

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Jun 07 2023

S.C. SUPREME COURT

—————
Certiorari to Florence County

Honorable George M. McFaddin, Circuit Court Judge

—————
JASON R. JONES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001245

—————
APPENDIX
—————

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ATTORNEYS FOR RESPONDENT

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State of South Carolina)	Court of General Sessions
)	Twelfth Judicial Circuit
County of Florence)	Case No. 2018-GS-21-01679
)	Case No. 2018-GS-21-01680
)	
)	
State of South Carolina,)	
)	
Plaintiff,)	
)	
-vs-)	Transcript of Record
)	
)	
Jason Rashaad Jones,)	
)	
Defendant.)	
)	

October 3, 2019
Florence, South Carolina

B E F O R E:

The Honorable Edgar J. Dickson, Judge

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

Todd Tucker, Esquire
Attorney for the Plaintiff

Scott Floyd, Esquire
Attorney for the Defendant

Krystal J. Smith
Circuit Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Presented)

COURT REPORTER LEGEND

dashes --	intentional or purposeful interruption or change in thought
ellipses . . .	trailing off
[ph]	phonetically written
[sic]	written as said

1 OCTOBER 3, 2019

2 (WHEREUPON, the proceedings began at 12:10 p.m.)

3 MR. TUCKER: Jason Jones.

4 THE COURT: You said Jason Jones? Jones?

5 MR. TUCKER: Yes, Your Honor.

6 THE COURT: Okay. Mr. Floyd, do you represent Mr.

7 Jones?

8 MR. FLOYD: I do, Your Honor.

9 THE COURT: Okay.

10 Mr. Tucker?

11 MR. TUCKER: Thank you, Your Honor. May it please the

12 Court.

13 THE COURT: Yes, sir.

14 MR. TUCKER: Standing before you is Jason Rashaad Jones.

15 He is pleading guilty on the following two indictments, the
16 first of which is 2018-GS-21-1679. He is pleading guilty on
17 that particular indictment to trafficking cocaine base, 10
18 grams or more but less than 28 grams, second offense, for
19 which he could get from 5 to 30 years and a \$50,000 fine.

20 He is also pleading guilty to 2018-GS-21-1680. He is
21 pleading guilty on that indictment to distribution of cocaine
22 base, third offense or more, for which he could get from 30
23 -- or from 0 months up to 30 years and a \$50,000 fine.

24 This is a negotiated plea with a negotiated sentence of
25 10 years as to each offense. There's also a bench warrant

1 that we would ask be lifted by virtue of this plea.

2 And, Your Honor, as a housekeeping matter, you'll notice
3 that Mr. Jepertinger's signatures are on the documents I just
4 handed up. I am standing in for him, as he is not present
5 today.

6 THE COURT: But he'll get credit for this?

7 MR. TUCKER: He certainly will.

8 THE COURT: He will?

9 MR. TUCKER: That's why he signed it yesterday.

10 THE COURT: Okay. He signed it yesterday just so he
11 wanted to make sure he got credit?

12 MR. TUCKER: Yes, sir.

13 THE COURT: All right. And this is 10 years negotiated,
14 concurrent?

15 MR. TUCKER: That is correct, Your Honor.

16 THE COURT: Okay. All right.

17 All right. Mr. Floyd, you've had an opportunity to meet
18 with Mr. Jones and review the evidence with -- regarding
19 these charges with him?

20 MR. FLOYD: Yes, sir, I have.

21 THE COURT: And you've -- you explained to him the law
22 and possible sentences and his constitutional rights?

23 MR. FLOYD: Yes, Your Honor.

24 THE COURT: He -- after you had had your discussions
25 with him, he asked you to pursue plea opportunities?

1 MR. FLOYD: Yes, Your Honor.

2 THE COURT: And that's why we're here today?

3 MR. FLOYD: Yes, Your Honor.

4 THE COURT: And he's aware of the impact of the -- of
5 this 10-year sentence?

6 MR. FLOYD: Yes, Your Honor.

7 THE COURT: And he is aware that the trafficking in
8 cocaine base, second offense, the one that carries between 5
9 and 30 years, is a violent and serious offense?

10 MR. FLOYD: Yes, Your Honor.

11 THE COURT: And you've -- you've explained to him how
12 that's going to -- could affect him in the future?

13 MR. FLOYD: Yes, Your Honor.

14 THE COURT: Okay. Do you believe it's in his best
15 interest to go forward with this?

16 MR. FLOYD: He does.

17 THE COURT: Okay.

18 MR. FLOYD: Yes, Your Honor.

19 THE COURT: Mr. Jones, my -- the sentencing sheet
20 indicates you're 37; is that correct?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. And, Mr. Jones, before you got
23 arrested, were you working somewhere?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Where?

1 THE DEFENDANT: I was working out at Francis Marion.

2 THE COURT: What were you doing at Francis Marion?

3 THE DEFENDANT: Landscaping.

4 THE COURT: I'm sorry. What?

5 THE DEFENDANT: Landscaping.

6 THE COURT: Oh, landscaping. Did you help keep up the
7 baseball field?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. How long had you been working at
10 Francis Marion?

11 THE DEFENDANT: Nine -- ten months.

12 THE COURT: Okay. And where did you work before then?

13 THE DEFENDANT: I was working at Wendy's and I was
14 cooking.

15 THE COURT: Okay. The -- the Francis Marion job was a
16 pretty good job, wasn't it?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. All right. How far did you go in
19 school, Mr. Jones?

20 THE DEFENDANT: I got my GED.

21 THE COURT: Okay. Where were you going to high school?

22 THE DEFENDANT: I was going to Darlington High School.

23 THE COURT: Darlington?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: What grade did you quit?

1 THE DEFENDANT: In eleventh grade.

2 THE COURT: And why did you stop in the eleventh?

3 THE DEFENDANT: Because I had got incarcerated.

4 THE COURT: What?

5 THE DEFENDANT: I went to jail.

6 THE COURT: Oh, okay. Okay. Mr. Jones, have you ever
7 been treated for any mental health issues?

8 THE DEFENDANT: No, sir.

9 THE COURT: Have you ever been treated for any drug or
10 alcohol abuse or dependency?

11 THE DEFENDANT: No, sir.

12 THE COURT: Okay. Are you taking any kind of
13 prescription medication?

14 THE DEFENDANT: No, sir.

15 THE COURT: Okay. Today are you under the influence of
16 any alcohol or illegal drugs?

17 THE DEFENDANT: No, sir.

18 THE COURT: Okay. Are you thinking clearly right now?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. Did Mr. Floyd go over with you the
21 evidence that the State has against you regarding these
22 charges?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Did he explain to you the law that applies
25 in each one of these situations?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Did he explain to you the maximum sentence
3 you're facing on all of these charges?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Did he explain your constitutional rights to
6 you?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Did he answer all of your questions?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Did you understand everything he told you?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Are you satisfied with his services as your
13 attorney?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you need any more time to talk with him?

16 THE DEFENDANT: No, sir.

17 THE COURT: Do you want a jury trial on these charges?

18 THE DEFENDANT: No, sir.

19 THE COURT: Okay. Now, it's my understanding that Mr.
20 Floyd was able to negotiate a 10-year sentence on these
21 charges. Is that your understanding?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. Other than that -- other than that
24 negotiated sentence, has anyone promised you anything else to
25 get you to plead guilty here today?

1 THE DEFENDANT: No, sir.

2 THE COURT: Has anybody threatened you or forced you to
3 make you plead guilty here today?

4 THE DEFENDANT: No, sir.

5 THE COURT: Are you doing this freely and voluntarily?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you believe it's in your best interest to
8 go forward with a plea?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. Mr. Tucker?

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

13 THE COURT: Yes, sir.

14 FACTS

15 MR. TUCKER: Beginning with 18-1680 first, that incident
16 occurred on April the 11th, 2018, at or around 7:30 p.m. The
17 incident location is Room 308 of the Ramada Inn at 1519 West
18 Lucas Street, which is in Florence County.

19 On that date and time, the narcotics officers with the
20 Florence County Narcotics Division utilized a confidential
21 informant. The informant made contact with an individual
22 known to the informant as Baby Huey, later identified as this
23 defendant, Jason Rashaad Jones.

24 The confidential informant negotiated the purchase of
25 cocaine base. Once the deal was made over the telephone,

1 narcotics officers supplied the confidential informant with
2 \$40 in funds with which to purchase the cocaine base. As is
3 customary with these kinds of operations, the confidential
4 informant was also outfitted with both a recording -- video
5 recording and audio recording device.

6 At any rate, the confidential informant went to the
7 room, purchased \$40 worth of cocaine base. Ultimately, that
8 turned out to be .28 grams, testing positive for cocaine base
9 through chemical analysis.

10 Once the transaction was completed, the confidential
11 informant met the narcotics officers at a predetermined
12 location, handing over both the audio and video recording
13 devices. Both were viewed and determined to be of sufficient
14 quality. At any rate, as is standard with these operations
15 also, the informant was also searched prior to the
16 transaction and shortly thereafter to make sure the informant
17 didn't have anything on his or her person.

18 The next incident, Your Honor, is 18-1679. That
19 incident occurred on April the 18th, 2018, at or around 4:00
20 p.m. The incident location is [REDACTED] West Lucas Street.

21 On this date and time, officers involved in the
22 investigation of Mr. Jones executed a search warrant at the
23 incident location. When they conducted the search warrant,
24 they found numerous items inside the -- the residence, one of
25 which was almost 14 grams of methamphetamine. They also had

1 cocaine base they found.

2 But at any rate, once the search was completed, they
3 were able to locate this defendant inside the residence as
4 well and, of course, in the investigation there were
5 allegations that Mr. Jones had been selling in or out of that
6 particular location, as well as the Ramada Inn. But at any
7 rate, Your Honor, these items were found and belonged to Mr.
8 Jones.

9 In terms of a prior record, it looks like his first drug
10 conviction was back in 2000. It looks like it was possession
11 of cocaine base. It looks like he was given a 5-years,
12 suspended to a 3-year sentence.

13 Next, in 2001 it looks like distribution of crack. It
14 looks like he received an 8-year sentence, and it looks like
15 mostly magistrate and municipal-level offenses.

16 It looks like there was a strong-armed robbery
17 conviction in 2013. It looks like he was given a 78-day
18 sentence on that with time served.

19 Burglary in 2015, second degree, 78 months.

20 And then it looks like the incident offenses which bring
21 us here today. It looks like he's got a little bit of a out-
22 of-state record as well from Georgia, but again, it's one of
23 these where it's always kind of hard to figure out what's
24 what in terms of an arrest and/or a conviction.

