

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Horry County

Honorable Kristi F. Curtis, Circuit Court Judge

NEWITT R. WALKER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001052

APPENDIX

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
		2018-GS-22-00792 and
COUNTY OF GEORGETOWN	)	2018-GS-26-05267
STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	
	)	February 25, 2019
NEWITT WALKER,	)	
	)	
Defendant.	)	

B E F O R E:

Honorable Steven H. John
Georgetown County Courthouse
Georgetown, South Carolina

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

Keith R. Powell, Esquire
Attorney for State

Ronald W. Hazzard, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

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FEBRUARY 25, 2019Pg.

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E X H I B I T S

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No.IDEV

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(No Exhibits were marked or admitted.)

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State v. Walker - 2018-GS-22-00792 and 2018-GS-26-05267 3
BY THE COURT

1 **FEBRUARY 25, 2019 - 11:18 A.M.**

2 NEWITT WALKER, HAVING BEEN DULY
3 SWORN, TESTIFIED AS FOLLOWS:

4 THE COURT: Yes, Solicitor?

5 MR. POWELL: Your Honor, this is State of South Carolina
6 versus Newitt Walker. Mr. Walker is present before you this
7 morning with his attorney, Mr. Hazzard. We're expecting a
8 guilty plea to a charge here in Georgetown County and also to
9 a charge coming out of Horry County. It's our understanding
10 that the defendant is going to waive venue issue with the plea
11 to the charge in Horry County. For the record, the Georgetown
12 County Indictment Number is 2018-GS-22-00792. The original
13 charge was trafficking in heroin 14 to 28 grams. The state is
14 going to allow the defendant to plead guilty to the lesser
15 included trafficking in heroin four to 14 grams, first
16 offense. The state is going to recommend a 17-year sentence
17 to run concurrent with the Horry County guilty plea. The
18 Horry County indictment number -- and both these indictments
19 have been true-billed. The Horry County Indictment Number for
20 the record is 2018-GS-26-05267. The original charge was PWID
21 cocaine base, I believe it was third offense. The state will
22 recommend or allow him to plead guilty to the lesser included
23 PWID cocaine base, first offense. The state is recommending a
24 15-year sentence on that matter to run concurrent with the
25 Georgetown County charge. I have the sentencing sheets of the

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BY THE COURT

1 Horry County indictment. And, there is a bench warrant that
2 was issued two weeks ago; I have an order lifting that bench
3 warrant.

4 BY THE COURT:

5 THE COURT: All right. Very good.

6 All right, Mr. Walker, give me your attention, sir. You
7 are coming before the Court and you are pleading guilty to two
8 charges of -- that being possession with intent to distribute
9 cocaine base, first offense, and trafficking in heroin four to
10 14 grams, first offense; is that correct?

11 MR. WALKER: Yes, sir.

12 THE COURT: Now, the possession with intent to distribute
13 cocaine base first offense, that one is an Horry County case.
14 So, you have the right to have that matter heard in Horry
15 County if you choose to do so or you can give that up, that is
16 waive it and have it heard now here in Georgetown County. Do
17 you understand that?

18 MR. WALKER: Yes, sir.

19 THE COURT: You've talked to Mr. Hazzard about that,
20 correct?

21 MR. WALKER: Yes, sir.

22 THE COURT: And it's my understanding that you want to
23 have the Horry County case heard here in Georgetown County
24 today; is that correct?

25 MR. WALKER: Yes, sir.

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BY THE COURT

1 THE COURT: And you're giving up having it heard in Horry
2 County; is that right?

3 MR. WALKER: Yes, sir.

4 THE COURT: All right. Now, regarding these offenses,
5 the trafficking in heroin, four to 14 grams, first offense,
6 the potential sentence there is seven to 25 years and a
7 \$50,000 fine; you understand that?

8 MR. WALKER: Yes, sir.

9 THE COURT: Now, that's a lesser included defense. You
10 were actually charged for trafficking in heroin, the charge
11 being -- let's see ---

12 MR. POWELL: 14 to 28 grams.

13 THE COURT: Yes, 14 to 28 grams; you understand that?

14 MR. WALKER: Yes, sir.

15 THE COURT: More serious offense. And the possession
16 with intent to distribute cocaine base first offense, that's a
17 lesser included offense of the one that you were charged, you
18 were charged with more than a first -- I think it's a third, I
19 believe. All right? You understand that?

20 MR. WALKER: Yes, sir.

21 THE COURT: Now, regarding the defenses for which you are
22 pleading to that trafficking in heroin four to 14 grams, first
23 offense, that one is listed as a violent and serious offense
24 by the State of South Carolina; you understand that?

25 MR. WALKER: Yes, sir.

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BY THE COURT

1 THE COURT: And you've talked to Mr. Hazzard about that,
2 right?

3 MR. WALKER: Yes, I have.

4 THE COURT: And you understand its ramifications or how
5 it affects you and in the Department of Corrections; you
6 understand that?

7 MR. WALKER: Yes, sir.

8 THE COURT: And you understand it gives you a strike
9 under the state's three-strike law; you understand that?

10 MR. WALKER: Yes, sir.

11 THE COURT: And that's been explained to you by Mr.
12 Hazzard, correct?

13 MR. WALKER: Yes, sir.

14 THE COURT: All right. Very good. Now, understanding
15 all these things that we've talked about then, do you want to
16 go forward with your two guilty pleas?

17 MR. WALKER: Yes, sir.

18 THE COURT: Are you currently under the influence of any
19 drugs or intoxicants of any kind or currently have them in
20 your system? Sir?

21 MR. HAZZARD: I apologize, Your Honor. I was explaining
22 to him that he needed to keep the volume of his voice up.

23 THE COURT: That's right.

24 Mr. Walker, are you currently under the influence of any
25 drugs or intoxicants of any kind or currently have anything in

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BY THE COURT

1 your system?

2 MR. WALKER: No, sir.

3 THE COURT: Are you suffering from any kind of physical,
4 mental, emotional problem that would keep you from
5 understanding what you're doing here today

6 MR. WALKER: No, sir.

7 THE COURT: Now, when you plead guilty, you give up
8 constitutional rights, among those, the right to remain
9 silent. You're speaking to me, you're giving that right up;
10 you understand that?

11 MR. WALKER: Yes, sir.

12 THE COURT: Other rights are the presumption of
13 innocence, the right against self-incrimination at a trial.
14 The state has to prove you guilty beyond a reasonable doubt.
15 You plead guilty, you give up those rights. You understand
16 that?

17 MR. WALKER: Yes, sir.

18 THE COURT: You're entitled to a jury trial. Twelve men
19 and women would be sitting in that box over there listening to
20 the facts and evidence presented by the state to see if there
21 are indeed enough facts and evidence to prove you guilty
22 beyond a reasonable doubt. If you plead guilty, you're giving
23 up those rights; you understand that?

24 MR. WALKER: Yes, sir.

25 THE COURT: In the jury trial with your attorney you

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BY THE COURT

1 could question the witnesses and the evidence, you could
2 testify, call witnesses, present evidence, challenge the
3 state's offering, but when you plead guilty you give up all
4 those rights; you understand that?

5 MR. WALKER: Yes, sir.

6 THE COURT: Now, you're coming before the Court and
7 you're pleading guilty to trafficking in heroin four to 14
8 grams, first offense, and possession with intent to distribute
9 cocaine base, first offense. Are you pleading guilty to both
10 of those freely and voluntarily?

11 MR. WALKER: Yes, sir.

12 THE COURT: Of your own freewill and accord?

13 MR. WALKER: Yes, sir.

14 THE COURT: Pleading guilty because you are guilty of
15 both crimes?

16 MR. WALKER: Yes, sir.

17 THE COURT: Did anybody promise you anything, threaten
18 you, force you in any way to get you to plead guilty?

19 MR. WALKER: No, sir.

20 THE COURT: Now, you're here today with your attorney,
21 Mr. Hazzard; is that right?

22 MR. WALKER: Yes, sir.

23 THE COURT: Did you tell him everything you wanted to
24 tell him about both cases?

25 MR. WALKER: Yes, sir.

State v. Walker - 2018-GS-22-00792 and 2018-GS-26-05267
BY THE COURT

9

1 THE COURT: Have enough time to talk to him?

2 MR. WALKER: Yes, sir.

3 THE COURT: Need any more time to talk to him?

4 MR. WALKER: No, sir.

5 THE COURT: You satisfied with his help and
6 representation?

7 MR. WALKER: Yes, sir.

8 THE COURT: Any complaints about his help or
9 representation?

10 MR. WALKER: No, sir.

11 THE COURT: All right, Mr. Hazzard, you are here today
12 representing the interest of your client, Mr. Walker, in this
13 matter.

14 MR. HAZZARD: I am, Your Honor.

15 THE COURT: And he comes before the Court tendering his
16 plea of guilty to the two offenses named. Do you concur?

17 MR. HAZZARD: Yes, sir.

18 THE COURT: And you believe he's coming before the Court
19 of his own freewill and accord?

20 MR. HAZZARD: I do.

21 THE COURT: And have you explained to him his
22 constitutional rights, any defenses he might have, as well as
23 the information and the evidence in the possession of the
24 state?

25 MR. HAZZARD: I have.

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BY THE COURT

1 THE COURT: Thank you very much.

2 All right, Solicitor, the basic facts, please.

3 MR. POWELL: Your Honor, just a little bit of education
4 about the matter before I get to the facts. This is a global
5 plea in Georgetown County and there are three separate
6 distribution of heroin charges with two -- proximity charges
7 associated to two of those will be dismissed. The Horry
8 County charge just has some separate drug charges in addition
9 to the one he's pleading guilty to. And the week of
10 Valentine's Day, week before last, there was a trafficking
11 heroin charge brought against him that has a couple of
12 companion charges with as well. These two pleas will take
13 care of all those warrants.

14 I'll read the Horry County facts into the record first.

15 THE COURT: Yes, sir.

16 MR. POWELL: The indictment ending in 5267, on 6/17/2018
17 in Horry County, the Surfside Beach area, Defendant was in a
18 motor vehicle, law enforcement made a traffic stop. The
19 officer noticed the other person in the vehicle put what
20 looked like a bag of marijuana into his pocket. The officer
21 got the two people, including the defendant, out of the
22 vehicle. They told the defendant to get out, stand still,
23 we're gonna cuff you; he basically ran away. They apprehended
24 him a short distance away from that. He ended up being
25 arrested for interference or not cooperating. They found a

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BY THE COURT

1 bag containing cocaine base in it where he was hiding,
2 actually it was several bags containing cocaine and cocaine
3 base. That's the Horry County charge.

4 The facts on the Georgetown County charge, that in
5 Georgetown County on November 30th, 2017, law enforcement made
6 a traffic stop on the defendant. He was operating a motor
7 vehicle. They noticed the odor of alcohol -- excuse me --
8 noticed the odor of marijuana. One of the officers was a
9 canine officer, the dog was with him. They did a search
10 around the outside perimeter of the vehicle. The dog made an
11 alert. Based upon the smell of marijuana and the dog alert,
12 they searched the car and found a bag of marijuana, a bag
13 containing heroin in the glove box of the vehicle, unlocked
14 glove box. The SLED report came back in the heroin as being
15 22 grams of a mixture containing heroin.

16 THE COURT: All right, Mr. Walker. You've heard those
17 facts of these two cases as well as the associated matters
18 that are being dismissed. Regarding the two cases you're
19 pleading guilty to, there is a set of facts in your two
20 indictments that are similar to the facts set forth by the
21 solicitor. My question to you is, are those facts true and
22 correct?

23 MR. WALKER: Yes, sir.

24 THE COURT: And you understood you engage in that kind of
25 activity, you are committing crimes, you understand that?

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BY THE COURT

1 MR. WALKER: Yes, sir.

2 THE COURT: Have you understood my questions here today?

3 MR. WALKER: Yes, sir.

4 THE COURT: All your answers to me been the truth?

5 MR. WALKER: Yes, sir.

6 THE COURT: Anybody tell you how to answer my questions?

7 MR. WALKER: No, sir.

8 THE COURT: And you understand you have the right to

9 appeal your guilty pleas within 10 days?

10 MR. WALKER: Yes, sir.

11 THE COURT: I find there's been a substantial factual
12 basis for the pleas, find the defendant's decision to plead
13 guilty has been done freely, voluntarily, knowingly, and
14 intelligently made. He's had the advice of competent counsel
15 with whom he's satisfied, therefore, Mr. Walker's decision to
16 plead guilty of trafficking heroin four to 14 grams, first
17 offense, and possession with intent to distribute cocaine
18 base, first offense, is accepted.

19 Yes, sir, Mr. Hazzard?

20 MR. HAZZARD: Thank you, Your Honor. May it please the
21 Court, Mr. Walker is 32 years old. He's a life resident of
22 Georgetown, South Carolina. He has been -- excuse me --
23 behind the eight ball basically most of his life. And I say
24 that because his father, Newitt Walker, III, is deceased. And
25 his mother Rosita Moses is a disabled schizophrenic bipolar,

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BY THE COURT

1 and I know that for a fact because she has her own issues with
2 drugs and she is currently a client of mine as well. So, you
3 have a young man who, for the most of his life, didn't have
4 the mother and father that you would want someone to have. He
5 made it into the ninth grade in high school at Georgetown High
6 before he would go running afoul of the law, going up the road
7 but, to his credit, he did obtain his GED while he was up the
8 road the first time. He says to me, point blank, I am a drug
9 addict, that's my problem. I've never been able to get any
10 help for it. And to be truthful, never sought out the help on
11 his own but didn't really know how to, didn't know where to
12 turn. And so he's acted in such a way that he's run afoul of
13 the law several times on this street. There's absolutely no
14 doubt about that. The sad part about this is we -- one of the
15 cases that was scheduled to go to trial, the Georgetown County
16 case, we actually tried that case two weeks ago, the week of
17 February 11th, and it ended up in a very unusual mistrial.
18 But what's sad about it is that before that trial, that Mr.
19 Walker was not present at, the plea offer to dispose of all of
20 his charges was 12 years, but I was never able to get ahold of
21 him to discuss it with him, because he was out doing his thing
22 and on the run and there is no really good day to go to prison
23 when you're a drug addict. So, as a result, he has not acted
24 in such a way where they got him definitely still behind the
25 eight ball, the offer now is 17 years and 15 concurrent, and

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BY THE COURT

1 it could be worse, we know that. Although, I would ask the
2 Court to respectfully consider something a little less than
3 that, possibly a 168-month sentence, a 14-year sentence,
4 something in that range. As the prosecutor said, all other
5 charges related to his arrest on June 17th, 2018, September
6 11th, 2016, September 18th, 2016, and some related things from
7 this incident in Georgetown County that we were scheduled to
8 go to trial on November 30th, 2017 are dismissed as a part of
9 the plea. We appreciate that. There are also two other
10 charges of possession with intent to distribute marijuana
11 proximity and a trafficking heroin within proximity from this
12 case that have never been indicted that were dismissed January
13 29th. And to our understanding, the dismissal will be with
14 prejudice as part of this plea on those charges. But we'd ask
15 the Court to give him any and all leniency and understanding
16 as it can and I don't even know if Mr. Walker is aware of
17 this, but one of his family members is here in the back of the
18 courtroom supporting him, showing her love for him and we
19 thank her for being here today.

20 Thank you, Your Honor.

21 THE COURT: Thank you very much.

22 Anything else from the state?

23 MR. POWELL: Just would remind His Honor that he was
24 arrested by Myrtle Beach Police the week of his TIA for
25 trafficking heroin. He was out doing that instead of being at

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SENTENCE OF THE COURT

1 trial.

2 THE COURT: Very good.

3 SENTENCE OF THE COURT:

4 THE COURT: All right. 2018-GS-22-792, State of South
5 Carolina, County of Georgetown versus Newitt Rodney Walk
6 regarding trafficking in heroin four to 14 grams, first
7 offense.

8 Mr. Walker, I've taken into consideration what your
9 attorney has said. The fact of the matter is that there are
10 any number of charges that the state is dismissing that are on
11 separate offenses, not related to these two, that if they
12 decided to try you on this one and then try you on those
13 separately that by the time you got to the end of it, your
14 sentence would be life in prison without the possibility of
15 parole. They have offered you a plea bargain, and under the
16 circumstances, I find it to be appropriate.

17 Therefore, regarding this Georgetown case, the defendant
18 is committed to the State Department of Corrections for a
19 determinate term of 17 years, the defendant is given credit
20 for the time that he has served. I am stating that the
21 Addictions Treatment Unit is needed by the defendant.

22 2018-GS-26-5267, the possession with intent to distribute
23 cocaine base, first offense, the defendant is committed to the
24 State Department of Corrections for a determinate term of 15
25 years concurrent with the 2018-GS-22-792 offense. Again,

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SENTENCE OF THE COURT

1 credit for any time that he has served and, again, the
2 recommendation regarding the Addictions Treatment Unit.

3 Thank you very much.

4 MR. HAZZARD: I would ask, Your Honor, since we're
5 talking about two different offenses in two different
6 counties, his time-served is very minimal, it's 28 days, and
7 we would ask the sentence sheet to reflect that so there's no
8 question and he receives credit for the 28 days.

9 THE COURT: All right, sir. Very good, sir. I will
10 write that on both.

11 MR. HAZZARD: Thank you, Your Honor.

12 MR. POWELL: Is Your Honor lifting the bench warrant?

13 THE COURT: Yes, I've signed that and it's sitting right
14 here on the bench.

15 MR. POWELL: May I come get it, Judge?

16 THE COURT: Yes, sir, please.

17 MR. POWELL: Thank you, Your Honor.

18 THE COURT: Thank you.

19 **ADJOURNED - 11:34 A.M.**

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State v. Walker - 2018-GS-22-00792 and 2018-GS-26-05267 17
CERTIFICATE OF COURT REPORTER

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus Newitt Walker, held in the Court of General Sessions for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on February 25, 2019.

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

Kay H. Richardson
Official Court Reporter

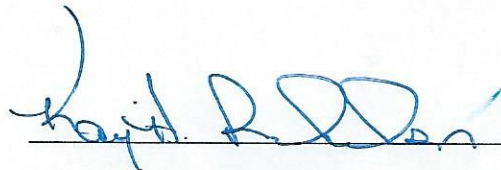
August 23, 2019.

State v. Walker - 2018-GS-22-00792 and 2018-GS-26-05267 17
CERTIFICATE OF COURT REPORTER

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus Newitt Walker, held in the Court of General Sessions for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on February 25, 2019.

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



Kay H. Richardson

Official Court Reporter

August 23, 2019.

