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Jan 29 2024

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Beaufort County

Honorable G.D. Morgan, Jr., Circuit Court Judge

LEVY LARKIN BROWN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001636

APPENDIX

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Attorney General

South Carolina Commission on Indigent Defense
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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF GENERAL SESSIONS
FOURTEENTH JUDICIAL CIRCUIT
IND. NOS.: 2020-GS-07-00713;
2020-GS-07-00717; 2020-GS-07-00719 -
00721; 2020-GS-07-00681

State of South Carolina,)
)
 Plaintiff,)
)
 vs.)
)
 Levy Brown,)
)
 Defendant.)
-----)

TRANSCRIPT OF HEARING

July 29, 2021
Beaufort, South Carolina

B E F O R E:

The Honorable Carmen Mullens, Judge Presiding

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

Jared Shedd, Esquire
Fourteenth Circuit Solicitor's Office
102 Ribaut Road
Beaufort, South Carolina 29902
843-779-8477

Melissa Duque, Esquire
South Carolina Commission on Indigent Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201
803-734-1343

Cathy L. Young, CVR-M
Official Circuit Court Reporter
P.O. Box 4604
Beaufort, SC 29903

I N D E X

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1 P R O C E E D I N G S

2 * * * * *

3 MR. SHEDD: The State calls Levy Brown.
4 Your Honor, Mr. Brown is here on Indictment Numbers
5 -- one moment, Your Honor, I apologize, 22-GS-27-
6 00713, 717, 719, 720, 721, and 681, Your Honor, and
7 he's charged with the offenses of possession of
8 marijuana with intent to distribute, first offense;
9 manufactured distribution of cocaine based, first
10 offense; trafficking in cocaine, ten to 28, first
11 offense; possession of a weapon during a violent
12 crime; trafficking in manufactured cocaine based 28
13 to 100 grams, first offense; and pointing and
14 presenting a firearm at a person, Your Honor. He's
15 here today to plead guilty to those charges, and the
16 State is recommending 16 years. As a bit of
17 procedural background, Your Honor, this Defendant
18 was tried back in April of this year for armed
19 robbery, and Your Honor sentenced him after
20 conviction to 16 years (inaudible).

21 THE COURT: All right, go ahead and swear
22 him in, if you would, please, and I need the
23 sentencing sheets.

24 THE CLERK: If you'll raise your right
25 hand.

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* * *

LEVY BROWN,
having been duly sworn,
testifies as follows:

* * *

THE COURT: Ms. Duque, these charges that he's pleading to today, did they predate the armed robbery case, or were they after the armed robbery?

MS. DUQUE: They were after the armed robbery.

THE COURT: They're after the armed robbery case? Okay.

* * *

DIRECT EXAMINATION

* * *

BY THE COURT:

Q. I want to make sure you understand what we're doing, Mr. Brown. First off, when you plead guilty, you're waiving your constitutional right to a jury trial, and all the other rights that go along with a jury trial; do you understand that?

A. Yes.

Q. And you're coming forward and you're telling me you're guilty; do you also understand that, sir?

1 A. Yes, ma'am.

2 Q. All right. Sir, are you satisfied with
3 how your lawyer has represented you?

4 A. Yes, ma'am.

5 Q. Has she done everything you've asked
6 her to do?

7 A. Yes, ma'am.

8 THE COURT: Have these all been indicted it
9 looks like, yes?

10 MR. SHEDD: They have, Your Honor.

11 BY THE COURT:

12 Q. I want to make sure, Mr. Brown, you
13 appreciate that the distribution of cocaine based,
14 first offense, carries up to 15 years in prison.
15 The trafficking in cocaine ten grams or more, but
16 less than 28, first offense, carries a -- a minimum
17 of three, and up to ten. The possession of a weapon
18 during the commission of a violent crime carries up
19 to five. The trafficking of meth or cocaine based
20 28 grams or more, but less than 100, first offense,
21 carries a mandatory minimum of seven, and up to 25
22 years. And, lastly, sir, the pointing and
23 presenting a firearm carries up to five years. Do
24 you understand all that?

25 A. Yes, ma'am.

1 Q. And understanding that, sir, do you
2 still wish to plead guilty?

3 A. Yes, ma'am.

4 Q. Has anyone threatened you or pressured
5 you, or made you come forward and plead guilty to
6 these charges today?

7 A. No, ma'am.

8 Q. Now, how long have you been in SCDC
9 since I sentenced you on the armed robbery?

10 A. Three months.

11 Q. Three months? What are you doing there
12 while you're there? Do you have a job?

13 A. No, I'm currently in eval. I don't
14 come out of my room.

15 Q. Okay, how long are you expected to be
16 in eval? Did you have to take care of these charges
17 before you can get assigned, or do you know?

18 A. That's why they've been holding me.

19 Q. Okay, I would assume so. All right.

20 A. May I comment and say something to you?

21 Q. Of course.

22 A. I want it on the record that with them
23 drug charges, I had co-defendants that got charged,
24 too, and they had nothing to do with it. They
25 weren't aware of what I had going on. I take credit

1 for all the drug charges.

2 Q. Okay.

3 THE COURT: Well, did you all talk about
4 him making a proffer on the record, or, obviously --
5 you tell me.

6 MR. SHEDD: No, Your Honor, the -- the
7 charges against the co-Defendant are -- are still
8 pending, at this time, so this is news. I -- I can
9 tell you that -- that this -- this case, when we get
10 into the facts of it, there's -- there was a large
11 amount of drugs (inaudible), and the co-Defendant
12 was in the room (inaudible), it was not in drawers.
13 It was everywhere throughout the co-Defendant's
14 house and everything.

15 THE COURT: Okay, all right.

16 BY THE COURT:

17 Q. So, sir, again, you're satisfied with
18 how Ms. Duque has represented you; is that correct?

19 A. Yes, ma'am.

20 Q. You have ten days from today's to
21 appeal this guilty plea and the sentence of this
22 Court. If you can't afford an attorney for an
23 appeal, one will be appointed for you at no cost to
24 you, but you must request it; do you understand
25 that?

1 A. Yes, ma'am.

2 THE COURT: Was this a single incident, Mr.
3 Shedd?

4 MR. SHEDD: The -- all of the drug charges
5 are.

6 THE COURT: That's what I'm asking, yes.

7 MR. SHEDD: But it all happened at -- in
8 the same day.

9 THE COURT: Okay. Go ahead.

10 MR. SHEDD: Thank you, Your Honor, may it
11 please the Court. The point -- I'll start with the
12 point in presenting on March 15th, 2021, Law
13 Enforcement went to Walgreens on Ribaut Road, which
14 is here in Beaufort County, and spoke to the store
15 clerk, who reported that a customer became irate,
16 and -- and was demanding the pills, and was
17 eventually recognized on surveillance as -- as
18 customer. He was identified after -- when he
19 pointed a firearm at -- or, excuse me, he pointed a
20 firearm at the clerk, although the clerk identified
21 him as a customer and a family member of someone who
22 does his haircut -- or does her --

23 THE COURT: And did he identify him as Mr.
24 Brown? You said a customer.

25 MR. SHEDD: Was the one that identified him

1 on the surveillance --

2 THE COURT: Okay.

3 MR. SHEDD: -- and the clerk knew him --

4 THE COURT: But was the person, in fact,
5 holding the gun, Mr. Brown?

6 MR. SHEDD: Yes, Your Honor.

7 THE COURT: Okay, keep going.

8 MR. SHEDD: Later that day there were some
9 allegations, these -- these charges were not
10 indicted, and will be dismissed due to a lack of
11 cooperation; but just for -- to provide the whole
12 picture, there was --

13 THE COURT: Thank you.

14 MR. SHEDD: -- Law Enforcement responded
15 out to an armed robbery that occurred, and there was
16 a victim who was bleeding from the head and claimed
17 that the Defendant had robbed him. Eventually, they
18 were able to track his movements -- the Defendant's
19 movements that day back to a Super 8 Motel. Once
20 they found out what room he was in, they went and
21 knocked on the door. Mr. Brown answered the door
22 and was wearing -- he was clothed. At that point,
23 he was taken into custody so that they could
24 question him on the other charges.

25 When the door was open, they were able to

1 -- excuse me, they pro -- they conducted a
2 protective sweep in the room, and they saw marijuana
3 on one of the beds, a bag of multi-colored pills,
4 and a 2-tone firearm on the bathroom sink counter.
5 They then backed out and got a search warrant, Your
6 Honor, and just -- I will skip to the drugs that
7 were found there, Your Honor. There was 50 -- a
8 later drug report analysis showed there were 51
9 total grams of marijuana. The total weight of the
10 meth was 32.84 grams. The total weight of the
11 cocaine that was found in the room was 14.92 grams.
12 The crack cocaine was 1.62 grams. Your Honor, Mr.
13 Brown's prior record is 2016 PWID marijuana, first
14 offense, and then the April of this year, armed
15 robbery.

16 THE COURT: All right.

17 BY THE COURT:

18 Q. Mr. Brown, do you admit that you are
19 guilty of, it looks like, all six of these charges,
20 sir?

21 A. Yes, ma'am.

22 Q. I find a substantial factual basis for
23 this plea. That your decision to plead guilty has
24 been made freely, voluntarily, knowingly, and
25 intelligently, with the consent of competent counsel

1 with whom you tell me you're satisfied, and I'm
2 going to accept your guilty plea.

3 THE COURT: Ms. Duque.

4 MS. DUQUE: Thank you, Your Honor, may it
5 please the Court.

6 THE COURT: Yes.

7 MS. DUQUE: Your Honor, Mr. Brown, he's 24-
8 years-old, and he has been through a lot. If Your
9 Honor recalls from his file --

10 THE COURT: Yes.

11 MS. DUQUE: -- he has been through a lot
12 growing up. And after that trial, Your Honor,
13 unfortunately, that same Friday his father passed
14 away, and it's just been hard for him. And I'd just
15 ask, Your Honor, to give him credit for the time
16 that he has done on these charges while he was
17 waiting in the Detention Center waiting for trial
18 for the armed robbery. Also, Your Honor, to
19 consider not going more than what he has already has
20 to serve, Your Honor, and that's it, Your Honor.

21 BY THE COURT:

22 Q. Anything you want to tell me, Mr.
23 Brown?

24 A. No, ma'am, that's all I had wanted to
25 tell you that I said earlier.

1 Q. Okay. Did you -- did you graduate from
2 high school, Mr. Brown?

3 A. No, ma'am.

4 Q. Were you in regular classes, or special
5 classes, or -- well, when did you drop out?

6 A. I went to DJJ at 13.

7 Q. Okay.

8 A. I came home at 17, y'all wouldn't allow
9 me back into the School District.

10 Q. Got it. So when you were at DJJ, you
11 didn't get your GED?

12 A. I made it to eleventh grade.

13 Q. Okay.

14 * * *

15 **JUDGE'S SENTENCE**

16 * * *

17 THE COURT: On the charge of possession
18 with intent to distribute marijuana, first offense,
19 the sentence is five years. On the charge of
20 distribution of cocaine based, first offense, the
21 sentence is 15 years. On the indictment for
22 trafficking cocaine between ten, but less than 28
23 grams, first offense, the sentence is ten years. On
24 the charge of possession of a weapon during the
25 commission of a violent crime, the sentence is five

1 years. And on the trafficking of meth and
2 amphetamine, or cocaine based, 28 grams, but -- or
3 more, but less than 100 grams, first offense, the
4 sentence is you be committed to the Department of
5 Corrections for a period of 16 years. And on
6 indictment -- sorry, on the pointing and presenting
7 a firearm at a person, the sentence is five years.
8 Those are all to run concurrent to each other, and
9 concurrent to your armed robbery sentence that
10 you're currently serving. Additionally, I'm
11 ordering that while you're in the Department of
12 Corrections you get your GED. Good luck to you,
13 sir.

14 MR. BROWN: Thank you.

15 THE COURT: Thank you all for bringing him,
16 I appreciate it. Thank you.

17 (Whereupon, the hearing is concluded at
18 10:31 a.m.)

19 - - -END OF TRANSCRIPT- - -

20

21

22 CERTIFICATE OF REPORTER

23

24 I, Cathy L. Young, Certified Verbatim
25 Reporter/Master for the State of South Carolina, do

1 hereby certify that the foregoing is a true,
2 accurate and complete Transcript of Record of the
3 digitally recorded hearing in the Family Court for
4 Greenville County, South Carolina, on the 29th day
5 of July, 2021.

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

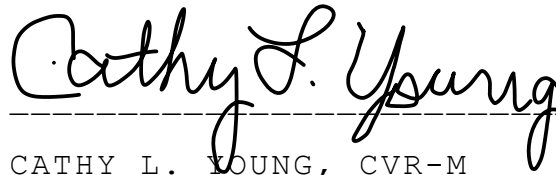
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10 This, the 7th of September, 2022

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12

A handwritten signature in black ink that reads "Cathy L. Young". The signature is written in a cursive style and is positioned above a horizontal dashed line.

