

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

—————
Certiorari to Cherokee County

Honorable Brian M. Gibbons, Circuit Court Judge
—————

CARL STONE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000474
—————

APPENDIX
—————

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S.C. SUPREME COURT

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| State of South Carolina |) | |
| |) | |
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| | | |
| The State of South |) | 2020A1110101363; |
| Carolina, |) | 2021A1110100422; |
| |) | 2021A1110100423; |
| Plaintiff, |) | 2021A1110100424 |
| |) | |
| v. |) | |
| |) | |
| Carl Anthony Stone, |) | Transcript |
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| Defendant. |) | of |
| |) | |
| |) | Hearing |
| |) | |
| |) | |
| |) | |
| |) | |

Date: November 29, 2021

Time: 2:36 p.m.

Location: Cherokee County Courthouse
125 E. Floyd Baker Blvd.
Gaffney, SC 29340

Reported by
Amber Payne, CVR

APPEARANCES

Presiding: The Honorable J. Derham Cole

For the Plaintiff: Kim Leskanic, Esq.
Seventh Circuit
Solicitor's Office
125 Floyd Baker Blvd.
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Matt Kendall, Esq.
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For the Defendant: Robin File, Esq.
804 John B. White Sr. Blvd.
Spartanburg, SC 29306

Also Present: Clerk of Court: Brandy McBee

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*Note: The Defense did not enter any exhibits.

1 PROCEEDINGS

2 THE COURT: (To the State) Ready? Proceed.

3 MS. LESKANIC: May it please the Court, Your
4 Honor. Before you is Carl Anthony Stone. He
5 is pleading guilty on four indictments. I
6 have the lead indictment, and the other three
7 are being handled by Mr. Kendall.

8 The first indictment is 2021-GS-11-350.
9 That is a true bill indictment for trafficking
10 in methamphetamine between 100 and 200 grams.
11 He is pleading guilty to the lesser included
12 offense of trafficking in between 28 and 100
13 grams of methamphetamine second offense.

14 There's a negotiated sentence in this case of
15 15 years and \$50,000. The defendant is
16 represented by Mr. File.

17 THE COURT: All right. You are Carl Anthony
18 Stone?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Mr. Stone, Mr. File is
21 representing you?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Today?

24 THE DEFENDANT: Yes, sir.

25 MR. FILE: Your Honor, Mr. Kendall has three

1 additional indictments. I don't know if you
2 need him . . .

3 MR. KENDALL: That's correct, Your Honor.
4 He's also charged with one count of
5 trafficking methamphetamine with 28 to 100.
6 One count of -- a Count 2 that -- with
7 possession of a firearm during commission of a
8 violent crime and a violent felony of
9 possession of a firearm connected (as spoken)
10 to a violent felony.

11 THE COURT: All right. Mr. Stone, I have
12 before me four indictments. Excuse me. Three
13 indictments; one has two counts. Each of
14 those counts charges you with several distinct
15 criminal offense for which you can receive,
16 and will receive, separate and distinct
17 punishments or penalties upon a conviction.
18 Indictment 2021-01 -- well, excuse me -- 2021-
19 00-350 charges you with trafficking in
20 methamphetamine. The State alleges that
21 offense occurred on December 8, 2020. On that
22 date, they allege that you did trafficking in
23 methamphetamine, and that you did have in your
24 actual constructive possession greater than
25 100 grams, but less than 200 grams of

1 methamphetamine. If convicted, you could
2 receive a sentence of up to 30 years in jail
3 and a fine of \$50,000. (To the State) Is
4 that based on the statute, or is that based on
5 the previous history?

6 MS. LESKANIC: That's statutory based on that
7 amount of methamphetamine, Your Honor.

8 THE COURT: All right. Thirty years in jail
9 and/or -- excuse me -- 30 years in jail and a
10 \$50,000 fine. (To the defendant) Do you
11 understand that charge and the potential
12 punishment?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Indictment 2021-01-445 also
15 charges you with trafficking in
16 methamphetamine, that occurred on a separate
17 date, that being on March 29th of 2021. On
18 that date, again, they allege that you did
19 have in your actual or constructive possession
20 greater than 28 grams, but less than 100 grams
21 of methamphetamine. And in Count 2 of that
22 indictment, they allege that you did have in
23 your possession a firearm during the
24 commission of a violent crime. That violent
25 crime being the trafficking of methamphetamine

1 alleged in Count 1.

2 Trafficking in methamphetamine greater
3 than 28 but less than 100 is what?

4 MR. KENDALL: Seven to thirty, Your Honor, for
5 second offense.

6 THE COURT: Okay. It carries up to 30 years
7 in jail and a fine of \$50,000.

8 Possession of a firearm in the commission
9 of that crime carries up to five years in jail
10 -- or carries five years in jail, mandatory
11 five.

12 (To the defendant) Do you understand --

13 THE DEFENDANT: Yes, sir.

14 THE COURT: -- what you're charged with in
15 that indictment?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And the remaining indictment is
18 2021-0424, it alleges that you possessed a
19 firearm after having been convicted of a
20 felony offense classified as violent. And the
21 State alleges on March 29, 2021, you did have
22 in your possession a firearm or ammunition
23 after you had been convicted of a violent
24 crime as defined in 16-1-60. (To the State)
25 And what was that violent crime?

1 MR. KENDALL: I believe it was trafficking,
2 Your Honor.

3 THE COURT: And he's got one prior trafficking
4 offense?

5 MR. KENDALL: I -- I believe that's correct,
6 Your Honor.

7 THE COURT: All right. And so trafficking is
8 a -- classified as a violent offense and a
9 felony offense, and, therefore, you can't
10 possess a handgun or ammunition; and it
11 carries up to five years in jail.

12 MS. LESKANIC: May I clarify something, Your
13 Honor?

14 THE COURT: Please do.

15 MS. LESKANIC: Thank you. His offense that I
16 have ending with indictment 350, the charge is
17 trafficking 100 to 200 grams.

18 THE COURT: All right.

19 MS. LESKANIC: The penalty on that is 25 years
20 and a \$50,000 fine. We are allowing him to
21 plead guilty to the lesser included offense of
22 trafficking 28 to 100 grams, second offense.
23 That potential penalty is seven to thirty
24 years and a \$50,000 fine, and we have
25 negotiated 15 years and a \$50,000 fine.

1 THE COURT: Okay. (To the defendant) Did you
2 hear what the solicitor just stated?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand what she --

5 THE DEFENDANT: Yes, sir.

6 THE COURT: -- just stated? And do you agree
7 with -- you're in agreement with it?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. Has -- how long has
10 Mr. File been representing you?

11 THE DEFENDANT: Since when I started. Since
12 last year.

13 MR. FILE: Two thousand --

14 THE DEFENDANT: December, yes, sir.

15 MR. FILE: Twenty-twenty, Judge, when I
16 represented him first.

17 THE COURT: All right. And you've been in
18 jail since that time?

19 THE DEFENDANT: I was released on an ankle
20 monitor on a hundred-thousand-dollar bond and
21 a GPS monitor, and then that's when I got the
22 other charges; so I've been here since April.

23 THE COURT: Okay.

24 THE DEFENDANT: Yes, sir.

25 MR. FILE: For 243 days, sir.

1 THE COURT: All right. Did Mr. File go over
2 each of these indictments with you?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You understand what the
5 allegations are and contained in each?

6 THE DEFENDANT: Yes, sir. I do.

7 THE COURT: Did he explain to you what kind of
8 sentence could be imposed if you were
9 convicted of each of these offenses?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Did you tell Mr. File everything
12 you know about the facts and circumstances
13 that are related to the allegations made
14 against you?

15 THE DEFENDANT: Yes, sir. I did.

16 THE COURT: After you and he discussed all of
17 that, did you determine whether or not you had
18 a defense to any of these charges?

19 THE DEFENDANT: Yes, sir. We determined that
20 I did not. We -- we really didn't have a
21 defense.

22 THE COURT: You have no defense?

23 THE DEFENDANT: No, sir.

24 THE COURT: So you're not aware of any reason
25 based upon the facts or the law or both as to

1 why you should not be convicted of each crime?

2 THE DEFENDANT: No, sir.

3 THE COURT: Did Mr. File explain to you each
4 of the constitutional rights you have that you
5 must give up if you want to plead guilty?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand you have the
8 right to remain silent?

9 THE DEFENDANT: Yes, sir. I do.

10 THE COURT: And that, of course, means you
11 don't have to say anything. You don't have to
12 testify, even during a trial. You don't have
13 to answer any questions that anyone might ask
14 about these charges. You don't have to make
15 any statement that relates to the offenses
16 that you're charged with, and you don't have
17 to answer my questions right now unless you
18 want to plead guilty, because you always have
19 an absolute right to remain silent.

20 But if you want to plead guilty, you have
21 to give that right up, because I'd have to ask
22 you questions for the purpose of me
23 determining whether or not your decision to
24 plead guilty today is freely and voluntarily
25 made. Nobody's forced you into it. Nobody's

1 pressured you into it, and that you made that
2 decision on your own, freely and voluntarily,
3 and with an understanding of the consequences
4 of that decision. So you do have a right to
5 remain silent, but you must give it up if you
6 want to plead guilty. Do you understand the
7 right?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you wish to give it up in order
10 to plead guilty?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Did Mr. File explain to you that
13 you have a right to confront and to examine
14 any witness in court that would provide
15 evidence against you?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: In other words, you've got a right
18 to make the State prove your guilt in court.
19 They would have to bring those witnesses that
20 are offering that information to court, have
21 those witnesses take the witness stand, have
22 them testify under oath in your presence. You
23 can see them; you can hear them. Mr. File can
24 cross-examine them on that testimony in order
25 to test each witness's credibility and the

1 reliability of the information that they're
2 providing to the Court. If you plead guilty,
3 that process doesn't take place. Do you
4 understand your right to confront and to
5 examine the witnesses?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you want to give that right up
8 in order to plead guilty?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Did Mr. File also explain to you
11 that you have a right to have a jury trial and
12 have a jury determine if you're guilty or not?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you know how a jury is selected
15 at a jury trial?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you know who selects the jury?

18 THE DEFENDANT: Yes, sir. Yes, sir. I do.

19 THE COURT: Do you know how many jurors are
20 selected to decide your case?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: How many?

23 THE DEFENDANT: Twelve.

24 THE COURT: Do you know how many have to vote
25 for a verdict of guilty before you can be

1 found guilty of any crime?

2 THE DEFENDANT: All 12.

3 THE COURT: All 12. Any verdict a jury
4 renders has to be unanimous; all 12 must be in
5 agreement. And you can have a jury trial and
6 put the State to the test in establishing your
7 guilt to the satisfaction of that jury beyond
8 a reasonable doubt and you can do that without
9 offering any testimony or other evidence
10 yourself. You always still have the right to
11 remain silent, but if you want to testify, you
12 can. That's simply a decision you have to
13 make. You understand your right to have a
14 jury trial?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you wish to give that right up
17 in order to plead guilty?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Now, has anybody offered you
20 anything or promised you anything in return
21 for your decision to plead guilty?

22 THE DEFENDANT: Yes. A negotiated plea -- a
23 negotiated.

24 THE COURT: That's right.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: So what's your understanding of
2 what y'all agreed to?

3 THE DEFENDANT: My understanding is I will be
4 sentenced to 15 years, I guess, in the
5 Department of Corrections, and then it's like
6 85 percent violent and nonparolable, I think.
7 So I'll have to do about 12 years, from my
8 understanding.

9 THE COURT: All right. Well, now, that might
10 be your understanding, and the law might
11 permit that, but do you understand that in
12 making a decision to plead guilty to a crime,
13 that you have to assume that if you receive a
14 15-year sentence, you -- you'll have to do
15 every day of it?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: In other words, in order to make
18 that decision, you've got to assume that --

19 THE DEFENDANT: Assume --

20 THE COURT: -- you've -- you'll have to do --
21 whatever time you get you'll have to do all of
22 it?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Might be some way you can receive
25 parole eligibility; might be considered for

1 parole. I mean, the law provides for that.
2 But you understand that you have to make a
3 decision to plead guilty based upon the fact
4 that you might have to do every bit of the
5 time you receive?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Did Mr. File also explain to you
8 that -- that the trafficking offenses are
9 classified as violent offenses?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And do you understand the
12 significance of that classification?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you also understand that each
15 of these offenses -- (to the State) the
16 trafficking offenses, are they most serious?

17 MS. LESKANIC: Serious, Your Honor.

18 THE COURT: They're serious. Do you
19 understand that each of these offenses are
20 classified as serious offenses under the law?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You understand the significance of
23 that classification?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And you understand that the

1 sentences for trafficking and methamphetamine
2 are -- are classified and designated and are
3 no parole offenses under the law?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And you understand the
6 significance of that designation?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Now, aside from the agreement that
9 you and your lawyer and the solicitors have
10 arrived at, have you been offered or promised
11 anything aside from that?

12 THE DEFENDANT: No, sir.

13 THE COURT: Have you be coerced or threatened
14 by anybody in any way that resulted in your
15 decision?

16 THE DEFENDANT: No, sir.

17 THE COURT: Are you pleading guilty freely and
18 voluntarily?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Was it your decision?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And are you satisfied with it?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And are you pleading guilty
25 because you did in fact commit each of these

1 crimes, just as they are described in each of
2 these separate indictments?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. All right. Mr. Stone,
5 I have your age as 48; is that true?

6 THE DEFENDANT: I'm 49.

7 THE COURT: You're 49?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You were 49 on last September the
10 9th?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Okay. And I have your race as
13 "blank." You want to give me one?