25 THE COURT: Okay.

1 MR. TUCKER: But certainly he had the requisite number
2 of predicate offenses to put him into the purview of a second
3 and a third possession.

4 THE COURT: All right. Mr. Jones, you heard what the
5 solicitor told me about the circumstances that led to your
6 arrest on the present charges?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay. All right, sir.

9 The first one that I want to talk about is -- occurred
10 in Florence County on April the 11th, 2018. This is the
11 distribution of cocaine base, third or subsequent offense.
12 Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. So how do you plead to this
15 charge?

16 THE DEFENDANT: I plead guilty.

17 THE COURT: All right, sir. The next one is the -- the
18 event that occurred in Florence County on April 19th [sic],
19 2018. This is the trafficking in methamphetamine, 10 grams
20 or more but less than 28 grams, second offense. How do you
21 plead to this charge?

22 THE DEFENDANT: Guilty, sir.

23 THE COURT: Mr. Jones, you understand if I accept your
24 guilty plea to these two charges, there will be two
25 additional convictions on your record?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You know what the negotiated sentence is?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You are aware that the last thing you pled
5 guilty to is a violent, serious offense and counts as a
6 strike? Do you understand that?

7 MR. FLOYD: He's asking you about the charge.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. All right, sir. Do you want me to
10 accept your guilty pleas to these two charges?

11 THE DEFENDANT: Yes, sir.

12 FINDINGS

13 THE COURT: Mr. Jones, I find your decision to plead
14 guilty to these two charges is freely, voluntarily, and
15 intelligently made. I find you've had the advice and counsel
16 of a competent lawyer. I find you're satisfied with the
17 services of your lawyer. I find there's a factual basis on
18 which to base your guilty plea to these two charges, and I am
19 going to accept your guilty plea to both of them.

20 Mr. Floyd?

21 MR. FLOYD: Thank you, Your Honor.

22 THE COURT: Yes, sir.

23 MR. FLOYD: Your Honor, Mr. Jones -- before I forget to
24 do this, he has served time in the county detention center on
25 these charges, and it was a situation where he was in on a

1 bench warrant, got out, and then got picked up on another
2 one. So there were like three different occasions he's
3 actually served time. I've added up all of his time
4 together, Your Honor, and from what I can determine, I think
5 he's entitled to 147 days credit on these charges.

6 THE COURT: Okay.

7 MR. FLOYD: Your Honor, Mr. Jones and I have certainly,
8 you know, discussed this plea offer and his decision to
9 accept it. He understands that his sentence -- sentences on
10 both of these charges are no-parole, subject to the -- to the
11 85-percent rule. He understands that the methamphetamine
12 charge is violent and it's a strike, but he feels that this
13 plea is in his best interest and wanted to go forward with
14 this today.

15 Your Honor, he does have a young son he's very concerned
16 about. He tells me that he's -- you know, when he gets done
17 with this, he's going to try to go on the straight and
18 narrow, and I certainly hope he succeeds in that.

19 Your Honor, we would just -- he's got plenty to look
20 forward to when he gets out, Your Honor. I've talked to his
21 fiancée, the mother of his child. I know she cares a great
22 deal about him. He's got a mother out there that supports
23 him. So hopefully, he's going to turn things around, but
24 he's got to get this behind him first. He understands that.

25 THE COURT: Okay.

1 MR. FLOYD: Your Honor, we would just ask if you would
2 accept the negotiation in this case.

3 THE COURT: Okay. And, Mr. Jones, I hope -- I hope when
4 you get out everything will work out, raising your child and
5 making a living and paying taxes and all the good stuff.
6 Okay?

7 THE DEFENDANT: Yes, sir.

8 RULING

9 THE COURT: I'm going to go along with the negotiated
10 sentence, and the sentence of this Court on each one of these
11 charges is that you're committed to the State Department of
12 Corrections for a period of ten years. These sentences are
13 concurrent. I am going to give you credit for the 147 days
14 you've served.

15 Okay. Good luck to you.

16 MR. FLOYD: Thank you, Your Honor.

17 MR. TUCKER: Thank you, Your Honor.

18 THE COURT: Thank you.

19 (WHEREUPON, the proceedings ended at 12:24 p.m.)

20

21 --- END REQUESTED TRANSCRIPT ---

22

23

24

25

WITNESSES

Jason Pate Florence County Sheriff

DOCKET NO. 2018-GS-21-01677

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

AUGUST TERM 2018

THE STATE

vs.

JASON JONES

Notle Prose... Oct. 3, 2019

Tell L. D.

John C Jeperfinger

ARREST WARRANT NUMBER

2018A2110100250 2018A2110100249

2018A2110100251

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: *8-22-18*

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE COCAINE BASE,
POSSESSION WITH INTENT TO
DISTRIBUTE MARIJUANA
AND
POSSESSION WITH INTENT TO
DISTRIBUTE HEROIN

DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

2018 AUG 23 PM 3:04

FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

INDICTMENT FOR
POSSESSION WITH INTENT TO
DISTRIBUTE COCAINE BASE,
POSSESSION WITH INTENT TO
DISTRIBUTE MARIJUANA
AND
POSSESSION WITH INTENT
TO DISTRIBUTE HEROIN

At a Court of General Sessions, convened on AUGUST 23, 2018 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- POSSESSION WITH INTENT TO DISTRIBUTE COCAINE BASE

That Jason Jones did in Florence County on or about April 2, 2018, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver a quantity of Cocaine Base, a controlled substance under the provisions of Section 44-53-110, et.seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law, and being in violation of Section 44-53-375(B)(3), S. C. Code of Laws, 1976, as amended.

COUNT TWO- POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA

That Jason Jones did in Florence County on or about April 2, 2018, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver a quantity of Marijuana, a controlled substance under the provisions of Section 44-53-110, et.seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law, and being in violation of Section 44-53-370(B)(2), S. C. Code of Laws, 1976, as amended.

COUNT THREE - POSSESSION WITH INTENT TO DISTRIBUTE HEROIN

That Jason Jones did in Florence County on or about April 2, 2018, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver a quantity of Heroin, a controlled substance under the provisions of Section 44-53-110, et.seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law, and being in violation of Section 44-53-370(B)(1), S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

WITNESSES

Angel M Clark Florence County Sheriff

DOCKET NO. 2018-GS-21-01679

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

AUGUST TERM 2018

John C Jepertinger

THE STATE

vs.

ARREST WARRANT NUMBER

2018A2110100309 2018A2110100310
2018A2110100311

JASON RASHAAD JONES

ION OF GRAND JURY

Indictment for

TRUE BILL

**POSSESSION OF HEROIN,
TRAFFICKING IN METHAMPHETAMINE
AND
POSSESSION OF COCAINE BASE**

[Signature]
Foreperson of Grand Jury
Date:

8-23-18

VERDICT

Foreperson of Petit Jury

Date:

2018 AUG 23 PM 3:04
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

FILED

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

INDICTMENT FOR
 POSSESSION OF HEROIN,
 TRAFFICKING IN METHAMPHETAMINE
 AND
 POSSESSION OF COCAINE BASE

At a Court of General Sessions, convened on AUGUST 23, 2018 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- POSSESSION OF HEROIN

That Jason Rashaad Jones did in Florence County on or about April 19, 2018, knowingly and intentionally possess a quantity of Heroin, a controlled substance under provisions of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized by law, and being in violation of Section 44-53-0370(d)(1), S. C. Code of Laws, 1976, as amended.

COUNT TWO- TRAFFICKING IN METHAMPHETAMINE

That Jason Rashaad Jones did in Florence County on or about April 19, 2018, knowingly, sell, deliver, purchase, or bring into this state; or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this state, or was in actual or constructive possession or attempted to become in actual or constructive possession of a quantity of Methamphetamine in an amount of more than ten grams but less than twenty-eight grams, same being a controlled substance all within the meaning of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized and in violation of Section 44-53-375(C)(1)(c), S. C. Code of Laws, 1976, as amended, for the crime of trafficking.

COUNT THREE - POSSESSION OF COCAINE BASE

That Jason Rashaad Jones did in Florence on or about April 19, 2018, knowingly, willfully, and intentionally possess or attempt to possess a quantity of Cocaine Base, a controlled substance under provisions of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized by law and being in violation of Section 44-53-0375(A), S. C. Code of Laws, 1976, as amended.

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



 E.L. Clements, III
 TWELFTH CIRCUIT SOLICITOR

WITNESSES

Angel M Clark Florence County Sheriff

John C Jepertinger

ARREST WARRANT NUMBER

2018A2110100305

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: 8-23-18

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2018-GS-21-01680

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

AUGUST TERM 2018

THE STATE

vs.

JASON RASHAAD JONES

Indictment for

DISTRIBUTION OF COCAINE BASE

DORIS POULOS O'HARA
CCJP & GS
FLORENCE COUNTY, SC

2018 AUG 23 PM 3:04

FILED

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

INDICTMENT FOR
 DISTRIBUTION OF COCAINE BASE

At a Court of General Sessions, convened on AUGUST 23, 2018 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- DISTRIBUTION OF COCAINE BASE

That **Jason Rashaad Jones** did in Florence County, on or about April 11, 2018, distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver to a Confidential Informant of the Florence County Sheriff's Office, a quantity of Cocaine Base, a controlled substance under provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law, and being in violation of Section 44-53-375(B), S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
 TWELFTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Florence
STATE VS.

Jason Rashaad Jones

AKA:

Race: Black Sex: M Age: 37

DOB: [redacted] SS#: [redacted]

Address: Hickory St

City, State, Zip: Darlington, SC 29532-5220

DL#: [redacted] SID#: [redacted]

*CDL Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Drugs / Trafficking in meth. or cocaine base - 10 g or more, but less than 28 g - 2nd offense (5-30 / \$0,000)

in violation of § 44-53-0375(C)(1)(b) of the S.C. Code of Laws, bearing CDR Code # 0451

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As Indicted. Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

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

ATTEST: John C. [redacted] 9826 SC Bar# [redacted] 104-3 Defendant Scott P. [redacted] 12061 SC Bar# Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

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

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

CONCURRENT or CONSECUTIVE to sentence on: 10/3/19

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 SCDOC.

