

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from York County

John C. Hayes, III, Circuit Court Judge

RECEIVED

AUG 27 2013

S.C. Supreme Court

ANTONIO PATTERSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001190

APPENDIX

ROBERT M. PACHAK
Appellate Defender

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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA

-----x

STATE,

Plaintiff,

Case No.

-against-

2010-GS-46-4111-12

ANTONIO PATTERSON

Defendant.

-----x

October 5, 2011

York, S.C.

B E F O R E:

HONORABLE LEE S. ALFORD

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

EB SPRINGS, Esquire

Attorney for the Plaintiff

MICHAEL MATTHEWS, Esquire

Attorney for the Defendant

Aileen Butler

Official Court Reporter

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E X H I B I T S

NO EXHIBITS MARKED

1 MR. SPRINGS: The next matter for this
2 Honorable Court is the State verses Antonio
3 Patterson, standing here with his appointed
4 counsel, Mr. Michael Matthews.

5 He was charged with distribution of cocaine
6 base, which is also called crack cocaine on
7 indictment 2010-GS-46-4112 and charged with
8 distributing that crack cocaine within proximity
9 of a school on 2010-GS-46-4111.

10 He is going to plead guilty today to
11 distribution of crack cocaine, second offense
12 which carries a minimum mandatory sentence of
13 five years, or a recommendation of five years and
14 he is pleading to the proximity charge for
15 recommendation of ten years suspended upon five
16 years to run concurrent.

17 THE COURT: Sir, you are Antonio Patterson,
18 is that right.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: How old are you, Mr. Patterson?

21 THE DEFENDANT: I am 30, sir.

22 THE COURT: How far did you go in school?

23 THE DEFENDANT: I went to school ten years.

24 THE COURT: Sir?

25 THE DEFENDANT: Tenth grade.

1 THE COURT: What do you do for job or
2 occupation?

3 THE DEFENDANT: What do I do? I do catering
4 work. I use to work with catering affairs and
5 I do lawn work also.

6 THE COURT: Are you married, sir?

7 THE DEFENDANT: No, sir.

8 THE COURT: Do you have any children?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: What are their ages?

11 THE DEFENDANT: I have six children. Ages
12 are 14, 11, 10, 7 and 4. I got two twin
13 daughters also.

14 THE COURT: Did you serve any time in jail
15 on these charges when you were arrested?

16 THE DEFENDANT: I served like two days.

17 MR. MATTHEWS: Two days is what we found
18 out from the the jail.

19 THE COURT: Mr. Patterson, you are charged
20 today with two offenses. You are charged with
21 distribution of crack cocaine, second drug
22 offense. Which offense is classified as a
23 felony. It carries a minimum sentence of five
24 years and maximum sentence of 30 years and
25 \$50,000 fine.

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Do you understand that charge and the maximum, minimum sentences you could receive?

THE DEFENDANT: Yes, sir.

THE COURT: You are also charged today with distribution of crack cocaine within proximity of a school park, playground, which is also classified as a felony and carries a maximum sentence of ten years and \$10,000 fine. This offense is classified as A serious offense. The importance of that classification is, should you get three serious offenses on your record or a combination of three serious and most serious offenses on your record. Upon receiving the third such offense you could get a sentence of life without parole. So called three strikes rule. This would classify as one of those three strikes.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: If I accept your plea of guilty to these two drugs charges they will constitute a drug offense on your record. The importance of that, should you receive another drug offense of any kind in the future with these charges on your record the penalties would be

1 enhanced because these were on your record. In
2 other words the penalties for a third drug
3 offense are higher. In some cases much higher
4 then they are for a second offense.

5 Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Understanding all that, how do
8 you wish to plead to these two charges today;
9 guilty or not guilty?

10 THE DEFENDANT: I plead guilty.

11 THE COURT: Do you understand by pleading
12 guilty you give up your right to remain silent?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand by pleading
15 guilty you give up your right to a trial by jury?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And if you give up your right to
18 a trial by jury you also give up your right to
19 assert any legal defenses you might have in a
20 jury trial?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: I know your attorney has gone
23 over that right with you and I will do so as
24 well.

25 At trial you you would have a right to

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confront and cross examination all witnesses against you.

You would have a right to present any witnesses and/or evidence in your own defense. You would have the right to testify in your own defense if you wish to do so. But no one could make you testify at your own trial. If you decided to go to trial and not testify, the judge would tell the jury they could not hold your failure to testify against you. In fact the jury couldn't even consider your failure to testify in their deliberations on your guilt or innocence. You would be presumed innocent throughout your trial and the State would have to prove your guilt beyond a reasonable doubt to a jury of 12 people. All 12 people would have to unanimously agree to your guilt in order to be convicted and even if you were convicted you would still have the right to appeal that conviction.

Do you understand your rights with regard to trial by jury?

THE DEFENDANT: Yes, sir.

THE COURT: Understanding that right do you still want to plead guilty or do you want me to

1 set your cases for trial?

2 THE DEFENDANT: Plead guilty, sir.

3 THE COURT: The State is recommending to the
4 Court the minimum five-year sentence on the
5 distribution of crack cocaine, second offense
6 charge and a sentence of ten years suspended on
7 service of five years on the proximity charge.

8 Is that your understanding of the agreement
9 you have with the solicitor's office in order to
10 plead guilty to these two charges?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Anybody promised you anything
13 other than that in order to get you to plead
14 guilty?

15 THE DEFENDANT: No, sir.

16 THE COURT: Are you satisfied with the
17 manner in which your attorney has advised you on
18 these charges?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Are you today under the
21 influence of any mind altering substance such as
22 alcohol or drugs or prescription medications
23 which would interfere with your judgement or
24 ability to understand what you are doing in
25 court?

1 THE DEFENDANT: No, sir.

2 THE COURT: Do you have any mental,
3 emotional or nervous condition that interferes
4 with your judgement or ability to understand what
5 you are doing in court?

6 THE DEFENDANT: No, sir.

7 THE COURT: Are you pleading guilty today of
8 your own free will?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Are you in fact guilty of all
11 these two charges?

12 THE DEFENDANT: Yes.

13 THE COURT: Please give me the facts,
14 solicitor?

15 MR. SPRINGS: Yes, Your Honor.

16 Your Honor, if we had proceeded to trial we
17 would have produced evidence that on Friday, July
18 the 2nd of 2010, an informant working with the
19 narcotics unit called the drug dealer named
20 Travis -- Trevaris Barnett, his nickname was Lou
21 and they set up a drug deal for purpose of \$40
22 worth of crack cocaine.

23 The informant met with Trevaris Barnett at a
24 Valero station here in York County. The
25 informant rolled up. Saw Barnett there at the

1 front of the Valero station and saw a man who was
2 the defendant here, Mr. Patterson, drive up on a
3 scooter.

4 Mr. Patterson drove up on a scooter and
5 the informant watched Barnett appear to bump into
6 Mr. Patterson here in front of the Valero's
7 station and the informant saw a hand-to-hand
8 transaction take place where Mr. Patterson gave
9 Barnett something. Barnett then came to the
10 informant and handed him some crack cocaine which
11 he had just gotten from Mr. Patterson.

12 The informant gave Barnett some money.
13 Barnett told the informant, wait a minute I got
14 to go pay him and he went over and handed some
15 money to Mr. Patterson here. That happened
16 within a half mile of North Side Elementary
17 School. And later when Mr. Paterson was arrested
18 he acknowledged that he he did know that North
19 Side Elementary School was within a half mile of
20 that location, that Valero station. And all
21 these things did happen within York County.

