

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Orangeburg County
Kristi Lea Harrington, Circuit Court Judge

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S.C. Supreme Court

STATE OF SOUTH CAROLINA

RESPONDENT,

V.

CEDRIC KEARSE,

PETITIONER

APPELLATE CASE NO. 2012-213198

A P P E N D I X

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ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
PLAINTIFF,)
-VS-) PLEA HEARING
CEDRIC KEARSE,) 2008-GS-38-0858, 0859, 0861
DEFENDANT.)

BEFORE THE HONORABLE KRISTI HARRINGTON, JUDGE
AUGUST 26, 2008
ORANGEBURG, SOUTH CAROLINA

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

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Assistant Solicitor

For the Plaintiff

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Assistant Public Defender

Margaret Hinds, Esq.
Assistant Public Defender

For the Defendant

REMA K. GANTT THOMAS
CIRCUIT COURT REPORTER

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E X H I B I T S

THERE WERE NO EXHIBITS INTRODUCED AT THIS HEARING.

1 THE SOLICITOR: Your Honor, the State
2 would call Cedric Kearsse. Mr. Kearsse is here today
3 with his attorneys Jill Ullman and Peggy Hinds of
4 the Public Defender's Office. He is here pleading
5 guilty to three charges.

6 Your Honor, he is pleading guilty to
7 trafficking cocaine, ten to 28 grams, second
8 offense. He is pleading guilty to possession with
9 intent to distribute crack cocaine, second offense.
10 As well as one count of failing to stop for a blue
11 light.

12 Your Honor, he does have two prior drug
13 convictions. These would be third convictions for
14 drugs. However, the State is allowing him to plead
15 to a lesser on the PWID as well as to the
16 trafficking, second offenses.

17 However, other than the reduction in
18 charge, the State is now making any negotiations or
19 recommendations in regards to the sentence.

20 (Whereupon, the Defendant
21 was sworn.)

22 THE COURT: Ms. Ullman, have you explained
23 to your client the charges that he is facing and the
24 possible punishment and the consequences of this
25 guilty plea?

5

1 MS. ULLMAN: I have explained, Your Honor,
2 and Ms. Hinds explained them in depth today, also.

3 THE COURT: Do you agree with Mr. Kearse's
4 decision to plead guilty here today?

5 MS. ULLMAN: I do.

6 THE COURT: Do you feel that he completely
7 understood the consequences of this guilty plea?

8 MS. ULLMAN: I believe he does.

9 THE COURT: Mr. Kearse, your attorney
10 indicates to me that you are here to plead guilty.

11 THE DEFENDANT: Yes, I am.

12 THE COURT: We actually have a jury
13 waiting to be selected. You are first up on the
14 jury docket. But you now wish to plead guilty; is
15 that correct?

16 THE DEFENDANT: Yes.

17 THE COURT: And you are taking advantage
18 of the State's offer to plead guilty to reducing
19 these. Instead of third offense drugs offenses to
20 second offense drug offenses. Do you understand
21 that?

22 THE DEFENDANT: Yes, Ma'am.

23 THE COURT: Is that your intention here.
24 today?

25 THE DEFENDANT: Yes, Ma'am.

1 THE COURT: Do you understand that other
2 than reducing the charges from third offense to
3 second offense, which the two third offense drug
4 charges carries 25 to 30 years.

5 THE DEFENDANT: Yes, Ma'am.

6 THE COURT: By allowing you to plead to
7 the lesser-included second offense, the possession
8 with intent to distribute crack carries a minimum of
9 five and a maximum of 30 years. As well as the
10 trafficking cocaine carries a minimum of five up to
11 thirty.

12 Do you understand that there are no
13 recommendations or negotiations?

14 THE DEFENDANT: Yes.

15 THE COURT: Knowing that, do you still
16 wish to plead guilty here today?

17 THE DEFENDANT: Yes, Ma'am.

18 THE COURT: Ms. Ullman, have you explained
19 to your client that trafficking cocaine, pleading to
20 this charge is a violent and serious offense?

21 MS. ULLMAN: Yes, Ma'am. I've explained
22 it to him.

23 THE COURT: And did you also explain that
24 possession with intent to distribute crack cocaine
25 second offense is a serious offense as well?

1 MS. ULLMAN: Yes, Ma'am.

2 THE COURT: And did your client understand
3 the ramifications in the future on those two
4 classifications?

5 MS. ULLMAN: Yes, Ma'am. I believe he
6 does.

7 THE COURT: Mr. Kearse, your attorney
8 indicates to me that she has explained to you what
9 violent means, the classification in our legal
10 system. Do you understand what that term means as
11 far as your sentencing?

12 THE DEFENDANT: Yes, Ma'am.

13 THE COURT: It's a classification that the
14 Department of Corrections uses. You will be
15 ineligible for probation or parole until a certain
16 time, based upon the classification as a violent
17 offense. Do you understand that?

18 THE DEFENDANT: Yes, Ma'am.

19 THE COURT: You are also pleading guilty
20 today to two serious offenses. Do you understand
21 what that means?

22 THE DEFENDANT: Yes, Ma'am.

23 THE COURT: For lack of a more eloquent,
24 legal explanation, three strikes and you're out.
25 Okay? So, today you have just picked up two

1 strikes. Do you understand that?

2 THE DEFENDANT: I didn't understand that
3 part.

4 THE COURT: The way our classifications
5 are, there is serious, and most serious offenses.
6 Any combination after today the State could look at
7 life without parole based upon, if you were to get
8 another serious or a most-serious offense. Do you
9 understand that?

10 THE DEFENDANT: I understand that part
11 now. Yes, Ma'am.

12 THE COURT: Ms. Ullman, you're looking
13 perplexed.

14 MS. ULLMAN: Your Honor, I believe because
15 these events occurred at the same time he is
16 pleading to them at the same time it would actually
17 only be considered one.

18 THE COURT: But they are -- but he needs
19 to be informed that they both are serious offenses.

20 MS. ULLMAN: Yes. We have discussed that
21 at length.

22 THE COURT: All right, and that they would
23 be under care law be treated as one event but they
24 are both classified as serious offenses.

25 Do you understand that, Mr. Kearse?

1 THE DEFENDANT: I understand that.

2 THE COURT: All right. Do you understand
3 the enhancement features of the drug laws of our
4 State?

5 THE DEFENDANT: I don't understand that
6 part but it is what it is. So, I mean--

7 THE COURT: You understand that the next
8 time you are charged with any drug offense that the
9 penalties would increase?

10 THE DEFENDANT: Yes, Ma'am.

11 THE COURT: Just as you are charged today
12 with trafficking third offense which the penalties
13 are 25 to 30 years. You are pleading to the lesser-
14 included second offense which the penalty is between
15 five and 30.

16 The next time this would be or could be
17 treated as your third offense and as you are aware
18 today, and as the Court is explaining to you, each
19 subsequent charge enhances the penalty. Do you
20 understand that?

21 THE DEFENDANT: Yes, Ma'am.

22 THE COURT: And I also need to advise you
23 that you will lose your driving privileges as the
24 result of any plea today.

25 THE DEFENDANT: Yes.

1 THE COURT: Do you understand that, sir?

2 THE DEFENDANT: Yes, Ma'am.

3 THE COURT: Knowing all of those
4 ramifications of this plea here today, how do you
5 wish to plead to these three indictments?

6 THE DEFENDANT: Guilty.

7 THE COURT: Do you understand that if you
8 plead guilty here today sir, you give up your right
9 to a jury trial?

10 THE DEFENDANT: Yes, Ma'am.

11 THE COURT: We were prepared to call your
12 case to trial today. By pleading guilty you give up
13 your right to have a jury determine your guilt
14 beyond a reasonable doubt based upon any evidence
15 the State presents, as well as any evidence you may
16 introduce. You are giving up your right
17 against self-incrimination, your right to say
18 nothing at all. You are giving up your right to
19 confront and be confronted by witnesses against you
20 as well as the right to call any witnesses on your
21 behalf.

22 By pleading guilty here today you give up
23 any defense you have to these three indictments.
24 Understanding the possible punishment, the nature
25 and elements of the charges against you, as well as

11

1 the consequences of this guilty plea, how do you
2 plead to trafficking of cocaine, ten to 28 grams,
3 second offense?

4 THE DEFENDANT: Guilty.

5 THE COURT: How do you plead to failure to
6 stop for a blue light?

7 THE DEFENDANT: Guilty.

8 THE COURT: How do you plead to possession
9 with intent to distribute crack cocaine, second
10 offense?

11 THE DEFENDANT: Guilty.

12 THE COURT: Are you pleading guilty
13 because you are in fact are guilty to all three
14 indictments?

15 THE COURT: Yes, Ma'am.

16 THE COURT: Has anybody threatened you,
17 forced you or coerced you into pleading guilty here
18 today?

19 THE DEFENDANT: No, Ma'am.

20 THE COURT: Do you understand that the
21 State is offering no recommendation or negotiations
22 as to how I may sentence you?

23 THE DEFENDANT: Yes, Ma'am.

24 THE COURT: Has anybody promised you, in
25 exchange for your plea, anything?

1 THE DEFENDANT: No, Ma'am.

2 THE COURT: Have you been? completely
3 satisfied with the services of Ms. Ullman and Ms.
4 Hinds?

5 THE DEFENDANT: No, Ma'am. Yes, Ma'am.

6 THE COURT: Sir, yesterday you had filed
7 an oral motion for Ms. Ullman to be relieved as
8 counsel. Are there any complaints about the way she
9 has handled your matters?

10 THE DEFENDANT: I just want to plead
11 right now. At the time I felt she didn't, but I'm
12 at a different point right now.

13 THE COURT: Do you, are you prepared to go
14 forward with her here today?

15 THE DEFENDANT: No, I'm not, Ma'am.

16 THE COURT: What specific complaints do
17 you have about the way she has handled your case?

18 THE DEFENDANT: Like I said yesterday, I
19 feel that we didn't have enough time to talk. You
20 say we did, so.

21 THE COURT: Is there anything you have
22 asked her to do that she has not done for you?

23 THE COURT: Well, I feel I haven't talked
24 to her that much. I mean, I only talked to her one
25 time and the second time I talked to her she didn't

13

1 have my file, the third time I talked to her she
2 walked out and the next time I see her is Monday,
3 then Tuesday is the trial.

4 THE COURT: Is there anything she could
5 have done that you think she didn't do to help you
6 investigate this case?

7 THE DEFENDANT: Under different
8 circumstances and not being close to trial -- I
9 mean, yes, I mean, who knows. If it was under
10 different circumstances it's like it's hard to say,
11 I mean. I'm right here at the door right now.

12 THE COURT: Well, sir, you've indicated to
13 me several times that you're here to plead guilty to
14 these three offenses.

15 THE DEFENDANT: Yes, I understand.

16 THE COURT: Are you pleading guilty
17 because you are guilty?

18 THE DEFENDANT: Yes. I'm guilty.

19 THE COURT: And other than meet with you
20 more times, is there anything that you specifically
21 asked Ms. Ullman to do that she did not do for you
22 in preparation of your case?

23 THE DEFENDANT: No, I mean -- I asked
24 her to have bond hearing and I didn't have that.

25 THE COURT: You were supposed to have --

1 I'm sorry.

2 THE DEFENDANT: A bond hearing. I had
3 one charge that was not set bond and never got back
4 into court for that.

5 MS. ULLMAN: Your Honor, that's because I
6 went and searched in the Clerk of Court's files and
7 found he, we actually both thought, by looking at
8 the paper work, that I had, that maybe the failing
9 to stop for a blue light did not have a bond set
10 because it was on a traffic ticket rather than a
11 warrant, but I did check with the Clerk's office and
12 a bond was set.

13 THE COURT: And Ms. Ullman, are you
14 prepared to go forward with trial today?

15 MS. ULLMAN: If need be, Your Honor, yes,
16 I am.

17 THE COURT: Okay.

18 MS. ULLMAN: As we are talking he's
19 telling me he doesn't want a trial, Your Honor.

20 THE COURT: Mr. Kearse, do you understand
21 that you have the right to appeal any sentence that
22 I impose upon you here today?

23 THE DEFENDANT: Yes, Ma'am.

24 THE COURT: But you or your attorney must
25 do so within ten days of today's date. Do you

15

1 understand that right?

2 THE DEFENDANT: Yes, Ma'am.

3 THE COURT: I am going to hear the facts
4 as presented by the Solicitor and then I'm going to
5 come back, Mr. Kearse, and ask you a few more
6 questions. Okay, so I need you to pay attention to
7 the facts. The Solicitor is also going to tell me
8 your previous criminal history.

9 THE SOLICITOR: Thank you Your Honor. May
10 it please the Court. Your Honor, this incident
11 occurred on April 12th of 2008 on Highway 4.
12 Trooper Panarelli stands before you today. He was
13 on routine patrol and observed a vehicle, a
14 Cadillac, exceeding the speed limit, approximately
15 71 in a 55 mile per hour zone.

16 He used his radar in his vehicle and was
17 able to determine that the vehicle was traveling 71
18 miles per hour. He proceeded to pull the vehicle
19 over for ordinary traffic stop. At which time
20 Officer Panarelli approached the vehicle, spoke with
21 the driver in regards to his registration and
22 license.

23 Your Honor, during that conversation he
24 smelled to odor of alcohol in the vehicle, asked the
25 driver about the alcohol, asked if he had been

1 drinking. Sort of asked where he was going. He
2 indicated he had just bought some alcohol, he had
3 drank some alcohol that night, and at that point the
4 officer asked him to exit the vehicle.

5 Prior to that, during their conversation,
6 the defendant did keep putting his hand in the
7 console, in the middle of the vehicle. At that time
8 the trooper ordered him to stop putting his hands in
9 the console. Again, as they proceeded with their
10 conversation after the officer smelled the odor of
11 alcohol, and saw the alcohol in the car, and he
12 indicated he had been drinking alcohol, he got him
13 out of the vehicle or asked him out of the vehicle.

14 At that time, Your Honor, Mr. Kearse put
15 the vehicle in drive and did drive off. The Trooper
16 went back to his vehicle and got into his patrol
17 vehicle and began to pursue Mr. Kearse. Your Honor,
18 he went on approximately four different road at
19 which time one of the roads was rather curvy, the
20 speeds of Mr. Kearse were up to 90 and 100 miles per
21 hour.

22 The vehicle did flip at which time Officer
23 Panerillo is behind the vehicle and Mr. Kearse did
24 get out of the flipped vehicle and run on foot.

25 Trooper Panerillo then ran after him on

17

1 foot at that point accompanied by a sheriff's
2 deputy. They were able to apprehend Mr. Kearse,
3 handcuff Mr. Kearse and he was transported to the
4 jail.

5 Inventory of the vehicle after this
6 incident did reveal, actually when the Trooper
7 approached the vehicle and they had turned it back
8 over, there were drugs in plain view in the driver's
9 side floorboard.

10 Trooper Panerillo did retrieve those items
11 that were believed to be drugs. They came back as
12 cocaine as well as crack cocaine. Your Honor, the
13 cocaine was 26.69 grams and the crack cocaine was
14 4.57 grams. That would be the basis for the
15 possession with intent to distribute crack.

16 THE COURT: The cocaine, one more time?

17 THE SOLICITOR: I'm sorry. It was 26.69
18 grams on the cocaine and 4.57 grams for the crack
19 cocaine. Your Honor, that would be the extent of
20 the facts of the case. Again, this was all captured
21 on video, Your Honor. Defense counsel and the
22 defendant have had an opportunity to view that
23 video. I can give his prior record whenever the
24 Court sees fit.

25 THE COURT: I'd be happy to hear it now.

1 THE SOLICITOR: All right, Your Honor, he
2 does have a prior conviction for assault with intent
3 to commit rape, from -- sorry, Your Honor.

4 THE COURT: You had indicated on the plea
5 sheet, 1993?

6 THE SOLICITOR: That's -- this is an out-
7 of-state record, I believe, from San Diego,
8 California, Your Honor. It's kind of difficult to
9 determine the exact date of conviction but I believe
10 it was in 1993. It was assault with intent to
11 commit rape conviction for which he received four
12 years.

13 He also had a drug conviction in 1996,
14 Your Honor, as well as one in 2000 from the
15 information provided from San Diego, Your Honor, the
16 2000 -- it just says it was a controlled substance.
17 And then the 1996 says -- I believe it just says
18 possession of narcotics, and that was from 1996.