147 days

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED

Set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____

Recipient: _____ May serve W/E beginning _____

* Fine: \$ _____ Substance Abuse Counseling

§ 14-1-206 (Assessments 107.5 %) \$ _____ Random Drug/Alcohol testing

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ pmts. of \$ _____ beginning _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____ \$ _____ paid to Public Defender Fund

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

Proviso (Public Def/Probation) \$500 \$ _____

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

§ 14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

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

§ 56-5-2942(J) (Vehicle Assessment) \$10/cr \$ _____

3% to County (if paid in installments) \$ 8.25

TOTAL: \$ 283.25

Clerk of Court/ Deputy Clerk [redacted]

Court Reporter: [redacted] Presiding Judge [redacted]

SCCA217 (04/2018) Judge Code: 2153

Sentence Date: 10/3/19

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018-GS-2:1-01679

A/W#: 2018A21 10100310

Date of Offense: 4/19/2018

S.C. Code §: 44-53-0375(C)(1)(a)

CDR Code #: 0450

SENTENCE SHEET

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Florence
STATE VS.

INDICTMENT/CASE#: 2018-GS-21-01680

Jason Rashaad Jones

A/W#: 2018A2110100305

AKA:

Date of Offense: 4/11/2018

Race: Black Sex: M Age: 37

S.C. Code § : 44-53-0375(B)(3)

DOB: [REDACTED] SS#: [REDACTED]

CDR Code #: 3039

Address: [REDACTED] Hickory St

City, State, Zip: Darlington, SC 29532-5220

DL#: [REDACTED] SID#: [REDACTED]

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Drugs / Manufacture, distribution, etc. of cocaine base, 3rd or sub. Offense CONVICTED OF or PLEADS (10-30, 5000)

in violation of § 44-53-0375(B)(3) of the S.C. Code of Laws, bearing CDR Code # 3039
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS § 17-25-45 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As Indicted. Lesser Included Offense. Defendant Waives Presentation to Grand Jury. (defendant's initials)
The plea is: Without Negotiations or Recommendation. Negotiated Sentence. Recommendation by the State.

ATTEST: *Jol C [Signature]* Solicitor *9826 [Signature]* SC Bar# *Jason [Signature]* Defendant *[Signature]* Attorney for Defendant *12061 [Signature]* SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*: the balance is suspended with probation for

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

CONCURRENT or CONSECUTIVE to sentence on: 10/3/19
 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 SCDoc.

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP days/hours Public Service Employment

Total: \$ plus 20% fee: \$
Payment Terms:
 Set by SCDPPPS

Recipient:

*Fine:		\$
§ 14-1-206 (Assessments 1:17.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 8.25
TOTAL		\$ 283.25

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Clerk of Court/ Deputy Clerk: *[Signature]*
Court Reporter: *[Signature]*
SCCA/217 (04/2018)

Appointed PD or appointed other counsel, § Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees. *[Signature]*
Presiding Judge *[Signature]*
Judge Code: 2153
Sentence Date: 10/3/19

FILED FORM 5

STATE OF SOUTH CAROLINA)

2020 AUG 27 AM 11:14 IN THE COURT OF COMMON PLEAS

COUNTY OF)

DORIS POULOS O'HARA
CCCP & GS

20 20 CP 21 1967

Full name and prison number (if any) of Applicant)
FLORENCE COUNTY, SC)

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF)

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 _____
2. Name and location of Court which imposed sentence _____
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2018-GS-21-01679
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 10-4-19
 - (b) 10 yrs sentence

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) ON-18-2018 At approximately 16:04 Florence Sheriff office bust a room I was in and they found different type of drugs in the room I took ownership of what's was in ^{room} ~~room~~
- (b) I had 8.7 Grams of Methamphetamine; the other persons in the ~~room~~ ^{room} had 3.7 grams but they charge me with it all so I end up have a trafficking Meth. instead
- (c) of P.W.D

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

- (a) I was in possession of 1.6 Grams of heroin 3.9 grams of marijuana and 8.7 Grams of meth and I was charge with trafficking when my codefendant stated ~~that~~ she had her own drugs in the room ~~to~~ and her drugs was 0.1 of
- (b) cocaine base 0.8 of powder cocaine and 8.7 grams of meth and I told my lawyer ~~all of this~~ and he still inform me it was best if I pled to the 10 yrs and 2 ready ~~to~~
- (c) of P.W.D

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

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

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

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

- (a) My court appointed attorney Scott Floyd told me not to take it to trial because I was facing 45 to 36 years and that was a lie I was facing
- (b) 5 to 30 if I knew that I would or took it to trial because I knew
- (c) all the things that was find wasn't mine, and I got a writing statement from ms. black stating the 3.7 grams was mine.

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? _____
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (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. SCOTT P. FLOYD
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. _____
 - iii. _____

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

I would like for my charge to be dropped to a lesser offense

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

NO

STATE OF SOUTH CAROLINA)
)
County of)

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.

Jason R. Jones

SWORN to and subscribed before me this 18th
day of 8-6-20, 2020.

Sascha Oud (L.S.)
Notary Public

My Commission Expires: 2/17/24

FILED

2020 AUG 27 AM 11:14
DORIS PAULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

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

I, _____, 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.

Jason Jones
Applicant

SWORN or affirmed to and subscribed before me this
18th day of Aug, 2020.

Suzanne Duke
Notary Public

My Commission Expires: 2/17/24

2020 AUG 27 AM 11:14
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

FILED

STATE OF SOUTH CAROLINA)
 COUNTY OF FLORENCE)
)
 Jason Rashaad Jones, #279065,)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE TWELFTH JUDICIAL CIRCUIT

Case No.: 2020-CP-21-1967

**RETURN
 (Counsel Appointed)**

2020 DEC 17 PM 2:35
 DORIS POULOS O'HEA
 C.C.P. & G.S.
 FLORENCE COUNTY, S.C.

FILED

In response to Jason Rashaad Jones's (Applicant) action for post-conviction relief (PCR) commenced August 27, 2020, the State makes this return:

I. Procedural History

Applicant is confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the [Indictment Term] term of the Florence County Grand Jury for trafficking in meth or cocaine base-second offense (2018-GS-21-1679) and manufacturing or distribution of cocaine-third or subsequent offense (20189-GS-21-1680). Applicant was represented by Scott Floyd. Assistant Solicitor Todd Tucker prosecuted the case.

On October 3, 2019, Applicant pleaded guilty, pursuant to a negotiated plea agreement with the State, before the Honorable Edgar J. Dickson. Judge Dickson sentenced Applicant as negotiated to concurrent terms of ten years' imprisonment. Applicant did not appeal.

II. Facts

i. 2018-GS-21-1679

The incident giving rise the charges occurred on April 11, 2018, at or around 7:30 p.m. Plea Tr. 10. The facts for this indictment were articulated by the State at Applicant's plea hearing as follows:

CERTIFIED A TRUE COPY
 OF THE ABOVE
 CLERK OF COURT
 FLORENCE COUNTY, S.C.

[N]arcotics officers with the Florence County Narcotics Division utilized a confidential informant. The informant made contact with an individual known to the informant as Baby Huey, later identified as defendant, Jason Rahsaad Jones.

The confidential informant negotiated the purchase of cocaine base. Once the deal was made over the telephone, narcotics officers supplied the confidential informant with \$40 in funds with which to purchase the cocaine base. As is customary with these kinds of operations, the confidential informant was also outfitted with both a recording – video recording and audio recording device.

At any rate, the confidential informant went to the room, purchased \$40 worth of cocaine base. Ultimately, that turned out to be .27 grams, testing positive for cocaine base through chemical analysis.

Once the transaction was completed, the confidential informant met the narcotics officers at a predetermined location, handing over both the audio and video recording devices. Both were viewed and determined to be of sufficient quality.

Plea Tr. 10–11.

ii. 2018-GS-21-1680

The incident giving rise the charges occurred on April 18, 2018, at or around 4:30 p.m.

Plea Tr. 11. The facts for this indictment were articulated by the State at Applicant's plea hearing as follows:

[O]fficers involved in the investigation of Mr. Jones executed a search warrant at the incident location. When they conducted the search warrant, they found numerous items inside the -- the residence, one of which was almost 14 grams of methamphetamine. They also had cocaine base they found.

But at any rate, once the search was completed, they were able to locate this defendant inside the residence as well and, of course, in the investigation there were allegations that Mr. Jones had been selling in or out of that particular location, as well as the Ramada Inn. But at any rate, Your Honor, these items were found and belonged to Mr. Jones.

Plea Tr. 11–12.

III. Current Application

Applicant timely commenced this PCR action on August 27, 2020. Applicant asserts he is being held in custody unlawfully, alleging:

1. Ineffective assistance of counsel:
 - a. “I told my lawyer [my co-defendant took ownership of some of the drugs in the room] and he still informed me it was best if I pled to the 10 years but I really didn’t want to.”

Applicant requests relief in the form his charge to be dropped to a lesser offense.

Attached herewith and incorporated herein are the Florence County Clerk of Court records regarding the subject conviction, Applicant’s SCDC records, the plea transcript, and the records of this PCR action. Respondent reserves the right to amend this Return upon receipt of any relevant materials

IV. Response to Allegation of Ineffective Assistance of Counsel

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

The test for determining the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). “[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). “The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.”

Watson v. State, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To prove prejudice, the applicant must show a reasonable probability he would not have pleaded guilty and would have insisted on going to trial absent plea counsel's alleged deficiency. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

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

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). To support a claim that trial counsel was ineffective for

failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. *Id.*

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

V. Any Future Amendments and Invocation of Discovery

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. *See* Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *See id.* at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

Pursuant to section 17-27-150 of the South Carolina Code, 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. Further, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State 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 the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

VI. Any and All other Allegations

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

VII. Conclusion

WHEREFORE, the State requests an evidentiary hearing be held on the 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

MICHAEL D. DAVIDSON
Assistant Attorney General

By: s/Michael D. Davidson
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

December 15, 2020



ALAN WILSON
ATTORNEY GENERAL

December 15, 2020

The Honorable Doris Poulos O'Hara
Clerk of Court, Florence County
180 N. Irby Street MSC-E
Florence, SC 29501

Re: Jason Rashaad Jones, # 279065 v. State of South Carolina
2020-CP-21-1967

2020 DEC 17 PM 2:35
DORIS POULOS O'HARA,
CCCP & GS
FLORENCE COUNTY, SC

FILED

Dear Ms. O'Hara:

Enclosed please find Respondent's Return for the above-captioned post-conviction relief case for filing. Please let me know if anything additional is needed.