13

CATHY L. YOUNG, CVR-M

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STATE OF SOUTH CAROLINA)
)
 County of BEAUFORT)
)
LEVY LASHIV BROWN 367857)
 Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

2022 CP 0700507

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

2022 MAR 25 AM 11:15
 JERRI ANN ROSENBERG
 BEAUFORT COUNTY, S.C.
 CLERK OF COURT

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 E. Vans Correctional Institution
2. Name and location of Court which imposed sentence Beaufort County
Post Office Box 1128 Beaufort South Carolina
3. Name(s) of co-defendant(s) (if any) AUTUMN PARKER
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2020 GS 0700717, manufacture, distribution, cocaine
 - (b) 2020 GS 0700719, Trafficking in cocaine

16 (c) 2020 G.S. 0700721, Traffic in Meth.

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

(a) 7-29-21 15 YRS, nonviolent

(b) 7-29-21 10 YRS violent, serious

(c) 7-29-21 16 YRS violent, serious

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. NA

ii. _____

iii. _____

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

i. NA

ii. _____

iii. _____

(c) the date of each such result:

i. NA

ii. _____

iii. _____

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

i. NA

ii. _____

iii. _____

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

(a) I am guilty, just want my sentence reconsidered.

(b) appeal wasn't necessary

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

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

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

(a) _____
(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? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

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. NA
ii. _____
iii. _____
iv. _____

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

i. NA
ii. _____
iii. _____
iv. _____

(c) the disposition thereof:

- i. NA
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. NA
- ii. _____
- iii. _____
- iv. _____

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

- i. NA
- 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. NA
- ii. _____
- iii. _____

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

- i. NA
- ii. _____
- iii. _____

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

- (a) First opportunity
- (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? NA
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NA
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NA

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. Melissa Duque Public Defender
 - ii. 1905 Duke Street, Room 210
Post office Box 525
 - iii. Beaufort, SC 29901
- (b) the proceedings at which each such attorney represented you:
 - i. sentencing
 - ii. _____
 - iii. _____

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

Sentence Reconsider

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

NO

STATE OF SOUTH CAROLINA)

County of Beaufort)

VERIFICATION

I, Levy Lashin Brown 367857, 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.

X Levy Lashin Brown

SWORN to and subscribed before me this 3rd day of March, 2022

Saxcha Outen (L.S.)
Notary Public

My Commission Expires: 2/17/22

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

I, Levy Lashin Brown 367857, 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.

Levy Brown

Applicant

SWORN or affirmed to and subscribed before me this
3rd day of March, 2022

Saxcha Outlaw

Notary Public

My Commission Expires: 2/17/24

STATE OF SOUTH CAROLINA)
 COUNTY OF BEAUFORT)
 2022 SEP 27 PM 1:07)
 Levy L. Brown, SCDC #367857, ANN ROSEHEAD)
 BEAUFORT COUNTY, S.C.)
 CLERK OF COURT)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2022-CP-07-00507

**RETURN TO THE APPLICATION
 FOR POST-CONVICTION RELIEF
 AND MOTION FOR A MORE
 DEFINITE STATEMENT**
 (Counsel Already Appointed)

Respondent the State of South Carolina, making its return¹ to the application for post-conviction relief filed by Levy L. Brown² (Applicant) on March 25, 2022, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. During its December 2020 term, the Beaufort County Grand Jury indicted Applicant for pointing or presenting a firearm at a person (2020-GS-17-00681); manufacturing, distribution, etc., schedule I, II, III, flunitrazepam, or controlled substance analogue (2020-GS-17-00713); manufacturing, distribution, etc., methamphetamine, cocaine base, and ephedrine (2020-GS-07-00717);

¹ Respondent’s return was due to be filed sixty days after receipt of Applicant’s instant post-conviction relief application. *See* Rule 12(a), SCRCP (“[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.”). Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept this return as timely filed. *See* S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that “respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application.”); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

² Applicant filed this post-conviction relief application *pro se*. Counsel, Michael H. Lifsey, Esquire, has since been appointed.

trafficking in cocaine, 10g or more, but less than 28g (2020-GS-07-00719); possession of a weapon during a violent crime (2020-GS-07-00720); and trafficking methamphetamine or cocaine base, more than 28g but less than 100g (2020-GS-07-00721). On July 29, 2021, Applicant appeared before the Honorable Carmen Mullen and pleaded guilty as indicted, with a recommendation from the State of sixteen years imprisonment. Melissa Duque, Esquire represented Applicant. Jared Shedd of the Fourteenth Circuit Solicitor's Office prosecuted the case. Pursuant to the State's recommendation, Judge Mullen sentenced Applicant to concurrent sentences of five years for the pointing and presenting a firearm charge; five years for the offense of possession of marijuana with intent to distribute – 1st offense; fifteen years the manufacturing, distribution of cocaine base – 1st offense; ten years' for the trafficking in cocaine 10g or more, but less than 28g – 1st offense charge; five years for the possession of a weapon charge; and sixteen years for the trafficking in meth or cocaine base, 28g or more, but less than 100g – 1st offense. Applicant did not appeal his convictions or sentences.

II. Summary of Factual History

The facts for these indictments were articulated by the State at Applicant's plea hearing as follows:

MR. SHEDD: Thank you, Your Honor, may it please the Court. The point -- I'll start with the point in presenting on March 15th, 2021, Law Enforcement went to Walgreens on Ribaut Road, which is here in Beaufort County, and spoke to the store clerk, who reported that a customer became irate, and -- and was demanding the pills, and was eventually recognized on surveillance as -- as customer. He was identified after -- when he pointed a firearm at -- or, excuse me, he pointed a firearm at the clerk, although the clerk identified him as a customer and a family member of someone who does his haircut -- or does her --

THE COURT: And did he identify him as Mr. Brown? You said a customer.

MR. SHEDD: Was the one that identified him on the surveillance --

THE COURT: Okay.

MR. SHEDD: -- and the clerk knew him --

THE COURT: But was the person, in fact, holding the gun, Mr. Brown?

MR. SHEDD: Yes, Your Honor.

THE COURT: Okay, keep going.

MR. SHEDD: Later that day there were some allegations, these -- these charges were not indicted, and will be dismissed due to a lack of cooperation; but just for - - to provide the whole picture, there was --

THE COURT: Thank you.

MR. SHEDD: -- Law Enforcement responded out to an armed robbery that occurred, and there was a victim who was bleeding from the head and claimed that the Defendant had robbed him. Eventually, they were able to track his movements -- the Defendant's movements that day back to a Super 8 Motel. Once they found out what room he was in, they went and knocked on the door. Mr. Brown answered the door and was wearing -- he was clothed. At that point, he was taken into custody so that they could question him on the other charges.

When the door was open, they were able to -- excuse me, they pro -- they conducted a protective sweep in the room, and they saw marijuana on one of the beds, a bag of multi-colored pills, and a 2-tone firearm on the bathroom sink counter. They then backed out and got a search warrant, Your Honor, and just -- I will skip to the drugs that were found there, Your Honor. There was 50 -- a later drug report analysis showed there were 51 total grams of marijuana. The total weight of the meth was 32.84 grams. The total weight of the cocaine that was found in the room was 14.92 grams. The crack cocaine was 1.62 grams. Your Honor, Mr. Brown's prior record is 2016 PWID marijuana, first offense, and then the April of this year, armed robbery.

(Plea Tr. 8-10).

III. Allegations Raised and Relief Sought in Post-Conviction Relief Application

In his initial application filed March 25, 2022, Applicant did not include any cognizable claims for post-conviction relief. Rather, in response to question nine as to why he did not appeal his convictions, he states: "I am guilty, just want my sentence reconsider[*sic*]."³

³ The relief Applicant seeks is not available because the Uniform Post-Conviction Procedure Act does not provide a vehicle for sentence reduction. See *Clark v. State*, 259 S.C. 378, 382–83, 192 S.E.2d 209, 210 (1972) (*per curiam*) (holding that an inmate cannot seek a "time cut" in his sentence via post-conviction relief if the sentence was within the statutorily defined limits); John H. Blume, *An Introduction to Post-Conviction Remedies, Practice and Procedure in South Carolina*, 45 S.C. L. Rev. 235, 268 n.103 (1994) (noting that "[t]he lack of jurisdiction to reduce otherwise proper sentences seems not to be widely recognized by many inmates who file pro se applications seeking a reduction in their sentences"). If this Court finds a defect in the original proceedings, the appropriate relief would be a new trial on the original indictments. See generally *Singleton v. State*, 313 S.C. 75, 85–86, 437 S.E.2d 53, 59–60 (1993) (discussing section 17-27-20(B) and the appropriate relief in PCR cases); *Gilstrap v. State*, 252 S.C. 625, 628, 168 S.E.2d 88, 89 (1969) (stating that even under the assumption that all the allegations were true, the relief to be granted on PCR is remand for a new trial); *Smith v. State*, 413 S.C. 194, 195, 775 S.E.2d 696, 696 (2015) ("We now clarify the proper remedy is a new trial.").

On September 1, 2022, Applicant filed a letter and requested his application include the following allegations:⁴

1. Ineffective assistance of counsel
 - a. Counsel “failed to dutifully investigate the details of my case in order to represent my role in the crime and the events that occurred. Her failure to do so misrepresented my involvement within the crime which was used as an aggravating factor to influence the Courts discretion in sentencing me.”

Attached herewith and incorporated by reference are the Beaufort County Clerk of Court records regarding the subject conviction; Applicant’s records from the South Carolina Department of Corrections; the plea transcript; and the records of this current PCR action. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

IV. Response to Allegation of Ineffective Assistance of Counsel

Applicant alleges he is entitled to post-conviction relief based on ineffective assistance of counsel. Applicant claims plea counsel failed to investigate the details of his case and accurately characterize his role in the commission of the crime to the plea court. Applicant further alleges plea counsel’s failure to properly represent his involvement in the charged crimes was used as an aggravating factor during sentencing.

Ineffective Assistance of Counsel, Generally

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant—like all other defendants—the right to “assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the

⁴ In light of Applicant filing the *pro se* amended application to include cognizable claims, the State requested counsel be appointed to represent Applicant. Counsel Michael H. Lifsey was appointed on September 15, 2022. This return follows.

applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel. *See Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel's performance under

the first prong of *Strickland* remains unchanged—the applicant must show that counsel’s representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58–59; accord *Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” *Hill*, 474 U.S. at 56. The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” *Id.* at 58–59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.* at 59.

Failure to Investigate and Present Mitigating Evidence to the Plea Court

It is impossible for Respondent to reply specifically to Applicant’s claims without more facts and details. Applicant claims plea counsel “failed to dutifully investigate the details of [his] case in order to represent [his] role in the crime and the events that occurred.” Applicant claims plea counsel’s failure to investigate caused counsel to misrepresent Applicant’s involvement in the charged crimes and counsel’s misrepresentation was thereafter used as an aggravating factor during sentencing. However, Applicant does not indicate with any specificity what counsel should have investigated, how counsel misrepresented Applicant’s involvement in the charged crimes, what mitigation evidence counsel failed to present to the court, or how Applicant was prejudiced. Therefore, Respondent responds to Applicant’s general and vague claims below and moves for Applicant, through appointed counsel, to file an amended return.

“A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the the State.” *McKnight v. State*, 378, S.C. 33, 46, 61, S.E.2d 354, 360, (2008). “[W]hile the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.” *Ard*, 372, S.C. at 331-32, 642, S.E.2d at 597 (internal quotation marks omitted) (emphasis omitted). However, counsel need only interview potential witnesses “when it is reasonable to do so.” *Edwards v. State*, 392, S.C. 449, 457, 710 S.E.2d 60, 65 (2011). “In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Strickland*, 466 U.S. at 691.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Harris*, 377 S.C. at 75-76, 659 S.E.2d at 145-46 (citing *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. *Id.* at 75, 659 S.E.2d at 145-146. Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.* at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Applicant stated at his plea hearing he was satisfied with the services of his attorney, his attorney had done everything Applicant had asked her to do, and that he understood by pleading guilty he was waiving his right to a jury trial (Plea Tr. 4-5). Therefore, Respondent believes

Applicant cannot satisfy either requirement of *Hill*, nor show plea counsel was ineffective for failing to investigate. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of plea counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

V. Motion for a More Definite Statement

The State submits Applicant's claims of ineffective assistance of counsel are without merit. However, it is impossible for the State to adequately respond to Applicant's allegations because Applicant has completely failed to provide any specific facts to support such claims. "[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 [applicant] that he was deprived of adequate and effective assistance of counsel is insufficient." *Coardes v. State*, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974); *see* S.C. Code Ann. § 17-27-50 (2014) (requiring an applicant to "specifically set forth the grounds upon which the application is based"); *see also* Rule 8(a)(2), SCRPC (requiring all civil pleadings to include "a short and plain statement of the facts showing that the pleader is entitled to relief"); Rule 71.1(d), SCRPC ("Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.").

Accordingly, the State moves for Applicant, through counsel, to amend his application to provide a more definite statement of his allegations of ineffective assistance of counsel pursuant to Rule 12(e), SCRPC and the Post-Conviction Procedure Act.

VI. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *Id.*, 428 S.C. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCP. *See also* Rules 15(a)–(b), SCRCP. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCP.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

VII. Response to Any and All Other Allegations

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

VIII. Conclusion

WHEREFORE, the State respectfully requests this Court grant its motion for a more definite statement, and thereafter convene an evidentiary hearing on the allegations of ineffective assistance of counsel.


Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

SAMANTHA J. WEIDAUER
Assistant Attorney General

By: 

ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

September 23, 2022

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

2022 SEP 27 PM 1:47

Levy Brown, #367857)

JERRI ANN ROSENEAU)
CLERK OF COURT)

Applicant,)

v.)

