

**ORIGINAL**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Robin B Stilwell, Circuit Court Judge

**RECEIVED**

APR 6 2012

SC Supreme Court

**ORIGINAL**

RICKY DALE GILSTRAP,

PETITIONER,

V

STATE OF SOUTH CAROLINA,

RESPONDENT

---

APPENDIX

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South Carolina Commission on Indigent  
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STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF GREENVILLE

STATE OF SOUTH CAROLINA

GREENVILLE

-vs-

TRANSCRIPT OF RECORD

RICKY GILSTRAP

October 6, 2009

Greenville, South Carolina

B E F O R E

HONORABLE JOHN C FEW, Judge

A P P E A R A N C E S

GEORGE CAMPBELL, ESQ

Attorney for the Plaintiff

BRIAN JOHNSON, ESQ

Attorney for the Defendant

MARY E DIGIROLAMO

Court Reporter

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I N D E X

WITNESSES                      DIRECT      CROSS      REDIRECT      RE CROSS

N/A

EXHIBITS                                      MARKED                      FILED

N/A

CHARGE OF THE COURT      N/A

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THE COURT Can you verify that you've complied with the victim's rights act?

MR CAMPBELL Yes, Your Honor

THE COURT Mr Johnson, you represent Mr Gilstrap?

MR JOHNSON Yes, sir, Your Honor

THE COURT Have you explained to him the crucial elements that the State would have to prove in order to convict him of these crimes, the maximum punishment that he faces on each one, and all of his Constitutional rights?

MR JOHNSON I have, Your Honor

THE COURT Does he understand all that?

MR JOHNSON I believe he does, Your Honor

THE COURT Mr Gilstrap, raise your right hand, please

RICKY GILSTRAP

Having been first duly sworn, testified as follows

THE COURT All right You can put your hand down Within the last 24 hours have you taken any medication, drugs or alcohol?

MR GILSTRAP No, sir

THE COURT Mr Gilstrap, you are charged with forgery which carries up to five years in prison, and you're also charged with one count of forgery, where no dollar amount is involved, which carries up to three

1 years in prison Do you understand that?

2 MR GILSTRAP Yes, sir

3 THE COURT Which is the one that was on the trial  
4 docket?

5 MR CAMPBELL Both were, Your Honor

6 MR JOHNSON One was today and one was tomorrow I  
7 believe, that's the way it was, George?

8 MR CAMPBELL Yes I believe, Your Honor, that  
9 both of these are for forgery less than \$5,000 on the --  
10 unless there's an error on the sentencing sheet

11 THE COURT Well, the sentencing sheet on one says  
12 no dollar amount

13 MR CAMPBELL Then that is my error, Your Honor  
14 The indictments are both for forgery less than \$5,000

15 MR JOHNSON That's actually the way we understood  
16 it, Judge

17 THE COURT Okay And did you -- one of them --  
18 this is also a third or subsequent property offense?

19 MR CAMPBELL Yes, sir, Your Honor

20 THE COURT Okay

21 MR JOHNSON Wait a minute

22 THE COURT Thank you

23 THE CLERK You're welcome

24 THE COURT This is the one that's not on the  
25 docket?

1 MR CAMPBELL Yes, sir

2 MR JOHNSON Yes, sir

3 THE COURT Gotcha Okay So it appears that he  
4 has two counts of forgery, both of which are third or  
5 subsequent property offenses and carry up to 10 years in  
6 prison?

7 MR JOHNSON Judge, that seems to be the case, but  
8 to be honest with you that's not something I discussed  
9 with my client

10 THE COURT Okay Well, you can discuss it with him  
11 now

12 MR JOHNSON Okay

13 THE COURT Okay He also has a possession of crack  
14 cocaine which carries up to three years and a fine of up  
15 to \$5,000 All right So we'll take a break for you to  
16 discuss the sentencing -- the sentence range on the two  
17 forgeries

18 MR JOHNSON Okay We don't need too long, Judge  
19 We'll just be right here

20 THE COURT Okay

21 (A discussion was held off the record )

22 MR JOHNSON Judge, I believe we're prepared to go  
23 forward at this time

24 THE COURT All right Mr Gilstrap, you -- let's  
25 go back to the discussion about what these crimes carry

1 by way of sentencing And you're charged with two counts  
2 of forgery and they each carry up to 10 years in prison  
3 Do you understand that?

4 MR GILSTRAP Yes, sir

5 THE COURT You're charged, as I discussed with you  
6 a few moments ago, with one count of possession of crack,  
7 which carries up to three years in prison and a fine of  
8 up to \$5,000?

9 MR GILSTRAP Yes, sir

10 THE COURT If you're ever convicted of a drug  
11 offense again then the penalty you face will be enhanced  
12 as a result of your plea on this drug charge, and you  
13 will lose your driver's license today Do you understand  
14 that?

15 MR GILSTRAP Yes, sir

16 THE COURT When you plead guilty you give up very  
17 important Constitutional rights including your right to a  
18 trial by jury You also have the right to remain silent,  
19 the right against self-incrimination You're entitled to  
20 the presumption of innocence, and that means that if you  
21 were to stand trial on these charges then you would be  
22 presumed innocent And in order to convict you the State  
23 would have to prove you guilty beyond a reasonable doubt  
24 And at trial you would have the right to confront  
25 witnesses called by the State to testify against you Do

1           you understand all those rights?

2           MR GILSTRAP    Yes, sir

3           THE COURT    Do you wish to give up all those rights  
4           and plead guilty?

5           MR GILSTRAP    Yes, sir

6           THE COURT    Are you guilty?

7           MR GILSTRAP    Yes, sir

8           THE COURT    Are you completely satisfied with your  
9           attorney?

10          MR GILSTRAP    I am, Your Honor

11          THE COURT    Has he done everything in this case that  
12          you feel he could have done or should have done?

13          MR GILSTRAP    I feel he has

14          THE COURT    Has he done anything in this case that  
15          you feel he should not have done?

16          MR GILSTRAP    No, sir

17          THE COURT    Now, you realize these two forgery cases  
18          are on the docket to be tried this week?

19          MR GILSTRAP    Yes, sir

20          THE COURT    Are you satisfied that if you had  
21          decided to exercise your right to a trial by jury that  
22          your attorney is sufficiently prepared to defend you in  
23          the trial of the case?

24          MR GILSTRAP    Yes, sir

25          THE COURT    Any recommendation?

1 MR CAMPBELL None from the State, Your Honor

2 THE COURT Has anybody promised you anything, or  
3 held out any hope of reward in order to get you to plead  
4 guilty?

5 MR GILSTRAP No, sir

6 THE COURT Has anybody threatened, or used force,  
7 or pressure, or intimidation in order to get you to plead  
8 guilty?

9 MR GILSTRAP No, sir

10 THE COURT Are you the one who made the decision  
11 that you would plead guilty here today?

12 MR GILSTRAP I am, Your Honor

13 THE COURT And are you pleading guilty because you  
14 are guilty?

15 MR GILSTRAP Yes, sir

16 THE COURT All right Tell me the facts

17 MR CAMPBELL May it please the Court, Your Honor?

18 On or about June 30, 2008, in Greenville County, the  
19 defendant knowingly presented a forged instrument of  
20 writing, a check, number 1005, for \$564 22 to Parker Road  
21 Drugs in Greenville County The State obtained  
22 fingerprint evidence and video surveillance of the  
23 defendant at this location

24 Then on or about July the 16th, 2008, in Greenville  
25 County, the defendant knowingly presented another forged

1 instrument of writing, check number 1001, to Walmart for  
 2 \$468 76, which was also -- the defendant was apprehended  
 3 by loss prevention, and the video surveillance implicated  
 4 him in the crime The defendant further freely and  
 5 voluntarily confessed to these two forgeries and  
 6 implicated other defendants in the forgery ring in which  
 7 he was participating

8 Then on or about April 5, 2008, in Greenville County  
 9 the State alleges that the defendant was found knowingly  
 10 in possession of less than one gram of crack cocaine  
 11 pursuant to a lawful search of his person after police  
 12 responded to a disturbance He does have a prior record  
 13 and there is no recommendation

14 THE COURT Mr Gilstrap, is there anything that the  
 15 solicitor said about what you did on these three  
 16 occasions that's not true?

17 MR GILSTRAP No, sir

18 THE COURT It's all true?

19 MR GILSTRAP It's all true

20 THE COURT What's his prior record?

21 MR CAMPBELL 1986, burglary first, 1989 -- 1991,  
 22 burglary second, 1992, driving under suspension, 1995  
 23 driving under suspension, 1996, failure to stop for a  
 24 blue light, two counts of petty larceny in 1997, fraud  
 25 check in 1999, simple assault and battery in 2003, 2005,

1 manufacturing or possession of drugs, arson second  
2 degree

3 MR GILSTRAP No, sir

4 MR JOHNSON Hold on The drugs?

5 MR GILSTRAP Arson or the drugs, either one

6 MR CAMPBELL And then apart from the arson, on May  
7 15 -- 17 of 2006, the defendant plead guilty to a federal  
8 charge -- two federal charges of counterfeiting

9 MR JOHNSON Judge?

10 THE COURT Yes, sir

11 MR JOHNSON Just for the record, my client says  
12 he's actually familiar with those -- that arson and that  
13 drug conviction, that he had actually been trying to get  
14 them removed Just for the purposes of the record he  
15 would like me to make you aware of that, that those  
16 charges aren't his He says he doesn't know anything  
17 about them, Judge

18 THE COURT I won't consider them

19 MR JOHNSON Thank you, Your Honor

20 THE COURT All right Let me hear -- let me hear  
21 the record again

22 MR CAMPBELL 1986, burglary first, 1991, burglary  
23 second, 1992, driving under suspension, 1995, driving  
24 under suspension, 1996, failure to stop for a blue light,  
25 1997, two counts of petty larceny, 1999, fraud check,

1 2003, simple assault and battery, 2006, two federal  
2 counts of counterfeiting currency

3 THE COURT 2006?

4 MR CAMPBELL Yes, Your Honor He plead guilty on  
5 May 17, 2006, received eight months prison and three  
6 years probation