19 The most recent conviction he has is the
20 criminal domestic violence I believe from 2000.

21 THE COURT: Was that here in South
22 Carolina?

23 THE SOLICITOR: That's correct, Your
24 Honor. And that's the extent of his record that I'm
25 aware of.

19

1 THE COURT: All right. I'll be happy to
2 hear from you, Trooper, at this time or if you wish
3 to address the Court?

4 THE TROOPER: There's nothing that I
5 exactly need to address the Court about, Your Honor.

6 THE COURT: All right.

7 Mr. Kearse, you heard the facts as
8 presented by the Solicitor. Are those facts true?

9 THE DEFENDANT: Yes, Ma'am.

10 THE COURT: Is that what you did?

11 THE DEFENDANT: Yes, Ma'am.

12 THE COURT: Have you had an opportunity to
13 view the video take?

14 THE DEFENDANT: Yes, one time last week.

15 THE COURT: All right, so Ms. Ullman did
16 show you that video tape?

17 THE DEFENDANT: Yes.

18 THE COURT: So she did provide you with
19 some discovery that the State had provided?

20 THE DEFENDANT: Yes, Ma'am.

21 THE COURT: Sir, I see that you are
22 smirking and --

23 THE DEFENDANT: I'm not.

24 THE COURT: -- I don't know if it's just
25 because you are nervous but I'm not here, if you're

1 not guilty and if you are not satisfied I'm not here
2 -- we're ready to go to trial. Ms. Ullman has
3 indicated that she is ready to go to trial and you
4 have indicated that not only do you understand the
5 charge that you were charged with but the possible,
6 the ramifications as well as the classifications, so
7 I just want to ensure that you completely understand
8 what we are doing here today and all of the
9 consequences of a guilty plea here today.

10 THE DEFENDANT: Can I say something?

11 THE COURT: Yes, sir.

12 THE DEFENDANT: I'm not smirking to be
13 funny or trying to be a wise guy. Don't get that
14 picture. I mean, I'm just here. Some things I
15 agree, some things I don't.

16 THE COURT: Okay, well, sir, this is your
17 time. And like I said, I am not here, if you are
18 not guilty or if you are not ready to plead guilty
19 we are not here to make you plead guilty.

20 THE DEFENDANT: I understand that.

21 THE COURT: Has anybody promised you or
22 threatened you into pleading guilty here today?

23 THE DEFENDANT: No, Ma'am.

24 THE COURT: Whose decision was it for you
25 to plead guilty to these three indictments?

21

1 THE DEFENDANT: My decision.

2 THE COURT: Mr. Kearse, have you given me
3 complete and truthful responses here today?

4 THE DEFENDANT: Yes, Ma'am.

5 THE COURT: Have you responded to me here
6 today because your attorney or somebody else coached
7 you or told you to answer my questions in a certain
8 way?

9 THE DEFENDANT: No, Ma'am.

10 THE COURT: In light of any of those
11 questions, is there any questions that you wish to
12 change, any of your answers, any responses that you
13 wish to change to the Court?

14 THE DEFENDANT: No, Ma'am.

15 THE COURT: Are you pleading guilty to
16 these three indictments, Mr. Kearse, freely and
17 voluntarily?

18 THE DEFENDANT: Yes, Ma'am.

19 THE COURT: And do you understand the
20 consequences of each of these charges?

21 THE DEFENDANT: Yes, Ma'am.

22 THE COURT: Mr. Kearse, have you
23 understood, so far, everything that has gone on in
24 the courtroom here today?

25 THE DEFENDANT: Yes, Ma'am.

1 THE COURT: How old are you, sir?

2 THE DEFENDANT: I'm 38.

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

4 THE DEFENDANT: Twelfth grade, graduated.

5 THE COURT: What type of work do you do?

6 THE DEFENDANT: I was delivering warehouse

7 parts, shower and tubs, working for a warehouse.

8 THE COURT: Is that here in Orangeburg?

9 THE DEFENDANT: Yes, Ma'am.

10 THE COURT: And how long had you been

11 there?

12 THE DEFENDANT: Almost two years.

13 THE COURT: Have you ever been treated for

14 the abuse of drugs or alcohol?

15 THE DEFENDANT: No, Ma'am.

16 THE COURT: Have you ever been treated for

17 mental illness?

18 THE DEFENDANT: No, Ma'am.

19 THE COURT: Are you married?

20 THE DEFENDANT: Yes, Ma'am. Well, I'm

21 divorced.

22 THE COURT: Do you have any children?

23 THE DEFENDANT: Yes, Ma'am.

24 THE COURT: How many?

25 THE DEFENDANT: One.

1 THE COURT: Boy or girl?

2 THE DEFENDANT: Boy.

3 THE COURT: How old?

4 THE DEFENDANT: He will be 19 in October.

5

6 THE COURT: Does he live here in
7 Orangeburg?

8 THE DEFENDANT: Yes, Ma'am.

9 THE COURT: Mr. Kearse, I find that there
10 is a substantial, factual basis for your plea here
11 today. Your decision to plead guilty to these three
12 indictments has been freely, voluntarily, knowingly
13 and intelligently made. Your decision to plead has
14 been -- you've had the advice of counsel of a
15 competent attorney while whom while you told the
16 Court that you think you needed more time, you do
17 indicate and your answers have been those that
18 indicates to the Court that you have had the advice
19 of counsel and of a competent attorney.

20 You indicate that you are ready to plead
21 guilty here today and you have freely and
22 voluntarily made that decision to plead guilty. You
23 indicated to the Court that you've had opportunity
24 to review the discovery materials as presented to
25 you by Ms. Ullman, that you are prepared and

1 satisfied to go forward here today with Ms. Ullman.

2 I hereby accept your plea of guilt, Mr.

3 Kearse, as to three indictments that you are charged

4 with. Now, it's up to the Court to fashion a

5 sentence that is appropriate for the charges that

6 you have just pled guilty to.

7 I will be happy to hear from you regarding

8 sentencing, Ms. Ullman.

9 MS. ULLMAN: Thank you, Your Honor. As he

10 told you, he is 38 years old and did graduate from

11 high school. He went to high school here in

12 Orangeburg. He was born and raised here. His

13 entire family is here. I have indicated, but

14 unfortunately we have not been able to get her back

15 in, his sister to come here today to show her

16 support for Mr. Kearse.

17 I have actually met with his mother and

18 his sister. They obviously care for him and would

19 love to have him home with them whenever the Court

20 sees fit.

21 He did spend some time in San Diego, as

22 the solicitors told you. He joined the Marines when

23 he got out high school. He did four years honorable

24 with the Marines. He did one year tour of duty in

25 Japan during those four years. When he was

1 discharged from the Marines he was in San Diego.

2 He moved back here in 2004 and has been
3 here ever since. As he told you, he has been
4 working doing deliveries for Moorhouse-Hubert for
5 about two years.

6 As the Court has heard, his prior record
7 is not extensive. He just had the two prior drug
8 charges. The assault charge is from San Diego and
9 the only charge existing here in South Carolina is
10 the CDV in 2005.

11 Your Honor, he is an educated man. He is
12 a man who voluntarily did time in the military
13 including an overseas tour. He has worked all his
14 life. He does have an almost 19-year-old son who
15 obviously needs a father in his life, Your Honor.

16 We would ask you to consider the lower
17 part of this range understanding that the range is
18 five to 30 years. We would ask that you do consider
19 the lower part of the range in your sentencing for
20 Mr. Kearse.

21 MS. HINDS: Your Honor, if I may?

22 THE COURT: Yes.

23 MS. HINDS: I spoke with his sister this
24 morning and unfortunately when the court convened I
25 wasn't in a position to go find her. But she was

1 here all morning showing support. She did want me
2 to relay to the Court that their mother wanted to be
3 here but she felt that it would be so emotional that
4 she thought she would not be able to address the
5 Court with the decorum that it needed but she is
6 here in spirit.

7 THE COURT: Do you wish to go find Mr.
8 Kearse's sister? I mean, would that--

9 MS. HINDS: No. I will also tell you
10 that I aided Ms. Ullman in this case and came in a
11 little bit later on but obviously -- what I have
12 noticed in my meetings with Mr. Kearse is, I think
13 he projects an attitude that he doesn't realize he
14 is projecting.

15 I do think that the Court perceived as a
16 smirk had to do more with nervousness than it did
17 with him trying to insult Your Honor. He is taking
18 this very seriously.

19 THE COURT: He said one of the bailiffs
20 had gone downstairs to look for the sister.

21 What's your sister's name?

22 THE DEFENDANT: Deborah Kearse.

23 THE COURT: We'll take a few minutes.

24 (Whereupon, a short recess
25 in proceedings was had awaiting location of Ms.

1 Deborah Kearse.)

2 THE COURT: It appears she has left the
3 courthouse. That's what he said.

4 Thank you, sir.

5 MS. ULLMAN: Thank you, Your Honor.

6 THE COURT: Mr. Kearse, anything you wish
7 to tell the Court?

8 THE DEFENDANT: No, Ma'am.

9 THE COURT: Why did you run from the
10 Trooper?

11 THE DEFENDANT: He told me to get out of
12 my car and put my hands on the hood. That's what he
13 told me. He told me to get out and put my hands on
14 the hood.

15 THE COURT: And then why did you drive
16 away?

17 THE DEFENDANT: I knew I wasn't drunk.
18 I'm not trying to go back on it or beat the system.
19 I'm not trying -- it's hard to explain.

20 THE COURT: What were you doing with 26
21 grams of cocaine and 4.5 grams of crack, sir?

22 THE DEFENDANT: I use drugs. I mean,
23 that's all I had in California, possession.

24 THE COURT: So you're telling the Court
25 that was for personal use?

1 THE DEFENDANT: Yes. That's all I had.
2 That's all I've ever been caught with is possession.
3 That's what the crack was for.

4 THE COURT: Anything else, Ms. Ullman?

5 MS. ULLMAN: No.

6 THE DEFENDANT: And I have tested dirty
7 for it in California.

8 MS. ULLMAN: I think he's trying to get
9 the Court to understand he has or has had a drug
10 problem but there's nothing further.

11 THE COURT: All right. Anything further,
12 Ms. Hinds?

13 MS. HINDS: No, Ma'am.

14 Anything further from the State?

15 SOLICITOR: No, Your Honor.

16 THE COURT: And Ms. Ullman, you are
17 appointed?

18 MS. ULLMAN: Yes, Ma'am.

19 THE COURT: Okay.

20 RULING OF THE COURT

21 THE COURT: The order of the Court, Mr.
22 Kearse, on Indictment 2008-GS-38-0859, and that will
23 be the controlling indictment, that you be committed
24 to the State Department of Corrections for a term of
25 13 years.

29

1 I will order that you go to the ATU Unit.

2 It is the order of the Court that on
3 Indictment 2008-GS-38-0858, that you be committed to
4 the State Department of Corrections for a term of
5 three years. That is concurrent to the previous
6 indictment as well as 2008-GS-38-0861 which I commit
7 you to the State Department of Corrections for a
8 term of 13 years. Good luck to you sir.

9 MS. HINDS: Your Honor, I would ask for
10 credit for the time he has been in jail.

11 THE COURT: Credit. I show that he has
12 been in custody since April 13th 2008. Credit for
13 time served.

14 THE SOLICITOR: Your Honor, I will place
15 on the record there are a couple of tickets in
16 another unrelated charge that I am dismissing. I
17 just want to be sure he knows that.

18 THE COURT: Ms. Burbage, any related
19 traffic tickets will be dismissed pursuant to
20 today's plea.

21 THE SOLICITOR: That's correct, and he has
22 another unrelated charge sex registry violation that
23 will be dismissed as well.

24 THE COURT: All right, thank you, Ms.
25 Burbage.

1 Is that your understanding, Ms. Ullman?

2 MS. ULLMAN: Yes, Ma'am.

3 THE COURT: Do you need Ms. Burbage to
4 place any indictment numbers or ticket numbers on
5 the record?

6 MS. ULLMAN: No, Ma'am.

7 THE COURT: All right, thank you.

8 Good luck to you, Mr. Kearse.

9 THE DEFENDANT: Thank you, Your Honor.

10 --End on Transcript of Record--

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT THOMAS, OFFICIAL COURT
REPORTER, AND NOTARY PUBLIC IN AND FOR THE STATE OF
SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF
RECORD OF THE PROCEEDINGS HAD AND EVIDENCE
INTRODUCED IN THE ABOVE-CAPTIONED CASE ON AUGUST 25,
2008, IN ORANGEBURG, SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL
NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF
ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS
OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND
AND SEAL AT CHAPIN, SOUTH CAROLINA, THIS THE TENTH
DAY OF NOVEMBER, 2008.

REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 11/21/2013

STATE OF SOUTH CAROLINA)
County of ORANGEBURG)
Cedric Dion Kearse 330288)
Full name and prison number, if any, of applicant.)
v.)
State of South Carolina)
Name of Respondent)

In the Court of Common Pleas

APPLICATION FOR
POST-CONVICTION RELIEF

FILED FOR RECORD
WILLIAM B. CLARK
CLERK OF COURT
2011 JAN 14 A 11:18

[Handwritten signature]

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 it clear to which question any such continued answer refers.

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

If the applicant 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 applicant was convicted.

1. Place of detention Ridgeland Correctional Institution PO Box 2039
Ridgeland SC 29115
2. Name and location of Court which imposed sentence Court of General Session County
of ORANGEBURG SC Amelia St PO Box 1525 Orburg SC 29116
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
(a) 2008 65 38 0859 H831608
(b) 2008 65 38 0859 D234864
(c) 2008 65 38 0861 H831607
4. The date upon which sentence was imposed and the terms of the sentence:
(a) Aug 26 2008 13yrs Trafficking Cocaine 2nd offense
(b) Aug 26 2008 3yrs Failure to Stop for Blue Light
(c) Aug 26 2008 13yrs PWID 2nd offense ALL IN CONCURRENT

5. 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 _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? imposition of sentence
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeal
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirm Conviction
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. June 28 2010
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Did not object to the trial Court
- ii. _____
- iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Drug Enhancement Law
- (b) _____
- (c) _____

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WILLIAM CLARK
CLERK OF COURT
JAN 14 A 11:18
2011

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

(a) Court Record

(b) _____

(c) _____

11. Prior to this application have you filed with respect to this conviction

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

N/A

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

N/A

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) N/A

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

N/A

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

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WINNIE B. BLANK
CLERK OF COURT
COLUMBIA, SC
JAN 4 11:18 AM '18

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(d) the date of each such disposition:

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

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

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

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? N/A

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

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

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

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

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

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

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? no
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
yes
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? yes

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WINNIEA B. CLARK
CLERK OF COURT
DEPARTMENT SO
201 JAN 14 A 11:18

6
17. If you answered "yes" to one or more parts of (16), list:

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

- i. Jillian Ullman 190 Gibson, Rm 110 PO Box 1112 Oburg SC
- ii. LaNelle Caney Durant 1330 Lissy St Suite 401 Columbia SC 29206
- iii. _____

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

- i. Jillian Ullman plea and sentencing
- ii. LaNelle Durant Direct Appeal
- iii. _____

18. State clearly the relief you seek in filing this application.

New hearing or a sentence reduction ~~and~~ ~~and~~
0-8 yrs Plead Deal

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

No

2011 JAN 14 A 11:18
FILED FOR RECORD
VIRNIEA B. CLARK
CLERK OF COURT
COLUMBIA, SC

STATE OF SOUTH CAROLINA)

COUNTY OF Orangeburg)

VERIFICATION

I, Cedric Kearse, 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.

Sworn to and subscribed before me:

This 11th day of Jan, 2011

[Signature] L.S.

Notary Public for South Carolina

My Commission Expires 2/5/2017

Cedric Kearse
Cedric Kearse 1-11-11

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

I, Cedric Kearse, 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 proceeding or give security therefor.

Sworn to and subscribed before me

This 11th day of Jan, 2011

[Signature] L.S.