14 THE DEFENDANT: White.

15 THE COURT: I have your gender as "blank."
16 You want to give me one of those?

17 THE DEFENDANT: Male.

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

20 THE DEFENDANT: Eleventh grade.

21 THE COURT: And why did you quit?

22 THE DEFENDANT: Just to go to work and then I
23 started working.

24 THE COURT: Where'd you go to work?

25 THE DEFENDANT: At Piedmont Mechanical in

1 Spartanburg with my dad. I should have stayed
2 in school.

3 THE COURT: Sir?

4 THE DEFENDANT: I said, "I should have stayed
5 in school." I went on -- I got my GED later
6 on, though.

7 THE COURT: Well, you didn't have to go back
8 to school if you had a good job and you had --
9 your father had a business and you were
10 working instead of --

11 THE DEFENDANT: Well, he --

12 THE COURT: -- dealing drugs.

13 THE DEFENDANT: -- he worked there, so I went
14 to work with him one summer and just didn't go
15 back. I was --

16 THE COURT: Oh.

17 THE DEFENDANT: -- yes, sir.

18 THE COURT: Okay. I got your address in here
19 as Cowpens; is that right?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Well, it doesn't have a state.
22 Cowpens is still in South Carolina, but --

23 THE DEFENDANT: Yes, sir.

24 THE COURT: I thought so. What's your zip
25 code?

1 THE DEFENDANT: It's 29341.

2 THE COURT: Is that the Cowpens zip?

3 THE DEFENDANT: Oh, no, sir. I think it's

4 387 --

5 MS. LESKANIC: 29330, Your Honor, is Cowpens.

6 THE DEFENDANT: [REDACTED].

7 THE COURT: Well, is Crenshaw up in Cowpens?

8 THE DEFENDANT: It's a Cowpens address. It's

9 actually still in --

10 THE COURT: Well, that's what I mean.

11 THE DEFENDANT: -- still in Cherokee County.

12 THE COURT: But it's a Cowpens address?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Have you ever been married?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Are you now?

17 THE DEFENDANT: No, sir.

18 THE COURT: What happened?

19 THE DEFENDANT: I tried for 11 years and just

20 -- we had moved from here to Spartanburg for

21 work. And I was working with my brother

22 building houses, and we just -- my wife

23 decided she wanted to move back to Gaffney;

24 and I stayed in Spartanburg. So we went

25 through -- she got a legal separation or

1 whatever. So after a year, we got divorced.

2 I was married for 11 years, though.

3 THE COURT: All right. What about children?

4 Y'all have any?

5 THE DEFENDANT: I have one daughter.

6 THE COURT: What's her age?

7 THE DEFENDANT: She's 29. I have three
8 grandchildren.

9 THE COURT: All right. And what kind of work
10 have you done?

11 THE DEFENDANT: I worked at -- I worked on
12 remodeling houses, but then I worked at Metro
13 Drill for a good little while taking soil
14 samples, geotechnicals, out at Cowpens and --
15 so at any rate, I got my right foot crushed
16 working on a drill ready (as spoken.) And
17 that was when -- actually the first time I
18 ever messed with any methamphetamines, too.

19 But I -- I worked at Metro Drill, and
20 after I got hurt, that's pretty much all.
21 I've -- I've had little odds and end jobs. I
22 went to work when I got out of prison for this
23 trafficking stuff. I went to work at Rooter-
24 Man Plumbing. I worked at the Criminal
25 Justice Academy when I was in prison and

1 worked for old Bill Kern down there doing
2 plumbing.

3 So when I got out, I got me a job and it
4 probably lasted a good little while, and I
5 just -- I don't know what drug me back over
6 the edge like that. I just -- I don't know.
7 Because I had a good job and everything and I
8 don't know how it happened, and I had to come
9 back over here. I never had any drug charges
10 in my life until I was, like, 46 when I got
11 that trafficking, that first one.

12 THE COURT: And you -- what -- what were you
13 spending time in the Department of Corrections
14 for?

15 THE DEFENDANT: The first offense trafficking
16 that I -- that I --

17 THE COURT: What kind of sentence did you get?

18 THE DEFENDANT: They gave me three years. I
19 stayed a year. And then, I don't know. I
20 probably should've went -- I don't know. I --
21 I guess, I probably needed some drug
22 rehabilitation and stuff. I should have had a
23 better plan when I got out, but just -- I went
24 to work, and I thought I was all back on a
25 good roll, and that's when I screwed up.

1 Because I was doing well. I was -- I was
2 even actually attending church every week with
3 my -- with my dad and staying with my dad and
4 working full-time at Rooter-Man Plumbing. And
5 then I decided to rent a house and get out on
6 my own, since I'd been in prison.

7 And then when I got out of prison, I
8 started living with dad, and I felt like I was
9 a little bit of burden on him, so I rented a
10 house back over here in Gaffney and I was just
11 running everywhere with my old buddies. I
12 mean -- and it's not their fault. I just
13 reunited with them and got to cutting up and
14 actually lost my job at Rooter-Man Plumbing.

15 THE COURT: All right. Listen to what the
16 solicitor tells me about the facts that relate
17 to your cases.

18 MS. LESKANIC: Thank you, Your Honor. The
19 first incident occurred December 8th of 2020,
20 at [REDACTED] here in Cherokee County.
21 Law enforcement was looking for a vehicle that
22 had been stolen out of Spartanburg County.
23 They had information that the vehicle may be
24 located at this address.

25 They went to that location. When they

1 first arrived, they encountered a Mr. Wicks
2 (phonetic), who was sitting in his van. As
3 soon as law enforcement walked up to him to
4 just find out what he was doing and get some
5 information about who may be at the house, he
6 tried to drive away while law enforcement was
7 talking with him, almost struck a police
8 vehicle. So they detained him.

9 Lieutenant Dorsett with the sheriff's
10 department then noticed Mr. Stone stepped
11 outside of the home. He recognized him and
12 told him to hold on a second, and he closed
13 the door and went back inside. Law
14 enforcement knocked on the door. They ended
15 up speaking with Mr. Stone outside. No one
16 claimed ownership of this house. It was a
17 known drug house here in Cherokee County. Mr.
18 Stone stated that the owner was a Nelson
19 Bonner. Mr. Bonner claimed that he did not
20 own the home.

21 Police did a protective sweep of the
22 home, and in plain view, they saw scales with
23 residue. They also found some syringes in Mr.
24 Stone's possession. He was not a diabetic.
25 Once of them was loaded with a little bit of

1 blood in it.

2 Based on the information the law
3 enforcement gathered, they were able to secure
4 a search warrant for that location, and during
5 the search of the home, they found over a
6 hundred grams of methamphetamine. There was
7 approximately 82 grams of methamphetamine
8 found in a black bag. That bag was claimed by
9 this defendant. I have marked State's Exhibit
10 1, which is a pre-interrogation waiver form
11 signed by this defendant, as well as his
12 statement claiming that law enforcement did
13 find 3 ounces of meth that belonged to him; so
14 I would like to make that part of the record
15 in this case.

16 THE COURT: All right.

17 (WHEREUPON, a pre-interrogation waiver
18 form is marked into evidence as State's
19 Exhibit No. 1.)

20 MS. LESKANIC: And those are the facts of that
21 trafficking, Your Honor.

22 MR. KENDALL: With regard to the other
23 offenses, Your Honor, these occurred on March
24 29, 2021. Lieutenant Brandon Dorsett, along
25 with agents from the Cherokee County Sheriff's

1 Office, went to 917 North Logan Street in
2 reference to Carl Anthony Stone's GPS
3 detention check. Stone sleeps in this
4 location, as well as the residence on
5 Maplewood Drive. They'd been observing
6 Stone's movement by a GPS monitor, and he has
7 been frequenting multiple known drug houses on
8 a regular basis. While at the location,
9 several subjects were arrested for
10 methamphetamine and warrant solicited on Case
11 Number 2101096.

12 After the subject was removed, he
13 admitted to having several ounces of
14 methamphetamine in the building where he was
15 running the fake business at 917 North Logan
16 Street. He gave Captain Painter a key to a
17 blue toolbox and stated the methamphetamine
18 was in a teacup. Law enforcement used the key
19 from Stone to open the toolbox. They located
20 a white teacup that contained roughly 47 grams
21 of methamphetamine. Also, a 22 long rifle was
22 located in the same room as the toolbox, and
23 he was charged with that. I don't believe the
24 drugs had been come back -- have come back
25 from SLED yet, Your Honor, but I believe he is

1 waiving that.

2 THE COURT: All right. Mr. Stone, you've
3 heard what the solicitors have told me?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You agree or disagree?

6 THE DEFENDANT: I agree.

7 THE COURT: You also heard Mr. Kendall tell me
8 that the drugs haven't actually been tested by
9 SLED, but you're here pleading guilty. Now,
10 are you certain that the -- the drugs that
11 they claim is methamphetamine found in your
12 possession was in fact methamphetamine?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: No doubt about it?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: There is a doubt about it?

17 THE DEFENDANT: No, sir. There isn't -- no,
18 sir. It was -- it was the meth in -- in that
19 teacup that I told them was in there.

20 THE COURT: Okay. Okay. You still want me to
21 accept your plea as guilty?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. I'll accept it and
24 hear from you, Mr. File.

25 MR. FILE: Judge, as you heard, he's 49 years

1 old, and he has a work history of -- as he
2 told you. He got injured, crushed his right
3 foot about eight years ago; he got workers'
4 comp. And he tells me that's about the time
5 he started doing meth, basically self-
6 medicating after he got some prescription
7 medication, and I guess, at some point that
8 got cut off.
9 He's divorced; been divorced for about ten
10 years. He has a daughter and three
11 grandchildren. He has a [REDACTED] that -- that I
12 have consulted -- or talked with at his behest
13 about this case. She's very educated and
14 works in the [REDACTED].

15 And he and I have met many, many times
16 about these -- this case -- or these cases and
17 talked and discussed any possible defenses and
18 -- and things and discussions about the
19 viability of any defenses he might've had, and
20 we came to the conclusion -- I believe it was
21 mutual -- that he should accept the negotiated
22 offer and sentence. I -- we would ask you to
23 accept that negotiated sentence. He's --
24 basically, my opinion, I believe he's a good
25 guy. He -- I mean, as far as -- he's not --

1 he's done some bad things with the trafficking
2 and all, but he's -- he's always been
3 straightforward with me in discussions about
4 the case. He and I have had a good working
5 relationship on the case, and as far as being
6 able to discuss the case openly and
7 everything.

8 And he's a affable man and he's really
9 wanting to -- and we feel like that the 15
10 years, although it is a significant amount of
11 time, it will still give him a chance to -- to
12 do right when he gets out and -- and all. He
13 -- he loves his grandchildren dearly. He's
14 told me that many times and all, so hopefully
15 he can get out and make something out of the
16 rest of his life.

17 And, like I say, he's 49, and so it will
18 give him an opportunity to straighten out and
19 -- and make something out of his life after he
20 -- after he's served his sentence.

21 THE COURT: Anything you want to add, Mr.
22 Stone?

23 THE DEFENDANT: No, sir.

24 THE COURT: Now, I think we've determined that
25 Mr. Stone is living in Cowpens, but on one of

1 his other sentencing sheets, I've got
2 Jamestown Court in Moore. What -- what --
3 who's residence is that one?

4 THE DEFENDANT: That's my brother's. That's
5 where I was living before I moved back to
6 Gaffney. When I -- when I moved back to
7 Gaffney, I moved back to Reely Street
8 (phonetic), but I changed my address from
9 there. I was -- I was living at [REDACTED] Raintree
10 because of my ankle monitor, but I came to the
11 Clerk of Court and changed my address from [REDACTED]
12 Raintree to [REDACTED] Crenshaw just when I was on my
13 ankle monitor.

14 THE COURT: All right.

15 THE DEFENDANT: And that was my last address I
16 got arrested.

17 THE COURT: [REDACTED] Crenshaw is your correct last
18 address?

19 THE DEFENDANT: Yes, sir. And I got arrested
20 when I was at --

21 THE COURT: Crenshaw Street? Road? Boulevard?
22 what?

23 THE DEFENDANT: It's Crenshaw Road.

24 MR. FILE: And -- and Judge, per my
25 calculations, he had 223 days since April the

-1 21st, and then he had 20 days before he was
2 released on bond on that first case. So that
3 would be 243 days with the ankle monitor,
4 because he was on the ankle monitor, too.

5 THE COURT: He violated, didn't he?

6 MR. FILE: Yes, sir.

7 THE COURT: Why would he get credit for
8 violating?

9 MR. FILE: Okay.

10 THE COURT: Madam Clerk, I'm trying to correct
11 his age, which is 49, not 48. Can you take a
12 look at it?

13 THE CLERK OF COURT: Yes, sir.

14 (WHEREUPON, a bench conference was held.)

15 THE COURT: Is everybody in agreement? 243
16 days is the correct credit?

17 MS. LESKANIC: Yes, your honor.

18 MR. KENDALL: Yes, Your Honor.

19 THE DEFENDANT: Yes, sir.

20 MR. KENDALL: But -- hold on one second, Your
21 Honor. I think he was arrested on 4/21/21 on
22 this charge.

23 THE COURT: Well, I'm trying to do something
24 else now. Y'all figure it out and let me
25 know. I'm having to change all these

1 addresses and everything now.

2 Mr. Stone, what's the Crenshaw [REDACTED]
3 address? What number?

4 THE DEFENDANT: It's [REDACTED].

5 THE COURT: [REDACTED]?

6 THE DEFENDANT: Yes, sir.

7 MR. KENDALL: Your Honor, I believe on the
8 last known trafficking, the weapons charges,
9 and the 28 to 100, it's 223 days.