7 MR JOHNSON Thank you, Your Honor My client is  
8 41 years old He does have a high school education In  
9 addition he tells me he's studied heating and air at  
10 Maylon Community College in North Carolina The last  
11 time he was out -- well, before I met him the first time  
12 he had worked at Budget Tree Service Before then he  
13 worked maintenance for a trailer park So he does have a  
14 history of work

15 Your Honor, we're here today pleading off the trail  
16 docket essentially because my client never wanted to go  
17 trial he just wanted a better plea deal, if you may The  
18 plea that was on the table when we had the forgeries was  
19 a five year sentence And as he understood it at the  
20 time that was going to be the max So he was simply  
21 trying to -- holding out hope Me and George Campbell  
22 discussed it Mr Campbell of course decided that the --  
23 of course, you know, he has to do his job as well, and he  
24 understood that But anyway he was hoping to get a  
25 better plea offer

1           In any case, Judge, I spoke with Mr Campbell about  
2 this last week, and I gave him no impression that we were  
3 ever intending to try this case   And you can confirm  
4 that with him

5           In talking with Mr Gilstrap about the case, he had  
6 this possession of crack charge and we decided also there  
7 was no use in prolonging that as well, Judge   So he  
8 wants to take care of that   As far as the cases are  
9 concerned, Judge, he wanted me to -- to reiterate that he  
10 did cooperate   We understand he did wrong, but he would  
11 like for the Court to know that when he was caught and  
12 when the police came to him, he did cooperate and he gave  
13 them other names, and he tried to do the best he could in  
14 order to make things right, even though he understands  
15 that he has to pay for what he did here today

16           In any case, Your Honor, he understands that you  
17 probably wouldn't think he's a good candidate for  
18 probation   We're of course asking for jail time (sic)  
19 We ask you to consider wrapping everything up   Maybe  
20 you'd consider three or more years, three years, or if  
21 you want to do five we understand, Judge, as well   But  
22 he really would like for you to consider doing three  
23 years   He would of course have no time served from this  
24 point forward   So -- well, Judge he says he's been in  
25 jail for about two months   Actually he was locked up on

1 the crack charge from 4/5 to 5/3, and then initially two  
2 weeks and now two weeks again So actually I apologize,  
3 Judge He would like credit for two months, Judge

4 THE COURT Be glad to give him credit for two  
5 months

6 MR JOHNSON In that case, Judge, we're asking for  
7 the mercy of the Court We'd ask you to take those  
8 things into consideration

9 THE COURT Anything further?

10 MR JOHNSON Nothing further from the defense, Your  
11 Honor

12 THE COURT All right The sentence on both of the  
13 forgeries is seven years Both -- and those are  
14 concurrent, with credit for time served The sentence on  
15 the drug charge is three years and a \$2,000 fine The  
16 time is suspended to one year The fine is suspended to  
17 \$1,000 With probation for three years And the case  
18 will terminate upon payment of all funds Another  
19 condition of probation is he pay \$500 to the public  
20 defender fund

21 MR JOHNSON Thank you, Your Honor

22 MR CAMPBELL Thank you, Your Honor

23 THE COURT The one year is concurrent

24 MR JOHNSON Thank you, Your Honor

25 - - -END OF TRANSCRIPT OF RECORD- - -

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C E R T I F I C A T E

I, the undersigned Mary E DiGirolamo, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 6th day of October, 2009

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

February 17, 2010

*Mary DiGirolamo*

Mary E DiGirolamo

Official Court Reporter

FORM 5

STATE OF SOUTH CAROLINA )  
County of Greenville )

IN THE COURT OF COMMON PLEAS

Ricky Dale Gilstrap 198939 )  
Full name and prison number (if any) of Applicant )

2010 CP-23- 0612

v )  
State of South Carolina )

APPLICATION FOR  
POST-CONVICTION RELIEF

19 JUN 25 AM 11 27  
CLERK OF COURT

**INSTRUCTIONS B 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 Trenton Corr. Inst.

84 Green House Rd Trenton SC, 29847

2 Name and location of Court which imposed sentence General Sessions

Greenville County

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

(a) 08-652308163 / 08-652308164

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

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

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

(a) Sept 26, 2009 / 7 years

(b) Sept 26, 2009 / 7 years concurrent

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

6 Check whether a finding of guilty was made

(a) after a plea of guilty

(b) after a plea of not guilty \_\_\_\_\_

(c) after a plea of nolo contendere \_\_\_\_\_

7 Did you appeal from the judgment of conviction or the imposition of sentence?

NO

8 If you answered Ayes@ to (7), list NO

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

I N/A

II \_\_\_\_\_

III \_\_\_\_\_

(b) the result in each such Court to which you appealed N/A

I \_\_\_\_\_

II \_\_\_\_\_

III \_\_\_\_\_

(c) the date of each such result N/A

I \_\_\_\_\_

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 Ano@ to (7), state your reasons for not so appealing

(a) Was not aware I could appeal



- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) Ineffective Assistance of Counsel <sup>Thompson vs State SC 2000</sup> <sub>340 S.C. 12, 531 S.E. 2d 6</sub> <sup>Grier vs State (SC 1987)</sup> <sub>SC</sub>
- (b) Sentencing judge imposed a sentence greater than a maximum allowed by law
- (c) \_\_\_\_\_

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

- (a) See attached page
- (b) See attached page
- (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 Ayes@ to any part of (12), list with respect to each petition, motion or application

- (a) the specific nature thereof N/A
  - I \_\_\_\_\_
  - II \_\_\_\_\_
  - III \_\_\_\_\_
  - IV \_\_\_\_\_
- (b) the name and location of the Court in which each was filed N/A
  - I \_\_\_\_\_
  - II \_\_\_\_\_
  - III \_\_\_\_\_

10(a) Ineffectiveness of Counsel case notes cont  
 Turner v State (S.C. 1999) 335 S.C. 382, 517 S.E. 2d 46

11(a) Counsel informed me that maximum sentence on each charge would carry no more than 5 years and to accept the open plea of 0-5 years which I accepted. Once in Courtroom while pleading to what I was informed of as a 0-5 open plea my charge(s) were enhanced by presiding judge and I was sentenced to 7 years on each count of forgery to run concurrent.

Had Counsel properly informed me of the actual sentencing enhancement guidelines I would not have pled. Counsel failed to properly research and study my case including any past convictions which could relate to current sentence imposed. Furthermore, after being sentenced in court I was advised by my counsel to file for post conviction relief based on his own ineffectiveness of representing me.

11(b) Sentencing judge based his enhancement of crime on 3 previous misdemeanor offenses over 10 years old (2 Cts. Petit Larceny / 1 fraudulent check under \$1000)

IV \_\_\_\_\_  
(c) the disposition thereof *N/A*

I \_\_\_\_\_

II \_\_\_\_\_

III \_\_\_\_\_

IV \_\_\_\_\_

(d) the date of each such disposition *N/A*

I \_\_\_\_\_

II \_\_\_\_\_

III \_\_\_\_\_

IV \_\_\_\_\_

(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 *N/A*

I \_\_\_\_\_

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

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea? Yes.
- (b) your trial, if any? N/A
- (c) your sentencing? Yes.
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Have not filed any appeal
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? \_\_\_\_\_

18 If you answered Ayes@ to one or more parts of (17), list

- (a) the name and address of each attorney who represented you
  - i Brian Johnson - Greenville Co. Public Defender
  - ii 305 East North St. Greenville SC. 29601
  - iii \_\_\_\_\_

- (b) the proceedings at which each such attorney represented you
  - i Arraignment and Plea
  - ii Sentencing
  - iii \_\_\_\_\_

19 State clearly the relief you seek in filing this application

I ask that I be resentenced as a 1<sup>st</sup> offense and not 3<sup>rd</sup> or greater  
That the enhancement of the crime be withdrawn and the original  
open plea of 0-5 years be honored.

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA )  
County of Greenville )

VERIFICATION

I, Rickey Dale Gulstrap, 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

Rickey Dale Gulstrap

SWORN to and subscribed before me this 19<sup>th</sup>  
day of January, 2010

[Signature] (L S)  
Notary Public

My Commission Expires 8/22/2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C A No 2010-CP-23- 612
COUNTY OF GREENVILLE	)	
	)	
Ricky D Gilstrap, SCDC# 198939	)	AMENDMENTS TO
Applicant,	)	POST CONVICTION
	)	RELIEF APPLICATIONS
vs	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	
Respondent	)	

---

The applicant hereby amends answers to number 9 and number 10 of his Application for Post-Conviction Relief to state the following

COURT OF COMMON PLEAS  
 GREENVILLE COUNTY  
 JUN 17 PM 1:20  
 2010

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

(A) The Applicant was denied effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and Article I, Section 14 of The South Carolina Constitution

10 State concisely and in order the facts which support each of the grounds set out in (9)

(a) The applicant was provided with deficient representation by his attorney, in that the conduct of his attorney was objectively unreasonable under the circumstances Strickland vs Washington, 466 U S 668 (1984) The outcome of the applicant's proceeding was prejudiced, and it is reasonably probable that the outcome would have been different had counsel's performance not been deficient Strickland, 466 U S at 694 Defense counsel was ineffective based on one or more of the following

1 My defense attorney failed to conscientiously discharge his professional responsibilities while he was handling my case

- 2 My defense attorney failed to effectively challenge the arrest and seizure of the Applicant
- 3 My defense attorney failed to act as my diligent, conscientious advocate
- 4 My defense attorney failed to give me his complete loyalty
- 5 My defense attorney did not have my best interest in mind while he was supposed to be investigating and preparing my case
- 6 My defense attorney failed to serve my cause in good faith
- 7 My defense attorney neglected the necessary investigations and the preparation of my case
- 8 My defense attorney did not do the necessary factual investigations on my behalf
- 9 My defense attorney did not do the necessary legal research
- 10 My defense attorney did not conscientiously gather any information to protect my rights
- 11 My defense attorney did not try to have my case settled in a manner that would have been to my best advantage
- 12 My defense attorney did not advise me of all my rights or take any of the actions that were necessary to protect or preserve them knowing that I was not versed in the law
- 13 My defense attorney, knowing I was illiterate in the law, never properly ascertained whether or not I actually understood or comprehended all of the issues that were involved in my case
- 14 My defense attorney never properly consulted with me or kept me informed with what was going on as far as my case was concerned
- 15 My defense attorney never explained to me or discussed with me any of the elements of the crime charged
- 16 My defense attorney never made any attempt to ascertain whether or not I actually knew what the elements of the crime charged were or whether or not I understood exactly what the term "criminal element" actually meant