22 The drugs were tested and they were what
23 they were said to be; crack cocaine.

24 THE COURT: What prior offense does he have?

25 MR. SPRINGS: His criminal record includes

1 convictions in 2001 for it is either distribution
2 or PWID of crack cocaine of proximity to a
3 school.

4 MR. MATTHEWS: It was PWID, Your Honor.

5 THE COURT: Mr. Patterson, you heard the
6 facts recited to the Court by the solicitor's
7 officer with regard to these two charges. Do you
8 disagree in any way with what they say happened?

9 THE DEFENDANT: No, sir.

10 THE COURT: I find the decision of the
11 defendant, Antonio Patterson to plead guilty to
12 these two charges to be made freely and
13 voluntarily and intelligently. He has had the
14 representation of competent attorney with whom he
15 says he is satisfied. I find the facts presented
16 to the Court by the solicitor's office, concurred
17 by the defendant fully support the guilty pleas
18 in this case and I accept the pleas as freely and
19 voluntarily made.

20 Mr. Patterson, if you disagree with the
21 proceeding in which you are currently involved
22 you have ten days from today's date within which
23 to file a notice of intent to appeal.

24 Do you understand your right to appeal
25 today's proceeding?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Counsel.

3 MR. MATTHEWS: Yes, Your Honor. I got this
4 case fairly recently. There was a change of
5 attorney and I was appointed on the case. I
6 received a letter on August 31st of this year
7 from Mr. Springs saying I have been appointed.
8 Here is what has been going on with the case.

9 My file reflects that Mr. Patterson came
10 into my office on September 9th. Told me his
11 concerns about the case. Things kind of fell
12 apart at that point in time and I told him
13 let's have a second meeting. Let's go through
14 everything. After I reviewed it and go step by
15 step through the case, through discovery and
16 discussed the elements of the charges and what he
17 is possibly facing if he went to trial and go
18 from there.

19 Later on, earlier this month we did have
20 that conversation and we went through a very
21 detailed view of it. He was very open with me.
22 Wasn't hiding anything. Came through and explain
23 how everything went through. We discussed the
24 photographs. We discussed what was found and we
25 discussed the witnesses in the case.

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Mr. Springs was very open to say who was going to be the State's witnesses in case. I related that to my client. My client was very pragmatic about it in discussing it and going through with it.

Once we reviewed all the things that we did, I gave him the offer that was originally given to me and we discussed that and he gave me some information that I relayed to Mr. Springs and we came up with this offer of the five years concurrent on the two sentences.

There is going to be a probation violation which I have been in contact with Agent Moffit and the probation office and asked them to please have the file here so that we could go ahead and handle that. And I have a separate presentation because I will be honest with you, a lot of my research in this case was actually on that probation violation because it is kind of convoluted. But the -- not objection that I got from probation is very simple to what we have hear, but I have to explain how we got there. With that said once the solicitor okayed the five year counteroffer we set the time to be here today.

1 My client is willing to move forward. Plead
2 to five years. I did -- I know there are some
3 changes in the law and the no parole aspect of
4 cases. The second degrees carries 5 to 30 so I
5 went ahead just in case because SCDC was going to
6 explain to me further that there is a possibility
7 that this charge is no parole. So we went ahead
8 and discussed community supervision. As you will
9 hear in the probation violation he has already
10 been through that process once before. So he is
11 very familiar with it. Community supervision
12 discussed, however if it is parolable then I took
13 a step further then maybe I needed too on it.

14 We did discuss the three strikes. Your
15 Honor, we are asking that -- I am not going to go
16 into a long diatribe of how good a person he is
17 or anything of that nature. I am just asking for
18 Your Honor to accept the five years on him and
19 let him do his time on this case.

20 I am not real sure about how the ten
21 suspended on five works because the e-mail I got
22 was just talking about five years. So our
23 presentation here was based on a five-year
24 sentence on the two charges concurrent, Your
25 Honor. And then when we are ready to do the

1 probation violation I can go into how me and Mr.
2 Moffit got to where we were on probation.

3 THE COURT: All right. He wants to go into
4 probation violation at this time?

5 MR. MATTHEWS: Yes, sir. He asked me
6 even though I am just appointed on the criminal
7 case, he and I have been having pretty positive
8 conversations and he wanted me to go ahead and
9 handle this part of it. I have gone through and
10 explained everything to him.

11 THE COURT: Are you retained or appointed?

12 MR. MATTHEWS: I am appointed.

13 THE COURT: Let me appoint you on these as
14 well.

15 MR. MATTHEWS: Yes, sir.

16 THE COURT: That is an agreeable with you
17 Mr. Patterson, Mr. Matthews to represent you on
18 probation violation?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Let me ask you, were you served
21 with an arrest warrant for violation of your
22 probation, case number 01-GS-46-888 were you
23 served with that on September the 15th of 2010?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Were you served with arrest

1 warrant for violation of your probation, case
2 number 09-GS-46-83 on that same date?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Has he been served today?

5 MR. MATTHEWS: We understand a plea today
6 would be obviously a substantial violation.

7 THE COURT: He will need to be served. We
8 don't have jurisdiction on it until he gets
9 served.

10 MR. MATTHEWS: Yes, sir.

11 (Defendant handed papers from Probation).

12 THE COURT: Were you served with a violation
13 for violation in each of these cases? Were you
14 served with those in the courtroom today.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Please tell me about the alleged
17 violation.

18 PROBATION OFFICER: Your Honor, he has
19 actually has two different probation cases. On
20 one of them -- he has been served with a
21 warrant on both of them and citation that was
22 served today, on indictment 01-GS-46-888 he was
23 served with warrant W-46-10-415 charging him with
24 failing to follow the advice, instructions of the
25 agent. Failing to pay supervision fees. Being

1 in arrears. Failed to reframe from using
2 controlled substance by testing positive for
3 marijuana and cocaine on September 15th of
4 2010. And also the citation he is pleading
5 guilty to the offenses today.

6 And indictment 09-GS-46-83 he was served
7 with warrant W46-10-414 charging him with the
8 same charges that were on the other warrant and
9 the additional citations with the charges of
10 today's date.

11 THE COURT: Mr. Patterson, let me ask you
12 about the -- on the indictment on 09-GS-46-83,
13 were you sentenced by Judge Hyman on March the
14 12th, 2009, on a charge of threatening the life
15 of a public official where you were sentenced to
16 three years suspended to three years probation;
17 is that correct.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And on the case of 01-GS-46-888
20 were you sentenced by Judge Baty on May 16, 2001
21 to 10 years and \$10,000 provided upon the
22 service of one year. The balance suspended
23 to three years probation?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And on April the 3, 2009, Judge

1 Hayes continued you on probation and did he toll
2 the time on that?

3 PROBATION OFFICER: Yes, Your Honor.

4 THE COURT: All right, now let me hear you
5 on the probation violation, counsel.

6 MR. MATTHEWS: Yes, Your Honor. I had to
7 draw myself out a flow chart to be able to figure
8 it out. I finally got to the bottom of it
9 between talking to go Agent Moffit and then he
10 was out and I talked to Miss Perish a little bit.
11 Basically on the '01 case he had community
12 supervision which drew me right into going back
13 and looking at State versus Dawkins a little bit.
14 But they had a situation where they were had a
15 violation of the community supervision and then
16 we had this '09 situation come up. So she said
17 they withdrew the community supervision warrant
18 and ended that. That kicked in the probation
19 that he had. She said that kicked in the
20 probation they had on the proximity charge and
21 that technically that would have ended
22 October 26th of this year. And of course we had
23 this probation with threatening and they kind of
24 ran the two of them together for lack of a better
25 term is what was explained to me. So I jumped

1 through the hoops to make sure the community
2 supervision on PWID second charge, which at that
3 time carried up to 25 years, was still not a
4 lingering issue out there. And I confirmed that
5 it was not.