Sincerely,

/s/ Michael D. Davidson

Michael D. Davidson
Assistant Attorney General

MDD/kw
Enclosure

cc: Ola A. Johnson, Esquire

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

Jason Rashaad Jones, # 279065

Case No.: 2020-CP-21-1967

Applicant,

v.

Certificate 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
 PO Box 549
 Lexington, SC 29071

DORIS POULOS O'HARA,
 CCCP & GS
 FLORENCE COUNTY, SC

2020 DEC 17 PM 2:35

FILED

DATED this 15th day of December, 2020.


 Katie Wade, Legal Assistant
 For Respondent

OFFICE OF THE CLERK OF COURT
 FLORENCE COUNTY, S.C.

FILED

STATE OF SOUTH CAROLINA)

2022 JUN -6 PM 12:07

IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE

DORIS POULOS CHARRA
CCCP & GS
FLORENCE COUNTY, SC

TWELFTH JUDICIAL CIRCUIT

JASON JONES,

CASE NO.: 2020-CP-21-1967

Applicant,

v.

AMENDMENT TO APPLICATION

FOR POST CONVICTION RELIEF

STATE OF SOUTH CAROLINA,

Respondent.

Applicant, by and through his undersigned attorney, hereby amends his application for Post-Conviction Relief. This amended complaint adopts and includes all grounds in the original application filed August 27, 2020, by Applicant. Applicant further alleges as additional grounds regarding his claim of ineffective assistance of counsel as to Scott Floyd as follows:

1. Applicant was not advised of his constitutional rights to include his right to confrontation, to a jury trial or his right to remain silent and as a result he was unable to voluntarily waive these rights and enter a plea.

2. Applicants counsel Scott Floyd, failed to meet with the applicant a sufficient number of times to properly review the evidence and discuss this case with applicant.
3. Applicants counsel Scott Floyd failed to properly advise him regarding the potential sentence he was facing.
4. Applicants counsel Scott Floyd failed to advise the Applicant regarding his right to appeal.
5. Applicants counsel Scott Floyd coerced Applicant into entering a guilty plea with statements he made to Applicant.
6. Applicants counsel Scott Floyd, failed to review the states evidence with the Applicant and failed to properly investigate the facts of this case.

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

Respectfully submitted,



OLA JOHNSON

Attorney for Applicant

P.O. Box 549

Lexington, SC 29071

803-360-8692 Phone

This 1st day of June, 2022

FILED

STATE OF SOUTH CAROLINA 2022 JUN -6 PM 12:07

COUNTY OF FLORENCE JORIS FOULOS O'HARA

JASON JONES,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

CASE NO.: 2020-CP-21-1967

CERTIFICATE OF SERVICE

I, Ola Johnson, hereby certify on that on June 2nd, 2022, I served a copy of the AMENDMENT TO APPLICATION FOR POST CONVICTION RELIEF on Danielle E. Dixon, Assistant Attorney General by Email and U.S. Mail to the following address:

Danielle E. Dixon, Asst. Attorney General
SC Attorney General's Office
Rembert Dennis Building
PO BOX 11549
Columbia, SC 29201

6-2-22
Date


OLA JOHNSON

State of South Carolina)	In the Court of Common Pleas
)	Twelfth Judicial Circuit
County of Florence)	Case No. 2020-CP-21-01967
)	
Jason Rashaad Jones,)	
)	
Applicant,)	
)	
-vs-)	Transcript of Record
)	
State of South Carolina,)	
)	
Respondent.)	
)	

June 16, 2022
Florence, South Carolina

B E F O R E:

The Honorable George M. McFaddin, Jr., Judge

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

Ola A. Johnson, Esquire
Attorney for the Applicant

Danielle Dixon, Esquire
Attorney for the Respondent State

Krystal J. Smith
Official Circuit Court Reporter III

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Admitted)

COURT REPORTER LEGEND

dashes --	intentional or purposeful interruption or change in thought
ellipses . . .	trailing off
[ph]	phonetically written
[sic]	written as said

1 JUNE 16, 2022

2 (WHEREUPON, the proceedings began at 1:35 p.m.)

3 MS. DIXON: Your Honor?

4 THE COURT: Yes, ma'am.

5 MS. DIXON: May I approach?

6 THE COURT: Yes, ma'am.

7 MS. DIXON: I'll give you just the court packets --

8 THE COURT: Okay. Thank you, ma'am.

9 MS. DIXON: -- for the next case.

10 THE COURT: Thank you so much. We're doing Mr. Jones
11 now; right?

12 MS. DIXON: Yes, sir. This is the -- I'm Danielle Dixon,
13 assistant attorney general for the State of South Carolina.
14 This is the case of Jason Jones v. State, Docket Number 2020-
15 CP-21-1976 [sic].

16 Mr. Jones was indicted in August of 2018 for multiple
17 drug charges. He pled guilty October 3rd, 2019, before the
18 honorable Edgar Dixon to trafficking meth or cocaine base,
19 second offense, and distribution of cocaine base, third
20 offense. It was a negotiated 10-year sentence. They were
21 concurrent. He did not file a direct appeal.

22 He filed the PCR application timely August 27th, 2020.
23 The State filed a return December 17th, 2020. He has amended
24 his application June 2nd, 2022, to raise six allegations of
25 ineffective assistance of counsel, and I believe I'll ask Mr.

1 Johnson to confirm that that's what he's going forward on
2 today.

3 THE COURT: Is that right, sir?

4 MR. JOHNSON: Yes, sir. I put language in there adopting
5 the original application and, after reading that, it seems to
6 indicate similar grounds, discussing what my client argues was
7 some ineffective assistance of counsel based on advice
8 regarding sentencing and failure to investigate the case, and
9 that's included in my grounds as well. So that's what we're
10 going forward on.

11 THE COURT: All right, sir.

12 MS. DIXON: And then I guess just a quick housekeeping.
13 There was a discovery motion Mr. Johnson had filed. I talked
14 to him the other day. He's gotten everything. So I think
15 that's been --

16 MR. JOHNSON: That's resolved.

17 MS. DIXON: -- resolved.

18 THE COURT: All right.

19 MR. JOHNSON: Thank you, Judge.

20 THE COURT: I'm ready, sir.

21 MR. JOHNSON: Your Honor, we'd call Mr. Jones to testify.

22 THE CLERK: Do you swear or affirm that the testimony you
23 give will be the truth, the whole truth, and nothing but the
24 truth, so help you God?

25 THE APPLICANT: Yes, ma'am.

JASON JONES - DIRECT BY MR. JOHNSON

1 THE CLERK: Thank you.

2 THE COURT: Proceed, sir.

3 MR. JOHNSON: Thank you.

4 JASON JONES, being first duly
5 sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. JOHNSON:

8 Q: Mr. Jones, who was your attorney in this matter?

9 A: Mr. Scott Floyd.

10 Q: Okay. When you entered this guilty plea, was that done
11 voluntarily?

12 A: I mean, I wouldn't say so.

13 Q: You wouldn't say so? And during the plea, were you ever
14 advised properly or were you -- were you ever given an
15 understanding of your constitutional rights, rights regarding
16 the right to a jury trial or advised of the right to remain
17 silent or the right to confrontation?

18 A: I don't recall that.

19 Q: You don't recall that?

20 A: No, sir.

21 Q: Okay. And how many times did Mr. Floyd meet with you to
22 prepare for this case?

23 A: Two times.

24 Q: Okay. Did he ever give you a copy of the evidence?

25 A: He gave it to me the week that he was telling me if I

JASON JONES - DIRECT BY MR. JOHNSON

1 didn't take a plea, I had to go to trial.

2 Q: Did he ever hire a private investigator that came and
3 talked to you?

4 A: No, sir.

5 Q: To your knowledge, did he ever interview anybody related
6 to this case?

7 A: No, sir.

8 Q: And did you receive any advice from Mr. Floyd regarding
9 the potential sentence in this case or what you were facing?

10 A: Yes, sir. When I was telling him that I wanted to take
11 the charges to trial, he was telling me I was facing 10 to 30
12 years, and the plea was 10 years. I felt like dealing with
13 the system, I mean that was the only route I could have took
14 was the 10 years. I don't want to do 30 years for a crime I
15 know I didn't do. So I rather took 10.

16 Q: Do you recall during your hearing that there was a
17 statement made that the indictment under 2018-GS-21-1680,
18 distribution of cocaine base third, do you recall the
19 statement being made that was from zero months up to 30 years
20 as a potential range?

21 A: I only heard that once we was in court and the judge said
22 that, but he told me I was facing 10 to 30 if I took it to
23 trial.

24 Q: Do you feel like you were confused about the potential
25 sentence because of that?

JASON JONES - DIRECT BY MR. JOHNSON

1 A: Yeah. I would have went with an open plea if it was zero
2 to 30. I would have took my chances with the judge.

3 Q: And did Mr. Floyd ever discuss with you the option for an
4 appeal or how to pursue that?

5 A: No. I ain't even know nothing about nothing that I could
6 come back to court on it until I got to prison and talked to
7 other individuals.

8 Q: Did you want to file an appeal?

9 A: Yeah. Because I never wanted to really take the
10 trafficking charge. I was guilty for the distribution, but I
11 steady from the beginning I was never guilty for the
12 trafficking charge.

13 Q: Did Mr. Floyd coerce you in any way by making statements
14 to you?

15 A: Well, he brought me up there, I think, on that Thursday
16 because I took my plea that Friday with the prosecutor, and I
17 was telling the prosecutor the same thing, that I don't feel
18 like I'm guilty for the trafficking charge. And they both was
19 there. Mr. Floyd was there, too, and he was telling me if I
20 took it to trial for the trafficking and beat him, they were
21 going to slay me on the distribution charge because they had
22 enough evidence to find me guilty on the distribution, even
23 though that ain't had enough for the trafficking, but if I
24 beat him on the trafficking, I was going to still get found
25 guilty for the distribution.

JASON JONES - DIRECT BY MR. JOHNSON

1 Q: Did you ask him to investigate the case and talk to
2 people?

3 A: I told him everything that went on. It was somebody else
4 that got locked up with me in the room that even in the plea
5 bargain, when I looked through the motion that you sent me,
6 they don't never speak of that person. The only person they
7 speak of is Jason Jones. When they came in the room, they
8 made it seem like when they came in the room, I was the only
9 person there. Only they never got no drugs out my possession,
10 period.

