicant was unable to voluntarily waive his rights and enter a guilty plea;
  - g. Counsel failed to object or to move to withdraw the guilty plea when the solicitor recommended a sentence after informing the defense and the court that there was no negotiation or recommendation as reflected in the sentencing sheets; and
  - h. Counsel failed to notify the solicitor that Applicant had accepted the State's offer of two years' incarceration at a meeting witnessed by Applicant's wife, Latisha Williams, and failed to contact Applicant regarding a deadline for the offer.

As his requested relief, Applicant seeks to have the State's initial two-year plea offer reinstated or, barring that, to have his plea vacated.

### II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, 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:

**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 by a preponderance of the evidence. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985); Rule 71.1(e), SCRPC. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel's performance was deficient. Strickland, 466 U.S. at 687; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). 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.”).

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 (quoting Strickland, 466 U.S. at 694). “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.

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Statements made during a guilty plea should be considered conclusive, unless an Applicant

presents valid reasons why he should be allowed to depart from the truth of his statements. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Id. at 696-97.

#### **1. Failure to Explain Guilty Plea, Sentencing, and Elements of Offense**

This Court finds that Counsel was not ineffective for failing to explain the details of Applicant's guilty plea and sentencing or the elements of the offenses. At the evidentiary hearing, Applicant testified that Counsel neither explained the elements of possession with intent to distribute heroin nor informed him that the State's evidence could support an inference of intent. However, Applicant admits he cut short Counsel's attempts to communicate with him about the case because Applicant believed the evidence was against him and intended to plead guilty. In addition, Counsel testified that he explained the elements of the charge and how it differed from simple possession to Applicant. This Court finds that Counsel made a reasonable attempt to discuss the elements of the charged offenses with Applicant and that, to the extent Applicant failed to understand them, his failure was due to his own rejection of Counsel's attempts to further discuss the case. Therefore, the Court finds that Applicant has failed to establish Counsel's deficient performance as to this allegation. See Strickland, 466 U.S. at 687.

Even if Counsel's performance had been deficient, this Court finds that Applicant was not prejudiced because the charges, possible sentences, and consequences of pleading guilty were all

explained at the plea proceeding. Before a court can accept a guilty plea, the defendant must be advised of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived. Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). The 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 the defendant, between the court and defendant's counsel, or both." State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993).

The transcript of the plea hearing reflects that the judge explained the charges and the potential sentences to Applicant, and Applicant affirmed he understood what the offenses were. (Plea Tr. p.10, line 16–p.11, line 22). The judge described the rights Applicant would be giving up by pleading guilty and asked if Applicant was freely and voluntarily giving them up; Applicant responded, "Yes, sir." (Plea Tr. p.14, line 18–p.16, line 6). The solicitor then recited the factual basis for the charges, and Applicant admitted the solicitor's statement of the facts was correct. (Plea Tr. p.20, line 5–p.24, line 21). The judge explained that Applicant was preparing to enter a "straight-up" plea, leaving his sentence to the court's discretion, and Applicant indicated he understood. (Plea Tr. p.24, line 22–p.25, line 6). This Court finds the detailed explanation of the charges, sentences, and effects of pleading guilty presented at Applicant's plea hearing was sufficient to cure any purported deficiency in Counsel's own explanation of those concepts. See Terry v. State, 383 S.C. 361, 372–73, 680 S.E.2d 277, 283–84 (2009) (holding plea counsel's deficient performance was cured by the court's reading of the indictments, the solicitor's recitation of the facts, and the defendant's indication he understood the charges and admitted guilt), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018); Wolfe v. State, 326 S.C. 158, 164–65, 485 S.E.2d 367, 370 (1997) (holding, where a defendant alleged his

attorney incorrectly advised him his guilty plea would result in a reduced sentence, any error was cured when the judge explained he was not bound by sentencing recommendations during the guilty plea colloquy). Therefore, this allegation is denied and dismissed with prejudice.

**2, 3, and 4. Failure to Provide or Review Evidence and Discuss Strategy**

Applicant alleges Counsel was ineffective for failing to provide a copy of the State's evidence to Applicant, failing to review the available evidence with Applicant, and failing to discuss defense strategy with him. This Court finds these allegations to be without merit.