Alma Y. White
Georgetown County Clerk of Court



P. O. Box 479 • 401 Cleland St.
Georgetown, SC 29442

February 24, 2020

Office of the Attorney General
Attn: Johnny Ellis James, Jr.
P.O. Box 11549
PCR Division
Columbia, S.C. 29211

RE: Newitt Rodney Walker 302395 vs. State of South Carolina
Case Number: 2020-CP-22-00225

Dear Mr. James:

Attached please find a filed copy Application for Post-Conviction Relief and General Sessions's documents. Should you have any questions, please do not hesitate to contact our office.

Georgetown County Clerk of Courts Office

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Georgetown)

Newitt Rodney Walker #302395)

Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

2020 CP2200225
 IN THE COURT OF COMMON PLEAS
 AREA Y WHITE
 CLERK OF COURT
 2020 FEB 24 AM 11:12
 FILED
 SOUTH CAROLINA

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Leiber Correctional Institution.
2. Name and location of Court which imposed sentence Georgetown, Court of General Sessions.
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
2018-Gs-22-00792; et. al.
 - (a) 17 years, concurrent with Horry County charges.
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) February 26, 2019
 - (b) _____

(c) 17 years concurrent with Horry Co. convictions.

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty xx
 (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: N/A

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

i. N/A

ii. N/A

iii. N/A

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

i. _____ N/A

ii. _____

iii. _____

(c) the date of each such result:

i. _____ N/A

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

- (a) _____ Ineffective assistance of counsel, not cognizable on direct review, but permitted to be raised on PCR.
 (b) _____
 (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Ineffective assistance of counsel, in violation of Petitioner's Sixth Amendment right, where counsel advised Petitioner to plead guilty without fully investigating viable defenses that had merit. Revised 12/00

(a) See Attached Sheets.

(b) _____

(c) _____

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

in (10): Ineffective assistance of counsel, in violation of

(a) _____ Petitioner's Sixth Amendment rights, where counsel failed to have the initial plea offer enforced.

(b) _____ "See Attached Sheets".

(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. N/A

iii. _____

iv. _____

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. _____

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. None!

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) N/A

(b) _____

(c) _____

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

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

Court of Common Pleas
15th Judicial Circuit

Newitt Rodney Walker, #302395,

Applicant,

Vs.

State of South Carolina,

Respondent. /

ATTACHED SHEETS TO PCR APPLICATION

This Matter is being brought to the attention of this Honorable Court, by way of a pro-se applicant seeking relief pursuant to S.C. Code §17-27-10 through 160. Claiming a right to redress based upon an unconstitutional conviction and sentence.

COGNIZABLE CLAIMS

A PCR applicant can raise almost any allegation relevant to any phase of the previous court proceeding. Specifically, an applicant can raise virtually every denial of a federal constitutional right, with the exception of the sufficiency of the evidence; but see Jackson v Virginia, 443 U.S. 307 (1979)(holding that insufi-

STATE OF SOUTH CAROLINA)
 COUNTY OF GEORGETOWN)

Court of Common Pleas
 15th Judicial Circuit
 2020CP2200225

Newitt Rodney Walker, #302395,

Applicant,

Vs.

State of South Carolina,

Respondent. /

FILED
 GEORGETOWN COURT
 2020 FEB 24 AM 11:12
 ALMA Y. WHITE
 CLERK OF COURT

ATTACHED SHEETS TO PCR APPLICATION

This Matter is being brought to the attention of this Honorable Court, by way of a pro-se applicant seeking relief pursuant to S.C. Code §17-27-10 through 160. Claiming a right to redress based upon an unconstitutional conviction and sentence.

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A PCR applicant can raise almost any allegation relevant to any phase of the previous court proceeding. Specifically, an applicant can raise virtually every denial of a federal constitutional right, with the exception of the sufficiency of the evidence; but see Jackson v Virginia, 443 U.S. 307 (1979) (holding that insuffi-

ciency of the evidence is a federal constitutional claim).

The PCR Act also specifically recognizes almost any abridgement of a state created right. (1) The sentence or conviction was in violation of the Constitution of the United State , or the South Carolina Constitution; (2) the court was without jurisdiction to impose the sentence; (3) the sentence exceeds the maximum authorized by law; (4) there is evidence of material facts not previously presented and heard, that requires vacation of the sentence of conviction in the interest of justice; (5) the sentence has expired, probation, parole or conditional release has been unlawfully revoked; or that the applicant is otherwise unlawfully held in custody or other restraint; and (6) the conviction or sentence is otherwise subject to collateral attack.

THE INSTANT CASE AT BAR

Here, Applicant pled guilty pursuant to a plea offer, which was initially based upon a 15 year agreement. The charges were for trafficking heroin, and distribution of crack 2nd offense, and dismissing all other pending charges.

On or about February 25, 2019. What was suppose to be 15 years, wound up being 17 years, without any attempt by plea counsel to have the original plea offer enforced.

In addition, counsel never investigated whether applicant retained a fourth Amendment right of privacy at his home, where the evidence was obtained, in order to charge the trafficking

offense. Where Applicant's vehicle was in front of his home, at the mailbox, when he was confronted by police. And thereby requiring a "search warrant" to investigate private property for evidence of any crime.

Argument 1.

Here, the denial of the right to effective assistance of counsel is a violation of a federal right. See Strickland v. Washington, 466 U.S. 668 (1984) Strickland applies a two-prong test for determining whether counsel's performance fell below an objective standard of reasonableness.

First, counsel was vividly aware of the 15 year plea offer, yet "failed to move for detrimental reliance" when the court sentenced the Applicant to 17 years. See Custodio v. State, 644 S.E. 2nd 36 (S.C. 2007) For this reason standing alone, had counsel moved under Custodio, the outcome of the proceeding would have had to be different by a minimum of two years prison time.

Argument 2.

Here, the Applicant claims he received ineffective assistance of counsel, in violation of "both" his Fourth and Sixth Amendment rights. Where prior to advising him to plead guilty to a trafficking charge. Counsel acting competently, should have been aware, "a person has a right under the Fourth Amendment to privacy, against unreasonable search and seizures". Where law enforcement entered

upon private property without a warrant and without reasonable suspicion of whether a drug trafficking crime was afoot. See Sikes v. State, 448 S.E. 2d 560 (S.C. 1994)

wherefore, based on the foregone PCR application, as well as these attached sheets, do the Applicant pray for the relief by vacating the conviction and sentence and remanding this case for a new trial.

Respectfully submitted,

s/ *N. H. Walker* 302395
Newitt R. Walker, 302395
Leiber Corr. Institution
P.O. Box 205
Ridgeville, S.C. 29472

cc: file
12/16/2019

2020CP22 00225

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)
Newitt Walker 302395)

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

*Newitt Walker**Newitt Walker 302395*

SWORN to and subscribed before me this 8th
day of January, 2020.

Lynd K. B. (L.S.)
Notary Public

My Commission Expires: 6-20-26

FILED
CLERK OF COURT
ALMA Y. WHITE

2020 FEB 24 AM 11:12

2020CP2200225

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

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

N. H. Walker
Newitt Walker 302395

SWORN or affirmed to and subscribed before me this
8th day of JANUARY, 2020

Linda K. Ba
Notary Public

My Commission Expires: 6-20-26

ALMA Y. WHITE
CLERK OF COURT

2020 FEB 24 AM 11:12

FILED
COUNTY CLERK

February 16, 2020

Georgetown Clerk of Court
Court of Common Pleas
P.O. Box 479
Georgetown, S.C. 29442

In re: State v. Newitt Walker #302395

Dear Clerk;

The Applicant here caused to be filed a application for PCR, dated and notarized on January 8th, 2020. Since that time, this Clerk's Office has returned the application, unstamped, premised on a request for information which the Applicant does not have.

In accordance with the Sentencing Sheet, the paperwork displays but a single case number (i.e., 2018-GS-22-00792), to which is included on the first page of the PCR application. Also, is "the date" upon which the Applicant was convicted.

Wherefore, according to the "Mailbox Rule", Applicant has done everything within his control to forward all information except that in which he

(1)

does not possess.

Thus, it is respectfully request that his case be filed and given a civil proceeding number. Whereas, the Attorney General for the State of South Carolina, may be able to supply this Clerk's Office with any information required. Since the "State" is the respondent to this action. And is the entity that instituted various criminal case numbers.

In conclusion, I pray that this letter fully explains my position to your most recent request. Thank you for your time and immediate attention.

Sincerely,
 151 N.H. Walker 302395
 Newitt Walker # 302395
 Leiber Correctional Institution
 P.O. Box 205
 Ridgewille, S.C. 29472

cc: filed

2/16/2020

(2 of 2)

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Newitt R. Walker, #302395,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No.: 2020-CP-22-00225

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

NOW COMES the Respondent, making its return to the application for post-conviction relief (hereafter "PCR") filed on February 24, 2020 by Newitt R. Walker (hereafter "Applicant"). Respondent respectfully offers the following in support of its return:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Georgetown County Clerk of Court. During its October 2018 term, the Georgetown County Grand Jury indicted Applicant for Trafficking in Heroin, fourteen to twenty-eight grams (2018-GS-22-00792).¹ Applicant was represented by Ronald W. Hazzard, Esquire. Assistant Solicitor Keith R. Powell of the Fifteenth Circuit Solicitor's Office prosecuted the case. On February 25, 2019, Applicant appeared before the Honorable Steven H. John, circuit court judge, and pled guilty to the lesser included offense of trafficking in heroin between four and fourteen grams, first offense and to a recommended sentence of seventeen years. Judge John sentenced Applicant to seventeen years' imprisonment.²

¹ Applicant was also faced multiple charges in Horry County that were not stated in the current PCR Application and, consequently, are not specifically addressed in this return.

² Applicant also pled to fifteen years for the Horry County offense of Possession with Intent to Distribute Cocaine (2018-GS-26-0267), running concurrently.

Applicant filed a Notice of Appeal on March 11, 2019. An Order of Dismissal was filed on April 25, 2019, for failure to provide a sufficient guilty plea explanation, as required by Rule 203(d)(1)(B)(iv), SCACR. Applicant filed a *pro se* guilty plea explanation and a motion to reinstate the appeal on April 30, 2019. An Order of Dismissal was filed on May 30, 2019, denying the motion to reinstate or rehear the dismissal of the appeal. The Remittitur was filed on June 12, 2019 and the Amended Remittitur filed on June 14, 2019.

II. Statement of Facts

On November 30, 2017, law enforcement officers stopped Applicant while he was operating a motor vehicle. (Plea Tr. 11). Officers noticed an order of alcohol and marijuana. (Plea Tr. 11). One of the officers had a canine with him. (Plea Tr. 11). The officers conducted a search around the outside of Applicant's vehicle. (Plea Tr. 11). The dog alerted officers to something, after which officers searched the car and found a bag of marijuana and a bag of heroin in the unlocked glove compartment. (Plea Tr. 11). The SLED report came back positive for twenty-two grams of a mixture containing heroin. (Plea Tr. 11).

III. Current Action before the Court

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

1. "Ineffective assistance of counsel, in violation of Petitioner's Sixth Amendment right, where counsel advised Petitioner to plead guilty [without] fully investigating viable defenses that had merit."
 - a. "Violation of 'both' [] Fourth and Sixth Amendment Rights."
 - i. "Counsel acting competently, should have been aware, 'a person has a right under the Fourth Amendment to privacy, against unreasonable search and seizures.' Where law enforcement entered upon private property without a warrant and without reasonable suspicion of whether a drug trafficking crime was afoot."
2. "Ineffective assistance of counsel, in violation of Petitioner's Sixth Amendment rights, where counsel failed to have the initial plea offer enforced."
 - a. "Counsel was vividly aware of the 15 year plea offer, yet 'failed to move for

detrimental reliance' when the court sentenced the Applicant to 17 years . . . had counsel moved . . . the outcome of the proceeding would have had to be different by a minimum of two years prison time."

Attached to and incorporated herein are the records of the Georgetown County Clerk of Court regarding the Applicant's case, the Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of additional relevant information.

IV. Argument

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRCP ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the

scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters “only in the rarest case” because “[t]he likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

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

Invalid Guilty Plea

Applicant alleges he was coerced into entering the plea. Regarding guilty pleas, the

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

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

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. at 34, 528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." *Dalton*, 376 S.C. at 138,

654 S.E.2d at 874 (quoting *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)).

Further, “guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea.”

Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

Here, the record reflects that the plea was entered knowingly, voluntarily, freely, and intelligently. Applicant stated his intent at the plea hearing was to plead guilty to two charges, including the trafficking in heroin charge. (Tr. 4). Applicant stated he understood he could be sentenced between seven and twenty-five years for the heroin charge, that he was pleading to the lesser included offense, and that he was pleading to a violent and serious offense. (Tr. 5).

Applicant stated he discussed the ramifications and affects of the plea, particularly as it relates to his Department of Corrections conditions. (Tr.6). He stated he understood he was given a strike under the three strikes law. (Tr. 6). After this, Applicant stated he still wanted to enter his plea. (Tr. 6). Applicant stated he was not under the influence of any drugs or intoxicants and did not have an impairment that would keep him from understanding his decision to plead. (Tr. 6-7).

Applicant stated he understood he was giving up his right to remain silent, the presumption of innocence, the right against self-incrimination at trial, to prove guilt beyond a reasonable doubt, to a jury trial, to call and cross-examine witnesses, to testify, present evidence, and challenge the State’s case. (Tr. 7-8). Applicant stated he was pleading freely and voluntarily because he was guilty of the crimes charged. (Tr. 8). Applicant stated no one threatened him into or otherwise promised him something to get him to plead. (Tr. 8). Applicant stated he discussed his cases with Counsel, that he had enough time to talk to Counsel during, that he did not need any more time to talk to Counsel during, that he was satisfied with representation, and did not have any complaints about counsel. (Tr. 8-9). Thus, based on the plea hearing transcript, Respondent

contends that the plea was entered knowingly, intelligently, freely, and voluntarily. Thus, all non-jurisdictional defects and defenses were waived through the plea colloquy process.

Failure to Enforce Plea

Applicant alleges Counsel was ineffective for failing to move to enforce the plea deal, involving a recommended sentence of fifteen years, not seventeen. As shown above, the recommended sentence on the charge and subsequent conviction at issue was seventeen years; not fifteen. (Tr. 3). When the recommended seventeen year sentence was discussed in court, Applicant did not object or otherwise attempt to clarify the recommendation. Additionally, when Judge John told Applicant that the sentencing range was between seven and twenty-five years imprisonment, Applicant stated he understood. (Tr. 5). Thus, Applicant's allegation is without merit and any indication he may have received indicating he would face a fifteen, not seventeen, year sentence was resolved at the plea colloquy.

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

Failure to Investigate Failure, Prepare, and Assert a Defense

Applicant alleges ineffective assistance of counsel for failure to investigate and prepare and present a defense. Applicant is required to present evidence or witnesses he alleges Counsel did not properly investigate. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995).

Additionally, whether Applicant was prejudiced by Counsel's failure to investigate is contingent on whether the evidence presented would have led Counsel to change her recommendation regarding the plea. *Stalk v. State*, 383 S.C. 559, 562, 681 S.E.2d 592, 594 (2009).

Here, because he validly entered the plea, Applicant waived his right to assert a defense. Additionally, Applicant failed to state what Counsel failed to investigate or how that evidence or defense, if investigated, would have caused Counsel to change his recommendation concerning the plea. Thus, a more definite statement is needed for Respondent to ascertain whether or not this allegation has merit.

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

V. Motion for a More Definite Statement

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

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

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

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

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

VI. Other Allegations Denied

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

VII. Assertion of Rights to Notice of Amendments, Experts

Applicant should raise any claims he intends to raise at the PCR evidentiary hearing well in advance of the hearing. Here, Applicant’s court-appointed attorney is the only individual authorized to file amendments to this application, given his representative capacity, Rule 11(a), SCRCP and *pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C.

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

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

VIII. Conclusion

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

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

CHELSEY F. MARTO
Assistant Attorney General

By: /s Chelsey F. Marto
ATTORNEYS FOR RESPONDENT

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

August 11, 2020

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Newitt R. Walker, #302395

Applicant,

v.

State of South Carolina

Respondent,

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No.: 2020-CP-22-00225

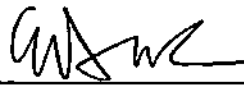
Certificate of Service

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

James K. Falk, Esquire
Falk Law Firm, LLC
Post Office Box 1058
Charleston, South Carolina 29402

DATED this 11th Day of August, 2020.

FILED
CLERK OF COURT
2020 AUG 13 PM 1:56
GEORGETOWN COUNTY, SC



EVA D. COOK
Legal Assistant for Respondent

1 State of South Carolina) **TRANSCRIPT OF RECORD**
2 COUNTY OF GEORGETOWN) CASE NO. : 2020-CP-22-00225

3 -----

4 September 9, 2022

5 **BEFORE:** The Honorable Kristi F. Curtis

6 -----

7

8 Newitt R. Walker,)

9 Applicant,)

10 vs.)

11 State of South Carolina,)

12 -----

13 APPEARANCES:

14 Chelsey F. Marto, Esquire
15 Attorney for the State of South Carolina

16 Thurmond Brooker, Esquire
17 Attorney for the Applicant.

18 Ronald W. Hazzard, Esquire

19

20

21

22 Julie A. Kevish
23 Official Court Reporter

24

25 September 9, 2022

1	E-X-H-I-B-I-T-S		
2	PLAINTIFF'S EXHIBITS/DESCRIPTION	ID	EV
3	(NONE)	NO EXHIBITS	
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I-N-D-E-X

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

1
2 MS. MARTO: Good afternoon, Your Honor. May it
3 please the Court? We are here today on the case of Newitt
4 Walker versus the State of South Carolina, Docket Number
5 2020-CP-22-00225. My name is Chelsey Marto, and I represent
6 the Respondent and Mr. Thurmond Brooker represents the
7 Applicant in this matter. In October of 2018 he was indicted
8 for trafficking in heroin, 14 to 28 grams, represented by Mr.
9 Ronald Hazzard and Assistant Solicitor, Keith Powell,
10 prosecuted the case. He was also charged in Horry County with
11 PWID of cocaine base, third offense, and this was dropped to
12 first offense and recommended 15 years at the plea. On
13 February 25, 2019 he appeared before the Honorable Steven H.
14 John and plead guilty to the lesser included offense of
15 trafficking in heroin four to 14 grams first offense, to a
16 recommended 17 years. He was sentenced to 17 years in
17 accordance with the recommendations. He filed a notice of
18 appeal and an order of dismissal was filed on April 25, 2019
19 dismissing for failure to provide a sufficient guilty plea
20 explanation of 203. He filed a pro se guilty plea explanation,
21 motion to reinstate April 30, 2019, an order of dismissal was
22 filed May 30, 2019, and the Remittitur was issued June 12,
23 2019, and then an amended Remittitur was filed June 14, 2019
24 and then he also filed his application February 24, 2020 and
25 the return was filed August 13, 2020, and with that I'll turn

1 it over to Mr. Brooker.