State of South Carolina)

Respondent,)

IN THE COURT OF COMMON PLEAS)
FOR THE FOUREENTH JUDICIAL)
CIRCUIT)

Case No.: 2022-CP-07-00507

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 to the Application for Post-Conviction Relief and Motion for More Definite Statement in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Michael H. Lifsey, Esquire
Post Office Box 548
Chester, SC 29706

DATED this 23rd day of September, 2022.



Jennifer Jennison, Administrative Coordinator
For Respondent

FORM 5

STATE OF SOUTH CAROLINA)
)
 County of Beaufort)
367857)
Lenny Larkin Brown)
 Full name and prison number (if any) of Applicant)
)
 v.)
)
 State of South Carolina)
)
)
)

IN THE COURT OF COMMON PLEAS
2022 CP0700507

'AMENDED'
 APPLICATION FOR
 POST-CONVICTION RELIEF

2022 SEP 27 PM 1:24
 JERRI ANN ROSENEAU
 CLERK OF COURT
 BEAUFORT 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 Evan's Correctional Institution

2. Name and location of Court which imposed sentence Beaufort County
Post Office Box 1128, Beaufort SC
3. Name(s) of co-defendant(s) (if any) Autumn Parker

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 20206S0700717, Manufacture, dist. cocaine
 - (b) 20206SD700719, Trafficking in cocaine

(c) 2022BS0700721, Trafficking Meth

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

(a) July 29, 2021; 15 years (non-violent)

(b) July 29, 2021; 10 years (violent; serious)

(c) July 29, 2021; 16 years (violent; serious)

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. _____

ii. n/a

iii. _____

(c) the date of each such result:

i. _____

ii. n/a

iii. _____

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

i. _____

ii. n/a

iii. _____

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

(a) evidence to warrant appeal was found after time was barred

(b) _____

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

- (a) Ineffective Assistance of Counsel
- (b) _____
- (c) _____

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

- (a) Attachment #1
- (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? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no

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. _____
- ii. _____ *n/a*
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____ *n/a*
- iii. _____
- iv. _____

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

- i. _____
- ii. _____ *n/a*
- 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. _____

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) first application for relief
 (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? n/a
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? n/a
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
n/a

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. Melissa Duque; Public Defender
1905 Duke St, Box Room 210
 ii. P.O. Box 525
Beaufort, S.C 29901
 iii. _____

 (b) the proceedings at which each such attorney represented you:
 i. guilty plea
 ii. sentencing hearing
 iii. _____

Attachment #1

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

Attorney Melissa Duque, Public Defender, 1905 Duke Street Room 210, Post Office Box 525, Beaufort, South Carolina 29901, failed to dutifully investigate the details of my case in order to represent my role in the crime and the events that occurred. As stated in 'Weldon v. State 436 S.C 69': "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary."

Counsel's failure to dutifully investigate misrepresented my involvement within the crime which was used as an aggravating factor to influence the Courts discretion in relaying my sentence.

Attachment #2

'State clearly the relief you seek in filing this application':

Evidence supporting my claim was not discovered until the time where an appeal/petition for sentencing reconsideration was legally lapsed. The acts of my attorney forfeited ~~my~~ my right to appeal the imposition of the sentence. I ask that this Court reverse my sentence and remand it back to trial court for a just opportunity to be properly represented by competent and effective counsel.

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

Attachment #2

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

no

STATE OF SOUTH CAROLINA)
)
County of _____)

VERIFICATION

I, Levy Brown, 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.

[Signature]

SWORN to and subscribed before me this 21
day of September, 2022

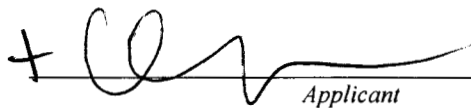
[Signature] (L.S.)
Notary Public

My Commission Expires: 2/17/24

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

I, Levy Brown, 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.

+ 
Applicant

SWORN or affirmed to and subscribed before me this
21 day of September, 2022

Sandra Outlaw
Notary Public

My Commission Expires: 2/17/24

STATE OF SOUTH CAROLINA)
 COUNTY OF BEAUFORT)
 Levy L. Brown, SCDC #367857,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2022-CP-07-00507

**MOTION TO STRIKE
 PRO SE FILINGS**

JENNIFER ROSENEAU
 BEAUFORT COUNTY, S.C.
 CLERK OF COURT
 2022 OCT 10 AM 11:38

In response to Applicant’s document filed on September 27, 2022, entitled “Amended Application for Post-Conviction Relief” with the Beaufort Clerk of Court and to the extent, the document is an amendment to Applicant’s application, Respondent would show this Court:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. During its December 2020 term, the Beaufort County Grand Jury indicted Applicant for pointing or presenting a firearm at a person (2020-GS-17-00681); manufacturing, distribution, etc., schedule I, II, III, flunitrazepam, or controlled substance analogue (2020-GS-17-00713); manufacturing, distribution, etc., methamphetamine, cocaine base, and ephedrine (2020-GS-07-00717); trafficking in cocaine, 10g or more, but less than 28g (2020-GS-07-00719); possession of a weapon during a violent crime (2020-GS-07-00720); and trafficking methamphetamine or cocaine base, more than 28g but less than 100g (2020-GS-07-00721). On July 29, 2021, Applicant appeared before the Honorable Carmen Mullen and pleaded guilty as indicted, with a recommendation from the State of sixteen years imprisonment. Melissa Duque, Esquire, represented Applicant. Jared Shedd of the Fourteenth Circuit Solicitor’s Office prosecuted the case. Pursuant to the State’s recommendation, Judge Mullen sentenced Applicant to concurrent sentences of five years for the

pointing and presenting a firearm charge; five years for the offense of possession of marijuana with intent to distribute – 1st offense; fifteen years for the manufacturing, distribution of cocaine base – 1st offense; ten years for the trafficking in cocaine 10g or more, but less than 28g – 1st offense charge; five years for the possession of a weapon charge; and sixteen years for the trafficking in meth or cocaine base, 28g or more, but less than 100g – 1st offense. Applicant did not appeal his convictions or sentences.

II. MOTION TO STRIKE FOR FAILURE TO COMPLY WITH RULE 11, SCRPC

There is no right to “‘hybrid representation’ that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relieve counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.” *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010); *see also State v. Stuckey*, 333 S.C. 56, 58, 508 S.E.2d 564 (1998); *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing a nullity where person was represented by counsel).

Where an Applicant seeks to submit a filing through his or her attorney, counsel has an obligation to use professional judgment and review arguments offered by his or her client. *Jones v. State*, 348 S.C. 13, 14, 558 S.E.2d 517 (2002). “[C]ounsel may not serve as a mere conduit for *pro se* documents in an effort to avoid the prohibition against hybrid representation[.]” *Id.* Further, Rule 11, SCRPC, requires “[e]very pleading, motion, or other paper of a party represented by an attorney” to be signed “by at least one attorney of record who is admitted to practice law in South Carolina.” Rule 11(a), SCRPC.

Michael H. Lifsey, Esquire, was appointed counsel to represent Applicant in this matter on September 15, 2022. Applicant’s September 27, 2022, filing of the supplemental document was submitted *pro se* and lacks any indicia of PCR counsel’s assistance. To the contrary, the filing is

signed only by Applicant and bears no indication it was ever served on counsel of record, much less reviewed and adopted by him. Respondent submits the allegations in the supplemental document fail to comply with Rule 11, SCRPC and constitute an impermissible hybrid filing as Applicant was represented by appointed counsel at the time. As such, the Court should strike this filing, give them no consideration, and treat this *pro se* filings as a nullity.¹

III. CONCLUSION

WHEREFORE, Respondent respectfully requests that this Court strike Applicant's *pro se* amended application filed September 27, 2022, as impermissible hybrid representation in violation of Rule 11, SCRPC.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

SAMANTHA J. WEIDAUER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

October 5, 2022

¹ Should the Court require, Respondent reserves the right to respond to these allegations as needed.

recommendation, Judge Mullen sentenced Applicant to concurrent sentences of five years for the pointing and presenting a firearm charge; five years for the offense of possession of marijuana with intent to distribute – 1st offense; fifteen years for the manufacturing, distribution of cocaine base – 1st offense; ten years for the trafficking in cocaine 10g or more, but less than 28g – 1st offense charge; five years for the possession of a weapon charge; and sixteen years for the trafficking in meth or cocaine base, 28g or more, but less than 100g – 1st offense. Applicant did not appeal his convictions or sentences.

II. RESPONDENT’S MOTION TO STRIKE FOR FAILURE TO COMPLY WITH RULE 11, SCRPC

There is no right to “‘hybrid representation’ that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relieve counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.” *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010); *see also State v. Stuckey*, 333 S.C. 56, 58, 508 S.E.2d 564 (1998); *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing a nullity where person was represented by counsel).

Where an Applicant seeks to submit a filing through his or her attorney, counsel has an obligation to use professional judgment and review arguments offered by his or her client. *Jones v. State*, 348 S.C. 13, 14, 558 S.E.2d 517 (2002). “[C]ounsel may not serve as a mere conduit for *pro se* documents in an effort to avoid the prohibition against hybrid representation[.]” *Id.* Further, Rule 11, SCRPC, requires “[e]very pleading, motion, or other paper of a party represented by an attorney” to be signed “by at least one attorney of record who is admitted to practice law in South Carolina.” Rule 11(a), SCRPC.

III. CONCLUSION

Based upon its review of the records before this Court including Applicant's *pro se* filing, the order appointing counsel in this matter, and Respondent's motion, this Court finds Michael H. Lifsey, Esquire, was appointed counsel to represent Applicant in this matter on September 15, 2022. This Court further finds Applicant filed a *pro se* supplemental document on September 27, 2022, which lacks any indicia of PCR counsel's assistance. Because the filing is signed only by Applicant and bears no indication it was ever served on counsel of record, much less reviewed and adopted by him, this Court finds the supplemental document fails to comply with Rule 11, SCRPC and constitutes an impermissible hybrid filing as Applicant was represented by appointed counsel at the time of filing. As such, the Court finds the *pro se* amended application filed September 27, 2022, is an impermissible hybrid filing in violation of Rule 11, SCRPC, gives it no consideration, treats the *pro se* filing as a nullity, and strikes it from the record.

IT IS THEREFORE ORDERED:

The *pro se* filing filed by Applicant on September 27, 2022, is struck from the record as it fails to comply with Rule 11, SCRPC.

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

Bentley, South Carolina

Bentley Price
BENTLEY PRICE
Chief Administrative Judge – Common Pleas
Fourteenth Judicial Circuit

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 Levy L. Brown,)
 SCDC # 367857,)
 Applicant,)
)
 v.)
)
 State of South Carolina.)
 _____)

COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT
 Case No.: 2022-CP-07-00507

**AMENDED POST-CONVICTION
 RELIEF APPLICATION**

2022 OCT 21 AM 11:56
 BEAUFORT COUNTY, S.C.
 COURT OF COMMON PLEAS

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on March 25, 2022, to add the following allegations:

1. Ineffective assistance of counsel for

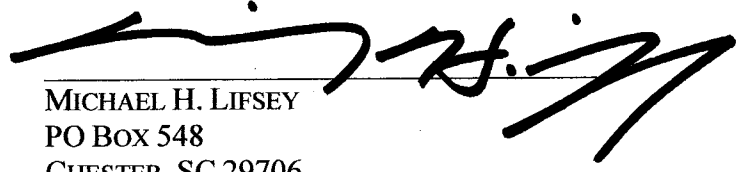
- (a) Applicant’s plea counsel did not meet with Applicant a sufficient number of times prior to his plea, did not fully explain the strengths and weaknesses of the State’s case, and did not explain the elements of the crimes of which he was charged. Had plea counsel given effective representation in this regard, Applicant would not have entered a guilty plea and would have insisted on a jury trial.
- (b) Applicant’s plea counsel informed Applicant that he was pleading to a cap of 16 years and that she would ask for less than 16 years. Despite so advising Applicant, plea counsel did not ask for less than 16 years but merely acquiesced to the State’s request for a 16 year sentence. Had plea counsel given effective representation in this regard, Applicant would not have entered a guilty plea and would have insisted on a jury trial.
- (c) Prior to his plea on these charges, plea counsel represented Applicant on an unrelated trial for which Applicant received a 16 year sentence. Counsel filed an appeal of the

conviction and sentence and informed Applicant that he had potentially meritorious arguments on appeal. Despite this, plea counsel advised Applicant to enter a plea to these charges without advising him that the plea on these charges would effectively render his appeal moot. Plea counsel also did not advise Applicant that he should seek advice from independent counsel before entering this plea. Had plea counsel given effective representation in this regard, Applicant would not have entered a guilty plea and would have insisted on a jury trial.

(d) Based on plea counsel's ineffective advice as described above, Applicant believed that he had no choice but to answer the Judge's questions during the plea colloquy in such a manner as would result in the Judge accepting the plea. Had plea counsel given effective representation in this regard, Applicant would not have entered a guilty plea and would have insisted on a jury trial.

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. H. Lifsey', written over a horizontal line.