At the hearing, Applicant testified that Counsel reviewed the State's video evidence with him, after which Applicant decided to plead guilty and declined to have any more meetings discussing the evidence with Counsel. Counsel testified he offered to provide Applicant with a complete copy of the evidence, but Applicant turned him down. Counsel also testified he discussed with Applicant the possibility of arguing simple possession, rather than possession with intent to distribute, to the jury; however, Applicant insisted on foregoing a jury trial and pleading guilty. This Court finds that Counsel made a reasonable attempt to present a complete copy of the State's evidence to Applicant, to set up additional meetings to discuss the evidence, and to pursue a valid defense strategy as an alternative to pleading guilty. Therefore, the Court finds Applicant has not proven his allegations that Counsel's performance in preparing for trial was deficient.

In addition, the Court finds Applicant has not met his burden of establishing prejudice from any of Counsel's alleged failures. To establish prejudice, Applicant must show that, but for Counsel's alleged errors, he likely would not have pleaded guilty and would have insisted on going to trial. Hill, 474 U.S. at 59. However, Applicant admits he insisted on *not* going to trial and instructed Counsel that he wanted to plead guilty because he believed the State's video evidence was enough to guarantee a conviction.

Furthermore, Applicant has not explained how receiving or reviewing any additional evidence or discussing any additional defense strategy would have changed his mind about pleading guilty. An applicant who alleges his or her defense attorney was ineffective in failing to spend more time preparing or to provide a copy of the discovery materials must demonstrate prejudice by showing what evidence could have been discovered or what other defenses could have been pursued. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls, 422 S.C. 174, 810 S.E.2d 836. Furthermore, an applicant must also show how the new evidence or defenses would have resulted in a different outcome. Id. (citing David v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)). Because Applicant has not established a reasonable probability that, but for Counsel's allegedly deficient performance, he would not have pleaded guilty, this Court finds Applicant has failed to establish prejudice as to these allegations. Hill, 474 U.S. at 59; Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. Accordingly, these three allegations are denied and dismissed with prejudice.

##### **5. Failure to Withdraw Plea when Solicitor Enhanced Charges to Third Offense**

Applicant alleges Counsel was ineffective for failing to withdraw the guilty plea when the court granted the solicitor's motion to amend the drug charges from second offenses to third offenses. This Court finds this allegation without merit. As both Applicant and Counsel testified, Applicant was anxious to avoid going to trial and insisted on entering a guilty plea. Withdrawing the guilty plea would have been contrary to Applicant's express wishes. Before Applicant pled

guilty, the judge informed him that his drug charges were both third offenses and explained the potential sentences to him. (Plea Tr. p.10, line 18–p.11, line 5). Counsel also testified that he had informed Applicant of the State's intention to amend the charges prior to the plea proceeding, and both he and Applicant admitted that Applicant's prior criminal record supported the amendment. Nevertheless, Counsel objected to the State's motion, and Applicant raised the issue in his direct appeal. This Court finds that, because Applicant was already aware that the State intended to amend the drug charges prior to entering his guilty plea, Counsel's refusal to withdraw the guilty plea after the solicitor's motion did not constitute deficient performance. Furthermore, Applicant has not even asserted—much less proved—that he would have insisted on going to trial but for Counsel's alleged error. Therefore, Applicant has failed to demonstrate any prejudice. Hill, 474 U.S. at 59; Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. Accordingly, this allegation is denied and dismissed with prejudice.

#### 6. Failure to Request Continuance

Applicant alleges that his guilty plea was not voluntarily made because he used heroin prior to the plea proceeding and was still "coming down" when he entered his guilty plea; Applicant also alleges Counsel was ineffective for failing to request a continuance when he learned of Applicant's recent heroin use. This Court finds Applicant was not incapacitated such that he could not voluntarily enter a guilty plea and further finds Counsel was not ineffective for failing to request a continuance.

In order to plead guilty, a defendant must be competent, and his decision to plead guilty must be a knowing and voluntary one. Garren v. State, 423 S.C. 1, 14, 813 S.E.2d 704, 711 (2018). If a post-conviction relief applicant claims his guilty plea was involuntary due to the influence of drugs, he must show that his mental faculties were so impaired by the drugs when he pleaded that

he was incapable of fully understanding and appreciating the charges against him, of comprehending his constitutional rights, and of realizing the consequences of his plea. Id. at 15, 813 S.E.2d at 712.

