

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

William Jeffrey Young, Circuit Court Judge

EDMOND JEROME MAYES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001023

APPENDIX

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STATE OF SOUTH CAROLINA)	COURT OF GENERAL SESSIONS
)	
COUNTY OF GREENVILLE)	Case No(s) : 2009GS2305453,
)	2010GS2302749
State of South Carolina,)	
)	
Plaintiff,)	
)	
-VS-)	TRANSCRIPT OF RECORD
)	
Edmond Jerome Mayes,)	OPEN
)	
Defendant.)	
)	

February 8, 2011
Greenville, South Carolina

B E F O R E:

HONORABLE G. EDWARD WELMAKER, Judge.

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

JULIE J. ANDERS, Esquire
Assistant Solicitor

SCOTT ROBINSON, Esquire
Attorney for the Defendant

Recorded by: Mary DiGirolamo
Circuit Court Reporter

Transcribed by: Teresa B. Johnson
Circuit Court Reporter

I N D E X

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Guilty Plea	4			
Certificate of Reporter	15			

EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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PLAINTIFF EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

1
2 **THE CLERK:** This is case number 2009-GS-
3 23-5453, Edmond J. Mayes, indictment for
4 Resisting Arrest with Assault. Pleading to the
5 same. It is a true bill. And 2010-GS-23-2749
6 indictment for Trafficking Cocaine. Pleading
7 to Trafficking in Cocaine Second offense. It
8 also is a true bill.

9 Would you raise your right hand to be sworn
10 in? Do you swear or affirm to tell the truth,
11 the whole truth and nothing but the truth so
12 help you God?

13 **MR. MAYES:** Yes, ma'am.

14 **THE CLERK:** Thank you.

15 **MS. ANDERS:** Your Honor, just so you know,
16 this is a trial -- I'm sorry -- a plea off the
17 trial docket. The trial coordinator asked us
18 to handle this plea over here today.

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

20 Mr. Robinson, you represent Mr. Mayes in
21 this matter?

22 **MR. ROBINSON:** I do so, Your Honor.

23 **THE COURT:** Have you had an opportunity to
24 discuss with your client the charges pending
25 against him, the possible punishments he faces

1 and his constitutional rights?

2 MR. ROBINSON: I have, Your Honor.

3 THE COURT: Do you believe he understands
4 those discussions you've had with him?

5 MR. ROBINSON: I do, Your Honor.

6 THE COURT: You've had an opportunity to
7 review with your client all the State's
8 evidence?

9 MR. ROBINSON: We have, Your Honor. Yes.

10 THE COURT: Based upon your investigation
11 of all the facts and circumstances surrounding
12 this matter, do you believe the State could
13 produce sufficient evidence to convince a jury
14 of his guilt beyond a reasonable doubt if a
15 trial were held?

16 MR. ROBINSON: Yes, sir.

17 THE COURT: Mr. Mayes, how old are you,
18 sir?

19 MR. MAYES: 29.

20 THE COURT: Are you married?

21 MR. MAYES: No, sir.

22 THE COURT: You have children?

23 MR. MAYES: Yes, sir.

24 THE COURT: How many children do you have?

25 MR. MAYES: Three.

1 **THE COURT:** How old are your children?
2 **MR. MAYES:** 6, 7, 8.
3 **THE COURT:** How far did you go in school?
4 **MR. MAYES:** 9th grade.
5 **THE COURT:** Where did you attend?
6 **MR. MAYES:** Carolina High School.
7 **THE COURT:** What kind of work have you
8 done outside of once you left high school?
9 **MR. MAYES:** What kind of work?
10 **THE COURT:** What kind of work.
11 **MR. MAYES:** I helped a friend with
12 landscaping.
13 **THE COURT:** You ever been treated for
14 alcohol or drug abuse?
15 **MR. MAYES:** No, sir.
16 **THE COURT:** You ever been treated for any
17 sort of mental illness?
18 **MR. MAYES:** No, sir.
19 **THE COURT:** You have any physical or
20 mental or emotional problems of any kind that
21 would affect your ability to understand what we
22 are doing here today?
23 **MR. MAYES:** No, sir.
24 **THE COURT:** I have indictments before me
25 that says that here in Greenville County on or

1 about the 23rd of February, 2010, that you were
2 or had manufactured or brought into the state
3 or conspired to sell or manufacture a quantity
4 of cocaine, that being more than 10 grams
5 constituting the offense of Trafficking in
6 Cocaine. Are you pleading guilty to that
7 today?

8 **MR. MAYES:** Yes, sir.

9 **THE COURT:** On or about May the 16th,
10 2008, I have an indictment that says that you
11 resisted the arrest, lawful arrest of Officer
12 P.W. Swift of the Greenville County Sheriff's
13 Office and you did so by committing an assault.
14 You pleading guilty to that resisting arrest
15 with assault?

16 **MR. MAYES:** Yes, sir.

17 **THE COURT:** Solicitor, be glad to hear
18 about the facts.

19 **MS. ANDERS:** May it please the Court. As
20 to the Resisting Arrest with Assault, on May
21 16th, 2008 at about 10:30 at night, Greenville
22 County Sheriff's Office deputies went to serve
23 a probation violation warrant on this defendant
24 where he was working as the manager of
25 Castaway's Bar on Wade Hampton Boulevard in

1 Greenville County. After they told him that
2 they had the warrant for his arrest, the
3 defendant gave officers another name and he
4 ran.

5 He ran across Wade Hampton Boulevard into
6 the woods. Of course, officers chased him.
7 The defendant stopped at the edge of a creek.
8 He approached officers with his fists balled.
9 Deputy Swift tased the defendant because he
10 would not comply with the arrest. The taser
11 was unfortunately ineffective and the defendant
12 was on the ground kicking the deputy. Several
13 other officers were required to subdue the
14 defendant.

15 Deputy Swift was seen by EMS because his
16 right pinky finger was bleeding. The
17 fingernail was split in half and his finger was
18 swollen and purple. X-rays did reveal that his
19 finger was broken in three places.

20 As to the drug charge, Your Honor, on
21 February 23rd, 2010, the defendant was arrested
22 for another completely separate active
23 probation violation warrant. During a search
24 incident to arrest, officers found a plastic
25 bag containing 10.41 grams of cocaine in the

1 defendant's shoe. During an inventory search
 2 of his car, other drugs were found. However,
 3 those charges are being dismissed as part of
 4 this plea agreement today.

5 After the defendant was properly
 6 mirandized, he did admit to mixing the cocaine
 7 with blending powder that was found in the car
 8 and he did claim ownership of the drugs in his
 9 shoe and the car. He did tell the officer that
 10 he started selling drugs a couple of weeks ago
 11 to make some extra money. This did occur at
 12 the Wal-Mart in Travelers Rest in Greenville
 13 County.

14 **THE COURT:** You heard the Solicitor
 15 reciting these facts, Mr. Mayes. Are those the
 16 facts at which you are here to plea guilty
 17 today?

18 **MR. MAYES:** Yes, sir.

19 **THE COURT:** You understand that by
 20 entering a plea of guilty, you are giving up
 21 your right to have a trial by jury. The State
 22 would have to prove your guilt beyond a
 23 reasonable doubt. You would be presumed
 24 innocent and you could remain silent throughout
 25 the entire proceeding. You could confront

1 those witnesses against you and challenge the
2 evidence the State tries to offer. You'd have
3 a right to call witnesses in your own behalf if
4 you chose to. These and other rights you give
5 up by pleading guilty. You understand that?

6 MR. MAYES: Yes, sir.

7 THE COURT: You want to give those rights
8 up?

9 MR. MAYES: Yes.

10 THE COURT: You satisfied with Mr.
11 Robinson's representation?

12 MR. MAYES: Yes, sir.

13 THE COURT: Has he done everything to
14 defend you that you've asked him to do?

15 MR. MAYES: Yes, sir.

16 THE COURT: Have you met with him as often
17 and as long as you feel necessary?

18 MR. MAYES: Yes.

19 THE COURT: You understand those
20 discussions you've had with him?

21 MR. MAYES: Yes.

22 THE COURT: You completely satisfied with
23 his services then?

24 MR. MAYES: Yes, sir.

25 THE COURT: I understand this is a

1 negotiated plea of a 10-year sentence. Is that
2 what you understood through your attorney that
3 the State was ---

4 MR. MAYES: Yes, sir.

5 THE COURT: --- going to be recommending?
6 Except for that recommendation and the dropping
7 of the other drug charges, have there been
8 anyone to promise you anything to get you to
9 plea guilty?

10 MR. MAYES: No, sir.

11 THE COURT: Anybody threaten you in any
12 way?

13 MR. MAYES: No, sir.

14 THE COURT: You pleading guilty, Mr.
15 Mayes, of your own free will?

16 MR. MAYES: Yes, sir.

17 THE COURT: You are doing so because you
18 are, in fact, guilty?

19 MR. MAYES: Yes, sir.

20 THE COURT: You understand the questions
21 that I've asked you?

22 MR. MAYES: Yes, sir.

23 THE COURT: You been truthful in the
24 answers that you've given me?

25 MR. MAYES: Yes, sir.

1 **THE COURT:** I find there is a substantial
2 factual basis for the plea, that it has been
3 freely, voluntarily, knowingly and
4 intelligently made by Mr. Mayes with the advice
5 of competent legal counsel with whom he has
6 expressed his satisfaction. I will accept your
7 plea, sir.

8 **MR. MAYES:** Thank you, Your Honor.

9 **THE COURT:** Mr. Robinson, be glad to hear
10 from you.

11 **MR. ROBINSON:** May it please the Court.
12 Your Honor, the Solicitor's office and myself
13 and my client have been engaged in negotiations
14 in this case. We believe that the, uh, -- my
15 client and I believe that the 10-year
16 negotiated sentence is very fair. It's at the
17 high end of the resisting arrest, the 10 years.
18 It's in the middle of the trafficking charge.
19 Your Honor, we ask the Court to, uh, accept and
20 consider the, uh, negotiated sentence
21 reasonable in this matter.

22 Edmond has a lot of, uh, things going for
23 him. He wants to get his degree, get his GED.
24 And in my conversations with him down at the
25 Department of Corrections, he's indicated that

1 when he gets out, he wants to do something
2 good, be a model for his kids and for his
3 mother. We think this is a reasonable
4 sentence, reasonable negotiated sentence. We'd
5 ask the Court to accept it.

6 MR. ROBINSON: Thank you, Mr. Robinson.
7 Mr. Mayes, anything you would like to tell
8 me?

9 MR. MAYES: I do want to apologize to the
10 court, sir.

11 THE COURT: Any family here?

12 MR. MAYES: Yes.

13 MR. ROBINSON: His mother and, uh,
14 girlfriend, I believe.

15 THE COURT: What's the prior record,
16 Solicitor?

17 MS. ANDERS: Your Honor, from 1999,
18 Receiving Stolen Goods under \$1000 and Driving
19 Under Suspension; from 2001, Simple Possession
20 Marijuana and another Receiving Stolen Goods
21 under 1000; 2002, CDV first, Driving under
22 Suspension, Possession of Controlled Substance
23 first; 2004, another Criminal Domestic Violence
24 charge; 2006, Loitering to Engage and Habitual
25 Traffic Offender, which is where the first

1 Probation Violation came from; and from 2007,
2 Possession of Crack and Possession of
3 Controlled Substance, which is where the second
4 Probation Violation came from.

5 THE COURT: What was the first violation?
6 What was the offense on the first one?

7 MS. ANDERS: Habitual Traffic Offender,
8 Your Honor.

9 THE COURT: You don't do probation very
10 well, is that right?

11 MR. MAYES: Yes, sir.

12 THE COURT: Case 2009-GS-23-5453, the
13 sentence of the Court is the defendant be
14 committed to the State Department of
15 Corrections for a period of 10 years.
16 Recommend the ATU program while incarcerated.

17 Case 2010-2749, the sentence is 10 years.
18 It's to be concurrent with the other case and
19 to be given credit for time served.