MICHAEL H. LIFSEY
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SC BAR No. 015154
ATTORNEY FOR APPLICANT

October 27, 2022

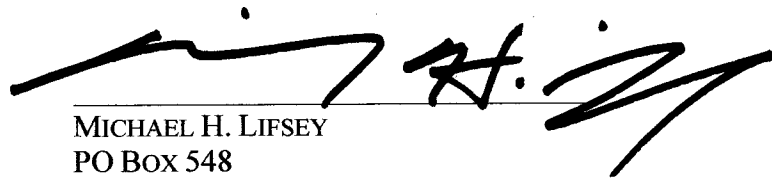
CERTIFICATE OF SERVICE

I certify that I have served this document via first class mail on:

Samantha J. Weidauer
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

This 27th Day of October, 2022.

2022 OCT 31 AM 11:56
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT



MICHAEL H. LIFSEY
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ATTORNEY FOR APPLICANT

October 27, 2022

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P R O C E E D I N G S

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THE COURT: All right. Are we ready to proceed?

4

I believe the next case is Levy Brown.

5

Is that correct?

6

MS. MIMS: Yes, Your Honor.

7

MR. LIFSEY: Yes, sir.

8

9

THE COURT: All right. I'll let the AG call the case and then I will turn it over to the, the applicant.

10

MS. MIMS: This is the -- may it please the Court?

11

THE COURT: Yes, ma'am.

12

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MS. MIMS: This is the post-conviction relief matter of Levy L. Brown. Respondent or, I'm sorry, applicant filed an application for post-conviction relief on March 25th, 2022.

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Applicant is presently confined in the South Carolina Department of Corrections. During its December, 2020 term, the Beaufort County Grand Jury indicted applicant for pointing and presenting a firearm at a person, manufacturing distribute, et cetera, Schedule I, II, III flunotripam (phonetic) or controlled substance analogue, manufacturing distribution, et cetera, of methamphetamine, cocaine base, and ephedrin, trafficking in cocaine 10, 10 grams or more but less than 28 grams, possession of a weapon during a violent crime, and trafficking methamphetamine or cocaine

1 base more than 28 grams but less than a hundred grams.

2 On July 29th, 2021, applicant appeared before the
3 Honorable Carmen Mullen and pleaded guilty as indicted with
4 a recommendation from the State of 16 years imprisonment.
5 Melissa Duque, Esquire, represented applicant. Jared Shedd
6 of the Fourteenth Circuit Solicitor's Office prosecuted the
7 case.

8 Pursuant to the State's rep -- recommendation, Judge
9 Mullen sentenced applicant to concurrent sentences of five
10 years for the pointing and presenting a firearm charge, five
11 years for the offense of possession of marijuana with intent
12 to distribute first offense, 15 years for the manufacturing,
13 distribution of cocaine base first offense, 10 years for the
14 trafficking in cocaine 10 grams or more but less than
15 28 grams first offense, five years for the possession of a
16 weapon charge, and 16 years for the trafficking in meth and
17 cocaine base 28 or more -- 28 grams or more but less than a
18 hundred grams first offense and applicant did not appeal his
19 convictions or sentences.

20 And I would ask the Court to apprise applicant what
21 would happen if he's successful on PCR.

22 THE COURT: All right. Thank you, ma'am.

23 All right. Mr. Brown, you understand this is a PCR
24 matter and I do not have any authority to reduce your
25 sentence or anything like that. The only thing I can do is

1 grant your PCR relief. And, if that is done, then it goes
2 back down and basically starts over.

3 So, if it happens, if I were to grant that motion and
4 it goes back down, you can -- you'd be tried and you could
5 receive a greater sentence than you already have. It looks
6 like you got 16 years and then you got some five year
7 concurrent sentences.

8 Is that your understanding?

9 THE APPLICANT: Yes, sir.

10 THE COURT: Now, do you understand, again, that if it
11 goes back down, if I were to grant it, you face the
12 potential of receiving a greater sentence?

13 Do you understand that?

14 THE APPLICANT: Yes, sir.

15 THE COURT: Understanding all that, do you want to go
16 forward with this PCR today?

17 THE APPLICANT: Absolutely.

18 THE COURT: All right.

19 All right. Yes, sir.

20 MR. LIFSEY: Thank you, Your Honor.

21 I did file a -- I want to ask if the Court has an, an
22 amended application on his behalf?

23 THE COURT: I've got it.

24 MR. LIFSEY: Thank you, judge.

25 I'd call Levy Brown to the stand please.

1 I went to trial for.

2 Q. All right. Well, I want to -- let's talk a little bit
3 about that background. There were charges -- there was a
4 charge that you went and had a jury trial on.

5 Is that correct?

6 A. Yes, sir.

7 Q. What was that charge for?

8 A. Armed robbery.

9 Q. And what -- you were found guilty by the jury.

10 Is that right?

11 A. Correct.

12 Q. And what were you sentenced to on that?

13 A. Sixteen years.

14 Q. All right. You have filed -- did you file an appeal of
15 that case?

16 A. A direct appeal right away.

17 Q. As far as you know, is that appeal still pending?

18 A. Yes, sir.

19 Q. All right. So this PCR that you're here today on
20 doesn't concern that case---

21 A. Not at all.

22 Q. ---directly.

23 Okay. Is that right?

24 A. Yes, sir.

25 Q. All right. You pled guilty to some other charges that

1 you have filed PCR on.

2 Is that correct?

3 A. Yes, sir.

4 Q. All right. Who was your lawyer?

5 A. Ms. Melissa Duque over there.

6 Q. All right. Was Ms. Duque your lawyer for the trial
7 case as well?

8 A. Everything in one.

9 Q. All right. So you had a trial with Ms. Duque
10 representing you.

11 Is that right?

12 A. Yes, sir.

13 Q. And after the trial you filed an appeal, correct?

14 A. Yes, sir.

15 Q. All right. What did Ms. Duque tell you about the
16 chances on appeal or what do you think about that?

17 A. She says as long as we reserve it on the record, that,
18 you know, it would be up to the appellate judges and them.
19 But they would handle it as long as, you know, she reserved
20 everything on the record right then and there, the, the
21 problems that I had with my case that I was saying.

22 Q. All right.

23 A. But I know it was gon' take some time for me to get it,
24 it appealed. But I know I have a possibility of getting it
25 appealed.

1 Q. Okay. All right. So, later on -- how much later did
2 you plead guilty to the charges that your PCR's about today?

3 A. Like two months and some change. It was right away
4 when they got me right back in court.

5 Q. I got you.

6 Tell us about Ms. Duque's representation of you in that
7 regard.

8 A. I didn't -- well, she just told me I had court and
9 pretty much I came here. I was like over there in the
10 witness box. She came and told me what I was being offered.

11 She kind of like a rush, rush. Wasn't really thinking.
12 I asked her a few questions. You know, I honestly
13 thought -- I said it would help my codefendant and it
14 didn't. I mean it's like I -- I don't know, somewhere in my
15 mind, it's like I, I thought I was -- that was a part of the
16 deal or I was promised that. Like I don't know if I
17 misinterperated (phonetic) it.

18 But -- and then like with the 16 years, from my
19 understanding, I, I know that she told me that Mullen said
20 it would be a zero cap, from zero to 16. I'm not gon' get
21 no more than I already have. But I figured that she would
22 at least try to negotiate the, the cap like, cause if I get
23 my appeal right now, it's, it's, it's, it's no reason for me
24 to even go with my direct appeal. I got 16 years for
25 another charge.

1 Q. All right. Well, let's sort of take these issues one
2 at a time.

3 How many times did you and your lawyer meet to discuss
4 these charges, the PCR -- I'm gonna call them, for, for lack
5 of a better word, the PCR charges.

6 How, how, how much did y'all -- how long did y'all --
7 how many times did you discuss that?

8 A. One time on July 29th, the day of the plea, in the
9 jury box.

10 Q. What -- you had met with her on other occasions.
11 Is that right?

12 A. Yes. But that was for different charges. We never
13 discussed the plea or anything about those. We were taking
14 them one at a time.

15 Q. Okay. So, your other meetings then concerned the trial
16 case?

17 A. That, that was our main focus.

18 Q. Okay. Do you believe you had an adequate or enough
19 discussions with her about these PCR cases?

20 A. No, I wish I would of got some more time to be able to
21 sit and think about my decisions before I made them so fast.

22 Q. If, if you had had more time, do you -- would you have
23 gone to trial or would you have entered a plea?

24 A. I might of actually went to trial to be honest with
25 you. It's a -- it was a -- it's a lot of details and

1 investigation in my case that I feel like I already had
2 time.

3 So, what's the point of investigating as much as you
4 should?

5 Q. All right. Let's talk about what the plea offer was.
6 Was it, was it a negotiated 16?

7 Was it a cap of 16?

8 What was your---

9 A. It---

10 Q. ---understanding of the plea offer?

11 A. I thought it was a cap, from zero to 16, basically
12 saying you could get zero. But you -- you not gon' get no
13 more than you already have. But I figured that she was
14 gonna negotiate and at least try to -- she like --.

15 Q. Did your lawyer, Ms. Duque, did she tell you she was
16 gonna -- what she was, she was gonna ask for or ask for less
17 or what did she --?

18 A. She didn't say exactly what she was gon' fight for.
19 But, you know, I mean she didn't say what she was gonna ask
20 for. But, from my understanding, I thought that she was
21 gonna at least try to negotiate it down some.

22 Q. If you had known that she was gonna go along with the
23 16, would you have pled guilty or would you have asked for
24 the jury trial?

25 A. I would of asked for a jury trial.

1 Q. All right. Let's -- you mentioned the appeal.

2 You already had a 16 year sentence?

3 A. Yes, sir.

4 Q. Which you believe you have a potentially meritorious
5 appeal?

6 A. Yes, sir, I got the victim circumstantial evidence for
7 like of some stuff allowed in my trial that shouldn't of
8 been.

9 Q. Okay. Well, I mean what does this 16 year sentence do
10 to your appeal?

11 A. It makes it where it's no point of an appeal.

12 Q. In other words, do you -- even if you were to succeed
13 on your pending appeal --?

14 A. I still got to serve the same sentence.

15 Q. That's correct.

16 Did your lawyer explain all that to you?

17 A. No, sir.

18 Q. If you -- your lawyer had explained all that to you,
19 would you have pled guilty or would you have insisted on
20 having a jury trial?

21 A. I would of insisted on a jury trial.

22 Q. Are there any other complaints you want to raise, since
23 you're on the witness stand now, about the way Ms. Duque
24 represented you?

25 A. I just have one other problem. Like when I had asked

1 her about my co -- which she, she did say that's not her
2 client, that, you know, she couldn't -- but she said if you
3 get it on the record, I'll be able to take it to my -- her
4 coworker and her charges would be dropped. So, in so many
5 words, and from my understanding, I took that plea, I was
6 thinking that my codefendant charges being dropped.

7 I mean this a woman that was in the wrong place at the
8 wrong time in a hotel room and she literally paying a
9 hundred dollars a week on an ankle monitor for something she
10 has nothing to do about at all.

11 Q. Anything else?

12 A. That's about it. Like I really rushed into taking the
13 plea. I didn't think about and I was doing it to help
14 someone else instead of the truth like.

15 Q. Would you have---

16 A. If they would of---

17 Q. ---needed help to get you another lawyer to talk to you
18 about these different charges?

19 A. That, that could of helped someone else to give me a
20 second opinion. And especially they'd of got to look at
21 they camera and saw so many different people going inside a
22 hotel room that's, that's not in my name. It's not my room.
23 I'm not responsible for what's in there.

24 Q. Okay.

25 All right. Your Honor, I don't have any further

1 questions if he wants to ask---

2 THE COURT: All right. Cross-examination.

3 MS. MIMS: Briefly, Your Honor.

4 I beg the Court's indulgence a bit. I'm sorry.

5 THE COURT: All right.

6 CROSS-EXAMINATION

7 BY MS. MIMS:

8 Q. Good morning, Mr. Brown.

9 How you doing?

10 A. How you do?

11 Good morning.

12 Q. I feel good.

13 So, you testified that Ms. Duque represented you on a
14 different charge before these charges, correct?

15 A. Yes, ma'am.

16 Q. And you went to a jury trial on that one, correct?

17 A. Correct.

18 Q. And was it your testimony earlier that you took the
19 plea -- you decided to take the plea deal to help out your
20 codefendant?

21 A. It had something to do with it, correct. I was already
22 serving 16 years. I didn't figure taking more charges was
23 gonna do me any worse than it already was. But she's still
24 charged and then it's like -- it, it also was my
25 understanding that I wasn't necessarily getting 16 years.

1 I mean that was never part of the agreement that you
2 gonna get the sentence you already have and what's the point
3 when we just went to trial. She helped me file a direct
4 appeal to give my time back. That's like voiding what you
5 just did.

6 what's the point of doing that?

7 Q. Right.

8 A. It's no point of, of getting a, a, a appeal and I
9 said -- that wasn't explained to me like the decisions you
10 fixing to make right now is fixing to affect what you
11 already got planned. So, I'm not gonna stop fighting any of
12 my cases. That's why I took the first charge to trial. I
13 would of took the second ones to trial.

14 Q. Okay. So, you took the first charge -- you took the
15 first case, the armed robbery case, to trial. You filed a
16 direct appeal. You testified earlier that that direct
17 appeal is still pending.

18 Correct?

19 A. Correct.

20 Q. And you haven't withdrawn that appeal, correct?

21 A. I'm not going to.

22 Q. Okay. And the, the plea that you -- you've entered
23 into, it -- you testified it was your decision to take that
24 plea, correct?

25 A. From my understanding, the plea that I took is not the

1 one that I received.