10 THE COURT: Say that again.

11 MR. KENDALL: I believe on the -- the
12 possession of a firearm during a commission of
13 a violent crime, the trafficking meth, and
14 possession of a firearm by a violent felon, I
15 believe that's 223 days.

16 THE COURT: Does everybody agree with him?

17 MR. FILE: And Judge, he was on the -- he was
18 on the monitor until -- before he violated.
19 And, well --

20 THE COURT: Here's the thing about the
21 monitor. I know you could credit it for it,
22 but if you can't stay on it without getting
23 violated, why would I give you credit for it?
24 So I don't.

25 THE DEFENDANT: I understand.

1 MR. FILE: Well, the 223 would be --

2 THE COURT: Okay. 223. Madam Clerk?

3 (WHEREUPON, a bench conference was held.)

4 MR. FILE: Judge, he had an additional 15
5 days. We're -- we were just discussing with
6 Ms. Leskanic. He had an additional 15 days on
7 her traffic case, so we . . .

8 THE COURT: Yeah, I told y'all while I was
9 doing this to get together on a number. Y'all
10 can't get together on a number?

11 MS. LESKANIC: It's two different numbers,
12 Your Honor, because on my charge --

13 THE COURT: Well, is it gonna matter?

14 MS. LESKANIC: I -- we just wanted to give you
15 the accurate information, Your Honor.

16 THE COURT: Well, I appreciate that, but I
17 mean -- oh, he's got all concurrent sentences.
18 So we will just go with the greater number
19 that you have.

20 MS. LESKANIC: Then that would be 237 days,
21 Your Honor.

22 THE COURT: All right. So 237 goes on Mr.
23 Kendall's charges and 223 goes on yours; is
24 that my understanding?

25 MS. LESKANIC: No.

1 MR. KENDALL: No.

2 MS. LESKANIC: My charge is 237, Your Honor.

3 MR. KENDALL: And mine is 223, Your Honor.

4 THE COURT: All right. I think we're set up
5 here. Let me see.

6 All right. On Indictment 2021-00-350,
7 sentence of the Court is you, Carl Anthony
8 Stone, be confined to the South Carolina
9 Department of Corrections for a period of 15
10 years and pay a fine of \$50,000. The
11 defendant to be given credit of 237 days he's
12 already served.

13 On Indictment 2021-01-445, Count 2,
14 possession of firearm during commission of
15 violent crime, sentence of the Court is you,
16 Carl Anthony Stone, be confined to the South
17 Carolina Department of Corrections for a
18 period of five years, and it's concurrent; but
19 then he had a credit for 223 days.

20 Same indictment, Count 1, sentence of the
21 Court is you, Carl Anthony Stone, be confined
22 to the South Carolina Department of
23 Corrections for a period of 15 years
24 concurrent, credit for 223 days.

25 And the remaining Indictment 2021-01-444,

1 possession of a weapon by a convicted -- by a
2 felon, sentence of the Court is you be
3 confined to the South Carolina Department of
4 Corrections for the period of five years.
5 That sentence is concurrent. Defendant to be
6 given credit for the 223 days.

7 MR. FILE: Thank you, Your Honor.

8 THE COURT: I believe that's all of it.

9 MR. KENDALL: Thank you, Your Honor.

10 (Whereupon the within hearing was
11 concluded at 3:23 p.m.)

12 (*This transcript may contain quoted material.
13 Such material is reproduced as read or quoted
14 by the speaker.)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

CERTIFICATE

I, Amber Payne, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Cherokee County, South Carolina on November 29, 2021.

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

Amber J. Payne, CVR

Date: 7/9/2022
 Notary public for South Carolina
 My commission expires August 12, 2029

WITNESSES

Cherokee County Sheriff's Office

Heather M Kelly

ARREST WARRANT NUMBER

2020A1110101363

ACTION OF GRAND JURY

TRUE BILL

Jetha Kump

Foreperson of Grand Jury

Date: *3-25-21*

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

21-GS-11- 00350

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

March 25, 2021 TERM

THE STATE

vs.

CARL ANTHONY STONE

Indictment for

TRAFFICKING IN METHAMPHETAMINE

SC Code: 44-53-375

FILED IN THE OFFICE
CLERK OF COURT
2021 MAR 25 P 1:08
BRANDY W. MCBEE
CHEROKEE COUNTY, SC

STATE OF SOUTH CAROLINA }
 COUNTY OF CHEROKEE }

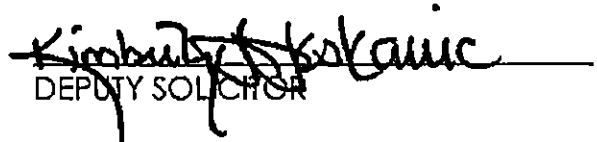
INDICTMENT

At a Court of General Sessions, convened on March 25, 2021, the Grand Jurors of Cherokee County present upon their oath:

TRAFFICKING IN METHAMPHETAMINE

That Carl Anthony Stone did in Cherokee County on or about December 8, 2020, knowingly sell, manufacture, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or did knowingly actually or constructively possess, or did knowingly attempt to actually or constructively possess (100) one hundred grams or more, but less than (200) two hundred grams of Methamphetamine, a schedule II controlled substance, in violation of §44-53-375, THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

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


 DEPUTY SOLICITOR

WITNESSES

CHEROKEE COUNTY SHERIFF'S OFFICE

ARREST WARRANT NUMBER

2021A1110100424

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 21-GS-11-01444

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

2021 NOV 30 AM 8:23

BRANDY W. MCBEE

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

November 29, 2021 TERM

THE STATE

vs.

CARL ANTHONY STONE

Indictment for

WEAPONS / POSSESSION OF FIREARM OR
AMMUNITION BY PERSON CONVICTED OF
VIOLENT FELONY

SC Code: 16-23-0500 (A)

CDR Code: 3434

Class FEL/F

STATE OF SOUTH CAROLINA }
 COUNTY OF CHEROKEE }

INDICTMENT

At a Court of General Sessions, convened on November 29, 2021 the Grand Jurors of Cherokee County present upon their oath:

WEAPONS / POSSESSION OF FIREARM OR AMMUNITION BY PERSON CONVICTED OF VIOLENT FELONY

That Carl Anthony Stone did in Cherokee County on or about March 29, 2021, willfully and unlawfully, after being convicted of a violent crime as defined by §16-1-60 that is classified as a felony offense, possess a firearm or ammunition within this State, in violation of §16-23-0500 (A), *THE CODE OF LAWS OF SOUTH CAROLINA, (1976, as amended)*.

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


 ASSISTANT SOLICITOR

WITNESSES

Cherokee County Sheriff's Office

ARREST WARRANT NUMBER

2021A1110100423- COUNT ONE

2021A1110100422- COUNT TWO

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. **21-GS-11-01445**

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

2021 NOV 30 AM 8:23

BRANDY W. MCBEE

COURT OF GENERAL SESSIONS

November 24, 2021 TERM

THE STATE

vs.

CARL ANTHONY STONE

Indictment for

TRAFFICKING IN METHAMPHETAMINE-
COUNT ONE AND POSSESSION OF FIREARM
DURING COMMISSION OF A VIOLENT
CRIME- COUNT TWO

SC Code: 44-53-375; 16-23-490
CDR: 0549
CLASS: Fel/F

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on November 29, 2021, the Grand Jurors of Cherokee County present upon their oath:

TRAFFICKING IN METHAMPHETAMINE - COUNT ONE

That Carl Anthony Stone did in Cherokee County on or about March 29, 2021, knowingly sell, manufacture, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or did knowingly actually or constructively possess, or did knowingly attempt to actually or constructively possess twenty-eight (28) grams or more, but less than one hundred (100) grams of Methamphetamine, a schedule II controlled substance, in violation of §44-53-375, THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

**POSSESSION OF FIREARM DURING
 COMMISSION OF A VIOLENT CRIME- COUNT TWO**

That Carl Anthony Stone did in Cherokee County on or about March 29, 2021, possess a firearm, during the commission of a violent crime as defined in Code §16-1-60, to wit: TRAFFICKING IN METHAMPHETAMINE, in violation of Code §16-23-490, CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

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


 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)

COUNTY OF Cherokee)

STATE)

VS.)

Carl Anthony Stone)

AKA:)

Race: White Sex: Male Age: 48)

DOB: ***/1972 SS#: ***..****)

Address: Crenshaw Rd)

City, State, Zip: Cowpens, SC 29330)

DL# * SID#)

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the above indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Drugs / Trafficking in ice, crank or crack - 28 g or more, but less than 100 g - 2nd offense

In violation of § 44-53-0375(C)(2)(b) of the S.C. Code of Laws, bearing CDR Code # 0389

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. s/CAS (def.'s initials)

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

s/Kimberly L Leskanic 16837 s/Carl A Stone s/Robin C File 7843
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center, for a determinate term of 15 years Youthful Offender Act not to exceed ___ years

And to pay a fine of \$ 50,000.00 ; provided that upon the service of ___ payment of \$ ___ ; plus costs and assessments as applicable*; the balance is suspended with probation for ___

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

The sentence shall run CONCURRENT or CONSECUTIVE to sentence on: _____

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDoc. 237 days

To include time spent on monitored house arrest prior to trial and sentencing.

The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SENTENCE SHEET

INDICTMENT/CASE#: 2021 -GS- 11 - 00360

A/W#: 2020A1110101363

Date of Offense: 12/8/2020

S.C. Code §: 44-53-0375(C)(3)

CDR Code #: 0388

STATE VS. Carl Anthony Stone INDICTMENT/CASE#: 2021 -GS- 11 - 00350

SPECIAL CONDITIONS:

PTUP after _____

And Other Terms Listed Below:

- Substance Abuse Counseling Completion of GED Random Drug/Alcohol Testing
- Attend Voc. Rehab. Or Job Corp No Contact with Victim Domestic Violence Intervention Program
- Mental Health Counseling May serve W/E beginning: _____
- Sex Offender Registry pursuant to S.C. Code § 23-3-430 Public Service Employment _____
- Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- Other:

RESTITUTION: Deferred Def. Waives Hearing Ordered

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

Payment Terms: _____ Set by SCDPPPS

Recipient: _____

***Fine:**

| | | | | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|----------|--------------|-----------|-------------------|
| Fine may be pd. in equal consecutive | pmts. of | \$ _____ | Beginning | \$ _____ | \$ 50,000.00 |
| §14-1-206 (Assessments 107.5%) | | | | \$ | 53,750.00 |
| §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 | \$ | |
| §14-1-212 (Law Enforce. Funding) | | | \$25 | \$ | 25.00 |
| §14-1-213 (Drug Court Surcharge) | | | \$150 | \$ | 150.00 |
| §34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs) | | | \$41 | \$ | |
| §50-21-114 (BUI Breath Test Fee) | | | \$50 | \$ | |
| §56-5-2942(J) (Vehicle Assessment) | | | \$40/ea | \$ | |
| §3% to County (if paid in installments) | | | TBD | \$ | 3,120.75 |
| <input type="checkbox"/> Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees | | | \$500 | \$ | |
| <input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund | | | TBD | \$ | |
| | | | TOTAL | \$ | 107,145.75 |

Clerk of Court/Deputy Clerk: s/Terry Jolly
Court Reporter: Amber Payne

Presiding Judge: s/J. D Cole
Judge Code: 2053
Sentence Date: 11/29/2021

STATE OF SOUTH CAROLINA)
COUNTY OF Cherokee)
STATE)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2021 -GS- 11 - 01444

VS.

Carl Anthony Stone

AKA: _____
Race: White Sex: Male Age: 48
DOB: ***/1972 SS#: ***-**-****

A/W#: 2021A1110100424
Date of Offense: 3/29/2021
S.C. Code §: 16-23-0490
CDR Code #: 0549

Address: Crenshaw Road
City, State, Zip: Cowpens, SC 29330
DL# ***** SC * SID# _____

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the above indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Weapons / Possession of Firearm or Ammunition by person convicted of violent felony

In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

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. s/CAS (def.'s initials)

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

s/George M Kendall 77213 s/Carl A Stone s/Robin C File 7843
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of 5 years Youthful Offender Act not to exceed _____ years
_____ to pay a fine of \$ _____; provided that upon the service of _____ payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

The sentence shall run CONCURRENT or CONSECUTIVE to sentence on: _____

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.
223 days
 To include time spent on monitored house arrest prior to trial and sentencing.
 The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Carl Anthony Stone INDICTMENT/CASE#: 2021 -GS- 11 - 01444

SPECIAL CONDITIONS:

PTUP after _____

And Other Terms Listed Below:

- Substance Abuse Counseling Completion of GED Random Drug/Alcohol Testing
- Attend Voc. Rehab. Or Job Corp No Contact with Victim Domestic Violence Intervention Program
- Mental Health Counseling May serve W/E beginning: _____
- Sex Offender Registry pursuant to S.C. Code § 23-3-430 Public Service Employment _____
- Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- Other: _____

RESTITUTION: Deferred Def. Waives Hearing Ordered

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

Payment Terms: _____ Set by SCDPPPS

Recipient: _____

***Fine:**

| Fine may be pd. in equal consecutive | pmts. of | \$ | Beginning | \$ | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|----|-----------|--------------|------------------|
| §14-1-206 (Assessments 107.5%) | | | | \$ | _____ |
| §14-1-211 (A)(1)(Conv. Surcharge) | | | | \$100 | \$ 100.00 |
| §14-1-211 (A)(2)(DUI Surcharge) | | | | \$100 | \$ _____ |
| §56-5-2995 (DUI Assessment) | | | | \$12 | \$ _____ |
| §56-1-286 (DUI Breath Test) | | | | \$25 | \$ _____ |
| §14-1-212 (Law Enforce. Funding) | | | | \$25 | \$ 25.00 |
| §14-1-213 (Drug Court Surcharge) | | | | \$150 | \$ _____ |
| §34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs) | | | | \$41 | \$ _____ |
| §50-21-114 (BUI Breath Test Fee) | | | | \$50 | \$ _____ |
| §56-5-2942(J) (Vehicle Assessment) | | | | \$40/ea | \$ _____ |
| §3% to County (if paid in installments) | | | | TBD | \$ 3.75 |
| <input type="checkbox"/> Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees | | | | \$500 | \$ _____ |
| <input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund | | | | TBD | \$ _____ |
| | | | | TOTAL | \$ 128.75 |

Clerk of Court/Deputy Clerk: s/Terry Jolly
Court Reporter: Amber Payne

Presiding Judge: s/J. D Cole
Judge Code: 2053
Sentence Date: 11/29/2021

STATE OF SOUTH CAROLINA)
COUNTY OF Cherokee)
STATE)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2021 -GS- 11 - 01445

VS.