6 They said that they would not have objection
7 is my understanding, both from Mr. Moffit and
8 from Miss Perish, that they did not have an
9 objection for him to have five years run
10 concurrent to this five years and terminate his
11 probations at that point in time. However you
12 want to word it, but basically the understanding
13 is they didn't have an objection to the five
14 years.

15 Now the threatening he has three years over
16 his head. The proximity he has three years with
17 credit of how much time he served. But there
18 was no objection to the five years run concurrent
19 to this five year sentence and be done with it
20 and whatever the statute says he is to do after
21 he gets through with this five year sentence
22 however it is calculated.

23 THE COURT: Is that correct?

24 PROBATION OFFICER: Yes, sir.

25 THE COURT: Mr. Patterson, anything you want

1 to say to the Court?

2 THE DEFENDANT: Well, sir, I did get in
3 trouble in 2001 and had the ten-year suspended
4 and I really thought that it was over with
5 because I was in prison. They sent me a letter
6 saying that I was no longer on community
7 supervision. Which I really didn't understand
8 community supervision. So, I thought that, you
9 know the ten and community supervision went
10 together. So when I signed the paper I thought
11 that I was just off of the community supervision
12 and I just had the three years for the three and
13 that's what my PO said. I had just three years
14 for the three. But I also told Mr. Matthews that
15 I had this case back in 2001 and what was going
16 on.

17 MR. MATTHEWS: But I also explained to him a
18 plea of guilty of these set of charges would be a
19 violation of his probation.

20 THE COURT: Well, in any event, we will
21 clean it up all today.

22 In case number 2010-GS-46-4112, Antonio
23 Patterson, having plead guilty to distribution
24 of crack cocaine, second offense, sentence of the
25 Court is he be committed to state department of

1 corrections for determinate term of five years.
2 This sentence is concurrent and he is given
3 credit for two days of jail time.

4 In case number 2010-GS-46-4111, Antonio
5 Patterson having plead guilty to distribution of
6 crack cocaine in proximity of a school, the
7 sentence of the Court is he be committed to
8 the state department of corrections for a
9 determinate term of ten years providing upon the
10 service of five years. The balance is suspended.
11 He is given credit for two days of jail time and
12 it is to be run concurrent.

13 In so far as case number, 09-GS-46-83, the
14 Courts finds it is substantial willful violation
15 of probation. The Court will therefore revoke
16 the remaining time he has on that charge. It
17 looks like three years on that. We will revoke
18 that three years and run it concurrent to the
19 sentences today and terminate probation on that
20 charge.

21 And on the charge for 01-GS-46-888 on that
22 charge, we will revoke five years and give him
23 credit - - well, I don't know. He originally had
24 ten years suspended on the service of one. So he
25 served one on the ten but not on the five.

1 THE DEFENDANT: Yes, sir. Excuse me, but I
2 was also going to say that like with the ten that
3 I was serving at the time I was doing, you know,
4 going back to prison for the violation, the
5 community supervision.

6 THE COURT: Did you go back on the community
7 supervision?

8 THE DEFENDANT: Yeah, and that's when I
9 really understood the way the community
10 supervision went because I didn't understand
11 nothing about community supervision. I just
12 thought that when I got out I was just going to
13 have the three years.

14 THE COURT: You know community supervision,
15 you can be required to serve the full amount of
16 your sentence and therefore whatever time hadn't
17 been served if you get out on community
18 supervision you could continue to be sent back
19 until you serve whatever sentence you got.
20 Whatever the top of your sentence was, you can
21 keep getting sent back if you violate until you
22 serve the entire amount.

23 MR. MATTHEWS: That is what I was looking
24 for is because in the statute it says you can get
25 up to one year for revocation. Once he gets out

1 he has got to start the the two years over again
2 and keep going.

3 THE COURT: And you keep doing that until
4 you served the whole ten years.

5 MR. MATTHEWS: But that didn't happen in
6 this case.

7 THE COURT: But what I am saying, that's how
8 that works. I mean I don't know what happened
9 with that, but they are saying it is still in
10 effect that you are on probation for that, right?

11 PROBATION OFFICER: Your Honor, it is
12 actually -- the way I look at it is there are two
13 separation cases. He had O1887, that one was
14 the one that was no parolable offense. He had
15 community supervision.

16 THE COURT: So this one he is just on
17 probation.

18 PROBATION OFFICER: He is a probation case,
19 yes, sir.

20 THE COURT: So the supervision one, the
21 community supervision is gone?

22 MR. MATTHEWS: That's correct.

23 PROBATION OFFICER: Yes.

24 THE COURT: We are not into that. That is
25 already gone, community supervision. So that has

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already been terminated. We are talking about here probation.

MR. MATTHEWS: That's right.

THE COURT: So in this one we will revoke, five years and terminate and run that concurrent with everything else. So really you are looking at a five-year sentence. How they were treat it for parole purposes, I don't know. But in any event, you got one five year sentence. All will run concurrent and then probation will be terminated. You won't have any probation when you get on the first two. On this one you may have some parole, but you will no have probation.

MR. MATTHEWS: Okay.

PROBATION OFFICER: Hank you, Your Honor.

MR. SPRINGS: Thank you, Your Honor.

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Family Court for Spartanburg County, South Carolina, on the 20th day of January, 2011

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

July 30, 2012

Aileen Butler

FORM 5

STATE OF SOUTH CAROLINA)

County of York)

ANTONIO PATTERSON #275449)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2012 CP 46-2269

FILED-RECEIVED
2012 JUN 18 PM 4:13
DAVID E. HILDDON
C.C.P. & GS
YORK COUNTY, SC

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Waterloo Correctional Institution
W7-36 Po Box 189 Rembert SC. 29128
2. Name and location of Court which imposed sentence York County
Moss Justice Center York SC. 29145-0649
3. Name(s) of co-defendant(s) (if any) TAVARIS BARNETTE
Rock Hill
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Distribution of Cocaine Base
 - (b) 2nd OFFENSE 2010 GS 460411Z

(c) Proximity of School Zone

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

(a) October 5th 2011

(b) 5 years

(c) 10 years Suspended to 5 years

6. Check whether a finding of guilty was made:

(a) after a plea of guilty pled 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?

8. If you answered "yes" to (7), list:

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

i. _____

ii. N/A

iii. _____

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

i. _____

ii. N/A

iii. _____

(c) the date of each such result:

i. _____

ii. N/A

iii. _____

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

i. _____

ii. N/A

iii. _____

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

(a) _____

(b) N/A

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

(a) DUE PROCESS
(b) TRIAL COURT ERROR
(c) _____

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

(a) Court didn't tried my Case right
(b) Lawyer didn't inform my of Everything
(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)? _____
(d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:
i. _____
ii. _____
iii. N/A
iv. _____

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

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

(a) which grounds have been presented:

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

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

- i. _____
- ii. _____ N/A
- 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 by Micheal Matthews
- (b) your trial, if any? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. Micheal Matthews
Law office Micheal Matthews
- ii. Po Box 36668
Rock Hill, South Carolina 29732
- iii. _____

(b) the proceedings at which each such attorney represented you:

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

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

Reversed and Remanded
VACATE of Sentence

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

STATE OF SOUTH CAROLINA)
County of York County)

VERIFICATION

I, Antonio Patterson, 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.