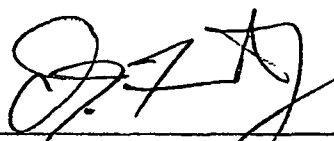
- 17 My defense attorney never explained to me or discussed with me how the elements of the crime charged and the evidence that the prosecution planned to introduce into evidence against me related to one another and did not discuss how the sentencing would be done especially as it related to the elements of the crime as in State v Boyd
- 18 My defense attorney never informed me of any of the defenses that were available to me
- 19 My defense attorney never intended to offer any defense to the court on my behalf
- 20 My defense attorney never explained to me or discussed with me any kind of defense strategy
- 21 My defense attorney never explained to me or discussed with me any of the tactical choices that they either made or were planning to make
- 22 My defense attorney dictated to me exactly how my case was going to be handled and offered no alternative options
- 23 My defense attorney failed to properly acquaint themselves with the law and the facts surrounding my case and as a direct result of their intentional negligence, there was a very serious error in their assessment of both the law and the facts
- 24 Because of my defense attorney's gross neglect and his many legal errors no defense at all was put in issue for me during the Court proceedings
- 25 My defense attorney did not subject the prosecution's case to any adversarial testing
- 26 My defense attorney failed to oppose the prosecution's case with any adversarial litigation
- 27 My defense attorney failed to function as the government's adversary in any sense of the word
- 28 My defense attorney failed to pursue any of the legal recourse that were available to him
- 29 The attorney that represented me on this charge in Court failed to function as the counsel that the Constitution's Sixth Amendment Guarantees

- 30 My defense attorney failed to call alibi witnesses on my behalf which would have proven my innocence
- 31 My defense attorney failed to appeal my case after I was convicted when I wanted an appeal

His counsel's representation was not within the range and scope of competence demanded by Strickland and its progeny

A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction requires that the defendant show first, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial Sosebee v Leeke, S C 362, F 2<sup>nd</sup> 221 (1987), citing Strickland v. Washington, 46 S E 2D 813 (1984) See also Butler v State, 286 S C 441, 334 S E 2d 813 (1985), and Hill v. Lockhart, 474 U S 88 (1985)

Respectfully submitted,



---

Daniel J Farnsworth, Jr. (S C Bar # 6922)  
**FARNSWORTH LAW OFFICES, LLC**  
Attorney for the Applicant  
414 Pettigru Street, Suite A  
Post Office Box 8719  
Greenville, South Carolina 29604

June 4, 2010  
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C A No 2010-CP-23-612
COUNTY OF GREENVILLE	)	
	)	
Ricky D Gilstrap, SCDC# 198939	)	AFFIDAVIT OF SERVICE
Applicant,	)	
	)	
vs	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	
Respondent	)	
_____	)	

I hereby certify that I have served the Amendment to PCR Application on the State of South Carolina by depositing a copy of the same in the United States Mail, postage prepaid, on June 7<sup>th</sup>, 2010 addressed to the attorney of record, Karen C Ratigan, Office of the Attorney General, Post Office Box 11549, Columbia, South Carolina, 29211

Sally Drawdy  
 Sally Drawdy  
 Legal Assistant to Daniel J Farnsworth, Jr

SWORN to and subscribed before me this  
7<sup>th</sup> day of June, 2010  
Melanie Sharp  
 NOTARY PUBLIC FOR SOUTH CAROLINA  
 My Commission Expires 1/9/14

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C A No 2010-CP-23-0612
COUNTY OF GREENVILLE	)	
	)	
Ricky Dale Gilstrap,	)	
S C D C No 198939,	)	
	)	
Applicant,	)	
	)	RETURN
v	)	
	)	
State of South Carolina,	)	
	)	
Respondent	)	
_____	)	

In response to the post-conviction relief application filed January 25, 2010, the Respondent would show this Court

I

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the March 2009 term of General Sessions for two (2) counts of forgery (2008-GS-23-8163, -8164) and the Applicant waived presentment on the charge of possession of cocaine base (crack cocaine) (2009-GS-23-4457). Brian Johnson, Esquire represented the Applicant.

On October 6, 2009, the Applicant pled guilty. The Honorable John C. Few sentenced the Applicant to concurrent terms of seven (7) years for each count of forgery and three (3) years imprisonment and a \$2000 fine suspended on the service of one (1) year imprisonment, a \$1000 fine, and three (3) years probation for possession of cocaine base, first offense.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South

Carolina Department of Corrections, and the guilty plea transcript

## II

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reasons

- 1 Ineffective assistance of counsel,
  - a Advised the maximum sentence was five (5) years
  - b Failed to research and study the case
- 2 "Sentencing judge imposed a sentence greater than a maximum allowed by law "

In a document titled "Supplement (Ammended) to PCR Post Conviction Relief" filed February 15, 2010, the Applicant alleges

- 1 "I was sentenced to 7 years on this charge which clearly is more than the maximum allowed by law "

## III

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result" Strickland v. Washington, 466 U S 668, 686, 104 S Ct 2052, 2064 (1984), Butler v State, 286 S C 441, 442, 334 S E 2d 813, 814 (1985)

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases The courts presume counsel

“rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment ” Strickland, 466 U S at 690, 104 S Ct at 2066 The Applicant must overcome this presumption in order to receive relief See Cherry v State, 300 S C 115, 118, 386 S E 2d 624, 625 (1989)

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel First, the applicant must prove counsel’s performance was deficient Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms ” Cherry v State, 300 S C at 117, 386 S E 2d at 625 (quoting Strickland, 466 U S at 688, 104 S Ct at 2065) Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different ” Cherry, 300 S C at 117-18, 386 S E 2d at 625 “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial ” Johnson v State, 325 S C 182, 186, 480 S E 2d 733, 735 (1997) (citing Strickland v Washington, 466 U S 668, 104 S Ct 2052 (1984))

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v Washington test However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record The Respondent 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) (citing Norman v State, 276 S C 278, 277 S E 2d 707 (1981))

#### IV

The Respondent denies each allegation not expressly admitted, qualified or explained

V

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant

Respectfully submitted,

HENRY DARGAN McMASTER  
Attorney General

JOHN W McINTOSH  
Chief Deputy Attorney General

SALLEY W ELLIOTT  
Assistant Deputy Attorney General

KAREN C RATIGAN  
Assistant Attorney General

P O Box 11549  
Columbia, S C 29211

By

  
Attorneys for Respondent

April 21, 2010

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 )  
 )  
 RICKY DALE GILSTRAP, 198939 )  
 )  
 )  
 )  
 Applicant, )  
 )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 )  
 )  
 Respondent )  
 )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

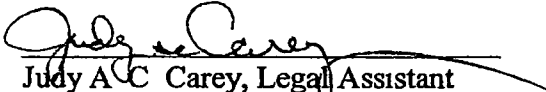
2010-CP-23-0612

AFFIDAVIT OF SERVICE BY MAIL

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

**Ricky Dale Gilstrap, 198939**  
**Trenton Correctional Institution**  
**84 Greenhouse Road**  
**Trenton SC 29847**

DATED this 21st day of April, 2010

  
 Judy A C Carey, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No(s) 2011CP2300612
	)	
Ricky Gilstrap,	)	
	)	
Applicant,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
State of South Carolina,	)	
	)	
Respondent	)	
	)	

**ORIGINAL**

February 22, 2011  
Greenville, South Carolina

B E F O R E

**HONORABLE ROBIN B STILWELL, Judge**

A P P E A R A N C E S

**KAREN RATIGAN, Esquire**  
Attorney for the State

**DANIEL J FARNSWORTH, JR , Esquire**  
Attorney for the Applicant

Recorded by Mary DiGirolamo  
Circuit Court Reporter

Transcribed by Teresa B Johnson  
Circuit Court Reporter

I N D E X

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Remarks	4			
Ricky Gilstrap				
by Mr Farnsworth	8			
by Ms Ratigan		15		
Brian Johnson				
by Mr Farnsworth	18			
by Ms Ratigan		21		
by Mr Farnsworth			23	
Certificate of Reporter	25			

EXHIBITS PAGENODESCRIPTIONID EV

## APPLICANT EXHIBITS

(No exhibits offered )

## RESPONDENT EXHIBITS

(No exhibits offered )

## COURT EXHIBITS

(No exhibits offered )

Remarks

4

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

2                    **THE COURT**     All right     Lady, Gentlemen,  
3                    good morning     How are y'all doing today?     Or  
4                    afternoon     I'm sorry     Let's see who I've got  
5                    here     I've got Ms     Garrido

6                    Is that you?

7                    **THE INTERPRETER**     Yes

8                    **THE COURT**     Mr     Mackey     Mr     Mackey

9                    Mr     Gilstrap     All right

10                    And you are, sir?

11                    **MR WILLIAMS**     Williams

12                    **THE COURT**     Mr     Williams?     Okay

13                    **MS RATIGAN**     They transported him for  
14                    some reason     We'll be able to go forward on  
15                    him today

16                    **THE COURT**     You will?     Okay     Good     All  
17                    right     Good     I had on my docket it was  
18                    continued     But that's okay     All right

19                    The reason I have you out here now before  
20                    we get started is to give you an advisement  
21                    about the nature of post-conviction relief  
22                    applications and the benefits and potential  
23                    pitfalls of being granted potentially a post-  
24                    conviction relief application

25                    It's important for you to know what I can't

1 do in a post-conviction relief application  
2 That is, I can't change your sentence I can't  
3 change the charges I can't change  
4 classifications of your, uh, of the crimes I  
5 can't change the way you do your time at the  
6 Department of Corrections Really, the sole,  
7 uh, remedy that I'm limited to is to send you  
8 back to trial for a new trial

9 Now, that could be good to you, but that  
10 could be bad to you as well Because if you go  
11 back to the circuit court for a new trial, what  
12 happens is you start from square one, which  
13 means if you benefitted from a plea  
14 negotiation, you benefitted from charges being  
15 dropped or indictments being dropped, if you  
16 benefitted from a jury's verdict in some way,  
17 if you benefitted from a judge who maybe gave  
18 you less than the maximum sentence on the  
19 charge to which you either pled or for which  
20 you were convicted, then you go back to circuit  
21 court without the benefit of those negotiations  
22 or the benefits of those concessions or  
23 modifications

24 I tell you that because it has happened in  
25 the past that applicants have been granted

1 post-conviction relief and they go back to  
2 trial court only to discover that they are in a  
3 much worse position than they would have been  
4 if they had just accepted the original sentence  
5 of the court

6 Now, I don't tell you that to dissuade you  
7 from coming in front of me with post-conviction  
8 relief application I'm here to hear your  
9 cases I'm happy to hear your cases So  
10 please, uh, feel free to put your case up on  
11 the record I'll hear it I'll consider it  
12 very deliberately But I did want you to know  
13 what can happen in some cases if you are  
14 granted a post-conviction relief application  
15 Okay All right

16 Ms Ratigan, who are you going to do first?

17 **MS RATIGAN** Uh, we can do Mr Williams

18 **THE COURT** All right

19 (WHEREUPON, there is a break in the record )

20 **THE COURT** All right Let's call the  
21 case -- call to bar the case of Ricky Gilstrap  
22 versus the State of South Carolina, case number  
23 2010-CP-23-0612

24 Ms Ratigan

25 **MS RATIGAN** Thank you, Your Honor May





1 forgeries?