In Garren, a post-conviction relief applicant alleged he was incompetent to plead guilty due to an unidentified medication he had received prior to entering the plea. Id. at 7-8, 813 S.E.2d at 708. At his post-conviction relief hearing, the applicant testified he could not understand or even remember the plea proceeding because of the medication. Id. at 9-11, 813 S.E.2d at 709. The South Carolina Supreme Court reversed the post-conviction relief court's grant of relief, holding the applicant had failed to establish his incompetence by a preponderance of the evidence. Id. at 16, 813 S.E.2d at 712. The Court noted that, at the plea hearing, the applicant had denied being impaired by any drugs or medication, that his attorney testified he seemed normal and appeared to understand the proceedings, and that there was no evidence the applicant had taken the medication on the day he pled guilty. Id. at 16-17, 813 S.E.2d at 712-13.

The facts in this case are similar to those in Garren. At his plea hearing, Applicant claimed he had used heroin approximately 24 hours prior. (Plea Tr. p.12, line 14-p.13, line 12). The judge asked Applicant whether he was still under the effects of heroin and whether he was able to understand the proceedings. (Plea Tr. p.13, line 22-p.14, line 16). Applicant answered that he was "coming down" from his heroin use and that he had understood everything that happened at the plea hearing so far. (Plea Tr. p.12, line 16-p.14, line 17). At the post-conviction relief hearing, Counsel testified Applicant acted no differently than usual during the plea proceeding. This Court finds Applicant's current claim that he was incompetent due to heroin use is contradicted by Counsel's testimony and by his own solemn statements at the plea hearing. See Dalton, 376 S.C. at 137-38, 654 S.E.2d at 874 (holding statements made during a guilty plea should ordinarily be

considered conclusive). Therefore, this Court finds Applicant has failed to establish his incompetence by a preponderance of the evidence. Garren, 423 S.C. at 16–17, 813 S.E.2d at 712–13. Furthermore, since Applicant repeatedly stated he was able to understand the proceedings during the plea hearing, the Court finds Counsel was not ineffective for failing to seek a continuance. Therefore, this allegation is denied and dismissed with prejudice.

#### **7. Failure to Withdraw Plea when Solicitor Recommended Sentence**

At the plea hearing, the solicitor remarked that “the State would be asking for over the minimum,” although she declined to give a specific number. (Plea Tr. p. 22, lines 9–11). Applicant alleges Counsel was ineffective for failing to move to withdraw the guilty plea after the solicitor asked the judge to impose a sentence “over the minimum.” Applicant argues the solicitor’s request constituted a “recommendation,” which was not proper because the sentencing sheet reflected his plea was made without negotiations or recommendation.

This Court finds this allegation without merit. The South Carolina Court of Appeals has held that the sentencing sheet option “without negotiations or recommendation” means that the State and the defendant have not agreed on sentencing; consequently, each party is free to request a favorable sentence. State v. Rikard, 371 S.C. 295, 302, 638 S.E.2d 72, 76 (Ct. App. 2006). Therefore, the solicitor’s request for an “over the minimum” sentence was appropriate and was not a “recommendation.” Furthermore, the judge later explained that Applicant was preparing to enter a “straight-up” plea and that any sentence would be in the discretion of the court. (Plea Tr. p.24, line 22–p.25, line 2). Nor did the solicitor’s request dissuade Counsel from asking for a minimum sentence. (Plea Tr. p. 28, lines 8–25). For these reasons, this Court concludes the solicitor’s request did not warrant attempting to withdraw Applicant’s guilty plea, and Counsel was not ineffective for failing to do so. Therefore, this allegation is denied and dismissed with prejudice.

### 8. Failure to Notify Solicitor Regarding Applicant's Acceptance of Plea Offer

Finally, Applicant alleges Counsel was ineffective for failing to inform the solicitor that Applicant had accepted the State's initial two-year plea offer. Applicant claims Counsel knew he intended to accept the offer but failed to contact either the solicitor or Applicant until the deadline to accept the offer had expired. Applicant asks for the State's two-year offer to be reinstated as a remedy pursuant to Lafley v. Cooper, 566 U.S. 156, 171 (2012) (holding that, if a defendant shows he likely would have accepted a plea offer but for counsel's errors, a court may exercise its discretion to resentence the defendant to the term of imprisonment offered in the plea).