Antonio Patterson

SWORN to and subscribed before me this 11th day of June 2012

[Signature] (L.S.)
Notary Public

My Commission Expires: 02/15/17

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

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

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

Antonio Patterson
Applicant

SWORN or affirmed to and subscribed before me this

14th day of June, 2012
[Signature]
Notary Public

My Commission Expires: 02/15/17

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Antonio Patterson, #275449,

2012-CP-46-2269

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on June 18, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The York County Grand Jury indicted the Applicant at the November 2010 term of General Sessions for Distribution of Crack Cocaine within proximity of a school (2010-CP-46-4111) and Distribution of Cocaine Base (2010-CP-46-4112). The Applicant was represented by Michael Matthews, Esquire.

On October 5, 2011, the Applicant pled guilty to Distribution of Cocaine Base, 2nd offense and Distribution of Crack Cocaine within proximity of a school. The Honorable Lee S. Alford sentenced the Applicant to confinement for five (5) years for Distribution of Cocaine Base, 2nd offense, and ten (10) years, concurrent, provided upon the service of five (5) years. The Applicant did not appeal his conviction or sentence.

II.

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

1. "Due Process"
2. "Trial Court Error"
 - a. "Court didn't try my case right"
3. "Lawyer didn't inform my(sic) of everything"

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, the South Carolina Department of Corrections' records, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent construes the Applicant's claim against plea counsel as one of ineffective assistance of counsel. The Respondent asserts that the Applicant's allegation of ineffective assistance of plea counsel is without merit. The Respondent asserts that 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 Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668, 104 S. Ct. 2052. The Applicant must overcome this

presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland v. Washington. 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, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

The Respondent submits that 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. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant further alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an

evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

The Applicant alleges trial court error as a ground for PCR. This allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at his plea or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

VI.

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

VII.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

Respectfully submitted,

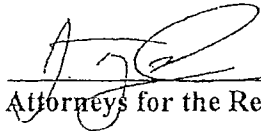
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: 
Attorneys for the Respondents

Columbia, South Carolina
August 22, 2012

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)
)
 ANTONIO PATTERSON, 275449)
 Applicant,)
 vs)
 STATE OF SOUTH CAROLINA,)
 Respondent.)

IN THE COURT OF COMMON PLEAS

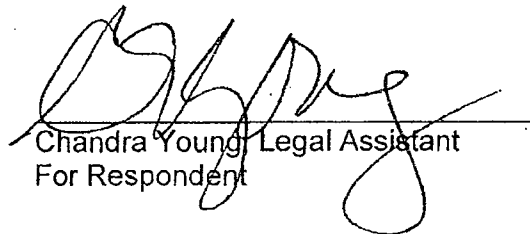
2012-CP-46-2269

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(s) by depositing same in the United States mail, postage prepaid:

Tracy T. Vann, Esquire
 PO Box 10940
 Rock Hill, SC 29731

DATED this 22nd day of August, 2012.


 Chandra Young Legal Assistant
 For Respondent

I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

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<u>WITNESS</u>	<u>BY:</u>	<u>PAGE NO.</u>
Antonio Patterson	By Ms. Moody	P.5-14
	By Mr. Johnson	P.14-15
Mr. Michael Matthews	By Mr. Johnson	P.16-26
	By Ms. Moody	P.26
Court Reporter's Certificate Page		P.28

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I-N-D-E-X - CON'T

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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No Exhibits were received into the record.

1 (COURT IN SESSION IN THE MATTER OF ANTONIO PATTERSON,
2 WEDNESDAY, MAY 15, 2013, AT 01:57 P.M..)

3 THE COURT: Thank you. Take your seats.

4 MR. JOHNSON: May it please the court, Your Honor.

5 THE COURT: Yes, sir.

6 MR. JOHNSON: This is the case of Antonio Patterson
7 versus State of South Carolina, it's Case No. 2012-CP-46-
8 2269. Mr. Patterson was indicated at the November 2010
9 term of the York County Grand Jury for distribution of
10 crack cocaine base and distribution of crack cocaine within
11 proximity of a school. On October 5th, 2011 he pled guilty
12 to distribution of cocaine base second offense and
13 distribution of crack cocaine within proximity of a school
14 before the Honorable Lee S. Alford.

15 As per recommended by the State he was sentenced to
16 five years for distribution of cocaine base second offense
17 and ten years provided upon five years service for the
18 proximity charge. There was no appeal; however, there was
19 a timely PCR application filed June 18th, 2012.

20 The State filed it's return on August 22nd, 2012, and
21 he is represented here today by Ms. Leah Moody.

22 THE COURT: Ms. Moody.

23 MS. MOODY: Thank you, Your Honor. If we could we
24 would like to call Mr. Patterson to the stand.

25 THE COURT: All right. Mr. Patterson, please come up

ANTONIO PATTERSON: BY MS. MOODY

-5-

1 and be sworn.

2 (WHEREUPON: ANTONIO PATTERSON,
3 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

4 DIRECT EXAMINATION

5 ANTONIO PATTERSON BY MS. MOODY:

6 Q. Mr. Patterson, could you please state your full name
7 for the record?

8 A. Antonio Patterson.

9 Q. Okay. And where are you currently residing?

10 A. Wateree Correctional Institution.

11 Q. And you heard the State, you are there based on the
12 charges for distribution of crack cocaine?

13 A. Yes, ma'am.

14 Q. And the proximity of - crack cocaine within a school
15 zone?

16 A. Yes, ma'am.

17 Q. Okay. Can you tell the court again what your sentence
18 was?

19 A. The sentence is five years and I had approximately -
20 for the proximate charge ten years suspended to five ran
21 concurrent with the five.

22 Q. And now are you there on any other charges?

23 A. No, ma'am.

24 Q. Did you get any kind of violations that went along
25 with this particular sentence?

1 A. Yes, ma'am. I had a probation violation.

2 Q. And that violation was for what charge?

3 A. For the threatening life of a public official but I
4 really got violated because I caught this crack charge.

5 Q. Okay. So now on the day that you pled which was
6 October 5th, 2011; that's correct?

7 A. Yes.

8 Q. Who were you represented by?

9 A. Mr. Michael Matthews.

10 Q. And was that your only attorney that you were
11 represented by?

12 A. No, ma'am. I had Ashley Anderson in the beginning.

13 Q. Okay. And who was the solicitor on that case?

14 A. First I had a lady then they changed to EB
15 Springs. I don't know the lady's name.

16 Q. Okay. And you entered your plea based off of
17 negotiations with Mr. Springs?

18 A. Well no I'm not gonna say negotiations with Mr.
19 Springs. You know I entered into negotiations with Mr.
20 Michael Matthews.

21 Q. Well who did he negotiate with?

22 A. Mr. Springs.

23 Q. And what were the plea negotiations for you?

24 A. Well in the beginning my plea deal was only five
25 years and then when they changed my - You know when they

ANTONIO PATTERSON: BY MS. MOODY

-7-

1 changed my attorney then it went from five to ten years.

2 Q. But it actually - Okay. It went from five to ten.

3 Did it ever go back to five?

4 A. Yes it did.

5 Q. Okay. And so that's what you're actually serving is a
6 five year sentence?

7 A. Yes, ma'am.

8 Q. All right. So you're here today on a PCR conviction -
9 a PCR application. Can you tell the court why, what
10 specifically was wrong with your representation?

11 A. Well I didn't really feel like I had a problem with
12 my representation. I think Mike did good but it's just a
13 lot of things Mike didn't explain to me. And when I told
14 him what the situation I was going through Mike said he was
15 gonna help me get up out of the situation that I was in.