11 MR. JOHNSON: No more questions, Your Honor.

12 THE COURT: Ms. Dixon?

13 CROSS-EXAMINATION

14 BY MS. DIXON:

15 Q: Mr. Jones, how are you today?

16 A: How are you doing, ma'am?

17 Q: If I'm understanding your testimony, it seems to me
18 you're most concerned with the fact that you don't feel like
19 you were guilty of the trafficking charge?

20 A: Yes, ma'am.

21 Q: Is that correct?

22 A: Yes, ma'am.

23 Q: What about the distribution of cocaine base? Did you
24 feel like the State had enough evidence --

25 A: Yes, ma'am.

JASON JONES - CROSS BY MS. DIXON

1 Q: -- to convict you? You did feel the State had enough
2 evidence to convict you? Did you understand the sentence for
3 that was 10 to 30 years?

4 A: Who? The distribution?

5 Q: For the distribution.

6 A: I mean I was -- they had me on camera. I was guilty for
7 that.

8 Q: So you do acknowledge that the State had sufficient
9 evidence for the distribution charge?

10 A: Yes, ma'am.

11 Q: And the sentence for that, as Mr. Scott advised you, was
12 10 to 30 years; correct?

13 A: Yes, ma'am.

14 Q: And did you understand when you took this plea that it
15 was a negotiated 10-year sentence?

16 A: With the distribution?

17 Q: Uh-huh.

18 A: Yes, ma'am.

19 Q: So you understood you were basically getting the best
20 deal you could get for that distribution charge; correct?

21 A: No. I ain't felt like I was getting the best deal.

22 Q: Okay.

23 A: But the way he was putting it and he made me feel like --
24 now that I done did my own investigation, I wanted the best
25 deal, but what he was putting it in that I had no knowledge of

JASON JONES - CROSS BY MS. DIXON

1 the law, that was the best deal, but that wasn't the best
2 deal.

3 Q: Gotcha. Okay. Well, I want to make sure before we go
4 further that you do understand what kind of relief that the
5 judge can give you today. You do understand the only thing he
6 can do if he decides that your guilty plea was involuntary is
7 grant you a new trial?

8 A: Yes, ma'am.

9 Q: And at that point, the State can come back and try you
10 for distribution, and at that time you will face a minimum of
11 10 years. But at that time, the Court could also sentence you
12 to up to 30. Do you understand that?

13 A: Yes, ma'am.

14 Q: And the State can also go forward with the trafficking
15 charge and, if they get a conviction, the sentence for that
16 would be 5 to 30 years. Do you understand that?

17 A: Yes, ma'am.

18 Q: So potentially you could be facing just for those two
19 charges 15 to 60 years?

20 A: Yes, ma'am.

21 Q: And you do want to go forward knowing that?

22 A: Yes, ma'am.

23 Q: Okay. And do you also understand the State dismissed
24 several other charges that day that they could bring back and
25 try you for?

JASON JONES - CROSS BY MS. DIXON

1 A: Yes, ma'am.

2 Q: And I believe some of those include possession with
3 intent to distribute cocaine base. That's a 10- to 30-year?

4 A: Yeah. But all the charges you're talking about, the same
5 thing I'm telling you. I wasn't the only one charged with
6 that. You're all talking about -- all the charges y'all are
7 talking about, they busted the motel room that other people
8 was in.

9 Q: Right.

10 A: Yeah. I just took the charges because I -- the advice of
11 my attorney that they was dropping all the rest of the
12 charges, which I still feel like they couldn't prove, but he
13 dropped them.

14 Q: But you do understand that --

15 A: Yeah, I understand that.

16 Q: -- if the judge grants you a new trial today, the State
17 --

18 A: Yes, ma'am.

19 Q: -- can go back and try you on all of those charges with
20 various sentences?

21 A: Yes, ma'am.

22 Q: I've calculated that if they convicted you of everything,
23 that you could potentially face more than 100 years. Do you
24 understand that?

25 A: Yes, ma'am.

JASON JONES - CROSS BY MS. DIXON

1 Q: Okay. And you do wish to go forward?

2 A: Yes, ma'am.

3 Q: All right. So your first allegation, you were not
4 advised of constitutional rights. Do you recall answering yes
5 when the judge asked if Mr. Floyd explained to you your
6 constitutional rights?

7 A: Yes, ma'am.

8 Q: Okay. And do you recall answering yes when the judge
9 asked if you understood everything Mr. Floyd told you?

10 A: Yes, ma'am.

11 Q: And do you recall answering no when the judge asked if
12 you wanted more time to talk to Mr. Floyd?

13 A: I mean -- I mean, whatever they said, they had it on
14 recording. So if I don't remember --

15 Q: Okay.

16 A: -- the paper that I read, it said I said yes.

17 Q: Okay. And let's see. You said you met with Mr. Floyd
18 twice?

19 A: Yes, ma'am.

20 Q: And what evidence did he review with you?

21 A: Well, the first time I was up here, I didn't even know I
22 had to go to court, but I have a family -- a friend of the
23 family that's a lawyer named Robert Stucks. He -- he inboxed
24 me on Facebook and told me that they was about to put a bench
25 warrant on me, but I didn't even get informed from Mr. Floyd.

JASON JONES - CROSS BY MS. DIXON

1 Once I got up here and came up here, I talked to him in
2 his office, and he was telling me all the charges you just
3 said. He's like, they really wanted nothing. The two main
4 charges was the trafficking and the distribution.

5 Q: Did he tell you any evidence that the State had for that?

6 A: That day? No, he didn't show --

7 Q: Or any day.

8 A: Well, he showed me the week that I tell you they was
9 trying to make me plead or go to trial. When he came up, left
10 from over here and went across the street and got the whole
11 Rule 5 and brung it back to me, but it's on a Thursday. He
12 told me either take a plea Friday or I'm going to trial
13 Monday, like my hands are tied behind my back. I didn't
14 really know what to do. So I mean --

15 Q: Right. And --

16 A: -- I put my faith in him.

17 Q: Right.

18 A: But now --

19 Q: So he did review the evidence with you?

20 A: He gave me my Rule 5.

21 Q: Okay. So you did review all the Rule 5 discovery?

22 A: I can't say I -- I did all that, but he gave it to me and
23 I went back to my room and the thing really on my mind was 10
24 years or 30 years. If I take it to trial, the case 30, and
25 this man telling me best offer right now is 10 years. That's

JASON JONES - CROSS BY MS. DIXON

1 all was on my mind. So I don't even really recall reading the
2 Rule 5.

3 Q: Okay.

4 A: Until I got to prison.

5 Q: Moving on to your third allegation, you said Mr. Floyd
6 told you you faced 10 to 30 years on the distribution charge;
7 correct?

8 A: No.

9 Q: No?

10 A: No. That what I'm telling you. We was never really
11 talking about a distribution charge. We was always talking
12 about the trafficking charge. That's the one I wasn't
13 agreeing with.

14 Q: Okay. All right. Did he advise you before the plea that
15 it was a negotiated plea?

16 A: I don't want to lie. I can't really recall.

17 Q: Do you know -- did you know going in that it was a 10-
18 year plea?

19 A: Yes, ma'am.

20 Q: You did know going in that it was a 10-year plea?

21 A: Yes, ma'am.

22 Q: So you understood when you were there that day that it
23 was going to be 10 years? All right. Did you want to appeal?

24 A: Yeah, the trafficking charge.

25 Q: Okay. If you were granted an appeal, what issue would

JASON JONES - CROSS BY MS. DIXON

1 you want to raise?

2 A: The trafficking charge.

3 Q: What about it?

4 A: That's what I keep telling you. They locked up other
5 people. I was not -- they never got no drugs off me. The
6 only thing they was coming to lock me up for that day was for
7 the distribution warrant. When they searched me, they found
8 nothing on me. There was other people in the room. They went
9 in the room. They found drugs in a pocketbook. They found
10 drugs in the drawer. They found drugs and took all the drugs
11 and put it on me.

12 Q: Okay. Did you want a jury trial?

13 A: Yeah, for the trafficking. Yes, ma'am.

14 Q: You did? Okay. Do you recall telling the judge you
15 didn't want a jury trial?

16 A: Well, yeah, because I'm going off of the advice of my
17 lawyer. I told my lawyer from the beginning. Again, from the
18 first time we ever talked, the only charge that I'm worrying
19 about, that I don't feel comfortable with taking no plea with
20 is the trafficking until he coerced me into believing that I
21 wasn't going to win regardless.

22 Q: All right. Is there anything you wanted Mr. Floyd to
23 investigate that he didn't investigate?

24 A: Yeah. Investigate the crime scene --

25 Q: Okay.

JASON JONES - CROSS BY MS. DIXON

1 A: -- where everything went down, investigate the female
2 that I was locked up with me that was known as a prostitute
3 that had drug -- already had drug charges before I ever caught
4 any drug charges.

5 Q: All right.

6 MS. DIXON: I don't have any further questions.

7 THE COURT: Mr. Johnson?

8 MR. JOHNSON: No further questions, Your Honor.

9 THE COURT: You may step down, sir. Thank you.

10 THE APPLICANT: All right.

11 MS. DIXON: Your Honor, the State calls Scott Floyd.

12 THE COURT: All right.

13 THE WITNESS: You've got to do that here, don't you,
14 before you get around the corner?

15 THE CLERK: Do you swear or affirm that the testimony you
16 give will be the truth, the whole truth, and nothing but the
17 truth, so help you God?

18 THE WITNESS: I do.

19 THE CLERK: Thank you.

20 THE COURT: Proceed, ma'am. I'm sorry.

21 MS. DIXON: Yes, sir.

22 SCOTT FLOYD, being first duly
23 sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MS. DIXON:

SCOTT FLOYD - DIRECT BY MS. DIXON

1 Q: Mr. Floyd, how are you?

2 A: I'm fine. How about you?

3 Q: I'm good. Just some quick background questions. How
4 long have you been practicing law?

5 A: Since '88 is when I got sworn in. So that's 30 --

6 Q: Thirty-plus?

7 A: Yeah, 32, 33 years, something like that.

8 Q: And what percentage of your practice is criminal?

9 A: All of it.

10 Q: All of it? Has it been that way pretty much since '88?

11 A: Well, I mean, I've been the public defender here for --
12 since 2012 is when I took over running the office. I actually
13 worked in the Public Defender's Office beginning in 2006, I
14 think maybe.

15 Q: Okay. And --

16 A: And -- but pretty much criminal since that time.

17 Q: Gotcha. Okay. And regarding your representation of Mr.
18 Jones, do you recall when you were appointed?

19 A: Well, I think he -- on these charges, I think, he was
20 arrested in April of 2018, I believe. And the way we do
21 things in this circuit is when you're taken for your bond
22 hearing in front of the magistrate, the magistrate screens and
23 then appoints. So it would have been within a day or two of
24 his arrest.