This Court finds Counsel was not responsible for Applicant's failure to accept the State's two-year plea offer in a timely fashion. According to Counsel's testimony, when Applicant first notified him of his intention to accept the State's offer, Counsel informed Applicant that he would have to wait until the January 22, 2018, plea term in order to accept the plea deal because it was late in the afternoon and the court was about to close. When the day arrived, however, Applicant did not show up. Counsel called Applicant's phone but was not able to reach Applicant or leave a message. Counsel then arranged with the solicitor to extend the plea deal deadline to January 25; however, he was not able to reach Applicant on that date either.

Applicant testified that Counsel never informed him of the January 22 deadline and never called to tell him when to come to court. He also testified Counsel did not give him any written notice of the plea deal. Applicant's wife testified that Counsel never called her or sent her any letters in an effort to contact Applicant.

This Court finds Applicant has failed to establish by a preponderance of the evidence that he was never informed of the January 22 deadline. Counsel's testimony about communicating the deadline to Applicant was definite and detailed, down to the time of day at which the conversation

took place. In addition, Applicant displayed a pattern of missing court dates despite advance notice; he admitted knowingly letting another plea deal lapse because he did not want to drive his car to the courthouse that day.

This Court finds that Counsel's performance was not deficient because he informed Applicant in advance of the need to appear at the January 22 plea term. The Court further finds that Counsel's subsequent failure to reach Applicant by phone or through Applicant's wife is not relevant. While it may be best practice to give a client multiple reminders of upcoming court dates, failure to do so is not an error "so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Strickland, 466 U.S. at 687. For these reasons, the Court finds Counsel was not ineffective, and this allegation is denied and dismissed with prejudice.

*[Conclusion and signature on following page]*

III. CONCLUSION

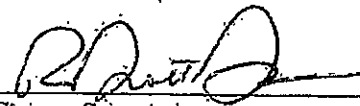
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. The Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 24 day of May, 2022.

  
 \_\_\_\_\_  
 R. SCOTT SPROUSE  
 Presiding Judge  
 Sixteenth Judicial Circuit

W. M. M. M., South Carolina

**RECEIVED**

JUN 02 2022

S.C. SUPREME COURT

**WITNESSES**

RHPD

Witnessing Officer: *Tripp*

**ARREST WARRANT NUMBER**

2017A4620301826

**ACTION OF GRAND JURY  
TRUE BILL**

*Mr. Beard*

Foreperson of Grand Jury

Date: *1-18-18*

**VERDICT**

Foreperson of Petit Jury

Date:

**DOCKET NO. 2018-GS-46-00204**

**The State of South Carolina**

**County of York**

**COURT OF GENERAL SESSIONS**

**JANUARY 18, TERM 2018**

**THE STATE**

**VS.**

**TRAVIS SEMAJ HUTCHINSON**

**INDICTMENT FOR**

**POSSESSION WITH INTENT TO  
DISTRIBUTE HEROIN**

SC Code: § 44-53-370

CDR Code: 0184

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

**Defendant**

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

*[Signature]*

**Defendant**

**Witness:**

*L. Benjamin J. Court Specialist*  
**C.C.C. PLS. AND G.S.**

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

CERTIFIED TRUE COPY  
INDICTMENT  
2018 JAN 30 AM 10:09


DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY SC

At a Court of General Sessions, convened on January 18, 2018, the Grand Jurors of York County present upon their oath:

**POSSESSION WITH INTENT TO DISTRIBUTE HEROIN**

The defendant, Travis Semaj Hutchinson, did on or about September 15, 2017, in York County, South Carolina, manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase heroin, a schedule I controlled substance narcotic, all in violation of Section 44-53-370, Code of Laws South Carolina (1976, as amended).

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

  
MARINA B. HAMILTON  
ASSISTANT SOLICITOR

**WITNESSES**

RHPD

Witnessing Officer: *Tripp*

**ARREST WARRANT NUMBER**

2017A4620301827

**ACTION OF GRAND JURY  
TRUE BILL**

*ML Beale*  
Foreperson of Grand Jury  
Date: *1-18-18*

**VERDICT**

Foreperson of Petit Jury  
Date:

DOCKET NO. 2018-GS-46-00205

**The State of South Carolina**

County of York

**COURT OF GENERAL SESSIONS**

**JANUARY 18, TERM 2018**

**THE STATE**

**VS.**

**TRAVIS SEMAJ HUTCHINSON**

**INDICTMENT FOR  
POSSESSION OF COCAINE**

SC Code: § 44-53-370  
CDR Code: 3012

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

*[Signature]*  
Defendant

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

*[Signature]*  
Defendant

Witness:

*L. Benfield Court Specialist*  
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

CERTIFIED TRUE COPY INDICTMENT

2018 JAN 30 AM 10:09

DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

At a Court of General Sessions convened on January 18, 2018, the Grand Jurors of York County present upon their oath:

**POSSESSION OF COCAINE**

The defendant, Travis Semaj Hutchinson, did on or about September 15, 2017, in York County, South Carolina, knowingly or intentionally possess cocaine, all in violation of Section 44-53-370, Code of Laws of South Carolina (1976, as amended).