16 Q. Okay. So can you tell us what the situation was that
17 you were in?

18 A. Well when I pled guilty to the five years I ask Mike
19 was it gonna be eighty-five percent and Mike said, no, I
20 was only gonna do - You know he said up under the new law I
21 would only be doing two and a half years. So when I got in
22 the Department of Corrections they changed it to a eighty-
23 five percent and when I called Mike and told him about this
24 problem Mike said he was gonna help me get it fixed.

25 Q. Okay. So he was helping you get the problem fixed

1 after you were sentenced?

2 A. Yeah.

3 Q. Well now when you first - Before you got sentenced
4 and accepted the plea offer, what if any communications did
5 you have with Mr. Matthews?

6 A. I had no communications with him. You know he went
7 over everything that he let me know that, you know, that it
8 could be a no parole offense or what not. But like I said
9 after I entered the plea and took the plea and I ask him
10 about the eighty-five percent he said under the new law
11 that it was no longer eighty-five percent and I would only
12 be doing two and a half years off my sentence.

13 Q. Okay. So when you talked with Mr. Matthews about your
14 sentence or what your respective sentence would be, did you
15 understand what no parole meant?

16 A. Yes, ma'am.

17 Q. Okay. And what did no parole mean to you?

18 A. No parole mean I'm not eligible for it.

19 Q. Okay. Does it - Do you understand what it means when
20 it says, when it talks about the amount of time you would
21 serve on your sentence?

22 A. Well I mean I kind of already had the idea about that
23 with my sentence but like I said I'm just going off based
24 of what Mr. Michael said.

25 Q. Well what I'm trying to get at is, did you understand

ANTONIO PATTERSON: BY MS. MOODY

-9-

1 what eighty - that you would have to serve eighty-five.
2 percent before you pled?

3 A. No I didn't.

4 Q. Okay. And so when he used the term no parole did it
5 resinate ---

6 A. Yeah.

7 Q. --- with you ---

8 A. Yes.

9 Q. --- that that meant eighty-five percent?

10 A. Yes that did then when they told me the no parole.

11 Q. Okay. We got to be clear on this. When he talked to
12 you about no parole, did he talk to you about it before you
13 pled guilty?

14 A. Before? Yeah he talked to me about it before I pled
15 guilty.

16 Q. And before you pled guilty you understood that meant
17 eighty-five percent?

18 A. Yeah I understood that.

19 Q. Okay. Then so when you went before - You pled
20 obviously and you got sent to the Department of
21 Corrections.

22 A. Yes.

23 Q. You were informed that it was eighty-five percent?

24 A. Yes.

25 Q. Okay. And at what point did Mike tell you that you

1 would only serve two and a half years?

2 A. Well Mike told me that after I took the plea and when
3 I was going to the back I ask him was it eighty-five
4 percent and he told me no it wasn't gonna be eighty-five
5 percent. He said I was only gonna serve two and a half
6 years so when - Like I said, when I got to the Department
7 of Corrections I told Mike what was going on with my
8 situation and he said he was gonna help me.

9 Q. Okay. Now do you recall what was said in the
10 courtroom when you went before the judge?

11 A. Yeah. The judge explained everything to me about my
12 situation and now much time that I could a been facing and,
13 you know, yeah I understood.

14 Q. Did the judge talk to you about what parole, no parole
15 meant?

16 A. No the judge didn't talk to me about that.

17 Q. So that's why you ask Mike about the eighty-five
18 percent again?

19 A. Yes I did.

20 Q. Okay. And you're saying that his response was that
21 you would do two and a half years?

22 A. Yes it was.

23 Q. Is there anything else that you would say that Mike
24 did not explain to you?

25 A. No I'm not gonna say it wasn't nothing that Mike

ANTONIO PATTERSON: BY MS. MOODY

-11-

1 didn't explain to me. It was just, you know, about this
2 situation.

3 MS. MOODY: I beg the Court's indulgence.

4 (PAUSE.)

5 MS. MOODY: Your Honor, may I approach the witness?

6 THE COURT: Yes.

7 BY MS. MOODY:

8 Q. Can you identify this document?

9 MR. JOHNSON: Leah, it's already in the record.

10 MS. MOODY: Okay. It's already in the record.

11 Q. That's the transcript?

12 A. Yes.

13 Q. And did you get a copy of that transcript from me?

14 A. Yes I did.

15 Q. Okay. Can you turn to Page 14?

16 And on Page 14 this is where your attorney Mr.

17 Matthews is talking to the court.

18 A. Yes.

19 Q. Okay. So from Line 1 it say, "My client is willing to

20 move forward, plead to five years. I did - I know there

21 are some changes in the law and no parole aspect of the

22 case - of cases. The second degrees carry five to thirty

23 so I went ahead in case because SCDC was going to explain

24 to me further that there is a possibility that this is a no

25 parole. So we went ahead and discussed community

1 supervision. As you will hear in the probation violation
2 he's already been through the process once before."

3 What did that mean to you?

4 A. That I been through the process of a eighty-five
5 percent sentence.

6 Q. Okay.

7 A. That's what it meant.

8 Q. Okay. Did it mean that this charge was gonna be
9 eighty-five percent?

10 A. I mean I didn't know cause he said under the new law
11 that it wasn't gonna be eighty-five percent so I didn't
12 know what was going on with the new law but I already been
13 - You know I already knew that it was eighty-five percent
14 yeah.

15 Q. All right. So then as you were exiting the courtroom,
16 you ask him again about eighty-five percent?

17 A. Yes I did.

18 Q. Okay. And so your issue is with the fact that you're
19 having to serve eighty-five percent?

20 A. Yeah that's my issue because I mean that's what he
21 told me and I'm just going off of what he told me because
22 he's my lawyer.

23 Q. Well go back and clarify. What he told you was --

24 A. I mean he told me - You know he said about the - He
25 talked about the eighty-five percent on this paper but like.

ANTONIO PATTERSON: BY MS. MOODY

-13-

1 I said once I left the courtroom he told me, you know, I
2 ask him was it gonna be eighty-five percent and he said no.

3 Q. He said no?

4 A. Yes he did.

5 Q. I know. I'm just asking you for the court's record.

6 Did he tell you a time of the amount of time?

7 A. I mean he told me the amount of time that I would a
8 done would a been two and a half years.

9 Q. Now is there anything else that Mr. Matthews did not
10 explain to you?

11 A. No he just didn't really explain that to me.

12 Q. Okay. And so what relief are you seeking from the
13 court?

14 A. I mean what I'm asking if, you know, is it any kind of
15 way that my time could be changed to a sixty-five percent.

16 Q. And we've discussed what the statute has?

17 A. Yes.

18 Q. And you still would like to ask the court to change
19 your sentence?

20 A. Yes.

21 Q. To something less than eighty-five percent?

22 A. Yes.

23 Q. Do you understand that this court can't change your
24 sentence here today?

25 A. Yes. I suspect. I mean I'm thinking --

ANTONIO PATTERSON: BY MS. MOODY
BY MR. JOHNSON

-14-

1 Q. Do you understand that if you are granted your relief
2 you will start over?

3 A. Yes I do.

4 Q. Meaning that you would start at the original charge
5 that you received?

6 A. Yes I do.

7 Q. And that charge would be eighty-five percent as well?

8 A. Yes I understand that.

9 A. No further questions.

10 MS. MOODY: Please answer any questions the State may
11 have.

12 MR. JOHNSON: Just a few, Mr. Patterson.

13 CROSS EXAMINATION

14 ANTONIO PATTERSON BY MR. JOHNSON:

15 Q. Just to elaborate a little bit more on what Ms. Moody
16 just ask you.

17 If you go back and you're successful here today you go
18 back you realize that you're facing forty years in prison?

19 A. Yes I understand that, sir.

20 Q. So five to thirty on the distribution second and then
21 ten on the prox charge?

22 A. Yes I understand that, sir.

23 Q. And the only thing you're asking is that the judge
24 give you a time cut is what you're asking for. Right?

25 A. Well, sir, I'm not really asking about a time cut.

ANTONIO PATTERSON: BY MR. JOHNSON

-15-

1 I'm just, you know, I'm just concerned about what Mr.
2 Michael said. And Mr. Michael said I was only gonna do two
3 and a half years and that's my reason why I'm back here
4 today.