20 MR. ROBINSON: Thank you, Your Honor.

21

22 (END OF PROCEEDINGS)

23

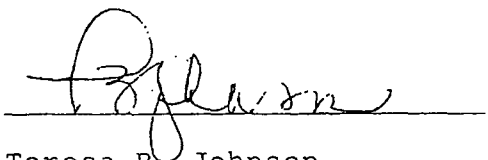
24

CERTIFICATE

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville, South Carolina, on this 24th day of October, 2011.

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



Teresa B. Johnson
 Official Court Reporter

STATE OF SOUTH CAROLINA)
County of Greenville)

In the Court of Common Pleas

Edmond Terone Mayes 291110
Full name and prison number, if any, of applicant)

APPLICATION FOR
POST-CONVICTION RELIEF

FILED
JUN 18 11 21 AM
GREENVILLE CO. SC
COURT

v.
State of South Carolina
Name of Respondent)

2011-CP-23-

2638

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 Inst. GA-01
P.O. Box 2039 Ridgeland, S.C. 29936
2. Name and location of Court which imposed sentence Greenville County Courthouse
Greenville, S.C.
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2009-65-2305453 Resisting Arrest with Assault on Police Officer
 - (b) 2010-65-2302749 TRAFFICKING IN COCAINE 2nd OFFENSE
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 2-8-11, 10 YRS. Resisting Arrest with Assault on Police Officer
 - (b) 2-8-11 10 YRS. CONCURRENT TRAFFICKING IN COCAINE
 - (c) _____

SEARCHED
SERIALIZED
INDEXED
FILED

- 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? NO

7. If you answered "yes" to (6), list
 (a) the name of each Court to which you appealed:

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

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

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

(c) the date of each such result:

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

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

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

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) BECAUSE I WAS TOLD THAT I COULDN'T APPEAL BECAUSE OF GUILTY PLEA
- (b) _____
- (c) _____

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

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) INVOLUNTARY GUILTY PLEA
- (c) _____

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

(a) Strickland v Washington 466 U.S. 668 104 S.Ct. 2052 (1984)

SEE ATTACHED STATEMENT

(b) HILL v LOCKHART 474 U.S. 52, 106 S.Ct. 366 (1991)

SEE ATTACHED STATEMENT

(c) Due Process of Law

LEAVE OPEN TO AMEND

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

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

NO

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

NO

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) NO

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

NO

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.

ii.

iii.

iv.

N/A

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

i.

ii.

iii.

iv.

N/A

(c) the disposition thereof:

i.

ii.

iii.

iv.

N/A

(d) the date of each such disposition:

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

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

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

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? NO

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

(a) which grounds have been presented:

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

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

- i. _____
- ii. N/A
- 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) _____
- (b) N/A
- (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?
N/A

(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? N/A

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. B. Richard Warder 15 PRIMROSE ST GREENVILLE SC 29616

ii. _____

iii. SCOTT D. ROBINSON, 101 LAVINIA AVE GREENVILLE, S.C. 29601

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

i. _____

ii. _____

iii. AT SENTENCING AND PLEA

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

SENTENCE REDUCTION AND NON-VIOLET CHARGES

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

NO

STATE OF SOUTH CAROLINA)
)
COUNTY OF Jasper)

VERIFICATION

I, Edmond Terrence MAYES 28171A, 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.

Edmond Terrence Mayes

Sworn to and subscribed before me

This 11th day of Apr, 2011

Patrick K. Shaw L.S.

Notary Public for South Carolina

My Commission Expires 2/5/2017

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

I, Edmond Terrence MAYES 28171A, 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 or 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.

Edmond Terrence Mayes
Applicant

Sworn to and subscribed before me

This 11th day of Apr, 2011.

Patrick K. Shaw L.S.

Notary Public for South Carolina

My Commission Expires: 2/5/2017

Defendant alleges, he was arrested on 5-16-08 for a probation warrant. Defendant ran into the woods and stopped to surrender, hand in a Officers from Greenville County So. Office tagged Defendant 3 or more times. Defendant was ^{incoherently} immobile after the Defendant alleges he didn't kick 2 officers. The Charges should have been resisting at the most. After the tag Defendant was in shock. Officers let Defendant afterwards the tag. Therefore this charge should be reduced to a non-violent offense. Attorney Scott Robinson was ineffective due to him telling me this charge I plead to was non-violent and a paroleable offense. Attorney Robinson was also ineffective for not telling me I could appeal the decision of the Sentencing Judge. I alleges he would have went to trial he knew he was getting the max. sen. Defendant also alleges the drug charge should have been a second offense if of a third offense. Defendant should have been able to plead to a first offense if

AMENDMENTS TO APPLICATION FOR
POST-CONVICTION RELIEF

RE: MAYES V. SOUTH CAROLINA, 11-CP-23-02638

IN REGARDS TO QUESTION TO QUESTION NINE (9) OF
PAGE TWO (2) OF THE APPLICATION FOR POST-CONVICTION;

STATE CONCISELY THE GROUNDS ON WHICH YOU BASE
YOUR ALLEGATION (S) THAT YOU ARE BEING HELD
IN CUSTODY UNLAWFULLY.

- A. INEFFECTIVE ASSISTANCE OF COUNSEL:
- B. DID NOT KNOWINGLY OR INTELLIGENTLY PLEAD GUILTY:
- C. COERCED INTO PLEA OF GUILTY:
- D. COUNSEL FAILED TO ADVISE HIS CLIENT AS TO
HIS RIGHT TO APPEAL:

STATE CONCISELY AND IN THE SAME ORDER THE
FACT WHICH SUPPORT EACH OF THE GROUNDS SET
OUT IN (9):

A.

PLAINTIFF WAS DENIED HIS SIX AND FOURTEENTH
AMENDMENT RIGHT TO AN EFFECTIVE ASSISTANCE OF
(1 of 11)

COUNSEL,
 INSOFAR AS HIS TRIAL COUNSEL FAILED TO PROVIDE
 REPRESENTATION AND THESE OMISSIONS WERE
 PREJUDICIAL TO HIS DEFENSE.

THE APPLICANT COUNSEL FAILURE (S) TO PROPERLY
 INVESTIGATE THE FACTS SURROUNDING THE CIRCUMSTANCES
 THAT LEAD TO HIS ARREST. IT HAS BEEN CLEARLY
 ESTABLISHED THAT THE AMOUNT OF PRE-TRIAL RESEARCH,
 OR THE LACK THEREOF, CAN MOST DEFINITELY
 AFFECT THE OUTCOME OF A CRIMINAL DEFENDANT'S
 TRIAL. DAVIS V. ALABAMA, 100 S.CT. 1827 (1980)

EFFECTIVE ASSISTANCE OF COUNSEL, I.E., WILL SATISFY
 THE REQUIREMENTS OF THE SIXTH AMENDMENT, IS COUNSEL
 "REASONABLE LIKELY TO RENDER AND RENDERING REASONABLY
 EFFECTIVE ASSISTANCE GIVEN THE TOTALITY OF THE CIRCUMSTANCES
STRICKLAND V. WASHINGTON, 693 F.2d 2113, 1250. (CAS, 1980)
 (EN BANC) CERT. GRANTED, 466 U.S. 668, 104 S.CT 2052 (1984);
LOCKHART V. FRETWELL 113 S.CT. 838 (1993); MAYS V. BALKCOM,
 631 F.2d 48, 52, N. 1 (CAS, 1980).

IN CONSIDERING THE TOTALITY OF THE CIRCUMSTANCES,
 A COURT MUST EXAMINE THE QUALITY OF COUNSEL'S
 ASSISTANCE FROM THE TIME OF INITIAL RETENTION,
 THROUGH THE TIME OF APPEAL. GOODWIN V. BALKCOM,

(2 of 11)

694 F.2d 794, 805 (CA11, 1981); STATE V. WILLIAMS,
571 S.E.2d 703 (CR. APP. 2002).

WOULD NOT JUSTICE BEST BE SERVED ONCE A CRIMINAL
DEFENDANT RAISED THE ISSUE OF INEFFECTIVE
ASSISTANCE OF COUNSEL, AND THE COURT DETERMINES
THERE IS A QUESTION OF WHETHER THE DEFENDANT
RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL, SHOULD
NOT THE COURT ALLOW THE APPLICANT BE GRANTED
A HEARING REGARDING THE ISSUE?

B.

THE APPLICANT CONTENDS THAT HIS PLEA CANNOT BE
CONSIDERED VOLUNTARY, DUE TO HIM BEING DENIED
EFFECTIVE ASSISTANCE OF COUNSEL, AND THAT THE
PLEA WAS BROUGHT ABOUT BY IGNORANCE, AND THE
"LACK" OF COMPETENCE ON THE PART OF HIS ATTORNEY,
BY ISSUING "ERRONEOUS" ADVICE AS TO THE PLEA
ENTERED BY THE APPLICANT. HINSON V. STATE, 377
S.E.2d 338 (1989).

APPLICANT MAKES THE FOLLOWING ALLEGATIONS CON-
CERNING HIS PLEA:

- (1) COUNSEL DID NOT ACTUALLY OR SUBSTANTIALLY
ASSIST HIM IN DECIDING WHETHER TO PLEAD GUILTY
(30P11)

OR NOT,

- (2) COUNSEL'S FAILURE TO COMMUNICATE TO APPLICANT WRITTEN PLEA OFFER WHEREBY STATE WOULD RECOMMEND SIX-YEAR SENTENCE IN EXCHANGE FOR APPLICANT'S GUILTY PLEA.
- (3) COUNSEL DID NOT FAMILIARIZE HIMSELF WITH THE FACTS OF THE CASE;
- (4) COUNSEL DID NOT IMPART TO THE APPLICANT AN UNDERSTANDING OF THE LAW ON THE RELATION OF THE FACTS;
- (5) COUNSEL ISSUED ERRONEOUS ADVICE TO THE APPLICANT AS TO THE LENGTH OF SENTENCE HE WOULD RECEIVE BY ENTERING HIS PLEA;
- (6) COUNSEL ISSUED ADVICE TO THE APPLICANT TO THE EFFECT THAT NO DEFENSE WAS POSSIBLE TO HIS CHARGE;
- (7) COUNSEL "COERCED" THE APPLICANT INTO ENTERING HIS PLEA, BY MAKING THREATS AS TO THE LENGTH OF SENTENCE HE WOULD RECEIVE BY NOT PLEADING GUILTY.

FOR A PLEA TO BE ENTERED KNOWINGLY AND VOLUNTARILY, A CRIMINAL DEFENDANT MUST POSSESS AN UNDERSTANDING OF THE LAW IN RELATION TO THE FACTS. MCCARTHY V U.S., 89 S.C.T. 1171 (1969). PROVIDING THIS "UNDERSTANDING" OF THE LAW IN RELATION TO

(4 of 11)

THE FACTS, IS THE FUNCTION OF THE ACCUSED'S COUNSEL.

NOTE: NOR SHOULD WE IGNORE THE SUPREME COURT'S ADMONITION IN ARGERSINGER V. HAMLIN, 407 U.S. 25, 92 S. CT. 2006 (1972), TO THE EFFECT THAT, "BEYOND THE PROBLEM OF TRIALS AND APPEALS IS THAT OF THE GUILTY PLEA, A PROBLEM WHICH LOOKS LARGE IN MISDEMEANOR AS WELL AS FELONY CASES." COUNSEL IS NEEDED SO THAT THE ACCUSED MAY KNOW PRECISELY WHAT HE IS DOING, SO THAT HE IS "FULLY AWARE" OF THE PROSPECT OF GOING TO JAIL OR PRISON, AND SO THAT HE IS TREATED FAIRLY BY THE PROSECUTION.

CAN IT BE SAID, BY THE APPLICANT, AFTER RELYING ON THE ADVICE OF HIS COUNSEL, THAT BY HIM PLEADING GUILTY AFTER BEING TOLD BY HIS ATTORNEY THAT NO POSSIBLE DEFENSE EXISTED, WHEN IN FACT, AT LEAST ONE PLAUSIBLE LINE DID? THEN COULD IT BE SAID THAT THE APPLICANT, PRIOR TO ENTERING HIS PLEA, POSSESSED AN UNDERSTANDING OF THE LAW WITH REGARDS TO THE FACTS?