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

  
MARINA B. HAMILTON  
ASSISTANT SOLICITOR

**WITNESSES**

YCSO

Witnessing Officer: T.Hager

**ARREST WARRANT NUMBER**

2017A4610201868

**ACTION OF GRAND JURY**

**TRUE BILL**

*ml BJD*

Foreperson of Grand Jury

Date: 1-18-18

**VERDICT**

Foreperson of Petit Jury

Date:

**DOCKET NO. 2018-GS-46-00213**

**The State of South Carolina**

**County of York**

**COURT OF GENERAL SESSIONS**

**JANUARY 18, TERM 2018**

**THE STATE**

**VS.**

**TRAVIS SEMAJ HUTCHINSON**

**INDICTMENT FOR**

**ESCAPE**

SC Code: § 24-13-0410

CDR Code: 2527

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

**Defendant**

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

*Travis Semaj Hutchinson*  
**Defendant**

**Witness:**

*L. Bonfield Court Specialist*  
**C.C.C. PLS. AND G.S.**

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

CERTIFIED TRUE COPY  
INDICTMENT  
2020 JAN 30 AM 10:09

DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

At a Court of General Sessions, convened on January 18, 2018, the Grand Jurors of York County present upon their oath:

ESCAPE

The defendant, Travis Semaj Hutchinson did on or about September 17, 2017 in York County, while lawfully confined in a prison, local detention facility or while in the custody of an officer, did escape, attempt to escape or have in his possession tools, weapons or other items which could be used to facilitate an escape. All in violation of 24-13-0410, *Code of Laws of South Carolina*, (1976, as amended).

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

  
MARINA B. HAMILTON  
ASSISTANT SOLICITOR

COUNTY OF YORK  
STATE VS.

TRAVIS SEMAJ HUTCHINSON

AKA: Travis Seami Hutchison, Travis S Hutchison  
Race: Black Sex: M Age: 37  
DOB: [REDACTED] SS#: [REDACTED]  
Address: [REDACTED]  
City, State, Zip: [REDACTED]  
DL# [REDACTED] SID# SC01120643

INDICTMENT/CASE#: 2018-GS-46-00204  
A/W: 2017A4620301826  
Date of Offense: 09/15/2017  
S.C. Code §: 44-53-370  
CDR Code #: 0184

CERTIFIED TRUE COPY

SENTENCE 30 JAN 30 AM 10:09

ORIGINAL

DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No   
In disposition of the said indictment comes now the Defendant who was  
TO: Possession with Intent to Distribute Heroin 3rd or Sub. Offense  
In violation of § 44-53-370 of the S.C. Code of Laws, bearing CDR Code # 0185

CONVICTED OF or  PLEADED

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  §17-25-45  
(CSC w/minor 1<sup>st</sup> or Lewd Act)

The charge is:  As indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury, \_\_\_\_\_ (def.'s initials)  
The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST:

Marina B. Hamilton 80383  
Marina B. Hamilton, Assistant Solicitor SC Bar #

TAKY  
Defendant

[Signature] 101444  
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center,  
for a determinate term of 14 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  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
Payment Terms: \_\_\_\_\_

Ordered PTUP \_\_\_\_\_  
\_\_\_\_\_ days/hours Public Service Employment  
Obtain GED

Set by SCDPPPS \_\_\_\_\_

Attend Voc. Rehab. Or Job Corp. \_\_\_\_\_

Recipient: \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

*Fine: _____	\$ _____
§14-1-206 (Assessments 107.5%)	\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100 <u>\$100</u>
§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 <u>\$25</u>
§14-1-213 (Drug Court Surcharge)	\$150 <u>\$150</u>
§50-21-114 (BUI Breath Test Fee)	\$50 \$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
3% to County (if paid in installments)	\$ _____
TOTAL	<u>\$250</u>

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ \_\_\_\_\_ Beginning \_\_\_\_\_

\$ \_\_\_\_\_ Paid to Public Defender Fund

Other: \_\_\_\_\_

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

Clerk of Court/Deputy Clerk: David Hamilton  
Court Reporter: Queen Butler  
SCCA/217 (07/2016)

Presiding Judge: [Signature]  
Judge Bar ID: \_\_\_\_\_ Judge Code: 2754  
Sentence Date: 2-13-18

158

COUNTY OF YORK  
STATE VS.