5 Q. So basically what you're saying is that if he said,
6 hypothetically, if he said that you were gonna serve
7 eighty-five percent you would not have pled guilty and
8 you'd gone to trial on these charges.

9 A. I'm not saying I wouldn't a pled guilty but I'm just
10 going off of what he said because that's what he told me.

11 Q. So that's your only grip here today.

12 A. Yes, sir.

13 MR. JOHNSON: I have no further questions, Your Honor.

14 THE COURT: Redirect?

15 MS. MOODY: No, sir, Your Honor.

16 THE COURT: All right. You can step down. Thank you.

17 (WITNESS LEAVING WITNESS STAND.)

18 MS. MOODY: Your Honor, I have no further questions -
19 no other witnesses.

20 THE COURT: All right. The State.

21 MR. JOHNSON: We call Michael Matthews to the stand,
22 please.

23 (WHEREUPON: MICHAEL MATTHEWS,
24 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

25 DIRECT EXAMINATION

MICHAEL MATTHEWS: BY MR. JOHNSON

-16-

1 MICHAEL MATTHEWS BY MR. JOHNSON:

2 Q. Mr. Matthews, can I get you to start off a little bit
3 by telling the court how you became involved in this case.

4 A. As he said - As Mr. Patterson said on the record he
5 was originally represented by the Public Defenders's
6 Office. At some point an order was done to appoint me onto
7 Mr. Patterson's case and take the case over.

8 Q. And initially what conversations would you have had
9 with Mr. Patterson?

10 A. Well according to my review of the file August 24th
11 we got appointed; August 31st we sent the letter to EB
12 Springs asking for the discovery. And then we would have
13 called Mr. Patterson into the office, he was not in jail at
14 the time, called him into the office to have a meeting with
15 me to discuss his case, see where he's at; what was going
16 on with - what was going on with Ms. Anderson, where we
17 were going with it and see where EB was at because EB
18 Springs had sent me a letter, I believe, dated the 31st of
19 August that was sent to me talking about what he wanted to
20 do with the case because he had taken it over from another
21 prosecutor.

22 Q. And in your discussion what all as far as the
23 sentencing possibility; any offers, what were the original
24 offers and what were the sentencing consequences of those
25 offers?

MICHAEL MATTHEWS: BY MR. JOHNSON

-17-

1 A. Well as I told the court during his plea once I got
2 the order I met with Mr Patterson. The discussion went
3 very quickly to what he was charged with; what the
4 presentation was in the case talking about the allegation
5 was that he had come up to scene on a scooter, another co-
6 defendant had - was contacted by a CI and that the CI
7 alleged that he saw the co-defendant go up to Mr. Patterson
8 bump into him, got something from him and turned around and
9 came back. Handed some crack; money transactions.
10 Supposedly the co-defendant said hey I got to go pay him,
11 hold up I got to go pay him. He goes to pay him. And that
12 was presented at the plea as well.

13 We discussed all of that. And we talked about what he
14 was charged with; what the possible penalties were, max's,
15 minimum's, that kind of stuff. We also discussed about the
16 offer that Mr. Springs was putting forward.

17 In the letter from Mr. Springs that was dated August
18 31st saying that the case had been sitting too long, he was
19 ready to move it forward, he had taken it over from another
20 prosecutor; indicated what happened to the co-defendant.
21 Said there was a plea offer had been put out and which he
22 had made an offer originally which Mr. Patterson rejected
23 which was a plea to a possession with intent to distribute
24 crack second offense for a range of five to ten years. The
25 deadline had passed and so they were sitting the case for

1 trial. And it even got to the point where they had
2 revealed the informant. And Mr. Springs says there will be
3 no more plea bargaining which is Mr. Springs typical action
4 when he's ready to move a case forward.

5 I discussed that with Mr. Patterson. And this was
6 about the time I had gotten off of another difficult case.
7 So what I did in this is kind of wrote some memo's had some
8 - and actually in this particular situation on September
9 23rd when he came back in to meet with me I made a
10 recommendation to him and - and that's when we started
11 talking about there was an original offer they found out
12 about which was a five year offer; just five years, period,
13 made by the previous prosecutor to Ashley Anderson.

14 Obviously we discussed that that was not the offer
15 that was before me now but he requested because he said he
16 didn't know until after the deadline had passed about that
17 offer from his previous attorney, so I said I'd go back to
18 Mr. Springs and see if he'd reconsider it based off of the
19 information Mr. Patterson gave me. I actually had Mr.
20 Patterson sign a document on September 23rd saying we went
21 through all that and what he was willing to do to finalize
22 the case and what he authorized me to do and what he wanted
23 me to check into.

24 Obviously the five year deal to confirm the no parole
25 status on the second offense that they were talking about.

MICHAEL MATTHEWS: BY MR. JOHNSON

-19-

1 And the probation status on the threatening of a police
2 officer and the drug charge from 2001. And the reason why
3 we were gonna check into that is because they had already
4 given him arrest warrants for those two probation
5 violations. And so I didn't think it was appropriate for
6 me to kind of deal with just these two charges and not also
7 prepare on the probation violations even though technically
8 I wasn't appointed on those. The judge did appoint me when
9 we actually did the plea and the probation violation.

10 But I had to look into all that because I knew if he
11 got violated on the probation and the sentence obviously if
12 we ran them concurrent one was going to affect the other as
13 to his classifications and we had to go through all that.
14 And that's the reason why all the discussions and
15 investigation about the previous community service, the
16 projection of the community service, what happened in 2009
17 with the threatening of a police officer plea and how they
18 ran the previous drug case in; how probation withdraw the
19 community service violation and they just continued the
20 probation on concurrently in 2009 on threatening a police
21 officer even though that previous case was all the way back
22 to 2001, so I had him sign that.

23 That's kind of unfortunately a round about way of
24 answering your question but that kind of gets us to that
25 point.

MICHAEL MATTHEWS: BY MR. JOHNSON

-20-

1 Q. Certainly. In these discussions would you have
2 discussed eighty-five percent or sixty-five percent and how
3 SCDC will classify his sentence?

4 A. In the document I actually said this is also - and
5 it's my normal practice - it's always subject to the
6 Department of Corrections. They have - It's been drilled
7 in our head - in mine for the last twenty years - but it's
8 been drilled in our heads you can't sit there and say a
9 hundred percent what somebody's gonna do.

10 Even with the new Department of Corrections web site
11 where you can put the CDR Codes in and they'll show you
12 possible - eligibility dates and possible max out dates
13 the caveat that they have on there is this is subject to
14 change based on case by case circumstances. So even with
15 that we still tell them it's not guaranteed. And we did
16 talk about the no parole because the charge he was charged
17 with, up until recent history, had been a no parole
18 offense. And the changes were not that clear in the law as
19 to how SCDC was going to do it. As a matter of fact in the
20 plea presentation that I made is there was conflicting
21 information I was getting from SCDC as to how they were
22 gonna treat it at the time.