2       **A**     They, uh, -- five years

3       **Q**     And five years was the maximum for the  
4 charge of Forgery less than \$5000, right?

5       **A**     Yes, sir     That's what I understood at the  
6 time

7       **Q**     And you didn't accept that because it was  
8 the maximum?

9       **A**     Yes, sir

10       **Q**     And Mr Johnson wasn't able to get the  
11 prosecutor to budge off of that offer?

12       **A**     No, sir

13       **Q**     Okay     You went to court that day in March  
14 of 2009 to go ahead and plead guilty ---

15       **A**     Yes, sir

16       **Q**     --- to the two forgeries and the possession  
17 of cocaine?

18       **A**     Yes, sir

19       **Q**     What did Mr Johnson tell you about the  
20 offer, whether it changed or anything?

21       **A**     That it was still the same     That was it  
22 I'd have to take the five-year plea

23       **Q**     Did he say what he was going to ask for?

24       **A**     He would ask for three years

25       **Q**     Did he tell you what he felt the judge

1 would do?

2           **A**     Well, uh, up to that time, I was informed  
3 that it was a subsequent third and above property  
4 crime. I thought there was a chance that we could  
5 get it to three. But at the very most, you know, I  
6 was looking at five.

7           **Q**     And when was the first time you were told  
8 that the charges you were pleading to, the two  
9 forgeries actually carry -- actually were third or  
10 above property crimes and would carry up to ten years  
11 each instead of just five?

12           **A**     When I came into the courtroom to make my  
13 plea. Initially, when the judge opened up, he told  
14 me that I had forgery less than \$5000 would carry  
15 five years and forgery with no dollar amount would  
16 carry a maximum of three years. Further on into it,  
17 he spoke to Mr. Campbell and said wait a minute, one  
18 of these or both of these are subsequent third and  
19 above. Mr. Campbell was like yes.

20           **Q**     This is the judge asking the prosecutor?

21           **A**     Yes.

22           **Q**     In the middle of your plea?

23           **A**     In the middle of my plea.

24           **Q**     Okay. So then what did your attorney say?

25           **A**     Uh, he said wait. After that, he informed

1 the judge that he did not discuss this with me It  
2 appeared to be so but he hadn't discussed this  
3 situation with me The judge said, well, you can  
4 discuss it with him now At that point, we had a  
5 discussion off record

6 Q Okay So you had a break during the plea?

7 A Yes, sir Just a short one

8 Q You talked with Mr Johnson about the fact  
9 that the penalty is more now than you thought it was?

10 A Right It was either that or go to trial  
11 If you were found guilty at trial, you would probably  
12 get the maximum But we can go ahead It wasn't  
13 likely now that we could get the three, but we could  
14 get the five that was originally on the table You  
15 would get five at the most because it was already on  
16 the table

17 Q So during your break, your attorney, Mr  
18 Johnson, said that he could get you the five years?

19 A Yes, sir Yes, sir

20 Q Okay

21 A He was going to ask for the three

22 Q Okay Is that why you went ahead with the  
23 plea?

24 A Absolutely It didn't feel like much  
25 choice at the time I felt like I shouldn't have

1 even been to that point A year before this, if  
2 someone had told me you'd be up there facing ten  
3 years, I would have gladly accepted the five years

4 Q So the five-year recommendation that Mr  
5 Campbell had been offering for a good while, you  
6 would have taken that had you known your maximum  
7 penalty would have been ten years on these charges?

8 A Absolutely That would have been half of  
9 what the charges carry and I felt like that would  
10 have been a good deal

11 Q Okay But the way your lawyer explained it  
12 to you and the way you understood it, they were  
13 offering you the maximum penalty of the charges?

14 A Right Five years is what they carry Why  
15 plead to it?

16 Q When you pled though, and after they  
17 explained that you are looking at -- after the judge  
18 and then your lawyer explained on the break that you  
19 were facing more time than you thought, you went on  
20 and pled anyway, didn't you?

21 A Yes, sir

22 Q Why is that?

23 A I was still under the impression that I was  
24 going to get the five at the very most still

25 Q Was there any recommendation by the

1 Solicitor or agreement or negotiation?

2       **A**     None at that point     Up until then, they  
3 were saying the five

4       **Q**     I'm thinking in the plea transcript when  
5 the judge asked the Solicitor, Mr Campbell, was  
6 there a recommendation, he said no

7       **A**     He said none     None from the State, Your  
8 Honor

9       **Q**     Did that surprise you?

10       **A**     Yeah, it actually did     For a moment, I  
11 thought that that would maybe be to my benefit  
12 Apparently, it wasn't

13       **Q**     Okay     And, uh, again, if you had known  
14 your two forgery charges carried up to ten years  
15 each, would you have accepted the five-year plea they  
16 offered months before?

17       **A**     Absolutely, without a doubt

18       **Q**     Would you have been put on the trial docket  
19 and held out for a better deal if that -- you had  
20 known that?

21       **A**     No, no

22       **Q**     Did Brian Johnson discuss with you what  
23 happened after the plea?

24       **A**     After the plea, we stepped in the corridor  
25 over there and he apologized and said that it was his

1 fault and he was sorry He didn't tell me about the  
2 ten years and I should file a motion for post-  
3 conviction relief because of that He didn't inform  
4 me of the ten years

5 Q Did Mr Johnson discuss with you your right  
6 to appeal the sentence after the plea?

7 A No, sir

8 Q Okay Did you ever ask him about that?

9 A I was shook At that point, I didn't even  
10 say anything leaving the courtroom At the end of  
11 the transcript, you can see I was speechless I  
12 never seen that coming I really and truly had in my  
13 gut that I was getting five years that day

14 Q Did the judge on his own -- did Judge Few  
15 on his own say that you were facing the charges that  
16 were now going to be enhanced because of prior  
17 convictions or is that something the prosecutor  
18 inserted?

19 A The judge brought it up first I think  
20 even in the transcript he says one of these is a  
21 subsequent third and above, is it not, Mr Campbell  
22 I think the prosecutor then replied that they both  
23 were, not just one, they both were I think that's  
24 how it went

25 Q Okay Did your attorney object to the

1 judge changing or modifying what the change was and  
2 the penalty ---

3 **A** No, sir

4 **Q** --- without the prosecutor's assertion or  
5 allegation or motion?

6 **A** No

7 **Q** Okay Did, uh, did you have any other  
8 discussions with your attorney Brian Johnson after  
9 that day?

10 **A** No, sir

11 **Q** How long has that been?

12 **A** Uh, about 18 months

13 **Q** You telling this court that again that you  
14 -- if you had known what these penalties carried,  
15 those two forgery charges carried, that you would  
16 have taken a plea that was offered months ago to five  
17 years?

18 **A** That's what the situation would have been  
19 if I had known

20 **Q** Okay Please answer any questions that the  
21 Assistant Attorney General might have

22 **CROSS-EXAMINATION**

23 **BY MS RATIGAN**

24 **Q** Just a couple of quick questions During  
25 the plea, when y'all took that break and you and Mr

1 Johnson reviewed the third or greater property  
2 offense of ten years, you still decided to go forward  
3 and plea?

4 A Yes, ma'am

5 Q And that's because you thought you were  
6 going to get five years?

7 A He gave me the impression that that was  
8 what was going to happen

9 Q Did he tell you that?

10 A He said we'll get you the five that was on  
11 the table The three is probably out the window but  
12 we'll get you the five that's on the table, that's  
13 already on the table I thought that meant it was  
14 locked in to that

15 Q Why didn't you object when the State said  
16 there was no recommendation?

17 A To be honest, like I said, like, at the  
18 time, I thought he said no recommendation, that maybe  
19 that was -- could be to my benefit I was nervous at  
20 the time I mean, who knows I think my attorney's  
21 job, I think, would be to object, not mine

22 Q Well, but the judge asked you if you had  
23 been promised anything for that plea and you said no,  
24 didn't you?

25 A Yes, sir, Yes, ma'am I said I didn't

1 think that -- I had a discussion or something similar  
2 to that before about the promises situation The way  
3 I understood it was that it meant like the district  
4 attorney or someone had promised you something in  
5 exchange for something

6 Q So Mr Johnson telling you would you would  
7 get five years, you didn't think that was a promise?

8 A Well, yeah That was a deal

9 MS RATIGAN That's all I have, Your  
10 Honor

11 THE COURT Redirect?

12 MR FARNSWORTH Uh, no, Judge

13 THE COURT All right Mr Gilstrap, you  
14 can step down Thanks

15 All right Anything further from the  
16 applicant?

17 MR FARNSWORTH We'd call Brian Johnson

18 THE CLERK Place your left hand on the  
19 Bible please Raise your right hand

20 BRIAN JOHNSON

21 having first been sworn, testifies as follows

22 THE CLERK Thank you You may be seated  
23 State your full name for the record please

24 THE WITNESS Brian Patrick Johnson

25 THE CLERK Thank you

**DIRECT EXAMINATION**

1  
2 **BY MR FARNSWORTH**

3 **Q** Mr Johnson, you recall the plea with, uh,  
4 Mr Gilstrap here?