IT SHOULD NOT BE ASSUMED THAT COUNSEL HAD CONTRIBUTED TO THE CASE WHERE HE CONCLUDED THERE WAS NO DEFENSE POSSIBLE, AND THAT HE EXERCISED HIS BEST JUDGEMENT IN ADVISING HIS CLIENT TO PLEAD GUILTY. NEITHER THE

(5411)

ATTORNEY, NOR THE COURT COULD SAY WHAT A PROMPT AND THOROUGH INVESTIGATION MIGHT DISCLOSE AS TO THE FACTS, OR WHAT DEFENSES COULD BE YIELDED.

IN POWELL V. ALABAMA 387 U.S. 45, 53 S. CT. 55 (1933), THE COURT STATED: "THE RIGHT TO BE HEARD WOULD BE, IN MANY CASES, OF LITTLE AVAIL, IF IT DID NOT COMPREHEND THE RIGHT TO BE HEARD BY COUNSEL."

EVEN IN TODAY'S MEDIA DRIVEN SOCIETY, THE MOST INTELLIGENT AND EDUCATED LAYMEN HAVE LITTLE OR SOMETIMES NO SKILL IN THE SCIENCE OF LAW. IF CHARGED WITH A CRIME, HE IS INCAPABLE, GENERALLY, OF DETERMINING FOR HIMSELF WHETHER THE INDICTMENT IS GOOD OR BAD. HE IS UNFAMILIAR WITH THE RULE OF EVIDENCE. LEFT WITHOUT THE AID OF COUNSEL, HE MAY BE PUT ON TRIAL WITHOUT A PROPER CHARGE, AND CONVICTED UPON INCOMPETENT EVIDENCE, OR EVIDENCE IRRELEVANT TO THE ISSUES, OR OTHERWISE INADMISSIBLE. HE WOULD LACK BOTH THE SKILL AND KNOWLEDGE ADEQUATELY TO PREPARE HIS DEFENSE, EVEN THOUGH HE MAY HAVE A PERFECT ONE. HE REQUIRES THE GUIDING HAND OF COUNSEL AT EVERY STEP IN THE PROCEEDING AGAINST HIM. WITHOUT IT, THOUGH HE MAY NOT

(6 of 11)

BE GUILTY, HE FACES THE DANGERS OF CONVICTION, BECAUSE HE DOES NOT KNOW HOW TO ESTABLISH HIS INNOCENCE.

NOTE: AS IT WAS IN THE CASE OF THE APPLICANT.

C.

IN THIS REGARD, THE APPLICANT CONTENTS THAT HIS COUNSEL'S FAILURE TO COMMUNICATE TO APPLICANT A WRITTEN PLEA OFFER WHEREBY STATE WOULD RECOMMEND A LESSER SENTENCE IN EXCHANGE FOR HIS GUILTY PLEA, AND THAT FROM THE OUTSET, COUNSEL BEGAN TO SPEAK OF A GUILTY PLEA, WHICH COUNSEL, SAW, AND PORTRAYED, AS THE APPLICANT'S ONLY OPPORTUNITY FOR A REDUCED SENTENCE. BECTON V. HUN, 516 S.E. 2d 762 (W.VA. 1999), STATE V. SIMMONS, 309 S.E.2d 493 (1983).

WHERE DEFENCE COUNSEL HAS FAILED TO INFORM A DEFENDANT OF A PLEA OFFER, THE FEDERAL COURTS HAVE BEEN UNANIMOUS IN FINDING, THAT SUCH CONDUCT CONSTITUTES A VIOLATION OF THE DEFENDANT'S SIXTH AMENDMENTS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL. US. VS. RODRIGUES, 929 F.2d 747 (13TH CIR. 1991); JOHNSON VS. DUCKWORTH, 793 F.2d 888 (7TH CIR. 1989); AND BARRENTINE VS. U.S., 728 F. Supp. 1241 (W.D.N.C.),
(7 of 11)

OFF'd, 908 F.2d 968 (4th Cir. 1990), consequently, for the state to allege that the result of the proceedings were not altered by counsel's failure to convey the plea bargain, is clearly fallacious reasoning. Further, every court to review this question has found the defendant prejudiced by counsel's failure to communicate the government's plea offer to the defendant.

Applicant contends counsel painted a bleak picture to the applicant, with little or no hope concerning the likelihood and outcome of any planned trial. Counsel should have enlightened applicant about his so-call, on-going deal making with the solicitor. The applicant, being faced with the pressure of the solicitor's office, and his own counsel, concerning the length of sentence he would receive, if convicted by a jury, finally, caved into the demands for his plea of guilty.

The applicant can see no reason behind the thought that his counsel be considered as having rendered anything near effective assistance to applicant. The applicant further offer that he has clearly met the burden of proof essential in the two (2) prongs

(80:11)

REQUIREMENTS UNDER STRICKLAND V. WASHINGTON, SUPRA., THEREFORE, BASED ON THE FORGOING, THE APPLICANT STRONGLY FEELS THAT HE IS ENTITLED TO A CORRECTION OF SENTENCE AND JUDGEMENT, AND TO HAVE THIS MATTER REMANDED BACK TO THE COURT OF GENERAL SESSIONS FOR RE-HEARING.

D.

IN ADDITION, THE APPLICANT CONTENTS THAT COUNSEL FAILED TO ADVISE HIM AS TO HIS RIGHT TO APPEAL. THE ACCUSED IS ENTITLED TO BE MADE AWARE OF THIS RIGHT TO APPEAL, AS AN ELEMENT OF EFFECTIVE ASSISTANCE OF COUNSEL, WEATHER VS STATE, 459 SE2d 838 (SC 1995); WHITE VS STATE, 208 SE2d 35 (SC 1974).

THE APPLICANT WAS NOT ADVISED OF HIS RIGHT HERE, DOUBTLESSLY BECAUSE AT THE TIME COUNSEL MISREPRESENTATION OF THE FACTS WERE NOT CLEARLY UNDERSTOOD BY APPLICANT. NONETHELESS EVEN IF HIS ADVICE ON THIS POINT WOULD HAVE AMOUNTED TO A MERE FORMALITY, THE ACCUSED WAS NONETHELESS ENTITLED TO AT LEAST BE MADE AWARE OF THIS RIGHT TO APPEAL, EVEN IN THE WAKE OF HIS PLEA.

(90211)

RELIEF SOUGHT

THEREFORE, THE APPLICANT, EDMOND JEROME MAYES, # 281740, PRAYS THAT THIS HONORABLE COURT, BY REVIEWING THIS RECORD, SHOULD CONCLUDE THAT THE ISSUES AND ALLEGATIONS CONTAINED HEREIN, DO IN FACT CONTAIN MERIT, AND THAT THE CONVICTION OF THE APPLICANT WAS IN VIOLATION OF THE CONSTITUTIONAL LAWS OF THE UNITED STATES, AS WELL AS THE STATE OF SOUTH CAROLINA, AND THAT THIS CONVICTION SHOULD BE VACATED, BECAUSE OF THE DUE PROCESS VIOLATION, AND AT A MINIMUM REVERSED.

APPLICANT PRAYS ALSO, THAT THIS HONORABLE COURT WOULD ENSURE THAT JUSTICE AND FAIRPLAY PREVAIL, AND THAT THIS COURT WOULD TAKE WHATEVER STEPS NECESSARY TO EXAMINE EVERY ALLEGATION AND FACT, ENSURING A FAIR AND JUST DECISION.

Respectfully Submitted:

S/ Edmond J. Mayes

EDMOND J. MAYES # 281740

(10 of 11)

ATTORNEY MOORE, PLEASE BE AWARE THAT IN ADDITION TO COUNSEL ALREADY LISTED ON THE ORIGINAL APPLICATION, THAT ATTORNEY LARRY COOKE, WORKING AS COUNSEL ASSIGNED BY WAY OF THE PUBLIC DEFENDER'S OFFICE OF GREENVILLE COUNTY, WAS ALSO AN ATTORNEY OF RECORD, AS WELL AS THE SUBJECT OF SEVERAL FACTS AND ALLEGATIONS HEREIN.

IN THE PROCESS OF AMENDING THE ORIGINAL APPLICATION, PLEASE INCLUDE MR. COOKE IN RELATION TO QUESTION SEVENTEEN (17), ON PAGE FIVE (5) OF THE APPLICANT'S APPLICATION FOR POST-CONVICTED RELIEF.

THANK YOU ONCE AGAIN, FOR YOUR ATTENTION AND CONSIDERATION TO THIS MATTER.

STATE OF SOUTH CAROLINA

County of Greenville

Edmond Jerome Moses 28710

V.

State of South Carolina

In the Court of Common Pleas

AMENDED

APPLICATION FOR
POST-CONVICTION RELIEF

2011-CP-23-2638

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

- (a) Ineffective assistance of Counsel
- (b) Involuntary Guilty Plea
- (c)

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

- (a) Strickland and Washington 466 US 668 104 S.Ct 2052 (1984) "See Attach Statement"
- (b) Hill V Lockhart 474 US 52 106 S.Ct 366 (1985) "See attach Statement"
- (c) Due Process of law "See attach Statement"

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. Larry Cooke, 405 E North St. Suite 123, Greenville SC 29601
- ii. Scott D. Robinson, 101 Lavinia Ave, Greenville, S.C. 29603

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

- i. arraignment
- ii At Sentencing and Plea

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

Sentence reduction and Non-Violent charges.

Edmond Jerome Mayer, 28110
Ridgeland Corr. Inst.
P.O. Box 2039
Ridgeland S.C. 29936

Edmond Jerome Mayer

July 6, 2011

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Edmond Jerome Mays, 281710

vs.

State of South Carolina

In the Court of Common Pleas

2011-CP-23-2638

Certificate of Service

I have this day served a copy of the amended Post-conviction relief by way of United States Postal Service. Application was placed into United States Mail, proper postage affixed thereto, addressed as follows:

Greenville County Clerk of Court
305 East North Street
Greenville S.C. 29601

SC Attorney General's office
Post Office Box 11549
Columbia, S.C. 29211-1549

Dated this 6th day of July, 2011.

~~S/Edmond Jerome Mays~~
Edmond Jerome Mays, 281710
Ridgeland Corr. Inst.
GA-1
P.O. Box 2039
Ridgeland S.C. 29936

Ineffective assistance of Counsel, Attorneys
Larry Cooke, and Scott Robinson

The mis conduct, and ineffective assistance of
Counsel against Mr. Larry H. Cooke.

Mr. Cooke represented me on Criminal
matters before Judge Robin Stilwell, August, 2010,
and again before Judge Victor Pyle, on Dec 17, 2010.

During Proceedings before Judge Stilwell, Mr
Cooke was relieved at my request, After it was
Discovered that A plea offer had been made by
the prosecuting Solicitor, that was never presented
to me by Mr. Cooke.

This Plea offer was for the matter before
Judge Pyle, as Judge Stilwell was hearing a charge
of Violation of probation. However it was during
the proceedings in Judge Stilwell's Court on Aug
16, 2010 Mr. Cooke was relieved.

The plea offer mentioned was a six (6) year term of
service, classified Non-Violent, which was later withdrawn, and
the matter set for trial before Judge Pyle. As a direct result
of his action, and that of Mr. Robinson I am now serving a
ten (10) year term of Service, Classified Violent.

As a result of relieving Mr. Cooke before Judge Stilwell, my Probation matter was handled without representation in Nov, 2010 and I was incarcerated. That same month Mr. Cooke was reassigned to me through the Public Defenders office in Greenville County to conclude the matter before Judge Ryle.

Again Mr. Cooke was relieved, this time by Judge Ryle, setting a Conflict of Interest stemming from the conclusion of the matter that was before Judge Stilwell in Aug 2010.

Assigned now to represent me in the matter before Judge Ryle was Attorney Scott Robinson.