Notary Public for South Carolina

My Commission Expires: 2/5/2017

Cedric Kearse
Cedric Kearse
 Applicant
 FILED FOR RECORD
 WINNIE B. CLARK
 CLERK OF COURT
 ORANGEBURG, SC
 2011 JAN 14 A 11:18

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	
	)	2011-CP-38-0058
	)	
Cedric Dion Kearse, 330288,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	(Appointment of Counsel Requested)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed January 14, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. The Applicant was indicted at the August 2008 term of the Orangeburg County Grand Jury for Failure to Stop for a Blue Light or Siren (2008-GS-38-0858), Trafficking in Cocaine, 10-28 grams, 3rd or Subsequent Offense (2008-GS-38-0859), and Possession With Intent to Distribute ("PWID") Crack Cocaine – 3rd or Subsequent Offense (2008-GS-38-0861). Traffic tickets were also issued for Speeding (15-25 mph) (Ticket No. D234861) and No Driver's License in Possession (Ticket No. D234863). Applicant was represented by Jillian Ullman, Esquire and Margaret Hinds, Esquire. On August 26, 2008, the Applicant pled guilty before the Honorable Kristi Harrington, to Failure to Stop for a Blue Light and the lesser included offense of PWID Crack Cocaine, Second. Applicant was sentenced without negotiation or recommendation to thirteen (13) years imprisonment for Trafficking Crack Cocaine, 2nd and three (3) years for Failure to Stop for a

Blue Light, sentences to run concurrently. A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Kearse, Op. No. 20010-UP-329 (S.C. Ct. App. filed June 28, 2010). The Remittitur was sent on July 14, 2010.

Attached herewith and incorporated herein are the records of the Orangeburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, appellate records, the motion hearing transcript and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Drug Enhancement Law"

Applicant has failed to set forth with specificity the grounds upon which the application is based and facts in support thereof. S.C. Code §17-27-50. Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

For purposes of this Return, Respondent interprets Applicant's allegations to be allegations of ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d

813 (1985). Where the application alleges ineffective assistance of counsel 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 upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. 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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent

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

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

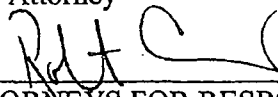
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

ROBERT D. CORNEY
Staff Attorney

By: 
ATTORNEYS FOR RESPONDENT
P.O. Box 11549
Columbia, SC 29211

JUNE 20, 2011.

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS

2011-CP-38-0058

CEDRIC DION KEARSE, 330288,

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

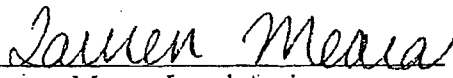
STATE OF SOUTH CAROLINA,

Respondent.

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:

Nicole L. Singletary, Esquire
The Law Office of Nicole L. Singletary
4511 N. Main Street
Columbia, SC 29203

DATED this 20th day of June, 2011.


Lauren Meara, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2011-CP-38-00058

Cedric Kearse,)

Plaintiff,)

v.)

State of South Carolina,)

Defendant.)

) Transcript of Record
)
)
)
)
)
)
)

May 22, 2012
Orangeburg, South Carolina

B E F O R E:

The Honorable DeAndrea G. Benjamin, Judge

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

Salley Elliott, Esquire
Attorney for the State

Nicole Singletary, Esquire
Attorney for the Defendant

Hilda M. Jordan, CVR-M
Circuit Court Reporter

Kearse v. State 5/22/12

2

I N D E XWITNESS/DESCRIPTIONPAGE NO.

EXHIBITS:

State's Exhibit No. 1 25

Certificate of Court Reporter 56

1

2

THE COURT: This is Kearse. We're just waiting on him.

3

Yes, ma'am.

4

5

MS. ELLIOTT: Your Honor, the State will proceed next with Cedric Kearse. He's number 2011-CP-38-0058. Mr.

6

Kearse was indicted in the August 2008 term of the

7

Orangeburg County Grand Jury for one count of failure to

8

stop for a blue light, one count of trafficking in cocaine,

9

10 to 28 grams, third or subsequent offense and one count of

10

possession with intent to distribute crack cocaine, third or

11

subsequent offense. He was represented by Jillian Ullman,

12

who is present in the courtroom today.

13

On August 26, 2008, Mr. Kearse appeared before the

14

Honorable Kristi Harrington and pled guilty to one count of

15

failure to stop for a blue light as indicted and the lesser

16

included offense of possession with intent to distribute

17

crack cocaine, second offense, and trafficking, 10 to 28

18

grams, second offense. Judge Harrington sentenced Mr.

19

Kearse to three years in prison imprisonment for failure to

20

stop for a blue light, and 13 years imprisonment on each

21

drug charge. All sentences were to run concurrently.

22

Mr. Kearse appealed his conviction and sentence which

23

were confirmed in the Court of Appeals. He filed a timely

24

application for post-conviction relief on January 14, 2011.

Kearse v. State 5/22/12

4

1 The State made its return on June 20, 2011.

2 At this time I would ask Ms. Singletary to set out the
3 allegations for the record.

4 THE COURT: Yes, ma'am.

5 MS. SINGLETARY: Thank Your Honor, if it pleases the
6 Court.

7 Mr. Kearse, my client, is actually alleging that his
8 trial attorney was actually ineffective for failing to
9 actually adequately advise him of the enhancement laws here
10 in South Carolina, and, therefore, based on that and on a
11 failure to investigate the actual allegations and a failure
12 to actually subpoena any witnesses on his behalf and not
13 having an adequate amount of time with the actual trial
14 attorney, he's saying that his plea, his guilty plea was not
15 voluntarily and intelligently made.

16 THE COURT: Anything else from the State before we
17 begin?

18 MS. ELLIOTT: No, Your Honor.

19 THE COURT: All right. Call your first witness.

20 MS. SINGLETARY: Thank Your Honor. If it pleases the
21 Court, I call Cedric Kearse to the stand.

22 THE CLERK: Could you place your left hand on the Bible
23 and raise your right hand, please. State your name for the
24 record, please.

25 MR. KEARSE: Cedric Kearse.

Kearse v. State 5/22/12

5

1 (WHEREUPON, Cedric Kearse was sworn to
2 tell the truth.)

3 THE CLERK: Thank you. You may be seated.

4 CEDRIC KEARSE - DIRECT EXAMINATION

5 BY MS. SINGLETARY:

6 Q Mr. Kearse, could you actually tell this Court where
7 you are currently housed?

8 A At McDougall Institution.

9 Q And you're housed there as a result of what?

10 A Trafficking, third offense. Trafficking, I pled guilty
11 to second offense, 13 years.

12 Q And you got sentenced to 13 years?

13 A Yes, ma'am.

14 Q And who, actually was your attorney at that time?

15 A Ms. Ullman.

16 Q Okay. And when were you actually arrested on this
17 offense?

18 A April 12, 2008.

19 Q And from April 12, 2008, until the time of your guilty
20 plea on August 26, 2008, about how many times would you say
21 you actually saw your guilty plea attorney?

22 A I saw her three times, but I talked with her -- I
23 talked with her for 45 minutes on July 30, around July 30.

24 Q Okay. So you actually say that you spoke to her three
25 times?

1 A I saw her three times.

2 Q Okay. You saw her three times?

3 A Yes.

4 Q And you said you spoke to her how many times?

5 A One time on July 30, around July 30.

6 Q Okay. Can you tell us about how long did these
7 meetings with your plea attorney last?

8 A When I talked with her around July 30, she told me that
9 the drug results from the test haven't come back yet, and I
10 asked about a preliminary hearing. She said her office
11 always filed a preliminary hearing in all cases like that.
12 After a while I asked her why didn't I have a preliminary
13 hearing she said the police was going to come and say the
14 same thing. Then I asked her about the drug enhancement law,
15 because I'd never been arrested here.

16 Q Okay. Let me stop you for just a second, because I
17 think you didn't understand my question. My question was
18 what was the duration of time that you spent with your plea
19 attorney?

20 A I'd say five minutes the first time. And then the
21 second time she didn't have the video I was supposed to
22 watch and she didn't have my file, so we didn't talk.

23 Q Okay.

24 A Because I came in another client's spot so that it
25 showed that she clearly was not ready to talk to me.

Kearse v. State 5/22/12

7

1. Q So is it your testimony that in the three times that
2 you actually met your trial attorney that you only spoke to
3 her about your case about five minutes?

4 A One time. Yes, ma'am.

5 Q Okay. Now, in that first meeting that you had with
6 your attorney, how long after your arrest on April the 12,
7 did you actually meet your attorney, Ms. Ullman?

8 A It was three and a-half months before I even met her
9 the first time.

10 Q Okay. So you were arrested in April. The first time
11 you met your trial attorney was in July?

12 A July 30. Around that time.

13 Q Okay. So you met her for the first time on July 30.
14 What did you actually talk about with your plea attorney on
15 July 30?

16 A Oh, I asked her about the language in the plea, the
17 plea agreement, because I didn't understand that third
18 offense, trafficking.

19 Q Okay.

20 A Because when I got arrested, they arrested me as first
21 offense trafficking and when I got the paper work from the
22 prosecutor or solicitor it states I have third offense
23 trafficking, see West Virginia. I have never been to West
24 Virginia in my life. So it was based on wrong information,
25 and language I didn't understand. So when I talked to her

1 about it she said nobody is saying I been arrested for
2 trafficking drugs three times in South Carolina. Nobody is
3 saying I trafficked drugs three times. So I asked her why
4 is they worded it like that. The last thing I remember she
5 saying is nobody is saying that. So I never got no
6 understanding of the drug enhancement law.

7 Q So my question to you is do you feel that you were
8 adequately prepared to go forth with a trial in this case?

9 A No, ma'am.

10 Q Why is that?

11 A Well, first of all, I received no Motion of Discovery,
12 no paper work. Like I said, I asked for a preliminary
13 hearing. The reason why she said I wouldn't get one -- I
14 filed for one actually, and her reason for not giving me one
15 is she said the police were going to come say the same
16 thing. I was thinking more it puts pressure on the
17 solicitor to bring something before the judge or gets the
18 police officer on record of saying something, you know, to
19 contradict down the line.

20 Q So did you ask your attorney for a copy of your
21 discovery?

22 A No. I never got no copy of it.

23 Q Well, my question is did you ask her for a copy of your
24 discovery?

25 A Yes, I asked her for it.

1 Q Okay.

2 A I didn't get it. I got it when I asked for it down the
3 road two years later.

4 Q And could you clarify that for the Court. When you say
5 you got your discovery later on down the road, are you
6 referring to after your guilty plea?

7 A Yes, ma'am.

8 Q Okay, but what you're actually testifying to is that
9 you actually asked your attorney, Ms. Ullman, for the
10 discovery and she did not give it to you?

11 A I did not receive no discovery from her.

12 Q Okay. Now, you were just talking about some paper work
13 that you received in reference to a plea offer?

14 A Yes, ma'am.

15 Q Could you explain to this Court exactly what you are
16 talking about about the plea offer?

17 A Yes. I received in the mail a plea agreement for eight
18 years. It says eight years. I received it on June 17.
19 And it expired on July 19, I mean, July 9, 2008. So when I
20 read it it says 1996 two drug convictions in West Virginia.
21 It says plead to second offense trafficking and possession
22 with intent to distribute, second offense.

23 Q And how did you actually get that plea offer?

24 A It was mailed to me.

25 Q Who actually mailed it to you?

1 A I guess the lawyer, Ms. Ullman. It was signed. She
2 have a cover page that say first offense trafficking. So it
3 came from here.

4 Q Okay. And you stated you received that letter on June
5 17?

6 A Yes, ma'am.

7 Q Of 2008?

8 A Yes, ma'am.

9 Q And you also stated that that plea offer of eight years
10 was scheduled to expire by July 9, 2008?

11 A Yes, ma'am.

12 Q Now, any time between June 17, 2008 and July 9, 2008,
13 did you have any communication other than that one plea
14 letter that was sent to you with Ms. Ullman?

15 A No, ma'am.

16 Q So if you actually wanted to accept that deal of eight
17 years you couldn't communicate that with Ms. Ullman --

18 A No, ma'am.

19 Q -- because you didn't have any -- your first
20 communication with her was --

21 A July.

22 Q -- July 30?

23 A That's correct.

24 Q And July 30 the plea deal had already expired?

25 A Yes, ma'am.

1 Q Okay.

2 A On July 9.

3 Q Okay. Now, when you actually spoke to Ms. Ullman about
4 your case were there particular witnesses that you actually
5 wanted her to call in defense of your case?

6 A We never discussed anything like that.

7 Q So you were actually slated to go to trial on this
8 case weren't you?

9 A Yes, ma'am.

10 Q And actually one day before your plea you actually did
11 a motion to relieve Ms. Ullman as counsel; correct?

12 A Correct.

13 Q And what happened at that motion?

14 A Yes. I filed a motion to have her relieved because I
15 saw the drug enhancement law for the first time in black and
16 white. After I read it and I talked to three lawyers, I
17 think it was three lawyers. I was told at the time that if
18 I had a possession that they could not enhance me. And
19 after that I kind of felt that wasn't true. That they was
20 misleading me. So I asked for a motion to dismiss and they
21 denied me saying I had to start trial the next day.

22 Q Yes. So what your testimony is is that you filed a
23 motion for Ms. Ullman to be dismissed --

24 A Yes, ma'am.

25 Q -- but that motion was denied?

1 A Yes, ma'am.

2 Q And you were slated to start trial the next day --

3 A The very next day.

4 Q -- with Ms. Ullman?

5 A Yes, ma'am.

6 Q And once you came back that very next day to start your
7 trial what, if any, conversations occurred between you and
8 Ms. Ullman?

9 A I thought it was best for me not to go to trial because
10 she didn't show any effectiveness. So I asked that I took
11 another deal just to get a deal because I didn't feel she
12 would be able to defend me, but after that I never saw her
13 again until I actually came back in the courtroom. I dealt
14 with Ms. Hinds the whole time while I was going over the
15 plea agreement. I asked Ms. Hinds where she was at and she
16 sold me she was out in court pre-screening the jury in case
17 I changed my mind. That's the last thing I heard until I
18 actually came back in the courtroom.

19 Q Okay. But she did speak, Ms. Ullman did speak on your
20 behalf of your actual plea, correct?

21 A Yes, ma'am. She came up at the very end. She came at
22 -- two days, she came on August 19, the same day I watched
23 the video. We both watched the video. That's when she came.

24 Q And there was a video, actually, in this case?

25 A Yes, ma'am, I saw it on August 19 -- August 21,

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1 basically three or four days before I was supposed to go to
2 trial. Yes.

3 Q Do you know whether Ms. Ullman actually got this video
4 from the solicitor's office in your case?

5 A Yes. When I went to court for my second appearance on
6 August 12 -- actually I went to my second appearance on
7 August 11, for my second appearance. She wasn't there for
8 that. On August 12, the very next day, I got called back to
9 court not knowing what I was going for. The deputy, the
10 same deputy, Ravenell, he told me I was here to see a video.
11 I stayed in the holding cell from 8:00 o'clock to closing
12 time. Didn't see no video and I went back to the jailhouse.
13 And then a week later on August 19, I went back to court.
14 Now, I've got a pretty good idea of what I'm there to see,
15 the video. When I get there she don't the video, she don't
16 have my file. I came in another inmate's spot. Because
17 that just showed clearly that she wasn't prepared. Then two
18 days later that's when her and Ms. Hinds came back. We saw
19 the video. We never discussed any part of the video. I
20 signed the paper work right there and she walked out, and
21 that was the end of that.

22 Q So you're saying you saw the video, but you didn't
23 discuss the video. Could you be clear for the Court?

24 A I looked at the video in the room over here and then we
25 came back to this room, the very same room. I signed that

1 paper work and she left. She left me with Ms. Hinds.

2 Q Okay. Did you ever talk about doing a motion to
3 suppress the actual drugs?

4 A Never talked about that. Never filed a motion.

5 Q Okay. Did you ever talk about any strategies at all in
6 defending your case?

7 A No, ma'am.

8 Q And it's your testimony that you were arrested on April
9 12, 2008?

10 A Yes, ma'am.

11 Q You did your guilty plea on August 25, 2008?

12 A Yes, ma'am.

13 Q You were actually scheduled to go to trial on August
14 24, 2008?

15 A That's -- August 25 was a Monday, I think.

16 Q You pled on the 25?

17 A Tuesday, because I came to court on a Monday, the 25,
18 and the very next day they said I was supposed to start
19 trial. I filed a motion to have her dismissed on August 25.

20 Q Okay. Yeah, August 26, you actually pled guilty?

21 A Yes, ma'am.

22 Q But on August 25 you were actually scheduled to go to
23 trial?

24 A Yes, ma'am, by the judge.

25 Q Okay. And you were not shown the video from the police

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1 officer from this traffic stop until the Thursday before you
2 were scheduled to go to trial?

3 A Exactly.

4 Q Now, you was actually talking about some paper work
5 that Ms. Ullman, actually gave you --

6 MS. SINGLETARY: Your Honor, may I approach?

7 THE COURT: Yes, ma'am.

8 BY MS. SINGLETARY:

9 Q -- I want you to take a look at that paper work and see
10 if you remember seeing that paper work from your plea
11 attorney?