5 **A** Yes, I do

6 **Q** Uh, were you incorrect in what the maximum  
7 penalties would be on these forgeries?

8 **A** Yes, I was I had told him otherwise  
9 before we got up there

10 **Q** Okay And when the -- when Judge Few  
11 brought that to your attention, I believe you had a  
12 -- you did have a little conversation off the record  
13 with your client?

14 **A** Yes, sir

15 **Q** Okay Did you still lead him to believe  
16 and hope that you would get the five years anyway?

17 **A** I can't remember the conversation in  
18 totality But I think, doing my best to recall, I  
19 believe I told him that I would ask for five I  
20 don't remember how -- it's probably in the transcript  
21 what I actually asked for, but I believe I asked him  
22 that I would indeed ask for the five and try to get  
23 that

24 **Q** I believe the transcript includes you asked  
25 for three Three and five, I think you mentioned

1 Does that sound ---

2       **A**     That sounds about right

3       **Q**     --- like what you remember? Uh, you didn't  
4 object when Judge Few amended the maximum penalty or  
5 decided that the charge would carry more than what  
6 the prosecutor had announced they carry?

7       **A**     I did not

8       **Q**     And do you remember if you had talked to my  
9 client about his right to appeal?

10       **A**     I don't believe I mentioned it

11       **Q**     Okay Even after this error that you  
12 realized and discussed with him and sort of, uh,  
13 smoothed over during the plea, did you not then tell  
14 him, hey, you still have a right to appeal this?

15       **A**     I don't believe I mentioned it to be  
16 honest

17       **Q**     Okay Was, uh, -- do you recall whether  
18 the plea offer from George Campbell, the Solicitor,  
19 was five years for a good while before this was done?

20       **A**     It was, uh, -- it initially started out  
21 with two forgery charges, which was five Then he  
22 picked up a Possession of Cocaine charge later and it  
23 remained five

24       **Q**     Okay So the five-year recommendation was  
25 something that was on the table for a good while?

1           **A**     Yes, sir

2           **Q**     Okay    And, uh, that would have been what  
3 you instructed your client was the maximum for  
4 forgeries?

5           **A**     Yes, sir

6           **Q**     And your talks with the Solicitor never  
7 included consecutive time?

8           **A**     No, as I understood it, George, he didn't  
9 choose to see it as a third or subsequent offense

10          **Q**     Okay    And when the judge decided to treat  
11 it that way and George had asserted that, you didn't  
12 object to that?

13          **A**     I did not    As far as I was concerned, he  
14 was right    It was just something -- generally, a  
15 Solicitor will make that, uh, apparent    However, it  
16 wasn't done this time    So I didn't really tell -- I  
17 didn't tell Ricky that

18          **Q**     All right    Uh, in your talks with -- you  
19 may not be able to answer this    In your talks with  
20 Ricky and as that plea offer for five years was on  
21 the table, knowing it was the maximum for what you  
22 thought the forgeries would carry, do you believe he  
23 would have considered taking that five-year plea if  
24 he realized the penalties were actually ten years on  
25 those?

1           **A**     Yes     Yes, I do

2                   **MR FARNSWORTH**     That's all I have     Thank  
3           you

4                                   **CROSS-EXAMINATION**

5   **BY MS RATIGAN**

6           **Q**     Why didn't Mr Gilstrap take the five-year  
7           offer?

8           **A**     As he understood it, as I explained to him,  
9           five years was the max     He didn't understand why  
10          they wanted him to do five years considering, I  
11          believe, he helped cooperate with the investigation

12          **Q**     Did you explain to him that he could  
13          receive concurrent or consecutive sentences?

14          **A**     I did     I did tell him that the sentences  
15          could be done concurrent or consecutive

16          **Q**     And you advised him of the minimum and  
17          maximum sentence he was facing on each of these three  
18          charges, even without the ten-year?

19          **A**     Yes, ma'am     Although I do believe -- I  
20          believe I told him five on both the forgeries     I  
21          don't believe I ever said three     I believe I told  
22          him five on both of them

23          **Q**     Again, you explained the judge could run  
24          that consecutive if he so chose?

25          **A**     Yes, ma'am

1           **Q**     And it was Mr Gilstrap who made the  
2 decision not to take that five-year offer for a good  
3 long bit?

4           **A**     Yes, ma'am

5           **Q**     Okay And you had obviously his RAP sheet,  
6 his prior offenses?

7           **A**     Yes, ma'am

8           **Q**     Was there any question once the judge  
9 brought that up that they were -- these were properly  
10 third offense or greater property?

11          **A**     It was no question Once he said that, I  
12 realized it to be true

13          **Q**     And during the break, during the plea when  
14 you talked about this with him, you explained to him  
15 the concept of a third or greater property offense?

16          **A**     Yes, ma'am

17          **Q**     And you told him at that point that he was  
18 facing ten years?

19          **A**     Yes, ma'am

20          **Q**     And did you make a recommendation as to  
21 whether he should go ahead and plead or whether he  
22 should go to trial?

23          **A**     Uh, I don't remember exactly, but it was my  
24 opinion even before this that they had him pretty  
25 red-handed It was always my recommendation to him

1 that he plead It would have been the same whether  
2 it was ten or five

3 Q But Mr Gilstrap was the one who made that  
4 ultimate decision that day?

5 A Yes, ma'am

6 Q Did you tell him how to answer the judge's  
7 questions?

8 A No, ma'am

9 Q In your opinion, were there any legal  
10 errors as a result of the plea that could have been  
11 appealed?

12 A No legal errors, no, ma'am

13 MS RATIGAN That's all I have, Your  
14 Honor

15 THE COURT Any redirect?

16 REDIRECT EXAMINATION

17 BY MR FARNSWORTH

18 Q Mr Johnson, when you resumed the plea  
19 During the break, you talked to your client and  
20 explained to him that the penalties were more severe  
21 than he was aware or you were aware at the time, did  
22 you indicate to him though that you could still get  
23 the five years?

24 A I didn't say for sure I told him that I  
25 would go for the five, that that's what we should

1 shoot for I believe he understood that he could  
2 still get the ten That was the main purpose of the  
3 conversation that you could indeed get the ten, but I  
4 would -- my thinking now is we should shoot for five

5 Q And again, you think, based on your  
6 conversations with him, if he knew all along that he  
7 was facing ten, he probably would accept the five?

8 A I believe that to be true

9 MR FARNSWORTH That's all we have,  
10 Judge Thank you

11 THE COURT All right All right Any  
12 recross, Ms Ratigan?

13 MS RATIGAN No, Your Honor

14 THE COURT You can step down, Mr  
15 Johnson

16 Anything further from the applicant?

17 MR FARNSWORTH No, Your Honor

18 THE COURT Anything from the State?

19 MS RATIGAN No, Your Honor

20 THE COURT All right I'll take it under  
21 advisement Thank you and good luck to you, Mr  
22 Gilstrap

23 MR FARNSWORTH Thank you, Judge

24 (END OF PROCEEDING)

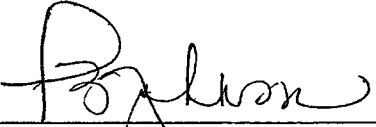
25

## CERTIFICATE

STATE OF SOUTH CAROLINA     )  
  )  
COUNTY OF GREENVILLE     )

I, the undersigned, Teresa B Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville, South Carolina, on this 28th day of October, 2011

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

  
\_\_\_\_\_  
Teresa B Johnson  
Official Court Reporter



**State of South Carolina**  
**The Circuit Court of the Thirteenth Judicial Circuit**

**Robin B Stilwell**  
 Judge

Greenville County Courthouse  
 305 East North Street Suite 315  
 Greenville SC 29601 2113  
 Phone (864) 467 8406  
 Fax. (864) 235 3625  
 rstilwell@sccourts.org

February 24, 2011

Ms Karen C Ratigan  
 Assistant Attorney General  
 Post Office Box 11549  
 Columbia SC 29211

Mr Daniel J Farnsworth, Jr  
 Attorney at Law  
 Post Office Box 8719  
 Greenville, SC 29604

RE Ricky Gilstrap v State of South Carolina  
 2010-CP-23-0612

Dear Counsel

I have had the opportunity to review the above-referenced case file in context with the testimony and arguments submitted at the hearing. I would respectfully deny the application, finding specifically that the applicant failed to meet his burden of proving that representation was deficient or that any deficiency prejudiced him in any material or substantial way. It is clear from the record that Mr Gilstrap was advised of the maximum possible sentence that he could have received under the law for the offense. Furthermore, even if the Court had proceeded under the notion that the forgeries were up to five-year offenses, Mr Gilstrap still faced up to thirteen years of incarceration. I would appreciate Ms Ratigan preparing an Order memorializing this finding and submitting the same to me.

I thank each of you for having tried an excellent case and look forward to seeing you again soon.

With kindest regards,

  
 ROBIN B STILWELL

RBS cor

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Ricky Dale Gilstrap,	)	C A No 2010-CP-23-0612
S C D C No 198939,	)	
	)	
Applicant,	)	
	)	<b>ORDER OF DISMISSAL</b>
v	)	
	)	
State of South Carolina,	)	
	)	
Respondent	)	
	)	

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 25, 2010. The Respondent made its return on April 21, 2010. An evidentiary hearing into the matter was convened on February 22, 2011 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Daniel J Farnsworth, Jr, Esquire. Karen C Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Brian Johnson, Esquire. The Court had before it the guilty plea transcript, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and the Respondent's return.