2 Q. Can you help me understand that?

3 A. Well, for one, I was told that it was gonna be an open
4 plea, that she was gonna -- she was gonna negotiate for what
5 I'm -- why -- I'm your client. You should try to get me
6 less. That was never done.

7 Two, I was told, once I put it on the record, and she
8 get back to her office and let her co-worker know, my
9 codefendant's charges will be dropped. From my
10 understanding, her charges would have been dropped. I was
11 helping someone out that was innocent in the wrong place at
12 the wrong time.

13 Q. Okay. So --.

14 A. And if I -- if that wasn't in my mind or, or, or that's
15 what was going on, I would of never pled out. Like I
16 literally got offered this plea within two minutes of being
17 in here and was standing where you standing within two
18 minutes. In all, all reality, I just got 16 years not even
19 60 days ago. I just want to go back and be left alone,
20 ma'am. My dad just died.

21 Q. Okay. Let me, let me just -- let's, let's go back.

22 So you said that you took the -- you, you said that
23 you---

24 A. I agreed---

25 Q. ---there was no, there was no further negotiation from

1 Ms. Duque or, from your understanding, there was no further
2 negotiation?

3 A. I was standing right there. She just agreed to
4 whatever the solicitor agreed to.

5 Q. Did you ever have any conversations about her
6 negotiation before you got to the plea?

7 A. I mean I pretty much was right there. I was like --
8 she said I'm gonna try to get you the best that I can get
9 you.

10 Q. Okay.

11 A. That, that -- that's, that's assurances that, whatever
12 the lowest you can get, you gonna go for if you gonna try to
13 get me the best that you can get me.

14 Q. Okay. And did you understand that this was a
15 recommended sentence?

16 A. No, I, I did not.

17 MS. MIMS: Okay. I beg the Court's indulgence.

18 (Pause.)

19 Q. And, you know, do you recall telling Judge Mullen that
20 you were satisfied with your lawyer's representation?

21 A. I'm gon' be honest with you, I was still kind of in a
22 shock. I was just agreeing, going through the motions.

23 Like I was hearing her but I wasn't hearing her. I was just
24 yes, ma'am, yeah. If you record the, the -- whatever -- the
25 transcript, I just was agreeing just to agree to get out of

1 here. Like my mind was somewhere else. I wasn't thinking
2 about my actions or what -- I didn't even get time to think
3 about it.

4 If someone was to offer you a plea, you wouldn't want a
5 day or two to think on it?

6 Q. I, I can't answer that question. I've never been in
7 that situation.

8 And do you recall telling the judge that no one had
9 threatened or pressured you or made you come forward to
10 plead to those charges that day?

11 A. Not no one threatened me or nothing like that. I
12 just---

13 Q. Threatened or promised.

14 A. I mean not necessarily promised. But, like I said, in
15 so many words where you told me that, once I plead and I get
16 it on the record, my codefendant will be set free. So, in
17 my eyes, I'm pleading to help an innocent person. I mean --.

18 Q. Okay.

19 A. So --

20 Q. So it was your decision to plead guilty to help the
21 innocent person?

22 A. If that was a part of the deal I was gonna plead to it.
23 That wasn't the deal. That's not what I got.

24 In so many words, if, if, if I wasn't gonna get this, I
25 would have rather went to trial cause now I'm pleading to

1 things that I really have nothing to do with it. I'm just
2 doing it for someone else because I already have time.

3 Q. And not pleading because you were actually guilty?

4 A. Exactly.

5 Q. Okay. Do you recall telling Judge Mullen that you
6 were, in fact, guilty?

7 A. Yeah, I was told to do that on the stand for my
8 codefendant.

9 Q. And who told you---

10 A. Put it on the record.

11 Q. ---to do so?

12 A. Ms., Ms. Melissa Duque said get it on the record that
13 everything in the room was yours so I can give it to my
14 coworker for your, for your, for your codefendant.

15 Q. So, is it your testimony that Ms. Duque told you to
16 plead guilty for your codefendant?

17 A. She told me to put it on record.

18 Q. But did she tell you to plead guilty for your
19 codefendant?

20 A. Pleading guilty would get my codefendant charges
21 dropped. That's where -- that was from my understanding.

22 Q. That was your understanding but y'all had a con -- did
23 y'all have a conversation where she told that to you?

24 A. In so many word, yes, ma'am.

25 Q. What do you mean by in so many words?

1 Did she tell you---

2 A. I mean I just told you the whole story. It was right
3 there for two to five minutes, right where he sitting at.
4 First she told me that. Then I asked her about my
5 codefendant. She said I'm not her lawyer. But what I will
6 do, if you get it on record that everything in the room was
7 yours and you're guilty, I'll get it to my coworker and her
8 charges will be dropped.

9 Q. Okay. And you didn't---

10 A. That's, that's, that's what my mind and my ears heard.

11 Q. Okay. And so when Judge Mullen asked you had anyone
12 promised you anything, you didn't want to place that on the
13 record?

14 A. I just was agreeing trying to get up out of there. To
15 be honest with you, I don't, I don't -- judges made me
16 nervous. Courtrooms make me nervous. I just had got 16
17 years the last time I was in a courtroom. I really didn't
18 want to be there. I was just going through the motions. I
19 lost a parent my second day there. Like I still was not in
20 me right mindset.

21 Q. You testified a little bit on that you only met with
22 your attorney one time prior to this plea.

23 Is that your testimony?

24 A. Yes.

25 Q. Okay. So you never met with---

1 A. I only met her that day of the plea. The same day like
2 how we in the courtroom right now, she met me right over
3 there in the box. She told me -- I didn't have enough time
4 to really think about it. I wish I would of got at least a
5 day. But within five minutes, I pled out. I'm thinking I'm
6 helping somebody. It's not affecting me any other way. I
7 still got the time that I do have.

8 Q. And so did you ever discuss the rights that you would
9 be getting up -- giving up for a plea?

10 Such as the right---

11 A. Not that I recall.

12 Q. ---to a jury trial?

13 A. Not that I recall.

14 Q. Okay. And did you give your attorney any leads on
15 witnesses to investigate if you were to take this to trial?

16 A. Before I got to my first trial, we was -- I was in the
17 middle explaining what happened and pretty much she was woa,
18 woa, woa, we gon' take it one case at a time. We didn't get
19 to that case yet.

20 So, when I got done going to trial, we never even got
21 to that case. It was already Mullen's offered you a plea.
22 when you get here, we'll discuss the plea.

23 I get to the courtroom. I got offered me maybe two to
24 five minutes. Within a minute or two after that I'm
25 standing where you standing at. I wish I'd of had more time

1 to think.

2 MS. MIMS: Okay. I beg the Court's indulgence.

3 (Pause.)

4 Q. Now, I just want to reiterate or bring up to you again
5 in the transcript that you reiterated for Judge Mullen two
6 times or do you remember re -- reiterating for Judge Mullen
7 twice that you were satisfied with the services from Ms.
8 Duque?

9 A. I say I was just going through the motions. As far as
10 I'm concerned, my codefendant drop -- I promises -- I'm
11 understanding now.

12 My codefendant charges about to be dropped, and to be
13 honest, quite honest, I didn't really -- cause she didn't
14 call like one sentence. She went on each charge and called
15 out a certain sentence. So, I wasn't really listening or
16 hearing what she saying. But I am noticing like okay, I got
17 five years of that, that.

18 But I didn't realize those were the maxes. You know
19 what I mean?

20 And I didn't even realize I still got -- I didn't even
21 realize I had 16 years along with my 16 years until I got
22 back in my cell in Columbia and went through my paperwork.

23 MS. MIMS: I beg the Court's indulgence.

24 (Pause.)

25 MS. MIMS: No further questions, Your Honor.

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Levy Brown - Redirect examination
By Mr. Lifsey

1 THE COURT: All right. Any redirect?

2 MR. LIFSEY: Just very, very briefly.

3 REDIRECT EXAMINATION

4 BY MR. LIFSEY:

5 Q. The solicitor asked -- I mean excuse me.

6 The attorney general asked you about how many times you
7 met with your lawyer and you said once.

8 Are, are you -- you're not saying that's the only time
9 you'd ever met---

10 A. No.

11 Q. ---Ms. Duque?

12 A. No, I'm not saying like. Like before I took that plea,
13 how many times I met her in person and discussed the, the
14 plea bargain, that was that one time right there in the
15 courtroom.

16 Q. So you're saying you only discussed what I'm calling
17 the PCR charges one time?

18 A. Yes, sir.

19 MR. LIFSEY: I don't have anything further.

20 THE COURT: All right. Any recross?

21 MS. MIMS: Nothing further from the State.

22 THE COURT: All right. You may step down.

23 THE WITNESS: Thank you.

24 THE COURT: All right. Next witness.

25 MR. LIFSEY: Your Honor, we don't have anything else.

1 THE COURT: All right. Anything from the State?

2 MS. MIMS: Yes, Your Honor.

3 The State will call Melissa Duque.

4 THE COURT: All right.

5 MS. MIMS: I'll take this from me.

6 MELISSA DUQUE, being first duly
7 sworn, testified as follows:

8 THE CLERK: You may go up to the witness stand.

9 DIRECT EXAMINATION

10 BY MS. MIMS:

11 Q. Good morning, Ms. Duque.

12 How are you doing?

13 A. Good morning.

14 Q. How long have you been practicing law?

15 A. I've been practicing law for about four years.

16 Q. Okay. And how much of that was criminal law?

17 A. Three years.

18 Q. Okay. And you were appointed to represent applicant?

19 A. So, the Public Defender's Office was appointed to
20 rep -- to represent Mr. Brown some time in 2018 when he
21 picked up his first armed robbery charge. That case was
22 assigned to Ms. Courtney Gibbs in the office and, in October
23 of 2020, that case -- Mr. Brown's cases were transferred to
24 me.

25 Q. Okay.

1 A. And that's how I ended up representing Mr., Mr. Brown.

2 Q. Okay. So you weren't the original attorney in those
3 cases?

4 A. I was not.

5 Q. Okay. How many times did you meet with applicant in
6 your course of representation?

7 A. Several times.

8 When I was assigned to this case in October of 2020, I
9 initially met with Mr. Brown and all of the other clients
10 that were assigned to me on November of 2020 and I -- that
11 was my -- that one meeting was me introducing myself to
12 them, letting them know that Ms., Ms. Gibbs was no longer
13 going to be their attorney, that I am gonna be taking over
14 this case.

15 And I introduced myself and I told them that I was
16 gonna -- not just my -- those clients, but Mr. Brown, that I
17 will get myself up to speed as to what's happening in his
18 case and I come back to the detention center and discuss the
19 case with them.

20 Then I recall meeting again. When the case got
21 indicted in December, I went back to the detention center to
22 inform Mr. Brown that his cases that he had picked up on
23 2020 had really been -- originally -- had been indicted and
24 now are in the General Court session officially. And when I
25 had that meeting with him, I recall, and it, it was my

1 practice, to always write in the indictment how much each
2 charge carries and everything else. And I went there during
3 that one meeting and I explained that the charges were
4 officially indicted and this is how much each charge
5 carries, from the minimum to the max.

6 And because I wasn't sure if Ms. Gibbs had already
7 provided discovery to Mr. Cole (sic), I had my investigator
8 again bring everything to disk, send them to the detention
9 center for Mr., Mr. Brown to have, and I met with him
10 afterwards and discussed every single one of those cases.
11 Not only that was prior to me and going over the discovery
12 in all of the cases, he did meet -- he did tell me, on the
13 cases that he picked up on 2020, I had a to do list.

14 So the, the person in one of the armed robberies that
15 was later dismissed that he had picked up, apparently the
16 victim in that case wanted the case to be dropped. So, he
17 provided me with the name -- the number of his codefendant,
18 Ms. Oran (phonetic), so that my investigator can get a hold
19 of her so that we can get a number of the victim in the
20 armed robbery to get a drop slip from that victim.

21 And then when -- he also explained to me about the
22 charge that he picked up in the detention center. He
23 explained to me that he had gotten maced because they were
24 making him bunk with someone who he didn't get along with.
25 And he ended up getting maced and essentially that he didn't

1 actually spit on the officer. But it was a reaction of the
2 mace. And, for that case, I went ahead and requested all of
3 the records from the Beaufort County Detention Center.

4 Q. Okay. So, did you receive discovery -- you received
5 discovery pursuant to what applicant is kind of classified
6 as the PCR charges, correct?

7 A. I received discovery for all of his cases, and,
8 everything that I received from the Solicitor's Office, I
9 burn to a disk. Not myself. But my investigator that
10 was -- I asked for him to burn it to a disk so I provide --
11 and provide a copy of all of the discovery to Mr. Brown.

12 And, unfortunately, at that time because it was during
13 that COVID period, I couldn't come to the detention center
14 with my computer and go through everything with him
15 face-to-face. And what the detention center was doing was
16 that they had like a computer set up for them to review the
17 discovery, which I did, and Mr. Brown called me several
18 times to follow-up hey, did you send me the discovery, which
19 I did, which I did send and my, my investigator actually
20 brought it to the detention center for him to review.

21 And I recall, just from re -- from reviewing my notes,
22 that I met with Mr. Brown and we talked about all of his
23 cases because, after that time, there was no court here in
24 Beaufort. So we didn't know that the armed robbery from
25 2018 was gonna be up for trial in April up until like some

1 time in March. But we had -- we met several times.