Carl Anthony Stone

AW#: 2021A1110100423
Date of Offense: 3/29/2021
S.C. Code §: 44-53-0375(C)(2)(b)
CDR Code #: 0389

AKA: _____
Race: White Sex: Male Age: 48
DOB: ***/1972 SS#: ***-**-****

Address: Crenshaw Road
City, State, Zip: Cowpens, SC 29330
DL#: ***** SC * SID# _____

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the above indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Drugs / Trafficking in ice, crank or crack - 28 g or more, but less than 100 g - 2nd offense

In violation of § 44-53-0375(C)(2)(b) of the S.C. Code of Laws, bearing CDR Code # 0389

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, s/CAS (def.'s initials)

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

s/George M Kendall 77213 s/Carl A Stone s/Robin C File 7843
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of 15 years Youthful Offender Act not to exceed _____ years

_____ to pay a fine of \$ _____; provided that upon the service of _____ payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

The sentence shall run CONCURRENT or CONSECUTIVE to sentence on: _____

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDoc.
223 days
 To include time spent on monitored house arrest prior to trial and sentencing.
 The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Carl Anthony Stone INDICTMENT/CASE#: 2021 -GS- 11 - 01445

SPECIAL CONDITIONS:

PTUP after _____

And Other Terms Listed Below:

- Substance Abuse Counseling Completion of GED Random Drug/Alcohol Testing
- Attend Voc. Rehab. Or Job Corp No Contact with Victim Domestic Violence Intervention Program
- Mental Health Counseling May serve W/E beginning: _____
- Sex Offender Registry pursuant to S.C. Code § 23-3-430 Public Service Employment _____
- Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- Other: _____

RESTITUTION: Deferred Def. Waives Hearing Ordered

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

Payment Terms: _____ Set by SCDPPPS

Recipient: _____

***Fine:**

| Fine may be pd. in equal consecutive | pmts. of | \$ | Beginning | \$ |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|----|--------------|------------------|
| §14-1-206 (Assessments 107.5%) | | | | \$ |
| §14-1-211 (A)(1)(Conv. Surcharge) | | | \$100 | \$ 100.00 |
| §14-1-211 (A)(2)(DUI Surcharge) | | | \$100 | \$ |
| §56-5-2995 (DUI Assessment) | | | \$12 | \$ |
| §56-1-286 (DUI Breath Test) | | | \$25 | \$ |
| §14-1-212 (Law Enforce. Funding) | | | \$25 | \$ 25.00 |
| §14-1-213 (Drug Court Surcharge) | | | \$150 | \$ 150.00 |
| §34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs) | | | \$41 | \$ |
| §50-21-114 (BUI Breath Test Fee) | | | \$50 | \$ |
| §56-5-2942(J) (Vehicle Assessment) | | | \$40/ea | \$ |
| §3% to County (if paid in installments) | | | TBD | \$ 8.25 |
| <input type="checkbox"/> Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees | | | \$500 | \$ |
| <input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund | | | TBD | \$ |
| | | | TOTAL | \$ 283.25 |

Clerk of Court/Deputy Clerk: s/Terry Jolly
Court Reporter: Amber Payne

Presiding Judge: s/J. D Cole
Judge Code: 2053
Sentence Date: 11/29/2021

STATE OF SOUTH CAROLINA

COUNTY OF Cherokee

STATE

VS.

Carl Anthony Stone

AKA:
Race: White Sex: Male Age: 48
DOB: ***/1972 SS#: ****

Address: Crenshaw Road
City, State, Zip: Cowpens, SC 29330
DL# *****SC SID#

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the above indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

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. s/CAS (def.'s initials)

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

ATTEST: s/George M Kendall 77213 s/Carl A Stone s/Robin C File 7843
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of 5 years Youthful Offender Act not to exceed years
to pay a fine of \$; provided that upon the service of payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

The sentence shall run CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDoc.
223 days
To include time spent on monitored house arrest prior to trial and sentencing.
The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2021 -GS- 11 - 01445A

A/W#: 2021A1110100422
Date of Offense: 3/29/2021
S.C. Code §: 16-23-0490
CDR Code #: 0549

SENTENCE SHEET

STATE VS. Carl Anthony Stone INDICTMENT/CASE#: 2021 -GS- 11 . 01445A

SPECIAL CONDITIONS:

PTUP after _____

And Other Terms Listed Below:

- Substance Abuse Counseling Completion of GED Random Drug/Alcohol Testing
- Attend Voc. Rehab. Or Job Corp No Contact with Victim Domestic Violence Intervention Program
- Mental Health Counseling May serve W/E beginning: _____
- Sex Offender Registry pursuant to S.C. Code § 23-3-430 Public Service Employment _____
- Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- Other: _____

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

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

Payment Terms: _____ Set by SCDPPPS

Recipient: _____

***Fine:**

| Fine may be pd. in equal consecutive | pmts. of | \$ | Beginning | \$ | \$ |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|----|--------------|----|---------------|
| §14-1-206 (Assessments 107.5%) | | | | | |
| §14-1-211 (A)(1)(Conv. Surcharge) | | | \$100 | | 100.00 |
| §14-1-211 (A)(2)(DUI Surcharge) | | | \$100 | | |
| §56-5-2995 (DUI Assessment) | | | \$12 | | |
| §56-1-286 (DUI Breath Test) | | | \$25 | | |
| §14-1-212 (Law Enforce. Funding) | | | \$25 | | 25.00 |
| §14-1-213 (Drug Court Surcharge) | | | \$150 | | |
| §34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs) | | | \$41 | | |
| §50-21-114 (BUI Breath Test Fee) | | | \$50 | | |
| §56-5-2942(J) (Vehicle Assessment) | | | \$40/ea | | |
| §3% to County (if paid in installments) | | | TBD | | 3.75 |
| <input type="checkbox"/> Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees | | | \$500 | | |
| <input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund | | | TBD | | |
| | | | TOTAL | | 128.75 |

Clerk of Court/Deputy Clerk: s/Terry Jolly
Court Reporter: Amber Payne

Presiding Judge: s/J. D Cole
Judge Code: 2053
Sentence Date: 11/29/2021

FORM 5

STATE OF SOUTH CAROLINA)
 County of CHEROKEE)
CARL ANTHONY STONE 380019)
 Full name and prison number (if any) of Applicant)
 v.)
 State of South Carolina)

IN THE COURT OF COMMON PLEAS

22CP-110311

APPLICATION FOR
POST-CONVICTION RELIEF

BRANDY
MOSEEE

2022 MAY -5 AM 11:16

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

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 KIRKLAND CORRECTIONAL R+E CENTER
2. Name and location of Court which imposed sentence CHEROKEE County Court House GAFFNEY, S.C.
3. Name(s) of co-defendant(s) (if any) NELSON BONNER - JOUSHA WHITE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) U/A
 - (b) _____

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

(a) Nov. 29th 2021

(b) SENTENCED TO 15 YRS.

(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. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

(c) the date of each such result:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

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

(a) I did not know All my Rights

(b) And my Lawyer did not Inform me of them.

(c) I didn't know that I could appeal.

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

(a) Ineffective assistant Council

(b) SEE ATTACHMENTS/FACTS

(c) _____

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

(a) Council failed to represent to the fullist

(b) _____

(c) _____

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

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

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

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

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

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

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

NO

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

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- ii. _____
- iii. _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
(c) I didnt know that I could appeal.

(a) Ineffective assistant Council
(b) SEE ATTACHMENTS/FACTS
(c) _____

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

(a) Council failed to represent to the fullist
(b) _____
(c) _____

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

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

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

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

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

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

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

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

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

New trial, time cut or what my lawyer
promised me from the start.

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

No

STATE OF SOUTH CAROLINA)

County of Cherokee)

VERIFICATION

I, CARL Anthony Stone, 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.

Carl Anthony Stone

SWORN to and subscribed before me this 2 day of May, 2020.

Melissa Gray (L.S.)
Notary Public

My Commission Expires: 12-01-2025

22CP-110311

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

I, CARL ANTHONY STONE, 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.

Carl A. Stone
Applicant

SWORN or affirmed to and subscribed before me this

2 day of May, 2022

Melissa Spring
Notary Public

My Commission Expires: 12-01-2025

③ ATTACHMENT FACTS

A HEARING TO SHOW ANY OF THESE GROUNDS, WHICH IS INEFFECTIVENESS OF NO COUNSEL **22CP-110311**

COUNSEL SHOULD HAVE SUPPRESS THE SEARCHES IN A MOTION, UNDER 4TH AMEND AND THE UNTRUE STATEMENTS OF THE OFFICER. FRANKS V DELA STATES WHERE THE DEFENDANT MAKES A SUBSTANTIAL PRELIMINARY SHOWING THAT A FALSE STATEMENT KNOWINGLY AND INTENTIONALLY, OR WITH RECKLESS DISREGARD FOR THE TRUTH, WAS INCLUDED BY THE AFFIANT IN THE WARRANT AFFIDAVIT, AND IF THE ALLEGEDLY FALSE STATEMENT IS NECESSARY TO THE EXISTING OF PROBABLE CAUSE, THE FOURTH AMEND, AS INCORPORATED IN THE FOURTEENTH, REQUIRES THAT A HEARING BE HELD AT THE DEFENDANTS REQUEST.

FILED IN OFFICE OF CLERK OF COURT GEORGE COUNTY, S.C. 2022 MAR 22 11:16 AM JACOBEE

AT THIS TIME DEFENDANT REQUEST THIS P.C.R. TO BE GRANTED AT THIS TIME AND COUNSEL NEVER OBJECTED TO NO GROUNDS IN COURT, AND COUNSEL DID NOT FILE NO APPEAL IN BEHALF OF DEFENDANT. UNDER WHITE V. STATE

WHEREFORE DEFENDANT REQUESTED THAT ALL ISSUES ARE RAISED IN COURT, AND DEFENDANT AWAITS HIS DAY IN OPEN COURT.

AND THIS P.C.R. IS TO BE LEFT OPEN TO ADD NEW ISSUES AT A LATER DATE.

Carl D. W.
DEFENDANT

(B)⁶⁰ ATTACHMENT FACTS

CP-110311

STICKLAND V. WASHINGTON 466 U.S. 668

TO ESTABLISH INEFFECTIVE ASSISTANCE OF COUNSEL IN CRIMINAL MATTERS, A DEFENDANT MUST SHOW THAT THERE IS A REASONABLE PROBABILITY THAT, BUT FOR COUNSEL'S UNPROFESSIONAL ERRORS, THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT. A REASONABLE PROBABILITY SUFFICIENT TO UNDERMINE CONFIDENCE IN THE OUTCOME.

FIRST, THE DEFENDANT MUST SHOW THAT COUNSEL'S PERFORMANCE WAS DEFICIENT THIS REQUIRES SHOWING THAT COUNSEL MADE ERRORS SO SERIOUS THAT COUNSEL WAS NOT FUNCTIONING AS THE COUNSEL GUARANTEED THE DEFENDANT BY THE SIXTH AMENDMENT.

SECOND THE DEFENDANT MUST SHOW THAT THE DEFICIENT PERFORMANCE PERJUDICED THE DEFENSE. THIS REQUIRES SHOWING THAT COUNSEL'S ERRORS WERE SO SERIOUS AS TO DEPRIVE THE DEFENDANT OF A FAIR TRIAL, A TRIAL WHOSE RESULT IS NOT RELIABLE.

COUNSEL SHOULD HAVE PUT A MOTION IN COURT TO SUPPRESS THE EVIDENCE OF THE OFFICER UNDER FRANKS V. DELA. 438 U.S. 154 AND THE 4TH AMEND. THE RIGHT OF THE PEOPLE TO BE PROTECTED AGAINST UNREASONABLE SEARCHES AND SEIZURES SHALL NOT BE VIOLATED, AND NO WARRANTS SHALL ISSUE, BUT UPON PROBABLE CAUSE, SUPPORTED BY OATH OR AFFIRMATION AND UNDER 17-13-50 THE OFFICER SIGNED UNTRUE REASONS FOR THE GROUNDS OF ARREST AND COUNSEL DID NOT REQUEST,

Cul J. Turner
DEFENDANT

FILED IN OFFICE OF CLERK OF DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Carl Stone, #380019,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2022-CP-11-0311

**RETURN AND MOTION FOR A
MORE DEFINITE STATEMENT**

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2022 JUL 18 AM 11:19
ANDY W. HOBBE

NOW COMES Respondent, moving for a more definite statement and making its return to the post-conviction relief (hereafter “PCR”) application filed on May 5, 2022, by Carl Stone (hereafter “Applicant”). Respondent respectfully offers the following in support of its return:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. In March 2021, Applicant was indicted by the Spartanburg County Grand Jury for trafficking in methamphetamine (2021-GS-11-00350). Waiving presentment, Applicant was charged with possession of a firearm or ammunition by person convicted of a violent felony (2021-GS-11-01444) and trafficking in methamphetamine (count one) and possession of a weapon during the commission of a violent crime (count two) (2021-GS-11-01445). Applicant was represented by Robin C. File, Esquire. Assistant Solicitor George M. Kendall of the Seventh Circuit Solicitor’s Office prosecuted the case. On November 29, 2021, Applicant appeared before the J. Derham Cole, circuit court judge, and pled guilty to a negotiated fifteen years’ imprisonment sentence on both trafficking methamphetamine charges and to a negotiated five years’ imprisonment on both weapons charges. Judge Cole sentenced Applicant in accordance with the negotiations, sentences running

concurrently. Applicant did not pursue a direct appeal.