25 Q: Okay.

SCOTT FLOYD - DIRECT BY MS. DIXON

1 A: I think the arrest date was April the 20th of 2018. So
2 we would have been appointed probably the next day or the day
3 after, I guess.

4 Q: So about maybe six months or so before the plea, it looks
5 like, approximately? Approximately six months before the
6 plea?

7 A: Well, actually, I don't think the plea was until 2019.

8 Q: Oh, gotcha. Okay. Yes. A year and a half?

9 A: So yeah, it was about 18 months, I believe. Yeah.

10 Q: Okay. Let's see. Did you -- prior to his plea, did you
11 discuss with Mr. Jones his constitutional rights?

12 A: Yes, ma'am.

13 Q: And do you recall which rights you advised him on?

14 A: Well, sure. You know, different judges have different
15 plea colloquies, and I'm not -- and Judge Dixon is not one of
16 ours. So I wasn't sure exactly what he would go over. But in
17 general, you know, I always go over the rights before a plea
18 just so they'll be prepared, you know, for the questions and
19 understand them.

20 And I would advise him he had a right to have a jury
21 trial. That if he chose to do that, we would impanel twelve
22 jurors here. The State would have the burden of convincing
23 those jurors beyond a reasonable doubt of his guilt. They
24 would have to do that by bringing witnesses into court to
25 testify and that he would have a right to cross-examine and

SCOTT FLOYD - DIRECT BY MS. DIXON

1 confront those witnesses through his attorney.

2 And also, during that trial, he would not have to say
3 anything. He could remain silent because he doesn't have to
4 prove anything. So, therefore, he doesn't have to say
5 anything. He doesn't have to incriminate himself.

6 So I always go through that and, certainly, I tell them
7 about the right to appeal, but I also tell them, you know, if
8 it's a plea and there's a legal sentence issued after a plea,
9 your grounds for appeal probably are not going to be there,
10 but -- but you have a right to file it. And so, I mean,
11 that's what I generally tell them.

12 Q: And did you explain to him that by pleading guilty he was
13 waiving these rights?

14 A: Correct.

15 Q: And did you think he understood?

16 A: I did.

17 Q: Okay. And how many times did you meet with him?

18 A: Well, he was out on bond, I believe, initially after his
19 arrest, and he had -- I believe his initial and docket
20 appearance for these cases were -- I believe they would have
21 been in July and August of 2018. So I have a note where we
22 talked in the August docket appearance. I don't have a note
23 that we talked at the July '18 initial appearance. So I'm not
24 sure if he was there or not.

25 Generally, if they're there and I speak to them when I

SCOTT FLOYD - DIRECT BY MS. DIXON

1 call their names, then, you know, I note it, but for the
2 initial appearance, I didn't note it. So I'm not saying I
3 didn't speak to him, but normally I take notes at the initial
4 and docket appearance.

5 So I spoke to him in August of 2018. As I said, he was
6 out on bond. So, you know, as far as him coming into my
7 office, I know at one point I tried to reach him. I found out
8 that he was in Tennessee at some point. In fact, I believe he
9 ended up being incarcerated there, if I'm not mistaken, but in
10 any event, it was sometime during the time he was out on bond
11 he was in Tennessee.

12 And then, you know, I remember trying to call I know in,
13 like, December of '18. I tried to call, and the number wasn't
14 working. I sent a letter to the address I had saying, hey,
15 we're having a term of court in January, please call me, but I
16 didn't hear from that letter.

17 I mean, my recollection was eventually -- I think it may
18 be even July of '19, maybe his -- the bondsman put him -- took
19 him back to the detention center. So I -- so I think it was
20 probably July when he actually got put in the detention center
21 that I -- that I spoke to him then, and then I spoke to him
22 for sure at the detention center.

23 Let's see. I spoke to him on September 27th, September
24 30th, October 2nd, and then -- then, I believe, on the 3rd, we
25 actually did his plea.

SCOTT FLOYD - DIRECT BY MS. DIXON

1 Q: Okay. Okay. So definitely more than two times it sounds
2 like?

3 A: Right.

4 Q: Okay. Do you recall the evidence -- what evidence the
5 State had against him?

6 A: Well, on the distribution, you know, there was -- it was
7 a controlled buy. I mean they -- if I recall, they wired up
8 an individual, sent him into a hotel room with money, and he
9 made a buy of some -- some cocaine base, I believe it was.
10 And of course, there was a video of that I got. I watched the
11 video in the Solicitor's Office, I believe, and had stills
12 printed out and provided those to Mr. Jones when we went over
13 his Rule 5.

14 Q: In the video, could you tell it was him?

15 A: Well, I could, yes.

16 Q: Was it clearly him?

17 A: I mean, it looked like him, yeah.

18 Q: It looked like him?

19 A: It was pretty clear.

20 Q: Okay. Did he -- did he have any defenses, any good
21 defenses that you saw?

22 A: I mean, when I spoke to him about the distribution, I
23 mean, he didn't raise any. I mean, he certainly didn't deny
24 it.

25 Q: Okay. And did you explain to him what the State had to

SCOTT FLOYD - DIRECT BY MS. DIXON

1 prove on these charges?

2 A: Yes, I mean.

3 Q: Okay. And let's see. Did you engage in -- did you
4 engage in plea negotiations with the State?

5 A: Yes, I did.

6 Q: Okay. And did you discuss any offers with him?

7 A: Yes.

8 Q: And did the State dismiss any charges in exchange for
9 this plea?

10 A: Yes, they did. We had -- in addition to these two
11 charges, there was another set of charges. I believe it was a
12 -- maybe a failure to stop for a blue light and a possession
13 of other controlled substance maybe --

14 Q: Okay.

15 A: -- that occurred allegedly some time before these did.
16 So I think that those charges were -- were already pending.
17 And then it seems that there was another set of PWID charges
18 that had to do with -- I think it was cocaine base, PWID
19 marijuana, and PWID heroin that were from a different date --

20 Q: Okay.

21 A: -- prior to these. And I think all those -- those were
22 dismissed as well.

23 Q: Okay. So he basically walked away with a clean slate
24 other than the one he pled to?

25 A: Right. Yes.

SCOTT FLOYD - DIRECT BY MS. DIXON

1 Q: Okay.

2 A: All of his warrants here in Florence County should have
3 been cleared away.

4 Q: Okay. Did he ever express an interest in having a trial?

5 A: No, ma'am.

6 Q: Okay. And regarding the sentence, did you explain to him
7 the sentencing ranges for each offense?

8 A: I did.

9 Q: And let's see. Did you explain to him what a negotiated
10 plea meant or did he understand it was a 10-year plea?

11 A: Right. Yes. I mean, I went over that, and I felt like
12 he understood it.

13 Q: Did he ever request an appeal?

14 A: No, he didn't.

15 Q: What would you have done if he had requested an appeal?

16 A: I would have done the notice of appeal, filed it, and
17 sent it to Indigent Defense in Columbia because they -- we
18 don't -- after we file the notices, we don't actually handle
19 the actual appeal. The Office of Appellate Defense takes
20 over. At that point, they -- they actually handle it.

21 Q: Okay. But you would have filed the notice?

22 A: Sure.

23 Q: Okay. And let's see. Did you threaten him to enter the
24 plea or are you aware of anyone else that threatened him to
25 enter the plea?

SCOTT FLOYD - DIRECT BY MS. DIXON

1 A: I didn't threaten him.

2 Q: Whose decision was it to plead guilty?

3 A: It was his.

4 Q: His decision? Is there anything specific that he asked
5 you to investigate?

6 A: Not that I recall.

7 Q: Okay. And did you agree with his decision to plead
8 guilty?

9 A: I did.

10 Q: Okay. And do you stand by the advice that you gave him?

11 A: Yes.

12 Q: Okay.

13 MS. DIXON: That's all I have.

14 THE COURT: Mr. Johnson?

15 MR. JOHNSON: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. JOHNSON:

18 Q: Mr. Floyd, do you recall that the right to confrontation
19 and the right to remain silent, right to jury trial were not
20 specifically read out on the record during the plea? Do you
21 recall that?

22 A: I have no idea. The judge simply went over it during his
23 colloquy. I haven't -- if it's in the transcript, he did, but
24 if it isn't, then he didn't.

25 Q: Okay.

SCOTT FLOYD - CROSS BY MR. JOHNSON

1 A: Yeah.

2 Q: And did you have the ability to step back with your
3 client when those were not read out and you could say, wait,
4 Judge, can you get specific and advise of each specific right?
5 You had the ability to stop the plea or pause it and do that;
6 correct?

7 A: Sure. If he had any questions, yeah, I could have
8 answered.

9 Q: Okay. And how many times -- I can't remember if you gave
10 an exact number of times you met with Mr. --

11 A: Well --

12 Q: -- Jones.

13 A: I mean, I can -- I can tell you the number of times I
14 actually wrote it down. Okay? He had an initial appearance
15 and a docket appearance. So it was, I think, scheduled in
16 July and August for these charges. I spoke to him at the
17 docket appearance in August. Okay? Which I would have had at
18 least partial discovery at that time.

19 The initial appearance, I do not have a note that he was
20 there. He would have been out on bond. I could have spoken
21 to him, but if I did, I didn't write it down. Okay? So I
22 know I spoke to him in August of '18.

23 He went -- you know, at various times after that, I tried
24 to -- attempted to call him. The number that I had wasn't
25 working. At one point, I think he was up in Tennessee. I

SCOTT FLOYD - CROSS BY MR. JOHNSON

1 couldn't get in touch with him. I ended up sending him a
2 letter at some point in December of '18, and said, look, you
3 know, your case is getting a little age on it. I want you to
4 come to -- to see me, whatever. I mean, I don't remember the
5 exact wording, but I sent him the letter.

6 You know, I don't think I had any contact with him after
7 that, and so I believe his bondsman went off his bond, if I
8 recall. I believe he ended up going back into the detention
9 center in July of '19, I think. I'm not positive about that,
10 but that's what I recall.

11 Q: Okay. And you met with him after that?

12 A: Yes.

13 Q: Okay. And was it -- was the only time you met with him
14 the week before your plea?

15 A: Yeah, I believe I met -- after he got put back in in
16 July, I believe I met with him in July. Okay? At the jail
17 and -- and then I know that I saw him on the dates in
18 September and then October that I mentioned earlier.