2 Q. Okay.

3 A. And we spoke more than once.

4 Q. Okay. And can you talk a little bit about the plea
5 negotiations?

6 A. So -- and I just want to make, make sure that we, we
7 get that clarify that, here in the Fourteenth Circuit, the
8 solicitor Office had made it very clear that there was no
9 plea deals for anyone. Once you get charged with -- once
10 your case is indicted, and there was no reducing it to
11 anything, and the recommendation that you get, when the,
12 when the solicitor indicts the case and they give a
13 recommendation, that was gonna be your recommendation should
14 the -- should you decide to plea or should you decide to go
15 to trial.

16 There, there -- they weren't listening to hey, can we
17 reduce this to common law armed robbery. Nothing. They're,
18 they're -- that, that wasn't happening here -- that's not
19 happening here in this circuit unfortunately.

20 And when the armed robbery was put on the trial docket,
21 I explained that to Mr. Brown that, you know, if you plea or
22 if you go to trial, the recommendation is gonna be the same.
23 So, we might as well try it.

24 And whenever this other cases came up, I explained the
25 same to Mr. Brown. We didn't have to -- he didn't have to

1 plea. He had a right to go to trial just like we try his
2 armed robbery.

3 Now, regards to this case, on May of 2021 in this very
4 same courtroom, we had a docket call with Judge Mullen and
5 it was all the solicitors, all the public defenders. We
6 were sitting here and we were going through the entire
7 docket for Beaufort to see if maybe we can get a Solicitor's
8 Office to come up with some sort of deal, which didn't
9 happen.

10 And when we got to Mr. Brown's case, Judge Mullen, we
11 reminded her this is the case that we tried in April that
12 Your Honor sentenced to 16 years. And, at that point, Judge
13 Mullen said Melissa, if you want to speak with your client.
14 Let him know that if he decides to plea, I will not sentence
15 him to anything more than what I have already sentenced him.

16 The State wasn't gonna change his recommendation from
17 what they had already recommended, 16 years. They weren't,
18 they weren't -- there, there was no persuading the State to
19 can we do this instead, can you reduce this to this charge.
20 There, there -- once you're indicted, you plead to that or
21 you go to trial to that.

22 Q. Let me ask -- let me stop you and ask you a question.

23 So was there ever any discussion with your client that
24 it would be zero to 16 years?

25 A. No, no, no, no, no.

1 So, after we had that call, I made arrangements so that
2 I -- that meeting here. I made arrangements with the
3 facility, SCDC, I want to say it was Kirkland, I made
4 arrangements so that I can have a call with Mr. Brown and we
5 spoke on the phone more than once. And I inform him hey, we
6 had a, a meeting with Judge Mullen today regarding the
7 pending cases. The State is making this recommendation, 16
8 years. They're not. That's it. And Judge Mullen wanted me
9 to let you know that, if you decide to plea, she's not gonna
10 sentence you to anything over what she already sentenced you
11 to.

12 Then he was suppose to recall -- be brought down from
13 SCDC on the June term of court and, for some reason, he
14 may -- he did -- his name didn't make it to the list of
15 matters and I don't think SCDC knew about bringing him over
16 and he didn't come down that what -- that -- at that point
17 at which point I realized that. And I don't recall whether
18 I set up the call for him to -- for me to call him or if he
19 called me from SCDC and I explained to him that his name
20 didn't make it to the list of matter, which is why they
21 didn't bring him down in June. And he ended up coming down
22 the next term of court.

23 And during one of those calls, I want to say it was the
24 first one after we met with Judge Mullen, that he, he told
25 me that he wanted to write a statement pretty much taking

1 blame for all of the drug charges so that his codefendant
2 wouldn't be essentially prosecuted for those charges. And I
3 remember saying to him that I wasn't -- I am not -- I wasn't
4 the attorney for that person and I personally didn't
5 recommend for him to do that.

6 I didn't even -- when Mr. Brown pled and got on the
7 record and he asked Judge Mullen can I say something real
8 quick, and he went on and pretty much took blame for all of
9 the drug charges, I wasn't expecting that to happen.

10 Q. And so -- and that wasn't -- and that was a surprise to
11 the solicitor's office?

12 A. That was a surprise to me. And if, if had -- if I had
13 known that he -- that wanted to do -- that was gon' happen,
14 I was gonna -- I would have let the solicitor know that he
15 wanted to do that because I didn't want him to write no
16 statement taking the -- all the blame for himself.

17 Then when he got on the record and said that, I
18 remember Mr. Shedd -- Judge Mullen asked if he was ready to
19 take his statement and Mr. Shedd was not prepared to pretty
20 much proffer his testimony either. Like it -- that caught
21 me by surprise cause I don't recall at any point saying to
22 Mr. Brown just put it on the record.

23 Q. All right. So you, you weren't aware that any
24 statement was gonna be put on the record?

25 You never had any discussions about that, correct?

1 A. No.

2 Q. All right. And did you ever promise Mr. Brown that you
3 would, you know, give any statement to the, the attorney for
4 the codefendant?

5 A. No.

6 Q. And was it always Mr. Brown's idea to plead guilty?

7 A. When he came down here in -- I, I explained to him, and
8 you can see on the sentencing sheet, it would -- it's
9 practice here in the Fourteenth that we write what each
10 charge carries. And not only did I say -- explain that to
11 him when we first got indicted, but when he was getting
12 ready to plea, I told him you don't have to plead to any of
13 these cases if you don't want to. We can go to trial like
14 we tried the armed robbery.

15 And that day that we pled, there was a prisoner, the
16 throwing bodily fluids charge, that he said I'm not pleading
17 to that and he didn't plead to that. And we -- I gave the
18 sentencing back to the solicitor and he didn't plea to that.
19 And --.

20 Q. So, he knew that it was essentially an option to plead
21 guilty or to go to trial?

22 A. Yes. Because we -- I -- when we tried the armed
23 robbery, I explained that to him for all of his cases. We
24 can -- if the recommendation was gonna be the same, if you
25 decide to plead guilty, and you -- or if you go to trial,

1 and the recommendation of the State is gonna be the same, we
2 might as well try them all.

3 Q. Let me ask you a little bit about applicant's
4 allegation regarding his appeal.

5 You filed a direct appeal on the armed robbery on his
6 behalf?

7 A. That is correct.

8 So, after he was found guilty of armed robbery, we file
9 an appeal I think like within the next week. And after I
10 file that appeal, I let Mr. Brown know that I have filed the
11 appeal based on my objections throughout his trial and that
12 was pretty much why I -- what I told Mr. Brown.

13 MS. MIMS: I beg the Court's indulgence.

14 (Pause.)

15 Q. And if applicant had asked you to take this case to
16 trial, would you have been prepared to go to trial?

17 A. Yes, I would of tried them too.

18 Q. And I just want to make sure I'm -- clarify for the
19 record.

20 You did explain to him the nature of what the
21 recommended, the recommended sentence would be, correct?

22 A. Yes, I did. I explained that to him. I explained that
23 each charge -- what, what each charge carried and what he
24 was looking if he was to plead -- he pled guilty or be found
25 guilty, if you were to be sentenced concurrent, and if you,

1 you were to be sentenced consecutively, the total amount
2 that you will be facing.

3 Q. And did you agree with client's decision to plead
4 guilty?

5 A. I did.

6 Q. Okay. And to -- and to this day do you stand by the
7 counsel that you provided?

8 A. I do.

9 Q. And let's jump back to the State's evidence regarding
10 these, I guess, like I said, the PCR charges---

11 A. Yes, ma'am.

12 Q. ---we're calling them today.

13 Did you have any defenses or conceive any defenses
14 based on those charges?

15 A. So, for the drug charges, I would of questioned the
16 legality of the search and would of moved to get the drugs
17 out because of maybe a legality of the search warrant and
18 the fact that the officer went in the, in the room without a
19 warrant. I would of moved to suppress the drugs for that
20 reason and the legality of the search.

21 Q. And you didn't do so because --?

22 A. I didn't do so because Mr. Brown wanted to plead. See
23 I explained to him, when we were here in the other
24 courtroom, that we could try the cases if he wanted to. I
25 was here for that.

Melissa Duque - Direct examination
By Ms. Mims

1 Q. And did you have any discussion with Mr. Brown
2 regarding his guilty plea and any appellate possibility?

3 A. No.

4 Q. All right. And you didn't file an appeal on that -- on
5 his behalf?

6 A. Excuse me?

7 Q. He didn't -- you didn't file an, an appeal on his
8 behalf regarding -- after the plea?

9 A. No.

10 Q. Okay. And he -- did he ask you to do so?

11 A. No, ma'am.

12 MS. MIMS: Okay. No further questions at this time,
13 Your Honor.

14 THE COURT: All right. Cross.

15 CROSS-EXAMINATION

16 BY MR. LIFSEY:

17 Q. I want to get -- make sure I've got the timeline
18 correct.

19 You were appointed on all -- to, to represent our
20 client when?

21 A. So I got this case -- his cases on October of 2020.

22 Q. October of 2020.

23 He goes to trial on the armed robbery when?

24 A. In April of 2021.

25 Q. And then he ends up convicted in April of 2021?

1 A. Correct.

2 Q. And then enters the plea in -- on these charges in
3 July?

4 A. Correct.

5 Q. Do you believe that was a sufficient time period to
6 prepare for these cases?

7 A. Well, prior to when I -- as soon as I got all of his
8 cases, I went through all of the discovery on all of those
9 cases and I met with Mr. Brown and we discussed each and
10 every single one of those cases. And I had a to do list of
11 you need to meet with this -- you need to find this person.
12 This person wants to drop charges. We need to get the
13 evidence from the, the detention center. So we had time to
14 discuss all of those case.

15 Now, once the April case got put on the trial docket,
16 we shift gears and worked, worked on that case. But all of
17 his cases, as soon as I got the cases, all of those cases I
18 was working on.

19 Q. How many times did you meet with him face-to-face?

20 A. Jesus Christ. Probably over 10 times. If you pull up
21 the Beaufort County Detention Center records, I met with
22 Mr. Brown a lot of times.

23 Q. Do you, do you have notes indicating when those
24 meetings were?

25 A. I -- so I know that some of the notes are in defender

1 data and some of the notes are in the actual paper file. In
2 the paper file you will probably find more meetings. The
3 ones that made it to defender, that as other ones where I
4 had to actually task my investigator I need to go do this,
5 this, and that.

6 But from what I recall from looking at my notes at --
7 in, in the system of the Public Defender's Office, I met
8 with Mr. Brown over five times.

9 Q. When did you review those notes?

10 A. I went there yesterday to review those notes.

11 Q. Correct me if I'm -- I'm, I'm trying to -- I think you
12 told the solicitor one of the reasons you went to trial on
13 the armed robbery was that the State had made no real offer.

14 A. So, the State wasn't gonna make any real offers. If
15 I'm -- I don't know if you're familiar. But Mr. Stone,
16 there's a whole video of Mr. Stone saying there is no plea
17 deals in the Fourteenth Circuit. Once you are indicted, you
18 either plead to that recommendation and there's no
19 reductions. You plea as indicted to the State
20 recommendation.

21 Q. I've, I've heard of that policy.

22 A. There -- I -- it is -- there's a whole video in his
23 social media website.

24 Q. Sure. Got you. I thought you -- and you said to the
25 solicitor, and I wrote this down, but tell me if I'm wrong,

1 that, because of that policy, we might as well go to trial
2 is what you told my client.

3 A. That is correct because if you, if you decide to plead
4 guilty, and the recommendation is gonna be 15, if we go to
5 trial, you can either get a not guilty or recommendation is
6 gonna be the same as if you decided to plead guilty.

7 Q. But if you went to trial on the armed robbery, we might
8 as well go to trial, why would that same logic not apply to
9 the remainder of the charges?

10 A. I was ready to try any one of those cases. But
11 Mr. Brown wanted to plead guilty. I -- because when I had
12 that call with him after we had the meeting with Judge
13 Mullen, he, he wanted to write a statement pretty much
14 taking all of the blame and leaving his codefendant -- so
15 that his codefendant charges will get dismissed.

16 Q. All right. As I understand this, I thought you
17 testified that Judge Mullen is the one who basically -- who
18 said, and I think your words were, I won't give him any more
19 time than he's already got?

20 A. That is correct. We were in this same -- very
21 courtroom when Judge Mullen made that -- to -- for me to let
22 him know that.

23 Q. Did -- Judge Mullen said -- and Judge Mullen was the
24 plea judge in this case, right?

25 A. Correct.

1 Q. If Judge Mullen said she wouldn't give him any more
2 than he got, why did you not ask for less than he got?

3 A. So, I believe that, when we were going through his
4 plea, I asked the judge to be lenient and I reminded her
5 that -- I asked her not to give her anything, anything more
6 than what she -- he had already been sentenced and I
7 reminded her that he had -- this is the -- the -- his case
8 was like the trial we had in April and that his father had
9 passed away right after that trial and that's what I did.

10 Q. Okay. I presume you conveyed or did you, did you
11 convey to the client Judge Mullen's promise to not give him
12 any more than he had already gotten?

13 A. That is correct.

14 So, when we had that meeting with Judge Mullen, it was
15 some time in the middle of May of 2021, I set up the call
16 within a few days after so that I can explain to him the
17 discussions that we had with the solicitor with your
18 small -- with Judge Mullen. So I did explain that to
19 Mr. Brown.