My initial meeting with Mr. Robinson was on January 26, 2011. At that meeting I requested Mr. Robinson to seek a Continuance, giving himself ample time to prepare a defense on my behalf, this because trial date had been set for Feb. 8, 2011, just Thirteen (13) days away.

One week later I met with Mr. Robinson's investigator Paul A. Silvaggio.

Mr. Silvaggio informed me at this meeting that the Court was not willing to grant a Continuance, and that a New Plea offer of Ten (10) yrs. Service, Classified Non-Violent was offered, and it was recommended that I take the offer rather than risk Trial.

Again this information was given to me, my mother and

my Girlfriend by Mr. Silvaggio, Mr. Robinson's representative. After accepting the offer, and Pleading Guilty on Feb 8, 2011, now before Judge Wilmaker, I was Sentence to Ten (10) yrs Service, only it was not classified as previously stated by Mr. Silvaggio, Mr. Robinson's representative the term was classified Violent, As opposed to the Non-Violent that help to guild my decision of the guilty plea.

It is my opinion that the action of these two Attorneys, or the inadvertency of their representation of myself in this matter, was certainly inappropriate.

In the case of Mr. Coate, I feel his action, or lack there Violated my six (6) and fourteenth (14) Amendment Rights to effective Assistance of Counsel, As well as Mis-Conduct for him not informing me of the Solicitors original Plea offer, that was resoundly better than the later.

In the case of Mr. Robinson, although by way of his legal representative Mr. Silvaggio, again I feel like my fourteenth (14) Amendment Rights to effective assistance of Counsel were Violated, in that he failed to argue regarding the length of time he had to prepare a proper defense.

In addition I sincerely feel my six (6) Amendment Rights were Violated as well with the given of the information surrounding my Guilty Plea, whether an error or intentional as a method to Conclude this pro bono matter.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C.A. No. 2011-CP-23-2638
COUNTY OF GREENVILLE)	
)	
Edmond Jerome Mayes, ¹)	
S.C.D.C. No. 281710,)	
)	
Applicant,)	
)	RETURN
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

In response to the post-conviction relief application filed April 18, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the October 2009 term of General Sessions for resisting arrest with assault (2009-GS-23-5453) and at the September 2010 term for trafficking cocaine (2010-GS-23-2749). Scott D. Robinson, Esquire, represented the Applicant.

On February 8, 2011, the Applicant pled guilty. The Honorable G. Edward Welmaker levied concurrent terms of ten (1) years for resisting arrest with assault and ten (10) eyars for trafficking cocaine, second offense. The Applicant did not appeal.

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

¹ The South Carolina Department of Corrections lists the Applicant's name as Edward Jerome Mayes.

South Carolina Department of Corrections. The plea transcript will be forwarded upon receipt.

II.

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

1. Ineffective assistance of counsel.
 - a. Advised the Applicant the charges were classified as non-violent and parole eligible.
 - b. Failed to inform of the right to appeal.
2. Involuntary guilty plea.

III.

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

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386

S.E.2d 624, 625 (1989).

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

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Applicant's assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by

showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248 (1983).

V.

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

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

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

By: Karen Petig
Attorneys for Respondent

June 27, 2011

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
)
 EDMOND JEROME MAYES, 281710)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

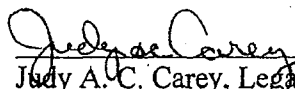
2011-CP-23-2638

AFFIDAVIT OF SERVICE BY MAIL

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

**Edmond Jerome Mayes, 281710
 Ridgeland Correctional Institution
 Post Office Box 2039
 Ridgeland SC 29936**

DATED this 27th day of June, 2011.



 Judy A.C. Carey, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS
 3 Edmond Jerome Mayes,)
 4 Applicant,) TRANSCRIPT OF RECORD
 5 -vs-) 2011-CP-23-2638
 6 The State,)
 7 Respondent.) February 13, 2013
 Greenville, South Carolina

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B E F O R E :

HONORABLE WILLIAM JEFFREY YOUNG, JUDGE

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

SCARLET B. MOORE, ESQUIRE
Attorney for the Applicant

KAREN C. RATIGAN, ESQUIRE
Attorney for the Respondent

Margaret A. Woods
Circuit Court Reporter

ORIGINAL

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1 THE COURT: Alright, Ms. Ratigan, what do we have first
2 today?

3 MS. RATIGAN: Thank Your Honor, may it please the Court.
4 The first case of the morning is Edmond Mayes vs. the State of
5 South Carolina, the Docket Number is 2011-CP-23-2638.
6 Mr. Mayes was indicted for resisting arrest with assault and
7 trafficking cocaine, he was represented on these charges by
8 Mr. Robinson. On February 8th of 2011 he pled guilty before
9 Judge Welmaker to a negotiated sentence of 10 years, that
10 would be 10 years for resisting arrest with assault and then a
11 a concurrent 10 years for trafficking cocaine second offense.
12 He did not file an appeal, uh, he timely filed his application
13 so the State's ready to proceed.

14 THE COURT: Alright, Ms. Moore, are you ready to proceed?

15 MS. MOORE: Yes, I am, Your Honor, yes.

16 THE COURT: Alright, thank you. You ---

17 MS. MOORE: Thank you.

18 THE COURT: --- may call your first witness.

19 MS. MOORE: Okay, Your Honor, I will call Scott Robinson
20 to the stand.

21 THE COURT: Alright, Scott Robinson, please come forward.

22 MS. MOORE: Judge, I beg your very brief indulgence.

23 THE COURT: Yes, ma'am.

24 MS. MOORE: Thank you. Thank Your Honor.

25 (Whereupon, the witness came forward.)

SCOTT ROBINSON - DIRECT EXAMINATION BY MS. MOORE

1 MR. ROBINSON: Good morning, Your Honor.

2 THE COURT: Good morning, I see you're in here.

3 (Whereupon, a discussion was held off the record.)

4 THE CLERK: Place your left hand on the Bible and raise
5 your right hand, Mr. Robinson.

6 SCOTT ROBINSON, having been first
7 duly sworn, testified as follows:

8 THE CLERK: Thank you, you may be seated.

9 (Whereupon, a discussion was held off the record.)

10 MS. MOORE: Your Honor, ---

11 THE CLERK: Please state ---

12 MS. MOORE: --- may I approach the bench? May we
13 approach briefly, Your Honor?

14 THE COURT: Briefly.

15 MS. MOORE: Thank you.

16 (Whereupon, a bench conference was held off the record.)

17 DIRECT EXAMINATION BY MS. MOORE:

18 Q. Will you state your name for the record.

19 A. Scott Robinson.

20 Q. Okay, and are you, uh, what is your profession, sir?

21 A. Um, attorney.

22 Q. Okay. Now in the course of your, uh, profession have you
23 had the occasion to represent a defendant Edmond Jerome Mayes?

24 A. I have. Yeah, I was appointed to Edmond's case I believe
25 around January 25th 2011.

SCOTT ROBINSON - DIRECT EXAMINATION BY MS. MOORE

1 Q. I I'm so sorry, I couldn't hear you.

2 A. I believe I was appointed in his case on or about January
3 25th 2011.

4 Q. Okay, and, uh, when you were appointed on or about
5 January 25th of 2011, uh, did you, uh, did you learn anything
6 in regard to the circumstances surrounding your appointment
7 for specifically, um, were you, um, taking over for another
8 attorney?

9 A. Yes, uh, I believe he had an attorney, a well-regarded
10 attorney named Larry King, Larry, I'm watching too much
11 television, Larry Cooke, excuse me.

12 Q. Okay, so it was your understanding that you were
13 appointed to, uh, to be substituted for Mr. Cooke.

14 A. Yes.

15 Q. Okay. And can you tell the Court following January 25th
16 of 2011 ---

17 A. Uh, ---

18 Q. --- did you have an occasion to to meet with Mr. Mayes?

19 A. Yes, uh, my investigator and I traveled down to Kirkland
20 in Columbia and met with him, uh, got there about eleven, met
21 with him about two hours.

22 Q. Okay. And do you, do you recall, uh, the the date of
23 that meeting?

24 A. It was, uh, January 27, 2011.

25 Q. Was it two days after your appointment?

1 A. I think -- I'm gonna go back. I know I was actually
2 appointed on January 13th and we sent our discovery request in
3 after that, ---

4 Q. Okay.

5 A. --- January 13th.

6 Q. Okay, but at at the end a the day January 2011.

7 A. Yeah, ---

8 Q. Okay.

9 A. --- that's fine.

10 Q. Okay, and so, uh, can you tell the Court when you met
11 with Mr. Mayes on January 27th for that two hours, ---

12 A. Um-hum.

13 Q. --- what did you discuss with him at that point?

14 A. It was a, um, it was a negotiated plea that they offer us
15 in the case.

16 Q. Okay, so at -- on January 27th you you already had
17 correspondence from the solicitor that there was a negotiated
18 sentence offer 10 years?

19 A. Let's see, we discussed a negotiated offer, went over the
20 discovery in the case, the Rule 5 materials, uh, discussed any
21 defenses he would have had, potential sentences, um, anything
22 that, uh, would have to do with his case and this particular
23 offer and I believe he was incarcerated at that time in in
24 Kirkland.

25 Q. Okay, and so so did you discuss with Mr. Mayes, uh, any

1 plea offers that may have been on the table when Mr. Cooke was
2 representing him?

3 A. Um, yes, I believe we did. I think that, um, we talked
4 about it, he said that, uh, he would've taken the original
5 offer if he was explained the offer by his previous attorney,
6 um, and then he said he was very pleased with the 10-year
7 negotiated which would run concurrent with his present
8 sentence ---

9 Q. Okay.

10 A. --- and that we we had him sign, we we explained to him
11 and we had him sign the sentencing sheet.

12 Q. Okay, and just and so I just wanna ask you a quick
13 question about that, you said that he was pleased with the
14 10-year negotiated sentence?

15 A. Yes.

16 Q. And what was your understanding about, um, how much time
17 he was already serving for which that 10 years would run
18 concurrent? How much time was he -- he was already
19 incarcerated, right?

20 A. Yes.

21 Q. Okay. How much time was he already serving at that point
22 which would have would would just basically woulda run
23 concurrent?

24 A. I don't have any notes in here as far as how much time he
25 was going to be serving or serving, I just -- I was appointed

1 on this particular case, ---

2 Q. Um-hum.

3 A. --- um, with a negotiated, uh, offer in this matter.

4 Q. Okay. Now I wanna go back and you -- your testimony is
5 that he said he would've taken the previous offer if if it had
6 been explained to him, ---

7 A. That's what he said in his conversation, correct.

8 Q. --- okay, and so did he say anything else about, um,
9 yeah, what was in fact explained to him about any previous
10 offers in this case?

11 A. No, all I have in my notes, uh, this was prepared by my
12 investigator in the case, um, is that he, uh, woulda taken it
13 if he was explained the offer and he was pleased with the
14 10-year negotiated to run concurrent with his present
15 sentence ---

16 Q. Okay.

17 A. --- and it, and it says that, uh, he signed the
18 sentencing sheets and, uh, the remaining charges were dis --
19 being dismissed following his plea and these were some other
20 charges he had.

21 Q. Okay. As I just wanna make sure I'm clear, so you're
22 saying that that, um, on on or about January 27, 2011 that's
23 when Mr. Mayes signed the sentencing sheets?

24 A. He signed it that that day, he actually -- let's see,
25 okay, let me go back here.

SCOTT ROBINSON - DIRECT EXAMINATION BY MS. MOORE

1 Q. Okay.

2 A. January 27th we met with him, Mitchell Silvaggio my
3 investigator and myself, then about a week later on February
4 5th 2011 he had been transferred from Kirkland to Ridgeland
5 and my investigator went down there to see him, um, and that's
6 when they discussed the negotiated offer and, uh, when he
7 talked about this, uh, previous offer that he wished it had
8 been explained to him, uh, then on Monday February 7th, uh, we
9 hand-delivered the sentencing sheets to Assistant
10 Sis -- Solicitor Julie Anders and then again on February 8th,
11 uh, we met with him at the, uh, courthouse to go over his
12 rights, um, uh, and he again said that he wished to plead on
13 the negoti -- negotiated offer or negotiated sentence.