19 Q: Okay. Do you recall discussing his potential sentence on
20 these charges?

21 A: Yes, sir.

22 Q: Okay. Do you recall on -- I'm referencing page 4 of the
23 transcript.

24 A: Right.

25 Q: It looks like the prosecution making a statement that the

SCOTT FLOYD - CROSS BY MR. JOHNSON

1 distribution of cocaine base third could carry -- and it says
2 from zero months up to 30 years. Do you recall hearing that?

3 A: I don't remember hearing it, but that's wrong.

4 Q: Okay. So that's wrong. That should have been corrected?

5 Do you feel like that should have been corrected?

6 A: Well, I mean, I told him that. I mean, I felt like he
7 understood it. I didn't hear -- I mean, I don't remember

8 hearing him say that, but --

9 Q: You told him that --

10 A: That it was 10 to 30.

11 Q: Ten to 30?

12 A: Yes.

13 Q: Okay. And you're saying you did not get a request to
14 file an appeal. Did you discuss the appeal process with him
15 or deadlines for filing an appeal?

16 A: Before a plea, I always -- my general practice is I
17 always say you have a right to an appeal, and particularly on
18 a plea, I tell them, look, you know, you have a right to file
19 notice of appeal, but if you -- if you do enter this plea and
20 the sentence is legal, then you're probably not going to have
21 grounds for a successful appeal, but you know.

22 Q: Did you ever make any statements to him about whether or
23 not he would win at trial or whether or not it was a good
24 idea?

25 A: I -- look, I don't make predictions. I never tell

SCOTT FLOYD - CROSS BY MR. JOHNSON

1 anybody, you know, you're going to win or you're going to
2 lose, you know. You know, look, I just tell them to stay --
3 you know, this is the evidence they plan to present, and it's
4 up to twelve people to decide whether you're guilty after they
5 hear that evidence. You know, lots of things are jury
6 questions. I mean, they're the finders of fact, I mean, but I
7 don't make predictions as to what they're going to find.

8 Q: Okay. And you said you delivered a copy of the discovery
9 to Mr. Jones?

10 A: Yes, sir.

11 Q: DO you remember the day you did that?

12 A: I believe that I took everything down to him when we went
13 and met September 27th. I think I took everything that day.
14 You know, I can't remember at the docket appearance how much
15 -- I doubt if we had everything at that point, but whatever we
16 had at that time, you know, if he would have asked me for it,
17 I would have given it to him. But -- but I -- but in
18 September, when I met him at the jail, I took the discovery
19 stuff to him, the whole packet.

20 Q: Okay. Do you have a private investigator working with
21 your office?

22 A: We do.

23 Q: Did you have the option of having this investigator talk
24 to some of the other people involved in this case?

25 A: Sure.

SCOTT FLOYD - CROSS BY MR. JOHNSON

1 Q: Okay. And you didn't do that?

2 A: No, sir. Because he told me he wanted to plea after I
3 discussed the case with him.

4 Q: Okay.

5 MR. JOHNSON: No more questions.

6 THE COURT: Ms. Dixon?

7 MS. DIXON: Just real quick to clarify a discrepancy that
8 may be in the transcript.

9 REDIRECT EXAMINATION

10 BY MS. DIXON:

11 Q: You did advise him of the sentencing that -- the sentence
12 range that he faced for that, and do you recall what you told
13 him the range was?

14 A: That would be a minimum of 10 and a maximum of 30.

15 Q: And that's the distribution --

16 A: Distribution.

17 Q: -- of cocaine base?

18 A: Now, the the trafficking, I believe, was 5 to 30.

19 Q: Okay. And --

20 A: But --

21 Q: You can go ahead.

22 A: But both of them were negotiated 10. Right.

23 Q: Right. And were you here for his testimony earlier today
24 just now?

25 A: Yes, I was sitting here.

SCOTT FLOYD - REDIRECT BY MS. DIXON

1 Q: You heard him testify that you -- that you advised him
2 the sentence was 10 to 30 years?

3 A: Correct.

4 Q: Okay.

5 A: On the distribution, right.

6 Q: On the distribution?

7 A: Yes.

8 MS. DIXON: That's all.

9 THE COURT: Mr. Johnson?

10 RE-CROSS-EXAMINATION

11 BY MR. JOHNSON:

12 Q: What was the range you told him on the trafficking?

13 A: Five to 30.

14 Q: Five to 30?

15 A: For a --

16 Q: You didn't say 10 to 30?

17 A: For a second offense. Well, I told him that the
18 negotiation was 10 on both.

19 Q: Right.

20 A: Concurrent, but that the range for that particular charge
21 of a second offense, I believe, is 5 to 30. That's what I had
22 written down.

23 MR. JOHNSON: No more questions, Your Honor.

24 THE COURT: Ms. Dixon?

25 MS. DIXON: Nothing more from the State.

1 THE COURT: You may step down, sir.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: Does the State have anything else?

4 MR. DIXON: Nothing, Your Honor. You don't want
5 argument, I assume, or do you?

6 THE COURT: No, ma'am.

7 MS. DIXON: Okay.

8 THE COURT: Okay. I always take lots of notes, and even
9 though the urge to rule sometimes is great, I like to take a
10 little bit more time to reflect and organize my thoughts.
11 I'll send you a ruling. Thank you.

12 MR. JOHNSON: Thank you, Judge.

13 (WHEREUPON, the proceedings ended at 2:09 p.m.)

14

15 --- END REQUESTED TRANSCRIPT ---

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FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE) FOR THE TWELFTH JUDICIAL CIRCUIT

2022 AUG 12 PM 3:14

Jason R. Jones,

DORIS FOULOS O'HARA) CASE NO. 2020-CP-21-1967
CCCP & GS)

Applicant,)
FLORENCE COUNTY, SC)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)
_____)

CERTIFIED: A TRUE COPY
Doris Foulos O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

This matter comes before the Court by way of Applicant Jason R. Jones's application for post-conviction relief (PCR) filed August 27, 2020. The State filed its return on December 17, 2020, requesting an evidentiary hearing. Applicant filed an Amended Application on June 2, 2022. On June 16, 2022, an evidentiary hearing convened before the Honorable George M. McFaddin, Jr. at the Florence County Courthouse. Applicant was present in the courtroom and represented by Ola Johnson, Esquire. Assistant Attorney General Danielle Dixon represented the State. Applicant testified on his own behalf, and the State presented testimony from Scott Floyd, Esquire.

Following a thorough review of the plea transcript and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to meet his burden of proof. Accordingly, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a ten-year sentence. In August 2018, the Florence County Grand Jury indicted him for possession with intent to distribute (PWID) cocaine base, PWID marijuana and PWID heroin (2018-GS-21-1677); possession of heroin; trafficking methamphetamine, and possession of cocaine base (2018-GS-21-1679); and distribution of cocaine base (2018-GS-21-1680). Scott Floyd, Esquire,

represented Applicant on these charges, and Solicitor Todd Tucker represented the State. Pursuant to a negotiated ten-year plea, Applicant pled guilty to trafficking methamphetamine (2018-GS-21-1679) and distribution of cocaine base, third offense (2018-GS-21-1680) before the Honorable Edgar Dickson on October 3, 2019. In exchange, the State dismissed the remaining charges. Judge Dickson accepted the plea, finding it was entered freely and voluntarily, and imposed concurrent sentences of ten years' imprisonment for each offense. Applicant did not appeal.

STATEMENT OF FACTS

On April 11, 2018, narcotics officers with the Florence County Narcotics division utilized a confidential informant (CI), who contacted Applicant to negotiate the purchase of cocaine base. Officers provided the CI \$40 and outfitted him with audio and video recording devices. The CI went to a hotel room and purchased .28 grams of cocaine base, which he later turned over to the officers. Thereafter, the narcotics officers procured a search warrant for the location and executed it on April 18, 2018. During their search, they found cocaine base and almost 14 grams of methamphetamine. Applicant was inside the residence. During the investigation, officers had received allegations that Applicant was selling out of that location.¹

CURRENT APPLICATION

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

1. Ineffective assistance of counsel:
 - a. "I told my lawyer [my co-defendant took ownership of some of the drugs in the room] and he still informed me it was best if I pled to the 10 years but I really didn't want to."

In his Amended Application, Applicant raised the following additional grounds:

¹ The remaining set of charges, which were nolle prossed, arose from an incident that occurred April 2, 2018.

Ineffective assistance of counsel:

1. Applicant was not advised of his constitutional rights to include his right to confrontation, to a jury trial, or his right to remain silent, and as a result he was unable to voluntarily waive these rights and enter a plea.
2. Applicant's counsel Scott Floyd failed to meet with Applicant a sufficient number of times to properly review the evidence and discuss this case with applicant.
3. Applicant's counsel failed to properly advise him regarding the potential sentence he was facing.
4. Applicant's counsel Scott Floyd failed to advise Applicant regarding his right to appeal.
5. Applicant's counsel Scott Floyd coerced Applicant into entering a guilty plea with statements he made to Applicant.
6. Applicant's counsel Scott Floyd failed to review the State's evidence with Applicant and failed to properly investigate the facts of this case.

At the evidentiary hearing, Applicant proceeded on the allegations in the amended application.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant testified he met with counsel twice but they did not review discovery and counsel did not investigate or interview any witnesses. Applicant did not recall being advised of his constitutional rights. When asked whether he voluntarily pled guilty, he replied, "I would not say so." Applicant testified he was confused about the potential sentence range because once he was in the courtroom, the plea court indicated the range was zero to thirty years. He testified he was not advised of his right to appeal but would have wanted to appeal. Applicant maintained he "was never guilty," and he told the solicitor he was not guilty of the trafficking charge. Applicant testified he told plea counsel he wanted a jury trial, but the plea offer was ten years and he did not want to serve thirty years for a crime he did not commit.

~~On cross-examination, Applicant agreed his biggest concern was he believed he was not guilty of the trafficking charge. However, he acknowledged the State had enough evidence to~~



convict him. He also acknowledged telling the plea court he understood the constitutional rights he was waiving. Applicant admitted plea counsel reviewed discovery with him the Thursday before he pled guilty and told him he could plead guilty on Friday or the trial would start that Monday. Applicant acknowledged he pled to a negotiated 10-year sentence, and he knew what the sentence would be when he pled guilty. He maintained he wanted a jury trial for the trafficking charge and would have appealed that charge. When asked whether he recalled telling the plea court he did not want a jury trial, he responded, "He coerced me into believing I would not win."