20 Q. When you explained to the client that Judge Mullen said
21 he would not -- she would give him any more than he had
22 already received, I mean don't you agree it's reasonable for
23 him to expect you to ask for less than he received?

24 A. That is -- that -- that's true.

25 Q. And, and at any point during the plea did you ever

1 explicitly ask Judge Mullen to give him five years, six
2 years, seven years, any number less than 16?

3 A. I don't recall.

4 Q. You said you filed an appeal of his armed robbery
5 conviction at his request, correct?

6 A. Correct.

7 Q. Did you discuss, at any point prior to him entering
8 this plea, the effect of any -- of, of the sentence on the
9 efficacy of the appeal, the usefulness of the appeal?

10 A. I don't believe we had that discussion.

11 Q. You would agree now that he is serving a 16 year
12 sentence on this PCR, that, unless the PCR is granted, the
13 appeal will have no effect on him, correct?

14 A. Perhaps. I mean --.

15 Q. What I'm saying is if he got granted an appeal
16 tomorrow, if his, if his appeal -- if his conviction was
17 reversed --

18 A. Uh-huh. (Affirmative).

19 Q. -- on the armed robbery, and the State said we're just
20 not gonna try him again, we're gonna dismiss the charges, it
21 doesn't make a day a difference to him on how long he
22 serves, does it?

23 A. No.

24 Q. Did you explain that to him at any point?

25 A. I don't believe I did.

1 MR. LIFSEY: Can I have just one moment, judge?

2 THE COURT: Yeah.

3 (Pause.)

4 MR. LIFSEY: I don't have any other questions, Your
5 Honor.

6 THE COURT: All right. Anything else?

7 MS. MIMS: Yes, Your Honor. Briefly.

8 REDIRECT EXAMINATION

9 BY MS. MIMS:

10 Q. I wanted to ask you a little bit about your
11 conversation with Judge Mullen.

12 A. Yes.

13 Q. Was Judge Mullen's promise not to give applicant more
14 than 16 years, was that, was that in exchange for a guilty
15 plea?

16 A. No, that was just me -- the way -- we were trying to
17 see how we can move cases and I explained the way that it
18 came about was Judge Mullen -- we reminded Judge Mullen that
19 this is the case that we tried in April, that she sentenced
20 him to 16 year, and she said if you get your client on the
21 phone and you explain to him that, if he decides to plead
22 guilty, I will not sentence him to anything more than 16
23 year because, by that time, the State wasn't, the State
24 wasn't making any offers.

25 Q. Okay. So, that -- so Judge Mullen conveyed to you to

1 convey to your client that if he pled guilty that she would
2 not give him more than 16 years?

3 A. Correct.

4 Q. So if, if he were to go to trial, even though the State
5 recommend 16 years, it was possible Judge Mullen could of
6 sentenced him higher?

7 A. Yeah.

8 Q. Okay. And as far as applicant, applicant wanted to
9 plead guilty, correct?

10 A. Yes. It -- when we were in the other courtroom, I
11 explained to him that we didn't have to -- he -- if he
12 didn't want to plead, he didn't have to. Like I made that
13 clear to him and any other my clients. We don't have to
14 plead guilty if you don't want. If you want to go to trial,
15 we go to trial.

16 Q. And it was his contention that he always -- that he
17 wanted to complete -- he wanted to plead guilty to the
18 charges?

19 A. He wanted to plead guilty and he wanted to write a
20 statement and he ultimately made a statement on the record.

21 MS. MIMS: No further questions, Your Honor.

22 THE COURT: All right. Anything else?

23 MR. LIFSEY: No, sir, Your Honor.

24 THE COURT: All right. You may step down. Thank you.

25 THE WITNESS: Thank you, Your Honor.

1 THE COURT: All right. Any other witnesses from the
2 State?

3 MS. MIMS: No, Your Honor. State rests.

4 THE COURT: All right. Anything else from either
5 party?

6 (WHEREUPON, there was no audible response.)

7 THE COURT: All right. I will take it under advisement
8 and I'll let you know my decision. Thank you both for your
9 arguments.

10 MS. MIMS: Thank you.

11

12 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

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2
3 I, Pamela E. Green, Official Court Reporter for the
4 State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate and complete Transcript of
6 Record of the proceedings had and evidence introduced in the
7 trial of the captioned case, relative to appeal, in the
8 Court of Common Pleas Nonjury for Beaufort County, South
9 Carolina, on the 16th day of November, 2023.

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

12
13
14
15 June 9th, 2023

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18 
19

20 PAMELA E. GREEN, Court Reporter
21
22
23
24
25

STATE OF SOUTH CAROLINA)
 COUNTY OF BEAUFORT)
 Levy L. Brown, SCDC #367857)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTEENTH
 JUDICIAL CIRCUIT
 Case No. 2022-CP-07-00507

ORDER OF DISMISSAL

2023 OCT -5 PM 12:35
 JERRI ANN ROSENEAU
 BEAUFORT COUNTY CLERK
 CLERK OF COURT, S.C.

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Levy L. Brown (Applicant) on March 25, 2022. An evidentiary hearing convened before the Honorable G.D. Morgan, Jr. Applicant was present and represented by Michael H. Lifsey, Esquire. Assistant Attorney General Lauren T. Mims represented Respondent. At the hearing, Applicant testified on his behalf. Respondent called as a witness plea counsel Melissa L. Duque. Following a thorough review of the records before the Court and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving an aggregate sixteen-year sentence. In December 2020, the Beaufort County Grand Jury indicted Applicant for manufacturing, distribution, etc., of cocaine base, first offense (2020-GS-07-717); trafficking in cocaine, ten to 28 grams (2020-GS-07-719); trafficking methamphetamine or cocaine base, 28 to 100 grams (2020-GS-07-721); manufacturing/distribution of Schedule I, II, III, Flunitrazepam, or controlled substance analogue (2020-GS-07-713); possession of a weapon during a violent crime (2020-GS-07-720); and pointing and presenting a firearm (2020-GS-7-681).

On July 29, 2021, Applicant pled guilty before the Honorable Carmen Mullen to possession with intent to distribute (PWID) marijuana on the manufacture of schedule I, II, II, flunitrazepam, or controlled substance charge; and as indicted on the remaining charges. Melissa L. Duque, Esquire represented Applicant, and Assistant Solicitor Jared Shedd represented the State. At the plea, the State recommended an aggregate sixteen-year sentence. Pursuant to the State's recommendation, Judge Mullen sentenced Applicant to concurrent sentences of sixteen years for trafficking 28 to 100 grams of methamphetamine; fifteen years for manufacturing / distribution of cocaine base; ten years' for trafficking ten to 28 grams of cocaine; five years for PWID marijuana; and five years for each of the weapon charges. Applicant did not appeal.

CURRENT APPLICATION

On March 25, 2022, Applicant timely commenced this PCR application. On October 31, 2022, Applicant filed an amended application alleging:

Ineffective assistance of counsel/involuntary guilty plea:

- a. Counsel did not meet with Applicant a sufficient number of times, fully explain the strengths and weaknesses of the State's case, or explain the elements of the charges.
- b. Counsel "informed Applicant that he was pleading to a cap of 16-years and that she would ask for less than 16 years. Despite so advising Applicant, plea counsel did not ask for less than 16 years but merely acquiesced to the State's request for a 16-year sentence."
- c. Prior to his plea, counsel previously represented Applicant on an unrelated trial for which Applicant received a 16-year sentence. Counsel filed an appeal and informed Applicant that he had potentially meritorious arguments on appeal. Despite this, plea counsel advised Applicant to enter a plea to these charges without advising him that the plea on these charges would effectively render his appeal moot. Pleas counsel also did not advise applicant that he should seek advice from independent counsel before entering his plea.

- d. Based on plea counsel's ineffective advice as described above, Applicant believed that he had no choice but to answer the Judge's questions during the plea colloquy in such a manner as would result in the Judge accepting the plea. Had plea counsel given effective representation in this regard, Applicant would not have entered a guilty plea and would have insisted on a jury trial.¹

At the hearing, Applicant proceeded on the allegations set forth in his amended application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Before this Court are the Beaufort County Clerk of Court records of the underlying conviction, Applicant's records from the South Carolina Department of Corrections; the plea transcript; and the records from this current application. This Court has had the opportunity to review the records in their entirety, and listen to the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRCPP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813. "The test for effective assistance of counsel is whether the representation was within the range of competence

¹ This Court construes this as a claim that his plea was involuntary due to ineffective assistance of counsel.

demanded of attorneys in criminal cases.” Watson v. State, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption to received relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness and (2) the applicant sustained prejudice as a result of counsel’s deficient performance. Strickland, 466 U.S. at 687–88; Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625. “A PCR applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial.” Dalton v. State, 376 S.C. 130, 136, 654 S.E.2d 870, 873 (Ct. App. 2007). To prove prejudice following a guilty plea, the applicant “must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Failure to meet a sufficient times / adequately advise

Applicant first alleges plea counsel was ineffective for failing to meet an adequate number of times, fully explain the strengths and weaknesses of the State’s case, or explain the elements of the charge. This Court finds Applicant has not met his burden of proof in this regard.

At the PCR hearing, Applicant testified he met with plea counsel once—the day of the plea. However, Applicant testified he had met with counsel on other occasions to discuss unrelated charges. He averred that had he spent more time with counsel, he would have proceeded to trial. Applicant testified he was rushed at the time of the plea, and he primarily pled to help his

co-defendant, whom he relayed was innocent. Applicant averred counsel should have investigated more. He explained several people were in and out of the hotel room, which was not in his name.

Plea counsel testified she was appointed October 2020 and met with Applicant over ten times and had her investigator meet with Applicant. Plea counsel summarized she initially met with Applicant shortly after she took over previous counsel's cases, which included Applicant's case. She recalled visiting Applicant to explain the charges and sentence each charge carried.

Plea counsel testified she received discovery and burned them into a disk for Applicant. She testified she went over the nature of charges and sentencing, as well as consequences of pleading guilty, the possibility of going to trial, and the recommended sentence. Counsel stated she would have challenged the legality of the search warrant and moved to suppress the drugs if Applicant proceeded to trial. Plea counsel testified Applicant did not wish to appeal his guilty plea and never expressed his interest in proceeding to trial.

This Court finds the foregoing testimony by counsel credible. This Court likewise finds not credible Applicant's assertion that he only met with counsel once—on the day of the plea. This Court further notes Applicant's representation to the plea judge that he was completely satisfied with plea counsel and that counsel had answered all his questions. (Plea 5); see Dalton v. State, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (Ct. App. 2007) ("[S]tatements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements."). Based on counsel's foregoing credible testimony, this Court finds counsel met with Applicant an adequate number of times and adequately advised him on the charges he faced. This Court finds counsel's advice was reasonable within prevailing professional norms and not deficient.

Moreover, this Court finds Applicant failed to identify precisely what plea counsel did not

explain or disclose to him from materials provided in discovery or what, if anything, could have been achieved had counsel spent more time with him. See Smith v. State, 404 S.C. 493, 500–501, 745 S.E.2d 378, 382 (Ct. App. 2012) (noting an applicant must present evidence to show how additional time spent in consultation regarding discovery would have resulted in a different outcome); see also Moody v. Polk, 408 F.3d 141, 148 (4th Cir. 2005) (“[T]here is no established ‘minimum number of meetings between counsel and client prior to trial necessary to prepare an attorney to provide effective assistance of counsel.’”). Accordingly, Applicant has failed to show deficiency or prejudice, and this claim is **DENIED**.

Failure to further negotiate plea offer

Applicant next contends counsel was ineffective for informing Applicant that he was pleading to a cap of sixteen years and that she would ask for less time, but failing to request less time at the plea hearing. This Court finds Applicant has not proved this claim.

At the PCR hearing, Applicant testified counsel told him he was pleading to a cap of sixteen years, and he would not receive more time than he was already serving for a different conviction (sixteen years). He testified, “But I figured that she would at least try to negotiate the, the cap.” Applicant stated he anticipated a shorter sentence. He explained he thought his plea would help an “innocent” co-defendant who was in the “wrong place at wrong time.” Applicant averred he would have proceeded to a jury trial had he known counsel would not negotiate the sentence. On cross-examination, he acknowledged that he understood this was an open plea.

Plea counsel testified the Solicitor’s Office made it clear there would be “no plea deals for anyone, no reducing it to anything, and the recommendation that you get, was gonna be your recommendation should you decide to plea or should you decide to go to trial.” Plea counsel testified she told Applicant the recommendation would be the same whether he went to trial or

pled guilty, and she advised him he had a right to trial. She stated she informed Applicant of the State's recommendation and explained the plea was not negotiable. Counsel denied telling Applicant that the sentencing range would be zero to sixteen years. However, she stated the judge had relayed to her that if Applicant pled guilty, he would not receive a sentence greater than what he already had on the other charge. Counsel testified Applicant wanted to accept responsibility for the drugs and confess on the record, although she advised him against it. Counsel maintained she would have been prepared for trial.