14 Q. Okay, and so the discussion on February 5th, uh, in
15 regard to the negotiated sentence were you there?

16 A. No, I ---

17 Q. Was ---

18 A. --- wasn't there at that time.

19 Q. Your your investigator was there.

20 A. Yes.

21 Q. Subsequent to February 5th did you have an opportunity to
22 discuss with Mr. Mayes the negotiated sentence?

23 A. Yes.

24 Q. You did. And so what -- would that a been on, uh, either
25 February 7th or February 8th?

1 A. February 8th.

2 Q. February 8th? Okay, and February 8th, um, that was the
3 day that he pled, ---

4 A. Yes.

5 Q. --- the day of his plea?

6 A. Um, yeah, that's correct.

7 Q. Okay. Okay, and just to be crystal clear, did you hear
8 anything about a 6-year offer ever during the course of your,
9 um, representation of Mr. Mayes that woulda previously been on
10 the table prior to your representation?

11 A. I don't have any independent recollection but I do know
12 from, I've known Mr. Cooke for a long period a time and his
13 policy is to, this is my understanding 'cuz I've seen this in
14 person, they get the offer, he discusses the offer with them
15 and it's up to them what they wanna do and, uh, if they don't
16 want it, he's ready to go to trial.

17 Q. Okay, I under -- I understand that but to, but to be
18 clear did you ---

19 A. Okay.

20 Q. --- ever hear anything about a specific 6-year offer that
21 was on the table when Mr. Cooke was representing him?

22 A. This is what I have: ---

23 Q. Okay.

24 A. --- I have in my notes from my my investigator's notes
25 when he went down to see him on February 5th that he he stated

SCOTT ROBINSON - DIRECT EXAMINATION BY MS. MOORE

1 to him that he would have taken the original offer if it had
2 been explained to him. As far as me personally, I have no
3 independent recollection discussing a 6-year and the reason
4 being is that that had already passed with Mr. Cooke and I --
5 that's -- my my job was to get the 10-year negotiated offer
6 that she gave me at that point.

7 Q. Okay. Okay, thank you. Now, um, one a the allegations
8 that Mr. Mayes makes in his post-conviction relief
9 application ---

10 A. Um-hum.

11 Q. --- is that, um, you informed him that this would be
12 calculated, um, as a non-violent, uh, crime so that perhaps
13 and and certainly the concern is that perhaps he would be
14 eligible depending on the the calculation of the department of
15 soc -- excuse me, Department of Corrections, um, a a a much
16 lesser percentage than a violent plea, do you recall, uh,
17 telling Mr. Mayes that if he pled his sentence would be
18 calculated, uh, at a non-violent plea?

19 A. I have no independent recollection of that, the reason of
20 being I don't have a pol -- I do not as a rule, I do -- I
21 don't know what people are going to get because it's
22 Department of Corrections, they calculate things the way they
23 do, I don't think I can really say, This is what they'll do in
24 these kinda situations, ---

25 Q. Okay, ---

1 A. --- I don't know.

2 Q. --- and did did did Mayes complete an Advisement of
3 Rights form for you prior to the plea?

4 A. Advisor of Rights form?

5 Q. Or like did he complete any type of form where you, um,
6 where he, there's a checklist and he initialed next, uh, next
7 to every r -- every right that he's giving up that perhaps
8 sort of addressed the issues of, um, uh, violent versus
9 non-violent sentence calculation?

10 A. The only place that he would do that would be a
11 sentencing sheet that would, that would explain to him -- I
12 mean, ---

13 Q. Okay.

14 A. --- if you look at a regular sentencing sheet explains,
15 they check the boxes and so that's the only thing I can
16 imagine he's talking about.

17 Q. Okay, so your testimony is that you you never told
18 Mr. Mayes that that his sentence would be calculated at a --
19 as as a non-violent plea, is that correct?

20 A. You can just -- I -- you can just go by the, by the
21 sentencing sheet and the judge, this was Judge Welmaker, the
22 only, the only, uh, the only thing we had was a negotiated
23 plea this case.

24 Q. Right, I'm just just -- but to be clear is your testimony
25 that you never told Mr. Mayes, that you you never told

SCOTT ROBINSON - DIRECT EXAMINATION BY MS. MOORE

1 Mr. Mayes that his sentence would be calculated as a
2 non-violent plea, is that your testimony?

3 A. I have no independent recollection of that ---

4 Q. You have no independent recollection.

5 A. --- I don't think.

6 Q. Do you recall, uh, do you recall ever telling Mr. Mayes
7 that that if he took the the negotiated sentence and entered
8 the guilty pleas on February 8th of 2011 that he would be
9 eligible for parole?

10 A. I don't have any independent recollection of that either.
11 I mean, I think he's gotta look at the sentencing sheet and
12 what the judge talked about at this -- the plea. It was an
13 indictment ---

14 (Whereupon, the bailiff handled a disturbance outside of
15 the courtroom.)

16 THE COURT: Thank you.

17 A. He pled to trafficking. I I -- he ple -- I believe he
18 pled to -- plead to the same resisting arrest with assault,
19 trafficking cocaine, uh, trafficking second degree which would
20 he -- that he had. I don't see anything in there where it
21 said non-violent or -- it -- trafficking's a violent charge.

22 Q. Okay, I -- right, I I understand but I just wanna make
23 sure that your, the -- your te -- I wanna make sure I
24 understand your testimony.

25 A. Okay.

1 Q. Your your testimony is that you have no independent
2 recollection of ---

3 A. No.

4 Q. --- discussing with Mr. Mayes the issue of parole or
5 whether or not, uh, the sentence would be calculated as a
6 violent or non-violent plea, is that correct? You you said
7 you had no, you have no independent recollection of that.

8 A. I don't and and the sentencing sheet I believe would say
9 violent.

10 Q. Right, but I just -- that that's right, I I accept that
11 but but I I wanna know what what you did or did not tell
12 Mr. Mayes during the course of negotiations.

13 A. Nothin'. All we discussed or what I discussed we had a
14 negoti -- we would've gone through the disco -- over the
15 2-hour period we met with him I believe, I woulda gone over as
16 I said earlier the Rule 5 materials, what he was facing, his
17 defenses in this matter, ---

18 Q. Um-hum.

19 A. --- what the negotiated offer was by Ms. Anders ---

20 Q. Um-hum.

21 A. --- and that's it and then he signs the sentencing sheet
22 and the sentencing sheet states clearly violent trafficking
23 violent, that's what it typically said.

24 Q. Now and and so you said that that when your investigator
25 met with Mr. Mayes on February 5th 2011, ---

SCOTT ROBINSON - DIRECT EXAMINATION BY MS. MOORE

1 A. Um-hum.

2 Q. --- uh, your your testimony was that he was pleased with
3 a negotiated sentence, can you tell the Court why why is your
4 opinion that he was pleased with the the negotiated
5 sentence?

6 A. I wasn't there, I wasn't there. I told you that my
7 investigator traveled to Ridgeland to meet with him, this is
8 my investigator notes, and he said that in his, in his memo to
9 me that he was pleased. I didn't, I did not meet with him on
10 February 5th, I was at -- he met with my Investigator Paul
11 Silvaggio.

12 Q. Okay. So certainly in your specific dealings with
13 Mr. Mayes you never, so you you never received any information
14 or or or formed an opinion as to whether or not he was pleased
15 with this negotiated sentence of 10 years?

16 A. Well here here's what he, here's what he had: I --
17 miss -- I met with him on January 27th, ---

18 Q. Um-hum.

19 A. --- my investigator met with him on February 5th, uh, we
20 delivered the sentencing sheets to Ms. Anders on February 7th,
21 February 8th we ca -- he ca -- he was transported from
22 Ridgeland here, met with him on February 8th to go over this
23 again to see if he wanted to do this. If he didn't wanna do
24 it, he had the absolute right to a trial in this matter,
25 absolute right to a trial if he didn't like that particular

SCOTT ROBINSON - CROSS-EXAMINATION BY MS. RATIGAN

1 offer, the negotiated sentence in this case 'cuz a judge
2 really, if the judge thought it was unreasonable or not right,
3 he could've said, I'm not gonna take this, I don't like it,
4 uh, but, you know, if if he didn't like it, I didn't -- I
5 mean, I I can't force anyone to do anything, it's up to him
6 and it was a very fair offer in this matter, um, it was
7 10 years negotiated in this matter, um, uh, and if he ha -- he
8 didn't like it, he coulda gone to trial.

9 Q. Okay, thank you.

10 MS. MOORE: Beg the Cour -- brief indulgence, Your Honor.

11 THE COURT: Yes.

12 MS. MOORE: Thank you. Your Honor, thank you for your
13 indulgence, I have no further questions of this witness.

14 THE COURT: Alright, Ms. Ratigan.

15 MS. RATIGAN: Thank Your Honor, may it please the Court.

16 CROSS-EXAMINATION BY MS. RATIGAN:

17 Q. So, Mr. Robinson, did you testify earlier that you had,
18 uh, gone ahead and filed discovery motions in this case?

19 A. Yeah, we filed the, uh, Rule 5 in this matter on on,
20 Fe -- excuse me, January 26th.

21 Q. And you ended up receiving those materials and reviewing
22 them with your client?

23 A. Yes, we revie -- we woulda reviewed those, excuse me,
24 when we met with him on January 27th I believe.

25 Q. And did you review with Mr. Mayes his version of, uh,

SCOTT ROBINSON - CROSS-EXAMINATION BY MS. RATIGAN

1 these two separate events?

2 A. Yes.

3 Q. Did you review with him the minimum, maximum sentences he
4 could possibly receive on these charges?

5 A. Yes.

6 Q. And so your testimony is by the time that you came onto
7 the case that prior plea offer, um, that had been conveyed to
8 Mr. Cooke that was already gone, it was already expired?

9 A. I'm getting this from you to -- from the attorney that
10 there was a 6-year offer ---

11 Q. Okay.

12 A. --- on the table. I mean, he met with my investigator,
13 um, in -- on February 5th and he stated that, uh, the -- he
14 woulda taken the original offer if he was explained the offer
15 by his previous attorney.

16 Q. Okay, let me phrase it this way then: So based on your
17 testimony the only offer you ever received from the State
18 while you were on the case was this 10-year negotiated offer.

19 A. Yes, that's it.

20 Q. Okay. And did you explain to Mr. Mayes what a negotiated
21 offer meant, ---

22 A. Yes.

23 Q. --- that it was a -- the judge could take it or leave
24 it?

25 A. Yes.

1 Q. Did you review with him the pros and cons of going
2 forward under this negotiated plea?

3 A. Yes.

4 Q. At the plea hearing itself, do you recall Mr. Mayes ever
5 wavering or ever telling you he did not wish to proceed?

6 A. I can only go by the transcript but going back to that
7 time Judge Welmaker would have let him stand down if he didn't
8 wanna take the plea. If he, if he had -- I mean, he gets --
9 Judge Welmaker had the opportunity to watch him, to look at
10 him, to -- and if he had at any time wavered, he woulda
11 stopped him and we could have either explained more to him if
12 he needed more information or, uh, we coulda stood down the
13 plea and gone to trial.

14 Q. But you have no independent recollection of Mr. Mayes
15 balking or not wanting to proceed?

16 A. No, I can just go by the transcript.

17 Q. Okay.

18 MS. RATIGAN: That's all I have, Your Honor.

19 THE COURT: Any redirect?

20 MS. MOORE: No, Your Honor.

21 THE COURT: Thank you, you may step down.

22 THE WITNESS: Thank you, Judge.

23 (Whereupon, the witness left the stand.)

24 MS. RATIGAN: May Mr. Robinson be released, Your Honor?

25 THE COURT: Excuse me?

LARRY HOLMES COOKE - DIRECT EXAMINATION BY MS. MOORE

1 MS. RATIGAN: May he be released?

2 THE COURT: Any objection?

3 MS. MOORE: No, Your Honor.

4 THE COURT: Thank you, Mr. Robinson, have a good day.

5 THE WITNESS: You too, Judge.

6 THE COURT: Plaintiff may call its next witness.

7 MS. RATIGAN: Yes, I will call Larry Cooke to the stand,
8 Your Honor.

9 THE COURT: Alright. Mr. Cooke, please come forward.

10 (Whereupon, the witness came forward.)