12 A Yes, I remember seeing it, but I didn't -- but the way
13 she said it I would not be offered another deal of eight
14 years. Sign right here. And that's all she showed me and
15 presented to me.

16 Q So it's your testimony that you did not read those two
17 sheets in its entirety?

18 A No, ma'am.

19 Q Is it your testimony that Ms. Ullman did not go into
20 specific detail with you about what was actually on that
21 sheet?

22 A That's correct.

23 Q And is it also your testimony from looking over that
24 paper work, doesn't that paper work go over the facts of
25 your case?

1 A Yes, ma'am.

2 Q Doesn't that paper work actually go over with the
3 penalties of the charges you were actually charged with at
4 that time?

5 A Yes, ma'am.

6 Q And does that paper work actually go over the plea
7 offer that the State was actually willing to make in that
8 case?

9 A Yes, ma'am.

10 Q Now, is that your signature --

11 A Yes, ma'am.

12 Q -- dated beside August 24, 2008?

13 A Yes, ma'am.

14 Q And even though all that is being said it is your
15 testimony in court today that you were not fully aware of
16 what you were signing at the time?

17 A Yes, ma'am.

18 Q Now, if you felt that Ms. Ullman was actually prepared
19 to go forth on your case would you have went to trial rather
20 than take a guilty plea?

21 A Yes, ma'am.

22 Q Did you feel at the time -- how did you feel at the
23 time -- why did you take the guilty plea?

24 A Well, I feel I couldn't -- she had a lot of no-shows.
25 She walked out on me. I never seen her for the first three

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1 and a-half months. I had every reason to believe that she
2 wasn't going to show up at trial. I just had every reason
3 to believe that.

4 Q Were there any pressures or any coercion --

5 A Yes.

6 Q -- or any threats that were made to you to get you to
7 plead guilty?

8 A Yes, but the very next day on August 22, my mom and my
9 sister came to the courtroom and I never called them up
10 here. What really kind of upset me was they didn't come
11 with the lawyer I was forced to go to trial with, had I
12 gone. I came with a lawyer I just met the day before.

13 Q And who was that?

14 A Ms. Hinds. So that was a wasted opportunity right
15 there. I was supposed to go to trial with this same lawyer.
16 I didn't understand that.

17 Q So did you feel that you voluntarily entered into a
18 guilty plea?

19 A Yes, I was backed into it. And then my sister and my
20 ex-wife was on the line talking me and they saying it didn't
21 sound right, neither, as far as the language in the third
22 offense trafficking. The only thing I got from the drug
23 enhancement law, like I said, was they can do that -- they
24 can do that. Nobody saying you -- nobody saying you
25 trafficked in drugs two times. Nobody saying you did it

1 three times. That don't -- I mean, if you tell half of
2 America that they not going to believe that. I mean, but if
3 they say it in black and white they will understand it a
4 little better.

5 Q Now, I know if was a long time ago, but do you remember
6 actually the date of the plea and pretty much how things
7 proceeded on that day?

8 A I remember pretty much everything as far as --

9 Q Okay. Would it be your opinion that you tried to reach
10 out to someone, you tried to reach out to the judge to let
11 them know that you did not feel comfortable with the guilty
12 plea on that day?

13 A Yes, ma'am.

14 Q And what did you actually say that day on the record,
15 if you remember.

16 A I actually stood up and told the whole court that I
17 didn't understand the second offense, third offense.

18 Q And what you mean by that is you don't understand --
19 you didn't understand the enhancement laws?

20 A Yes.

21 Q And the judge actually asked you that at your guilty
22 plea and you explained to the judge that you did not
23 understand the enhancement laws?

24 A That's correct.

25 Q And that they were not explained to you?

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1 A That's correct.

2 Q And is it your opinion that at the time that you
3 actually pled guilty it took an extremely long amount of
4 time for this guilty plea to actually take place?

5 A As to -- You say it took a long time?

6 Q Didn't the judge -- in your opinion, do you remember
7 the judge asking you constantly stopping and kind of saying
8 there's a jury waiting?

9 A Yes, there's a jury waiting for me. Actually, when I
10 went to court that day it was rather late in the day, I
11 asked about the drug enhancement law for the 10 year law and
12 she said yes we've been using your '96 case and you have
13 basically it was about four hours for me to take a deal or 5
14 to 25 years. So yeah.

15 Q Now, is there anything else you would like to relate to
16 the Court as it relates to your post-conviction relief and
17 your ineffective assistance of counsel?

18 A Yes. I would like to let the Court know I would have
19 went to trial if I had no idea of who I was going to face or
20 who was going to come talk against me or if I got on the
21 stand what would be said. Never went over none of that. I
22 had no idea, like I said, that witness that was going to be
23 called against me. No -- that was never talked about. Or
24 if I got on the stand what could they bring up as far as my
25 past or if I didn't get on the stand. That was never

1 mentioned at all.

2 Q So what you're basically saying is that your
3 constitutional rights were not explained to you?

4 A Exactly.

5 Q No trial strategy was actually explained to you?

6 A No trial strategy.

7 Q No defenses were mentioned to you?

8 A I don't even know what the difference between the drug
9 enhancement -- not the drug enhancement. I already know
10 they didn't tell me that. What constitute possession with
11 intent to distribute or trafficking. I know the weight
12 merely constitute trafficking or possession with intent to
13 distribute, but it's more than just the weight. You know.
14 I didn't know none of that.

15 Q So what's your relaying to this Court is that you
16 didn't understand at the time of the plea the charges that
17 were actually against you at the time?

18 A Exactly.

19 MS. SINGLETARY: Your Honor, I have no further
20 questions.

21 THE COURT: Please answer any questions the State may
22 have.

23 CEDRIC KEARSE - CROSS EXAMINATION

24 BY MS. ELLIOTT:

25 Q You appeared before Judge Harrington twice for a pre-

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1 trial hearing and then the day before your plea; correct?

2 A Yes, that Monday, and you said --

3 Q And then you pled guilty on Tuesday?

4 A Okay. That's two times. Yeah.

5 Q Okay. And during the hearing you had the day before
6 you pled do you remember Judge Harrington going over South
7 Carolina's drug enhancement law; is that correct?

8 A She ask me did I understood the drug enhancement law
9 and I say no.

10 Q And then, I believe after that -- do you have a copy of
11 the transcript in front of you, from the motion hearing?

12 A I remember what she said.

13 Q Because she went pretty in depth about two pages worth
14 explaining South Carolina's drug enhancement laws to you and
15 even a mere possession could be used against you; did she
16 not?

17 A That just merely states that the next time I get
18 arrested.

19 Q But she explained to you on the record, and you
20 admitted to her on the record that you had two separate drug
21 convictions in California; correct?

22 A What page is that on?

23 Q Page 8 of the motion transcript, the smaller one.
24 Seven and eight is where she's explaining. The bottom of
25 seven, Line 23. Sir, in the state of South Carolina if you

1 have a previous drug offense it doesn't matter if it was a
2 simple possession of marijuana, possession of a Xanax pill,
3 any previous drug conviction is treated as a drug offense
4 and is used to enhance your sentence on the next drug
5 charge, and you responded, okay.

6 A Oh, about the three strikes?

7 Q No. It was about the previous drug offense, doesn't
8 matter if it was marijuana or possession of a Xanax pill,
9 any previous drug conviction is treated as a drug offense
10 and is used to enhance your sentence on a subsequent drug
11 offense.

12 MS. ELLIOTT: Beg the Court's indulgence.

13 MS. SINGLETARY: He has the wrong transcript.

14 MS. ELLIOTT: Oh. There's two. Yeah.

15 And Your Honor, there's a copy in your packet, too.

16 A All right. What's the question? I don't --

17 BY MS. ELLIOTT:

18 Q Well, I'm wondering -- do you see right there where you
19 agreed. You said, okay. What part of South Carolina's drug
20 enhancement laws is explained to you by Judge Harrington;
21 what part of it is confusing to you? Are you not --

22 A I know it's in here. I'm not to the same page.

23 MS. ELLIOTT: May I approach, Your Honor.

24 THE COURT: Yes.

25 A Because she specifically asked me do I understand the

1 drug enhancement laws.

2 BY MS. ELLIOTT:

3 Q Yes. So she explained to you on the record, South
4 Carolina drug enhancement laws, simple possession of
5 marijuana, whether it's a Xanax pill, doesn't matter what it
6 was, in South Carolina that's the drug enhancement law.
7 Prior conviction harsher penalties. They go up each time.
8 She explained that on the record, right?

9 A Oh, see right here on Page 9, it says do you understand
10 the enhancement features of the drug laws of our state?
11 Now, that's being more -- that's more specific of the drug
12 enhancement law. Do you understand the enhancement features
13 of the drug enhancement law of our state? And then I say I
14 do not understand that part.

15 Q On the second transcript? Okay, but you agree the day
16 before that you understood the drug enhancement law to her
17 on the record during the motion hearing?

18 A No, we never talked about that. This all happened
19 during sentencing.

20 Q No. I'm talking about the first transcript that we're
21 looking at. The first time that you were brought in front
22 of her. I know later on in the day was your motion to have
23 Ms. Ullman relieved as counsel, but earlier you went on the
24 record for her to explain the drug enhancement laws to you;
25 correct? You went over that with Judge Harrington and you

1 admitted to her that you did have two previous separate drug
2 offenses from California; correct?

3 A Yes, I know I have two previous drug possessions.

4 Q Yes, and she explained to you that in South Carolina
5 law these drug offenses result in harsher penalties, that's
6 why you're currently being charged with third offenses;
7 correct?

8 A Okay. I just said okay.

9 Q I'm trying to go to the fact that one of your
10 allegations that counsel -- you pled guilty not with a
11 failure to understand South Carolina's drug enhancement laws
12 and the motion transcript shows that Judge Harrington took
13 the time to go over them with you before and your counsel
14 did. I believe Ms. Singletary asked you to look at this
15 document and Ms. Ullman had you sign. Do you still have
16 this in front of you?

17 MS. ELLIOTT: May I approach, Your Honor?

18 THE COURT: Yes.

19 BY MS. ELLIOTT:

20 Q Do you still have this in front of you --

21 A Yes, ma'am.

22 Q -- that your attorney showed you?

23 A Yes, ma'am.

24 MS. ELLIOTT: The State would move at this time to have
25 pre-marked Exhibit No. 1.

1 THE COURT: Any objection?

2 (State's Exhibit No. 1, document,
3 was marked and entered.)

4 BY MS. ELLIOTT:

5 Q If you could take out that document, please, Mr.
6 Kearse. In this document, Ms. Ullman goes over South
7 Carolina's drug enhancement laws pretty in depth, does she
8 not, the explanation of charges on Page 1?

9 A Yes, but it don't say at any state, though. It don't
10 say at any time at any state. So it's not saying -- it's
11 not being more specific. If you go back to what the Court
12 said.

13 Q If you'll follow with me in the second paragraph in the
14 explanation of charges it says due to two prior drug
15 convictions in San Diego, California; 1996 possession of
16 crack cocaine and 2000 possession of narcotics. So it does
17 say your two priors.

18 A I'm on another page, ma'am, but I understand that part.

19 Q Okay. Your testimony is that Ms. Ullman did not
20 explain South Carolina drug enhancement laws to you at all?

21 A What's that now?

22 Q Your testimony you gave here today is Ms. Ullman is
23 ineffective as your counsel because she did not explain drug
24 enhancement laws?

25 A That's correct.

1 Q But yet she provided this document to you which clearly
2 lays out explanation of charges and why they're third
3 offenses, did she not?

4 A That's before the judge is actually saying all that.

5 Q She actually --

6 A I mean --

7 Q If you'll see your signature. You signed this document
8 on the 21. So this was before you were in front of Judge
9 Harrington. Your attorney prepared this for you explaining
10 the charges; correct?

11 A Yeah, but that just --

12 Q And you signed this document; correct?

13 A I understand that, ma'am. But that's just saying I've
14 been arrested two times, in '96 and 2000.

15 Q Okay. You know how to read don't you, Mr. Kearse?

16 A Yeah. Yes, ma'am.

17 Q And your testimony before the Court was also that you
18 didn't understand this document when Ms. Ullman gave it to
19 you, but you still signed it?

20 A She never presented it to me like that. She just
21 presented the back part saying I would not be offered an
22 eight year deal, sign right here.

23 Q Why did you sign the document if you didn't understand
24 it, then?

25 A She said I would not be offered another eight years.

1 And I was -- okay, I signed it.

2 Q Okay. And one of the other allegations you've had was
3 that Ms. Ullman failed to subpoena witnesses for you. What
4 witnesses would you have wanted to be presented on your
5 behalf? This was a single occupant car crash all caught on
6 video.

7 A Okay.

8 Q What witnesses did you think she failed to subpoena for
9 you?

10 A No, I mean, I could have another drug test to get
11 another opinion on the drugs.

12 Q But as far as subpoena of witnesses. You attorney, Ms.
13 Singletary set forth one of your allegations was that Ms.
14 Ullman did not subpoena witnesses for you. What other
15 witnesses would you have liked to subpoenaed?

16 A We never did discuss that.

17 Q And Ms. Ullman has shown the video tape from the police
18 cruiser, didn't she?

19 A Yes, she did.

20 Q And did she explain to you that this would have come in
21 as evidence in trial if you had proceeded to trial?

22 A No, ma'am. She never talked -- after we saw the video
23 and came back to that room, I signed that paper, she got up
24 and left.

25 Q At one point during your plea you told Judge Harrington

1 that you didn't agree with everything that was being said;
2 is that correct?

3 A That's correct.

4 Q Okay. And Judge Harrington told you if you didn't want
5 to go forward with your plea you could stop; correct?

6 A That's correct.

7 Q But you decided to continue with your plea anyway; is
8 that correct?

9 A That's correct.

10 Q Why did you continue to plea if you felt it was not
11 voluntary?

12 A Because I felt I couldn't be adequately defended by her
13 if I went to trial.

14 Q Did you want a jury trial?

15 A Yes, ma'am.

16 MS. ELLIOTT: No further questions.

17 MS. SINGLETARY: Your Honor, briefly.

18 THE COURT: Uh-huh. (Affirmative response.)

19 CEDRIC KEARSE - REDIRECT EXAMINATION

20 BY MS. SINGLETARY:

21 Q Mr. Kearse, you have a hard time understanding things,
22 do you?

23 A No, ma'am. I don't think I do.

24 Q Let me rephrase this. Our meeting, our prior meeting
25 was about almost three hours long; correct?

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1 A You talking about me and yours?

2 Q Yes. Me and yours, correct?

3 A That's correct. We talked.

4 Q And I had to keep repeating myself over and over and
5 over again; correct?

6 A As into what. I mean, I don't --

7 Q When I would ask you a question and you would answer
8 that question back I would say that's not what I asked?

9 A Okay.

10 Q I would become very animated?

11 A Okay.

12 Q Would you say that you had a difficult time
13 understanding some of things I told you?

14 A Yes, ma'am, but -- I thought I understood you very
15 clearly.

16 Q How far did you make it in school?

17 A I graduated.

18 Q Okay.

19 A United States Marine Corps.

20 Q And you were in the Marine Corps. Okay. Now, let's be
21 very clear, what you are alleging today is that you felt
22 your trial counsel was not prepared to go to trial?

23 A Exactly.

24 Q You have to say yes or no?

25 A Yes, ma'am.

1 Q And that you only met with her on about three different
2 occasions?

3 A Yes, ma'am.

4 Q And you spoke to her one time?

5 A Yes, ma'am.

6 Q And you spoke to her for about five minutes that one
7 time?

8 A Yes, ma'am.

9 Q And this case was a case in which a video was involved?

10 A Yes, ma'am.

11 Q And you didn't get to view that video until about five
12 days before you were headed to go to trial?

13 A That's right.

14 Q And it's your testimony that you and trial counsel
15 never discussed any defenses strategies?

16 A Never.

17 Q That any -- and you made mention on cross-examination
18 that you wanted her to get an expert to look over the drug
19 analysis?

20 A Yes, ma'am.

21 Q And you told her that?

22 A She never did that. I mean, we never made it that far.

23 Q Okay.

24 A I mean --

25 Q So you're saying that you didn't have any meaningful

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1 conversations with -- and you have to say yes or no?