JAIL

INDICTMENT/CASE#: 2018-GS-46-00205  
A/W: 2017A4620301827  
Date of Offense: 09/15/2017  
S.C. Code §: 44-53-370  
CDR Code #: 3012

CERTIFIED TRUE COPY

SENTENCE SHEET JAN 30 AM 10:09

TRAVIS SEMAJ HUTCHINSON  
AKA: Travis Seamj Hutchison, Travis S Hutchison  
Race: Black Sex: M Age: 37  
DOB: [REDACTED] SS#: [REDACTED]  
Address: [REDACTED]  
City, State, Zip: [REDACTED]  
DL# [REDACTED] SID# SC01120643

ORIGINAL

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADED

TO: Possession of Cocaine 3rd or Sub. Offense

In violation of § 44-53-370 of the S.C. Code of Laws, bearing CDR Code # 3013

DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  §17-25-45  
(CSC w/minor 1<sup>st</sup> 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:

*Manna B. Hamilton* 80383  
Manna B. Hamilton, Assistant Solicitor SC Bar #

*Travis Hutchison* Defendant  
*Dee R. M...* 101444  
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center,  
for a determinate term of 5 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_  
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which  
are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: 2018-GS-46-00204

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 \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine: \_\_\_\_\_ \$ \_\_\_\_\_

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

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 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 \$ 25

§14-1-213 (Drug Court Surcharge) \$150 \$ 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 \$ 275

Attend Voc. Rehab. Or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ \_\_\_\_\_ Beginning \_\_\_\_\_

\$ \_\_\_\_\_ Paid to Public Defender Fund

Other: \_\_\_\_\_

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

Clerk of Court/Deputy Clerk: David Hamilton  
Court Reporter: Queen Butler  
SCCA/217 (07/2016)

Presiding Judge: \_\_\_\_\_  
Judge Bar ID: \_\_\_\_\_ Judge Code: 2154  
Sentence Date: 2-13-18

COUNTY OF YORK  
STATE VS.

JAIL

INDICTMENT/CASE#: 2018-GS-46-00213  
A/W: 2017A4610201868  
Date of Offense: 09/17/2017  
S.C. Code §: 24-13-0410  
CDR Code #: 2527 CERTIFIED TRUE COPY

TRAVIS SEMAJ HUTCHINSON  
AKA: Travis Seami Hutchison, Travis S Hutchison  
Race: Black Sex: M Age: 37  
DOB: [REDACTED]  
Address: [REDACTED]  
City: [REDACTED]  
DL# [REDACTED]

SENTENCE SHEET 30 AM 10:09

ORIGINAL

DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was  
TO: Escape

CONVICTED OF or

PLEADED GUILTY

In violation of § 24-13-0410 of the S.C. Code of Laws, bearing CDR Code # 2527

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  §17-25-45  
(CSC w/minor 1<sup>st</sup> 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:

Maria B. Hamilton 80383  
Maria B. Hamilton, Assistant Solicitor SC Bar #

[Signature]  
Defendant

[Signature] 101444  
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center,  
for a determinate term of 1 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: 2018-65-46-00784  
 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. \_\_\_\_\_  
May serve W/E beginning \_\_\_\_\_

Recipient: \_\_\_\_\_  
Substance Abuse Counseling   
Random Drug/Alcohol Testing   
\*Fine: \_\_\_\_\_ \$ \_\_\_\_\_  
Fine may be pd. in equal consecutive weekly/monthly  
\$14-1-206 (Assessments 107.5%) \$ \_\_\_\_\_  
pmts. of \$ \_\_\_\_\_ Beginning \_\_\_\_\_  
\$14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100  
\$ \_\_\_\_\_ Paid to Public Defender Fund  
\$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  
\$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 \$ 125

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: David Hamilton  
Court Reporter: Aileen Butler  
SCCA/217 (07/2016)

Presiding Judge: [Signature]  
Judge Bar ID: \_\_\_\_\_ Judge Code: 2754  
Sentence Date: 2-13-18