This Court finds the foregoing testimony by counsel credible, including testimony that she relayed to Applicant that the recommendation from the State would be the same whether he pled guilty or proceeded to trial. Ultimately, counsel could not compel the State to offer a better deal. Based on counsel's foregoing testimony, this Court finds counsel's negotiation of and advice regarding this plea was reasonable within prevailing professional norms and thus not deficient. This Court likewise finds Applicant has not shown prejudice. Specifically, Applicant testified at the PCR hearing that he ultimately pled guilty because he believed it would help co-defendants. This is consistent with his statement at the plea hearing, wherein he told the court, "I had co-defendants that got charged, too, and they had nothing to do with it. They weren't aware of what I had going on. I take credit for all the drug charges." (Tr. 6-7). In light of the foregoing, this Court finds not credible Applicant's testimony that he would not have pled had he known counsel would not negotiate a shorter sentence. Accordingly, Applicant did not meet his burden of proving prejudice, and this claim is **DENIED**.

Failure to advise accepting plea would render appeal moot.

Applicant contends counsel was ineffective for failure to advise him that accepting the recommended sentence for the drug charges would render his appeal moot on the trial charges of

armed robbery. Applicant likewise contends counsel was ineffective for not advising him to seek advice from another lawyer. This Court finds this allegation lacks merit.

At the evidentiary hearing, Applicant explained he had previously been convicted of armed robbery and was sentenced to sixteen years. He stated he believed that if he pled guilty, he would not receive more time than he already had. Applicant averred his direct appeal for the armed robbery charge was moot now that he had received a sixteen-year sentence for the guilty plea. Applicant also testified he did not realize he had received sixteen years along with an additional sixteen-year sentence until he got back to his cell and reviewed his paperwork.

Plea counsel testified that Applicant is serving a sixteen-year sentence for the drug charges. She stated she did not discuss the effect of the sentence on the pending appeal for an unrelated charge. However, counsel explained Applicant wanted to write a statement and plead guilty on the drug charges, that he ultimately made a statement confessing guilt at the plea. She reiterated she was prepared to proceed with trial.

This Court finds counsel's foregoing testimony credible, and counsel's advice and preparation of this case was reasonable within prevailing professional norms and thus not deficient. Initially, Applicant's direct appeal for an unrelated charge was not pertinent to his drug charges. The sentence he is serving for armed robbery is unrelated to his drug charges and has no legal effect on his pending direct appeal. Additionally, this Court finds it is not within the prevailing professional norms for criminal attorneys to advise clients to seek a second opinion; thus, counsel's failure to do so was not deficient. This Court likewise finds it is not reasonably likely Applicant would have obtained significantly different advice had he consulted with a different attorney because counsels' advice here was reasonably within prevailing professional norm. Finally, as noted, this Court finds Applicant ultimately pled because he believed it would assist a

co-defendant. Overall, Applicant did not prove deficiency or prejudice, and this claim is **DENIED**.

Involuntary Plea

Applicant contends that based on plea counsel's ineffective advice, he believed that he had no choice but to answer the judge's questions during the plea colloquy in such a manner as would result in the judge accepting the plea. He avers that had counsel given effective representation, Applicant would not have entered a guilty plea and would have insisted on a jury trial. This Court finds Applicant failed to meet his burden of proof.

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). "To be knowing and voluntary, a plea must be entered with an awareness of its consequences." Holland v. State, 322 S.C. 111, 113, 470 S.E.2d 378, 379 (1996). "To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him." Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007).

At the PCR hearing, Applicant explained at the time of his guilty plea, he was dealing with his father's passing and answered questions to get through and leave court. He testified he "was just agreeing, going through the motions." Applicant recalled stating at the plea hearing that no one had pressured or threatened him to enter guilty plea.

Initially, as discussed, this Court finds counsel's representation and advice was reasonable within prevailing professional norms and not deficient. This Court likewise finds Applicant ultimately pled guilty because he thought it would help a co-defendant if he accepted responsibility for the drugs.

Further, this Court finds Applicant failed to show his plea was involuntary. This Court finds credible counsel's testimony that she informed Applicant about his constitutional rights and consequences of pleading guilty. This Court finds not credible Applicant's testimony that he answered plea questions untruthfully because of counsel's ineffective representation. Further, the plea transcript itself supports a finding that Applicant was fully aware of the consequences of his plea, and thus pled guilty knowingly, voluntarily, freely, and intelligently. Specifically, Applicant told the plea court that he understood he was waiving his constitutional rights to a jury trial, and no one had promised him anything or threatened or forced him to plead guilty. (Plea 4-6). Likewise, Applicant relayed that he understood the sentences he faced. (Plea 5). Cf. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (“[S]tatements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements.”). This case presents a classic case of buyer's remorse. Ultimately, the evidence and testimony before this Court establishes Applicant discussed with counsel the consequences of taking the plea and pled guilty because he wanted to assist his co-defendant, who Applicant testified was innocent and at the wrong place at the wrong time. Based on the foregoing, this Court finds Applicant understood the consequences of pleading guilty and has failed to prove his plea was involuntary.

Conclusion

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

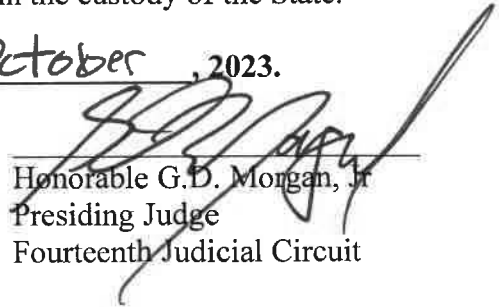
Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203,

SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRPC. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 2nd day of October, 2023.



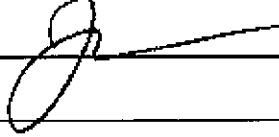
Honorable G.D. Morgan, Jr.
Presiding Judge
Fourteenth Judicial Circuit


_____, South Carolina

WITNESSES

PRPD

JEFF VORTISCH



ARREST WARRANT NUMBER

2020A0720400034

ACTION OF GRAND JURY

True Bill

Russell Young

Foreperson of Grand Jury

Date: DEC 17 2020

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2020GS0700713

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

December Term 2020

THE STATE

vs.

LEVY LARKIN BROWN

Indictment For

Manu., Dist., Etc. Schedule I, II, III,
Flunitrazepam, or Controlled
Substance Analogue

SC Code: 44-53-370(b)(2)

CDR Code: 0186

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

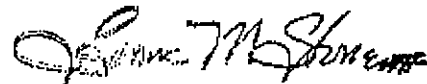
INDICTMENT
2020GS0700713

At a Court of General Sessions, convened on December 17th, 2020, the Grand Jurors of Beaufort County present upon their oath:

Manu. Dist., Etc., Schedule I, II, III, Flunitrazepam, or Controlled Substance Analogue

That in Beaufort County, South Carolina, on or about March 16, 2020, the Defendant, LEVY LARKIN BROWN, did manufacture, distribute, dispense, deliver, or purchase or aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase or possess with the intent to manufacture, distribute, dispense, deliver, or purchase Marijuana, which was a controlled substance classified in Schedule I, II, III, flunitrazepam, or a controlled substance analogue, all in violation of Section 44-53-370(b)(2), et al. of the Codes of Law of South Carolina.

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



Solicitor

THE BEAUFORT COUNTY

WITNESSES

PRPD

JEFF VORTSCH
[Signature]

DOCKET NO. 2020GS0700717

The State of South Carolina
County of Beaufort

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

December Term 2020

I
hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

2020A07204000396

THE STATE

vs.

LEVY LARKIN BROWN

ACTION OF GRAND JURY

True Bill

Indictment For

Manu., Dist., Etc.,
Methamphetamine, Cocaine Base,
and Ephedrine

SC Code: 44-53-375(B)(1)

CDR Code: 3014

Defendant

Russell Young
Foreperson of Grand Jury

Date: DEC 17 2020

Witness:

VERDICT

Foreperson of Petit Jury

Date:
INDICT

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

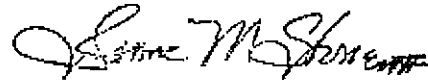
INDICTMENT
2020GS0700717

At a Court of General Sessions, convened on December 17th, 2020, the Grand Jurors of Beaufort County present upon their oath:

Manu., Dist., Etc., Methamphetamine, Cocaine Base, and Ephedrine

That in Beaufort County, South Carolina, on or about March 16, 2020, the Defendant, LEVY LARKIN BROWN, did manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with intent to distribute, dispense, or deliver cocaine or cocaine base, all in violation of Section 44-53-375(B)(1), et al. of the Codes of Law of South Carolina.

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



Solicitor

True Bill

WITNESSES

PRPD

JEFF VERTSCH



DOCKET NO. 2020GS0700719

The State of South Carolina
County of Beaufort

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

December Term 2020

I
hereby appear in my own proper person and plead guilty to the within indictment or to

THE STATE

vs.

LEVY LARKIN BROWN

ARREST WARRANT NUMBER

2020A0720400040

Indictment For

Trafficking In Cocaine, 10g or more,
but less than 28g

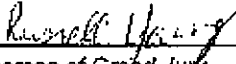
SC Code: 44-53-370(e)(2)(a)(1)

CDR Code: 0278

Defendant

ACTION OF GRAND JURY

True Bill



Foreperson of Grand Jury

Date: DEC 17 2020

Witness:

VERDICT

Foreperson of Petit Jury

Date:

INDICT

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

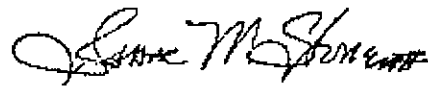
INDICTMENT
2020GS0700719

At a Court of General Sessions, convened on December 17th, 2020, the Grand Jurors of Beaufort County present upon their oath:

Trafficking in Cocaine, 10g or more, but less than 28g

That in Beaufort County, South Carolina, on or about March 16, 2020, the Defendant, LEVY LARKIN BROWN, did knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State or provide financial assistance to bring into this State or aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this state or actually or constructively possess or attempt to become in actual or constructive possession of ten grams or more, but less than twenty-eight grams of cocaine or a mixture containing cocaine, as provided in 44-53-210(b)(4), all in violation of Section 44-53-370(e)(2)(a)(1), et al. of the Codes of Law of South Carolina.

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



Solicitor General
THE STATE OF SOUTH CAROLINA

WITNESSES

PRPD

JEFF VERTACK
J

DOCKET NO. 2020GS0700720

The State of South Carolina
County of Beaufort

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

December Term 2020

hereby appear in my own proper person and plead guilty to the within indictment or to

THE STATE

vs.

LEVY LARKIN BROWN

ARREST WARRANT NUMBER

2020A0720400041

Indictment For

Possession of Weapon During Violent Crime

SC Code: 16-23-490

CDR Code: 0549

ACTION OF GRAND JURY

True Bill

Defendant

Russell Young
Foreperson of Grand Jury

Date: DEC 17 2020

Witness:

VERDICT

Foreperson of Petit Jury

Date:
INDICT

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

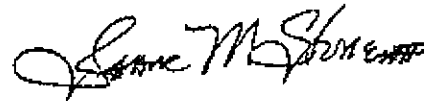
INDICTMENT
2020GS0700720

At a Court of General Sessions, convened on December 17th, 2020, the Grand Jurors of Beaufort County present upon their oath:

Possession of Weapon During Violent Crime

That in Beaufort County, South Carolina, on or about March 16, 2020, the Defendant, LEVY LARKIN BROWN, did possess a firearm, visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent crime and LEVY LARKIN BROWN was convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, all in violation of Section 16-23-490, et al. of the Codes of Law of South Carolina.

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



Solicitor

JMS BII

WITNESSES

PRPD

JEFF VORTSCH

DOCKET NO. 2020GS0790721

The State of South Carolina
County of Beaufort

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

December Term 2020

I
hereby appear in my own proper person and plead guilty to the within indictment or to

THE STATE

vs.

LEVY LARKIN BROWN

ARREST WARRANT NUMBER

2020A0720400042

Indictment For

Trafficking Methamphetamine or Cocaine Base, more than 28g but less than 100g

SC Code: 44-53-375(C)(2)(a)

CDR Code: 0392

ACTION OF GRAND JURY

True Bill

Defendant

Russell Young
Foreperson of Grand Jury

Date: *DEC 17 2020*

Witness:

VERDICT

Foreperson of Petit Jury

Date:

INDICT

C.C.C. PLS. and G.S.

WITNESSES

Beaufort PD

C. Garnes

DOCKET NO. 2020G30700681

The State of South Carolina

County of Beaufort

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

December Term 2020

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

THE STATE

vs.

LEVY LARKIN BROWN

ARREST WARRANT NUMBER

2020a0720600055

ACTION OF GRAND JURY

True Bill

Indictment For
Pointing or Presenting Firearm at a Person

SC Code: 16-23-410

CDR Code: 0122

Defendant

Russell Young
Foreperson of Grand Jury

Date: DEC 17 2020

Witness:

VERDICT

Foreperson of Petit Jury

Date:
INDICT

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

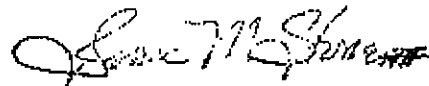
INDICTMENT
2020GS0700681

At a Court of General Sessions, convened on December 17th, 2020, the Grand Jurors of Beaufort County present upon their oath:

Pointing or Presenting Firearm at a Person

That in Beaufort County, South Carolina, on or about March 15, 2020, the Defendant, LEVY LARKIN BROWN, did present or point a firearm, whether loaded or unloaded, at Danielle McLaughlin, all in violation of Section 16-23-410, et al. of the Codes of Law of South Carolina.

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



Solicitor

True B