II. Statement of Facts

On December 8, 2020, law enforcement was looking for a stolen vehicle. (Tr. 23). They arrived at the location they were given a tip concerning and encountered someone sitting in his van. (Tr. 23-24). As soon as law enforcement approached, he tried to drive away while law enforcement was talking to him, almost striking a police vehicle when doing so. (Tr. 24). Applicant stepped outside the home and an officer recognized him. (Tr. 24). They spoke to Applicant outside the home. (Tr. 24).

No one claimed ownership over the home, which was known as a drug house. (Tr. 24). Police did a protective sweep and found scales with residue and syringes in Applicant's possession. (Tr. 24). A search warrant was obtained and over a hundred grams of methamphetamine found inside. (Tr. 24-25). A bag containing eighty-two grams of methamphetamine was claimed by Applicant. (Tr. 25).

On March 29, 2021, officers responded in reference to a GPS detention check on Applicant. (Tr. 25-26). Officers were able to observe through GPS monitoring that Applicant was frequenting drug houses on a regular basis where several individuals were arrested for methamphetamine. (Tr. 26). After being removed, Applicant admitted to having several ounces of methamphetamine in the building where he was running a fake business. (Tr. 26). He gave the officer a key to a blue toolbox containing forty-seven grams of methamphetamine. (Tr. 26). Applicant agreed with the facts. (Tr. 27).

III. Current Action before the Court

In his *pro se* PCR application, Applicant alleges he is detained unlawfully for the following reasons:

1. I did not know all my rights.
 - a. My lawyer did not inform me of them.
2. Ineffective assistance of counsel.
 - a. Failure to file motion to suppress.
 - b. Failure to file an appeal.

Attached to and incorporated herein are Applicant's Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, and the current PCR application. Respondent reserves the right to amend this return upon receipt of additional relevant information.

IV. Argument

Ineffective Assistance of Counsel/Involuntary Plea

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Effective assistance of counsel does not mean perfect or mistake-free representation. *See Weaver v. Massachusetts*, 137 S. Ct. 1899 (2017) (“[A] defendant has a right to effective representation, not a right to an attorney who performs his duties ‘mistake-free.’” (citation omitted)); *Burt v. Titlow*, 571 U.S. 12, 24 (2013) (“[T]he Sixth Amendment does not guarantee the right to perfect counsel; it promises only the right to effective assistance[.]”); *Yarborough v. Gentry*, 540 U.S. 1, 8 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Instead, it simply means assistance that was objectively reasonable under prevailing professional norms. *Strickland*, 466 U.S. at 687-688.

When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective

assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRCPP ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690); *see Dunn v. Reeves*, 141 S. Ct. 2405, 2410 (2021) (noting counsel's strategic decisions are to be afforded "'strong presumption' of reasonableness that the defendant must overcome); *Cullen v. Pinholster*, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Importantly, “[t]he likelihood of a different result must be *substantial*, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 112 (2011).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant’s right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v.*

United States, 519 F.2d 347, 350 (4th Cir. 1975)).

For a plea to be valid, the applicant must have been aware of the nature and crucial elements of the offense the maximum and minimum penalties, and the rights he is waiving by accepting the plea. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 29 (2000). A plea is not knowing or voluntary if a defendant “lacks knowledge of material evidence in the prosecution’s possession.” *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999).

A defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between the court and defendant, between the court and defendant’s counsel, or both.” *Roddy v. State*, 339 S.C. at 34, 528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). “[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874 (quoting *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). Further, “guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea.” *Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

Respondent contends that plea was entered freely, knowingly, intelligently, and voluntarily. At the plea, the State called the case. (Tr. 4-5). Applicant stated he understood the charges, elements, sentencing ranges, and violent classification, if applicable, on each charge. (Tr. 5-9, 16). Applicant stated he told Counsel everything he knew about the facts of the cases and that Counsels discussed and shared the indictments, allegations, and sentencing ranges. (Tr. 10). Applicant stated he did not know of a defense to any charges. (Tr. 10-11). Applicant stated

he understood he was waiving his rights to remain silent, call and confront witnesses, and to a jury trial. (Tr. 11-14). Applicant stated he was not promised anything beyond the negotiated sentence. (Tr. 14-17). Applicant stated he understood that the Court could not promise he could receive parole and that he should expect to serve up to one hundred percent of the sentence. (Tr. 15-16). He stated he was not threatened or coerced into pleading, that he was pleading freely and voluntarily, that it was his own decision, and that he was pleading guilty because he is guilty. (Tr. 17-18). After they were recited, Applicant agreed with the facts. (Tr. 27). Applicant indicated he still wanted to plead guilty. (Tr. 27). pleas were thereafter accepted upon Applicant's request. (Tr. 27). Thus, Respondent contends that the plea was seemingly entered freely, knowingly, intelligently, and voluntarily and cannot be withdrawn now. Respondent contends that Applicant cannot meet his burden of proof concerning the allegations above and requested the Court deny relief accordingly.

Motion to Suppress

Applicant claims Counsel was ineffective for failure to file a motion to suppress. However, this right was seemingly waived when he entered an otherwise free, voluntary, intelligent, and knowing plea. Thus, Respondent contends this allegation likely lacks merit, but requests a more definite statement to fully resolve the matter.

File an Appeal

Applicant claims Counsel was ineffective for failing to file an appeal. Counsel is required to make certain the defendant is made fully aware of the right to appeal following a trial. *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). However, absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. *Weathers v. State*, 319 S.C. 59, 459 S.E.2d 838 (1995). The bare assertion that a

defendant was not advised of appellate rights is insufficient to grant relief. *Id.* Instead, there must be proof that extraordinary circumstances exist such that the defendant should have been advised of the right to appeal. *Id.* Extraordinary circumstances may exist when there is reason to think that a rational defendant would want an appeal, such as when non-frivolous grounds for an appeal exist, or when the defendant reasonably demonstrates an interest in appealing. *Id.*; *Roe v. Flores-Ortega*, 528 U.S. 470 (2000).

Applicant has failed to state he requested an appeal or extraordinary circumstances existed in this case. Accordingly, Respondent contends Applicant likely cannot meet his burden of proof.

Still, the ineffective assistance of counsel allegations probably raise questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (“Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.”).

V. Motion for a More Definite Statement

Respondent moves for a more definite statement regarding Applicant’s allegations. Applicant alleges that plea counsel was constitutionally ineffective. However, he does not explain exactly what Counsel did that constituted ineffective assistance of counsel. Applicant fails to set forth with specificity any facts and circumstances upon the claim is based. The Uniform Post-Conviction Procedure Act requires that applicants must “specifically set forth the grounds upon which the application is based.” Section 17-27-50 of the Code of Laws of South

Carolina (1976). In a PCR application, it is incumbent upon applicants to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). The Supreme Court of South Carolina has provided that:

[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the appellant that he was deprived of counsel is insufficient.

Coardes v. State, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974).

Furthermore, Rule 8(a), SCRPC, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Respondent moves pursuant to Rule 12(e), SCRPC, to require Applicant to provide a more definite statement of his claims. Respondent moves to require Applicant to file an additional amended application well in advance of any evidentiary hearing concerning this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the allegation.

VI. Other Allegations Denied

Each and every other allegation in Applicant’s PCR application not explicitly admitted, qualified, or explained in this return is hereby denied by Respondent.

VII. Assertion of Rights to Notice of Amendments, Experts

Applicant should raise any claims he intends to raise at the PCR evidentiary hearing well in advance of the hearing. Here, Applicant’s court-appointed attorney is the only individual authorized to file amendments to this application, given his representative capacity, Rule 11(a), SCRPC and *pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing is a nullity where person was

represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) (“Since there is no right to ‘hybrid representation’ that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.”).

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent or, in the alternative, continue the matter to permit adequate time to investigate and address the claims. *See Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017) (“In most PCR cases . . . we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases.”); *Love v. State*, 428 S.C. 231, 242, 834 S.E.2d 196, 201 (2019) (“When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record.”); *see also* Rules 15(a)-(b), SCRPC (explaining how to amend a pleading). Pursuant to Section 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless the Court grants leave upon good cause shown. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits withheld until the last minute resulting in undue prejudice to Respondent.

VIII. Conclusion

WHEREFORE, Respondent requests that the Court require Applicant to provide a more definite statement and then hold an evidentiary hearing regarding Applicant's allegations.

Respectfully submitted,

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Attorney General

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By: 
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July 15, 2022

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Carl Anthony Stone, #380019)
)
 Applicant,)
)
 vs)
)
 State of South Carolina,)
)
 Respondent,)

IN THE COURT OF COMMON PLEAS

2022-CP-11-0311

CERTIFICATE OF SERVICE BY MAIL

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

Mr. Rodney Wade Richey, Esquire.
Richey & Richey, PA
P.O. Box 10916
Greenville, SC 29603-0916

DATED this 15th day of July 2022.

 Jordan Hickman, Legal Assistant
 For Respondent

FILED IN OFFICE OF
 CLERK OF COURT
 CHEROKEE COUNTY, S.C.
 2022 JUL 18 AM 11:10
 BRANDY W. ICBEE

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|------------------------------|---|---------------------------|
| STATE OF SOUTH CAROLINA |) | |
| |) | COURT OF GENERAL SESSIONS |
| COUNTY OF CHEROKEE |) | 2022-CP-11-311 |
| |) | |
| |) | |
| |) | |
| CARL STONE, |) | |
| |) | |
| |) | |
| vs. |) | TRANSCRIPT OF RECORD |
| |) | |
| THE STATE OF SOUTH CAROLINA, |) | |
| DEFENDANT. |) | |
| |) | |

October 17, 2022
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE BRIAN M. GIBBONS, JUDGE.

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

CHELSEY MARTO, ESQ.
Assistant Attorney General

RODNEY RICHEY, ESQ.
Attorney for the Applicant

AMBER PAYNE, CVR
Circuit Court Reporter

I N D E X

(SW) - Denotes State's Witness
(AW) - Denotes Applicant's Witness

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E X H I B I T S

There were no exhibits entered during this hearing.

P R O C E E D I N G S

(Whereupon, the hearing began at
11:06 a.m.)

THE COURT: All right. Madam A.G.

MS. MARTO: Yes, Your Honor. Good morning. May it please the Court. We're here today in the case of "Carl Stone vs. the State of South Carolina," Docket Number 2022-CP-11-311. He's presently confined in the South Carolina Department of Corrections. March 2021, he was indicted for trafficking methamphetamine, and then waiving presentment was charged with possession of a firearm and trafficking in methamphetamine and another weapons possession charge. He was represented by Mr. Robin File. George Kendall prosecuted the case.

November 29th, 2021, he appeared before the Honorable Judge Cole, and pled guilty to a negotiated 15 years imprisonment for both meth trafficking charges and a negotiated five on both weapons charges. He was sentenced in accordance with the negotiations and did not pursue a direct appeal. The application was filed May 5th, 2022, and the State's return made July 15th, 2022.

With that, I'll turn it over to Mr. Richey.

THE COURT: All right. So I -- I want to make sure

1 I understood this. Fifteen-year sentence?

2 MS. MARTO: Yes, Your Honor.

3 THE COURT: Not 15 plus five?

4 MR. RICHEY: No. It's 15.

5 MS. MARTO: No. I believe it --

6 THE COURT: The five for the weapons is running
7 concurrent --

8 MS. MARTO: Concurrent.

9 THE COURT: -- with the 15?

10 MS. MARTO: My understanding is everything runs
11 concurrent.

12 MR. RICHEY: Yeah.

13 THE COURT: All right. I just want to make sure.

14 All right. Mr. Richey?

15 MR. RICHEY: Thank you. We call Mr. Stone.

16 THE COURT: All right. Mr. Stone, you can come on
17 up here, sir. All right. You can be seated.

18 (WHEREUPON, the applicant was sworn.)

19 THE COURT: Thank you, sir. Just keep talking loud
20 for me, okay?

21 THE APPLICANT: Okay.

22 THE COURT: Mr. Richey?

23 MR. RICHEY: Yes, sir. Thank you, Your Honor.

24 **DIRECT EXAMINATION OF CARL STONE**

25 BY MR. RICHEY:

1 Q Sir, will you state your name, please?

2 A Carl Stone.

3 Q And, Mr. Stone, are you in the Department of Corrections?

4 A Yes, sir.

5 Q And what are you in there for?

6 A Trafficking methamphetamine.

7 Q Okay. And who represented you on those charges?

8 A Robin File.

9 Q And you filed an application because you do not believe

10 that Mr. File effectively represented you; is that

11 correct?

12 A Yes, sir.

13 Q Okay. This is a case of trafficking meth. What

14 supposedly happened in this case? Can you tell me in

15 your words?

16 A Like, from Day 1? Like, from the time I was arrested?

17 Q Yeah.

18 A They -- they -- the -- Cherokee County Narcotics came to

19 -- to a residence -- to a house where I was at, and they

20 -- and it was -- they said in my motion that they came in

21 -- in reference to a stolen vehicle, a Chrysler 300,

22 which was not stolen, and they didn't even -- didn't even

23 check to see if the --

24 Q Well, let me ask you: You had a car. You had -- what

25 type of car did you have?