11 THE WITNESS: Mornin', Judge.

12 THE COURT: Mornin'.

13 (Whereupon, a discussion was held off the record.)

14 THE CLERK: Mr. Cooke, let me swear you in. Let me swear
15 you in.

16 THE WITNESS: Okay.

17 THE CLERK: Okay. Place your left hand on the Bible,
18 raise your right hand.

19 LARRY HOLMES COOKE, having
20 been first duly sworn, testified as follows:

21 THE CLERK: Thank you. Please state your full name for
22 the record.

23 THE WITNESS: Larry Holmes Cooke.

24 DIRECT EXAMINATION BY MS. MOORE:

25 Q. Mis -- Mr. Cooke, um, do do you know my client Edmond

1 Jerome Mayes?

2 A. I do.

3 Q. Okay. Can you tell the Court, uh, approximately what was
4 the the date and year that you first came into contact with
5 Mr. Mayes as to to the best of your recollection.

6 A. I am a contract attorney with the Public Defender's
7 Office and I was -- this file was open on 8/5/09, uh, the
8 original charges assault on an officer. He got out of bond --
9 he he got out on bond, he picked up additional charges of CDV,
10 ABHAN; he got out on bond, he was picked up on additional
11 charges possession of meth, a possession of drug
12 paraphernalia, false information to a police officer; he got
13 out on bond, he got charged with trafficking in cocaine; he
14 got out on bond, he got charged with possession of meth, DUS,
15 open container, possession of drug paraphernalia, false
16 information to police so I represented him on all those
17 charges ---

18 Q. Yes.

19 A. --- and at some point in time the solicitor moved to
20 revoke his bonds because of his continuing to be arrested.

21 Q. Okay, so so I -- oh, so, okay. So you say that you -- so
22 you said that you were appointed to represent Mr. Mayes on all
23 of those charges?

24 A. I was.

25 Q. That's right? And so that woulda been approximately

LARRY HOLMES COOKE - DIRECT EXAMINATION BY MS. MOORE

1 August of 2009?

2 A. Correct.

3 Q. Okay. The following August of 2009, um, did you ever
4 appear in court with Mr. Mayes?

5 A. I appeared in court with Mr. Mayes a good many times, uh,
6 you you know really, you don't mind maybe I can help ya here,
7 uh, cut to the chase, if if the State doesn't mind and and the
8 judge doesn't mind, might save us all a lot of time.

9 Q. Yes, sir.

10 A. Uh, Mr. Mayes, uh, reported me to the, uh, Supreme Court
11 of South Carolina for not properly representing him, made lot
12 of a -- made a lotta allegations which were later determined
13 to be untrue, uh, and I attached a letter, one of the basic
14 things he was complaining about is is, uh, to -- in in this
15 case is that he didn't know about a 6-year sentence so I
16 responded to the Supreme Court by sending a copy of Mr. Mayes'
17 letter in which he acknowledged he knew about the 6-year offer
18 and if I can just read his letter I'd like to clear this up.

19 MS. MOORE: And I don't object, Your Honor, as long as I
20 have ---

21 THE COURT: No objection with it if it comes in ---

22 MS. MOORE: --- as long as so -- at ---

23 THE COURT: Okay.

24 MS. MOORE: --- some point I can ask him questions ---

25 THE WITNESS: Yeah, you can.

1 MS. MOORE: --- I'll be glad to hear it.

2 THE WITNESS: Okay, on November the 8th 2010 I sent the
3 Supreme Court a copy of this letter, it says, "Dear Mr. Cooke,
4 as you know I went to court on 11/5/2010 and was sentenced to
5 four hundred and ninety-four (494) days for my probation
6 violation. On the computer it says I was also sentenced to a
7 hundred eighty-seven (187) days by another judge, can you
8 please find out what this other sentence is for and if it is
9 concurrent with the four hundred and ninety-four (494) days.
10 You told me on the phone Friday the solicitor emailed you
11 offering me 6-years non-violent, Mr. Cooke, I'm already having
12 to go to prison for this probation violation and I have four
13 children that depend on me for support, I want to get my life
14 together and be there for my kids. Uh, is there any way you
15 can talk the solicitor and see if they would be willing to
16 give me 10 years suspended to 5 years probation, drug classes
17 and maybe house arrest. I've got a good job waiting on me
18 when I get out and I am ready to do what I need to do. Also,
19 what can be done about Judge Pyle's sentencing me without you
20 being present? I told him I wanted to speak to my lawyer and
21 he told me no. I appreciate you looking into this matter for
22 me," signed Edwin Mayes, it's dated November the 8th 2010 and,
23 uh, "I wi -- and it goes on to say, "I will do some more work
24 for them if they need me so you see if you can talk to
25 somebody about that." So this letter clearly shows that he

LARRY HOLMES COOKE - DIRECT EXAMINATION BY MS. MOORE

1 knew about the 6 years that he was, he was offered.

2 BY MS. MOORE:

3 Q. Okay, now let let's -- okay, so let me ask you about
4 that, Mr. Cooke.

5 A. Okay.

6 Q. Can you tell me, um, how did you communicate that 6-year
7 offer to Mr. Cooke and if you have dates, ---

8 A. Yeah, ---

9 Q. --- that would be helpful.

10 A. --- this thing, this thing was getting close to trial and
11 and I with my silver tongue, uh, I I talked, I talked to
12 Ms. Anders and got her down to, uh, 6 years and on, uh, uh,
13 let's see in my notes, okay, on 11/5 of of of 2010, my
14 Investigator Tracy called his mother of the offer, spoke and
15 spoke with the client at and I spoke with him at my private
16 office of 6 years, he told me that he would get back to me
17 before the day was over. He never and I never heard back from
18 him so the solicitor put it on the trial docket so it was on
19 that Friday that he's talking about in his letter to me that I
20 told him about the 6 years. Now in defense of him a little
21 bit on this thing the reason he didn't get back to me is he
22 got shipped out before he could call me back.

23 Q. Okay. Okay, and at that point so you you realized that,
24 um, did you, did you call, uh, the solicitor and ask her for
25 an extension of of the deadline to accept that 6-year offer?

1 A. No, I didn't, uh, ---

2 Q. Okay.

3 A. --- as a matter of fact it got put on the trial docket
4 and I quite honestly I didn't know he'd been shipped out
5 either until, let's see when I found out. Okay, I had a video
6 conference lined up with him on 1 -- well this, I don't think
7 this had anything to do with that one. He I think he'd gotten
8 shipped out on something else, uh, prior to that as well,
9 maybe it was a probation violation, but it was on 1/10 of '10
10 so, uh, that didn't have anything to do with this. I'm just
11 tryin' to see if I have any notations on that ---

12 Q. So so from, ---

13 A. --- but I know he got shipped out.

14 Q. --- so from November of, November 5th the da -- the date
15 that you said that the investigator called your mother and
16 then also spoke with the client, the next communication you
17 had with Mr. Mayes woulda been January 10th of 2010, is that
18 correct?

19 A. No, no, no, no.

20 Q. Okay, ---

21 A. I don't, I don't ---

22 Q. --- I just wanna make sure I'm clear on that.

23 A. --- I'm not, I'm not sure about that. I'm not sure ---

24 Q. Okay.

25 A. --- how I knew he got shipped out, I know he got shipped

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out.

Q. Okay. Now going back to November 5th, did you actually speak with Mr. Mayes and talk with him about this 6-year offer?

A. When?

Q. On November 5th because I sa -- you said that ---

A. Yeah, I, according to my notes I talked to him on the 5th, yes, ---

Q. And ---

A. --- my, and and my investigator talked to him.

Q. --- and what -- how how did you talk with him?

A. I, and I was at my office on my private phone when I talked to him, ---

Q. Um-hum.

A. --- uh, my investigator Tracy probly called from the Public Defender's Office and talked to his mother about the offer.

Q. Okay, but just to be clear did -- you -- your testimony is that you did in fact speak to Mr. Mayes ---

A. Right.

Q. --- on the telephone and discussed this 6-year offer.

A. Yeah, and he states that in his letter to me about the, uh, You told me on the phone Friday the solicitor emailed you offering me 6 years non-violent.

Q. And was there a deadline on this 6-year offer?

1 A. That day.

2 Q. It was that day ---

3 A. Yeah, ---

4 Q. --- and di ---

5 A. --- that day.

6 Q. --- did you clearly communicate that with Mr. Mayes?

7 A. Absolutely, and he was supposed to call me back and I
8 never heard from him and I think you got shipped out.

9 Q. So it's it's certainly possible that that he wasn't able
10 to make a telephone call that day, ---

11 A. Yeah, ---

12 Q. --- isn't that fair ---

13 A. --- that ---

14 Q. --- to say?

15 A. --- that's possible.

16 Q. Okay. Okay. And so do you recall, Mr. Cooke, how long
17 you had had that offer as of November 5th of 2010?

18 A. I think that day. I mean, I I -- it, I mean, this all
19 just happened like bam, bam, we'd been negotiating on this
20 case and and I got it down to where I thought it was a
21 terrific offer and, uh, uh, I I think it was within a few
22 days, I I'd have to check my emails back then but I don't
23 know.

24 Q. So you're saying that you you think that the solicitor
25 called you that day and gave you 'til the close of business to

LARRY HOLMES COOKE - DIRECT EXAMINATION BY MS. MOORE

1 accept it.

2 A. Uh, pro -- probably ---

3 Q. Okay.

4 A. --- 'cuz it was on a Friday. Well I I don't remember
5 whether court was that comin' week or not, I I can't
6 remember.

7 Q. Okay.

8 A. I have so many things goin' on with him, I -- it it it
9 was, it's hard to sit here and tell you exactly how everything
10 went down.

11 Q. Okay. And so I -- so you're saying that there's the --
12 so the next note that you testified in your file was from
13 January 10th of 2010 but I bl -- I believe that Mr. Robinson
14 testified that he was appointed on or about January 13th of
15 2011 which woulda been about a year later, do you recall how
16 long you stayed on this case past January of 2010?

17 A. Uh, let's see, my last ---

18 THE COURT: Let me in -- I wanna make sure I got the time
19 line right. It's not a year later, it's only a couple months
20 later ---

21 MS. MOORE: Let me make sure I unders ---

22 THE COURT: --- 'cuz you were talkin' November 2010 and
23 then Mr. Robinson came on board on January 25th 2011 which is
24 only two months later, ---

25 MS. MOORE: Judge, thank you so much ---

1 THE COURT: --- not a year.

2 MS. MOORE: --- for clarifyin' that, that's that woulda
3 been January 2011 and I probly just wrote it, just wrote it
4 down ---

5 THE COURT: Just wanna be ---

6 MS. MOORE: Okay, ---

7 THE COURT: --- sure.

8 MS. MOORE: --- okay, great. I -- let me just withdraw
9 that question. I I -- thank you, Judge, I apologize.

10 BY MS. MOORE:

11 Q. Okay. And so and, Mr. Cooke, when were you relieved, uh,
12 when were you relieved of representing, uh, Mr. Mayes, do you
13 recall?

14 A. Let's see, on December the 8th I wrote Mr. Mayes a letter
15 at Broad -- at Kirkland and I told him, "This morning Judge
16 Pyle issued a continuance for today's trial date, your case
17 will be called for trial during the week of January the 10th
18 2011. The judge also relieved your attorney Larry Cooke, ---
19 oh, I'm sorry, this is a copy of a letter I received from
20 Julie Anders ---

21 Q. Okay.

22 A. --- the solicitor.

23 Q. Okay.

24 A. Uh, "You are currently not represented by an attorney.
25 Judge Pyle gave you until January the 10th the hire an

LARRY HOLMES COOKE - DIRECT EXAMINATION BY MS. MOORE

1 attorney and stated that no further continuance was -- would
2 would be given if you choose to proceed *pro se* representing
3 yourself. Uh, it is in your best interest to have an attorney
4 represent you at trial. As you were advised today,
5 trafficking cocaine third requires a mandatory sentence of 25
6 years in prison with a maximum of 30 years. Conviction on the
7 other charges could be run consecutive to any trafficking
8 sentences. If you choose to hire an attorney, please forward
9 him a copy of this letter, advise him that all plea
10 negotiations have been concluded and trial will be during the
11 January 10th term of court."