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the March 2009 term of the Greenville County Grand Jury for two (2) counts of forgery (2008-GS-23-8163, -8164) and the Applicant waived presentment on the charge of

1  
*RBG*

possession of cocaine base (crack cocaine) (2009-GS-23-4457) He was represented by Brian Johnson, Esquire

On ~~October~~ 6, 2009, the Applicant pled guilty The Honorable John C Few sentenced the Applicant to concurrent terms of seven (7) years for each count of forgery and three (3) years imprisonment and a \$2000 fine suspended on the service of one (1) year imprisonment, a \$1000 fine, and three (3) years probation for possession of cocaine base, first offense The Applicant did not appeal

### ALLEGATIONS

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

- 1 Ineffective assistance of counsel,
  - a Advised the maximum sentence was five (5) years
  - b Failed to research and study the case
- 2 "Sentencing judge imposed a sentence greater than a maximum allowed by law "

In a pro se document titled "Supplement (Amended) to PCR Post Conviction Relief" filed February 15, 2010, the Applicant alleges

- 1 "I was sentenced to 7 years on this charge which clearly is more than the maximum allowed by law "

The Applicant, through counsel, submitted an amendment to his application dated June 4, 2010, in which he alleged the following

- 1 Ineffective assistance of counsel
  - a Failed to conscientiously discharge professional responsibilities
  - b Failed to effectively challenge search and seizure
  - c Failed to act as a diligent and conscientious advocate
  - d Failed to give complete loyalty
  - e Did not have Applicant's best interest in mind
  - f Failed to serve the cause in good faith
  - g Neglected necessary investigations and preparation

- h Did not do necessary factual investigations
- i Did not do necessary legal research
- j Did not conscientiously gather information to protect rights
- k Did not try to have the case settled in a manner that would have been to my best advantage
- l Did not advise me of all my rights or take any of the actions that were necessary to protect and preserve them
- m Never properly ascertained whether or not I actually understood or comprehended all of the issues involved in the case
- n Never properly consulted with me or kept me informed
- o Never explained to me or discussed with me any of the elements
- p Never made any attempt to ascertain whether or not I actually knew the elements of the crime charge or whether or not I understood exactly what "criminal element" meant
- q Never explained or discussed with me how the elements of the crime charged and the evidence that the prosecution planned to introduce into evidence against me related to one another and did not discuss how the sentencing would be done especially as it related to the elements of the crime as in State v. Boyd
- r Never informed me of any of the defenses that were available to me
- s Never intended to offer any defense to the court on my behalf
- t Never explained to me or discussed with me any kind of defense strategy
- u Never explained to me or discussed with me any of the tactical choices that were made or planned to be made
- v Dictated to me exactly how my case was going to be handled and offered no alternative options
- w Failed to properly acquaint herself with the law and facts surrounding my case and, as a result, there was a very serious error in the assessment of both the law and the facts
- x No defense at all was put in issue for me during the Court proceedings
- y Did not subject the prosecution's case to any adversarial testing
- z Failed to oppose the prosecution's case with any adversarial litigation
- aa Failed to function as the government's adversary in any sense of the word
- bb Failed to pursue any of the legal recourse that was available
- cc Failed to function as the counsel that the Constitution's Sixth Amendment guarantees
- dd Failed to call alibi witnesses on my behalf
- ee Failed to appeal my case

**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. 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 conclusions of law as required by S C Code Ann § 17-27-80 (2003)

**Ineffective Assistance of Counsel**

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v State, 351 S C 385, 389, 570 S E 2d 172, 174 (2002)

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v Washington, 466 U S 668, 104 S Ct 2052 (1984), Porter v State, 368 S C 378, 383, 629 S E 2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v Lockhart, 474 U S 52, 58-59, 106 S Ct 366, 370 (1985), Roscoe v State, 345 S C 16, 20, 546 S E 2d 417, 419 (2001)

The Applicant stated there had been a plea offer in this case for a five (5) year sentence recommendation, but that he rejected it. The Applicant stated that, before the guilty plea hearing, plea counsel had told him the maximum sentence was five (5) years but that he would

request a three (3) year sentence. The Applicant stated that, during the plea hearing, the plea judge mentioned the two (2) forgery charges were eligible to be treated as third or greater property offenses and that he could receive a ten (10) year sentence on each. The Applicant stated he and plea counsel took a break to discuss this and that plea counsel said he would receive a five (5) year sentence if they went forward with the plea. The Applicant admitted he told the plea judge he had not been promised anything in exchange for pleading guilty but explained that he did not think plea counsel's statement that he would get a five (5) year sentence was a promise. The Applicant testified plea counsel did not inform him about the right to appeal. The Applicant stated he would have accepted the State's original five (5) year plea offer if he had known he was facing a ten (10) year sentence.

Plea counsel confirmed the plea offer in this case was for five (5) years but that the Applicant rejected it because that was the maximum sentence one could receive for forgery. Plea counsel testified that, before the guilty plea hearing, he advised the Applicant of the minimum and maximum sentences he was facing and that the judge could order those sentences to be either concurrent or consecutive. Plea counsel testified that he told the Applicant he was likely facing a five (5) year sentence. Plea counsel testified the plea judge brought up the concept of the charges being a third or greater property offense (with a potential ten-year sentence) during the guilty plea hearing. Plea counsel testified that, based on his review of the Applicant's NCIC report, there was no question these charges were true third property offenses. Plea counsel stated they took a break during the plea and he explained to the Applicant what had happened. Plea counsel stated he explained the concept of the third or greater property offense to the Applicant and that he could receive up to ten (10) years. Plea counsel stated the Applicant chose to go forward with the guilty plea hearing and that he told the Applicant he would ask for a three to

five year sentence Plea counsel stated they did not discuss the right to appeal but that there were no legal errors to appeal from the guilty plea hearing Plea counsel stated the Applicant would have taken the five (5) year plea offer if he had known he was facing a ten (10) year sentence

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof This Court finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation

The Applicant admitted to the plea judge both that he was guilty and that the facts recited by the solicitor were true (Plea transcript, p 7, p 8, p 9) The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way (Plea transcript, pp 6-7)

This Court finds the Applicant failed to meet his burden of proving plea counsel should have objected to the plea judge's decision to treat the charges as third or greater property offenses Plea counsel testified that he had advised the Applicant before the guilty plea hearing of the potential sentences he could receive on all three (3) charges and that it was within the plea judge's discretion whether to run the sentences concurrent or consecutive This Court finds plea counsel's testimony is credible The Applicant testified the plea judge stated he could receive ten (10) year sentences on these charges (as third or greater property offenses) and plea counsel testified that, during the break in the guilty plea proceedings, he also advised the Applicant as such Plea counsel testified the Applicant made the decision to continue with the guilty plea hearing This Court finds that, based on testimony from both the Applicant and plea counsel, the Applicant made a knowing decision to proceed with his guilty plea Furthermore, this Court notes that, even if the plea judge had proceeded under the notion that the forgery charges would

6  
L 3 9

be classified as five (5) year offenses, the Applicant still faced a potential maximum sentence of thirteen (13) years of incarceration. As such, this Court finds the Applicant's assertion that would have taken the five (5) year plea offer if he had known he was facing a ten (10) year sentence is not compelling.

This Court finds the Applicant failed to meet his burden of proving plea counsel should have informed him of the right to appeal his guilty plea. This Court notes plea counsel has a constitutionally imposed duty to consult with the defendant about an appeal only when there is reason to think either (1) that a rational defendant would want to appeal or (2) that this defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). Although not determinative, a highly relevant factor will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because a plea may indicate the defendant seeks an end to judicial proceedings. Id. This Court finds the Applicant did not meet his burden of proving either of the Flores-Ortega criteria and that plea counsel was not obligated to advise him of the right to appeal his guilty pleas to these charges. This Court further notes plea counsel's testimony that there were no appealable issues from the guilty plea hearing.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to

render reasonably effective assistance. See Frasier v State, 351 S C at 389, 570 S E 2d at 174

#### All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

#### CONCLUSION

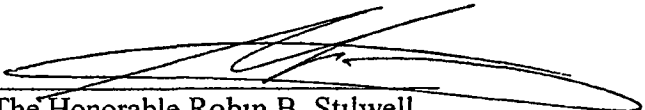
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**IT IS THEREFORE ORDERED**

- 1 That the application for post-conviction relief be denied and dismissed with prejudice, and
- 2 That the Applicant be remanded to the custody of the Respondent

**AND IT IS SO ORDERED** this 16th day of March, 2011



The Honorable Robin B Stilwell  
Presiding Judge, Thirteenth Judicial Circuit

Greenville, South Carolina

ARREST WARRANT

M-176184

5531

STATE OF SOUTH CAROLINA

County/  Municipality of

4809

Greenville

THE STATE  
against

09-055728

Ricky Dale Gilstrap

Address

Greenville, SC 29617-

Sex M Race W Height 6 Weight 180

DL State SC DL #

DOB 5/1/1968

Agency ORI # SC0230000

Prosecuting Agency Greenville County Sheriffs Office

Prosecuting Officer Andrew Moates - 1083

Offense Drugs/possession of less than one gram of meth or cocaine base 1st

Offense Code 3009

Code/Ordinance Sec. 44-53-0375(A)

This warrant is **CERTIFIED FOR SERVICE** in the

County/  Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law

(L.S.)

Signature of Judge

Date

RETURN

A copy of this arrest warrant was delivered to defendant on

Ricky Dale Gilstrap

4/5/09

[Signature] \*1078 D23  
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO

West Greenville Summary Court  
6247 White Horse Road  
Greenville, SC 29611

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/  Municipality of

Greenville

AFFIDAVIT

ORIGINAL

Form Approved by  
S.C. Attorney General  
April 21, 2003  
SCCA 518

Personally appeared before me the affiant Andrew Moates who

being duly sworn deposes and says that defendant Ricky Dale Gilstrap

did within this county and state on or about 04/05/2009

violate the criminal laws of the

State of South Carolina (or ordinance of  County/  Municipality of Greenville)

in the following particulars.

DESCRIPTION OF OFFENSE Drugs/possession of less than one gram of meth. or cocaine base 1st

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts

ON 04 05 09 MR. GILSTRAP WAS FOUND IN POSSESSION OF A WHITE SUBSTANCE WHICH WAS FIELD TESTED POSITIVE FOR A COCAINE BASE MR. GILSTRAP WAS IN ACTUAL PHYSICAL OF THE SUBSTANCE THIS INCIDENT DID OCCUR WITHIN GREENVILLE COUNTY

Signature of Affiant

[Signature] \*1083 D25

STATE OF SOUTH CAROLINA

County/  Municipality of

Greenville

Affiant's Address 4 Mcgee Street  
Greenville, SC 29601-  
Affiant's Telephone (864)467-5300

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONS...