1 A I had a Mercedes E320 --

2 Q Okay.

3 A -- but it wasn't even there.

4 Q Right. Go ahead.

5 A Yeah. And so, what they done was, is they came down
6 there and -- and they -- Mr. -- we heard racket out in
7 the front yard, so we go out in the front yard. I opened
8 the front door and see it's the police officers. I shut
9 the door back. When I shut the door back, Lieutenant
10 Dorsett opens the door, himself, and points -- he says it
11 was a Taser, but it was a pistol. I knew what it was.
12 It was a Glock, and when he pointed it at me, he asked me
13 to come outside. I put my hands up and I noticed Mr.
14 Dorsett's hands start to shaking, so I'm
15 thinking -- I threw my hands up and I said, "Listen. I
16 know my rights. I'm not coming out of this house." And
17 that's when he pointed that gun at me.

18 I came out of the house. When I came out of the
19 house, he searched me, and I had some syringes in a bag,
20 but none -- none that had been -- had no drugs or no
21 nothing like that, so then he proceeds to go on -- he
22 goes up to the -- to the -- to the door and gets the
23 other two guys out. And when he gets the other two men
24 out of the house, he searches then two, and handcuffs all
25 three of us. Then he goes into the house himself and

1 he's hollering, "Sheriff's office. Sheriff's office,"
2 and all this and that and the third. He comes out and he
3 tells Captain Ronnie Painter, with the Cherokee County
4 Narcotic Team, he said, "Well" -- he said -- he said, "I
5 seen a couple of things of scales, and this and that and
6 the third, in plain view." He said -- he said, "That
7 should be enough for us to get a search warrant on them."

8 And that's when Captain Painter got mad at me
9 because I said, "Well, why would you want to go get a
10 search warrant? You've done been inside the house now."
11 You know what I mean? So they didn't have none of that.
12 They didn't -- they didn't -- their body cams and none of
13 that stuff was on. All -- in -- in the motion -- my
14 motion of discovery, it says all of that. That none of
15 the body cams were on or anything.

16 So we're standing outside -- outside the residence
17 for literally an hour and a half, close to two hours in
18 the cold waiting on them two, Lieutenant Dorsett and
19 Captain Ronnie Painter, to go to -- to town and get a
20 search warrant. So it's -- it's nearly close to two
21 hours before they come back and they get a search
22 warrant. Then they go inside the house and leave us
23 sitting outside.

24 Q Okay. And tell me the drugs that you're supposedly was
25 in possession of. What were those?

1 A Okay. Eighty-four grams of methamphetamine. I told -- I
2 told the narcotic guys, I said, "Eighty-four" -- they
3 found it in a Black & Decker bag inside the house. I
4 said, "Okay. I'm gonna man up. These 84 grams belong to
5 me."

6 So they say in my motions of discovery that they see
7 a guy throw some methamphetamine out the window; one --
8 one of the other guys that was in there. They clearly
9 say that in the motion of discovery. And when they throw
10 that -- that when he throws the dope out the window, they
11 get somebody that comes back in -- and when he -- when we
12 get outside in the front yard, they say in my motion that
13 they clearly see -- or they -- they recognize the guy as
14 being Nelson Bonner (phonetic), which was one of my co-
15 defendants, that's throwing the meth out the window. So
16 when I claim 84 grams, which is 3 ounces of meth that was
17 in the Black and Decker bag, when we get back to the --
18 when we're at booking, they -- I asked them -- one
19 officer, Officer Tate, I said, "What am I charged with?"

20 He said, "Trafficking more than 100/less than 200
21 grams of methamphetamine."

22 And I said, "How am I charged with that? I claim 84
23 grams of meth." And he didn't -- he -- he never said
24 another word after that. He just -- that was the end of
25 that, so when I kept asking, "How could I ever have been

1 charged with more than a hundred/less than 200?" So the
2 meth that -- that was thrown out the window -- that they
3 clearly see Nelson Bonner throw out the window, and then
4 they go around outside the bathroom window and get that
5 meth. So I'm assuming they take that meth and put with
6 my meth that I claim 84 grams and they -- and they
7 charged all three of us with trafficking more than a
8 hundred/less than 200 of methamphetamines and then so I'm
9 assuming, "Well -- so they just tampered with it." You
10 know, they take his drugs and put with my drugs and make
11 it more than a hundred/less than 200. And, basically,
12 what they've done was they got Nelson -- they threatened
13 Nelson and that other guy with all of this prison time
14 and that -- and that -- and that gets them to -- to sign
15 statements on me. But --

16 Q Well, let me ask you --

17 A -- the other guy --

18 Q -- let me ask you this before you go on. Okay. So you
19 said you claimed how much dope?

20 A Eight-four grams of methamphetamine.

21 Q Okay. And you pled to 28 to a hundred grams of meth,
22 correct?

23 A Yes, sir.

24 Q Okay. Now, you -- you received a 15-year sentence,
25 correct?

1 A Yes, sir.

2 Q Okay. So Mr. File, you wanted him to get you a better
3 deal; is that correct?

4 A Yes, sir. They kept offering me 15. They never came
5 down from the 15, and it -- they offered it to me four
6 different times: 15, 15, and 15.

7 Q So you -- you believe that Mr. File should have done
8 something to get them to offer you less than the 15?

9 A I would assume -- I would have hoped that they would've
10 came down less than that, yes, sir.

11 Q Okay. And you -- so you believe he didn't effectively
12 represent you, correct?

13 A Yes, sir.

14 Q Okay. Did -- do you believe that he should have filed a
15 motion for -- a motion to suppress the drugs?

16 A Yeah. Yes, sir.

17 Q Okay. And -- and you believe that the search was
18 unlawful; is that correct? Is that what you --

19 A Yes, sir.

20 Q Is that the basis of what you're doing because you claim
21 the dope was yours, correct?

22 A Yes, sir. Eighty-four --

23 Q But -- but you believe that they unlawfully got the drugs
24 through the search of the house --

25 A Yes, sir.

1 Q -- is that correct?

2 A Yes, sir.

3 Q And did you talk to Mr. File about that?

4 A Yes, sir.

5 Q And what did he say in regards to suppress the drugs?

6 A He just kept telling me that we were -- we -- we -- the
7 best thing I should do is take the 15 is -- is what he
8 kept telling me. And that Kim Leskanic ended her -- and
9 when I asked him, I said, "Look, she will not come down
10 from the 15?"

11 He was like, "No." And he was like, "Well, the
12 Narcotics are the ones that's pushing this issue.
13 They're the one that wants you to have the 15."

14 And I'm thinking, "Well, she's the solicitor," you
15 know. I mean, does she have to -- I mean, I understand
16 that they're all tied together or whatever, but I just
17 felt like they could come down from the 15. I don't
18 know. And he kept telling me that that was a fair plea,
19 so -- and I went with it and he -- and -- and then he
20 told me one time that if they -- if -- if -- they were
21 gonna move me -- they had a -- they had a murder trial
22 that one week, and they were gonna move me from 24th on
23 the trial docket to second and if that trial -- and if
24 that -- excuse me -- if that trial got another
25 continuance then they were going to move me from 24th to

1 -- to first on the trial docket. And I asked Mr. File, I
2 said, "Is that possible?"

3 And he said, "Well, yeah. Certainly, that's
4 possible. They can do that."

5 And I said, "Well, then I" -- and I talked to him,
6 and I said, "Look, I guess what I'd rather do is -- is
7 talk to my sister about it and see what she thinks."

8 And she basically, said, "Look, if they're -- if
9 they're gonna give you 15 years, and if you -- and if you
10 take it" -- we were going -- I was either gonna take the
11 negotiated 15, or they had told me they was gonna take it
12 off the table, the 15, and take me to trial right after
13 that if I didn't take -- this was the weekend before
14 Thanksgiving. And so I talked to my sister, and she
15 said, "Look, if they've got it in for you that bad, then
16 if you take -- if you -- if you don't take the 15, then
17 they're gonna find a way to give you the 25 or the 30,
18 the max."

19 And we both agreed, "Look, hey, maybe I should just
20 take the 15."

21 Q Well, let me -- let me -- let me ask you a series of
22 questions. Do you -- do you understand that this Court
23 can only give you a new trial, right?

24 A Yes, sir.

25 Q That means you would go back and you would face these

1 charges again.

2 A Yes.

3 Q On a clean slate.

4 A Yes, sir.

5 Q And so you would have to make another decision whether to
6 have a trial or to plead guilty.

7 A Yes, sir.

8 Q Do you understand that?

9 A Yes, sir.

10 Q And you understand that's your remedy?

11 A Yes, sir.

12 Q Okay. And -- and knowing that, you still want this judge
13 to decide whether you get a new trial or not?

14 A Yes, sir.

15 Q Okay. Because it's your position that you would go back
16 and get less than 15?

17 A Yes, sir.

18 Q And how do you believe you can do that?

19 A I -- I mean, I just -- I know that the mandatory minimum
20 is like seven to 30, isn't it? So, I mean, anything they
21 could offer me less than the 15.

22 Q But you understand they could offer you 30, too, correct?

23 A Yes, sir.

24 Q And you're --

25 A Yes, sir.

1 Q -- willing to gamble all that, correct?

2 A Yes, sir.

3 Q Okay. In this case, do you know whether the drugs were
4 tested or not?

5 A I don't think so.

6 Q Okay.

7 A I'm not sure if they were or not.

8 Q Okay.

9 A I don't know.

10 Q So if the drugs were not tested at the time, do you
11 believe that you could have went to trial at that point?

12 A No, sir. I wouldn't think so.

13 Q Okay. And so -- so you -- you believe -- let me make
14 sure -- I'm going to go over this. You believe that the
15 lawyer should have tried to get you a better deal, right?

16 A Yes, sir.

17 Q Should have suppressed the drugs?

18 A Yes, sir.

19 Q Okay. And -- and would have to negotiate you a better
20 deal? So had he done both of those, you believe the
21 outcome would have been different?

22 A I think so, yes, sir.

23 Q Okay.

24 MR. RICHEY: (To the applicant) Thank you. Answer
25 any questions Ms. Marto has for you.

1 THE COURT: All right. Madam A.G.?

2 MS. MARTO: Yes, Your Honor.

3 CROSS-EXAMINATION OF CARL STONE

4 BY MS. MARTO:

5 Q Good morning, sir.

6 A Morning.

7 Q So are you saying today that you wanted to go to trial,
8 or did you just want a better plea deal?

9 A I would -- I would rather have a better plea deal for
10 sure.

11 Q Okay. So you have no interest in going to trial; is that
12 correct?

13 A I mean, if that's what it takes. I -- I feel like that -
14 - that I could -- yes, ma'am. Knowing now -- I didn't
15 know then all -- all my -- you know, what I could
16 possibly -- but just by going over my motion of discovery
17 myself, I felt like I would have a better -- a decent
18 chance at trial.

19 Q And that --

20 A Opposed to what -- what Mr. -- Mr. File and -- and Ms.
21 Leskanic and then the way they kept telling me, "Well,
22 you're -- you're gonna get this and that and all that and
23 the third." I didn't think so. I don't think so now.

24 Q But you decided to plead at the time because you thought
25 you'd face a lesser sentence than if you went to trial?

1 A No. I tried. I -- I pleaded to the 15 because I was --
2 because they were -- they -- him -- Mr. File and, also,
3 Ms. Leskanic was real convincing that I would get 25 or
4 30 years if I did not take that 15.

5 Q Did you tell the police when they went to your house that
6 the drugs in the bag were methamphetamine and they
7 belonged to you?

8 A When they -- when they got that, they arrested us. When
9 they found that stuff, they arrested us and took us to
10 the County Detention Center and it was then that I said,
11 "Hey, you know, that -- that's mine," because they were
12 trying to -- they were trying to charge everybody there
13 with that amount of drugs, and I feel like they should
14 have charged me with, then, more than 28 less than a
15 hundred. The guy that threw the stuff -- the guy they
16 seen throw drugs out the window, they should've charged
17 him with ever how much -- ever how much drugs that was.
18 But they took that and made it all more than a
19 hundred/less than 28. That never made no sense to me. I
20 was claiming 84 grams. I wasn't about to claim the --
21 the meth that the guy threw out the window that they
22 plainly say in my motion of discovery that they see him
23 throw it out the window, and they recognize him as being
24 Nelson Bonner, so I feel like at a trial, you know,
25 they -- somebody was -- I'm sure it would be illegal for

1 them to take the drugs that they seen him throw out the
2 window and then the drugs that I have, which is 84 grams,
3 for them to combine that and make it a total of more than
4 a hundred/less than 200. I feel like that would -- I
5 would have a good chance at trial with -- with the --
6 with them knowing that, and they say all that plainly in
7 my motion of discovery. It's not something that I'm just
8 making up.

9 Q And you pled to between 28 and a hundred grams, correct?

10 A I -- I didn't understand the question.

11 Q And what you pled to was trafficking between 28 and a
12 hundred grams, correct?

13 A Yes, ma'am.

14 Q And, again, you're just looking for a more favorable plea
15 deal, right.

16 A I would take that, yes, ma'am. Something -- something
17 less than 15, right. I would -- I would -- I don't know
18 how all the statutes and stuff -- I would -- if I could
19 get mine -- if I could get my case to where -- if it was
20 possible, where I could like -- like, I don't have any
21 kind of possible parole or anything like that, so that's
22 -- it's

23 a -- I think I have to do 12 years and 9 months off the
24 15, so anything less than that would be a blessing.