2 MR. BROOKER: Thank you, Your Honor. Your Honor, I
3 just stepped out from the back and I have not had the chance to
4 talk with Ms. Marto in reference to this. If I could take one
5 minute to do that, Your Honor, it's just a procedural issue?

6 THE COURT: Sure.

7 MR. BROOKER: I apologize, Your Honor. I wanted to
8 talk with Ms. Marto because I didn't want to catch her by
9 surprise on what I was about to say, and Your Honor, we want to
10 make a verbal motion to amend his application to include the
11 argument that his plea was not knowingly and intelligently
12 taken at the sentencing hearing, and specifically, it's based
13 upon whether or not at the sentencing hearing he was advised of
14 all of his constitutional rights and had effectively waived
15 those constitutional rights, including the confrontation clause
16 and then also including whether or not he was affirmatively
17 informed of the maximum and minimum penalties for the, I think,
18 possession with intent to distribute charge that he pled guilty
19 to.

20 THE COURT: Ms. Marto, do you want to be heard on
21 that?

22 MS. MARTO: No objection, Your Honor. The State is
23 fine with moving forward with this matter today.

24 THE COURT: Let me ask you all. I'm looking at the
25 application for PCR, and I see he has specifically applied for

1 a PCR on the 17-year sentence for the trafficking in heroin
2 charge. Has he filed a PCR for the corresponding PWID cocaine
3 that he got 15 years concurrent? Is there another application
4 out there anywhere?

5 MS. MARTO: This is the only application, Your Honor.

6 MR. BROOKER: This is the only one that I'm aware of,
7 Your Honor.

8 THE COURT: Okay. So I guess I want your opinion
9 from the State and from you, Mr. Brooker, as to the effect of
10 this, of course, if I grant the PCR the sentence for the PWID
11 cocaine of 15 years would be unaffected by this because it was
12 a concurrent sentence and he pled guilty to both of those at
13 the same time. My understanding is if he has not listed that
14 as one of the things he is requesting relief on that that
15 15-year sentence would continue unaffected by my decision of
16 the PCR. And then of course, the second issue is, Mr. Walker,
17 you had a significant reduction in your sentence as a result of
18 the plea for trafficking in heroin 14 to 28 grams that I
19 believe carried a 25-year mandatory minimum as well as being
20 the most serious offense that carries two strikes, and so in
21 exchange for your plea that was reduced to the trafficking
22 heroin that carried seven to 25 years. So I mean, the first
23 issue right off the bat is that if I grant your application for
24 PCR, you understand that you go back to square one and the
25 State can now seek to go forward with the original charge that

1 carries the mandatory minimum of 25 years? So in essence, if
2 you're granted this PCR you could get a longer sentence on
3 retrial than you are currently serving?

4 THE APPLICANT: Okay.

5 THE COURT: In addition, and I guess this is where I
6 feel there is a bit of a gray area, there were a number of
7 Georgetown indictments that were dismissed as a result of this
8 to plea, and then you had the Horry County charge for the PWID,
9 and there were a number of Horry County charges that were
10 dismissed. I think at a minimum the Georgetown cases that were
11 dismissed in exchange for your plea on this charge could then
12 be brought back into play, and I'm not entirely certain what
13 those were, just I think the record said that he had a number
14 of drug charges pending in Georgetown, I think three
15 distributions of heroin and two proximity charges is what I'm
16 showing from the record. So again, if I grant PCR it goes back
17 as if your plea never happened, which means that you're facing
18 the three counts of distribution of heroin, the two counts of
19 distribution within proximity of a school or a church, as well
20 as the trafficking 14 to 28 grams. I don't know if you would
21 be -- I don't know what would happen with the Horry County plea
22 if this was overturned, but let's just say only the Georgetown
23 would be back in play. That still subjects you to significant
24 exposure on retrial. If you went back on your original
25 charges, sir, there's no guarantee that the State is going to

1 negotiate with you and give you a better deal than what you got
2 initially, you could get more time, and if you were tried on
3 the trafficking 14 to 28 and you were convicted of that, again,
4 it's a mandatory minimum sentence of 25 years and it's a most
5 serious that counts as two strikes. The offense that you pled
6 to is a serious which only counts as one strike, so do you
7 understand that?

8 THE APPLICANT: Yes.

9 THE COURT: And have you discussed that with Mr.
10 Brooker, your exposure if you are successful in your
11 application?

12 THE APPLICANT: Yes, ma'am.

13 THE COURT: Has he answered all of your questions
14 about that?

15 THE APPLICANT: Yes, ma'am.

16 THE COURT: Do you want to go forward with the
17 application today?

18 THE APPLICANT: Yes, ma'am.

19 THE COURT: Mr. Brooker, you've discussed with him
20 the fact that he is facing an offense that carries a mandatory
21 minimum of 25 years?

22 MR. BROOKER: Yes, he's aware of that, Your Honor.
23 And can I ask you something else, Your Honor? I think you
24 raised the issue as to whether or not this PCR would cover
25 simply the plea to the trafficking charge, I think the

1 indictment that ends in 00792, and I was looking at his
2 original, looking at his original application, and I'm not
3 quite sure, obviously, it looks as if this was filed pro se,
4 and I think on the first page of that application where it asks
5 him to identify the indictment numbers upon which the offenses
6 occurred, and he indicated 28-GS-22-00792, and specifically
7 what's confusing is that it says, et al, now which obviously
8 means, obviously, Your Honor means is that, and further, in
9 which he is making reference to additional indictments, but
10 don't specifically identify that indictment, and that's where,
11 I guess, the gray area may come in as to how to type that "et
12 al" language that is identified there, and of course it goes on
13 to say the sentencing imposed, and he says the 17 years
14 concurrent with the Horry County charge, which would make
15 reference to the possession with intent to distribute, the one
16 in which he got the 15 years on.

17 THE COURT: Well, I mean, I bring this up because on
18 the State's return they specifically on page one in the
19 footnote, first of all that only refers to the Georgetown
20 charge, and then in the footnote it says, he also faces
21 multiple charges in Horry that were not stated in the current
22 PCR application, and consequently are not specifically
23 addressed in this return, so I guess I was operating, and it
24 appears to me that the State was operating under his filing
25 this with the State's Georgetown County, and names the

1 Georgetown charge, and specifically talks about the enforcement
2 of the 15 year.

3 MS. MARTO: Your Honor, it's the State's
4 understanding that when it comes to a case such as this, the
5 proper relief is the vacation of all of the pleas that were
6 entered that day because they are all in connection with one
7 another, and also he waived venue for all of the Horry County
8 cases to be heard at a global offer so it would be the State's
9 position that he's putting himself in a place where every
10 single thing he was charged with at that point would be coming
11 back if he was granted relief, even though he only addressed
12 his primary case, which anecdotally I can tell you that's not
13 atypical in a pro se application.

14 THE COURT: Okay. I mean, I've raised this because
15 of your footnote here that says, we're only addressing the
16 Georgetown cases. So if it's your position that if relief is
17 granted the 15-year sentence on the Horry County is vacated
18 along with the Georgetown, if that's the State's position then
19 that's perfectly clear with me, I just wanted to clarify that
20 before we go forward.

21 MS. MARTO: Yes, Your Honor. I think the application
22 can be orally amended to include all charges, and we would
23 agree that the vacation of the entire plea would be appropriate
24 relief.

25 THE COURT: Okay. Well, then I'll certainly allow

1 him to amend to add the Horry County sentence, as well, if
2 that's what you want to to do, Mr. Brooker.

3 MR. BROOKER: Yes, ma'am, I hear you. I want to talk
4 with him to make sure that he understands.

5 THE COURT: Sure. I mean, it's a double-edged sword.
6 It means if you get relief you get relief on all of it. It
7 also means that if it goes back it goes back on both the Horry
8 County and the Georgetown charges that were pending at the
9 time.

10 MR. BROOKER: Your Honor, I just talked with him and
11 just to make sure that he understood that the application would
12 be amended to clearly reflect that the application is for both
13 charges, the trafficking charge and also the possession with
14 intent to distribute charge that he pled guilty to, and that if
15 you were to rule in his favor on this application then that
16 would subject him to being sent back to the county and facing
17 all of the charges, the ones stemming from Horry County, and
18 also the charges stemming from Georgetown County.

19 THE COURT: Okay. Then I will certainly allow the
20 amendment. Mr. Brooker?

21 MR. BROOKER: Thank you, Your Honor. Your Honor, we
22 would call Mr. Walker to the stand.

23 **NEWITT R. WALKER WAS DULY SWORN AT THIS TIME AND**
24 **TESTIFIED AS FOLLOWS:**

25 THE CLERK: Please be seated and state and spell your

1 full name for the record, please.

2 THE APPLICANT: Newitt Walker, W-a-l-k-e-r.

3 **DIRECT EXAMINATION**

4 BY MR. BROOKER:

5 Q. Good morning, Mr. Walker. Am I pronouncing your last
6 name correctly?

7 A. Newitt Walker.

8 Q. I'm sorry, Newitt Walker. I apologize, Mr. Walker. Mr.
9 Walker, you filed this PCR application, and I think one of the
10 issues that you raised in your PCR application was based upon,
11 I think the charge of trafficking in cocaine that you had
12 received, I think here in Georgetown County; is that correct?
13 Do you remember the trafficking in heroin charge that you
14 received here in Georgetown County?

15 A. Yes, sir.

16 Q. That's the charge that is mentioned in your PCR
17 application?

18 A. Yes, sir.

19 Q. Now, my understanding is that one of the arguments that
20 you made in your PCR application is that you are alleging
21 ineffective assistance of counsel on the grounds that counsel
22 failed to fully investigate the defenses that were available to
23 you and talk with you about those defenses; is that correct?

24 A. Right, yes, sir.

25 Q. And I think that that issue is related to the

1 trafficking in heroin charge in Georgetown County; is that
2 correct?

3 A. Yes, sir.

4 Q. Now, I want to talk with you about that. Do you
5 remember, I think if my memory serves me correctly --

6 MR. BROOKER: If you can indulge me for just a second
7 Your Honor?

8 THE COURT: Uh-huh.

9 Q. -- that that occurred back on November 30, 2017, does
10 that sound about right?

11 A. Yes, sir.

12 Q. And where were you at when you were approached by law
13 enforcement?

14 A. At my mailbox.

15 Q. Now, I want to talk with you about little bit about that
16 so we can fully understand and the Court can fully understand.
17 You were at your mailbox, and were you sitting in a vehicle?

18 A. Yes, sir.

19 Q. Okay. I'm sorry, go ahead, I didn't mean to interrupt
20 you.

21 A. I was in the yard and I actually backed out to check the
22 mail and that's when they pulled up.

23 Q. So what you're saying is is that that vehicle was in the
24 yard --

25 A. Uh-huh.

1 Q. -- and you backed the vehicle out of the yard next to
2 mailbox?

3 A. Yes, sir.

4 Q. Now is that the mailbox in front of your residence?

5 A. Yes, sir.

6 Q. That's where you were living, right?

7 A. Yes, sir.

8 Q. And when you were sitting there in your car next to the
9 mailbox what were you doing?

10 A. Checking the mail, looking at the mail.

11 Q. And when you said, checking the mail, had you gotten the
12 mail out of the box?

13 A. Yes, sir, and I was just going through it.

14 Q. And about how long did you sit there at your mailbox
15 going through your mail?

16 A. Like, maybe two or three minutes, about five, something
17 like that.

18 Q. Now, and what happened next as you were sitting there
19 looking at your mail or going through your mail in your vehicle
20 at your mailbox?

21 A. I'm just going through mail, it's in my lap, and I
22 actually look up because I see a car that's beside my car, so
23 they just sat there for a minute, their windows was tinted,
24 then they pulled up so I continued looking through the mail for
25 the specific mail I'm looking for. When I looked back up their

1 facing back me, the car facing me and that that's when
2 they hopped out --

3 Q. And I want to make sure that the Court understands it
4 and I understand it. So you were saying as you were sitting
5 there next to your mailbox that car pulled up next to you?

6 A. Yes, sir.

7 Q. And of course, it stopped right next to you?

8 A. Yes, sir.

9 Q. Was your car parked out in the street?

10 A. It was like, in the street, like, half and half a little
11 bit, like, right beside the mailbox.

12 Q. And the car that pulled up next to you, you said it
13 stopped?

14 A. Yes, sir.

15 Q. Did it have any markings on it, were you able to
16 identify whose car pulled up next to you?

17 A. No, sir, this tinted jeep, a tinted jeep.

18 Q. And how long did it sit there?

19 A. Like a minute, maybe, at the most, it pulled off.

20 Q. And when it pulled off I think your testimony was you
21 went back to looking at your mail?

22 A. Yes, sir.

23 Q. And then you said that at some point in time you noticed
24 that that same vehicle that had pulled next to you had
25 positioned itself in front of you?

1 A. Right, yes, sir.

2 Q. And that people were getting out?

3 A. One, the passenger.

4 Q. The passenger in that vehicle got out?

5 A. Yes, sir.

6 Q. And of course, when the passenger in that vehicle got
7 out were you able to identify who that passenger was?

8 A. No, sir.

9 Q. At that time?

10 A. Right.

11 Q. Did he have on a uniform or anything like that?

12 A. No, sir.

13 Q. Just plain clothes?

14 A. Yes, sir.

15 Q. So you didn't know who it was at that time?

16 A. No, sir.

17 Q. When did you learn that that person was a law
18 enforcement officer?

19 A. When he started putting me in cuffs.

20 Q. When you said that they pulled around in front of you,
21 what do you mean, did they pull directly in front of you?

22 A. No. It was like they pulled off so I went back to look
23 at the mail, and I looked back up and they was sitting in front
24 of me, like, their car was facing mine and the passenger
25 was hopping out.

1 Q. How close was their car to -- so the cars were face to
2 face?

3 A. No, not that close, about from me to that podium right
4 there (indicating.)

5 Q. From you to that podium?

6 A. Yes, sir.

7 Q. So I'm terrible at distances. Would you say that that's
8 about maybe ten to 15 feet between from you to that podium
9 right there?

10 A. About ten to 15 feet.

11 Q. About ten to 15 feet away?

12 A. Yes, sir.

13 Q. And then the officer gets out of the car, but you didn't
14 know he was an officer at that time?

15 A. Right.

16 Q. Did the officer -- this person that you didn't know was
17 an officer at the time, did he say anything to you?

18 A. Stop, stop, stop, because I'm trying to pull back in the
19 yard because I know it was in park and then I just backed the
20 car in reverse -- well, back in drive, so I just pulled in the
21 yard, he's like, stop, stop, stop, stop, stop.

22 Q. So as you were pulling the car back in your driveway
23 they were yelling stop, stop, stop, stop?

24 A. Right.

25 Q. Did you ever get the car back into your driveway?

1 A. Yes, sir.

2 Q. Okay. And then what happened next?

3 A. That's when he asked to see my license and stuff, I gave
4 him my license.

5 Q. Okay. You gave him the license, and what happened once
6 you gave that individual your license?

7 A. They started pulling, telling me to get out of the car
8 and started searching me.

9 Q. So he asked you to get out of the car and started
10 searching you?

11 A. Yes, sir.

12 Q. Did he ask your permission to search you?

13 A. Not really. After he got my ID he pulled me out of the
14 car.

15 Q. Alright. And after they search you, what do they do
16 next?

17 A. Cuff me and put me in the car.

18 Q. Put you in their car?

19 A. Yes, sir.

20 Q. And after they did that did they search your car?

21 A. Not to my face, but I'm pretty sure, yes, sir.

22 Q. And the reason why I'm asking you is is that the
23 substances that you were charged with, trafficking in heroin,
24 when they searched you do they pull that heroin off your body?

25 A. No, sir.

1 Q. And you may not have known at that time, did you later
2 learn through discovery whether or not they had searched your
3 vehicle and was claiming to had pulled that heroin out of your
4 vehicle?

5 A. Yes, sir.

6 Q. Now, at some point in time did you hire a lawyer, or get
7 a lawyer?

8 A. Before the plea?

9 Q. Yeah, before the plea, you had a lawyer before the plea?

10 A. Yes.

11 Q. Who was Mr. -- Mr. Hazzard, right?

12 A. Right.

13 Q. He was your attorney, right?

14 A. Right, right.

15 Q. Okay. And was he a paid -- was he an attorney that you
16 hired on your own, or was he appointed to you through the
17 Public Defender's Office?

18 A. Public Defender's Office.

19 Q. Through the Public Defender's Office, okay. So after
20 you were arrested, this was on -- you were arrested on
21 November 30th of 2017, when was the first time that you met
22 with Mr. Hazzard, if I'm pronouncing his name correctly?

23 A. I'm going to say I went in there, like, early December.

24 Q. You were out on bond, right, did you get out on bond?

25 A. Yes, sir.

1 Q. And you think you met with him -- did you get out right
2 away?

3 A. Right away.

4 Q. How long did you sit in jail before you were able to
5 make bond?

6 A. Like, three, four days.

7 Q. And you think it was in December shortly after you got
8 out on bond that you met with Mr. Hazzard, you think is the
9 first time?

10 A. Yes, sir.

11 Q. And when you met with Mr. Hazzard, I'm assuming he
12 didn't have your discovery at that time because it had been so
13 short, or did he have your discovery?

14 A. Never went over there, I don't remember that.

15 Q. Well, that's what I want to try and get to you is that,
16 when was the first time that you met with Mr. Hazzard and he
17 had your discovery and you were able to go over your discovery
18 with him?

19 A. None.

20 Q. He's never went over the discovery with you? How many
21 times -- before you pled guilty, I think you pled guilty in
22 2019, I think February 25th of 2019 is when you pled guilty,
23 how many times did you meet with Mr. Hazzard prior to your
24 guilty plea?

25 A. Twice.

1 Q. Twice?

2 A. I went by the office once and then when I got arrested
3 in February he came over the county to see me.

4 Q. When you got arrested in February, February of when?

5 A. Of '19, I think.

6 Q. This is just before your plea?

7 A. Yes, sir.

8 Q. You got arrested -- just before your plea you got
9 arrested?

10 A. Yes, sir.

11 Q. And that would have been the second time that you saw
12 him?

13 A. Right.

14 Q. The first time you saw him, what did you all talk about
15 the first time that you saw him?

16 A. That first plea they had and I guess the investigation
17 he was going to do, or whatever, and that was it.

18 Q. That was in December?

19 A. Yes, sir.

20 Q. The first time. And of course you said that the next
21 time wasn't until, I think you said you were arrested on
22 February 12, 2019, probably about two weeks before your guilty
23 plea?