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 4/5/2009 defendant Ricky Dale Gilstrap

did violate the criminal laws of the State of South Carolina (or ordinance of

County/  Municipality of Greenville)

DESCRIPTION OF OFFENSE Drugs/possession of less than one gram of meth or cocaine base, 1st

Having found probable cause and the above affiant having sworn before me you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution or as soon thereafter as is practicable

Sworn to and subscribed before me

on 04/05/2009

[Signature] (L.S.)  
Signature of Issuing Judge

Darrell Fisher

Judge Code 5068

Judge's Address

Judge's Telephone

Issuing Court:  Magistrate  Municipal  Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

COMPUTER ENTERED  
APR 06 2009  
GREENVILLE COUNTY  
SHERIFF'S OFFICE

DOCKET NO 2009-GS-23-  
GAC 00 157

**The State of South Carolina**

County of Greenville

COURT OF GENERAL SESSIONS

TERM 2009

THE STATE

VS

RICKY DALE GILSTRAP

**WITNESSES**

Andrew Moates

Greenville County Sheriffs Office

4/5/2009

**ARREST WARRANT NUMBER**

M176184

**ACTION OF GRAND JURY**

*Foreperson of Grand Jury*

**VERDICT**

*Foreperson of Petit Jury*

*Date*

**Indictment for**

3009

**POSSESSION OF COCAINE BASE (CRACK  
COCAINE)**

VIOLATION § 44-53-0375

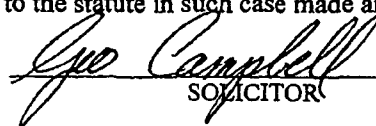
STATE OF SOUTH CAROLINA    )  
   )  
 COUNTY OF GREENVILLE        )

INDICTMENT FOR  
**POSSESSION OF COCAINE BASE (CRACK COCAINE)**

At a Court of General Sessions, convened on \_\_\_\_\_ the Grand Jurors of Greenville  
 County present upon their oath

That RICKY DALE GILSTRAP did in Greenville County, on or about the 5th day of April, 2009, willfully and  
 unlawfully have in his possession and under his control a quantity of Cocaine Base (Crack Cocaine), a controlled  
 substance This is in violation of §44-53-375 of the South Carolina 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

  
 \_\_\_\_\_  
 SOLICITOR

**B** STATE OF SOUTH CAROLINA )  
 COUNTY OF Greenville )  
 STATE VS )  
Ricky Dale Gilstrap )  
 AKA \_\_\_\_\_ )  
 Race W Sex M Age 41 )  
 DOB 05-01 1968 SS# \_\_\_\_\_ )  
 Address \_\_\_\_\_ )  
GREENVILLE, SC 29611 )  
 DL# \_\_\_\_\_ SID# \_\_\_\_\_ )

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE# 2009GS2304457  
 A/W# M176184  
 Date of Offense 4/5/2009  
 S C Code § 44-53 0375 (A)  
 CDR Code # 3009

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was  
 TO Drugs/possession of less than one gram of meth or cocaine base 1st

CONVICTED OF or  PLEADS

in violation of § 44-53-0375 (A) of the S C Code of Laws, bearing CDR Code # 3009  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC  §17-25 45  
 w/minor 1st or Lewd Act)

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

ATTEST  
Campbell George SC Bar# 77409 Ricky Dale Gilstrap Defendant George Campbell Attorney for Defendant SC Bar# 7390

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
 for a determinate term of 3 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
 and/or to pay a fine of \$ 2000 provided that upon the service of 1 days/months/years and/or payment  
 of \$ 1000, plus costs and assessments as applicable\*, the balance is suspended with probation for 3

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  
 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 (Criminal  
 Domestic Violence ) to ship, transport, possess, or receive a firearm or ammunition

SPECIAL CONDITIONS

RESTITUTION  Deferred  Def Waives Hearing  Ordered PTUP \_\_\_\_\_  
 Total \$ \_\_\_\_\_ plus 20% fee \$ \_\_\_\_\_ days/hours Public Service Employment  
 Payment Terms \_\_\_\_\_ Obtain GED \_\_\_\_\_  
 set by SCDPPPS \_\_\_\_\_ Attend Voc Rehab or Job Corp \_\_\_\_\_  
 \_\_\_\_\_ May serve W/E beginning \_\_\_\_\_  
 \_\_\_\_\_ Substance Abuse Counseling \_\_\_\_\_  
 \_\_\_\_\_ Random Drug/Alcohol testing \_\_\_\_\_  
 \_\_\_\_\_ Fine may be pd in equal, consecutive weekly/monthly  
 pmts of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
 \$ 500 paid to Public Defender Fund  
 \_\_\_\_\_ Other \_\_\_\_\_

Recipient:	
*Fine	\$
§ 14-1 206 (Assessments 107 5 %)	\$
§ 14 1 211(A)(1) (Conv Surcharge)	\$100 \$ <u>100.00</u>
§ 14 1 211(A)(2) (DUI Surcharge)	\$100 \$
§ 56 5-2995 (DUI Assessment)	\$12 \$
§ 56 1-286 (DUI Breath Test)	\$25 \$
§ 47 12 (Public Def/Prob)	\$500 \$
§ 14 1-212 (Law Enforce Funding)	\$25 \$ <u>25.00</u>
§ 14-1 213 (Drug Court Surcharge)	\$100 \$
§ 50-21 114(BUI Breath Test Fee)	\$50 \$
§ 56-5 2942(J) (Vehicle Assessment)	\$40/ea \$
§ 90 7 (SCCJA Surcharge)	\$5 \$ <u>5.00</u>
3% to County (if paid in installments)	\$
TOTAL	\$

Appointed PD or appointed other counsel, §47 12  
 requires \$500 be paid to Clerk during probation

Clerk of Court/ Deputy Clerk Paul B Wickens  
 Court Reporter John Mary Dicapriano  
 SCCA/217 (06/2009)

PRESIDING JUDGE \_\_\_\_\_ Judge Code \_\_\_\_\_  
 Sentence Date 10/6/09

Probation begins upon completion from sentence rec this date 10/6/09

ARREST WARRANT

1-475916

5031

STATE OF SOUTH CAROLINA

County/  Municipality of

Greenville

THE STATE  
against

08-104575

Ricky Dale Gilstrap

Address

Greenville SC 29617-

Phone Sex: M Race: W Height: 6 Weight: 180

DL State: SC DL #

DOB: 5/1/1968 Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: Jeffrey Maxwell - 0228

Offense: Forgery / Forgery, no dollar amount involved

Offense Code: 0488  
Code/Ordinance Sec: 16-13-0010

This warrant is CERTIFIED FOR SERVICE in the

County/  Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law

(L.S)

Signature of Judge

Date

RETURN

A copy of this arrest warrant was delivered to defendant on

Ricky d. Gilstrap  
7-18-08

Signature of Court Clerk or Enforcement Officer

\*991  
663  
A Benes

RETURN WARRANT TO

City Magistrate #2  
4 Mc Gee Street Room 116 B  
Greenville SC 29601

116 B

116 B

ORIGINAL

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ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA )  
 County/  Municipality of )  
Greenville )

AFFIDAVIT

ORIGINAL

Form Approved by  
S.C. Attorney Gen. rat  
April 21, 2003  
SCCA 516

Personally appeared before me the affiant Jeffrey Maxwell  
being duly sworn deposes and says that defendant Ricky Dale Gilstrap  
did within this county and state on or about 06/30/2008

who

violate the criminal laws of the

State of South Carolina (or ordinance of  County/  Municipality of Greenville )  
in the following particulars

DESCRIPTION OF OFFENSE Forgery / Forgery no dollar amount involved

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts.

Affiant is an Economic Crimes Investigator with the G.C.S.O. The affiant has obtained an incident report and documentation implicating the defendant in this offense. The defendant did present check # 1005 at the Parker Road Drug Store at 1319 Woodside Ave. The amount of check being \$564.22, with a payor Palmetto State Transport and the payee being the defendant. The check is counterfeit, using a stolen checking account number of another business. The said check being endorsed without the consent, permission, or knowledge of the victim. The offense did occur in Greenville County.

Signature of Affiant

STATE OF SOUTH CAROLINA )  
 County/  Municipality of )  
Greenville )

Affiant's Address 4 Mcgee Street  
Greenville, SC 29601-  
Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

it appearing from the above affidavit that there are reasonable grounds to believe that

on or about 6/30/2008 defendant Ricky Dale Gilstrap

did violate the criminal laws of the State of South Carolina (or ordinance of  County/  Municipality of Greenville )

DESCRIPTION OF OFFENSE Forgery / Forgery no dollar amount involved

Having found probable cause and the above affiant having sworn before me you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution or as soon thereafter as is practicable.

Sworn to and subscribed before me on 07/17/2008

Signature of Issuing Judge  
James E Hudson  
Judge Code 5031

(L.S)

Judge's Address 4 Mcgee Street, Room 116-B  
Greenville SC 29601-  
Judge's Telephone (864)467 5302

Issuing Court  Magistrate  Municipal  Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

WITNESSES

Jeffrey Maxwell *CG*

Greenville County Sheriffs Office

7/18/2008

ARREST WARRANT NUMBER

1475916

ACTION OF GRAND JURY

**TRUE BILL**

*Nicki Cummings*

FOREMAN GRAND JURY

*Foreperson of Grand Jury*

VERDICT

*Foreperson of Petit Jury*

*Date*

DOCKET NO 2008-GS-23-<sup>GAC</sup> 000163

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

✓ March

TERM 2008

THE STATE

vs

RICKY DALE GILSTRAP

✓  
2427  
Indictment for

FORGERY

VIOLATION § 16-13-0010

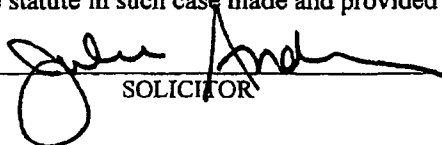
STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
FORGERY

At a Court of General Sessions, convened on **MAR 17 2009** the Grand Jurors of Greenville  
County present upon their oath

That RICKY DALE GILSTRAP did in Greenville County on or about the 30th day of June, 2008 with intent to defraud, falsely make, forge, counterfeit, cause or procure to be falsely made, forged, or counterfeited utter and publish as true, or willfully act or assist in any of the foregoing, in regard to an instrument of writing, to wit a check numbered 1005 in the amount of Five Hundred Sixty-Four Dollars and Twenty-Two Cents (\$564 22) on the account of Palmetto State Transport, drawn on Bank of America and presented to Parker Road Drug Store This is in violation of §16-13-10 of the South Carolina 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