23 Now have SCDC told me in the past that someone on a
24 normal situation would maybe max out at fifty-seven
25 percent, again, subject to change, sure. But we talked

MICHAEL MATTHEWS: BY MR. JOHNSON

-21-

1 about this and there was some concern. Also there was some
2 concern about how the probation violation would affect his
3 sentencing. Not so much from the threatening of the police
4 officer charge, but from the previous drug charge in 2001
5 because it had a community service attachment so he pled to
6 the charge that carried eighty-five percent. So we did
7 talk about it.

8 Q. So you talked about eighty-five percent. In your
9 opinion did he understand having previously served a
10 no parole sentence, that this charge, this plea, could lead
11 to him serving a eighty-five percent sentence?

12 A. Well typically - And again when I say eighty-five
13 percent I'm saying no parole. Sometimes I say no parole,
14 sometimes I say eighty-five percent, and sometimes just
15 leave it no parole. My client was, based on previous
16 experience with the system, was knowledgeable of the system
17 because he had gone through the community service.

18 As a matter of fact he was asking me a bunch of
19 questions. He was the one pointing out to me about the
20 community supervision. I had to go through and research
21 Dawkins again and kind of see how when it ended, when it -
22 how that all affects things just to make sure. And
23 whenever I talked to the probation office I was getting two
24 conflicting stories from them. I had gotten one that said,
25 who wasn't involved in the case, said that one agent was

1 telling me that based on the computer his community
2 supervision sentence had ended. And then the agent
3 actually in charge of the case said no that's not true he's
4 still - both cases are still active. So before the plea I
5 actually called the agent in charge, Ms. Margarete, and
6 Ashley said here's what I'm getting from one person; here's
7 what I'm getting from another person, which is right?

8 And in a memo I put in my file I actually wrote down
9 she said both of them are right. And then tried to explain
10 so that I would remember it in my notes how she was saying
11 both were - that's the reason why in the plea probation
12 violation part of it, both the drug case, 2001 case, and
13 the 2009 case were brought in, run concurrent for a five
14 year sentence.

15 Judge Alford actually said in that scenario because he
16 had done one year as ten years suspended on one year and
17 that he wouldn't get credit for the one year because he was
18 reducing - terminating the case on five years and
19 everything ran concurrent.

20 Q. And at the plea you actually brought up the fact that
21 SCDC there is a possibility they will run this sentence no
22 parole?

23 A. In the presentation - I think it's on that Page 14
24 that you all just read into the record - I think I did make
25 that - it was getting - I think I made my very first

MICHAEL MATTHEWS: BY MR. JOHNSON

-23-

1 sentence to the judge in the plea presentation part in the
2 transcript is "Your Honor, this is a very convoluted issue;
3 I've done a lot of research" and I don't know if I even
4 have the answers at that point in time "but there is the
5 possibility - SCDC is telling me there is the possibility
6 of no parole." I didn't use the word term eighty-five
7 percent I just said no parole.

8 Q. And Mr. Patterson what's he's claiming is after he
9 pled guilty that you said something about eighty-five
10 percent to him as he's leaving the courtroom. Do you ever
11 remember making a statement to that effect?

12 A. Oh yeah I remember that statement. I don't remember
13 any conversation with him after the fact. Now there is a
14 memo in the file that he alludes to when he called my
15 office and say hey look they messed this up and we were
16 still going on the presentation of the new possession with
17 intent to distribute second degree and this one was
18 actually distribution but the same scenario.

19 And in December 6th I went through a very lengthy - I
20 think about a three or four page memorandum that I wrote
21 and sent to him in the jail along with his sentencing
22 sheets saying "this is the research I've done so far, this
23 is where I think their coming from, I hope this works out
24 with you in talking to your case worker." That was mailed
25 to him December 6th of 2011,

1 Q. Is it your practice to promise a certain sentence or
2 percentage of a sentence to a client?

3 A. Not a guaranteed sentence. The only time we talked
4 about that is if we walk in and we've got a time served
5 scenario and tell them it just depends on how quick you get
6 sent out. Or we have a negotiated probation scenario where
7 their walking out within twenty-eight - twenty-four to
8 forty-eight hours. But when we're talking about active
9 sentencing, I give them ranges now with the new D-O-C web
10 site I print that out and I show it to them but make them
11 understand it is up to the Department of Corrections to
12 make sure they change those rules every blasted time we
13 turn around and there's no way we can keep up with them.

14 And it depends on work credits, it depends on how well
15 they behave, it depends on a lot of stuff. And I just - We
16 don't guarantee. I will say we do ranges but I'm not gonna
17 sit here and say you're gonna do X amount of years in jail.

18 Q. Would you have promised Mr. Patterson that he would
19 serve a two and a half year sentence versus an eighty-five
20 percent sentence?

21 A. We had too many question marks on this case as the no
22 parole scenarios. You know in my memo on December 6th it
23 does call to - allude to - I never said two and a half
24 years. It kind of says this could be a no parole
25 situation. But beforehand, no, I wouldn't have told him

MICHAEL MATTHEWS: BY MR. JOHNSON

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1 that because I didn't know how the probation violation was
2 going - D-O-C was gonna to treat that and I didn't know how
3 this new statute was gonna to work out. At the time I
4 fairly knew the statute.

5 Q. And would you have said something to him after the
6 plea about him serving a two and half year sentence?

7 A. All I can tell you is, because I don't remember any
8 conversations after the plea, I would be very hesitant to
9 sit there and tell somebody you're gonna do X amount of
10 time. Just because I just by habit just don't do that at
11 this point.. And whenever I got the phone calls
12 specifically from Mr. Patterson after the fact it was the
13 issue that hey they've got me classified as no parole on
14 these things.

15 And I sent an email to EB Springs, EB confirmed that
16 there is this big confusion out there because he actually
17 sent me emails saying that the PWID second was a
18 parolable offense. That's where all this kind of started
19 going. He sent that to me early in the case. But I wasn't
20 getting confirmation of that from SCDC and when he called
21 me up it wasn't hey I'm gonna do two and a half years.
22 It's hey they got me classified as no parole, what's going
23 on? And I sent him this, I sent an email to EB, EB said
24 he'd try to look into it. He said there's this big screw
25 up with SCDC they're interpreting the statute differently

MICHAEL MATTHEWS: BY MR. JOHNSON
BY MS. MOODY

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1 than we are. And now my understanding is, is if they are
2 not granted parole then they got to do the eighty-five
3 percent which is consistent with his - the sheet I received
4 with the parole eligibility max out dates which have him
5 maxing out in 2015.

6 MR. JOHNSON: That's all I have at this time, Your
7 Honor.

8 THE COURT: Cross?

9 CROSS EXAMINATION

10 MICHAEL MATTHEWS BY MS. MOODY:

11 Q. Mr. Matthews, did you ever discuss this case with Mr.
12 Patterson's family?

13 A. I know that after the plea his mother and or his
14 significant other would call my office about the situation
15 that he called me about that precipitated the December 6th
16 memorandum. Before the plea? I can't tell you one way or
17 the other if they did or not.

18 Q. So you're saying that the time where there was the
19 mixup with his classification, it was well after the plea
20 and that's when you sent the memorandum?

21 A. In December 6th.. Yeah that's when he told me that
22 they had him classified as no parole.

23 MS. MOODY: No further questions for this witness,
24 Your Honor.

25 MR. JOHNSON: No questions.

1 THE COURT: You can step down. Thank you.

2 (WITNESS LEAVING WITNESS STAND.)