24 A. Yes, sir.

25 Q. And did he come out and see you at the county jail?

1 A. Just once.

2 Q. Did he have the discovery with him?

3 A. I can't remember exactly. I can't remember exactly. I
4 don't remember going over no paperwork or seeing the motion or
5 nothing like that, but on the a tablet, I mean, the pen he was
6 writing, whatever, on a tablet.

7 Q. Did he have a bunch paperwork that he read over with you
8 about the incident reports and warrants and indictments and
9 that sort of stuff, did he have that sort of stuff that he read
10 over with you?

11 A. No. He told me they had a plea and that he tried to
12 call the phone he didn't leave no message or nothing, but
13 that's about it. He didn't go over any paperwork or nothing,
14 he just was telling me they had a plea for me and I missed
15 court.

16 Q. Then did he tell you what that plea was?

17 A. Twelve.

18 Q. They had a plea for 12 years?

19 A. Yes, sir.

20 Q. Okay. So that was the first time that you heard about
21 that plea agreement for 12 years?

22 A. Yes, sir.

23 Q. And that plea agreement for 12 years, was it 12 years
24 for what, was it 12 years for the trafficking charge or what
25 was that 12-year plea for?

1 A. The charge for trafficking in Georgetown.

2 Q. The trafficking in Georgetown?

3 A. Yes, sir.

4 Q. And was that plea on the table at that time? Did he
5 tell you whether or not that plea was still on the table?

6 A. I think it was, like, Friday when he came to the county
7 and I think we went to court that Monday. I called him, I
8 think it was like Saturday or something, and he's like I
9 think -- it was off the table, or whatever.

10 Q. He told you that that plea was off the table?

11 A. Yes, sir.

12 Q. So you never had an opportunity to accept the plea?

13 A. No, sir.

14 Q. Now, I think you said that he told you that you missed
15 court?

16 A. Right.

17 Q. What court did you miss?

18 A. Roll call, that's what I was informed of, and he said
19 they went ahead with court anyway.

20 Q. He said that they went ahead with court anyway. Did
21 they have a trial in your absence?

22 A. Yes, sir.

23 Q. And that trial ended in a hung jury?

24 A. That's what I was informed, yes, sir.

25 Q. You were not convicted?

1 A. Yes, sir.

2 Q. Now, the plea offer that he made to you at that time,
3 because you eventually accepted a plea, I think on February 25
4 of 2019, you accepted a plea, didn't you?

5 A. Yes, sir.

6 Q. And you pled guilty to, this was a global plea, I think
7 for the charges in Georgetown and also the charge in Horry
8 County; is that correct?

9 A. Yes, sir.

10 Q. Now, I don't know whether or not -- do you remember, did
11 he talk with -- I mean, Mr. Hazzard, before you accepted your
12 plea, I think on February 25 of 2017, you all did talk about
13 it, didn't you all talk about what you were going to be
14 pleading guilty to?

15 A. Well, the charges that I was pleading to, yes, sir.

16 Q. You were going to be pleading to, I guess, a lesser
17 included offense for trafficking in heroin?

18 A. Right.

19 Q. And then, of course, for the charges in Horry County,
20 you were gonna be pleading to a lesser included offense for
21 possession with intent to distribute? That would have been
22 your third offense, that possession with intent to distribute,
23 that would be a third drug offense, you had prior drug
24 offenses?

25 A. Yes, sir.

1 Q. So they were going to reduce this from a third to a
2 first, was that your understanding?

3 A. I didn't -- I -- know all of that, but that's what
4 happened.

5 Q. I want you to tell me, I'm trying to find out your
6 understanding. Tell me and tell the judge, what was your
7 understanding of what you were going to be pleading to when you
8 went to that plea hearing on February 25, what was your
9 understanding?

10 A. The trafficking, and I think they charged me trafficking
11 Myrtle Beach, too.

12 Q. But you didn't plead to the trafficking in Myrtle Beach,
13 you pled to the PWID first in Myrtle Beach; is that correct?

14 A. Yes, sir.

15 Q. Did you all talk about that prior to you pleading
16 guilty, that, hey, this is what the offer is, they are offering
17 a lesser included offense of trafficking that would take you
18 from a mandatory 25 years to a penalty of seven to 25 years in
19 that their offer is that you're also going to be pleading to
20 possession with intent to distribute third offense, and you
21 would be pleading to the lesser included offense of a
22 possession with intent to distribute first offense and be
23 looking at, you know, 15 years, or up to 15 years, did you have
24 that conversation with Mr. Hazzard?

25 A. Yes, sir. He didn't fully broke it down, but just like:

1 This is what they recommend, and I think you should take it.

2 Q. And I want to back you up because I just got a little
3 ahead of myself, and I apologize to the Court and to you, but I
4 want to take you back to the facts regarding the incident in
5 Georgetown County that happened at your house.

6 A. Yes, sir.

7 Q. Now, you said that you met with Mr. Hazzard twice, you
8 can't quite remember whether or not -- you don't remember
9 whether or not you went over the discovery, you don't recall
10 going over it, did you all talk about that incident? Did you
11 all talk about what happened at your house when law enforcement
12 came to your house and you were sitting at your mailbox, did
13 you all discuss that event and what happened there?

14 A. Yeah, I told them what happened. It wasn't like no deep
15 conversation about it, I just told them what happened.

16 Q. Did you tell them the facts exactly the way -- or
17 similar to the way that you explained them in court today?

18 A. As far as when they pulled up?

19 Q. I'll rephrase that. I want to make sure you understand.
20 The facts that you explained to Mr. Hazzard, you said you
21 explained the situation to Mr. Hazzard. What you said to Mr.
22 Hazzard was it similar to what you testified today about what
23 happened at your house when you were sitting at the mailbox?

24 A. Yes, sir.

25 Q. Now, based upon what you told him about that event, did

1 you all talk about any potential defenses?

2 A. No, not really. He just was saying he would have looked
3 into and do his part, or whatever, and look into it, that was
4 the only defense he discussed with me.

5 Q. Did you all talk about, you know, the possibility of a
6 defense of filing a motion seeking to suppress the search of
7 your vehicle?

8 A. Right. Right, that's what I was saying, like, I asked
9 him, like, was this illegal, which I felt it was. He was like,
10 yeah, no. It wasn't no direct type -- basically he was saying
11 he was going to do his investigation.

12 Q. He said he was going to do his investigation?

13 A. Yes, sir.

14 Q. And when you all had that conversation, when you did all
15 have that conversation, was it the first meeting or the second
16 meeting that you had?

17 A. It was the first one.

18 Q. The first meeting that you had shortly after you got
19 out, you said this is what happened in Georgetown, this is what
20 happened at my house, and he told you that he would investigate
21 it?

22 A. Right.

23 Q. Did you all ever discuss it again after that?

24 A. No, sir.

25 Q. Did he ever come back and say to you that this is the

1 results of my investigation from what happened at your house --

2 A. No, sir.

3 Q. -- in Georgetown?

4 A. No, sir.

5 Q. You're not an attorney, are you?

6 A. No, sir.

7 Q. Do you have any legal training or law training?

8 A. No, sir.

9 Q. Now, I'm going to take you back to where I left you off
10 before at the plea. We're talking about the plea, and of
11 course you told me that when you pled guilty to those two
12 charges, at that time when you pled guilty to those charges,
13 and specifically the trafficking charge in Georgetown, prior to
14 you pleading guilty, going before the judge and pleading
15 guilty, did you all have a talk about your constitutional
16 rights and what constitutional rights that you would be waiving
17 if you plead guilty?

18 A. I can't say that I fully understood it, but we talked.

19 Q. He talked about waiver of your constitutional rights to
20 you?

21 A. I couldn't tell you.

22 Q. Now, I noticed that during your plea that the judge
23 talked to you about the waiver of constitutional rights --

24 MR. BROOKER: And if you can indulge me, Your Honor,
25 can I hand him a transcript for him to take a look at?

1 THE COURT: Sure.

2 MR. BROOKER: Thank you, Your Honor.

3 Q. Now, if you could turn to, I think page number three, on
4 page number three it looks as if you were told what you were
5 going to be pleading guilty to. I think on that first plea it
6 says here that you were going to be pleading to the trafficking
7 charge, which was originally trafficking heroin 14 to 28 grams,
8 but of course it was going to be reduced to trafficking in
9 heroin four to 14 grams in a recommendation of 17 years.
10 That's in that first -- you were told that, right?

11 A. Yes, sir.

12 Q. That's what the State's recommendation was going to be?

13 A. Yes, sir.

14 Q. And you were also told, I think by Mr. Powell, the
15 prosecutor, that the agreement was also going to be that you
16 plead guilty to PWID cocaine, and that he said that he believed
17 it was a third offense, but the agreement was it was going to
18 be reduced to a first offense and that would be a
19 recommendation of 15 years, that's in the transcript, right?

20 A. Yes, sir.

21 Q. And you were there and you heard that's what the
22 prosecutor represented to the judge and what the agreement was
23 going to be; is that correct?

24 A. Yes, sir.

25 Q. And I think the judge did talk with you about the venue

1 and that you were pleading guilty to the Georgetown charges in
2 Horry County, and in order to do that you had to waive venue,
3 and you did waive and agree to allow those Horry County charges
4 be heard in Georgetown; is that correct?

5 A. Yes, sir.

6 Q. And then on five, the judge proceeded to talk with you
7 about what these time offenses carry, what these charges carry.
8 And if you look at page five, and specifically I'm looking at
9 starting with line four where the judge says: Now, regarding
10 the offense of trafficking in heroin four to 14 offense,
11 potential sentencing is seven years to 25 years and a fine of
12 \$50,000.00; and you understand that, correct?

13 A. Yes, sir.

14 Q. Now, further down the line 15, once the judge told you
15 about the penalties for the trafficking charge, on line 15
16 still on page five the judge then starts talking with you about
17 the possession with intent to distribute cocaine base first
18 offense, he then started talking with you about that offense,
19 the Horry County offense. Now, I don't see where the judge
20 then instructed what the maximum and the minimum penalty were
21 when it came to the possession with intent to distribute.

22 A. Okay.

23 Q. Were you ever told by the judge -- well, I think the
24 transcript is clear, I've read the transcript, is that there
25 was nowhere in the transcript where you were told the maximum

1 or minimum penalty for possession with intent to distribute
2 first offense. Did you and your attorney discuss what the
3 maximum and minimum penalty for that offense was prior to you
4 standing before the judge and pleading guilty? Did you all
5 have that conversation? Did he say, well for possession with
6 intent to distribute first offense this is what the sentencing
7 range is, this is the minimum, zero, this is the maximum, 15
8 years, and this is what the potential fine would be and the
9 judge could do one or the other or both, did you have that
10 conversation with him about the maximum and minimum penalty for
11 that particular offense?

12 A. No, sir, just what they offered.

13 Q. And I see further the judge explained to you, you know,
14 that this was a most serious offense, so you were aware of
15 that, that the trafficking in heroin was a serious offense, and
16 of course the judge also explained to you the ramifications for
17 that. In South Carolina, you know, we have a -- he explained
18 to you that we have a law that basically says that if you get
19 enough serious and most serious offenses, kind of like a three
20 strikes you're out rule, then that third strike you could be
21 sentenced to up in life imprisonment, he explained that, right?

22 A. Yes, sir.

23 Q. And you understand that, right?

24 A. Yes, sir.

25 Q. On page seven, if you turn to page seven, this is where

1 the colloquy begins to talk about your constitutional rights.
2 And of course, on line seven, I think the judge says, the Court
3 says that now when you plead guilty you give up constitutional
4 rights and among those are the right to remain silent. So you
5 were aware of that, right?

6 A. Yes, sir.

7 Q. And the Court went on to say that on line 12, that other
8 rights are the presumption of innocence, the right against self
9 incrimination at trial. Now, do you know what the right
10 against self incrimination is, self incrimination?

11 A. No, sir. I got an idea. Just basically, like -- like,
12 convicting yourself.

13 Q. I'm sorry, say that again.

14 A. Like convicting yourself, so to speak, like.

15 Q. Okay. That's your understanding is, is that convicting
16 yourself?

17 A. Yes.

18 Q. Okay. And of course the right of presumption of
19 innocence, do you understand what that is?

20 A. No, sir.

21 Q. Of course, on line 14 the Court went on to say that the
22 State has to prove your guilt beyond a reasonable doubt, when
23 you plead guilty, you give up these rights. Now, I know that
24 the colloquy tells you that you have a right against self
25 incrimination, you have a right to -- if you plead guilty

1 you're giving up the right against self incrimination, you give
2 up the right of presumption of innocence, but did anyone
3 explain to you what that means? Did your attorney explain to
4 you what those terms mean, what self -- the right against self
5 incrimination, the right against presumption of innocence, did
6 anybody explain those legal terms to you and what they meant?

7 A. No, sir.

8 Q. And did you clearly understood what they meant?

9 A. No, sir.

10 Q. I think on line 18, we're still on the same page, and
11 that is is that the Court advised you that you have a right to
12 a jury trial, and the Court explained that what a jury trial
13 means is that 12 men and women would be sitting in the jury box
14 over there listening to the facts and evidence presented to the
15 State and to see if there are, indeed, enough facts and
16 evidence to prove you guilty beyond a reasonable doubt. So the
17 Court explained to you what a jury trial was and what that
18 entails; is that correct?

19 A. Yes, sir.

20 Q. And you understood that, did you not?

21 A. Yes, sir.

22 Q. On the last line, line 25 on page seven, the Court says:
23 In the jury trial your attorney could request witnesses, excuse
24 me, not request, I'm sorry. It says, your attorney could
25 question witnesses and the evidence, you could testify, call

1 witnesses, present evidence, challenge the State's offerings,
2 and you give up all of these rights if you plead guilty. Okay.
3 Now, your right to testify, did anyone explain to you your
4 right to testify and not testify? I know the judge told you
5 you had the right to do it and not to to do it, did anyone
6 explain to you what that meant?

7 A. No, sir.

8 Q. Did anyone explain to you that if you were to testify
9 the jury would be instructed that you have the right to remain
10 silent and that the jury would be instructed that they could
11 not hold that against you and that they could not discuss that
12 in the deliberation room if you choose not to testify?

13 A. No, sir.

14 Q. Did you understand that that's what the right to testify
15 meant, that phrase meant?

16 A. No, sir.

17 Q. And of course it says that your attorney could question
18 the witnesses. Do you know what that meant?

19 A. Not really, because I didn't have no witnesses.

20 Q. Do you know what the confrontation clause is?

21 A. No, sir.

22 Q. Do you understand what that means, what the
23 confrontation clause guarantees an individual?

24 A. No, sir.

25 Q. And I'll try to briefly state it. Did anyone say to you

1 that underneath the confrontation clause that you have the
2 right to confront anyone who would be a witness against you at
3 trial. You have the right to confront anyone that would be a
4 witness against you based upon the charges that you were
5 charged with and that if those persons had evidence against you
6 that they would be required to sit in the witness stand and be
7 put under oath and testify in front of you to what evidence
8 that they're claiming they have against you that point to those
9 charges and that your attorney would have the right to
10 cross-examine those witnesses including impeachment. Did
11 anybody explain that to you, what that confrontation means?

12 A. No, sir.

13 Q. Did you understand that on your own?

14 A. To agree, like as far as court goes little bit.

15 Q. Tell me to what degree, to what degree you understood
16 it.

17 A. Just like no people could sit up there and get
18 questioned.

19 Q. So no people sit up and get questioned?

20 A. Get on the stand and get questioned.

21 Q. And that's the extent of your knowledge about it?

22 A. Yes, sir.

23 Q. Now, I note that an explanation of this stuff is not
24 contained within the transcript. Did your attorney talk with
25 you about the confrontation clause and what that meant?

1 A. No, sir.

2 Q. Did your attorney explain to you about the right to
3 testify or not to testify and the instructions that would be
4 given to the jury should you choose not to testify? Did your
5 attorney explain that to you?

6 A. I mean, he said I could go to trial, or whatever, but
7 that like ain't the best thing.

8 Q. I got you. What my specific question is did he talk
9 with you about if you were to go to trial you would have a
10 right to choose for yourself, no one could make the decision
11 for you, to testify or not to testify, and then if you choose
12 to testify the judge would instruct the jury -- choose not to
13 testify the judge would instruct the jury that your right not
14 to testify could not be held against you and that the jury
15 could not even consider that when they go back into the
16 deliberation room, did he explain that to you?

17 A. No, sir.

18 Q. Now, you filed a PCR application and you're asking Your
19 Honor and this Court to reverse your guilty plea. Have all of
20 these things been explained to you, the things that I went over
21 for you, and that means any potential defenses that you may
22 have had regarding of what law enforcement did to you at your
23 home in Georgetown, along with the constitutional rights that
24 you were waiving? If all of this stuff had been explained to
25 you and everything done right, would you have not pled to what

1 you pled to, that 17 years and 15 years?

2 A. No. I feel like there could have been like a better
3 investigation.

4 MR. BROOKER: If you could indulge me for just a
5 second, Your Honor, let me make sure I don't have any further
6 questions for Mr. Walker.

7 Q. Just a couple more, Mr. Walker, and I'm not doing this
8 all out of order, but I'm going to walk you out a little bit to
9 the Georgetown incident. I think at the colloquy, the guilty
10 plea, the judge gave a -- at least the prosecutor gave a
11 factual basis in which you were pleading guilty to. I think
12 with respect to the Georgetown incident, and I'm on page 11
13 specifically line four, the factual basis that was given says,
14 the facts of the Georgetown County charge that in Georgetown
15 County on November 30, 2017 law enforcement made a traffic stop
16 on the defendant. He was operating a motor vehicle, they
17 noticed an odor of marijuana -- excuse me, odor of alcohol --
18 excuse me -- the odor of marijuana, one of the officers was a
19 canine officer, dog was with him, they did a search around the
20 outer perimeter of the vehicle, the dog made an alert. Based
21 upon the smell of marijuana and the dog alert they searched the
22 car and found a bag of marijuana and also a bag containing
23 heroin in the glove compartment box. So it's your
24 understanding that they got it out of your vehicle?

25 A. Yes, sir.

1 Q. Now, and I'll be very quickly, I'm about to end with
2 you, these I think will be more appropriate questions for Mr.
3 Hazzard, but what I just want to know is, did you all talk
4 about -- when law enforcement said that they took the dog out
5 and used the dog for at least part of the basis for satisfying
6 probable cause to search, did you all talk about the dog and
7 talk about defenses to challenging the use of the dog to
8 establish probable cause?

9 A. No, sir.

10 Q. And you may not know this, that when Mr. Hazzard
11 requested the discovery in the case do you know whether or not
12 he requested any discovery regarding the canine that was used
13 for the sniff, do you know whether or not he requested the
14 medical records for the canine, do you know whether or not he
15 requested the training records for the canine, do you know
16 whether or not he requested the training manual for the canine,
17 do you know whether or not he requested what are the alert
18 signs for the canine?