25 Q Did you discuss a potential motion to suppress or other

1 defense with counsel?

2 A I don't -- what do you mean? Like, for -- for less time?

3 Q You stated that you wanted the drugs suppressed at trial,
4 correct?

5 A Yes, ma'am.

6 Q Did you discuss that with Counsel?

7 A I don't know if me and Mr. File if we discussed that or
8 not. We were -- anytime we ever really met we were just
9 talking about how that the -- that the State were stuck
10 on 15 years, and they wasn't coming down from that. That
11 was pretty much all we ever really went over is that --
12 is that -- is that he felt like, you know, that I should
13 go ahead and take the 15, that it was fair, and -- and
14 then if I didn't then -- then, I guess, the solicitor,
15 having it in for me like she did, was going to make sure
16 I got the max. So I was scared to death to be honest
17 with you.

18 Q Did you talk to Counsel about your version of the story
19 and how things went?

20 A Yes, ma'am. I mean, I didn't -- we -- we never did get -
21 - we never did go over my motion of discovery plainly and
22 clearly. We would talk -- I talked briefly to him about
23 some of the stuff, but then that's when it would turn
24 back to, "Look, if you don't take this 15, they gonna --
25 they gonna smash you; they're gonna -- you're gonna get

1 the whole 25 or 30," so -- but we -- I -- there's a lot
2 of things in my motion of discovery that I feel like if I
3 took it to trial, I would've -- I would have a darn
4 (phonetic) good chance of beating it. I really do. But
5 I don't know all the laws like that, so I was -- I was
6 scared. I'm not gonna tell you any lie. I was -- and I
7 -- and I -- this is all kind of new to me. I've not
8 really been in trouble a lot like that, so . . .

9 Q You think that you would've won at trial even though you
10 claim the drugs were yours?

11 A Well, the fact of the matter is is they took -- they
12 charged me -- see, they -- they tried to act like that --
13 that that more than a hundred/less than 200 once -- I --
14 yeah. I claimed the drugs, but I -- but they -- they
15 took and put the drugs that the guy threw out the window,
16 they would've had to of combined those two to make it
17 more than a hundred/less than 200. I feel like there was
18 just a lot of things that weren't handled right.

19 And then, also, with the guy -- the way they came in
20 and just rushed us out of the house and then they go
21 through and see a set of scales and then go to town to
22 get a search warrant. You know, they said -- they said
23 starting off in my motion of discovery that they were
24 there about a Chrysler 300 that had been stolen from
25 Spartanburg. Well, if -- if this Chrysler 300 -- it

1 looked -- it was in the front yard, if it looked like
2 that one or whatever, once they discovered that this
3 wasn't the stolen vehicle they were looking for, why
4 didn't they leave? You know what I'm saying? Why was
5 five or six -- I think there were six of them. Cherokee
6 County Narcotic Teams down there fully clothed -- you
7 know, with they're like riot stuff with
8 their -- with their vest on and all of this stuff with no
9 body cams on and no indication -- not one of them said,
10 "Cherokee County Sheriff's Department," or nothing. The
11 guy ran up on the front porch, and when I shut the door,
12 he grabs the doorknob and pushes the door back open. And
13 when I throw my hands up and say, "Hey, I -- I know my
14 rights. I'm not coming out of this house," is when he
15 pulled a gun -- he had a gun out -- he says it was a
16 Taser, and he says that plainly in the motion. But in
17 the transcript, the -- the solicitor says -- Ms. Leskanic
18 says that he notices me out on the front porch. That's
19 not so. That's a lie. I was not outside. I wasn't.
20 And then he -- so he calls me to talk to me and that
21 wasn't -- that's not true, so they contradict theirselves
22 (as spoken) a lot in the -- in the paperworks (as
23 spoken).

24 Q Sir, didn't you testify in direct examination that you
25 opened the door, saw the officers, and then shut the

1 door?

2 A And shut it back, yes, ma'am.

3 Q Okay.

4 A But when he came up on the porch he pulled -- he grabbed
5 the doorknob and pushed the door back open. You know,
6 when I opened the door and seen it was the police like
7 that, I shut the door back.

8 Q And the State, after stating that the officer recognized
9 you, they also stated that the house was a known drug
10 house, correct?

11 A That's what they said, yes, ma'am.

12 MS. MARTO: Nothing further, Your Honor.

13 MR. RICHEY: No other questions.

14 THE COURT: (To Mr. Richey) Redirect?

15 All right. Thank you, sir. You can step down.

16 (WHEREUPON, the applicant was excused.)

17 MR. RICHEY: We call Mr. File.

18 THE APPLICANT: All right. Thank you, sir.

19 THE COURT: Thank you. All right.

20 (WHEREUPON, the witness was sworn.)

21 **DIRECT EXAMINATION OF ROBIN FILE, ESQ.**

22 BY MR. RICHEY:

23 Q Sir, can you state your name, please?

24 A Robin File.

25 Q And, Mr. File, do you recall representing Mr. Stone?

1 A Oh, yes.

2 Q And was that in Cherokee County?

3 A Yes. It was.

4 Q And you've been in the courtroom. You've heard the
5 charges that he pled to 20 to a hundred grams. Did --
6 did Mr. Stone request a jury trial in this case?

7 A We talked about a jury trial versus a plea. We talked
8 several times about that.

9 Q And -- and do you believe -- well, let me ask you this:
10 Did you discuss with him the circumstances of which the
11 drugs were found?

12 A Yes.

13 Q And --

14 A I gave him the discovery, too, and then let him -- gave
15 him time to read over it and then we --

16 Q And --

17 A -- discussed it.

18 Q And did you talk to him about filing a motion to suppress
19 the drugs because there were -- there was an illegal
20 search?

21 A Well, I think that was brought up, but I explained to
22 him, too, though, that that would necessitate us going to
23 trial -- to trial on the case and -- and declining the
24 State's offer and everything, and so that was discussed,
25 but I discussed with him the, you know, ins and outs

1 about that, so . . .

2 Q If -- if he had gone to trial, do you believe that he had
3 a case that he could potentially win?

4 A No.

5 Q Okay. And why would you say that?

6 A Well, there was -- he had two trafficking cases pending,
7 but the one in which most of the reference today that
8 we're dealing with, that one I didn't think that -- that
9 the suppression issue would've been -- I -- I don't -- I
10 don't think they would have thrown out the drugs in that
11 -issue based on the facts as I understood them. And the -
12 - as far as these drugs go that were thrown out the
13 window, I believe -- as I recall, I believe Mr. Bonner
14 had given some statement to the effect that Mr. -- he had
15 been given those drugs by Mr. Stone to -- to discard, so
16 . . .

17 Q Okay. And -- and how much time was he actually facing?
18 Do you recall?

19 A Well, he had a prior trafficking conviction, and so the -
20 - he was facing -- they were treating these as second
21 offenses. He was facing 25 -- mandatory 25 on one and
22 seven to 30 on the other.

23 Q Okay.

24 A And -- and so with that prior conviction and, also, his
25 record, I -- I felt like he would be looking at the

1 higher end of -- of those.

2 Q And can you tell me what measures you took to get
3 something other than 15 years? Did you talk to the
4 solicitor or anything to try to get --

5 A I -- I begged, pleaded, and -- and till I was blue in the
6 face with the solicitor trying to get them to give him
7 something better than 15 years, and they would not come
8 off of that. I explained to him that I had no control
9 over what they thought was a fair offer and all. It was
10 -- and it was just a take it or leave it offer and that
11 he would be going to trial and be placed in much higher
12 jeopardy if he went to trial, so . . .

13 Q Okay. All right. And you discussed all -- and so -- and
14 do you believe he understood it?

15 A I think he understood it. He -- he just kept, you know,
16 wanting to know why they had it out for him and that kind
17 of thing and all, but he didn't have a -- you know, a
18 good reputation with the narcotics officers or -- or the
19 solicitor based on what --

20 Q And -- and the case he pled to, do you know whether the
21 drugs had been tested at the time?

22 A Yeah. They were tested.

23 Q They were?

24 A We had the lab result. Uh-huh.

25 Q And -- and they came back as being --

1 A Meth, right.

2 Q -- what it said it was?

3 A Right.

4 Q Okay. Okay. And he testified about him being on the
5 trial docket. Was that -- do you recall that?

6 A He was -- he was coming up on the trial docket. I don't
7 recall, you know, exactly what placement he was, but --
8 but he was -- he was getting up near the top.

9 Q And he -- you said he had two cases. Were one of them
10 older than the other case?

11 A He was -- yeah. One -- I believe the first case was the
12 one that he's talking about -- he's talked about here
13 today a lot. And then the second case, he got rearrested
14 while he was on bond on -- on the first case, and -- and
15 that one was a pretty open and shut case too as far -- as
16 far as the evidence against him, so . . .

17 Q Okay.

18 MR. RICHEY: (To the witness) Thank you. Answer
19 any questions the Attorney General will have for
20 you.

21 THE COURT: All right.

22 **CROSS-EXAMINATION OF ROBIN FILE, ESQ.**

23 BY MS. MARTO:

24 Q Good morning, sir. So it's your testimony that this was
25 a very strong case for the State, correct?

1 A Yes.

2 Q And did Mr. Stone seem to recognize that?

3 A He seemed to recognize that, yes.

4 Q Okay. And did he seem to recognize and understand all
5 the charges and rights he was pleading to and waiving at
6 the plea hearing?

7 A Yes. He seemed to be intelligent, and he seemed to
8 understand all that.

9 Q And whose decision was it to plead?

10 A His.

11 Q And was it your understanding it was because he wanted to
12 face less time than he would be if he went to trial?

13 A Right. That's correct.

14 Q And, again, you talked to him about a potential motion to
15 suppress, correct?

16 A Yes. We -- we discussed that. It wasn't -- we didn't
17 discuss long -- you know, very long about it, but we
18 discussed that and -- and everything,
19 so . . .

20 MS. MARTO: Nothing further, Your Honor.

21 THE COURT: All right. Any redirect?

22 MR. RICHEY: No, sir. And I --

23 THE COURT: All right. Thank you, sir. You can
24 step down.

25 THE WITNESS: Thank you.

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(WHEREUPON, the witness was excused.)

MR. RICHEY: And we rest at this time.

THE COURT: All right. Applicant rests. Anything in reply from the State?

MS. MARTO: No, Your Honor.

THE COURT: All right. Let's hear arguments.

CLOSING ARGUMENTS

MR. RICHEY: Your Honor, on the State case, we -- we're gonna rely on the testimony of Mr. Stone as to the allegations in the case. And we're gonna ask the Court to grant him a new trial based off his testimony and allegation that he raised. Thank you, Your Honor.

THE COURT: Thank you. In response?

CLOSING ARGUMENTS

MS. MARTO: No response, Your Honor. We would just request you deny relief in this case. Thank you.

THE COURT: All right. Based upon the testimony and evidence presented, I find that the applicant has failed to sustain his burden of proof of the Strickland factors, which would entitle him to the relief he seeks. Therefore, this application is denied and dismissed.

MS. MARTO: Thank you, Your Honor.

THE COURT: Thank you, Ms. Marto. If you'll prepare

1 the order.

2 MS. MARTO: Yes, Your Honor.

3 (Whereupon, the within hearing was
4 concluded at 11:32 a.m.)

5 (*This transcript may contain quoted material.

6 Such material is reproduced as read or quoted by the
7 speaker.)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

CERTIFICATE

I, Amber Payne, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina on October 17th, 2022.

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

Amber Payne

Amber J. Payne, CVR

Date: May 25, 2023

Notary public for South Carolina

My commission expires August 12, 2029

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Carl Stone, #380019,
Applicant,

Case No. 2022-CP-11-00311

v.

ORDER OF DISMISSAL

State of South Carolina,
Respondent.

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2023 MAR 15 A 11:49
BRANDY W. MCBEE

This matter comes before this Court by way of Applicant's post-conviction relief application filed on May 5, 2022. Respondent filed its return on July 18, 2022, requesting an evidentiary hearing be convened. An evidentiary hearing was held on October 17, 2022, at the Spartanburg County Courthouse. Applicant was present and represented by Rodney Richey, Esquire. Assistant Attorney General Chelsey Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel Robin File, Esquire, also testified. After reviewing all records of evidence before this Court, this Court finds Applicant cannot meet his burden of proof of establishing he is entitled to post-conviction relief and denies this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. In March 2021, Applicant was indicted by the Spartanburg County Grand Jury for trafficking in methamphetamine (2021-GS-11-00350). Waiving presentment, Applicant was charged with possession of a firearm or ammunition by person convicted of a violent felony (2021-GS-11-01444) and trafficking in

methamphetamine (count one) and possession of a weapon during the commission of a violent crime (count two) (2021-GS-11-01445). Applicant was represented by Robin C. File, Esquire. Assistant Solicitor Matt Kendall of the Seventh Circuit Solicitor's Office prosecuted the case. On November 29, 2021, Applicant appeared before the Honorable J. Derham Cole, circuit court judge, and pled guilty to a negotiated fifteen years' imprisonment sentence on both trafficking methamphetamine charges and to a negotiated five years' imprisonment on both weapons charges. Judge Cole sentenced Applicant in accordance with the negotiations, sentences running concurrently. Applicant did not pursue a direct appeal.

Summary of Relevant Facts

On December 8, 2020, law enforcement was looking for a stolen vehicle. (Tr. 23). Pursuant to a tip received of a location, an individual was encountered someone sitting in his van. (Tr. 23-24). Upon being approached, he attempted to drive away while speaking to law enforcement, almost striking a police vehicle when doing so. (Tr. 24). Applicant was recognized by an officer upon leaving the residence. (Tr. 24). They spoke to Applicant outside the home. (Tr. 24).