  
SOLICITOR

STATE OF SOUTH CAROLINA )  
 COUNTY OF Greenville )  
 STATE VS )  
Ricky Dale Gilstrap )  
 AKA \_\_\_\_\_ )  
 Race W Sex M Age 41 )  
 DOB 05-01 1968 SS# ~ )  
 Address \_\_\_\_\_ )  
GREENVILLE SC 29611 )  
 DL# \_\_\_\_\_ SID# \_\_\_\_\_ )

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE# 2008GS2308163  
 A/W# 1475916  
 Date of Offense 6/30/2008  
 S C Code § 16-13-0010  
 CDR Code # 0488

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was  
 TO Forgery / Forgery no dollar amount involved

CONVICTED OF or  PLEADS

in violation of § 16-13-0010 of the S C Code of Laws bearing CDR Code # 0488  
 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 Presentation to Grand Jury (defendant's initials)  
 The plea is  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State

ATTEST  
Geo Campbell 77407 Ricky Dale Gilstrap R. J. A. 73996  
 Campbell George 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 7 ~~days/months~~ years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
 and/or to pay a fine of \$ \_\_\_\_\_, provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
 of \$ \_\_\_\_\_, plus costs and assessments as applicable\* the balance is suspended with probation for \_\_\_\_\_

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

CONCURRENT or  CONSECUTIVE to sentence on \_\_\_\_\_  
 The Defendant is to be given credit for time served pursuant to S C Code § 24-13-40 to be calculated and applied  
 by the State Department of Corrections  
 The Defendant is to be placed on 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 (Criminal  
 Domestic Violence ) to ship, transport, possess, or receive a firearm or ammunition

SPECIAL CONDITIONS

RESTITUTION  Deferred  Def Waives Hearing  Ordered PTUP \_\_\_\_\_  
 Total \$ \_\_\_\_\_ plus 20% fee \$ \_\_\_\_\_ days/hours Public Service Employment  
 Payment Terms \_\_\_\_\_ Obtain GED \_\_\_\_\_  
 set by SCDPPPS \_\_\_\_\_ Attend Voc Rehab or Job Corp \_\_\_\_\_  
 May serve W/E beginning \_\_\_\_\_  
 Substance Abuse Counseling \_\_\_\_\_  
 Random Drug/Alcohol testing \_\_\_\_\_  
 Fine may be pd in equal, consecutive weekly/monthly  
 pmts of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
 \$ \_\_\_\_\_ paid to Public Defender Fund  
 Other \_\_\_\_\_

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	\$	
§ 47 12 (Public Def/Prob)	\$500	\$	
§ 14-1 212 (Law Enforce Funding)	\$25	\$	25.00
§ 14-1 213 (Drug Court Surcharge)	\$100	\$	
§ 50-21-114(BUI Breath Test Fee)	\$50	\$	
§ 56 5 2942(J) (Vehicle Assessment)	\$40/ea	\$	
§ 90 7 (SCCJA Surcharge)	\$5	\$	5.00
3% to County (if paid in installments)		\$	
TOTAL		\$	

Appointed PD or appointed other counsel, §47 12  
 requires \$500 be paid to Clerk during probation

Clerk of Court/ Deputy Clerk Paul B. Williams  
 Court Reporter J. Johnson D. G. Mary Williams  
 SCCA/217 (06/2009)

PRESIDING JUDGE \_\_\_\_\_  
 Judge Code 12123  
 Sentence Date 10/6/09

ARREST WARRANT

5531  
7-24-08  
1-429790

STATE OF SOUTH CAROLINA

County/  Municipality of

Greenville

THE STATE 08 104242

against

Ricky Dale Gilstrap

Address

Greenville SC 29617

Phone \_\_\_\_\_ SSN \_\_\_\_\_

Sex M Race W Height 6 Weight 180

DL State SC DL # \_\_\_\_\_

DOB 5/1/1967 Agency ORI # SC0230000

Prosecuting Agency Greenville County Sheriffs Office

Prosecuting Officer JK Hughes 1094

Offense. Forgery / Forgery value less than \$5 000

Offense Code 2427

Code/Ordinance Sec. 16 13-0010(B)(2)

This warrant is CERTIFIED FOR SERVICE in the  
 County/  Municipality of

The accused  
is to be arrested and brought before me to be  
dealt with according to the law

(L.S)

Signature of Judge

Date \_\_\_\_\_

RETURN

A copy of this arrest warrant was delivered to  
defendant Ricky D Gilstrap  
on 7-16-08

JK Hughes #1094 E-46  
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO

West Greenville Summary Court  
6247 White Horse Road  
Greenville SC 29611

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA )  
 County/  Municipality of )  
Greenville )

AFFIDAVIT

ORIGINAL

Form Approved by  
S C Attorney General  
April 21 2003  
SCCA 518

Personally appeared before me the affiant JK Hughes who

being duly sworn, deposes and says that defendant Ricky Dale Gilstrap

did within this county and state on or about 07/16/2008 violate the criminal laws of the

State of South Carolina (or ordinance of  County/  Municipality of Greenville)

in the following particulars

DESCRIPTION OF OFFENSE Forgery / Forgery value less than \$5 000

I further state that there is probable cause to believe that the defendant named above did commit  
the crime set forth and that probable cause is based on the following facts

The defendant did knowingly and intentionally attempt to utter check number 1001 at the Wal-Mart store at 6214 Whitehorse Rd  
for the amount of \$468 76 The defendant did attempt to utter this check with the intention of depriving the victim of said amount,  
and obtaining value or benefit from the forged document This offense occurred in Greenville County SC

Signature of Affiant

STATE OF SOUTH CAROLINA  
 County/  Municipality of  
Greenville

JK Hughes #1094 E-46  
Affiant's Address Mcgee Street  
Greenville 29601-  
Affiant's Telephone (864)271-5210

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

it appearing from the above affidavit that there are reasonable grounds to believe that

on or about 7/16/2008 defendant Ricky Dale Gilstrap

did violate the criminal laws of the State of South Carolina (or ordinance of \_\_\_\_\_)

County/  Municipality of Greenville

DESCRIPTION OF OFFENSE Forgery / Forgery value less than \$5 000

Having found probable cause and the above affiant having sworn before me you are empowered and directed to arrest the said defendant and bring him or  
her before me forthwith to be dealt with according to law A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution or as  
soon thereafter as is practicable  
Sworn to and subscribed before me )

on 07/16/2008 )

Vilvin Garrison (L.S.) )  
Signature of Issuing Judge

Vilvin Garrison )  
Judge's Address

5946 )  
Judge's Telephone

Issuing Court.  Magistrate  Municipal  Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

COMPUTER ENTERED  
JUL 17 2008  
SHERIFFS OFFICE

WITNESSES

J Hughes *fel*

Greenville County Sheriffs Office

7/16/2008

ARREST WARRANT NUMBER

1429790

ACTION OF GRAND JURY

TRUE BILL

*Archie C. ...*  
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date

DOCKET NO 2008-GS-23-000164  
GAC

✓ The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

✓ March

TERM 2008

THE STATE

VS

RICKY DALE GILSTRAP

✓  
2427 Indictment for

FORGERY

VIOLATION § 16-13-0010

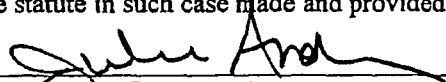
STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
FORGERY

At a Court of General Sessions, convened on **MAR 17 2009** the Grand Jurors of Greenville  
County present upon their oath

That RICKY DALE GILSTRAP did in Greenville County on or about the 16th day of July, 2008 with intent to defraud, falsely make, forge, counterfeit, cause or procure to be falsely made, forged, or counterfeited utter and publish as true, or willfully act or assist in any of the foregoing, in regard to an instrument of writing, to wit a check numbered 1001 in the amount of Four Hundred Sixty-Eight Dollars and Seventy-Six Cents (\$468.76) on the account of Budweiser of Spartanburg drawn on First Union Bank of South Carolina and presented to Wal-Mart This is in violation of §16-13-10 of the South Carolina 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

  
SOLICITOR

78

STATE OF SOUTH CAROLINA )  
 COUNTY OF Greenville )  
 STATE VS )  
 Ricky Dale Gilstrap )  
 AKA )  
 Race W Sex M Age 42 )  
 DOB 05 01 1967 SS# )  
 Address )  
 GREENVILLE, SC 29611 )  
 DL# SID# )

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE# 2008GS2308164  
 A/W# 1429790  
 Date of Offense 7/16/2008  
 S C Code § 16-13 0010(B)(2)  
 CDR Code # 2427

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was  
 TO Forgery / Forgery value less than \$5 000

CONVICTED OF or  PLEADS

in violation of § 16 13-0010(B)(2) of the S C Code of Laws, bearing CDR Code # 2427  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC  §17 25-45 w/minor 1st or Lewd Act)

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  
 Campbell, George 77409 SC Bar# Defendant R-10 Attorney for Defendant 73496 SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
 for a determinate term of 7 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  
 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 (Criminal  
 Domestic Violence ) to ship, transport, possess, or receive a firearm or ammunition

SPECIAL CONDITIONS

RESTITUTION  Deferred  Def. Waives Hearing  Ordered PTUP  
 Total \$ plus 20% fee \$  
 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 \$
§ 47 12 (Public Def/Prob)	\$500 \$
§ 14-1 212 (Law Enforce Funding)	\$25 \$ 25.00
§ 14-1 213 (Drug Court Surcharge)	\$100 \$
§ 50 21 114(BUI Breath Test Fee)	\$50 \$
§ 56 5 2942(J) (Vehicle Assessment)	\$40/ea \$
§ 90 7 (SCCJA Surcharge)	\$5 \$ 5.00
3% to County (if paid in installments)	\$
TOTAL	\$

\_\_\_\_\_ 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 \$ \_\_\_\_\_ beginning \_\_\_\_\_  
 \$ \_\_\_\_\_ paid to Public Defender Fund  
 Other \_\_\_\_\_

Appointed PD or appointed other counsel, §47 12  
 requires \$500 be paid to Clerk during probation

Clerk of Court/ Deputy Clerk Paul B. Wickens  
 Court Reporter Mary Alknotano  
 SCCA/217 (06/2009)

PRESIDING JUDGE  
 Judge Code 2123  
 Sentence Date 10/6/09