19 A. No.

20 Q. Do you know whether or not or did you ever see any
21 request for evidence with respect to what the canine was
22 trained on, what substances the canine was trained on?

23 A. No, sir.

24 Q. Did you all ever talk about that, what substances the
25 canine was trained on?

1 A. No, sir.

2 Q. Did you ever talk about whether or not, or did he ever
3 request it, or did you ever receive any records indicating
4 whether the canine was trained at a certified Kennel with the
5 ability to train dogs to detect controlled substances?

6 A. No, sir.

7 Q. Did you ever see any records for the dog that pertains
8 to false positives, any false positives that the dog may have
9 had over the life of his service?

10 A. No, sir.

11 Q. Now, I want to talk with you a little about the Horry
12 County charge. The Horry County charge that you plead with
13 PWID, that was the traffic stop, right?

14 A. Traffic stop?

15 Q. Yeah, the Horry County charge where you eventually pled
16 to possession with intent to distribute?

17 A. Yes, sir, Surfside, right?

18 Q. Yeah, Surfside, I'm sorry. And of course, on page ten,
19 I think there's a recitation of the facts that was given by the
20 solicitor. Then of course on page ten, it starts with line 16,
21 the solicitor indicated to the Court that the indictment ending
22 in 5267 on June 17 of 2018 in Horry, and he said, the Surfside
23 Beach area, defendant was in a motor vehicle, law enforcement
24 made a traffic stop, the officer noticed the other person in
25 the vehicle put what looked like a bag of marijuana into his

1 pocket. The officer got the two people out including the
2 defendant out of the vehicle, they told the defendant to get
3 out, stand still, we're going to cuff you, he basically ran
4 away, they apprehended him shortly -- a short distance away,
5 and he ended up being arrested for interference or not
6 cooperating, they found bags containing cocaine base in its --
7 where he was hiding, and of course, they said it was actually
8 several bags. Now, that traffic stop, do you remember that
9 traffic stop?

10 A. Yes, sir.

11 Q. Were you driving the vehicle?

12 A. Yes, sir.

13 Q. And of course, what reason did law enforcement pull you
14 over for?

15 A. Speeding, I think.

16 Q. They pulled you over for speeding?

17 A. Yes, sir.

18 Q. And I think the facts indicated is is that when they
19 pulled you over for speeding, when the officer approached the
20 car did he ask you for your license and registration?

21 A. Yes, sir.

22 Q. Did you have a license and registration?

23 A. Yes, sir.

24 Q. Did you provide the officer with a license and
25 registration?

1 A. Yes, sir.

2 Q. Was it one officer or more than one officer?

3 A. More than one.

4 Q. When you provide the officer with the license and
5 registration did he or she go run your license and
6 registration?

7 A. Not right away because, like, at the same time, like you
8 stated, the other officer who was on the passenger side quickly
9 went into snatching us out, or whatever, or snatching out
10 taking me out of the car, so he didn't get time to run my ID or
11 whatever.

12 Q. He snatched the passenger out?

13 A. Immediately.

14 Q. Immediately?

15 A. Right.

16 Q. And do you know why he snatched the passenger out?

17 A. Like, he said he smelled weed or something.

18 Q. He said he thought he saw something that -- he thought
19 that maybe the defendant put some weed in his pocket?

20 A. Yes, sir.

21 Q. And when he took you out, I think they were going to
22 handcuff you, right?

23 A. Yes, sir.

24 Q. And you ran away?

25 A. Yes, sir.

1 Q. And did they run after you?

2 A. Yes, sir.

3 Q. Did they eventually catch you?

4 A. Right away.

5 Q. How long did it take for them to catch you?

6 A. He was right behind me.

7 Q. Okay. And the reason I'm asking you is that they
8 indicated that they found some drugs in an area where they
9 eventually found you.

10 A. Not true.

11 Q. Did you throw any drugs down?

12 A. No, sir.

13 Q. Did the officers, and I don't know if you remember, you
14 said you didn't see your discovery, do you remember whether or
15 not there was any allegations that the officers saw you throw
16 drugs down?

17 A. No, sir.

18 Q. Did you all talk about any defenses that were
19 potentially available to you as a result of the traffic stop?

20 A. No, sir.

21 Q. Did you talk about the potential filing a motion simply
22 to suppress the drug evidence that they were claiming that was
23 found, I guess, near where they found you where you ran?

24 A. No, sir.

25 Q. But they certainly didn't find any drugs on you; is that

1 correct?

2 A. Yes, sir, correct.

3 MR. BROOKER: Your Honor, I don't believe I have any
4 further questions for Mr. Walker.

5 THE COURT: Ms. Marto?

6 MS. MARTO: Yes, Your Honor.

7 **CROSS-EXAMINATION**

8 BY MS. MARTO:

9 Q. Good afternoon, sir.

10 A. Good afternoon.

11 Q. So you're stating that counsel didn't review any of the
12 discovery with you, correct?

13 A. Right.

14 Q. Were you aware of what the charges you were facing were,
15 what they meant?

16 A. Yes, ma'am, to a degree.

17 Q. So counsel discussed those with you?

18 A. In that room right here, yes, ma'am, like he went over
19 what the State was offering.

20 Q. Okay. And he talked to you about the plea offer?

21 A. Yes, ma'am.

22 Q. And you knew the basis, the factual basis behind these
23 charges, right, even if you didn't see the discovery?

24 A. Like, as far as what I was charged with, yes, what I was
25 charged with.

1 Q. Do you know the rights you were waiving by pleading?

2 A. Not fully.

3 Q. What do you mean by "not fully," sir?

4 A. I just know like in order for me to waive it, that would
5 be the only way for them to hear it all at one time, or
6 whatever.

7 Q. So you just wanted to get this done?

8 A. That's right, sort of.

9 Q. You didn't want to go to trial, right?

10 A. I wanted a fair fight, though. Like, I wanted to be
11 treated right, not painted like this way.

12 Q. Did you want to go to trial, sir?

13 A. Pretty much. If the investigation was gonna be right,
14 pretty much.

15 Q. Okay. And so you still, today, you want to go to trial
16 and that's why you're asking the plea to be vacated, right?

17 A. I want it to be looked at properly, yes, ma'am.

18 Q. And are you saying you never saw the indictments against
19 you?

20 A. In my motion, yes, ma'am.

21 Q. You saw most of them?

22 A. I said, my motion, my motion of discovery in the
23 paperwork I got that I asked for --

24 Q. Your motion for discovery before the plea, or while Mr.
25 Brooker was representing you?

1 A. Yeah, since he been there.

2 Q. You didn't see any of the charges before you went plea,
3 is that what you're saying?

4 A. The warrants, yes, ma'am.

5 Q. Were you afraid of facing more time if you went to
6 trial?

7 A. I mean, that's normal.

8 Q. And you were charged with, what, about 16 different
9 offenses?

10 A. I don't know.

11 Q. And you want to go to trial on all of them?

12 A. I mean, if that's what it --

13 Q. Did counsel discuss the recommended sentencing from the
14 State?

15 A. The recommended?

16 Q. Yeah, the recommended sentences on what you pled to?

17 A. Yes, ma'am, he said what they recommended.

18 Q. Why would you plead if you didn't see any of the
19 discovery?

20 A. They wanted to give me more time, just trying to get it
21 together. It just seemed like they wanted to give me more time
22 than that.

23 Q. So you thought it was a good deal what Mr. Hazzard was
24 trying to get you to accept, right?

25 A. Sort of, yes, ma'am.

1 Q. And do you remember the Court talking to you about your
2 rights at the plead colloquy?

3 A. So, so.

4 Q. Do you remember them saying you could go to trial?

5 A. Yes, ma'am.

6 Q. Do you remember the Court saying you could question the
7 witnesses?

8 A. Yeah --

9 Q. What about question the evidence the State presented?

10 A. No.

11 Q. No? Do you have a copy of the transcript, sir?

12 A. It's right here.

13 Q. You could look at, I believe Mr. Brooker read this, but
14 page seven, starting with line 25, it says: In the jury trial
15 with your attorney you could question the witnesses and the
16 evidence, you could testify, call witnesses, present evidence,
17 challenge the State's offering, but when you plead guilty you
18 give up all of those rights. Do you understand that? And you
19 said, yes, sir. Do you recall any of that now?

20 A. Yes, ma'am.

21 Q. So you remember you could call and confront witnesses,
22 right?

23 A. Not really, but I mean, it's just saying you just
24 thinking, this plea. I wasn't -- I mean, I heard it, but I
25 didn't hear it, like, fully understood.

1 Q. But you still told the Court you understood, right?

2 A. Right.

3 Q. And you told the Court you understood that you could
4 present a defense or challenge the State's offering; is that
5 correct?

6 A. Yes, ma'am.

7 Q. And you told them that you understood you could testify
8 at trial, correct?

9 A. I told them, but I didn't fully know, I didn't know
10 that.

11 Q. And again, you just told the judge you understood things
12 even if you didn't because you wanted the plea?

13 A. Right.

14 Q. Because the plea sounded better than trial?

15 A. Yes, ma'am.

16 Q. And then you were told the State was recommending 15
17 years for your PWID charge, correct?

18 A. Yes, ma'am.

19 Q. And that's what was actually imposed, correct?

20 A. Yes, ma'am.

21 MS. MARTO: Nothing further.

22 THE COURT: Anything further, Mr. Brooker?

23 MR. BROOKER: Just probably about five questions,
24 Your Honor, but I'll be quick.

25

REDIRECT EXAMINATION

1

2 BY MR. BROOKER:

3 Q. I think that you were asked whether or not you thought
4 the deal was a good deal, I think that was one of the questions
5 that you were asked.

6 A. Yes, sir.

7 Q. If you were aware that you had a defense to these
8 charges do you think you would have explored those defenses?

9 A. Right, yes, sir.

10 MR. BROOKER: No further questions, Your Honor.

11 MS. MARTO: Nothing further.

12 THE COURT: You can step down, sir.

13 MR. BROOKER: We call Mr. Hazzard.

14 **RONALD HAZZARD WAS DULY SWORN AT THIS TIME AND**
15 **TESTIFIED AS FOLLOWS:**

16 THE CLERK: Thank you. Please state and spell your
17 name for the record.

18 THE WITNESS: My name is Ronald William Hazzard, last
19 name is spelled, H-a-z-z-a-r-d.

DIRECT EXAMINATION

20

21 BY MR. BROOKER:

22 Q. Good afternoon, Mr. Hazzard.

23 A. Good afternoon, sir.

24 Q. You represented Mr. Walker, I think, in connection with
25 the charges that he pled guilty to on February 25th of 2019 and

1 also the charges that are the basis of his application for
2 post-conviction relief?

3 A. Yes, sir.

4 Q. And I believe Mr. Walker was charged in Georgetown
5 County with trafficking in heroin, originally, 14 to 28 grams,
6 and was looking at a minimum of 25 years in prison; is that
7 correct?

8 A. Yes, sir.

9 Q. And is it your understanding that in the Georgetown --
10 excuse me, the Horry County charge he was charged with
11 possession with the intent to distribute, and I think the
12 prosecutor said potentially a third offense; is that correct?

13 A. I believe so, yes, sir.

14 Q. And were you the only attorney that ever represented him
15 in connection with these charges that you're aware of?

16 A. To the best of my knowledge.

17 Q. Now, it is my understanding, give me just a second, that
18 the first charge -- of these two charges, the charge that he
19 was arrested on first would have been the Horry County charge,
20 is that correct, that was in June of 2018? I'm sorry, that
21 that charge that he was arrested to first would have been the
22 Horry County charge, and that would have been November of 2017;
23 is that correct?

24 A. You got that backwards. The first charge was the
25 Georgetown charge, indictment 2018-GS-22-0792. That was

1 trafficking heroin 14 to 28 grams. My notes indicate the date
2 of arrest was November 30, 2017. Of the two incidents that he
3 entered guilty pleas to, the Horry County charge, that date of
4 arrest was, I believe, was June 17th of 2018, that was
5 indictment 2018-GS-26-5267.

6 Q. So the Horry County charge was the first charge he was
7 arrested on -- excuse me, not the Horry County, the Georgetown
8 charge?

9 A. Well, actually, he was arrested on charges in 2016 that
10 were disposed of as part of this plea deal, but of the two that
11 he entered the guilty plea to, the Georgetown charge would have
12 been the first in time, yes, sir.

13 Q. Exactly, and that's what I'm referencing. The two
14 charges that he pled guilty to, the first arrest was the
15 Georgetown charge?

16 A. Yes, sir.

17 Q. Okay. But of course, I think that Mr. Walker testified
18 to shortly after he was bonded out, I think, in November. I
19 think he said he was arrested November 30th of 2017, stayed in
20 there a couple days, and then of course bonded out, and he said
21 that he believed to the best of his recollection in December of
22 2017 that he met you first. Does that sound about right, that
23 he met you shortly after he was released from jail?

24 A. Mr. Walker's application for his 2016 heroin charges
25 came into our office in November of 2017. On November 26th of

1 2017 I instructed my executive assistant to open a file on Mr.
2 Walker and indicated that I would represent him on those
3 charges. Four days later he was arrested for the trafficking
4 heroin charge, and I subsequently met Mr. Walker the first time
5 at a roll call on December 8, 2017 here in Georgetown County.

6 Q. So he was correct when he said that when he met you, the
7 first time he met you was December of 2017 and you all, I
8 guess, may have potentially discussed his recent arrest
9 charges; is that correct?

10 A. Yes, sir.

11 Q. And I'm assuming that you filed what all attorneys do
12 for those trafficking charges, November of 2017 you filed a
13 Rule 5 and Brady request for disclosure?

14 A. Correct.

15 Q. And you received discovery?

16 A. Yes, sir.

17 Q. Now, once you received that discovery, and I'm
18 specifically talking about the November 30th of 2017
19 trafficking offenses, when was the next time that you meet him
20 after receiving the discovery for those charges in order to go
21 over it with him?

22 A. I couldn't tell you that because he had so many
23 different sets of charges from so many different arrests. It
24 wouldn't be that I spoke with him and made a notation that I
25 was speaking with him about this arrest or that arrest.

1 Whatever I had at the time that I met with him I would have
2 discussed everything that was pending at that time.

3 Q. Do you have records of when you met with him thereafter?

4 A. Yes, sir.

5 Q. When was the next time that you met him after December
6 of 2017?

7 A. After December 8, 2017, as a matter of fact, let's see:
8 December 8, 2017, roll call, talked with the defendant and
9 Assistant Solicitor, Keith Powell, confirmed defendant's
10 telephone number in the database. Defendant made an
11 appointment for an office conference on December 19th of 2017
12 at 11 a.m. On December 19th of 2017 I was in my office for his
13 scheduled appointment, he did not appear. So the next time I
14 actually got to speak with him would have been February 16th of
15 2018. Again, that was roll call, talked with him and talked
16 with the solicitor. The defendant confirmed the phone number
17 in our database, and he was excused at that time after I spoke
18 with him regarding some discovery that we have received up to
19 that point, and I made a notation: We need to schedule another
20 ACC, or attorney client conference, for him. I instructed my
21 executive assistant to contact Mr. Walker to find a mutually
22 agreeable time for him to come in. He finally came into see me
23 on March 29th of 2018. We discussed the facts of his cases,
24 the offense charged, the penal exposure for the charges, his
25 prior records, specifically confirming that he had at least

1 three prior narcotics convictions, the fact that confidential
2 informants were used in certain cases and the difficulties in
3 confidential informant cases for law enforcement. We reviewed
4 videos of dash cam and body cam of certain arrests that have
5 those. We scanned phone dump discs but noted that one of the
6 phone dump discs was inoperative, and I put in parenthesis: I
7 believe the mistake was made while the solicitor's office
8 attempting to download information from a shortcut on the
9 solicitor's computer desktop. So at that time, March 29th of
10 2018 we reviewed everything we had, discussed the charges he
11 was facing, the time he was facing, and the facts of those
12 cases, as well as his constitutional rights.

13 Q. So on that date, you can't tell me, and that's what I'm
14 concerned about, you can't tell me whether or not you discussed
15 the November 30th 2017 trafficking charge, the discovery, and
16 exactly what you discussed in reference to that case? And
17 that's the one that I'm most concerned with, is the one that he
18 filed the PCR action. Is there any notations that you
19 discussed with him, the discovery for the November 30, 2017
20 trafficking charge?

21 A. Oh, most definitely, I know I discussed that with him
22 because we went over everything having to do with the facts of
23 that situation. As I recall it, it is pretty close to the way
24 Mr. Walker testified, that he had pulled into the yard, and
25 what you're talking about is a two-lane road, it's a fairly

1 narrow road. He had pulled into the yard, pulled back out of
2 the yard, and when he pulled up to the mailbox, as I recall,
3 his mailbox is actually across the street from the residence,
4 so when he pulled back out of the yard and he pulled up to the
5 mailbox so that he could access it from the driver's side, he
6 was actually facing the wrong way on the wrong side of the
7 road. We discussed the fact that he believed and I believed,
8 and still believe, that the stop was totally pretextual in
9 nature, no question about that. When the police pulled up,
10 they get out of their call, he then pulls back into his yard,
11 gets out of his car, locks his car, and at that time there is
12 quite some mayhem there where the cops and the police are
13 trying to get keys from him, he doesn't want to give them his
14 keys, we discussed the fact that they accessed his car and what
15 was in his car without a warrant, and from my position, without
16 having any particular exigent circumstances or exceptions, that
17 would allow them to do so. So no, we discussed all of that at
18 great length, and it would have been wonderful if he would have
19 availed himself and made himself available at the trial of that
20 case.

21 Q. Let me ask you the question in reference, I think you
22 said it was your understanding that at the house the mailbox
23 was on the other side of the road. It was not on the same side
24 of the road that his house was on?

25 A. That's my recollection, yes, sir, because prior to the

1 trial I went and visited the location, obviously talked with
2 him about it at great length, that was on February 11th of 2019
3 when I went out there. That was [REDACTED] Road in
4 Georgetown, South Carolina.

5 Q. And that road which his house is on, is that a
6 residential road?

7 A. There are some houses on there, but it's not a real --
8 there are not a lot of houses out there, but there are houses
9 there, or residences, as I should say there.

10 Q. And the reason I'm asking that question is, is that if
11 he was pulled up next to his mailbox, whether it's a
12 residential road or not, is that in violation of a particular
13 statute that you were able to identify?

14 A. Other than him being in what would be considered the
15 wrong lane of traffic, not particularly, because if I recall
16 correctly, at the trial that did not end in a hung jury, as he
17 testified, it ended in a mistrial. I recall asking the officer
18 who swore out the warrant exactly what traffic law he was in
19 violation of, and they were unable to specifically name one, as
20 I recall.