2 A No, ma'am.

3 MS. SINGLETARY: Your Honor, at this time I have no
4 further questions.

5 THE COURT: Anything further from the State?

6 MS. ELLIOTT: Just briefly, Your Honor.

7 CEDRIC KEARSE - RECROSS EXAMINATION

8 BY MS. ELLIOTT:

9 Q So your testimony here today was that Ms. Ullman was
10 ineffective for failing to get an expert to go over the drug
11 analysis?

12 A Not solely, ma'am. No.

13 Q But one of your allegations is that she failed to get
14 an expert to go over the drug analysis?

15 A Yes, ma'am.

16 Q But you admitted during your plea to Judge Harrington
17 that you had a drug problem and those were drugs that were
18 in the car; correct?

19 A Yes, ma'am.

20 MS. ELLIOTT: Nothing further from the State.

21 THE COURT: All right, sir, you may step down.

22 Call your next witness.

23 MS. SINGLETARY: Your Honor, at this time we have no
24 further witnesses.

25 THE COURT: All right. Ms. Elliott.

1 MS. ELLIOTT: The State calls Jillian Ullman.

2 THE CLERK: Would you state your name for the record?

3 MS. ULLMAN: Jillian Denise Ullman. U-l-l-m-a-n.

4 (WHEREUPON, Jillian Ullman was
5 sworn to tell the truth.)

6 THE CLERK: Thank you. You may be seated.

7 JILLIAN ULLMAN - DIRECT EXAMINATION

8 BY MS. ELLIOTT:

9 Q Ms. Ullman, do you recall Mr. Kearse's case and about
10 what time you were appointed?

11 A Yes, ma'am. I actually met Mr. Kearse in the beginning
12 of 2007. He had a pending charge that we are not here
13 discussing here today, so I would have met him in early
14 2007. I would have then been appointed to the current drug
15 case we're talking about in May of 2008.

16 Q Okay. Do you recall the first time you met with him on
17 the current charge?

18 A On the current charge, looking at my notes. I see in
19 August we met and discussed that trial would be called and
20 that he did definitely want trial. He had an appearance in
21 July, and I have notes where I wrote down I guess just
22 information that I learned from the officer that I had
23 relayed to Mr. Kearse, and I'm not really good with my
24 notes. To be honest I'm thinking that that was in July, the
25 first time I would have told him that he was messing with

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1 the center console, that he told him to stop and that he did
2 not stop and then, obviously, the case continued after that.
3 But the first time I have specifically written down that we
4 discussed trial would be August 19.

5 Q Okay. So you think you might have met with him in
6 July, but you have definite in your notes you met with him
7 in August?

8 A Yes, and based on what I'm looking at I wrote down in
9 my notes. I can't see why I would have written this without
10 having spoken to Mr. Kearse in July.

11 Q Okay.

12 A I just didn't literally write, met with defendant.

13 Q Okay. Is that pretty common among the PD's office to
14 go a few months after being appointed before you finally get
15 in and in person meet with them?

16 A Absolutely. Especially when the clients are in jail.
17 I will tell you my practice is to try to get discovery
18 before I actually met with the client. I have found that
19 and I tell my clients that the Court starts with the police
20 report and I think that's where we should start also. So
21 other than just do a meet and greet and get some personal
22 information I don't like to talk about a case until I find
23 out what they're being accused of.

24 Q Okay. And there wasn't really a need to do a meet and
25 greet, because like you said, you --

1 A We'd met in 2007. Yes, ma'am.

2 Q Okay. Great. And when you did meet with Mr. Kearse in
3 August or July, do you recall going over the indictments
4 with him explaining the charges he was facing?

5 A I would have gone over the discovery with him and
6 explained the charges we were facing. I know one of the
7 main issues with Mr. Kearse and he obviously relayed that
8 today, was his understanding of the drug enhancement. I
9 believe the warrant and the indictment both said, just like
10 he said, trafficking, third offense. I specifically went
11 over with him, Ms. Hinds went over with him, and, as you
12 said, Judge Harrington went over with him that it's just the
13 way they write it. It's not a trafficking third offense,
14 it's a trafficking third drug offense. That's literally how
15 I explained it. I told him the enhancement was nothing to
16 be proven at trial that the enhancement is a sentencing
17 issue. That at trial the enhancement part of it wouldn't be
18 included in an indictment. Nobody would hear anything about
19 that at a trial on trafficking. If the elements were
20 proven, which I had no doubt they would have been, then the
21 judge determines prior drug offenses and whether the
22 enhancement is appropriate for sentencing. It's a
23 sentencing issue.

24 Q Okay. Great. And did you go over potential sentences
25 with him?

1 A Absolutely. The trafficking, third offense, I believe
2 carries a mandatory 25. I don't think there's any question
3 about that. It is mandatory 25. The PWID, third -- I don't
4 remember right off my head right now what it carries, but we
5 absolutely would have went over all that. Failure to stop
6 carries three. I would have told him that. But the
7 trafficking was his most important problem so that's the one
8 we would have discussed more, if that makes any sense.

9 Q Okay. And do you recall in the pre-trial hearing in
10 the day before his plea, Judge Harrington going over his
11 potential sentences with him and telling him the maximum
12 that he was facing on the record?

13 A Yes. One of Mr. Kearse's problems with this case other
14 than not understanding the enhancements was how quickly it
15 happened. He was in the jail and he obviously was
16 surrounded by people who had been in there six months, eight
17 months, 12 months waiting for a plea or waiting for a trial,
18 whereas he was up for trial within about three months. It
19 was very quick. He was bothered by that. But I explained
20 that the solicitor's control the docket and as long as we've
21 got discovery there's not a whole lot we can do to delay.
22 We had discovery, we had an offer. I really had nothing to
23 investigate. As you had previously mentioned it was a one
24 car accident with no witnesses. So Judge Harrington went
25 over those things with him because I was concerned and I

1 expressed to her that I wasn't sure that he understood the
2 really of the gravity of what he was doing by making the
3 choice of trial.

4 Q And you mentioned the extent of the evidence against
5 him, the video. Can you tell the Court a little bit more
6 about the evidence where there wasn't a strong defense?

7 A This is a case, it was a highway patrol. Two officers
8 in a vehicle were following Mr. Kearse and they actually
9 pulled him over. I believe they suspected him of being
10 drunk. When they pulled him over they said they smelled
11 alcohol and asked him for his identification. I don't
12 remember if he actually handed them anything or not. But he
13 did identify himself. They knew who he was.

14 When they asked him to step out of the vehicle he would
15 not, and he took off. That's where the failure to stop for
16 a blue light came from. So this was a case where they
17 actually had the vehicle stopped, he was the only person in
18 that vehicle fled. They chased, immediately saw the vehicle
19 wreck, immediately saw him run from the vehicle, caught him,
20 brought him back and searched the vehicle that was
21 registered to him, and found the drugs in the vehicle. So
22 as I explained to him in the letter that you had brought up,
23 I specifically in bold print and put in here, I do not see
24 any defense.

25 Now, obviously he was wanting a trial, and I was

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1 planning to prepare for that. I had actually prepared for
2 that. I had subpoenaed the police, both officers record,
3 disciplinary records. Anything. I was looking for anything
4 I could to try to help Mr. Kearse because the fact pattern
5 was not on our side. We had no witnesses and all I knew to
6 do was attack the search and the police themselves.

7 Q So you were prepared to go to trial despite not really
8 seeing an viable defense?

9 A Yes, ma'am. I actually have pre-trial motions that I
10 had prepared such as excluding his record, if he were to try
11 to take -- if he chose to take the stand. Suppressing
12 illegal substances due to the faulty chain of custody.
13 Suppressing evidence due to illegal search of a vehicle.
14 There was no exigent circumstances, should have got a
15 warrant. I have eight pre-trial motions I had prepared. As
16 I said, I had subpoenaed both officers records. There were
17 no witnesses.

18 I will tell you, he is saying I didn't have the drugs
19 retested. I did not. I honestly have not found a case yet
20 where I felt that that was warranted. In this case, they
21 found a substance. He in no way told me that it shouldn't
22 be an illegal substance. It was tested. It came back --

23 Q Did he ever indicate to you that he wanted you to hire
24 an expert to retest the drugs or go over the drug analysis?

25 A No, he never asked me to do so.

1 Q And the case was set for trial the day after this plea?

2 A Yes, ma'am.

3 Q So you were prepared to go forward right then?

4 A I actually think the case was set for trial right then.

5 Q That day.

6 A As he said, I had Ms. Hinds going over our normal plea
7 check list, which is this long paper where we go over all of
8 the rights, and one of the questions is you've told me all
9 of the facts, witnesses, circumstances know to you. You
10 understand you're going to be under oath when you talk to
11 the judge. All of your trial rights we go over with the
12 possible sentences are. I had Ms. Hinds do this because
13 until a defendant pleads the State is ready to proceed with
14 trial. So we had a jury panel sitting out here and I felt
15 it was better that one of us be present for the
16 qualifications.

17 Q So that was in no way a reflection on you not giving
18 Mr. Kearse your full representation, you guys at the PD's
19 office kind of double-team to make sure he got full
20 representation in the courtroom and with his plea?

21 A Our office always teams up. There are two people on
22 every trial. We never try a case by ourselves, and at that
23 time, since I was lead counsel, I felt that I would be in
24 front of the jury more, so I chose to qualify the jury while
25 Ms. Hinds spoke to Mr. Kearse.

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1 Q Let's talk about plea negotiations for a minute.
2 There's been mention made of an eight year plea negotiation
3 that was made to Mr. Kearse. Do you have any idea when this
4 deal was set to expire?

5 A It set to expire, I believe, in July at the second
6 appearance, which is kind of a normal thing for the
7 solicitors, but it's not a hard and fast rule. Usually what
8 happens on second appearances is we'll talk with the
9 solicitors. If we're ready to plea we'll deal with it. If
10 there's a few more things we're looking into or things we
11 need to do they'll usually hold off and give us a little bit
12 of time.

13 Q Was the offer still open for Mr. Kearse when you
14 prepared this document that he signed on the 21?

15 A It was still -- let me double check. I believe when I
16 prepared this document the offer was still open.

17 Q So as of August 21, 2008, the offer was still open for
18 eight years.

19 A Yes. Then later that day I received another letter
20 stating that if Mr. Kearse again changed his mind that
21 instead of being offered the eight years that he refused
22 that he would offered or recommended a 12 year sentence to
23 be run concurrent on all of his charges and that that offer
24 was to expire right before trial. He also did not accept
25 that offer which, I believe, is why the judge ended up

1 giving him 13, because that was a little more than what --

2 Q And Judge Harrington went over that with the defendant
3 during the motion hearing on August 25, did he not?

4 A Went over what? I'm sorry?

5 Q Went over the 12 year offer and explained to him it was
6 going to be open until the close of business today and that
7 was fully discussed, he was fully aware of that and that was
8 after rejecting the eight year --

9 A Yes, ma'am.

10 Q -- offer?

11 A Yes, ma'am.

12 Q Do you have any idea why when he came back the next day
13 Mr. Kearse decided to enter a plea instead of going to
14 trial?

15 A I don't. I will tell you in my experience, I've been
16 doing this almost six years, now. A lot of times a jury
17 panel will kind of frighten people into realizing how real
18 25 years really sounds, but he did not express to me why he
19 decided to change his mind.

20 Q And he ended up pleading with no recommendations or
21 negotiations other than pleading for lesser included drug
22 offenses, a second?

23 A Correct. The State was still willing to allow him to
24 plead to lesser offenses so that he was getting a 25 year
25 sentence.

1 Q Is that a pretty common practice among the solicitor's
2 offices to -- once you turn down an offer you don't get it
3 again when you decide to panic and plead guilty right before
4 the trial; correct?

5 A In my experience, and this is the only solicitor's
6 office I've dealt with. I've been a public defender here
7 for six years. Once an offer is rejected there is no offer.
8 That would include reducing charges. I was thrilled and
9 very happy for Mr. Kearse that the solicitor's office was
10 still willing to reduce the charges and allow him to plea
11 even straight up.

12 Q And do you think you gave him adequate information and
13 advice for him to make an informed and intelligent decision
14 whether to plead guilty or not?

15 A I feel that I did. I know that I was very worried
16 about Mr. Kearse. I did not want him to do 25 years and I
17 knew that his lack of understanding of the enhancement laws
18 wasn't going to save him. That's not even an issue to bring
19 up at a trial and I certainly wasn't going to be the person
20 to bring up to a jury that he had previous drug offenses.

21 I will tell you the document that everyone's talked
22 about where it explains the facts, the charges, his priors.
23 I don't allow my clients to read themselves, and I don't
24 mean that to sound rude in any way, but I read my clients
25 discovery to them. I read the offers to them. Anything I

1 write, unless I've mailed it to them, I personally read to
2 them. I do that because I don't want to have to ask
3 somebody if they know how to read. I don't want to be -- I
4 don't want to offend anybody. So rather than assume they
5 know how to read I just read everything to them. Then I make
6 sure when I'm done they have any questions, do they
7 understand what we've talked about, is there anything they
8 want me to re-read. He did not ask for a copy of his
9 discovery when he was in jail, and I don't just normally
10 hand out discovery to people in jail because there are jail-
11 house snitches who like to read stuff and help each other.
12 So I don't give it to jail people unless they specifically
13 ask and he did not.

14 Q So this document you prepared for him you read to him
15 out loud?

16 A Yes, ma'am. This document beginning with facts and
17 there's explanation of charges and it goes on to legal
18 opinion and then it goes on to his offer and then it ends
19 with client's decision. Understanding all of what I
20 explained he still wanted a trial. And I would have read
21 this to him.

22 Q And he signed it in front of you?

23 A Yes, ma'am.

24 Q Ultimately, whose decision was it for Mr. Kearse to
25 plead guilty?

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1 A It was his.

2 Q Thank you.

3 MS. ELLIOTT: No further questions.

4 THE COURT: Please answer any questions, Ms. Singletary
5 has for you.

6 MS. SINGLETARY: Thank you, Your Honor.

7 JILL ULLMAN - CROSS EXAMINATION

8 BY MS. SINGLETARY:

9 Q Would it be your opinion that Mr. Kearse was looking at
10 a substantial amount of time in jail?

11 A Absolutely.

12 Q A minimal of 25 years just on the trafficking charge?

13 A Correct.

14 Q And given his age at the time that's pretty much a life
15 sentence?

16 A Correct.

17 Q And you stated that you actually was first appointed to
18 his case back in May of 2008?

19 A Yes.

20 Q Okay. And, if I say he was arrested back on April 12,
21 2008, would you agree with that assessment that he was
22 arrested then?

23 A I could look through, but if you're saying he was
24 arrested then, that's probably true.

25 Q Okay. You've saying the first time you actually met

1 him wasn't until July?

2 A Regarding these current -- the drug charges, yes.

3 Q Okay. We're not here about that 2007 case; correct?

4 A Correct.

5 Q We're just here about the 2008 case?

6 A Yes.

7 Q Okay. So the first time that you met him about the case
8 that he is actually, that he filed an application for a PCR
9 is -- the first time you met him was in July of 2008?

10 A Correct. I did not receive discovery until sometime
11 that June.

12 Q And that's what I was about to ask you.

13 A Yes.

14 Q Can you tell me the exact date you received discovery
15 in this case?

16 A My file is noted with June 11. So as long as nobody in
17 my office is mistaken that would be the date I could look
18 for, a time stamped copy, if you wanted me to, but I would
19 say roughly the middle of June, around the 11.

20 Q Okay. So he was arrested on April 11, 2008. You --
21 you said it's your common practice not to go and see a
22 client until you get the discovery; that's correct?

23 A It's my practice not to discuss the case with the
24 client until I've received discovery.

25 Q Did you see my client prior to you receiving discovery?

1 A If I had never met the client before, I will try to
2 speak with them if I get a chance to, just kind of do a meet
3 and greet, but I'd met Mr. Kearse previously because of the
4 other charges, so we knew each other. I knew his age. I
5 knew his background and all of that. That would kind of be
6 my initial meet and greet. So I had done that previously,
7 and I know we're not talking about that case, but I knew Mr.
8 Kearse previously. So no, I didn't meet with him until after
9 I got the discovery on this case, regarding this case.