3 MR. JOHNSON: The State has no further witnesses.

4 THE COURT: Anything further, Ms. Moody?

5 MS. MOODY: No, sir, Your Honor.

6 THE COURT: Do you have any statement, arguments you
7 want to make? I think I see what the issue is.

8 MS. MOODY: No, sir, Your Honor.

9 THE COURT: All right. Let Mr. Patterson go back in
10 the holding cell. I'll take this one under advisement.

11 (APPLICANT, ANTONIO PATTERSON, ESCORTED FROM
12 COURTROOM.)

13 - END OF TRANSCRIPT OF RECORD -
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STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)
)
 Antonio Patterson, #275449,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2012-CP-46-2269

ORDER

FILED-RECEIVED
 2013 MAY 22 PM 2:58
 CLERK OF COURT
 C.C.P. & GS
 YORK COUNTY, SC

Applicant filed a Post-Conviction Relief application on June 18, 2012. This matter was heard by the undersigned on May 15, 2013. Applicant was represented by Leah B. Moody, Esq., the State by J. Rutledge Johnson, Esq.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The York County Grand Jury indicted the Applicant at the November 2010 term of General Sessions for Distribution of Crack Cocaine within proximity of a school (2010-CP-46-4111) and Distribution of Cocaine Base (2010-CP-46-4112). The Applicant was represented by Michael Matthews, Esquire.

On October 5, 2011, the Applicant pled guilty to Distribution of Cocaine Base, 2nd offense and Distribution of Crack Cocaine within proximity of a school. The Honorable Lee S. Alford sentenced the Applicant to confinement for five (5) years for Distribution of Cocaine Base, 2nd offense, and ten (10) years, concurrent, provided upon the service of five (5) years. The Applicant did not appeal his conviction or sentence.

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

1. "Due Process"

2. "Trial Court Error"
 - a. "Court didn't try my case right"
3. "lawyer didn't inform my(sic) of everything"

At his hearing, Applicant testified that his only issue was that after his plea trial counsel told him his sentence was not a no-parole sentence and that he would only have to serve two and one-half years in prison.

Applicant's claim against plea counsel appears to be one of ineffective assistance of counsel, although Applicant stated he was pleased with trial counsel's representation. The Respondent asserts that the Applicant's allegation of ineffective assistance of plea counsel is without merit. The Court treats this as a claim of ineffective assistance of counsel, while as seen below, the claim does not quite fit this category.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668, 104 S. Ct. 2052. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong,

JCH #2

attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, *citing* Strickland v. Washington. 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, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

In the over twenty years that the undersigned has been hearing post-conviction relief cases, this is a first. Applicant's position fails on its own basis. Applicant argues he is entitled to relief for a statement by his attorney after he had entered a plea, the plea had been accepted by the Court and he had been sentenced. I find this presents no cognizable issue for the Court. Even though I find no cognizable issue, certain observations are warranted.

Applicant, no stranger to our judicial system nor the parameters of a no-parole offense, claims, post his plea, trial counsel told Applicant that his sentence was not a no-parole offense and Applicant could expect to serve two and one-half years in jail. Trial counsel disputes that he made any such statement and trial counsel's testimony and the plea transcript wholly support trial counsel.

Trial counsel acknowledges that some confusion existed at the time of Applicant's plea, as to what offenses fell in the no-parole category. Trial counsel testified as to his diligent efforts to resolve this concern. Trial counsel testified he visited a South Carolina Department of Corrections (SCDC) website for a definitive answer as to the no-parole possibility of the charge to which Applicant pled and trial counsel testified to telephone conversations with SCDC regarding the no-parole issue.

get #3

Trial counsel, in Applicant's presence, related to the Court his concern and his inability to definitely resolve the no-parole question. (Plea Transcript p. 14, LL 4-13). This excerpt also establishes that relative to the possibility of his sentence being a no-parole offense, trial counsel and Applicant discussed the no-parole community supervision. This latter concept was not foreign to Applicant as he had previously (and the Court is not clear on this next point) perhaps was still on community supervision at the time of the plea. Regardless of whether or not he was or was not on community supervision at the time of the plea, he was fully cognizant of the effects of a no-parole sentence.

Applicant would not affirmatively state in cross examination by the State that he would not have pled when he did had he been clear on the no-parole issue. Applicant's complaint is solely that post-plea trial counsel told him he would only have to serve two and one-half years of his five year sentence.

The testimony by Applicant and his issue in this post-conviction relief application do not implicate Strickland, supra; Butler, supra; or Cherry, supra. There are no allegations of pre-plea ineffective assistance so a fortiori there is no such allegation for the Court to analyze.

Wherefore, Applicant's application for Post-Conviction Relief is Denied and Dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rule 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

Je H 4

IT IS SO ORDERED.

John C. Hayes, III

John C. Hayes, III
Presiding Judge

At 5

May ^K 16, 2013
York, South Carolina

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

Defendant

Antonio Patterson

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

As charged

X Antonio Patterson

Defendant

Witness

Ch. Dixon et al.
C.C.C. PLS AND G.S.

DOCKET NO. 2010-GS-46-0411

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

November 11, Term 2010

THE STATE

vs.

ANTONIO PATTERSON

Indictment for

DISTRIBUTION OF CRACK COCAINE WITHIN PROXIMITY OF A SCHOOL

SC Code: § 44-53-445
CDR Code: 0108

WITNESSES

D. Cashier

ab

ARREST WARRANT NUMBER

M-600378

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury 11-11-10

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on November 11, 2010, the Grand Jurors of York County present upon their oath:

DISTRIBUTION OF CRACK COCAINE WITHIN PROXIMITY OF A SCHOOL

That on or about July 2, 2010, in York County, South Carolina, the Defendant, Antonio Patterson, did distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute crack cocaine, a controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, within a one-half mile radius of the grounds of Northside Elementary School, a public school located in Rock Hill, South Carolina, such not having been authorized by law, all in violation of Section 44-53-445, Code of Laws of South Carolina (1976), as amended.

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

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

Jessie Ballard
ASSISTANT SOLICITOR

2012 JUN 20 PM 4: 29

CERTIFIED TRUE COPY

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

Defendant

Antonio Patterson
hereby appear in my own proper person and plead guilty to the within indictment or to *as charged 2nd offense*

Antonio Patterson
Defendant

Witness: *Off. Dixon et al*
C.C. P.S. AND G.S.

DOCKET NO. 2010-GS-46-04112

The State of South Carolina
County of York

COURT OF GENERAL SESSIONS

November 11, Term 2010

THE STATE

vs.

ANTONIO PATTERSON

Indictment for

DISTRIBUTION OF COCAINE BASE (CRACK)

SC Code: § 44-53-375
CDR Code: 3039

WITNESSES

DEU Cashier

ARREST WARRANT NUMBER

M-600376

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury *TRIP BULL*
11-11-10

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on November 11, 2010, the Grand Jurors of York County present upon their oath:

DISTRIBUTION OF COCAINE BASE (CRACK)

That on or about July 2, 2010, in York County, South Carolina, the Defendant, Antonio Patterson, did distribute, dispense, or deliver a quantity of cocaine base (crack), a controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, or did otherwise aid, abet, attempt, or conspire to distribute, dispense, or deliver cocaine base (crack), all in violation of Section 44-53-375, Code of Laws of South Carolina (1976), as amended.

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

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

Jessie Wallard
ASSISTANT SOLICITOR

2012 JUN 20 PM 4: 29

CERTIFIED TRUE COPY