21 Q. Now, if they were unable to specifically identify a
22 traffic law that he was in violation of, and of course, then
23 correct me if I'm wrong, is that underneath the prevailing law,
24 that before they could actually approach him, and this is South
25 Carolina, I think this is the federal fourth amendment right,

1 and of course South Carolina has an equivalent right against a
2 legal search and seizure that is more protective than the
3 federal statute, it's my understanding that before they even
4 approached him they would have to have had probable cause or
5 reasonable suspicion of a specific crime that they can identify
6 that they were investigating, and of course, if they could not
7 identify a traffic offense, if they could not identify a
8 specific traffic offense that he had committed and that they
9 were investigating, then in your opinion would that be grounds
10 for filing a motion seeking to suppress the evidence based upon
11 a violation of the federal fourth amendment right against legal
12 search and seizure in South Carolina's equivalency that
13 protects against a legal search and seizure and also has a
14 specific privacy provision in there?

15 A. Yes, sir. We went through all of that at the trial of
16 the case.

17 Q. And of course, those officers went on the record and
18 says they could not identify a traffic law that he had
19 violated; is that correct?

20 A. To my recollection, yes, sir.

21 Q. And so my question would be is, if they could not
22 identify a traffic law that he had violated and this appeared
23 to have been an illegal search and seizure, if they could not
24 identify a specific violation or a specific crime that he had
25 violated that they were investigating, then why would he plea,

1 why would you allow him to plead to that charge under those
2 circumstances, because he did eventually plead to the
3 trafficking charge of 17 years. Why would you allow him to
4 plead guilty to that?

5 A. Because those issues were fully addressed at a
6 preliminary hearing in front of Judge Larry Hyman, and that
7 motion to suppress was denied by a Court of Law. When I
8 finally got to speak with Mr. Walker about this after he was
9 taken into custody on the other drug charges, I explained to
10 him what happened at the trial that he failed to appear at or
11 missed and how that went down, and I explained to him also at
12 that time that I did believe in that defense, I did believe in
13 the motion to suppress, but that the Court had ruled against
14 him, that he would have the right to bring that matter up again
15 on the retrial of that case, which was actually scheduled for
16 the following week after he was taken into custody on new
17 charges in Horry County, because after that mistrial they
18 quickly put it right back on the trial docket. So there was
19 probably about a four-day gap, and if the Court will indulge me
20 for a second. On February 12th, they actually started the
21 trial on February 11, 2019. We did the jury qualification and
22 selection. We did the pretrial suppression motion before Judge
23 Hyman. The motion to suppress, drugs found, and the warrant
24 was search of the car was denied. The trial was 2012 -- or
25 February 12th of 2019 on indictment 2018-GS-22-0792,

1 trafficking heroin 14 to 28 grams. The defendant was not
2 present. Later that day he was found guilty on the trafficking
3 heroin charge where the mistrial was declared by Judge Hyman
4 because an alternate juror was allowed to deliberate and return
5 a verdict. February 17th, so five days after he was found
6 guilty in his absence and a mistrial declared, he was picked up
7 in Horry County and I spoke with him at that time at J. Reuben
8 Long Detention Center. We discussed the facts and
9 circumstances surrounding his most recent arrest in Horry
10 County on a bench and new heroin trafficking charges, because
11 the reason there was the bench warrant was because he had
12 missed a bunch of roll calls and not made himself available
13 over the preceding several months. I advised him at that time
14 that he was tried in his absence on heroin trafficking case,
15 arrest date, November 30th 2017, that that trial was the week
16 of February 11th and that the jury returned a guilty verdict on
17 the heroin trafficking charge, but to case resulted in a
18 mistrial, so we discussed in great length this motion that we
19 had to suppress and how that went down in front of a judge at a
20 trial. I also advised him that the case was on the trial
21 roster for a retrial the week of February 25th, so eight days
22 after this discussion that we were having. We discussed the
23 previous plea offer of 12 to 15 years and 12 years because,
24 actually, you know, when we go further into this you'll find
25 that the original offer was 12 years and the assistant

1 solicitor Powell had said to me, and I advised Mr. Walker of
2 this, that Mr. Powell had said: Before we go to trial see if
3 your client has, what he referred to, as a legitimate counter
4 offer. So if you tell me your offer is 12 and you'll take a
5 counter offer, I'm figuring we can at least get to ten, and
6 that's to dispose of, you know, like, four or five different
7 arrests and about 16 different drug charges, but anyway, let's
8 see. We talked about it being the 12-year offer, then it went
9 to 12 to 15. We also discussed the penal exposure,
10 specifically, the fact that the trafficking charge had a
11 mandatory sentence of 25 years and and \$200,000.00 fine and the
12 fact that the defendant has multiple drug charges pending in
13 Horry County and Georgetown County and the odds of him being
14 acquitted on all charges in multiple trials seems exceedingly
15 slim. We discussed the possibility of a 15-year plea offer at
16 his request, and requested -- and I did request, for one of the
17 few times in my career, I requested that he seriously consider
18 taking it if offered. I subsequently had a text interaction
19 with Assistant Solicitor Powell after leaving J. Reuben Long
20 Detention Center and inquired about the possibility of a
21 15-year plea offer to dispose of all pending charges.
22 Assistant Solicitor Powell replied that he was considering a
23 plea in the 17 to 18 year range but needed to speak with the
24 Horry County Solicitor first.

25 Q. Thank you. I want to ask to take you back because that

1 was a lot. I want to take you back to the trial. I noticed
2 that you said that the jury found him guilty on February 17th
3 of 2019 and I think --

4 A. No, sir, they found him guilty February 12th.

5 Q. February 12th, the next day. It started on the 11th and
6 they found him guilty on the 12th.

7 A. Yes, sir.

8 Q. And of course, as I think you've mentioned a mistrial,
9 what was the basis of the mistrial?

10 A. As I testified, the basis of the mistrial was that the
11 alternate juror, unbeknownst to either prosecutor or the judge,
12 and apparently the bailiffs, the alternate juror was allowed to
13 go in the jury room and the judge failed to bring the alternate
14 juror back out before deliberations began.

15 Q. I got you. Okay. And so my understanding is that you
16 did file a motion seeking to suppress the evidence for
17 suppressing the drug evidence as a result of that
18 February 30th, 2017 arrest; is that correct?

19 A. You mean November?

20 Q. I'm sorry, November, I'm getting my dates mixed up,
21 November 30, 2017 arrest, you did file a motion prior to the
22 start of that trial?

23 A. Yes, sir.

24 Q. And that the judge denied your motion to suppress?

25 A. Yes, sir.

1 Q. And I think you said that shortly after that trial he
2 was arrested on bench warrants, and I think new charges; is
3 that correct?

4 A. Yes, sir.

5 Q. And you met with him, and of course, is that the -- and
6 I want to make sure that I get this correct because I may not
7 have, was that the first time or did you talk with him
8 previously about the 12-year offer?

9 A. I talked with him about that multiple times. To be
10 clear, my contact with him went like this: Talked with him
11 following the roll call on December 8th of 2017. Okay? That's
12 the first time I ever talked with him.

13 Q. I'm just talking about the 12-year offer. When did you
14 talk with him about the 12-year offer? I understand all that
15 stuff and I don't want you to have to go back through it, but
16 when did you talk with him about the 12-year offer?

17 A. That had to have been during the office conference on
18 March 29, 2018, either then or possibly June 15th of 2018,
19 because I talked to him at a roll call after that. Now,
20 October 23rd of 2018 is when he came by the office and picked
21 up a copy of all of his discovery that he claims he never saw.

22 Q. You would have told him about at least on one of those
23 visits, either March 29th or June 15, 2018, or October of 2018,
24 you would have advised him about that 12-year offer?

25 A. It would have been in March or in June, March 29th of

1 2018 at our office conference or following roll call on
2 June 15th of 2018. I did not speak with him when he picked up
3 his discovery on October 23rd, 2018, I spoke with my executive
4 assistant when he received a copy of it from her. From that
5 point he missed roll call on January 17, 2019. I called him on
6 February 6, 2019, could not contact him at the phone number
7 that he provided. At the February 8, 2019 roll call he was not
8 present. The February 11, 2019 I called him again, could not
9 make contact with him by phone. I spoke with the woman who
10 thought she was his fiancé and she said, yeah, this is the
11 phone number that I normally can reach him, but I can't reach
12 him and he's not been around me in over a month, so we didn't
13 have a good phone number for him at that time.

14 Q. Okay. What did you discuss, do you remember what you
15 discussed about that offer when you did talk with him?

16 A. The number.

17 Q. Just the 12 years?

18 A. No, it was the number. It's the client's choice of
19 whether they choose to go to trial or not and my job is to
20 provide them knowledge regarding their constitutional rights
21 under the fourth, fifth, sixth and fourteenth amendments to the
22 United States Constitution and applicable South Carolina
23 constitution. My client makes the decision. My job is to make
24 any plea offer known to them for their decision.

25 Q. Absolutely. Your job is to make any plea offer known to

1 them so that they can make that determination, but it's also
2 your job is to assist them in making that determination by
3 making sure they have all the necessary information they need
4 in order to make an intelligent decision as to whether or not
5 they should accept or reject that. And the reason that I ask
6 you that is is that I think you testified that you would have
7 talked to him about the plea offer on March 29th or either
8 June 15th, but I think you said he was given a complete copy of
9 all of his discovery on October 18th, and that's why I'm asking
10 you is that if that was prior to him receiving a complete copy
11 of all of his discovery then he would have been relying on you
12 at that particular point in time, I guess to provide him with
13 sufficient information so that he could evaluate acceptance or
14 rejection, that's all I'm asking. That's what I'm asking is
15 what did you go over when he made that offer to you, did you
16 talk about potential defenses and talk about why, at least in
17 your opinion, you know, that this is the pros and cons of
18 accepting the offer or rejecting the offer?

19 A. Yes.

20 Q. But you did that before you went over the discovery with
21 him or had the discovery with him? Because like you said,
22 October 18th is when you gave him all of the discovery?

23 A. He picked up a full copy of his discovery October 23rd
24 of 2018. He and I had discussed the discovery, gone over the
25 body cameras and the dash cameras and most of the phone dumps

1 back in March.

2 Q. For the November?

3 A. For everything that was pending, the 2016, the 2017,
4 everything that he had up to that point, yes, sir.

5 Q. And that's what I wanted to make sure, that you had
6 that, that discovery for that particular charge at that point?

7 A. Yes, sir.

8 Q. And was there a deadline set on that? Did you tell him
9 that most prosecutors will put a deadline on it? Did you tell
10 him, hey, you've got until this time to accept or reject this
11 offer?

12 A. Every plea offer that is in writing comes with a
13 deadline. It is written on the plea offer form. I tell my
14 clients, and it is the God's honest truth, I have never had a
15 plea offer that actually expires. Now, he never indicated that
16 he was interested in accepting any plea offer, so really, once
17 again, there was no need to discuss it in great detail other
18 than making the number known to him, which gets us back to my
19 previous answer of, what did you discuss, the number.

20 Q. Now, you also represented him in connection with the
21 charges that came out of Horry County on June 17th of 2018, and
22 I think, so we don't have to rehash this all over again, is
23 that you would have also, when he came in on March of 2018 you
24 would have also discussed with him the discovery for that
25 charge, is that your testimony?

1 A. No, sir. The office conference on March 29th of 2018
2 was three months before he was arrested on the Horry County
3 charge in June.

4 Q. Okay, I'm sorry.

5 A. We discussed it, in fact, roll call June 15th would have
6 predated that by two days. He would have picked up the copy of
7 that discovery as well in October when he got all of his
8 discovery, and from that point, because he chose not to come to
9 any roll calls, return any phone calls or come by and see me, I
10 did not see him again until he was arrested in Horry County and
11 I saw him at J. Reuben Long on February 17th of 2019.

12 Q. Thank you. June 17, 2018 he was arrested on that
13 charge, and I think you said you would have gotten the
14 discovery for that Horry County charge in October, as well,
15 too. What I'm trying to figure out is when did you sit down
16 and go over that discovery with him?

17 A. February 17th of 2019 would have been the first
18 opportunity for me to do that.

19 Q. And that was about a week before he ended pleading on
20 the 25th of February?

21 A. Yes, sir, eight days prior.

22 Q. Now, I'll just simply go over with you about, I think
23 you heard him testify about the facts of that particular case;
24 is that correct?

25 A. I was in and out so I'm not sure.

1 Q. Okay. I'm sorry. I think my understanding is that the
2 Horry County charge was a traffic stop; is that correct?

3 A. I believe so, yes, sir.

4 Q. I think there was two individuals in the vehicle, do you
5 recollect that, there being two individuals in the vehicle and
6 Mr. Walker being the driver?

7 A. No, sir, not particularly.

8 Q. Okay. Well, what do you recollect about that event,
9 about that traffic stop?

10 A. Not much because I don't have those specific notes here
11 with me. The file with all of his cases is actually quite
12 large so I pulled the summary notes of my interaction with him,
13 but as far as the specifics of that incident, I have very
14 little to no recollection of that incident.

15 Q. And you don't think that you were in the courtroom when
16 he testified to the facts of that incident?

17 A. I heard him say something about being the driver of a
18 car. I wasn't sure if he was talking about the June 17, 2018
19 incident or the incident where he was arrested in Horry County,
20 which led him to him finally entering his plea in February of
21 2019. That also was a car incident with two individuals, so
22 I'm not sure.

23 Q. He was talking about the Horry County incident, the one
24 that I'm asking you questions about right now.

25 A. They are both Horry County, sir.

1 Q. Yes, the one he was arrested in June 17 of 2018. That's
2 the one I was asking him questions about when he said that he
3 was the driver, and of course he had a passenger in that
4 vehicle, and they got pulled over from speeding. Does that jar
5 your recollection of it?

6 A. No, sir.

7 Q. Okay. Well, let me ask you this question. I think his
8 testimony was, and I'm going to ask you some questions based
9 upon his testimony. Testimony was that he and a passenger was
10 pulled over for speeding, I think you said that there was more
11 than one officer, one officer came to the driver side asking
12 for his license and registration, another driver came up on the
13 passenger side and that driver -- that law enforcement officer
14 saw what he or she thought to believe the passenger putting
15 something in his pocket that he thought was marijuana. He said
16 that that officer then got the passenger out and then the
17 officer on the driver side got him out and attempted to place
18 him under arrest and he ran away. Do you remember whether or
19 not you talked with him about any potential defenses and what
20 potential defenses that you did discuss with him about that
21 particular incident?

22 A. I guarantee you I would have because I would have spoken
23 with him about each of the incidents, every possible defense,
24 the penal exposure that he was facing and whether he wanted to
25 go trial on it or not, but as far as the facts of that

1 particular incident, June 17th of 2018, I have no recollection
2 of it at this point in time.

3 Q. So it's your testimony that you are sure you talked with
4 him about it, that is based on your normal practice. You're
5 testifying that I'm pretty sure I talked with him about it
6 because that's my normal practice, but you don't have a
7 specific recollection of talking with him about it?

8 A. No, I'm not saying I'm pretty sure, I'm saying I'm sure.

9 Q. And that's based upon what your practice is, because
10 you're telling me that you don't have a specific recollection,
11 so is that testimony that you're sure you did it based upon
12 what your normal practice is?

13 A. Yes, because I am not in the business of standing people
14 in front of a judge without having fully discussed the facts
15 and circumstances surrounding their arrest, the time that they
16 are facing, any possible defenses, and their constitutional
17 rights.

18 Q. But you don't have a specific recollection?

19 A. With regard to this?

20 Q. With regard to that?

21 A. No, sir, as far as what the facts of the case were, no,
22 sir.

23 Q. And a specific recollection with respect to what
24 defenses that you all discussed?

25 A. No, sir. Now, if you want to continue this like this

1 was continued when I testified to all of this before and have
2 me bring the entire file, I'll be more than happy to answer any
3 questions you have.

4 Q. Now, you also, I think, indicated that when he pled
5 guilty you went over all of his constitutional rights with him;
6 is that correct?

7 A. Yes, sir.

8 Q. Now, I want to ask you based upon what your specific
9 recollection is as opposed to what your normal practice is.
10 And the reason I want to ask you about your specific
11 recollection is that we're not robots. We may not do
12 everything the same way every time scripted, and so I want to
13 ask you about your specific recollection. On the day in which
14 he pled guilty, what constitutional rights, based upon your
15 specific recollection and not what your normal practice is, you
16 can tell me about your normal practice later on, but your
17 specific recollection, what do you recollect talking to him
18 about regarding his constitutional rights?

19 A. February 25, 2019: Appeared for defendant's scheduled
20 plea/trial on this date, talked with defendant in courtroom
21 lockup confirming his decision to enter guilty plea, explained
22 plea protocol. I reviewed and executed sentence sheets after
23 explantation of significance of violent and serious
24 designations and waiver of constitutional rights again. Guilty
25 plea before Judge John at that time. Now, when I say, again,

1 that's because on February 21st had a conference with him at J.
2 Reuben Long Detention Center, reviewed pending drug charges in
3 both Horry and Georgetown Counties and the plea offer of 17
4 years, explained his penal exposure again, explained the trial
5 protocol again, explained waiver of constitutional rights
6 again. The defendant indicated at that time he wanted to
7 accept the plea offer, so that's the 21st. On the 25th when
8 they actually brought him to court, I never ever take it for
9 granted that someone's going to decide, when you're talking
10 about taking a sentence to time, that they are going to decide
11 they actually want to do that, so we discussed everything on
12 the 21st and again on the 25th before he actually entered the
13 plea.

14 Q. And on the 21st you would have discussed his right to a
15 jury trial; is that correct?

16 A. Yes, sir.

17 Q. You would have discussed with him what that means fully,
18 means that he has a right through the jury selection process to
19 assist in the striking of a jury in which he would have strikes
20 and the prosecution would have strikes and they would reach 12
21 individuals that the State would have the complete and total
22 burden of proving his guilt beyond a reasonable doubt on each
23 and every element of the offense, that the verdict would have
24 to be unanimous, which means each and every juror would have to
25 vote guilty in order for him to be found guilty of that. So

1 you went over all of that with him, and the reason I'm asking
2 you that is is that I don't know if you were in the courtroom
3 when I went over the colloquy regarding the guilty plea where
4 at certain times, I think at times in the colloquy the
5 transcript would say that you understand that you have a right
6 against self incrimination with no explanation what the right
7 against self incrimination is. That's why I'm asking you
8 specifically whether or not you did more than just simply
9 explain to him what these rights are or list these rights to
10 him, but you went into a detailed explanation with him what
11 they mean?