10 Q Okay. And could you tell me, according to your files,
11 when in July did you actually meet Mr. Kearse?

12 A I, unfortunately, do not have that written down.

13 Q And --

14 A It would have been roughly right around the time of his
15 appearance, which was July 9.

16 Q Okay. And he actually was scheduled -- now, he's
17 looking at a minimal of 25 years on this one case; correct?

18 A Yes.

19 Q And you met him for the first time on -- round about
20 July 9?

21 A Correct.

22 Q And about how many pages would you say his discovery
23 was?

24 A Possibly two. I mean, it's very, very short, if we're
25 not including best kit papers and things of that nature. I

1 mean, if we're just discussing actual information regarding
2 what did or did not happen I think there's maybe a two page
3 police report, and then, of course, chain of custody papers,
4 his prior record, of course. Yes. The police report is two
5 pages. After that there's a bunch of chain of custody and
6 that's about it.

7 Q And --

8 A And a drug analysis. Excuse me.

9 Q -- and when you actually read all of this information
10 to Mr. Kearse, did you go over that chain of custody paper
11 work with him?

12 A It's not my normal practice to go over chain of custody
13 with a client. I review that to make sure it's followed all
14 the proper legal requirements. I'm not sure what Mr. Kearse
15 would have to add. I mean, we would have went over and
16 looked at it. I certainly would not have read everything on
17 there. I probably would have said, this is the best kit,
18 this is the chain of custody papers, and flipped through it.
19 Now, obviously it was something that I looked at because it
20 was one of my pre-trial motions that I had planned to make
21 was to keep out all drugs seized, because there was a faulty
22 chain of custody. So it was something that I reviewed but I
23 can't say I specifically went over each one of those pages
24 with him.

25 Q Now, let me ask you this, as it relates to your pre-

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1 trial motions, did you actually relay that information to
2 your client to tell him exactly what motions you intended to
3 file at trial?

4 A I did not. No.

5 Q So don't you think that would be something that he
6 would need to know if he's actually going to trial with you,
7 what motions you're going to actually present before the
8 Court?

9 A I think my motions would be part of trial strategy
10 which is certainly within my purview to decide what to do.
11 I would have told him I was going to try to keep the drugs
12 out, you know, in a very generic way, as I just said it. I
13 can't imagine I would have went specifically over and said,
14 State v. Scriven your records shouldn't come in and State v.
15 Coff, your records shouldn't come in and 609 --

16 Q Ma'am, if I may interrupt you that's not what I'm
17 asking you for. What I'm asking you for is did you tell Mr.
18 Kearse that, Okay, at trial, we're going to try to do a
19 Motion to Suppress the drugs. Did you tell Mr. Kearse at
20 trial we were going to do a Motion to actually suppress the
21 drugs on the basis of a faulty search on the basis that they
22 didn't comply to Rule 6. Isn't that stuff that he should
23 know in making a decision as to whether to plea or go to
24 trial?

25 A I don't think I would have gotten into specifics, like

1 you said, faulty chain, Rule 6. Like I said, I would have
2 told him I would try to keep the drugs out, and I'm sure
3 after that I would have told him, but it's not going to
4 happen. I mean, the reality is it wasn't going to happen.
5 The drugs were going to come in. The chain of custody
6 doesn't have to be complete. Again, I don't see that going
7 through each legal case that I've ever read is something
8 that I need to do. I would have told him, we're going to
9 try to keep the drugs out, but it's probably not going to
10 happen.

11 Q And --

12 A That would have been my statement.

13 Q -- and let's clarify. I wasn't asking you to go over
14 every legal case that you read. I just said generically for
15 you to tell him, in order for him to make an informed
16 decision as it relates to whether or not to plea or go to
17 trial, tell him these are our strategies, this is our pre-
18 trial motions?

19 A Yes, ma'am. And like I said, I don't believe I would
20 have went over everything, but I would have told him, I
21 would try to keep the drugs out, because that's really the
22 only thing that could have won this case for us, but I don't
23 believe we'll win. That would have been the end of that
24 statement. I would have not gotten any more specific about
25 that.

1 Q And you actually testified that that it was your
2 opinion that Mr. Kearse did have a lack of understanding of
3 the enhancement law?

4 A Well, every time we talked about it he basically kept
5 telling me that it wasn't right, that the law wasn't right,
6 that this was not a third trafficking, he'd never been
7 charged with trafficking, he's never been convicted of
8 trafficking. And every time he said that I then responded
9 with Yes, I know that. This is what you've been convicted
10 of, this is what your record says. And in South Carolina it
11 is not the crime it is the fact that it is the drug. I told
12 him that you could rephrase it, instead of calling it
13 trafficking third, you could call it trafficking, third drug
14 offense.

15 Q And about how many times would you say that you
16 actually met with my client since the first time that you
17 met with him was around about July 9?

18 A I would say four to five.

19 Q So from July 9, up until August 25, you met with my
20 client four to five times?

21 A Yes, ma'am.

22 Q And in those meetings, were you -- did you ever meet
23 with Mr. Kearse alone?

24 A Yes.

25 Q On how many of those meetings would you say you met

1 with him alone?

2 A I would say definitely the first meeting I would have
3 met with him alone, because when you first meet with
4 somebody you don't know whether they want a trial or a plea.
5 The only time I would bring somebody else in is -- two
6 reasons, one, they definitely want a trial and we're
7 preparing for trial and I need a second chair. Or, two, in
8 my opinion, like Mr. Kearse's case, when somebody wants a
9 trial and after reviewing the evidence and seeing the offer
10 I really don't think it's in their best interest. I often
11 would bring another attorney in the office, usually, Ms.
12 Hinds. She has been here for 17 years and most people in
13 this community trust her opinion. I would bring her in and
14 just have her tell them. Often I leave them alone so that
15 the client doesn't feel that I'm painting Ms. Hinds' view.
16 I'll let her kind of review the discovery and tell them her
17 opinion.

18 Q And you heard my client testify earlier that he
19 actually -- his mother and his sister was actually privy to
20 one of these meetings. Do you remember what actually
21 occurred at that meeting where his sister and his mother
22 were present?

23 A I'm looking. Give me just one second.

24 Q Yes, ma'am.

25 A In looking at my notes, it looks like his mother and

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1 his sister did come here to the courthouse to meet with us.
2 Look like through cell phone. I don't believe that his wife
3 was local. I don't remember where she was, but I don't
4 believe she was local. And, again, this is something that I
5 do -- I certainly don't -- let me rephrase. I do not break
6 client confidentiality, but when somebody is making a choice
7 I think is going to be to their detriment, I will often call
8 family and just explain based on what I've seen, based on
9 what a couple of other attorneys in my office have seen, we
10 don't feel that this is a good trial case. This is the
11 offer, this is what he's looking at. Would you mind talking
12 with him. That's it. I don't ever say. I don't ever get
13 into confidential information.

14 MS. SINGLETARY: I have no further questions, Your
15 Honor.

16 THE COURT: Anything else from State?

17 MS. ELLIOTT: Briefly, Your Honor.

18 JILL ULLMAN - REDIRECT EXAMINATION

19 BY MS. ELLIOTT:

20 Q Is failure to comprehend a law a good defense?

21 A Unfortunately, failure to understand or even know the
22 law is not a defense.

23 MS. ELLIOTT: Nothing further from the State.

24 MS. SINGLETARY: Your Honor, just one last question,
25 please.

1 THE COURT: In response to her question

2 MS. SINGLETARY: No, Your Honor.

3 THE COURT: All right. All right, ma'am, you may step
4 down.

5 MS. ULLMAN: Thank you.

6 MS. ELLIOTT: No further witnesses, Your Honor. Briefly
7 to conclude?

8 THE COURT: Yes, ma'am.

9 MS. ELLIOTT: Applicant today has filed his application
10 based on ineffective assistance of counsel and that falls
11 under the Strickland test and the applicant must prove that
12 counsel's performance was deficient as much as by
13 reasonableness under professional norms and prejudice to the
14 applicant, but for the attorney's alleged prejudice
15 applicant would not have pled guilty and instead would have
16 insisted on going to trial.

17 This is the applicant's burden and he has failed to
18 carry this burden based on the testimony today. The
19 specific allegation alleged by Mr. Kearse were that the drug
20 enhancement laws were not communicated to him, but we have
21 testimony today from Ms. Ullman as well as in the record
22 that Judge Harrington specifically went over drug
23 enhancement laws with Mr. Kearse.

24 Additionally, one of Mr. Kearse's claims was failure to
25 investigate, but there has been testimony today that the

1 deal was shown to him. There wasn't much discovery, any
2 discovery that was made available was communicated to him in
3 a timely manner.

4 Additionally, failure to subpoena witnesses was one of
5 Mr. Kearse's allegations but he could provide no witnesses
6 that should have been presented to the Court that day and
7 failure to meet with the applicant, but Ms. Ullman testified
8 that she met with Mr. Kearse four to five times before the
9 plea.

10 And so for these reasons the applicant has failed his
11 burden in the Strickland test and the State is asking that
12 his application be dismissed.

13 Thank Your Honor.

14 THE COURT: Yes, ma'am.

15 MS. SINGLETARY: Thank you, Your Honor. If it pleases
16 the Court.

17 Your Honor, we would argue that my client has met his
18 burden under the Strickland test. Your Honor, it was my
19 client's testimony that he was not effectively advised as it
20 related to the drug enhancement laws, Your Honor. The
21 actual witness for the State actually testified that my
22 client was in jail on April 12, 2008 until July sometime
23 before she actually went to the jail to actually see him,
24 and he was scheduled to go to trial on a trafficking charge,
25 which carried a minimum of 25 years on August 25, Your

1 Honor. Surely with the stakes that my client had that were
2 being jeopardized at that time, a little less than a month
3 with all the other cases that public defenders have, and I
4 was a public defender for five years before I went into
5 private practice two years ago. One month is surely not
6 enough to effectively represent a person on a trafficking
7 charge when he's looking at a minimum of second offense and
8 that's a result of the fact that she did not give him
9 effective assistance of counsel, he was prejudiced and he
10 got the conviction of 13 years, Your Honor.

11 Your Honor, and my client would like for me to add that
12 just because the judge actually explained the enhancement
13 issue on the record does not mean he understood it at the
14 time, because his counsel did not explain it to him, Your
15 Honor.

16 THE COURT: All right. Over the course of testimony
17 I've had the opportunity to read over the transcripts and to
18 review the files. The file, actually I read over both
19 transcripts. The one from the hearing on the 25 and also
20 the plea transcript from August 26, and based on the reading
21 of the transcripts, also, State's Exhibit No. 1, I've taken
22 that into consideration. I find that the -- based on
23 State's Exhibit No. 1, that the applicant signed on August
24 21, 2008, that he was explained -- it was explained to him,
25 that he signed it. The offer was explained to him. As to

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1 the enhancement laws of the state, I further find that Judge
2 Harrington went into great detail during her colloquy about
3 drug enhancement on both the 25 and the 26, about the
4 enhancement laws. I further find that he indicated to Judge
5 Harrington that he understood. That the Court actually got
6 into the specifics of the sentencing regarding the
7 trafficking third, and the second as to the amount of time
8 that each one of them carried. I further find that the
9 attorneys failure to subpoena any witnesses went, according
10 to her testimony, trial strategy. As to the failure to
11 investigate claims, the applicant today tells us that he did
12 not have an opportunity to view the video, however, Judge --
13 the judge asked him about the video and the video
14 opportunity to look at it with his attorney. In that
15 transcript he indicated he did.

16 I find that applicant has failed to meet his burden
17 under Strickland that there is no prejudice or deficiency of
18 counsel and I will grant the State's Motion to Dismiss the
19 application.

20 All right. Thank you.

21 MS. SINGLETARY: Thank you, Your Honor.

22 MS. ELLIOTT: Thank you.

23 (This proceeding was concluded.)
24
25

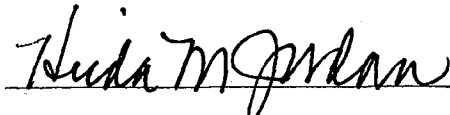
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C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE HEARING IN THE ABOVE CAPTIONED CAUSE, IN THE COURT OF COMMON PLEAS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE 22 DAY OF MAY, 2012.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



Hilda M. Jordan, CVR-M

March 14, 2013

Case # 2011-CP-38-0058

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

EXHIBITS

Plaintiff(s) Cedric Kearse
vs.
Defendant(s) STATE of SC

~~STATE'S~~ PLAINTIFF'S EXHIBITS	DEFENDANT'S EXHIBITS	COURT'S EXHIBITS
1 <u>Written Doc 2pgs</u>	1	1
2	2	2
3	3	3
4	4	4
5	5	5
6	6	6
7	7	7
8	8	8
9	9	9
10	10	10
11	11	11 ATTEST: TRUE COPY
12	12	12 <u>Winnifred B. Clark</u>
13	13	13 CLERK OF COURT
14	14	14 ORANGEBURG COUNTY, SC
15	15	15
16	16	16
17	17	17
18	18	18
19	19	19
20	20	20

Court Reporter Shirley M Jordan CRR-M Date 5/22/12
81 50 5/22/12

FACTS

You were stopped for going 71 mph in a 55mph zone. Once you were stopped, the officer said he smelled alcohol and you admitted to having drunk that day. Once the officer smelled alcohol, he had the legal right to ask you to step out of the car to perform a search of the vehicle or to perform field sobriety tests. Once he asked you to step out, you instead drove away. After wrecking the vehicle, you fled on foot, but were eventually caught. The officer searched your vehicle legally as a search incident to arrest. The officer said he found a clear plastic bag containing a white powder substance and a clear plastic bag containing a rock like substance. Both substances were found in the floorboard on the driver's side of the vehicle. You were the only occupant and the vehicle is registered to you. All of this is on a video. Both substances have been tested. The white powder tested positive for cocaine and weighed 26.69 grams. The rock-like substance tested positive for crack/cocaine and weighed 4.57 grams.

EXPLANATION OF THE CHARGES

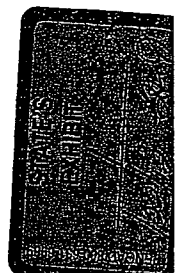
You have been charged with trafficking in cocaine, possession with intent to distribute crack, and failure to stop for a blue light. The drug analysis has come back for both substances. The cocaine weighed 26.69 grams. This is enough weight to be charged with trafficking cocaine 10 – 28 grams. The crack weighed 4.57 grams. This is enough weight to be charged with possession with intent to distribute crack.

Due to two prior drug convictions in San Diego, California: 1996 Possession of crack/cocaine; 2000 Possession of Narcotic, each of the charges you are currently facing are considered third offenses. The third offense relates to the category of charge. The two prior convictions from San Diego for possession of crack/cocaine and possession of a narcotic are both considered drug offenses under South Carolina law. The two charges you are currently facing are considered drug offenses. This means that you have two prior drug offenses and are now facing a third drug offense. In this instance the drug offenses you are currently facing are trafficking cocaine and possession with intent to distribute crack.

3rd drug offense; trafficking cocaine is a felony that carries a mandatory minimum 25 years up to a maximum 30 years and a \$50,000 fine. 3rd drug offense; possession with intent to distribute crack is a felony that carries a mandatory minimum 15 years up to a maximum 30 years and a \$30,000 fine and is considered a serious offense (which counts as one strike in the three strikes rule). The mandatory minimums cannot be suspended. Each is a no parole offense, meaning you will have to serve at least 85% of the sentence you receive. You are also charged with failure to stop for a blue light. Failure to stop for a blue light is a misdemeanor that carries 0 – 3 years or not less than a \$500 fine and your driver's license will be suspended for 30 days.

LEGAL OPINION

I believe if we take this case to trial, you will be found guilty. You were validly stopped by the officer for speeding (71 mph in a 55 mph zone). The entire stop is captured on video. After speaking with you, the officer thought you may have been drinking. You admitted you had



drunk one beer roughly 1½ hours prior to you being stopped. While speaking with you, more than once the officer commanded you to stop "messing" with something in the car. At this point the officer had a reasonable suspicion that you had been drinking and a reasonable suspicion that you were hiding something in the car. He even stated this when he asked you why it took you so long to stop your vehicle. The officer had the legal right to remove you from the car to investigate his suspicions by giving you field sobriety tests and/or by searching your vehicle. When the officer asked you to step out of the car, he again had to tell you to stop messing with something in the car. You did not get out of the car, but instead put the car in drive and sped away. The officer chased you in the car until you wrecked. The video shows the car on its roof and you climbing out and running. The video shows the officer chase you commanding to stop or be shot. Eventually back up arrived and you were apprehended. Once you were caught, the officers had the vehicle turned right side up and searched the vehicle. Both the cocaine and the crack were found inside the vehicle on the floorboard of the driver's side of the car. You were the sole occupant of a vehicle that is registered to you. **I do not see any defense.**

OFFER

The Solicitor has offered to allow you to plea to 2nd drug offense; trafficking cocaine, 2nd drug offense; possession with intent to distribute crack and failure to stop for a blue light. 2nd drug offense; trafficking cocaine carries a minimum mandatory 5 years up to a maximum 30 years. 2nd drug offense; possession with intent to distribute crack carries minimum mandatory 5 years up to a maximum 30 years and is a serious offense (which is considered one strike in the three strikes rule). Each of the charges are no parole offenses, meaning you will have to serve at least 85% of the sentence. The Solicitor has offered to recommend 8 years. I can speak with the Judge to see if she is willing to sentence you to less than 8 years.