No one claimed ownership over the home, which was known as a drug house. (Tr. 24). Police did a protective sweep and found scales with residue and syringes in Applicant's possession. (Tr. 24). A search warrant was obtained and over a hundred grams of methamphetamine found inside. (Tr. 24-25). A bag containing eighty-two grams of methamphetamine was claimed by Applicant. (Tr. 25).

On March 29, 2021, officers responded to a GPS detention check on Applicant. (Tr. 25-26). Through GPS monitoring officers observed that Applicant was frequenting drug houses on a regular basis where several individuals were arrested for methamphetamine. (Tr. 26). After being



removed, Applicant admitted to having several ounces of methamphetamine in the building where he was running a fake business. (Tr. 26). He gave the officer a key to a blue toolbox containing forty-seven grams of methamphetamine. (Tr. 26).

Current Action before the Court

In his current PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. Ineffective Assistance of Counsel:
 - a. Failure to file motion to suppress.
 - b. Failure to file an appeal.
 - c. Failure to inform Applicant of his rights.

At the PCR hearing, Applicant proceeded forward on:

1. Ineffective Assistance of Counsel.
 - a. Failure to move to suppress the drugs and to discuss this option with Applicant.
 - b. Failure to obtain a better plea deal.
 - c. Failure to file an appeal.
 - d. Failure to challenge the amount of drugs.
2. Invalid Plea.
 - a. Applicant pled because he was afraid of receiving a harsher sentence at trial.

All other allegations raised in his initial application and amendments are deemed waived and abandoned, and, accordingly, will not be addressed in this order.

Summary of the Testimony

Applicant Testimony

Applicant testified that he was incarcerated in SCDC for trafficking methamphetamine. He stated he was represented by Counsel and that he did not think Counsel effectively represented him. He stated that officers went to his house because of a stolen car and, upon seeing the officers, he went inside the home. He stated that the officers followed him while pointing their Glock at him. He stated that a bag of syringes was found on him. He stated that the



other people in the home were taken out and handcuffed. He stated that the drugs were in plain view. He stated that a search warrant was needed but the officers entered the home anyway. He stated they did not have bodycams. He stated he was charged with trafficking one- to two-hundred grams of methamphetamine, but only eighty-four grams of it belonged to him. He stated that his co-defendant threw the drugs out the window. He stated he was charged with trafficking one- to two-hundred grams because everyone else's drugs were combined with his to reach that amount. He stated he wanted a better deal. He stated he pled to trafficking between twenty-eight and one-hundred grams. He stated he wanted Counsel to move to suppress the drugs. He stated Counsel told him to plead. He stated he was afraid of facing more time if he went to trial.

Counsel Testimony

Counsel testified that he represented Applicant in his underlying criminal matter. He stated that he discussed a motion to suppress with Applicant, but that that motion would necessitate he proceed to trial. He stated he did not think this was a winnable case at trial. He stated that Applicant faced two trafficking charges. He stated he did not think the motion to suppress was winnable. He stated that he was facing a twenty-five mandatory minimum sentence on one charge and seven to thirty years on the other. He stated that Applicant was looking at receiving the higher end of the sentencing range if he went to trial. He stated that he attempted to obtain a better plea deal, but the State would not budge. He stated Applicant was facing a harsher sentence at trial. He stated that the drugs were tested. He stated that Applicant did not have a good reputation with the officers and the prosecutor. He stated that Applicant decided to plead when he was coming up on the trial docket.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the



testimony and arguments presented at the PCR hearing. Before this Court are the Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely decide upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by the South Carolina Code Annotated Section 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application by a preponderance of the evidence. Rule 71.1(e), SCRPC, *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). The Sixth Amendment of the U.S. Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668 (1984).

Nevertheless, the counsel of an attorney simply functions as an assistant to the accused. See *Strickland* at 689. *Strickland* does not guarantee perfect representation, only a "reasonably competent attorney". 466 U.S. 687 (quoting *McMann v. Richardson*, 397 U.S. 759, 770 (1970)). Therefore, a representative's overarching duty is to advocate on Applicant's behalf and to inform them of important developments during the course of prosecution. *Id.* The purpose of the Sixth Amendment guarantee to effective assistance of counsel is simply to ensure that criminal defendants [applicants] receive a fair trial. *Id.*

Thus, when an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must so show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Id.* At 686.;



Butler, at 442, 334 S.E.2d at 814. The Court uses a two-prong test set forth in *Strickland* when evaluating ineffective assistance of counsel.

Pursuant to the first prong of the *Strickland* analysis, an applicant must prove that counsel's performance was deficient. *Id.*; *Cherry v. State*, 300 S.C. 115, 116, 386 S.E.2d 624, 625 (1989). Under this prong, attorneys are held to an objective standard of "reasonably effective assistance" under "prevailing professional norms". *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The Scope of the reasonableness inquiry is limited to facts counsel had available at the time of the representation. *Strickland*, 466 U.S. at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgement." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential to towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtuously "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, the applicant must not only show that counsel's assistance was constitutionally deficient, but also that applicant was prejudiced by the deficiency so severely that it produced a "reasonable probability that before for counsel's unprofessional errors, the result of the proceeding would have been different". *Cherry*, 300 S.C. at 117-118, 386 S.E.2d at 625. The court makes this determination based on the totality of the evidence. *Strickland*, 466 U.S. at 695. The "likelihood of a different result must be substantial, not just conceivable" which occurs "only in the rarest case". *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

These standards do not establish mechanical rules; the ultimate focus of this inquiry is the



fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* At 696-97. As such, this Court finds Applicant has failed to satisfy the requirements under the *Strickland* test.

Invalid Plea

In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

For a plea to be valid, the applicant must have been aware of the nature and crucial elements of the offense the maximum and minimum penalties, and the rights he is waiving by accepting the plea. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 29 (2000). A plea is not knowing or voluntary if a defendant "lacks knowledge of material evidence in the



prosecution's possession." *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999).

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. at 34, 528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874 (quoting *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). Further, "guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea." *Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

This Court finds that plea was entered freely, knowingly, intelligently, and voluntarily. At the plea, the State called the case. (Tr. 4-5). Applicant stated he understood the charges, elements, sentencing ranges, and violent classification, if applicable, on each charge. (Tr. 5-9, 16). Applicant stated he told Counsel everything he knew about the facts of the cases and that Counsels discussed and shared the indictments, allegations, and sentencing ranges. (Tr. 10). Applicant stated he did not know of a defense to any charges. (Tr. 10-11). Applicant stated he understood he was waiving his rights to remain silent, call and confront witnesses, and to a jury trial. (Tr. 11-14). Applicant stated he was not promised anything beyond the negotiated sentence. (Tr. 14-17). Applicant stated he understood that the Court could not promise he could receive parole and that he should expect to serve up to one hundred percent of the sentence. (Tr. 15-16). He stated he was not threatened or coerced into pleading, that he was pleading freely and



voluntarily, that it was his own decision, and that he was pleading guilty because he is guilty. (Tr. 17-18). After they were recited, Applicant agreed with the facts. (Tr. 27). Applicant indicated he still wanted to plead guilty. (Tr. 27). The plea was thereafter accepted upon Applicant's request. (Tr. 27). Thus, this Court finds that the plea was entered freely, knowingly, intelligently, and voluntarily and cannot be withdrawn now.

Failure to File Appeal

Applicant claims Counsel was ineffective for failing to file an appeal. Counsel is required to make certain the defendant is made fully aware of the right to appeal following a trial. *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). However, absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. *Weathers v. State*, 319 S.C. 59, 459 S.E.2d 838 (1995). The bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief. *Id.* Instead, there must be proof that extraordinary circumstances exist such that the defendant should have been advised of the right to appeal. *Id.* Extraordinary circumstances may exist when there is reason to think that a rational defendant would want an appeal, such as when non-frivolous grounds for an appeal exist, or when the defendant reasonably demonstrates an interest in appealing. *Id.*; *Roe v. Flores-Ortega*, 528 U.S. 470 (2000).

Applicant has failed to show any extraordinary circumstances in his case. Accordingly, Applicant has failed to show why he was entitled to an appeal or how Counsel was ineffective for failure to file one. Accordingly, relief is denied on this ground.

Favorable Offer

Applicant claims Counsel was ineffective for failure to secure a more favorable plea deal. Applicant had no constitutional right to a plea offer. "Prosecutors have broad powers in the plea



bargain process[.]” *Reed v. Becka*, 333 S.C. 676, 684, 511 S.E.2d 396, 400 (Ct. App. 1999). See *Collins v. State*, 422 S.C. 250, 261, 810 S.E.2d 871, 877 (2018) (“[T]he decision whether to revive the expired plea offer rested exclusively with the solicitor.”); *State v. Langford*, 400 S.C. 421, 436 n.6, 735 S.E.2d 471, 479 n.6 (2012) (stating “[u]ndoubtedly, the solicitor has discretion in choosing how to proceed with a case, including whether to prosecute in the first place and whether he brings it to trial or offers a plea bargain”); see also *Weatherford v. Bursey*, 429 U.S. 545, 561 (1977) (finding “there is no constitutional right to plea bargain; the prosecutor need not do so if he prefers to go to trial”).

“Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety.” *Reed*, 333 S.C. at 684, 511 S.E.2d at 400-01. “The Judicial Branch is not empowered to infringe on the exercise of this prosecutorial discretion; however, on occasion, it is necessary to review and interpret the results of the prosecutor’s actions.” *Id.* Yet, plea offers must be analyzed within the bounds of judicial restraint. *Id.*

“[A] defendant has no constitutional right to plea bargain,” *id.* (citing *State v. Easler*, 322 S.C. 333, 471 S.E.2d 745 (Ct. App. 1996), *aff’d as modified*, 327 S.C. 121, 489 S.E.2d 617 (1997)), and “a trial judge is not required to accept a plea. *Id.* (citing *Santobello v. New York*, 404 U.S. 257 (1971)). “A plea agreement is only an ‘offer’ until the defendant enters a court-approved guilty plea. A defendant accepts the ‘offer’ by pleading guilty. Thus, until formal acceptance of the plea by the court has occurred, the plea binds no one, not the defendant, the State, or the court.” *Id.*, 333 S.C. at 688, 511 S.E.2d at 402 (citing *Harden v. State*, 453 So.2d 550 (Fla. Dist. Ct. App. 1984); see also *State v. Nesbitt*, 411 S.C. 194, 201 n.7, 768 S.E.2d 67, 71 n.7 (2015) (finding that “if the defendant enters into a negotiated plea agreement prior to the

court's acceptance of his guilty plea, that agreement is a mere executory promise that, standing alone, has no constitutional significance, as it binds neither the government nor the defendant.”).

Counsel credibly testified that he attempted to secure a better plea deal, but the State would not budge. The State has no duty to accept Applicant's counteroffer for a more lenient sentence. Accordingly, relief is denied on this ground.

Challenge the Amount of Drugs

Applicant claims that Counsel was ineffective for failure to challenge the amount of drugs. However, this was waived by entry of an otherwise valid plea. Additionally, this Court finds that this defense was seemingly known to Applicant before he pled and this Court has been presented with no reason why this defense would change Applicant's decision regarding the plea, especially because it would not be successful.¹

Motion to Suppress

Applicant claims Counsel was ineffective for failure to discuss a motion to suppress the drugs with him and for failure to argue this motion in Court. Counsel credibly testified that he discussed this motion with Applicant but cautioned him that this motion was only available if he decided to proceed to trial. This Court finds Applicant waived this motion by entering an otherwise valid plea. Accordingly, relief is denied on this ground.

Trial Tax

Applicant claims his plea was coerced because he was afraid if he did not plead and proceeded to trial instead, he would face life imprisonment. Fear of receiving more time if he

¹ Applicant, by his own admission, personally possessed eighty-four grams of meth and the remaining amount that brought the range between one-and two-hundred grams came from Applicant's co-defendants, thereby putting him on the hook for all the drugs under hand of one, hand of all.



went to trial is not enough to undermine the validity of the plea. Accordingly, relief is denied on this ground.

Conclusion

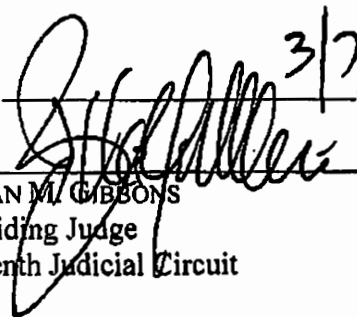
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this _____ day of _____, 2023.



 BRIAN M. GIBBONS
 Presiding Judge
 Seventh Judicial Circuit

_____, South Carolina.

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2022CP1100311

| | | | |
|--------------------|--|-------------------------|--|
| Carl Anthony Stone | | State Of South Carolina | |
|--------------------|--|-------------------------|--|

| | |
|---------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| PLAINTIFF(S) | DEFENDANT(S) |
| Submitted by: | Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> 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: _____

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

FILED IN OFFICE OF
 CLERK OF COURT
 CHEROKEE COUNTY, S.C.
 2023 MAR 15 P 2:20
 BRANDEY W. MCBEE

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) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
| N/A | | |
| | | |
| | | |

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.

| | | |
|---------------------|------------|-----------|
| S/Brian M. Gibbons | 2168 | 3/15/2023 |
| Circuit Court Judge | Judge Code | Date |

For Clerk of Court Office Use Only

This judgment was entered on 03/15/23, and a copy mailed first class or placed in the appropriate attorney's box on 03/15/23, to attorneys of record or to parties (when appearing pro se) as follows:

Rodney Wade Richey PO Box 10916 Greenville, SC
29603-0916

State Of South Carolina

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Brandy W. McBee

Court Reporter

Brandy W. McBee - 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 judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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.