12 A. Yes, sir. When I put in my notes that I went over the
13 trial protocol with him, that is what that means. When an
14 individual is making a decision, because again, the cases I do,
15 for the most part, we're not talking about a shoplifting,
16 people are looking at a lot of time. So when I sit down with
17 him and I say, let's talk about what a trial means, what I told
18 him was this, you have a right to a jury trial. That is the
19 one absolute right you have. People get hung up on whether or
20 not, what's my plea number, what's my plea offer, you don't
21 have that right. What you have is a right to a trial and you
22 have a right for me to represent you and do the absolute best I
23 can, you know? And here are the charges that you are facing.
24 This is the time that you are facing. Now, when we go to trial
25 we start, we go -- first of all, can you trust yourself? Do we

1 have to provide clothing for you? This is how we're going to
2 address you. When you're in courtroom this is how you act in
3 front of the jury. This is how you act in response to any
4 query from the Court. You have 12 jurors that will be picked
5 and you get to aid in that selection. While you get to choose
6 a jury, the Clerk of Court is going to draw a name, the person
7 is going to come up, turn around and stand and face us and the
8 Clerk of Court will then say, what says the State? The
9 prosecutor will say that they accept the juror or reject the
10 juror. At that point we get to say whether we accept or reject
11 the juror. Now, if the State rejects the juror --

12 Q. Can I cut you off for just a second? I'm going to
13 accept your statement that you went over the right to jury
14 trial. Could you tell me the other constitutional rights you
15 explained to him? I don't deny, based upon what you just said
16 that you fully explained to him what the right to jury trial
17 means, what are the other rights that you went over with him?
18 Because I don't want to drag this out any longer, I want to
19 just go over specifically what those rights are, whether or not
20 it's an explanation. I'm glad happy -- I'm glad you're very
21 thorough about explaining to him, you know, about the dress and
22 all of that, that's wonderful, I'm glad you do that, because a
23 lot of attorneys don't, so what are the other rights?

24 A. Obviously, I explained to him he has the right to
25 testify, if he so wishes he has the right call witnesses, any

1 and all, compel witnesses, he has also the right to remain
2 silent that cannot compel him to speak against himself. He has
3 the right to confront any witness and evidence the State has.
4 He's got the right to address that, and as part of going
5 through the trial with him I say that the State has that
6 absolute burden of proving his guilt beyond a reasonable doubt,
7 that the State puts up their evidence first, after they put up
8 their evidence there will be a break in the case, and at that
9 time the judge will want to inquire whether we wish to put up
10 evidence, and specifically whether he wishes to testify, and so
11 we discussed that beforehand, that when there's that break in
12 the case we're gonna revisit these issues and see, now, at this
13 point do we wish for you to testify, sir? Do you wish to
14 call -- do you wish to call any witnesses on your behalf? We
15 talked about the compulsion of those witnesses, that if you
16 give me good enough contact information, I give it to the
17 sheriff, the sheriff will go get them and drag them kicking
18 screaming in here, that's not going to be a problem, you always
19 have that right.

20 Q. And of course, all of those rights, including telling
21 him, you also went into a detailed explanation, you don't have
22 to go through a detailed of what each one of them means?

23 A. Yes, sir.

24 Q. Did you also talk with him about every element of the
25 offense in which he would be pleading guilty to?

1 A. Yes.

2 Q. Those two offenses that he plead guilty to that you went
3 over every element of those two offenses?

4 A. Well, drug cases aren't really that, you know, element
5 latent. There was the issue of possession and there's the
6 issue of the weight, and can they prove it is the substance
7 they say it is? In these cases there are obviously drug
8 reports, so they could prove that the substance is the
9 controlled substance they claim it is, and they could prove the
10 weight of it. Again, with regard the June 17, 2018 one where
11 he says he got out and ran and there was a passenger in the
12 car, we would have definitely discussed the issue of the mere
13 being merely present where the drugs are doesn't make you
14 necessarily guilty. You know, they would have to prove beyond
15 a reasonable doubt that that substance was in some way his, and
16 we would have discussed, you know, actual versus constructive
17 possession, for instance. We would have gone over that in
18 great detail.

19 Q. Can I ask you a question? I don't mean to interrupt
20 you. I know you're saying that we would have done this instead
21 of we did do this. Are you basing that upon what your normal
22 practice is, or are you basing that upon you have a specific
23 recollection of specifically what you said to him?

24 A. I would have to say my normal practice because, again, I
25 do not have a specific recollection regarding that particular

1 incident, but I guarantee you that I did.

2 Q. Okay, because that is your practice. I'm almost
3 finished. And just to clear things up, I think that when you
4 went over all of the constitutional rights that you normally
5 would explain to him, not just based upon what your normal
6 procedure was and not based upon specific recollection,
7 specific recollection specific to the conversation that you had
8 with him?

9 A. Which date?

10 Q. I'm talking about the February 25th. On February
11 25th -- Excuse me, February 21 is when you went over all these
12 constitutional rights and protections that you had, and I think
13 you explained it eloquently and went into great detail. Was
14 that also based upon your practice or was that based upon your
15 specific recollection of the conversation that you had with
16 him?

17 A. Let's see. My discussions with him on February 17th and
18 February 21st at J. Reuben Long were based on my specific
19 recollection. What I do not remember, again, with regard to
20 the June 17th and 18th case is I don't remember to specifics of
21 that charge, that's what I don't recall. My discussions with
22 him leading up to his plea, I specifically remember those
23 discussions.

24 MR. BROOKER: If you could indulge me for just a
25 second, Your Honor, let me make sure I don't have any further

1 questions for Mr. Hazzard.

2 THE COURT: Okay.

3 Q. Very shortly, and this was in reference to the
4 November 30, 2017, and I don't know if you're anything like me,
5 I know that law enforcement, I think, testified, I think you
6 said at a trial they testified that they did not have or could
7 not identify a specific citation that he was violating when he
8 was sitting near his mailbox on the other side of the road; is
9 that correct?

10 A. Well, they couldn't, but I could. He was obviously
11 facing the wrong way and on the wrong side of the road. They
12 just couldn't articulate it.

13 Q. But the thing about it is, and this is the reason why I
14 ask you whether residential or not is is that there's some
15 streets that you can park curbside on some streets, and it's
16 not against the law to park curbside; is that correct?

17 THE COURT: Mr. Brooker, with all due respect, you've
18 already him this, he's raised all this with the trial judge, so
19 I mean, that's an issue for direct appeal and not necessarily
20 for his attorney. This was raised to the trial judge, the
21 trial judge denied it.

22 MR. BROOKER: And I don't mean to get into that
23 Judge, and I'm not trying to, I just felt the need to respond
24 to that because he said that the officer couldn't identify a
25 specific traffic violation but he could and that's why I wanted

1 to address that.

2 THE COURT: I understand. He's already testified
3 that the officer could not identify a traffic violation.

4 MR. BROOKER: Okay.

5 Q. I think at that same time the officers used a canine; is
6 that correct?

7 A. The 2017?

8 Q. No, no, no, that's the November 30th of 2017 in
9 Georgetown.

10 A. I don't recall there being a canine. Again, there was a
11 contextual stop, they were determined to get in that car. They
12 may have walked a dog around it, I doubt it, but then, again, I
13 do have a notation where I have an e-mail with the prosecutor
14 asking for the records on a canine, so it might have been the
15 November 30, 2017 arrest, yes, sir.

16 Q. I think it is. I think on the transcript on page 11
17 where the solicitor gives the, I guess, a statement of
18 recitation of the facts, I think they indicated that there was
19 a canine, that they used a canine to run the dog around and he
20 alerted to drugs, and my only question is is that do you all
21 have a special Rule 5 -- not Rule 5, but Brady request that you
22 all use when it deals with canines in which you all aske for
23 the canine medical records, you ask for the training records,
24 you ask for the certification, you ask for, I guess, for lack
25 of a better term, the manual for the dog that identifies what

1 that dog's signs are and so you can understand what the dog's
2 signs are and whether or not the dog did alert or not, do you
3 all have a Brady request form specific to Illinois versus
4 Caballes that asks all of these questions so you can evaluate
5 whether or not the dog is a well-trained dog designed to detect
6 nothing but illegal substances and no legal matter?

7 A. As to my office, I do not believe, at least at this
8 point in time I know that my office did not, but I have always
9 used one. Hence, why on -- let's see: Received an e-mail from
10 Assistant Solicitor Keith Powell dated June 26, 2018 and I
11 replied to him on July 5th. His e-mail, June 26, 2018 was:
12 Ron, what defendant did you request canine statistics on, and
13 on July 5, 2018, I responded to Keith: Newitt Rodney Walker.
14 So, yes, I do have.

15 Q. Did you all get that discovery?

16 A. As far as I know, yes, sir.

17 Q. And that would have been a part of the discovery that
18 you shared with him?

19 A. Yes, sir, because he got all of the discovery in October
20 of 2018.

21 MR. BROOKER: I think that's the last question I
22 have, Your Honor.

23 THE COURT: Ms. Marto?

24

25

CROSS-EXAMINATION

1

2 BY MS. MARTO:

3 Q. So again, you discussed all the discovery with Mr.
4 Walker, correct?

5 A. Yes, ma'am.

6 Q. And how many charges do you recall he was facing,
7 roughly?

8 MR. HAZZARD: Court's indulgence, Your Honor.

9 A. He entered a guilty plea to two the charges. As a part
10 of that plea, a possession with intent to distribute cocaine
11 second offense and another trafficking heroin were dismissed.
12 Based on his arrest on February 13th of 2019, that's when I
13 finally got to talk to him at J. Reuben Long Detention Center,
14 he was arrested on that incident for possession of cocaine
15 second offense, trafficking heroin 4 to 14 grams, hit-and-run
16 property damage, and false information to a law enforcement
17 officer. All of those were dismissed as part of the plea.
18 That's in Horry County. In Georgetown County he had a
19 September 11, 2016 arrest for the distribution of heroin within
20 proximity for the distribution of heroin that same date; a week
21 later September 18th of 2016 he had another distribution of
22 heroin charge; and another distribution of heroin in proximity
23 charge; June 18, 2017, he was also charged with, yet, another
24 distribution of heroin; he also had a possession with intent to
25 distribute marijuana; and another trafficking heroin. Those

1 two were dismissed January 29, 2019, so all of those.

2 Q. So roughly 16?

3 A. Yes, ma'am.

4 Q. And he pled to two, correct?

5 A. Yes, ma'am.

6 Q. So he was facing a significant period of time if they
7 stacked the charges, correct?

8 A. Oh, yes, ma'am. I mean, because, and that was one of
9 the things he did, in fact, have three prior narcotics
10 convictions so the prosecutor could have made any one of them a
11 third offense, and I believe on several of them he would have
12 been facing no less than 15 to 30, and on others he would have
13 been facing 25 to 30 specifically on the traffickings. Even
14 with the possession with intent to distribute on the third, I
15 believe he would have been facing 15 to 30, if I'm not
16 mistaken.

17 Q. Was there any discussion about them potentially trying
18 cases one by one?

19 A. Yes, ma'am. When I finally got to talk with him at J.
20 Reuben Long Detention Center, and why I did, actually, suggest
21 that he seriously consider entering a guilty plea is because I
22 said in order for this to come out for you better than what
23 they are offering, we can't lose the trial. We have to win
24 every single one, and there are about eight or nine different
25 incidents, and I think I'm pretty good at what I do, even I

1 don't think I'm that good, so.

2 MS. MARTO: Your Honor, my apologies, I need to step
3 out for a minute, if that's okay?

4 THE COURT: Sure.

5 BY MS. MARTO:

6 Q. So what did you think the chance of succeeding on every
7 single one of those trials would have been?

8 A. Very, very, very, very slim. Very slim. And really,
9 honestly, what Mr. Walker was most worried about was his last
10 arrest, the one that he was in jail for in Horry County,
11 because when I went to see him on February 17th, we spent a
12 good deal of the time talking about that arrest. He was never
13 particularly concerned about the November 2017 trafficking,
14 because, again, both he and I believed that was a totally
15 contextual stop, and that somewhere down the road that he would
16 get justice on that one. The one that he was concerned about
17 was the one that he had just been arrested on because we
18 discussed that there was no defense to that one.

19 Q. Is that the one that was incurred after the mistrial?

20 A. Yes, ma'am.

21 Q. And again, the basis of the mistrial was that an
22 alternate juror was allowed into the deliberations, is that
23 what you said?

24 A. An alternate juror, of course at the conclusion of the
25 trial the judge sends all of the jurors into the jury room and

1 then deals with any issues, then calls the alternate juror back
2 out and then says the bailiff can tell the jury they can
3 deliberate. Well, for some reason none of caught the fact
4 that -- I think there was some issues that went on once the
5 jury went out, maybe an extended discussion about something,
6 I'm not sure, but at the conclusion of that discussion, none of
7 us, me, the prosecutor or the judge thought that, oh, nobody
8 ever got the alternate juror out of the jury room. So they
9 deliberated, they return a verdict, they come back and sit down
10 and there's like 13 of them up there, so Judge Hyman recognized
11 it at that point and declared a mistrial.

12 Q. And that mistrial occurred in his absentia, correct?

13 A. Yes, ma'am.

14 Q. And Mr. Walker was arrested multiple times throughout
15 the course of your representation of him, correct?

16 A. Yes, ma'am.

17 Q. And he failed to attend multiple scheduled meetings
18 without explanation; is that correct?

19 A. Multiple meetings and roll calls, yes, ma'am.

20 Q. And again, you explained to him all of the rights he was
21 waiving by pleading, correct?

22 A. Yes, ma'am.

23 Q. You explained to him the sentencing ranges associated
24 with what he was pleading to?

25 A. Yes, ma'am.

1 Q. And you explained the recommendations being made by the
2 State?

3 A. Yes, ma'am.

4 Q. And you explained the charges themselves?

5 A. Yes, ma'am.

6 Q. Did you coerce him into pleading?

7 A. Yes, ma'am.

8 Q. Was it his decision?

9 A. Yes, ma'am.

10 Q. To the best of your knowledge did he understand what he
11 was doing by pleading?

12 A. Yes, ma'am.

13 MS. MARTO: No further questions.

14 THE COURT: Any Redirect?

15 MR. BROOKER: Very quickly. It will be quickly, Your
16 Honor.

17 **REDIRECT EXAMINATION**

18 BY MR. BROOKER:

19 Q. Mr. Hazzard, I think you said that the November 30, 2017
20 trafficking charge, that went to trial on February 11th of
21 2019; is that correct?

22 A. Yes, sir.

23 Q. And that the next day on the 12th, February 12th, the
24 jury returned a verdict of guilty, and we heard you just
25 testify that there was a mistrial declared because the

1 alternate was allowed to deliberate with the jury?

2 A. Yes, sir.

3 Q. And I think you also testified that prior to the start
4 of that trial one of your pretrial motions that you made before
5 the Court was for the suppression of that evidence based upon
6 an illegal search and seizure under Federal and State
7 Constitution?

8 A. Yes, sir.

9 Q. And the judge denied it; is that correct?

10 A. Correct.

11 Q. And I think you said, and you correct me if I'm wrong,
12 that it was February 17th, I think that you went down to the
13 jail and saw Mr., was it 17th, February 17th he got picked up
14 February 17th and you visited him at the detention center?

15 A. February 17th, yes, sir, and again on the 21st.

16 Q. Okay. At that time, and I think you testified that you
17 explained to him about what happened at trial, at the trial in
18 his absence?

19 A. Yes, sir.

20 Q. Did you also talk with him about whether or not he
21 wished to appeal in result of trial, but of course appeal the
22 judge's decision to deny his motion to suppress?

23 A. That's not something we would discuss because with the
24 mistrial it becomes a nullity, he would been at trial, in a new
25 trial he would have had the chance to raise that again.

1 Q. Yeah, I understand that.

2 A. So there would have been no discussion regarding
3 appealing a nullity.

4 MR. BROOKER: That's the last question I have, Your
5 Honor.

6 MS. MARTO: No further questions, Your Honor.

7 THE COURT: Thank you, sir, you can step down.

8 MR. HAZZARD: Thank you Your Honor.

9 THE COURT: Anything further?

10 MR. BROOKER: Nothing further, Your Honor.

11 MS. MARTO: Nothing further, Your Honor.

12 THE COURT: Again, I'm going to review it and take it
13 under advisement.

14 MS. MARTO: Thank you, Your Honor.

15 MR. BROOKER: Thank you, Your Honor.

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4 CERTIFICATE

5 STATE OF SOUTH CAROLINA

6 COUNTY OF GEORGETOWN

7

8 I, Julie A. Kevish, Official Court Reporter for the

9 State of South Carolina, do hereby certify that the foregoing

10 is a true, accurate and complete Transcript of Record of the

11 proceedings had and evidence introduced in the Court of Common

12 Pleas for Georgetown County, South Carolina, on the 9th of

13 September, 2022.

14 I do further certify that I am neither of kin,

15 counsel, nor interest to any party hereto.

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JULIE A. KEVISH
OFFICIAL COURT REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Newitt R. Walker, #302395,
Applicant,)

Case No.: 2020-CP-22-00225

v.)

ORDER OF DISMISSAL

State of South Carolina,
Respondent.)

ALMA Y. WHITE
CLERK OF COURT
2023 MAY 26 PM 4:28
GEORGETOWN COURT

This matter comes before this Court by way of Applicant's post-conviction relief application filed February 24, 2020. Respondent made its return on August 11, 2020, requesting an evidentiary hearing be convened. An evidentiary hearing was held on September 9, 2022, at Georgetown County Courthouse. Thurmond Brooker, Esquire, represented Applicant. Assistant Attorney General Chelsey Marto, Esquire, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel Ronald Hazzard also testified. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. In October 2018, the Georgetown County Grand Jury indicted Applicant for trafficking in heroin, fourteen to twenty-eight grams (2018-GS-22-00792).¹ Ronald W. Hazzard, Esquire represented Applicant on this charge. Assistant Solicitor Keith R. Powell of the Fifteenth Circuit Solicitor's Office prosecuted

¹ Applicant also faced multiple charges in Horry County that were not stated in the current PCR Application and, consequently, are not specifically addressed in this return.

the case. On February 25, 2019, Applicant appeared before the Honorable Steven H. John, circuit court judge. Applicant plead guilty to the lesser included offense of trafficking in heroin between four and fourteen grams, first offense, and Judge John sentenced Applicant to seventeen years imprisonment.

Applicant filed a timely notice of appeal on March 11, 2019. An order of dismissal was filed on April 25, 2019, for failure to provide sufficient guilty plea explanation, as required by Rule 203 (d)(1)(B)(iv), SCAR. Applicant filed a *pro se* guilty plea explanation and a motion to reinstate the appeal on April 30, 2019. An order of dismissal was filed on May 30, 2019, denying the motion to reinstate or rehear the dismissal of the appeal. The remittitur was filed on June 12, 2019, and the amended remittitur was filed on June 14, 2019.