12 Q. Okay. So at some point between November of 2010 and
13 January 10, 2 -- 2011 you were relieved of a -- representing
14 Mr. Mayes?

15 A. Right.

16 Q. Okay, and so and just to be clear, you you've never
17 represented him following that time, is that correct?

18 A. No, not to my -- no.

19 Q. Okay.

20 MS. MOORE: Beg the Court's brief indulgence.

21 THE COURT: Yes, ma'am.

22 MS. MOORE: Thank you. Thank Your Honor, no further
23 questions of this witness.

24 THE WITNESS: Thank you.

25 THE COURT: Thank you.

1 MS. RATIGAN: I don't have any questions for Mr. Cooke,
2 Your Honor.

3 THE COURT: Alright, thank you, Mr. Cooke.

4 THE WITNESS: Thank you.

5 (Whereupon, the witness left the stand.).

6 THE COURT: Any objection to Mr. Cooke being excused for
7 the balance of this hearing?

8 THE WITNESS: I think I have another one, Judge.

9 THE COURT: Alright.

10 MS. MOORE: Thank Your Honor. Judge, I will call my
11 client Mr. Mayes.

12 THE COURT: Alright, Mr. Mayes, come forward, be sworn.

13 (Whereupon, the applicant came forward.)

14 THE CLERK: Come around this way. Please place your left
15 hand on the Bible, raise your right hand.

16 EDMOND JEROME MAYES, having been
17 first duly sworn, testified as follows:

18 THE CLERK: Thank you, you may be seated. Please state
19 your full name for the record.

20 THE APPLICANT: Uh, Edmond Jerome Mayes.

21 DIRECT EXAMINATION BY MS. MOORE:

22 Q. Now, Mr. Mayes, um, you were in the courtroom and heard
23 the testimony of Mr. Larry Cooke, ---

24 A. Yes, ---

25 Q. --- is that right?

1 A. --- yes, ma'am.

2 Q. Were you able to hear everything that Mr. Cooke said?

3 A. Yes, ma'am.

4 Q. Okay. I I I do want, I do wanna narrow our our inquiry
5 to to the issue of the negotiations, uh, in regard to that
6 6-year plea offer. Okay, did did Mr. Cooke, uh, communicate
7 to you that the State had had made a, uh, an offer of a 6-year
8 sentence recommendation?

9 A. Well I had found out from my mother, ---

10 Q. Okay.

11 A. --- I called her.

12 Q. Okay, so so you had to find that out from your mother,
13 um, so what did your mother tell you?

14 A. She told me this this after I got to R&E, I had sit there
15 for about a week or two before I even contacted anybody.

16 Q. Okay, so to be clear did you ever specifically talk with
17 Larry Cooke yourself on the telephone and discuss with him a a
18 6-year offer, uh, that was on the table, uh, from the
19 solicitor?

20 A. Well the day I got sentenced for my probation I did call
21 him and ask him why he, uh, not show up for my probation ---

22 Q. Okay.

23 A. --- but I don't, I don't recall say -- him sayin'
24 anything about my 6-year.

25 Q. Okay, so in regard to your probation revocation issue,

1 uh, when you called him after that hearing, ju -- just to be
2 clear, did you specifically discuss with Mr. Cooke the 6-year
3 offer that was on the table by the solicitor?

4 A. No, ma'am.

5 Q. Okay, no, okay. Never.

6 A. No, ma'am, I -- not at that point in time but ---

7 Q. Okay, so ever, did you ever discuss this with Mr. Mr.
8 Cooke?

9 A. No, ma'am, I I found out from my parents, ---

10 Q. Okay.

11 A. --- then I wrote him that letter.

12 Q. Okay, alright. Did you ever receive, um, did you ever
13 receive a letter from Mr. Cooke detailing, uh, the specifics
14 about the 6-year offer?

15 A. No, ma'am.

16 Q. Okay, so you never have had any communication or
17 correspondence?

18 A. No, ma'am.

19 Q. Okay. And you heard Mr. Cooke testify that the offer was
20 received on or about November 5th 2010 and that that offer was
21 open for a day, did anybody communicate that to you?

22 A. No, ma'am.

23 Q. Okay. Did Mr. Cooke communicate that to you?

24 A. No, ma'am.

25 Q. Did did Mr. Cooke's investigator commu -- uh, communicate

EDMOND JEROME MAYES - DIRECT EXAMINATION BY MS. MOORE

1 that to you?

2 A. Uh, I don't, I don't remember talking to investigator.

3 Q. Okay, so you don't recall having ever having any
4 communication with the investigator.

5 A. No.

6 Q. So Mr. -- so obviously, Mr. Mayes, you filed a
7 post-conviction relief, uh, making these allegations, at what
8 point did you in fact find out about the 6-year deal, do you
9 recall?

10 A. It was after I got to, uh, Kirkland af -- after I send
11 for my pr -- violation probation.

12 Q. Okay, would would that have been, um, after November 5th
13 of 2010?

14 A. Yes, ma'am.

15 Q. Okay, and so and I think your testimony and I don't, I
16 don't want to have to preach this out but you're saying that
17 that you found out from your mom.

18 A. Yes, ma'am.

19 Q. Aright, okay. So after you found out from your mother
20 that there there had been a 6-year deal on the table then then
21 what did you do? Did you communicate, try to communicate with
22 Mr. Cooke?

23 A. Well after that I filed, I filed a motion to the Court to
24 relieve him 'cuz he -- I never heard anything about the plea.

25 Q. Okay, and that motion was granted, ---

1 A. Yeah.

2 Q. --- right? Okay, so you never tried to further discuss
3 this matter with Mr. Cooke, ---

4 A. No, ma'am.

5 Q. --- is that right? Okay. Now you also were in the
6 courtroom and heard the testimony of Scott Robinson, ---

7 A. Yes, ma'am.

8 Q. --- is that correct?

9 A. Yes, ma'am.

10 Q. Could you -- were able to hear everything that
11 Mr. Robinson was able to say?

12 A. Yes, ma'am.

13 Q. Okay, um, did you ever meet with, uh, Mr. Robinson and
14 discuss your case?

15 A. Yes, ma'am.

16 Q. Okay. And and was that a -- he says he estimated he met
17 with you about two times, is that right?

18 A. Well he met me o -- met with me once and his investigator
19 met with me twice.

20 Q. Okay, so you you met with his investigator twice,
21 Mr. Robinson ---

22 A. Yes, ma'am.

23 Q. --- once. Okay, and and during your communication with
24 Mr. Robinson's investigator and Mr. Robinson, did you discuss
25 the 6-year offer that had previously been on the table?

EDMOND JEROME MAYES - DIRECT EXAMINATION BY MS. MOORE

1 A. Yes, ma'am.

2 Q. Okay, did you inform Mr. Robinson or his investigator
3 about that offer?

4 A. Yes, ma'am.

5 Q. Okay. Um, and what did they say?

6 A. They said they were gonna try to get that same plea
7 back.

8 Q. So they told ya that they would try to get it back?

9 A. Yes.

10 Q. Okay, and at some point did they report back to you after
11 talkin' with the solicitor about the 6-year ---

12 A. Uh, ---

13 Q. --- offer?

14 A. --- no, ma'am. His investigator came after that and
15 he ---

16 Q. Okay.

17 A. --- did tell me that he couldn't get that 6-year plea
18 back.

19 Q. Okay, the investigator said there's -- the 6-year deal's
20 gone.

21 A. Yeah.

22 Q. Okay. And so the the 10-year offer was on the table.

23 A. Yeah.

24 Q. Okay. And and you do and certainly you've reviewed the
25 transcript in this matter and you know that you entered a

1 negotiated sentence of 10-years, ---

2 A. Yes.

3 Q. --- is that correct?

4 A. Yes, ma'am.

5 Q. And and do you recall Mr., uh, Mr. Robinson testifying
6 that his investigator's notes were that you were pleased with
7 this offer?

8 A. Yes, ma'am, I do.

9 Q. Were you pleased with this offer?

10 A. Well at that time I really didn't have no choice because
11 it was either that or a trial, I'm kinda forced to actually
12 take that plea which I thought it was gonna be non-violent and
13 I was gonna be parole eligible 'cuz one sentencing sheet say
14 non-violent, other said violent.

15 Q. Okay. Okay. So did you ever -- so let's talk about
16 that. So, I mean, would it be fair to say that you weren't
17 pleased, would that be fair?

18 A. Yes, ma'am.

19 Q. Okay. Now you also allege against Mr. Robinson that that
20 he he or his investigator communicated to you that if you took
21 this plea that this would be calculated as a non-violent plea,
22 is that correct?

23 A. Yes, ma'am.

24 Q. Did, uh, did Mr. Robinson ever tell you that this would
25 be calculated as as a non-violent plea?

EDMOND JEROME MAYES - DIRECT EXAMINATION BY MS. MOORE

1 A. Yes, ma'am. I I actually wrote him a letter concerning
2 that same situation.

3 Q. Okay, did you receive a letter in response from
4 Mr. Mr. Robinson?

5 A. Yes.

6 Q. You did? And what did he say?

7 A. Well his letter he just told me that he think the 10-year
8 plea that I got was was a good plea for the charges I got.

9 Q. Okay, but to be clear did he in person when you had
10 communications with him tell you that it was gonna be
11 calculated as a non-violent sentence?

12 A. Yes, ma'am.

13 Q. Okay. And currently how is your s. -- how is your
14 sentence being calculated in the Department of Corrections,
15 violent or non-violent?

16 A. Violent.

17 Q. Okay. Okay, Mr. Mayes, if and and and I believe that
18 that Mr. Robinson's testimony the the limited information that
19 he had about it was that if you had known about the previous
20 offer, um, if it had been explained to you then you would've
21 taken it, ---

22 A. Yes.

23 Q. --- is is -- was that a true statement that Mr. Robinson
24 said?

25 A. Yes, ma'am.

1 Q. Okay.

2 MS. MOORE: Your Honor, I have no further questions of my
3 client.

4 THE COURT: Alright, Ms. Ratigan.

5 MS. MOORE: Thank you.

6 MS. RATIGAN: Thank Your Honor.

7 CROSS-EXAMINATION BY MS. RATIGAN:

8 Q. Do you remember when you were picked up by SCDC at the
9 jail and taken to Kirkland for processing, do you remember
10 when that was?

11 A. I don't remember exactly what the date was.

12 Q. Um, your SCDC records show that that was Jan -- I mean,
13 I'm sorry, November 10th of 2010, does that sound about
14 right?

15 A. Uh, yes.

16 Q. And at some point you filed a grievance, uh, against
17 Mr. Cooke, is that correct?

18 A. Yes, ma'am.

19 Q. And Mr. Cooke read, uh, read to the Court a letter that
20 you had sent him where you s -- you admitted to speaking on
21 the phone with him about that 6-year offer, did you hear him
22 testify ---

23 A. Yeah.

24 Q. --- about that? Are you saying today you did not send
25 him that letter?

EDMOND JEROME MAYES - CROSS-EXAMINATION BY MS. RATIGAN

1 A. Well actually I, at that point in time, I do remember
2 send that letter now but that come, that come out my mother's
3 mouth from the 6-year plea and I put it on a letter. I guess
4 I put it that that he explained it to her but I never hear
5 anything about her.

6 Q. Okay, so even if your letter says that you had talked to
7 Mr. Cooke about it, you don't recall ever talking to him about
8 it.

9 A. Not my plea, uh-uh (negative).

10 Q. Okay. So why didn't you tell Judge Welmaker that day
11 that you were unhappy with this 10-year negotiated and that
12 you wanted that 6-year offer back?