CLIENTS DECISION

After reading this document and discussing it with my lawyer I chose to reject the states offer and proceed with a trial. I understand that trial will be held the week of August 25, 2008. I understand that if I change my mind at the last minute and decide to plea, the solicitor has the right to revoke the offer; meaning if I change my mind at the last minute I may be pleading as charged without recommendation. Understanding all of this I want a trial.

Cedric Kearse

Cedric Kearse

8-21-08

Date

[Signature]

Witness

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Cedric Kearse, #330288,

2011-CP-38-0058

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

ATTEST: TRUE COPY

Winnifred B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

FILED FOR RECORD
WINNEBAGO COUNTY CLERK
CLERK OF COURT
DRAKE, ILL. 60130

2012 JUN -7 PM 1:31

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 14, 2011. The Respondent made its Return on June 20, 2011. An evidentiary hearing into the matter was convened on May 22, 2012, at the Orangeburg County Courthouse. Nicole Singletary, Esquire, represented the Applicant. Assistant Attorney General Megan E. Harrigan, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Applicant's plea counsel, Jillian Ullman, Esquire, also testified. This Court also had before it a copy of the records of the Orangeburg County Clerk of Court, records from the South Carolina Department of Corrections, the transcript of a motions hearing held prior to Applicant's guilty plea, the transcript of Applicant's guilty plea, and an Exhibit introduced by the Respondent that was prepared by Applicant's plea counsel and signed by Applicant.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. The Applicant was indicted at the August 2008 term of the Orangeburg County Grand Jury for Failure to Stop for a Blue

Light or Siren (2008-GS-38-0858), Trafficking in Cocaine, 10-28 grams, Third or Subsequent Offense (2008-GS-38-0859), and Possession With Intent to Distribute Crack Cocaine – Third or Subsequent Offense (2008-GS-38-0861). Traffic tickets were also issued for Speeding (15-25 mph) (Ticket No. D234861) and No Driver's License in Possession (Ticket No. D234863). Applicant was represented by Jillian Ullman, Esquire and Margaret Hinds, Esquire. On August 26, 2008, the Applicant pled guilty before the Honorable Kristi Harrington, to Failure to Stop for a Blue Light, the lesser included offense of Possession With Intent to Distribute Crack Cocaine, Second Offense, and the lesser included offense of Trafficking in Cocaine, 10-28 grams, Second Offense. Applicant was sentenced without negotiation or recommendation to thirteen years imprisonment for Trafficking Crack Cocaine, Second Offense, thirteen years imprisonment for Possession With Intent to Distribute Crack Cocaine, Second Offense, and three years for Failure to Stop for a Blue Light, with all sentences to run concurrently. A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Kears, Op. No. 20010-UP-329 (S.C. Ct. App. filed June 28, 2010). The Remittitur was sent on July 14, 2010.

ALLEGATIONS

At the evidentiary hearing, Applicant alleged that he is being held in custody unlawfully on the ground of ineffective assistance of counsel, with specific allegations of:

1. Counsel's failure to effectively communicate South Carolina's drug enhancement laws;
2. Counsel's failure to investigate, including failure to subpoena witnesses; and
3. Counsel's failure to sufficiently confer with Applicant regarding his 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 evidence presented at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief 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) (citing Rule 71.1(e), SCRCPP). 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 upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (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. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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, 300

S.C. at 117, 385 S.E.2d at 625, *citing Strickland*. 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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

A defendant who pleads guilty upon the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would have pled guilty, but would have instead insisted on going to trial. *Roscoe v. State*, 345 S.C. 16, 546 S.E.2d 417 (2001). There is a presumption that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment (*Butler v. State*, 286 S.C. 441, 385 S.E.2d 813 (1985)), and the Applicant must overcome this presumption to receive relief (*Cherry, Id.*).

Failure to Communicate South Carolina's Drug Enhancement Laws

The Applicant alleges that Counsel failed to communicate South Carolina's Drug Enhancement laws to him.

At the evidentiary hearing, Applicant testified he did not have sufficient knowledge and understanding of South Carolina's drug enhancement laws prior to entering his guilty plea. However, Counsel testified that she discussed the drug enhancement provisions of South Carolina laws with Applicant numerous times and explained how Applicant's prior two drug convictions from

California would make each of his current drug charges third offenses. Additionally, Counsel testified that she prepared a two-page document for Applicant, which outlined his present charges, how each drug charge was enhanced to a third offense under South Carolina law, and Applicant's various rights. Counsel testified that she read this document aloud to Applicant, after which Applicant signed this document. This document was admitted into evidence as State's Exhibit #1 at the evidentiary hearing.

Additionally, the day prior to Applicant's guilty plea, the Court explained South Carolina's Drug Enhancement Laws to Applicant on the record:

THE COURT: Sir, in the State of South Carolina if you have a previous drug offense it doesn't matter if it was a simple possession of marijuana, a possession of a Xanax pill, any previous conviction that you have is treated as a drug offense and is used to enhance your sentence on the next subsequent drug charge.

THE DEFENDANT: Okay.

Motion Tr. p. 7 ln.23 – p.8 ln. 5. Additionally, the Court's plea colloquy went into great detail about drug enhancement laws, specifically regarding the implications of third drug offenses versus second drug offenses. During the plea colloquy, Applicant agreed that he understood South Carolina's drug enhancement laws.

This Court finds the Applicant's testimony regarding Counsel's failure to communicate South Carolina's drug enhancement laws is not credible while also finding counsel's testimony is credible. Counsel took numerous measures to ensure Applicant understood these provisions of South Carolina law, including asking the Court to review Applicant's charges and South Carolina's drug enhancement laws to Applicant on the record the day prior to his plea. This Court finds the Applicant has failed to meet his burden of proving counsel's performance was deficient or that he

was prejudiced thereby. Accordingly, this allegation is denied.

Failure to Investigate and Subpoena Witnesses

The Applicant alleged Counsel failed to investigate the videotape of the incident and failed to subpoena witnesses for trial.

To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at post-conviction relief hearing to show how additional preparation would have had any possible effect on the result at trial).

The Applicant testified that Counsel did not fully investigate the videotape of the incident and failed to subpoena witnesses on Applicant's behalf for trial. During examination by Respondent, Applicant could not produce the names of any potential witnesses that Counsel could have subpoenaed, and admitted that Counsel had shown him the videotape of the incident in full. Counsel testified that she had access to the State's file, which included the videotape of the incident. Counsel stated she watched the videotape on more than one occasion and had Applicant view the videotape personally. Counsel also testified that as the incident in question was a "single-car crash," she did not believe in her professional opinion that any witnesses could have been subpoenaed on Applicant's behalf.

This Court finds that the Applicant has failed to establish that Counsel was ineffective with investigating and preparing for this matter. Counsel testified that she reviewed discovery materials then met and spoke with the Applicant concerning the case. The record clearly indicates that counsel

was considerably prepared for this case. Additionally, no evidence of prejudice was presented at the evidentiary hearing, as Applicant did not call any witnesses. Therefore, based on the foregoing, this allegation is denied.

Failure to Sufficiently Confer with Applicant

The Applicant alleged Counsel failed sufficiently confer with him regarding his case. Specifically, Applicant testified that counsel only met with him "two or three" times prior to his guilty plea and that she was not prepared during at least one of these meetings. Counsel testified that she met with the Applicant numerous times prior to his plea and that she was prepared to begin Applicant's trial on the day he pled. Additionally, Counsel testified that she sought the assistance of Margaret Hinds, Esq., a more senior attorney in the Public Defender's office, on Applicant's case and that Ms. Hinds met with Applicant on more than one occasion as well.

This Court finds that the Applicant has failed to establish that Counsel was ineffective in her communication with Applicant regarding his case. Counsel testified that she met and spoke with the Applicant concerning the case several times prior to his guilty plea. The record clearly indicates that counsel sufficiently and reasonably communicated with Applicant regarding his case. Therefore, based on the foregoing, this allegation is denied.

Summary

This Court finds in regards to all of Applicant's allegations of ineffective assistance of counsel, the Applicant's testimony is not credible, while also finding Counsel's testimony is credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in her representation, and that Counsel's conduct did not fall below the objective standard of reasonableness. Further, this Court also finds that the record in

this case fully demonstrates that the Applicant understood the nature of his charges, including the drug enhancement provisions of South Carolina laws.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in her representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

CONCLUSION

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

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

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!6-4

, 2012

Columbia

, South Carolina



DEANDREA G. BENJAMIN
Presiding Circuit Court Judge

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Cedric Kears, 330288,

☐ Plaintiff

v.

State Of South Carolina

☒ Defendant.

IN THE COURT OF COMMON PLEAS

2012 JUN -7 PM 1:30 CASE NO. 2011-CP-38-0058

FILED FOR MOTION AND ORDER INFORMATION
WINNIEA M. CLAY
CLERK OF COURT
FORM AND COVER SHEET
ORANGEBURG, SC

Plaintiff's Attorney: Nicole Singletary, Bar No. Address: 4511 N. Main St. Columbia, SC 29203 phone: (803) 754-5200 fax: e-mail: other:	Defendant's Attorney: Megan Harrigan, Bar No. Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: other:
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO	
SECTION II: Motion/Order Type ☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. <u>Megan E. Harrigan</u> Signature of Attorney for ☐ Plaintiff / ☒ Defendant <u>May 30, 2012</u> Date submitted	
SECTION III: Motion Fee ☐ PAID - AMOUNT: ☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE _____ CODE: _____ Date: _____
CLERK'S VERIFICATION Date Filed: _____ Collected by: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____	

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

CEDRIC KEARSE, 330288,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

Nicole Singletary, Esquire
4511 N. Main Street
Columbia, SC 29203

This 17th day of October, 2012.

Lauren Meara
Lauren Meara, Legal Assistant
For Respondent

SWORN to before me this 17th day of October, 2012.

Judy L. Carey
Notary Public for South Carolina.
My Commission Expires: May 11, 2014

WITNESSES

DUCKETT NO. 2008GS38-0859

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

Defendant

The State of South Carolina

County of

ORANGEBURG

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

TROOPER F.J. PANARELLO

Arresting Agency:
SC Highway Patrol

COURT OF GENERAL SESSIONS

August 11, 2008 TERM

Defendant

ARREST WARRANT NUMBER

H831608
Arrested: Apr 13, 2008

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

[Signature]

Cedric Dion Kearse

Foreperson of Grand Jury
Date: August 13, 2008

2008 AUG 13 A 11:01
CLERK OF COURT
JULIA A. COLETT
CLERK OF COURT
JULIA A. COLETT
CLERK OF COURT
JULIA A. COLETT
CLERK OF COURT
JULIA A. COLETT
CLERK OF COURT
JULIA A. COLETT

VERDICT

Indictment for
TRAFFICKING IN COCAINE >10GM
<28GM-3rd OFFENSE OR SUBSEQUENT
OFFENSE

Foreperson of Petit Jury
Date:

SC Code: 44-53-370(e)(2)(a)3
CDR Code: 147
Class: FEL-EX

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

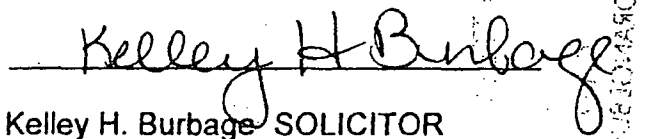
INDICTMENT
2008GS38-0859

At a Court of General Sessions, convened on August 11, 2008 the Grand Jurors of Orangeburg County present upon their oath:

**TRAFFICKING IN COCAINE >10GM <28GM – 3rd OFFENSE OR
SUBSEQUENT OFFENSE**

That Cedric Dion Kears, did in Orangeburg County, on or about April 12, 2008, knowingly and intentionally sell, manufacture, cultivate, deliver, purchase, bring into this State, or provided financial assistance or otherwise aided, abetted, attempted, or conspired to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or did knowingly actually or constructively possess or attempt to become in actual or constructive possession of a quantity of cocaine, or any mixtures thereof to wit: Approximately 26.69 grams of cocaine and as a result violated Section 44-53-370(e)(2)(a)3, 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.


Kelley H. Burbage SOLICITOR

WITNESSES

DOCKET NO. 2008GS38-0861

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

Defendant

The State of South Carolina

County of

ORANGEBURG

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

TROOPER F.J. PANARELLO

COURT OF GENERAL SESSIONS

August 11, 2008 TERM

Arresting Agency:
SC Highway Patrol

Defendant

ARREST WARRANT NUMBER

Witness:

C.C.C. PLS. AND G.S.

THE STATE

Arrested: Apr 13, 2008

vs.

Cedric Dion Kearse

ACTION OF GRAND JURY
FOUR BILL

Foreperson of Grand Jury
Date: August 13, 2008

VERDICT

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE CRACK COCAINE - 3rd
OFFENSE OR SUBSEQUENT OFFENSE

Foreperson of Petit Jury
Date:

SC Code: 44-53-375(B)(3)
CDR Code: 3039
Class: FEL-A

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

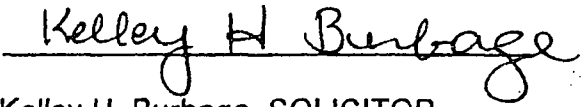
INDICTMENT
2008GS38-0861

At a Court of General Sessions, convened on August 11, 2008 the Grand Jurors of Orangeburg County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE – 3rd
OFFENSE OR SUBSEQUENT OFFENSE

That Cedric Dion Kearse, did in Orangeburg County, on or about April 12, 2008, knowingly and intentionally manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with intent to distribute, dispense, or deliver cocaine base, all in violation of 44-53-370, and as a result violated Section 44-53-375(B)(3), 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.


Kelley H. Burbage SOLICITOR

DOCKET NO. 2008GS38-0858

The State of South Carolina

County of

ORANGEBURG

TROOPER F.J. PANARELLO

Arresting Agency:
SC Highway Patrol

ARREST WARRANT NUMBER

D234864

Arrested: Apr 12, 2008

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Foreperson of Grand Jury _____
Date: August 13, 2008 _____

VERDICT

Foreperson of Petit Jury
Date:

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

**THE STATE
vs.**

COURT OF GENERAL SESSIONS

August 11, 2008 TERM

Cedric Dion Kearse

Indictment for

**FAILURE TO STOP FOR A BLUE LIGHT
OR SIREN**

SC Code: 56-5-750 (B)(1)
CDR Code: 0065
Class: MIS-A

10-11-13 A.H. 01

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

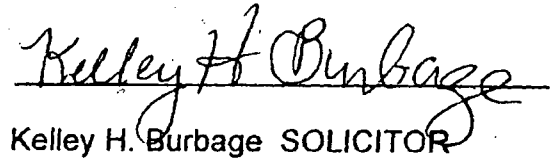
INDICTMENT
2008GS38-0858

At a Court of General Sessions, convened on August 11, 2008 the Grand Jurors of Orangeburg County present upon their oath:

FAILURE TO STOP FOR A BLUE LIGHT OR SIREN

That Cedric Dion Kearse, did in Orangeburg County, on or about April 12, 2008, while driving a motor vehicle on a road, street or highway of the state, unlawfully fail to stop for a law enforcement vehicle after being signaled to stop by use of a blue light and/or siren and as a result violated Section 56-5-750, 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.


Kelley H. Burbage SOLICITOR

COUNTY OF ORANGEBURG
STATEINDICTMENT/CASE# 2008 -GS- 38 - 0859VS.
Cedric Dion KearseA/W#: H-831608

AKA: _____

Date of Offense: April 12, 2008Race: B Sex: M Age: _____S.C. Code §: 44-53-370(c)(2)(a)(3)

DOB: _____ SS#: _____

CDR Code #: 147

Address: _____

City, State, Zip: _____

DL# _____ SID# _____

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Trafficking Cocaine 10-28 grams (2nd offense)in violation of § 44-53-370(c)(2)(a)(3) of the S.C. Code of Laws, bearing CDR Code # 387☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Kelley H. Bunage Cedric Kearse [Signature] 73286
Solicitor 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 13 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*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	\$ _____
§35.13 (Public Def/Prob)	\$500	\$ _____
§73.3, 1B TP (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§33.7, 1B TP (Drug Court Surcharge)	\$100	\$ <u>100.00</u>
§50-21-114(BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
3% to County (if paid in installments)	\$	\$ <u>6.90</u>
§90.11 TP (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
TOTAL		\$ <u>236.90</u>

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ paid to Public Defender Fund

Other: ATU☒ Appointed PD or appointed other counsel, §35.13 TP☐ Requires \$500 be paid to Clerk during probation.Marion S. Edgemon A.
Clerk of Court Deputy ClerkPRESIDING JUDGE Kristi [Signature]Court Reporter: Rema GantJudge Code: 21/5/1
Sentence Date: 8/20/08

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF ORANGEBURG
STATEINDICTMENT/CASE#: 2008-GS-38-0858VS.
Cedric Dion KearseA/W#: D-234864AKA: _____
Race: B Sex: m Age: _____Date of Offense: April 12, 2008

DOB: _____ SS#: _____

S.C. Code §: 56-5-750 (B) (1)

Address: _____

CDR Code #: 0065

City, State, Zip: _____

DL# _____ SID# _____

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Failure to Stop for a Blue Lightin violation of § 56-5-750 (B) (1) of the S.C. Code of Laws, bearing CDR Code # 0065☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Kelley H. Burbage Cedric Kearse J.D.A. 73286
Solicitor 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 3 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 paymentof \$ _____; 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: 2008-GS-38-0859 2008-GS-38-086
☒ 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	_____
\$14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ _____
\$14-1-211(A)(2) (DUI Surcharge)	\$100	\$ _____
\$56-5-2995 (DUI Assessment)	\$12	\$ _____
\$35.13 (Public Def/Prob)	\$500	\$ _____
\$73.3, 1B TP (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
\$33.7, 1B TP (Drug Court Surcharge)	\$100	\$ _____
\$50-21-114(BUI Breath Test Fee)	\$50	\$ _____
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
3% to County (if paid in installments)	\$	\$ <u>90</u>
\$90.11 TP (SCCJA Surcharge)	\$5	\$ <u>5.20</u>
TOTAL		\$ <u>30.90</u>

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, \$35.13 TP☐ Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE Krist HainingJudge Code: 21501Sentence Date: 8/26/08Marion L. Edgemon Jr.
Clerk of Court/Deputy ClerkCourt Reporter: Rema Gant

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF ORANGEBURG
STATEINDICTMENT/CASE#: 2008 -GS- 38 - 0861vs.
Cedric Dion KearseAW#: H-831607

AKA: _____

Date of Offense: April 12, 2008Race: B Sex: M Age: _____S.C. Code §: 44-53-375(B)(3)

DOB: _____ SS#: _____

CDR Code #: 3039

Address: _____

City, State, Zip: _____

DL# _____ SID# _____

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Possession with Intent To Distribute Crack Cocaine - 2nd
in violation of § 44-53-375(B)(2) of the S.C. Code of Laws, bearing CDR Code # 3015☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Kelley H. Bunbage
SolicitorCedric Kearse
Defendant[Signature]
Attorney for Defendant72284
SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 13 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: 2008-GS-38-0859
☒ 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine: \$ _____

Random Drug/Alcohol Testing ☐

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

Fine may be pd. in equal, consecutive weekly/monthly

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

pmts. of \$ _____ Beginning _____

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

\$ _____ paid to Public Defender Fund

\$56-5-2995 (DUI Assessment) \$12 \$ _____

Other: _____

\$35.13 (Public Def/Prob) \$500 \$ _____

\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ 100.00

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

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

3% to County (if paid in installments) \$ 6.90\$90.11 TP (SCCJA Surcharge) \$5 \$ 5.00TOTAL \$ 236.90☐ Appointed PD or appointed other counsel, \$35.13 TP☐ Requires \$500 be paid to Clerk during probation.Minor S. Edgemont
Clerk of Court/ Deputy Clerk

PRESIDING JUDGE

Court Reporter: Aema Grant

Judge Code: _____

Sentence Date: 8/26/08

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CEDRIC KEARSE,

APPELLANT

FINAL BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying appellant's motion to have his counsel relieved which made appellant's guilty plea involuntary and not knowingly made?

STATEMENT OF THE CASE

On August 13, 2008, the Orangeburg County Grand Jury indicted Cedric Dion Kears on the charges of trafficking in cocaine between 10 and 28 grams 3rd offense, possession with intent to distribute crack cocaine 3rd offense (PWID), and failure to stop for a blue light (FTSBL). On August 25, 2008, Kears appeared before the Honorable Kristi Harrington to be heard on his motion to have his counsel relieved. Judge Harrington denied his motion.

On August 26, 2008, Kears appeared before Judge Harrington and entered guilty pleas to the lesser charges of trafficking cocaine between 10 and 28 grams 2nd offense, PWID crack cocaine 2nd offense, and FTSBL. Judge Harrington sentenced Kears to thirteen years each on the trafficking charge and the PWID charge. She sentenced him to three years on the FTSBL. All sentences were to run concurrently. Kears's attorney filed a notice of appeal. This appeal follows.

ARGUMENT

The trial court erred in denying appellant's motion to have his counsel relieved which made appellant's guilty plea involuntary and not knowingly made.

Cedric Kears was stopped on April 12, 2008 by a highway patrolman for speeding. When Trooper Panarelli approached the vehicle, he asked Kears about the odor of alcohol. Kears admitted that he drank alcohol that night. When the trooper asked Kears to step out of the vehicle, Kears drove away. ROA. p. 12, ll. 9 – 25; ROA. 13, ll. 1 – 15.

The trooper pursued the vehicle which reached a speed of 90-100 miles per hour. The vehicle flipped over and Kears then ran on foot. The trooper and a sheriff's deputy who responded to the call caught Kears and he was taken to the jail. ROA P. 13, ll. 15 – 25; ROA. 14, ll. 1 – 4.

An inventory of the car revealed drugs on the floorboard on the driver's side. Analysis showed it to be 26.69 grams of cocaine and 4.57 grams of crack ROA 28, ll. 5 – 15.

On August 25, 2008, Kears appeared before Judge Harrington where the solicitor discussed the plea offer which he said was good until 5:00 that same day. He said the case was set for trial the following day. ROA 2, ll. 1 – 25; ROA. 3, ll. 1 – 4.

Kears told the court that he did not understand any of the plea offer regarding second and third offenses. ROA. p. 4, ll. 1 – 16. Kears told the court then that his attorney had walked out the last time he saw her on the previous Thursday. He said he had seen her a couple of times. ROA. 4, ll. 17 – 25; ROA. 5, ll. 1 – 7. His attorney explained that on the previous Thursday that she and Kears could not agree so she slipped out and asked another attorney in her office to discuss the issue with Kears. ROA. 6, ll. 18 – 24.

Kearse continued to tell the court that his mother and sister were present that day trying to get him to take the plea offer. He said:

That's not their job to try to get somebody to pressure me to plead guilty to anything. I never gave her my number to my mom. I never even told her I had a mom, for all she knows.

ROA. 8, ll. 4 – 14.

Kearse told the court that he was not taking the plea offer. ROA. 9, ll. 1 – 8.

Kearse's attorney told the court that Kearse felt he was being pressured to taking the deal.

ROA. 10, ll. 11 – 14.

Later that day, Kearse appeared before Judge Harrington again and made a motion to the court to have his attorney relieved. ROA 11, ll. 19 – 25; ROA. 12, ll. 1 – 21. He told the court that he did not feel he could be properly defended because he had not had time to talk to his attorney about the case and he was "being pressured to go to trial tomorrow."

ROA. 12, ll. 4 – 10.

Kearse said that he had talked to his attorney twice before this date and now he had to go to trial the next day and there was not enough time to prepare. ROA. 12, ll. 7 – 25; ROA. 13, ll. 1 – 6. Judge Harrington said he had indicated that he had at least three opportunities to meet with his attorney. Judge Harrington then asked if he felt he could represent himself. He said no because he did not know the law. She then asked if he could hire an attorney and he said no. Judge Harrington told Kearse that his attorney was prepared to go forward with his trial the next day. ROA. 13, ll. 21 – 25; ROA. 14, ll. 1 – 19. Kearse replied:

I don't feel I can be defended properly by her.

ROA. 14, ll. 8-9.

The judge denied his motion and said the jury would be present at 10:00 the next morning. ROA. p. 15, ll. 8 – 25; ROA. 16, ll. 1 – 11.

On August 26, 2008 at the guilty plea, when Judge Harrington asked Kearsa if he had any complaints that day about his attorney. He replied that he just wanted to plead as he was “at a different point right now.” The judge asked if he was prepared to go forward with his attorney on that day. He told the court: “No, I’m not, Ma’am.” ROA. 26, ll. 2 – 15.

Kearsa told the court that he was not satisfied with his attorney’s services as they did not have enough time to talk. ROA. 26, ll. 15 – 20. He said:

Well, I feel I haven’t talked to her that much. I mean, I only talked to her one time and the second time I talked to her she didn’t have my file. The third time I talked to her she walked out and the next time I see her is Monday then Tuesday is the trial.

ROA. 26, ll. 21 – 25; ROA. 27, ll. 1 – 3.

Kearsa told the court that his attorney did provide him with discovery and he did see the video of the incident the previous week. ROA. 33, ll. 12 – 20.

The judge accepted his guilty plea. ROA. 38, ll. 2 – 6.

To find a guilty plea is voluntarily and knowingly and intelligently entered into, the record must establish that the accused had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, (1969). A plea of guilty is more than a confession which admits that accused did various acts; it is itself a conviction. Boykin v. Alabama, *id.* Admissibility of confession must be based on reliable determination on voluntariness issue which satisfies constitutional rights of defendant. Boykin v. Alabama, *supra*.

The record must show with certainty that the plea is “an intentional relinquishment or abandonment of a known right or privilege”. State v. Patterson, 278 S.C. 319, 295 S.E.2d 264 (1982). The Sixth Amendment to the United States Constitution guarantees a defendant a right to counsel for his defense at trial. United States Constitution, Sixth Amendment.

The judge erred in denying Kearsé’s motion to have his counsel relieved. The dialogue showed that he did not want to plead guilty and that he did not trust his attorney. There was a reasonable probability that if he trusted her, he would have gone to trial. The applicant must show that there is a reasonable probability that but for counsel’s errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366 (1985). His attorney admitted to the court that she and Kearsé could not agree.

CONCLUSION

Based on the above, the conviction and sentences should be reversed and the case remanded for a new hearing.

Respectfully submitted,

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of June, 2009.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

LANELLE C. DURANT
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

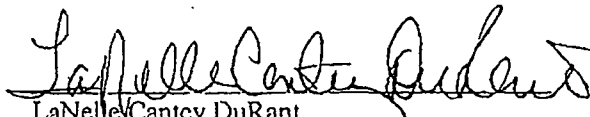
V.

CEDRIC KEARSE,

APPELLANT

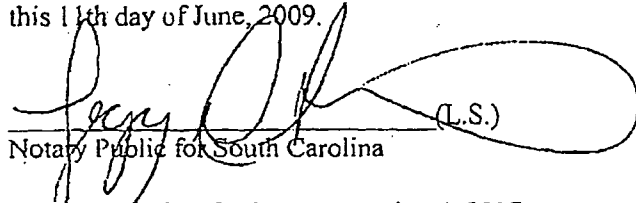
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon William M. Blich, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 11th day of June, 2009.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 11th day of June, 2009.


(L.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Cedric Kears,

Appellant.

Appeal From Orangeburg County
Kristi Lea Harrington, Circuit Court Judge

Unpublished Opinion No. 2010-UP-329
Submitted June 1, 2010 – Filed June 28, 2010

AFFIRMED

Appellate Defender Lanelle Cantey Durant, of
Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
and Assistant Attorney General William M. Blich,

Jr., all of Columbia; Solicitor David M. Pascoe, Jr., of Summerville, for Respondent.

PER CURIAM: Cedric Kearsse appeals his conviction for trafficking in cocaine—second offense, possession with the intent to distribute crack cocaine—second offense, and failure to stop for a blue light. He argues the plea court erred in: (1) denying his motion to relieve counsel; and (2) accepting his guilty plea because it was not knowingly and voluntarily entered into. We affirm.¹

1. As to whether the plea court erred in denying Kearsse's motion to relieve counsel: The plea court conducted a sufficient inquiry into the basis of Kearsse's complaints against plea counsel. Although Kearsse believed he did not have adequate time to speak with plea counsel and felt pressed to proceed to trial, none of his objections prevented him from communicating with his attorney or precluded plea counsel from adequately defending him. The plea court also inquired regarding plea counsel's preparations for trial, and determined plea counsel was prepared to go forward with the case. Accordingly, the plea court did not abuse its discretion in denying Kearsse's motion to relieve counsel. See State v. Childers, 373 S.C. 367, 372, 645 S.E.2d 233, 235 (2007) ("A motion to relieve counsel is addressed to the discretion of the trial judge and will not be disturbed absent an abuse of discretion."); State v. Sims, 304 S.C. 409, 414, 405 S.E.2d 377, 380 (1991) (holding an appellate court may consider several factors in determining whether the trial court abused its discretion in a motion for substitution of counsel: timeliness of the motion, adequacy of the trial judge's inquiry into the defendant's complaint, and whether the attorney-client conflict was so great that it resulted in a total lack of communication, thereby preventing an adequate defense).

2. As to whether the plea court erred in accepting his guilty plea because it was not knowingly and voluntarily entered into: This issue is not preserved for our review because Kearsse failed to object during the guilty plea. See State v. McKinney, 278 S.C. 107, 108, 292 S.E.2d 598, 599 (1982)

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

(holding the voluntariness of a guilty plea must be raised by objection to the trial court in order to be preserved for appeal).

AFFIRMED.

FEW, C.J., THOMAS, and PIEPER, JJ., concur.

STATE OF SOUTH CAROLINA
Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

Case Nos.: 2011-CP-38-0058

Cedric Kears,.....Petitioner

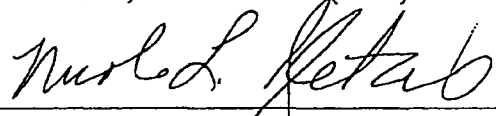
v.

State of South Carolina,..... Respondent

**STATEMENT OF BASIS FOR APPEAL FROM
DISMISSAL OF POST CONVICTION RELIEF**

The Defendant was dissatisfied with the Court's dismissal of the relief that he requested in his post-conviction relief and insisted in appealing. I am of the opinion that if the client insists on appealing, I am constrained to file an appeal. *Weathers v. State*, 319 S.C. 59, 459 SE.2d 838 (1995).

October 18, 2012



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Attorney for Appellant

Other Counsel of Record:

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Attorney for Respondent

STATE OF SOUTH CAROLINA
Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

Case Nos.: 2011-CP-38-0058

Cedric Kears,.....Petitioner

v.

State of South Carolina,..... Respondent

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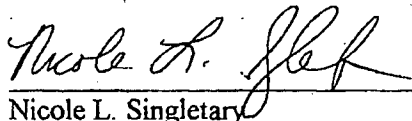
OCT 18 2012

S.C. Supreme Court

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Notice of Intent to Appeal in the above-referenced case has been served upon opposing counsel by delivering same this date to her office at the Office of the Attorney General's Office, Post Office Box 11549, Columbia, South Carolina 29201.

October 18, 2012



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STATE OF SOUTH CAROLINA
Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

Case Nos.: 2011-CP-38-0058

Cedric Kears,.....Petitioner

v.

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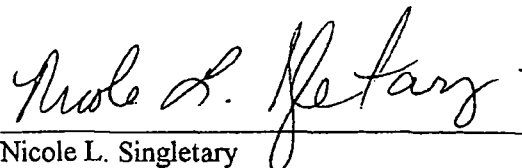
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S.C. Supreme Court

NOTICE OF APPEAL

Cedric Kears appeals his order of dismissal of his Application of Post-Conviction Relief. The order of dismissal was imposed by the Honorable DeAndrea G. Benjamin on June 4, 2012. Counsel for the Appellant received written notice of the entry of this order on October 18, 2012.

October 18, 2012



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