Summary of Relevant Facts

On November 30, 2017, law enforcement officers stopped Applicant while he was operating a motor vehicle and noticed an odor of marijuana. (Plea Tr. 11). One of the officers had a canine with him. (Plea Tr. 11). The officers conducted a search around the outside of Applicant's vehicle, and the dog alerted officers to something. (Plea Tr. 11). Officers then searched the car and found a bag of marijuana and a bag of heroin in the unlocked glove compartment. (Plea Tr. 11). The SLED report came back positive for twenty-two grams of a mixture containing heroin. (Plea Tr. 11).

Current Action Before this Court

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

1. "Ineffective assistance of counsel, in violation of Petitioner's Sixth Amendment right, where counsel advised Petitioner to plead guilty [without] fully investigating viable defenses that had merit."
 - a. "Violation of 'both' [] Fourth and Sixth Amendment Rights."

- i. "Counsel acting competently, should have been aware, 'a person has a right under the Fourth Amendment to privacy, against unreasonable search and seizures.' Where law enforcement entered upon private property without a warrant and without reasonable suspicion of whether a drug trafficking crime was afoot."
- 2. "Ineffective assistance of counsel, in violation of Petitioner's Sixth Amendment rights, where counsel failed to have the initial plea offer enforced."
 - a. "Counsel was vividly aware of the 15 year plea offer, yet 'failed to move for detrimental reliance' when the court sentenced the Applicant to 17 years . . . had counsel moved . . . the outcome of the proceeding would have had to be different by a minimum of two years prison time."

At the PCR hearing, Applicant proceeded forward on the following allegations:

- 1. Ineffective assistance of counsel.
 - a. Failure to investigate available defenses.
 - b. Failure to review discovery.
 - c. Brevity of time in consultation.
 - d. Failure to explain Applicant's rights.
 - e. Failure to discuss motion to suppress.
 - f. Failure to keep the twelve-year plea offer on the table.
- 2. Invalid plea.
 - a. Applicant was not fully informed of the rights he was waiving by entering the plea.
 - i. He especially did not know about his right to testify or rights under the Confrontation Clause.

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

Summary of the Testimony

Applicant Testimony

Applicant testified that he pled guilty to trafficking heroin. Applicant testified he thought Counsel failed to fully investigate the available defenses. Applicant testified that the officers approached him when he was by his mailbox, sitting in his car. Applicant further testified that someone left the patrol car without a uniform and approached him. Applicant stated that the officer searched him without consent. Applicant testified he did not have heroin on his person but had it in his car.

Applicant testified that Mr. Hazzard was appointed to represent him. Applicant stated he met with Counsel in early December, while Applicant was out on bond. Applicant asserted that he never went over discovery with Counsel and only met twice with Counsel. He stated he visited Counsel at his office once and Counsel visited him at the jail another time. He stated that Counsel had discovery with him when he went to jail, but they did not review it. Applicant testified that he was told about a negotiated plea offer for a sentence of twelve years for trafficking in Georgetown. Applicant stated that Counsel discussed the charges, including the lesser-included offenses, and the consequences of pleading guilty with him before he accepted the plea. He stated he was offered a global plea offer to settle all Horry and Georgetown offenses. Applicant rejected the plea offer and proceeded to trial. The trial resulted in a hung jury.

The State then extended a plea offer. Applicant stated that Counsel fully explained the State's recommendation, and that Counsel then told Applicant he believed it was in Applicant's best interest to accept the plea. Applicant recalled he told Counsel of the facts as told in this hearing and discussed the incident with Counsel but had no "deep conversation." Applicant stated Counsel told him he would investigate the facts. Applicant testified that Counsel talked to him about his constitutional rights and what rights are waived when pleading guilty, but Applicant was not sure he fully understood. Applicant stated that he understood what a jury trial was, the strike rules, and his right to remain silent. He stated he did not know what self-incrimination was, nor did he understand the presumption of innocence. He stated that the Court explained what a jury trial is. He stated he did not know what the Confrontation Clause is. He stated he did not know he had a right to determine whether he wanted to testify at trial. He stated he and Counsel did not discuss defenses against the K-9 search. He stated they did not discuss a

motion to suppress the drugs, nor defenses available at the traffic stop.

Applicant stated he was aware of the charges, the basis behind the charges, and the recommended sentencing. Applicant conceded he found out about his offer for fifteen years because Counsel came to jail to tell him. He stated that he was afraid of receiving more time at trial. He stated he understood he was waiving his right to call and confront witnesses, to testify, and to present a defense. He stated that out of his options, a plea sounded better than a trial. On cross-examination, Applicant responded he wants to reenter his plea. Applicant stated that he does not want to completely withdraw his plea, he simply seeks a reduction in time because he believes twelve years is reasonable for his crimes.

Counsel Testimony

Counsel testified he was appointed to represent Applicant. He stated that Applicant picked up the Georgetown charges before picking up the Horry charges. He stated that Applicant was facing a minimum of twenty-five years' imprisonment. He stated he met Applicant on December 8th at the bond hearing. Counsel stated he obtained the discovery in the case. He stated Applicant had many charges based upon different sets of arrests. He stated he discussed everything that was pending with Applicant. He stated that he reviewed the facts, sentencing exposure, prior record, confidential informant use, videos, phone dump, and Applicant's constitutional rights. He stated he discussed with Applicant how the pullover at Applicant's mailbox was pretextual and that the officers could not name the traffic law they broke. He stated that this issue was addressed at the preliminary hearing, where the motion to suppress was denied.

Counsel stated that Applicant missed his trial, which resulted in a mistrial because the alternate juror was sent to jury deliberations. He stated that after the mistrial, Applicant was

arrested again and missed roll call. He stated that the original plea offer was twelve years' imprisonment. He stated that chances of winning at trial were slim. He stated that he discussed the twelve-year offer with Applicant, including the negotiated sentence, and the pros and cons of pleading. He stated Applicant had a full copy of the discovery at the time of these discussions. He stated that Applicant never indicated to him that he wanted a plea deal. He stated he discussed potential defenses regarding Applicant's decision to run from the traffic stop. He stated he would not have put Applicant before a Judge without discussing everything with him and ensuring Applicant was fully informed in pleading. He stated he discussed all of Applicant's rights with him. He stated that the officers could not cite a specific violation Applicant committed, but Counsel said the violation was that Applicant was facing the wrong direction on the wrong side of the road. He stated he did not recall a K-9 being involved. He stated he received all information concerning use of a K-9 in discovery and that this was given to Applicant.

On cross-examination, Counsel testified that Applicant had sixteen charges and pled to two of them. Counsel testified that he believed there was no likelihood of success at trial. He stated Applicant was facing significant time. He again stated that the mistrial occurred because an alternate juror was sent to deliberations.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the Georgetown County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This

Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel’s performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel’s actions fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRPC (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”). Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny

of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters "only in the rarest case" because "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

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

Invalid Plea

Applicant alleges he was coerced into entering the plea. The applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). The applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the solemnity and truthfulness inherent in the guilty plea proceeding. *See*

Blackledge v. Allison, 431 U.S. 63, 73-74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Absent valid reasons why the applicant is entitled to depart from admissions made at the plea hearing, sworn statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

For a plea to be valid, Applicant must have been aware of the nature and crucial elements of the offense, the maximum and minimum penalties, and the rights he is waiving by accepting the plea. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 29, 528 S.E.2d 418 (2000). A plea is not knowing or voluntary if a defendant “lacks knowledge of material evidence in the prosecution’s possession.” *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999).

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

Here, the record reflects that the plea was entered knowingly, voluntarily, freely, and intelligently. Applicant stated his intent at the plea hearing was to plead guilty to two charges, including the trafficking in heroin charge. (Tr. 4). Applicant stated he understood he could be sentenced between seven and twenty-five years for the heroin charge, that he was pleading to the lesser included offense, and that he was pleading to a violent and serious offense. (Tr. 5). Applicant stated he was informed of the ramifications and effects of the plea, particularly as it relates to his Department of Corrections conditions. (Tr.6). He stated he understood he was given one strike under the three strikes law. (Tr. 6). After this, Applicant stated he still wanted to enter his plea. (Tr. 6). Applicant stated he was not under the influence of any drugs or intoxicants and did not have an impairment that would keep him from understanding his decision to plead guilty. (Tr. 6-7). Applicant stated he understood he was giving up his right to remain silent, his presumption of innocence, his right against self-incrimination at trial, his right to have the prosecution bear the burden of proving guilt beyond a reasonable doubt, his right to a jury trial, his right to call and cross-examine witnesses, his right to testify, his right to present evidence, and his right to challenge the State's case. (Tr. 7-8). Applicant stated he was pleading freely and voluntarily because he was guilty of the crimes charged. (Tr. 8). Applicant stated no one threatened him into or otherwise promised him anything to get him to plead. (Tr. 8). Applicant stated he discussed his cases with Counsel, that he had enough time to talk to Counsel, that he did not need any more time to talk to Counsel, that he was satisfied with his representation, and that he did not have any complaints about Counsel. (Tr. 8-9). Thus, based on the plea hearing transcript, this Court finds the plea was entered knowingly, intelligently, freely, and voluntarily and cannot be withdrawn now.

Failure to Review Discovery

Applicant claims Counsel was ineffective and his plea invalid because Counsel did not review his discovery with him. Counsel credibly testified that he reviewed the discovery with Applicant at great length. Accordingly, relief is denied on this ground.

Failure to Investigate Defenses

Applicant claims Counsel was ineffective for failing to investigate all available defenses. *Strickland* makes clear that defense counsel “has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” 466 U.S. at 691. When alleging failure to investigate as a ground for a larger ineffective assistance of counsel claim, judicial determination of this claim’s validity is evaluated for “reasonableness [under] all the circumstances” with “a heavy measure of deference to counsel’s judgments” applied. *Id.* At the PCR hearing, Applicant is required to present evidence or witnesses he alleges Counsel did not properly investigate. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Additionally, whether Applicant was prejudiced by Counsel’s failure to investigate is contingent on whether the evidence presented would have led Counsel to change his recommendation regarding the plea. *Stalk v. State*, 383 S.C. 559, 562, 681 S.E.2d 592, 594 (2009).

Counsel credibly testified that he discussed Applicant’s defenses with him. Further, Applicant has failed to identify any defenses specifically that Counsel did not discover which would have caused Counsel to change his recommendation as to the plea. Accordingly, Applicant has failed to meet his burden of proof, and relief is denied.

Brevity of Time

Applicant alleges that Counsel was ineffective for failing to communicate with Applicant a sufficient amount. “[B]revity of time spent in consultation with a defendant alone is not

indicative of inadequate trial preparation.” *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating “how additional preparation or communication would have resulted in a different outcome.” *Id. See Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what Counsel failed to discover or what defenses Counsel could have pursued had he more fully prepared for the case); *Skeen v. State*, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where Applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

Applicant has failed to establish how additional communication would have resulted in him proceeding to trial instead or a different outcome. Applicant has failed to meet his burden of proof, and relief is denied accordingly.

Failure to Explain Rights

Applicant claims Counsel was ineffective and his plea invalid because Counsel did not explain his rights to him. This Court finds that allegation not credible. The plea transcript and Counsel’s credible testimony at the PCR hearing show Applicant was informed by Counsel and the Court about his rights at great length. Accordingly, relief is denied.

Confrontation Clause

Applicant claims he was not aware of his rights under the Confrontation Clause. However, Counsel credibly testified that he informed Applicant about his rights at great length. He was also informed that he was waiving his right to call and confront witnesses at the plea hearing. (Tr. 7-8). Thus, this Court finds that Applicant was aware of this right, and it was waived through entry of an otherwise valid plea. Accordingly, relief is denied on this ground.

Right to Testify

Applicant claims he was not aware of his right to testify. However, Counsel credibly testified that he informed Applicant about his rights at great length. He was also informed that he was waiving his right to remain silent at the plea hearing. (Tr. 7-8). Thus, this Court finds that Applicant was aware of this right and it was waived through entry of an otherwise valid plea. Accordingly, relief is denied on this ground.

Twelve-Year Offer

Applicant claims Counsel was ineffective for letting the twelve-year offer lapse. Counsel credibly testified that Applicant did not want to plead guilty when this offer was conveyed to him initially. Counsel also credibly testified that this offer was no longer on the table after Applicant incurred more charges after he failed to appear at his mistrial. Applicant was not entitled to his initial offer at this time. The State was not required to keep the offer on the table with the change of circumstances. Thus, this claim is without merit, and relief is denied.

Motion to Suppress

Applicant claims Counsel was ineffective for failing to inform him about his option to move to suppress the drugs. However, Counsel credibly testified that he fully informed Applicant of all his rights. Additionally, Counsel credibly testified that he attended a preliminary hearing where he moved to suppress the drugs. This Court finds Applicant's testimony to the contrary not credible. Accordingly, relief is denied.

Conclusion

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

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 24th day of March, 2023.

Kristi F. Curtis
KRISTI F. CURTIS
Presiding Judge
Fifteenth Judicial Circuit

Sunter, South Carolina.

WITNESSES

John S Gambone Surfside Beach Police
Department

Don Sitter

ARREST WARRANT NUMBER

2018A2610201556

CDR: 3039 44-53-0375 (B) (3)

DOA: 6/17/2018

ACTION OF GRAND JURY

TRUE BILL

2 Drew Houser
Foreperson of Grand Jury OCT 17 2018
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2018GS2605267

The State of South Carolina

County of Horry

George Henry Martin III
18H03548

COURT OF GENERAL SESSIONS

September, 2018 TERM

THE STATE

VS.

Newitt Rodney Walker
B/M

Georgetown, SC 29440-4688

DOB: 1986-

SSN:

ATTORNEY: Ronald W. Hazzard

Indictment for

POSSESSION WITH INTENT TO DISTRIBUTE
COCAINE BASE

Jimmy A. Richardson, II, Solicitor

ORIGINAL

FILED

2018 OCT 19 AM 11:57

RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

DATE RECEIVED FROM

GRAND JURY

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on September 19, 2018, the Grand Jurors of Horry County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE
COCAINE BASE

CDR: 3039 44-53-0375(B)(3)

That Newitt Rodney Walker did in Horry County on or about June 17, 2018, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver a quantity of Cocaine Base, a controlled substance under the provisions of Section 44-53-110, et seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law, and being in violation of Section 44-53-375(B), S. C. Code of Laws, 1976, as amended.

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

James L. Jacobson

JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

OTIS

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

INDICTMENT

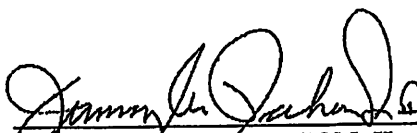
At a Court of General Sessions, convened on October 31, 2018, the Grand Jurors of Georgetown County present upon their oath:

TRAFFICKING IN ILLEGAL DRUGS
(HEROIN)

CDR: 0287 §44-53-0370 (e) (3) (b)

That Newitt Rodney Walker did in Georgetown County on or about November 30, 2017, sell, deliver, purchase, or bring into this state, or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this state, or was knowingly in actual or constructive possession of a quantity of Heroin in an amount of fourteen grams or more but less than twenty-eight grams, same being a controlled substance all within the meaning of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, in violation of Section 44-53-0370(e)(3), S. C. Code of Laws, 1976, as amended, for the crime of Trafficking.

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


JIMMY A. RICHARDSON, II
FIFTEENTH JUDICIAL CIRCUIT

WITNESSES

15th Circuit Drug Enforcement Unit

REST WARRANT NUMBER

2017A2210100124

CDR: 0287 §44-53-0370(e)(3)(b)

DOI: 11/30/2017

ACTION OF GRAND JURY

TRUE BILL

Angel Jewell
representative of Grand Jury
Date: 10/31/18

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2018-GS-22-00792

The State of South Carolina

County of Georgetown

W. Keith Powell

17G00943

COURT OF GENERAL SESSIONS

OCTOBER, 2018 TERM

THE STATE

vs.

NEWITT RODNEY WALKER

ROAD
GEORGETOWN, SC 29440-4688

DOB: [REDACTED]

SSN: [REDACTED]
B / M

ATTORNEY: Ronald W. Hazzard

Indictment for

TRAFFICKING IN ILLEGAL DRUGS
(HEROIN)

Jimmy A. Richardson, II, Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

149

COUNTY OF Horry
STATE VS.
Newitt Rodney Walker

AKA:

Race: BLACK Sex: M Age: 32DOB: 1986 SS# [REDACTED]Address Greentown RdCity, State, Zip: Georgetown, SC 29440-4688DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: PWID Cocaine Base, 1st OffenseINDICTMENT/CASE#: 2018GS2605267A/W#: 2018A2610201556Date of Offense: 6/17/2018S.C. Code § : 44-53-0375 (B) (3)CDR Code #: 3039

SENTENCE SHEET

in violation of § 44-53-0375 (B) (1) of the S.C. Code of Laws, bearing CDR Code # 3014

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

ATTEST:

SC101799

Hazzard, Ronald W. SCB011164

SC Bar# 04523 Defendant

Attorney for Defendant SC Bar#

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

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

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

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 28 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine: _____ \$

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

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

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

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def/Probation) \$500 \$

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

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

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

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

TOTAL

\$ 283.25 + 40.00 = 323.25

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 25.00 beginning 3/25/2034

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code:

Sentence Date:

2/25/19

15 yrs concurrent

STATE OF SOUTH CAROLINA

COUNTY OF Georgetown
 STATE VS.
Newitt Rodney Walker

AKA:

Race: BLACK Sex: M Age: 32DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED] Greentown RoadCity, State, Zip: Georgetown, SC 29440-4688DL#: [REDACTED] 1 SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Trafficking in Heroin, 4--14 grams, 1st offensein violation of § 44-53-0370(e)(3)(a)1 of the S.C. Code of Laws, bearing CDR Code # 2361
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.
 ATTEST: [Signature] SCB04523 [Signature] Hazzard, Ronald W. [Signature] SCB011164
 Powell, W. Keith SC Bar# Defendant Attorney for Defendant SC Bar#
WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 17 years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

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

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 28 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS: ATU needed☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 8.25

TOTAL \$ 283.25

Clerk of Court/ Deputy Clerk Susan WilsonCourt Reporter: Kay Richardson

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018GS2200792A/W#: 2017A2210100124Date of Offense: 11/30/2017S.C. Code § : 44-53-0370(e)(3)(b)CDR Code #: 0287

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS(7.25 yrs + \$50,000)

17 years concurrent

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 10.00 beginning 1mo after release

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.
Presiding Judge [Signature]Judge Code: 129Sentence Date: 2/25/19