Plea counsel testified he had been practicing law since 1988 and exclusively practiced criminal law. He was appointed to represent Applicant a day or two after Applicant's arrest and represented him about 18 months before the plea. Plea counsel stated Applicant was initially out on bond and they spoke at the August 2018 docket appearance. He testified Applicant was detained in Tennessee at one point during counsel's representation. Counsel stated he attempted to call Applicant in December 2018 but the number did not work. He also sent Applicant a letter but did not get a response. In July 2019, Applicant returned to the detention center in South Carolina. Plea counsel thought he met with Applicant in July 2019 and recalled meeting with him in September and October of 2019.

Plea counsel testified the State had a video of the controlled buy and it looked like Applicant in the video. He stated he explained to Applicant the State's burden of proof and the elements the State needed to prove. Plea counsel was not aware of any defenses and Applicant did not raise any. Likewise, Applicant did not ask plea counsel to investigate anything.

Plea counsel testified he engaged in plea negotiations and discussed all offers with Applicant. He testified the State agreed to dismiss a set of charges for PWID cocaine, marijuana, and heroin, as well as another set of charges for failure to stop and possession of a controlled

substance, and Applicant walked away with a clean slate.

Plea counsel testified Applicant was not interested in trial. Plea counsel testified he advised Applicant of the constitutional rights Applicant would waive by pleading guilty, including the right to a jury trial, the right to confront witnesses, and the right to remain silent. Plea counsel averred Applicant understood his rights. He also advised Applicant of the right to appeal. He testified Applicant never requested an appeal, but if he had counsel would have filed the notice of appeal and sent it to the Commission for Indigent Defense. Plea counsel testified they also discussed the sentencing ranges and the fact it was a negotiated plea. Plea counsel stated he never threatened or coerced Applicant to plead guilty, and it was Applicant's decision.

On cross-examination, plea counsel reviewed the plea transcript and acknowledged the plea court erroneously told Applicant the distribution of cocaine base charge carried zero to thirty years. However, counsel stated he had advised Applicant it carried ten to thirty years. Plea counsel recalled taking discovery to Applicant when they met on September 27. Plea counsel stated his office employed a private investigator; when asked whether the investigator could have talked to others involved, counsel replied, "Sure, but he said he wanted to plead."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the plea transcript in its entirety and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Applicant's allegations were, at best, conclusory, and Applicant failed to support his allegations. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).



Ineffective Assistance of Counsel

In a PCR action, an Applicant bears the burden of proving the allegations. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813.

The proper measure of performance is whether an attorney provided representation within the rang of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, an applicant must prove counsel’s deficient performance 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. To prove prejudice following a guilty plea, an applicant “must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Involuntary Guilty Plea

Applicant alleges he was never advised of the constitutional rights he was waiving, thus rendering his plea involuntary. Applicant has not proved this allegation. Plea counsel credibly



testified he explained to Applicant the constitutional rights he was waiving, including his right to a jury trial, his right to remain silent, and his right to challenge the State's evidence and confront witnesses. Plea counsel further credibly testified Applicant appeared to understand the rights he was waiving. Finally, plea counsel credibly testified he explained the sentencing ranges for each offense to Applicant, as well as the fact it was a negotiated ten-year plea. This Court finds counsel was not deficient in this regard, Applicant has not shown prejudice, and Applicant entered his plea knowingly and voluntarily. See Holland v. State, 322 S.C. 111, 113, 470 S.E.2d 378, 379 (1996) ("To be knowing and voluntary, a plea must be entered with an awareness of its consequences."). Thus, this allegation is denied and dismissed with prejudice.

Alleged failure to meet with Applicant and review evidence

Applicant next contends plea counsel failed to meet with him a sufficient number of times to properly review the evidence and discuss this case. Applicant has not proved this allegation. Plea counsel testified Applicant was initially out on bond, and he spoke with Applicant at the August 2018 docket appearance. Plea counsel later learned Applicant was incarcerated in Tennessee at one point. He attempted to call Applicant in December 2018 but his number did not work. He also sent a letter to Applicant but did not get a response. In July 2019, Applicant returned to the detention center in South Carolina, and plea counsel believed he met with him in July and recalled meeting with him in September and October. Plea counsel testified he reviewed the State's evidence with Applicant. This Court finds the foregoing testimony by plea counsel is credible. This Court further finds any failure on plea counsel's part to meet with Applicant more was caused by Applicant becoming detained or incarcerated in Tennessee and failing to keep plea counsel apprised of his contact information. Additionally, this court finds plea counsel met with Applicant a sufficient number of times to review the evidence and charges and prepare for the

case. Applicant has not shown plea counsel was deficient in this regard, nor has Applicant demonstrated any resulting prejudice. Thus, this allegation is denied and dismissed with prejudice.

Alleged failure to properly advise Applicant of the sentence he faced

Applicant asserts plea counsel was ineffective for not properly advising him of the potential sentence he was facing. Applicant has failed to prove this allegation. Notably, the plea transcript reflects this was a negotiated plea of ten years' imprisonment for each charge; thus, Applicant knew exactly what sentence he faced when he entered the plea. Further, plea counsel credibly testified he advised Applicant of the ranges he faced for each offense as well as the negotiated sentence and what that meant. Although the plea transcript indicates the *solicitor* stated the distribution charge carried zero to thirty years, plea counsel credibly testified at the PCR hearing that he had advised Applicant of the proper sentencing range of ten to thirty years. See S.C. Code Ann. § 44-53-375(B)(3) (providing a person guilty of distributing cocaine base, third offense, "must be imprisoned for not less than ten years nor more than thirty years"). Based on the foregoing, this Court finds Applicant has not shown counsel was deficient in this regard nor demonstrated any resulting prejudice. Thus, this allegation is denied and dismissed with prejudice.

Alleged failure to advise Applicant regarding his right to appeal

Applicant next contends counsel was ineffective for failing to advise Applicant of his right to appeal. Applicant has failed to prove this allegation. Initially, this Court notes that absent extraordinary circumstances which are not present here there is no constitutional requirement that a defendant be informed of his right to appeal a guilty plea. See Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008) ("Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in

appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.”). Nonetheless, plea counsel credibly testified he advised Applicant of his right to appeal but Applicant did not request an appeal. Plea counsel further credibly testified that if Applicant had requested an appeal, plea counsel would have filed the notice of appeal and notified the Commission of Indigent Defense. Based on the foregoing, Applicant has not shown counsel was deficient, nor has Applicant demonstrated any resulting prejudice. Thus, this allegation is denied and dismissed with prejudice.

Alleged coercion

Applicant asserts counsel was ineffective for coercing him to plead guilty with statements he made to Applicant. Applicant has failed to prove this allegation. Initially, Applicant has not explained what statements counsel made to him that purportedly coerced him to plead guilty. To the extent Applicant may have been facing a decision he did not like, that was due to his own actions and not the result of any deficiency by counsel. This Court finds credible counsel’s testimony that he did not coerce or threaten Applicant to plead guilty, and it was Applicant’s decision to plead guilty. This Court further notes Applicant told the plea court that no one had threatened or coerced him to plead guilty. Applicant has not shown counsel was deficient, nor has he demonstrated any prejudice. Thus, this allegation is denied and dismissed with prejudice.

Alleged failure to review evidence and properly investigate

Finally, Applicant asserts counsel was ineffective for failing to review evidence and investigate. Applicant has not proved this allegation. At the PCR hearing, plea counsel testified the State had a video of the controlled buy and it looked like Applicant in the video. Plea counsel recalled taking discovery to Applicant. He testified Applicant was not interested in trial and did not ask plea counsel to investigate anything. Plea counsel stated his office employed a private



investigator; when asked whether the investigator could have talked to others involved, counsel replied, "Sure, but he said he wanted to plead." This Court finds counsel's foregoing testimony is credible. Thus, Applicant has not shown counsel was deficient. Applicant has likewise failed to show *what* evidence counsel neglected to review with him that would have affected his decision to plead guilty. Finally, Applicant has not shown what evidence counsel would have discovered upon a further investigation and has thus not shown prejudice based on counsel's alleged failure to investigate. Cf. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) ("A PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial."). Thus, this allegation is denied and dismissed with prejudice.

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

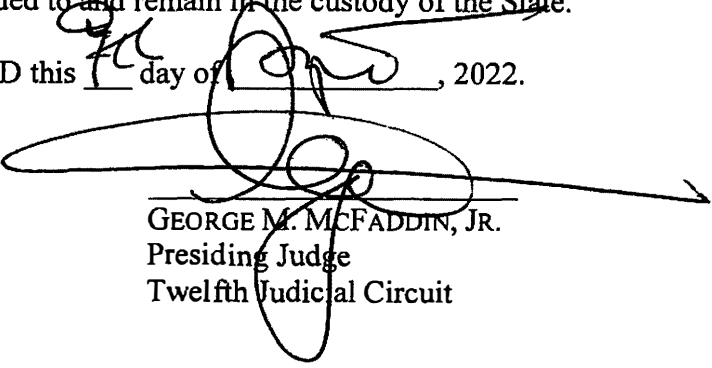
Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCARC. Pursuant to Austin v. State, 305 S.C. 453, S.E.2d (1991), an applicant has the right to an appellate counsel's assistance is seeking review of the denial of PCR. Pursuant to Rule 71.1(g), SCRCF, if an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on the applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

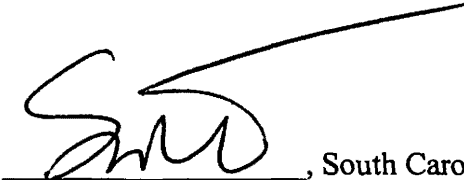
IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and

2. Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED this 17 day of July, 2022.


GEORGE M. MCFADDIN, JR.
Presiding Judge
Twelfth Judicial Circuit


_____, South Carolina

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

FILED
2022 AUG 12 PM 3: 14
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

FILED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2020CP2101967

Jason R Jones
2022 AUG 12 4:31 PM
South Carolina State Of

PLAINTIFF(S) DORIS POULOS O'HARA
DEFENDANT(S) CCCP & G
FLORENCE COUNTY
Submitted by: Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

CERTIFIED - A TRUE COPY
Doris Poulos O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

8/12/2022

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on August 12, 2022, and a copy mailed first class or placed in the appropriate attorney's box on August 15, 2022, to attorneys of record or to parties (when appearing pro se) as follows:

Ola A. Johnson PO Box 549 Lexington, SC 29071

Danielle Dixon PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris Poulos O'Hara

Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