13 A. Say that again.

14 Q. Why didn't you tell Judge Welmaker on the day you pled
15 guilty that you were unhappy with this 10-year negotiated
16 sentence and you wanted that 6-year offer back?

17 A. You say why didn't I tell him that?

18 Q. Yes.

19 A. Because they said the the 6-year plea wasn't gonna be
20 back on the table so I figured if I woulda said somethin' to
21 him about it it wouldn't matter.

22 Q. So you didn't think it would matter so you just didn't
23 mention anything?

24 A. Yes, ma'am.

25 Q. Okay. And you told the judge that day you were satisfied

1 with Mr. Robinson?

2 A. Yes, ma'am.

3 Q. But today you're saying that you were just pleading
4 guilty 'cuz you felt you had no choice?

5 A. Yes, ma'am.

6 Q. Okay.

7 MS. RATIGAN: That's all I have, Your Honor.

8 THE COURT: Alright, any redirect?

9 MS. MOORE: No, Your Honor.

10 THE COURT: Thank you, you may step down.

11 (Whereupon, the applicant left the stand.)

12 THE COURT: Anything further from the plaintiff?

13 MS. MOORE: No, Your Honor.

14 THE COURT: Anything further from the ---

15 MS. RATIGAN: We'd rest on the record and testimony, Your
16 Honor.

17 THE COURT: Alright, I'm gonna take this matter under
18 advisement, I will give a ruling by the end of the week.

19 MS. RATIGAN: Thank Your Honor.

20 MS. MOORE: Thank Your Honor.

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CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on February 13, 2013 at the time and place heretofore set forth; and that the foregoing pages numbered from 3 through 40, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

August 17, 2013

Margaret A. Woods

Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Edmond Jerome Mayes,¹)
 S.C.D.C. No. 281710,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2011-CP-23-2638

RECORDED

2013 MAR 15 AM 9:02
 CLOCKED IN ERROR
 JAMES C. CAMPBELL
 CLERK OF COURT
 SUMTER COUNTY, S.C.

ORDER OF DISMISSAL

2013 APR - 2 P 1:58

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKESHEIMER

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 18, 2011. The Respondent made its return on June 27, 2011. An evidentiary hearing into the matter was held on February 13, 2013 at the Greenville County Courthouse. The Applicant was present and represented by Scarlet B. Moore, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were both the Applicant's plea counsel, Scott D. Robinson, Esquire and the Applicant's first plea counsel, Larry H. Cooke, Esquire. The Court had before it the guilty plea transcript, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application and subsequent amendment, and the return.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the October 2009 term of the Greenville County Grand Jury for resisting arrest with assault

¹ The South Carolina Department of Corrections lists the Applicant's name as Edward Jerome Mayes.

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(2009-GS-23-5453) and at the September 2010 term for trafficking cocaine (2010-GS-23-2749).

He was represented by Scott D. Robinson, Esquire.

On February 8, 2011, the Applicant pled guilty to a negotiated sentence. The Honorable G. Edward Welmaker levied concurrent terms of ten (10) years for resisting arrest with assault and ten (10) years for trafficking cocaine, second offense. The Applicant did not file an appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. Advised the Applicant the charges were classified as non-violent and parole eligible.
 - b. Failed to inform of the right to appeal.
2. Involuntary guilty plea.

In a pro se document titled "Amendments to Application for Post-Conviction Relief" filed February 13, 2013, the Applicant makes the following allegations:

1. Ineffective assistance of counsel:
 - a. Failure to investigate the facts surrounding the circumstances of the arrest.
 - b. Failure to assist in deciding whether to plead guilty.
 - c. Failure to communicate the written six year plea offer.
 - d. Failure to familiarize himself with the case.
 - e. Failure to impart an understanding of the law in relation to the facts.
 - f. Misadvised about the potential sentence.
 - g. Misadvised there was no potential defense.
 - h. Coerced the Applicant into pleading guilty.
 - i. Failure to advise about the right to appeal.
2. Involuntary guilty plea.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the

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opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel/Involuntary Guilty Plea

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

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

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C.

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131, 318 S.E.2d 360 (1984)).

The Applicant's first attorney, Larry H. Cooke, Esquire, testified the public defender file in the Applicant's case was opened on August 5, 2009. Cooke testified the Applicant had several charges because he would be arrested on new set of charges each time he made bond. Cooke testified the State made a plea offer for six years on November 5, 2010. Cooke testified the Applicant was informed of this offer over the telephone and told him the deadline to accept the offer was that day. Cooke testified the Applicant never got back to him about accepting the offer. Cooke testified the Applicant was sent to SCDC soon afterwards. Cooke testified the Applicant sent a letter to him dated November 8, 2010 in which he acknowledged they discussed the six-year offer during a phone call. Cooke read this letter into the record and noted he attached it to his response to a grievance filed by the Applicant (in which the Applicant complained he was not informed of a six-year offer).

Plea counsel testified he was appointed on January 13, 2011 and knew Cooke had been the previous attorney in this case. Plea counsel testified he filed discovery motions, received those materials and reviewed them with the Applicant, discussed the Applicant's version of events, and informed the Applicant of the sentence ranges on the charges. Plea counsel testified both he and his investigator had several meetings with the Applicant. Plea counsel testified the Applicant had mentioned there was a prior six year offer from the State. Plea counsel testified, however, the offer had expired before he was appointed. Plea counsel testified the State made an offer for a ten-year negotiated sentence. Plea counsel testified he and his investigator reviewed this offer with the Applicant more than once. Plea counsel testified he explained the nature of a negotiated sentence and its advantages and disadvantages. Plea counsel testified the Applicant was pleased with the ten-year negotiated offer because it would be concurrent to the sentence he

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was already serving. Plea counsel testified he did not recall telling the Applicant this would be a non-violent sentence.

The Applicant stated he did not learn about a six-year offer from the State until after he had been sent to SCDC. The Applicant stated he filed a grievance against Cooke. The Applicant stated that, even if the November 8th letter he sent to Cooke mentioned that he spoke with Cooke on the phone about the six-year offer, he did not recall speaking with Cooke about it. The Applicant stated he met with plea counsel once after he was appointed (and with counsel's investigator twice). The Applicant stated the investigator told him the six-year offer was gone. The Applicant stated plea counsel told him the State made a new offer for a negotiated ten-year sentence. The Applicant stated he felt he had no choice but to accept the offer but admitted he did not say anything to the plea judge about his dissatisfaction. The Applicant stated plea counsel told him he would be pleading guilty to a non-violent sentence.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Applicant admitted to the plea judge that he was guilty and the facts recited by the solicitor were true. (Plea transcript, p.9; p.11). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.9-11).


This Court finds the Applicant failed to meet his burden of proving he was no properly advised of a six-year plea offer. This Court finds Cooke is credible and specifically finds the

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Applicant is not credible. Cooke testified he received the offer on November 5th, discussed it with the Applicant that day, and informed him the deadline to accept was the same day. The Applicant admitted on cross-examination that he was taken to SCDC on November 10th, so this Court finds he had adequate time to consider the offer and reply to Cooke that day. This Court notes the Applicant's November 8th letter to Cooke acknowledged their telephone conversation about the six-year offer. This Court finds Cooke fulfilled his responsibilities to the Applicant in this regard. Cf. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (holding counsel's failure to convey the State's plea offer to defendant constituted deficient performance).

This Court finds the Applicant failed to meet his burden of proving plea counsel was ineffective in not obtaining this six-year offer. Plea counsel testified this offer had long expired before he was appointed in this case. This Court finds both that plea counsel's testimony is credible and that the Applicant knew about the expiration of the offer by the time plea counsel was appointed. Regardless, this Court notes plea counsel managed to secure a beneficial negotiated ten-year sentence for the charges at issue. This Court further notes this negotiation also involved the dismissal of several other charges. (Plea transcript, p.9). The guilty plea transcript indicates the Applicant was aware of the nature and terms of the negotiated sentence. (Plea transcript, p.9; p.11). The guilty plea transcript does not indicate, however, that the Applicant was dissatisfied with plea counsel or wished to have the six-year offer reinstated. Rather, the Applicant stated he wanted to plead guilty and was satisfied with plea counsel's representation. (Plea transcript, p.10; p.11). The Applicant failed to meet his burden of proving plea counsel was deficient in his representation. See Hill v. Lockhart, 474 U.S. at 58-59, 106 S. Ct. at 370.

This Court finds the Applicant failed to meet his burden of proving plea counsel

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misadvised him that he was pleading guilty to a non-violent sentence. This Court notes plea counsel testified he did not recall telling the Applicant he would serve a non-violent sentence. This Court finds plea counsel's testimony is credible. This Court notes plea counsel is an experienced criminal defense attorney and would be well-aware that a trafficking cocaine charge would be classified as violent. See S.C. Code Ann. § 16-1-60 (Supp. 2006). As such, this Court finds it is highly improbable plea counsel would have advised the Applicant would be serving a non-violent sentence in this case.

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

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

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

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CONCLUSION

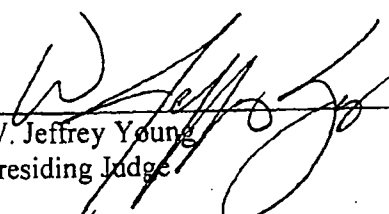
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation.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

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 15 day of March, 2013.



W. Jeffrey Young
Presiding Judge

Sumter, South Carolina.

WITNESSES

Donald R Widmer

Travelers Rest Police Dept

2/23/2010

C. Bray

ARREST WARRANT NUMBER

1546515

ACTION OF GRAND JURY

TRUE BILL

Ann Spivertte

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-23-2749

JJA

The State of South Carolina

file

County of Greenville

COURT OF GENERAL SESSIONS

September TERM 2010

THE STATE

vs.

EDMOND JEROME MAYES

Indictment for

0147

TRAFFICKING COCAINE

VIOLATION § 44-53-0370

DL SUSPENDS

Did Clerk receive driver's license?

YES _____ NO _____

If no, explain _____

Defendant

RECEIVED

JUL 02 2010

Clerk of Court
Greenville County

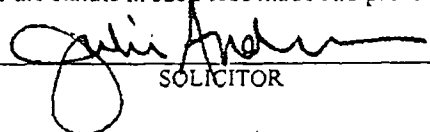
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
TRAFFICKING COCAINE

At a Court of General Sessions, convened on **SEP 21 2010** the Grand Jurors of Greenville
County present upon their oath:

That EDMOND JEROME MAYES did in Greenville County, on or about the 23rd day of February, 2010,
knowingly sell, manufacture, deliver or bring into the State of South Carolina or did knowingly provide financial
assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver or bring into the State or was
knowingly in actual or constructive possession of more than 10 grams of Cocaine. This is in violation of §44-53-
370 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

P.W. Swift

Greenville County Sheriffs Office

5/29/2009

ARREST WARRANT NUMBER

1517768

ACTION OF GRAND JURY

TRUE BILL

Nicki Cummins

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-23-

JJA

The State of South Carolina

005453

County of Greenville

COURT OF GENERAL SESSIONS

October TERM 2009

THE STATE

vs.

EDMOND J MAYES

sum

Robinson

Indictment for

0256

RESISTING ARREST WITH ASSAULT

VIOLATION § 16-09-0320

DL SUSPENSE

Did Clerk receive driver's license?

YES

NO

If no, explain

fact

Defendant

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
RESISTING ARREST WITH ASSAULT

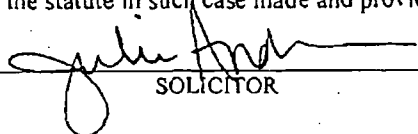
OCT 20 2009

At a Court of General Sessions, convened on
County present upon their oath:

the Grand Jurors of Greenville

That EDMOND J MAYES did in Greenville County, on or about the 16th day of May, 2008, knowingly and willfully and unlawfully assault, beat or wound P.W. Swift with the Greenville County Sheriff's Office while resisting an arrest by one whom he knew or reasonably should have known was a law enforcement officer. This is in violation of §16-9-320(B) of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR