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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Georgetown County

Steven H. John, Circuit Court Judge

OCTAVIUS OMAR COLLINS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213660

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF GEORGETOWN) 2010-GS-22-74, 75
State of South Carolina,)
Plaintiff,) Transcript of Record
vs.)
Octavious Collins,) August 30, 2010
Defendant.) September 1, 1010

B E F O R E :

Honorable Benjamin H. Culbertson
Georgetown County Courthouse
Georgetown, South Carolina

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

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Attorney for Plaintiff

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1 (On the record, August 30, 2010.)

2 MS. BAILEY: The State calls 2010-GS-22-00075. I want
3 to make sure I'm calling the right one, Your Honor. I
4 apologize, 00074, which is a true-billed indictment for
5 distribution of crack cocaine third offense. It's our
6 understanding that Mr. Octavious Omar Collins is here today
7 and intends to plead guilty to this offense without
8 negotiations or recommendation. The only discussions that we
9 have had in this case are that if Mr. Collins completes a
10 guilty plea to this offense, the State will dismiss 2010-GS-
11 22-75 which is the accompanying proximity charge along with
12 2007-GS-22-1382, 1383, 1384, 1385 and 2007-GS-22-1413. Those
13 are all unrelated charges.

14 THE COURT: All right.

15 MS. BAILEY: Also, for the Court's information, the
16 State would like to hand up a brief. Your Honor, there's been
17 some discussion. The State anticipated this issue coming up.
18 There's a new sentence reform law that was passed on June 2nd
19 of 2010. Mr. Barr brought that up with me a few minutes ago.
20 The State prepared a brief as to why this particular charge
21 falls under the old sentencing scheme which would have a 15-
22 year mandatory minimum instead of the new sentencing scheme,
23 and when the time is appropriate, the State has some Court's
24 Exhibits to place into evidence to build a record as to why
25 this is Mr. Collins's third offense.

1 THE COURT: Okay, but this - so, the actual incident?

2 MS. BAILEY: The incident date on this is June 22nd of
3 2009.

4 THE COURT: Okay.

5 (Whereupon, the Defendant is sworn by the Clerk.)

6 THE COURT: All right, because it might play into this
7 plea, let me hear - well, first of all, Mr. Barr, you
8 represent Octavious Collins on the charge of distribution of
9 cocaine base third offense?

10 MR. BARR: Yes, sir, Judge.

11 THE COURT: All right, before we get into it, let me
12 hear from you as to why you think the new Omnibus Crime Bill
13 Act would apply rather than the old statute.

14 MR. BARR: Your Honor, of course, this, as the
15 Solicitor has indicated, this is an issue that appears that
16 she anticipated well in advance of my having anticipated. Of
17 course, I brought it to her attention this morning, but Your
18 Honor, with respect to that issue what I would request that
19 the Court allow us to do is to proceed with the guilty plea
20 and defer sentencing until I could respond to the State's
21 brief. I think that, that we are kind of caught in as much as
22 I can - and quite frankly, I compliment the State because
23 they've done an excellent job of briefing the issue, and I've,
24 of course, this morning is the first time that I'm seeing that
25 brief, but what we would simply ask the Court to do is to go

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1 ahead and accept the plea and have the Defendant reappear for
2 sentencing after we've had an appropriate time to respond to
3 the State's brief.

4 THE COURT: Well, let me ask you this, if sentencing
5 is under the old statute and not under the new crime bill act
6 ---

7 MR. BARR: Yes, sir.

8 THE COURT: --- does that affect the voluntariness or
9 your client's - whether his desire to plead guilty or not
10 guilty?

11 MR. BARR: No, sir.

12 THE COURT: He's going to plead guilty regardless?

13 MR. BARR: He, he's going to plead guilty, Judge. It
14 would affect, it would affect - the minimum time under the old
15 statute would be 15 years, and of course, under the new
16 statute it would be 10 years.

17 THE COURT: Okay.

18 MR. BARR: So, it would - and Judge, while I'm
19 speaking, I might - and my understanding is that I think it
20 was indicated that the alleged offense took place on the 22nd
21 of June. I believe most of my paperwork showed that it was
22 supposedly on the 22nd of July.

23 THE COURT: My ---

24 MS. BAILEY: It was July, I apologize, Your Honor.

25 THE COURT: Yeah, the indictment says July 20th. Okay.

1 MR. BARR: Yes, Judge, of course, I'd like to maybe
2 take it back to May, but in any event, it will not affect the
3 plea itself.

4 THE COURT: All right, well, Mr. Barr, what I'm
5 inclined to do, I think it's still covered under the old act
6 just because I've had this come up before; and so, I'm
7 inclined to go ahead and sentence him under the old act. I
8 will, however, allow you to do some research, and then if you
9 disagree with my interpretation or disagree with the State's
10 position, you can file a motion to reconsider and bring him
11 back for resentencing if you - I think that's probably the way
12 to handle it because once you get into it, I don't, I don't
13 want to presume but I'm pretty sure that the old act is the
14 one that applies.

15 MR. BARR: Judge, you know, just to be clear about
16 it, I've had the issue come up in other proceedings and I've
17 had situations where the trial judge has deferred, or not so
18 much deferred but at least asked the Solicitor to indicate
19 whether or not they're proceeding under the old act or the new
20 act and I'm not sure what the Court's authority was in those
21 situations, but I've had that to happen to me, and for that
22 reason and in an abundance of caution, I would simply - and I
23 think that with the Court's ruling, if it's handled that way,
24 that would certainly give us a sufficient time to respond to
25 the brief that the State has prepared.

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1 THE COURT: Yeah, and I think that's going to be the
2 way to handle it.

3 MR. BARR: All right, sir.

4 THE COURT: And we'll do it that way. All right, all
5 right, Mr. Barr, you represent Octavious Collins on the charge
6 of distribution of crack cocaine third offense?

7 MR. BARR: Yes, sir.

8 THE COURT: And have you discussed with your client
9 the charge against him, his rights as a Defendant and the
10 consequences of being convicted of this crime?

11 MR. BARR: Yes, sir.

12 THE COURT: In your opinion does your client
13 understand the charge against him, his rights as a
14 Defendant and the consequences of being convicted of this
15 crime?

16 MR. BARR: In my opinion he does, Judge.

17 THE COURT: And does he wish to plead guilty or not
18 guilty?

19 MR. BARR: He wishes to plead guilty.

20 THE COURT: Do you agree with his decision to plead
21 guilty to this charge?

22 MR. BARR: Yes, sir.

23 THE COURT: Based upon the information you have if
24 this case proceeded to trial do you feel that the State could
25 prove your client's guilt beyond a reasonable doubt?

1 MR. BARR: Judge, it is my considered opinion that
2 the State could prove this case beyond a reasonable doubt.

3 THE COURT: Has your client received a competency
4 evaluation?

5 MR. BARR: No, sir.

6 THE COURT: Do you think he needs one?

7 MR. BARR: No, sir.

8 THE COURT: All right, sir, your name is Octavious
9 Omar Collins?

10 MR. COLLINS: Yes, sir.

11 THE COURT: All right, Mr. Collins, you have been
12 charged and indicted by the Grand Jury on the crime of
13 distribution of crack cocaine third offense, and according to
14 your attorney you wish to plead guilty to this charge; is that
15 correct?

16 MR. COLLINS: Yes, sir.

17 THE COURT: All right, before I can accept a guilty
18 plea from you, I've got to go over some questions with you to
19 be sure that you understand the charge against you, that you
20 understand your rights as a Defendant, that you understand the
21 consequences of pleading guilty, and I must be sure that
22 you're pleading guilty voluntarily.

23 Now, during the past 72 hours have you taken any
24 medication, consumed any alcohol or drugs or been under any
25 influence that would affect your ability to know why you're

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1 here?

2 MR. COLLINS: No, sir.

3 THE COURT: Do you understand why you're here today?

4 MR. COLLINS: Yes, sir.

5 THE COURT: Is there anything about this hearing
6 that you want to ask your lawyer or ask me before we proceed?

7 MR. COLLINS: No, sir.

8 THE COURT: All right, now, even though you've been
9 indicted by the Grand Jury, under the Constitution of the
10 United States you're presumed innocent of this crime, and you
11 have the right to have your guilt or innocence determined by a
12 jury trial of your peers. The State bears the burden of
13 proving your guilt beyond a reasonable doubt. You do not have
14 to prove your innocence and you cannot be compelled to testify
15 against yourself. You also have the right to confront and
16 cross examine anybody who testifies against you. If you
17 choose, you can present a defense to this charge, but when you
18 plead guilty, you give up all of those rights. Do you
19 understand that?

20 MR. COLLINS: Yes, sir.

21 THE COURT: And do you wish to give up those rights
22 and plead guilty to this charge?

23 MR. COLLINS: Yes, sir.

24 THE COURT: All right, now, for this crime, do you
25 understand that the maximum sentence you could receive for

1 this crime is 30 years in prison and a fine of \$50,000? Do
2 you understand that?

3 MR. COLLINS: Yes, sir.

4 THE COURT: Do you understand that this crime carries
5 a mandatory minimum sentence because I think it's still under
6 the old law, it carries a mandatory minimum sentence of 15
7 years in prison, and if I accept your guilty plea, the
8 absolute minimum sentence I could impose would be 15 years in
9 prison? Do you understand that?

10 MR. COLLINS: Yes, sir.

11 THE COURT: Do you understand that regardless of the
12 sentence I impose no part of this sentence - you cannot be
13 eligible for parole. So, whatever sentence I impose, you can
14 count on serving that entire sentence. Do you understand
15 that? Do you have any questions about that? You do have a
16 question? Do you want to talk to your lawyer a little while?

17 MR. COLLINS: Yes, sir.

18 THE COURT: All right, let's take a little recess and
19 let him talk to his lawyer.

20 MS. BAILEY: Thank you, Your Honor.

21 THE COURT: All right.

22 OFF THE RECORD

23 (On the record.)

24 THE COURT: All right, Mr. Barr, do you all need any
25 additional time?

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1 MR. BARR: No, sir, Judge.

2 THE COURT: Okay, all right, Mr. Collins, have you had
3 an ample opportunity to discuss this matter with your
4 attorney?

5 MR. COLLINS: Yes, sir.

6 THE COURT: All right, and do you still want to go
7 forward with your guilty plea? I mean, it's up to you. It's
8 whatever you want to do. If you want a jury trial, we'll give
9 you a jury trial. If you want to plead guilty, you can plead
10 guilty, but the decision is totally yours, whatever you want
11 to do.

12 Ms. Bailey, have you all got this on the trial roster?

13 MS. BAILEY: Yes, Your Honor, all the witnesses are
14 under subpoena and we're ready to begin.

15 THE COURT: All right, and what are the charges
16 against him?

17 MS. BAILEY: Your Honor, the charge that we intend to
18 try if we were to go forward tomorrow is the distribution of
19 crack cocaine third offense.

20 THE COURT: So, you're just going forward on this one
21 charge?

22 MS. BAILEY: Yes, there would - the State would not be
23 dismissing all the other charges which include a trafficking,
24 trafficking in crack 10 to 28 grams, trafficking in cocaine 10
25 to 28 grams, PWID crack in proximity, PWID cocaine in

1 proximity and a burglary third degree. Those are all of the
2 charges that are also pending against Mr. Collins. We don't
3 intend to try those this week, but they would not be
4 dismissed.

5 THE COURT: Okay, so, they don't arise out of the same
6 transaction as this one?

7 MS. BAILEY: Yes, Your Honor, that's correct.

8 THE COURT: Okay, all right.

9 All right, so, Mr. Collins, your options are we can go
10 start the trial tomorrow morning on this one charge. I wanted
11 to see if we went to trial whether or not there were any other
12 charges that were going to be tried this week, and according
13 to the Solicitors, this distribution of crack third offense is
14 the only charge they will try you on this week if you go to
15 trial. So, you know, your options are we can plead guilty now
16 or you can go to trial tomorrow morning. Which do you prefer
17 to do?

18 Have you all got anything else set up for this afternoon?

19 MS. BAILEY: No, Your Honor.

20 THE COURT: Okay.

21 All right, Mr. Collins, it's time to make a decision.
22 You need to let me know. All right, let's go ahead and stand
23 this down. We'll just get the jury here tomorrow morning;
24 we'll start the trial tomorrow morning. Okay?

25 MS. BAILEY: All right, thank you, Your Honor.

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1 MR. HIXSON: Thank you, Your Honor.

2 THE COURT: All right, thank you.

3 MR. HIXSON: Can I approach, Your Honor?

4 THE COURT: Yes, sir.

5 (Whereupon, a bench conference is held.)

6 THE COURT: All right, I think the best thing let's,
7 let's go ahead and just set this for trial and we'll start it
8 tomorrow morning; okay?

9 MR. HIXSON: Thank you, Your Honor.

10 MS. BAILEY: Thank you, Your Honor.

11 MR. BARR: Thank you, Judge.

12 THE COURT: Thank you.

13 OFF THE RECORD

14 (On the record, Wednesday, September 1, 2010.)

15 (The following takes place in the presence of the jury
16 panel.)

17 (Whereupon, a bench conference is held.)

18 THE COURT: All right, ladies and gentlemen, we are
19 getting ready to start the trial of the case of the State of
20 South Carolina versus Octavious Omar Collins, and I've got
21 some questions I need to go over with you.

22 All right, now, I've got to - I'll go over some
23 questions. You've already been qualified as jurors to serve
24 for this term of court; however, we do have some questions
25 commonly referred to as voir doir questioning which is to

1 determine whether or not you're qualified to serve as jurors
2 on this particular case, and plus it gives the attorneys some
3 information to assist them in their jury selection process.
4 So, as I go over these questions with you, if anything is
5 applicable to you I will ask that you stand at the appropriate
6 time, but as I told you during the jury qualification process,
7 you're constantly taking oaths as jurors. So, if I could
8 please get all - everyone in the jury panel to stand and raise
9 your right hand while the clerk administers the oath.

10 (Whereupon, the jury panel is sworn by the Clerk.)

11 THE COURT: All right, ladies and gentlemen, as I
12 said, this is the trial of the case of the State of South
13 Carolina versus Octavious Omar Collins. Mr. Collins has been
14 charged with distribution of cocaine base or distribution of
15 crack cocaine. He is the Defendant in this case, and is there
16 any member of the jury panel who is related by blood or
17 marriage, has a close personal relationship, a social
18 relationship, a business relationship or any other type of
19 relationship with the Defendant Octavious Omar Collins? If
20 so, please stand.

21 (No response.)

22 THE COURT: All right, the possible witnesses, and I
23 need you to listen up because there's several of them in this
24 case, are the Defendant Octavious Omar Collins, Reggie Grant
25 of the Georgetown County Sheriff's Department, Blair Cribb of

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1 the Georgetown Police Department, Michael Thacker of the
2 Georgetown County Sheriff's Department, Joe Nathan Lewis,
3 Maribeth Burroughs of the State Law Enforcement Division,
4 Patricia Crooks of the State Law Enforcement Division, Nicole
5 Perry of the State Law Enforcement Division and Sheron
6 Bullock. Is there any member of the jury panel related by
7 blood or marriage, have a social relationship, personal
8 relationship, business relationship or any other type of
9 relationship with any of these potential witnesses? If so,
10 please stand.

11 (No response.)

12 THE COURT: All right, Ms. Erin Bailey of the
13 Fifteenth Circuit Solicitor's Office is prosecuting this case
14 on behalf of the State of South Carolina. Mr. Charles David
15 Barr, an attorney in Kingstree, is the attorney for the
16 Defendant in this case.

17 Is there any member of the jury panel related by blood or
18 marriage, have a personal relationship, social relationship,
19 business relationship or any other type of relationship with
20 either of these attorneys? If so, please stand.

21 (No response.)

22 THE COURT: Is there any member of the jury panel who
23 has ever been represented by either of these attorneys? If
24 so, please stand.

25 (No response.)

1 THE COURT: Is there any member of the jury panel who
2 has ever been involved in any type of legal action in which
3 these attorneys represented another party to that action? If
4 so, please stand.

5 (No response.)

6 THE COURT: Is there any member of the jury panel who
7 either personally or has a family member or close personal
8 friend employed by the Fifteenth Circuit Solicitor's Office or
9 Mr. Barr's law firm in Kingstree, South Carolina? If so,
10 please stand.

11 (No response.)

12 THE COURT: All right, the indictment in this case
13 alleges that Mr. Collins on or about July the 20th, 2009,
14 distributed, dispersed or delivered or aided, abetted and
15 attempted or conspired to distribute, disperse or deliver a
16 quantity of cocaine base, which is a controlled substance, in
17 the County of Georgetown, South Carolina. Is there any member
18 of the jury panel who has heard anything about this case, read
19 anything about this case, discussed anything about this case
20 or knows anything about this case? If so, please stand.

21 (No response.)

22 THE COURT: Is there any member of the jury panel who
23 either personally or has a family member or a close personal
24 friend employed in law enforcement? If so, please stand.

25 All right, ma'am, your name and number?

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1 MS. SIERRA: Carmen Sierra, 248.

2 THE COURT: Your name again?

3 MS. SIERRA: Carmen Sierra.

4 THE COURT: And what is your jury number?

5 MS. SIERRA: 248.

6 THE COURT: Oh, 248. I'm sorry.

7 All right, Ms. Sierra, are you or is it a family member
8 or a friend that is employed with law enforcement?

9 MS. SIERRA: My sister-in-law and my brother-in-law.

10 THE COURT: All right, and what agency are they
11 employed with?

12 MS. SIERRA: My sister-in-law is employed with the
13 Georgetown Sheriff's Office and my brother-in-law is a
14 Georgetown Police officer.

15 THE COURT: Okay, all right, Ms. Sierra, I'm going to
16 excuse you from - being as a juror in this case; okay? Thank
17 you very much.

18 MS. SIERRA: Okay.

19 THE COURT: All right, the gentlemen to the right or
20 my right, your left. If you would just wait with us and I -
21 if you'd just stay with us for just a second and I'll excuse
22 you in just a minute.

23 MS. SIERRA: Okay, okay.

24 THE COURT: Sir, your name and number?

25 MR. LANKFORD: Juror 157, Justin Lankford.

1 THE COURT: All right, Mr. Lankford, is this you, a
2 family member or a friend?

3 MR. LANKFORD: A friend.

4 THE COURT: All right, and who is that friend employed
5 by?

6 MR. LANKFORD: Georgetown County Sheriff's Department.

7 THE COURT: All right, now, how close of a friend is
8 this?

9 MR. LANKFORD: Very close.

10 THE COURT: How often do you see the friend?

11 MR. LANKFORD: Once, twice a week.

12 THE COURT: All right, do you know or have you heard
13 of any of these witnesses through that friend?

14 MR. LANKFORD: No, sir.

15 THE COURT: All right, would the fact that you have a
16 friend employed - and you said it was with who?

17 MR. LANKFORD: Georgetown County Sheriff's Department.

18 THE COURT: Georgetown County Sheriff's Department,
19 would that relationship affect your ability to give both the
20 State and the Defendant in this case a fair and impartial
21 trial?

22 MR. LANKFORD: No, sir.

23 THE COURT: Would you be influenced by that friendship
24 in any fashion whatsoever in deciding this case?

25 MR. LANKFORD: No, sir.

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1 THE COURT: Would you be able to disregard that
2 friendship in its entirety and base your decision in this case
3 exclusively on the testimony and evidence in this case?

4 MR. LANKFORD: Yes, sir.

5 THE COURT: All right, thank you, Mr. Lankford, for
6 bringing that to our attention. I'm going to keep you.

7 Ma'am, you can sit down now. Thank you.

8 All right, your name and number?

9 MS. MOSS: Donna Moss, 196.

10 THE COURT: All right, Ms. Moss, who is it that you
11 know - is this a family member or a friend or a relative?

12 MS. MOSS: Close friends.

13 THE COURT: All right, and who are they employed with?

14 MS. MOSS: The Georgetown County Sheriff's Department
15 and the Georgetown City Police Department.

16 THE COURT: All right, were any of them - any of the
17 potential witnesses I listed in this case?

18 MS. MOSS: No.

19 THE COURT: All right, would those friendships or
20 relationships affect your ability to be fair and impartial to
21 both the State and the Defendant in this case?

22 MS. MOSS: No.

23 THE COURT: Would you be able to disregard those
24 associations in their entirety and base your decision in this
25 case exclusively on the testimony and evidence in this case?

1 MS. MOSS: Yes.

2 THE COURT: Okay, thank you for bringing that to our
3 attention. Thank you, ma'am.

4 All right, sir, your name and number?

5 MR. ETHRIDGE: Juror 91, David Ethridge, Jr.

6 THE COURT: All right, Mr. Ethridge, is this a family
7 member, a friend or who?

8 MR. ETHRIDGE: A friend.

9 THE COURT: All right, and the friend is employed with
10 whom?

11 MR. ETHRIDGE: The South Carolina Highway Patrol.

12 THE COURT: All right, would that relationship affect
13 your ability to be fair and impartial to both the State and
14 the Defendant in this case?

15 MR. ETHRIDGE: No, sir.

16 THE COURT: Would you be able to disregard that
17 relationship and base your decision in this case exclusively
18 on the testimony and evidence in this case?

19 MR. ETHRIDGE: Yes, sir.

20 THE COURT: All right, thank you for bringing that
21 matter to our attention.

22 Is there any member of the jury panel who is a member of
23 or a contributor to any group which has as its primary concern
24 the promotion of law enforcement? Now, some of these
25 organizations are Mothers Against Drunk Driving, or commonly

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1 referred to as MADD, Students Against Drunk Driving, commonly
2 referred to as SADD, Citizens Against Violent Crime, or CAVC,
3 and Citizens Against Spousal Abuse, CASA, and there's many
4 others, but is there any member of the jury panel who is a
5 member of or a contributor to any such organization that has
6 as its primary concern law enforcement and or victims' rights?
7 If so, please stand.

8 Ma'am, your name and number?

9 MS. TRIANA: Terri Triana, 276.

10 THE COURT: All right, Ms. Triana, are you a
11 contributor to, a member of?

12 MS. TRIANA: I am director of Birthright of Georgetown
13 which is the crisis pregnancy center, and we occasionally are
14 asked to provide some support to victims of abuse that have
15 had a child or who are pregnant in terms of material help.

16 THE COURT: Would that association and your
17 participation in that organization would that affect your
18 ability to give both the State and the Defendant in this case
19 a fair and impartial trial?

20 MS. TRIANA: No.

21 THE COURT: Would you be able to disregard that
22 association in its entirety and base any decision you may be
23 called to render in this case exclusively on the testimony and
24 evidence in this case?

25 MS. TRIANA: Yes, sir.

1 THE COURT: Okay, thank you for bringing that to our
2 attention.

3 Anyone else?

4 (No response.)

5 THE COURT: Has any member of the jury panel formed or
6 expressed an opinion about any issue or matter involved in
7 this case. If so, please stand.

8 (No response.)

9 THE COURT: Is any member of the jury panel aware of
10 any bias or prejudice towards either the State of South
11 Carolina or the Defendant in this case? If so, please stand.

12 (No response.)

13 THE COURT: Is there any member of the jury panel that
14 was a member of the Grand Jury which issued the indictment in
15 this case? If so, please stand.

16 (No response.)

17 THE COURT: Does any member of the jury panel know of
18 any reason whatsoever why he or she should not serve as a
19 juror in this case, with particular emphasis being placed on
20 your ability to be fair and impartial to both the State and
21 the Defendant? If so, please stand.

22 (No response.)

23 THE COURT: All right, any additional question from
24 the State?

25 MS. BAILEY: None, Your Honor.

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1 THE COURT: Any from the Defense?

2 MR. BARR: No, sir, Judge.

3 THE COURT: All right, all right, ladies and
4 gentlemen, procedurally what happens now is the Clerk of Court
5 - your names have been fed into a computer and spit out at
6 random and you will be called forward if - one at a time in
7 that random order. If your name is called, if you would
8 please come forward, stand here in front of me and in front of
9 the court reporter and face the attorneys. What happens is
10 the State will look at you a little while and then look at
11 their notes for a little while and then look back at you a
12 little while and then maybe talk to some of their witnesses a
13 little while and then they're going to decide if they want you
14 as a juror, and then if they want you as a juror then the
15 defense attorney's going to look at you a little while and
16 look at his notes a little while and talk to his client a
17 little while and then look back at his notes and he's going to
18 decide if he wants you as a juror, and we go through this
19 process until we select 12 jurors and once we select those 12
20 jurors they will be the ones that preside in this case. So,
21 if your name is called if you would please come forward and
22 bring with you any pocketbooks, umbrellas, coats, whatever you
23 might have with you for further direction by the Court.

24 Now, if you are struck as a juror by either the State or
25 the Defense in this case, don't take it personally. It just

1 means that they're, through some information provided to them
2 or for whatever reason, they do not feel that you would be
3 suitable to their case on this particular case. I've often
4 known attorneys that have struck a potential juror in one case
5 and then accepted that juror in the next case. I've also
6 known them to take them in one case and then reject them in
7 the next case. So, there's really no rhyme or reason as to
8 why an attorney will accept a juror in one particular case and
9 reject a juror in another particular case. So, please don't
10 take it personally, but if you would please listen up when
11 your name is called and if you would come forward and bring
12 with you anything you might have as far as pocketbooks, coats
13 or things of that nature.

14 Now, this is five and five? Is that correct? Or is it
15 five and ten?

16 MR. BARR: Five and five.

17 MS. BAILEY: Yes, Your Honor.

18 THE COURT: Five and five.

19 MS. BAILEY: That's my understanding.

20 THE COURT: Okay, all right, please listen up when
21 your name is called.

22 THE CLERK: Juror number 96, Rainor Finck.

23 THE COURT: If you'd please come forward, stand right
24 here in front of this table and then turn and face the
25 attorneys. Right there is good, right there. Thank you.

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1 THE CLERK: What says the State?

2 MS. BAILEY: Please present this juror.

3 THE CLERK: What says the Defense?

4 MR. BARR: Seat the juror, please.

5 THE CLERK: Please take a seat in the juror box.

6 THE CLERK: Juror Number 1, Amy Adams.

7 What says the State?

8 MS. BAILEY: Please present this juror.

9 THE CLERK: What says the Defense?

10 MR. BARR: Please excuse the juror from the trial of

11 this particular case.

12 THE CLERK: You may return to your seat.

13 Juror Number 253, Pamela Sipe.

14 What says the State?

15 MS. BAILEY: Please present this juror.

16 THE CLERK: What says ---

17 MR. BARR: Seat the juror, please.

18 THE CLERK: Please take a seat in the jury box.

19 Juror Number 98, Crystal Funny.

20 What says the State?

21 MS. BAILEY: Please present this juror.

22 THE CLERK: What says the Defense?

23 MR. BARR: Swear her, please.

24 THE CLERK: Please take a seat in the jury box.

25 Juror Number 84, Sharon Dumont.

1 What says the State?

2 MS. BAILEY: Please present this juror.

3 THE CLERK: What says the Defense?

4 MR. BARR: Please excuse this juror from the trial of
5 this particular case.

6 THE CLERK: You may return to your seat.

7 Juror Number 264, Shawneequa Sumpter.

8 What says the State?

9 MS. BAILEY: Please present this juror.

10 THE CLERK: What says the Defense?

11 MR. BARR: Swear the juror, please.

12 THE CLERK: Please take a seat in the jury box.

13 Juror Number 157, Justin Lankford.

14 What says the State?

15 MS. BAILEY: Please present this juror.

16 THE CLERK: What says the Defense?

17 MR. BARR: Excuse this juror, please.

18 THE CLERK: You may return to your seat.

19 Juror Number 97, Sheryl Fiorillo.

20 What says the State?

21 MS. BAILEY: Please present this juror.

22 THE CLERK: What says the Defense?

23 MR. BARR: Swear the juror, please.

24 THE CLERK: Please take a seat in the jury box.

25 Juror Number 276, Terri Triana.

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1 What says the State?

2 MS. BAILEY: Please present this juror.

3 THE CLERK: What says the Defense?

4 MR. BARR: Please excuse this juror from the trial of
5 this case.

6 THE CLERK: You may return to your seat.

7 Juror Number 282, Bruce Ward.

8 What says the State?

9 MS. BAILEY: Please present the juror.

10 THE CLERK: What says the Defense?

11 MR. BARR: Swear the juror.

12 THE CLERK: Please take a seat in the jury box.

13 Juror Number 200, Harold Murphy.

14 What says the State?

15 MS. BAILEY: Please present this juror.

16 THE CLERK: What says the Defense?

17 MR. BARR: Seat the juror, please.

18 THE CLERK: Please take a seat in the jury box.

19 Juror Number 287, Angela Watkins.

20 What says the State?

21 MS. BAILEY: Please present this juror.

22 THE CLERK: What says the Defense?

23 MR. BARR: What's that number again, Madam Clerk?

24 THE CLERK: 287.

25 MR. BARR: Seat the juror, please.

1 THE CLERK: Please take a seat in the jury box.
2 Juror Number 132, Darlene Holmes.
3 What says the State?
4 MS. BAILEY: Please present this juror.
5 THE CLERK: What says the Defense?
6 MR. BARR: Swear her, please.
7 THE CLERK: Please take a seat in the jury box.
8 Juror Number 22, Harold Bath, Jr.
9 What says the State?
10 MS. BAILEY: Please excuse this juror.
11 THE CLERK: You may return to your seat.
12 Juror Number 296, Annette Winstead.
13 What says the State?
14 MS. BAILEY: Please present Ms. Winstead.
15 THE CLERK: What says the Defense?
16 MR. BARR: Seat the juror, please.
17 THE CLERK: Please take a seat in the jury box.
18 Juror Number 249, Debra Sijodahl.
19 THE COURT: Ma'am, I apologize. Can you pronounce
20 your name?
21 MS. SIJODAHL: Sijodahl.
22 THE COURT: Sijodahl, okay, thank you.
23 THE CLERK: What says the State?
24 MS. BAILEY: Please excuse Ms. Sijodahl.
25 THE CLERK: You may return to your seat.

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1 Juror Number 105, John Glisson, II.
2 What says the State?
3 MS. BAILEY: Please present Mr. Glisson.
4 THE CLERK: What says the Defense?
5 MR. BARR: Swear him, please.
6 THE CLERK: Please take a seat in the jury box.
7 Juror Number 70, Mark Cox.
8 What says the State?
9 MS. BAILEY: Please excuse Mr. Cox.
10 THE CLERK: You may return to your seat.
11 Juror Number 28, Walter Beverly, Jr.
12 What says the State?
13 MS. BAILEY: Please excuse Mr. Beverly.
14 THE CLERK: You may return to your seat.
15 Juror Number 218, Frankie Point.
16 What says the State?
17 MS. BAILEY: Please present Mr. Point.
18 THE CLERK: What says the Defense?
19 MR. BARR: Swear him, please.
20 THE CLERK: Please take a seat in the jury box.
21 THE COURT: I think that'll be sufficient. I don't
22 think we need an alternate.
23 THE CLERK: Okay.
24 THE COURT: All right, ladies and gentlemen, you are
25 the 12 jurors that will comprise the jury in this particular

1 case. I'm going to excuse you back to the jury room for just
2 a moment and then I'll bring you out shortly with some
3 instructions that I'll need to give you before we start the
4 trial of this case with some preliminary instructions and
5 things of that nature, but I want to go ahead and excuse you
6 at this point in time and we'll bring you back out in just a
7 minute, but this'll give you an opportunity to get something
8 to drink, stretch your legs, whatever the case may be, all
9 right?

10 If everybody would please remain seated while the jury is
11 excused to the jury room.

12 (Whereupon, the following takes place outside the
13 presence of the jury.)

14 THE COURT: All right, any challenges to the selection
15 or composition of the jury by the State?

16 MS. BAILEY: None, Your Honor.

17 THE COURT: Any from the Defense?

18 MR. BARR: The Court's indulgence, Judge.

19 THE COURT: All right.

20 MR. BARR: No, sir, Judge.

21 THE COURT: All right.

22 (Remaining jury panel dismissed by Court with call-in
23 instructions.)

24 THE COURT: All right, Mr. Barr, what are we going to
25 do?

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1 MR. BARR: May it please the Court, Judge, if the
2 Court would recall I think we started a tender of a guilty
3 plea the day before yesterday, and we, perhaps, got to a point
4 in the plea where the Court in determining whether or not the
5 plea was free and voluntary ---

6 THE COURT: Right.

7 MR. BARR: --- questioned the Defendant as to whether
8 or not he understood that the minimum sentence for which he
9 was pleading, that the minimum sentence was 15 years with no
10 parole, and it was at that point that he had some serious
11 concerns and decided not to go forward with the plea. It's my
12 understanding that he has now had the benefit of some further
13 consideration and he wishes to resume the tendering of his
14 plea of guilty ---

15 THE COURT: All right.

16 MR. BARR: --- to the third offense drug distribution
17 charge.

18 THE COURT: All right, well, rather than resuming it,
19 I think what we'll do is just start all over and do a whole
20 ---

21 MR. BARR: Start it over again, Judge. We don't have
22 a problem with that.

23 THE COURT: All right, is that agreeable with the
24 State?

25 MS. BAILEY: It is, Your Honor.

1 THE COURT: All right, have you got a sentencing
2 sheet?

3 MS. BAILEY: I do.

4 THE COURT: Yeah, if we'd please get - Mr. Collins, if
5 you'd please stand and raise your right hand, please. Thank
6 you.

7 (Whereupon, Defendant is sworn by the Clerk.)

8 THE COURT: All right, now, Mr. Barr, you represent
9 Octavious Omar Collins on the charge of distribution of
10 cocaine base third offense; is that correct?

11 MR. BARR: Yes, sir.

12 THE COURT: And have you discussed with your client
13 the charge against him, his rights as a Defendant and the
14 consequences of being convicted of this crime?

15 MR. BARR: Yes, sir.

16 THE COURT: In your opinion does your client
17 understand the charge against him ---

18 MR. BARR: In my opinion he understands, Judge.

19 THE COURT: Does he understand his rights and the
20 consequences of being convicted of this crime?

21 MR. BARR: Yes, sir.

22 THE COURT: All right, and does he wish to plead
23 guilty?

24 MR. BARR: He has indicated to me that he wished to
25 plead guilty.

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1 THE COURT: And do you agree with that decision?

2 MR. BARR: I do.

3 THE COURT: Based upon the information you have if
4 this case proceeded to trial do you feel that the State could
5 prove your client's guilt beyond a reasonable doubt?

6 MR. BARR: Judge, I think that there's a substantial
7 likelihood that he would be convicted.

8 THE COURT: Has your client received a competency
9 evaluation?

10 MR. BARR: No, sir.

11 THE COURT: Do you feel that he needs a competency
12 evaluation?

13 MR. BARR: No, sir, I don't.

14 THE COURT: All right, sir.

15 Sir, your name is Octavious Omar Collins?

16 MR. COLLINS: Yes, sir.

17 THE COURT: All right, Mr. Collins, you have been
18 charged and indicted by the Grand Jury on the crime of
19 distribution of cocaine base third offense and according to
20 your attorney you wish to plead guilty to that charge; is that
21 correct?

22 MR. COLLINS: Yes, sir.

23 THE COURT: All right, before I can accept a guilty
24 plea from you, I've got to go over some questions with you to
25 be sure that you understand the charge against you, that you

1 understand your rights as a Defendant, that you understand the
2 consequences of pleading guilty, and I must be sure that
3 you're pleading guilty voluntarily.

4 Now, during the past 72 hours have you taken any
5 medication, consumed any alcohol or drugs or been under any
6 influence that would affect your ability to know why you're
7 here?

8 MR. COLLINS: No, sir.

9 THE COURT: Excuse me?

10 MR. COLLINS: No, sir.

11 THE COURT: All right, do you understand why you're
12 here today?

13 MR. COLLINS: Yes, sir.

14 THE COURT: Is there anything about this hearing
15 that you want to ask your lawyer or ask me before we
16 proceed?

17 MR. COLLINS: No, sir.

18 THE COURT: All right, now, even though you've been
19 indicted by the Grand Jury, under the Constitution of the
20 United States, you're presumed innocent of this crime, and you
21 have the right to have your guilt or innocence determined by a
22 jury trial of your peers. The State bears the burden of
23 proving your guilt beyond a reasonable doubt. You do not have
24 to prove your innocence and you cannot be compelled to testify
25 against yourself. You also have the right to confront and

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1 cross examine anybody who testifies against you. If you
2 choose, you can present a defense to this charge, but when you
3 plead guilty, you give up all of those rights. Do you
4 understand that?

5 MR. COLLINS: Yes, sir.

6 THE COURT: And is that what you want to do?

7 MR. COLLINS: Yes, sir.

8 THE COURT: All right, now you understand that for
9 this crime I could send you to prison for 30 years and fine
10 you \$50,000? Do you understand that?

11 MR. COLLINS: Yes, sir.

12 THE COURT: Do you understand that the absolute
13 mandatory minimum sentence that can be imposed is 15 years in
14 prison?

15 MR. COLLINS: Yes, sir.

16 THE COURT: And do you understand that regardless of
17 the sentence that has been - that will be imposed, you will
18 not be eligible for parole?

19 MR. COLLINS: Yes, sir.

20 THE COURT: Any do you understand that no part of your
21 sentence can be suspended and you cannot be placed on
22 probation?

23 MR. COLLINS: Yes, sir.

24 THE COURT: Do you understand that by pleading guilty
25 your driver's license will be suspended for a year?

1 MR. COLLINS: Yes, sir.

2 THE COURT: And do you understand this is your third
3 offense; and so, any subsequent offense of a drug possession
4 charge will carry an enhanced sentence which means that you're
5 subject to a sentence greater than if it was your first or
6 second offense and the State will use this guilty plea against
7 you to show a conviction for a drug possession crime. Do you
8 understand that?

9 MR. COLLINS: Yes, sir.

10 THE COURT: Knowing your rights as a Defendant,
11 knowing the maximum sentence you can receive, knowing the
12 mandatory minimum sentence that must be imposed, knowing that
13 no part of your sentence can be suspended, you cannot be
14 placed on probation, you are not eligible for parole, knowing
15 that your driver's license will be suspended for a year and
16 knowing the enhanced sentence you could get for any future
17 drug possession convictions, do you wish to plead guilty or
18 not guilty to possession with intent to distribute cocaine
19 base third offense?

20 MR. COLLINS: Guilty.

21 THE COURT: Has anybody promised you anything or
22 threatened you in any way to get you to plead guilty?

23 MR. COLLINS: No, sir.

24 THE COURT: Are you pleading guilty voluntarily?

25 MR. COLLINS: Yes, sir.

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1 THE COURT: Are you satisfied with the services of
2 your lawyer?

3 MR. COLLINS: Yes, sir.

4 THE COURT: Are you pleading guilty to this crime
5 because you committed this crime?

6 MR. COLLINS: Yes, sir.

7 THE COURT: All right, I need you to listen carefully
8 while the Solicitor gives me the facts of your case; okay?

9 MR. COLLINS: Yes, sir.

10 THE COURT: All right.

11 MS. BAILEY: Thank you, Your Honor. On July 22nd of
12 2010, the Defendant, Mr. Octavious Collins, sold a quantity of
13 crack cocaine to an undercover confidential informant who was
14 working at the direction and control of the Organized Crime
15 Bureau of Georgetown County. That sale of crack cocaine
16 happened at Apple and Persimmon Street which is in the Andrews
17 section of Georgetown County. SLED did run tests on the
18 quantity of crack cocaine. It came back at .84 grams of crack
19 cocaine. This was Mr. Collins's third offense. At this time
20 I'd like to make Court's Exhibits of the three - of three
21 previous convictions, drug convictions for Mr. Collins. One
22 is 2004-GS-22-0581 which is a guilty plea to simple possession
23 of marijuana. That guilty plea did happen in General
24 Sessions Court as part of a lesser included - as a guilty
25 plea to a lesser included offense. So, Mr. Collins was

1 counseled for that particular plea.

2 THE COURT: All right.

3 MS. BAILEY: Also, Mr. Collins has pled guilty in the
4 past to 2005-GS-22-1255 which was for possession with intent
5 to distribute cocaine first offense and 2005-GS-22-1254 for
6 possession with intent to distribute crack first offense.

7 Your Honor, it's my understanding that under the recent
8 Bryant case along with the Robinson case, just for the record,
9 the Bryant and the Robinson case say that even though Mr.
10 Collins has never pled guilty to a second offense crack - a
11 second offense of a drug distribution or any sort of drug
12 conviction that because he has these previous convictions that
13 that still sustains this being a third offense.

14 THE COURT: All right.

15 MS. BAILEY: And at this time I would like to make
16 these Court's Exhibits.

17 THE COURT: All right, any objection?

18 MR. BARR: No, sir.

19 THE COURT: All right, do you want to do those
20 separately or is there one exhibit?

21 MS. BAILEY: I think separately.

22 THE COURT: All right, so, we'll do those State's
23 Exhibits One, Two and Three admitted into evidence without
24 objection.

25 MS. BAILEY: Thank you, Your Honor.

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1 (Whereupon, State's Exhibits One, Two and Three admitted
2 into evidence and appropriately marked.)

3 MR. BAILEY: And at the appropriate time, the State
4 would like to speak as to sentencing.

5 THE COURT: All right.

6 MS. BAILEY: Do that now or later.

7 THE COURT: All right, Mr. Collins, you heard the
8 facts or the allegations against you in this case?

9 MR. COLLINS: Yes, sir.

10 THE COURT: All right, is that what happened in this
11 case?

12 MR. COLLINS: Yes, sir.

13 THE COURT: All right, all right, Mr. Barr, anything
14 in mitigation?

15 MR. BARR: Judge, we would just simply like to, first
16 of all, apologize for any inconvenience that has been caused
17 by the initiation of these proceedings and then having
18 terminated the proceedings and then having to come back to
19 court and we get here a little bit late this morning and have
20 to resume or have to do the whole thing over again.

21 Your Honor, I think that with respect to our request for
22 a minimum sentence, even though, and this is my position as a
23 defense lawyer, I'm convinced that, and I've done lots of
24 these cases, I'm convinced that perhaps yesterday is probably
25 the first time that in the colloquial language of people like

1 Mr. Collins and particularly in the street, he felt what the
2 law actually has described as it relates to a third offense
3 drug conviction, and I really don't think that prior to this
4 time, notwithstanding that fact that I've looked over the
5 previous guilty pleas that he entered, of course each time he
6 entered a guilty plea, I've looked over each one of them and
7 he certainly had, had competent counsel, but Your Honor, I'm
8 just not sure that it was explained to him in such a way that
9 it took hold, but I think because of his appearance here
10 yesterday and now after he's had to consider what exactly is
11 confronting him, I think he realizes now what, what he has
12 done in terms of this business of selling drugs.

13 Now, I'm not suggesting that Mr. Collins had no
14 appreciation prior to today of what a third offense drug
15 distribution would bring him, but I'm simply suggesting to the
16 Court that as a matter insofar as getting into his head I
17 think that from the standpoint of deterrent that had he really
18 understood what would be facing him as he engaged in this drug
19 trade business again, I think that perhaps he would have been
20 somewhat more reluctant to get himself involved in this kind
21 of activity again.

22 Now, Your Honor, I also want to speak to the issue of the
23 charges that I believe that the State has indicated that
24 they'll be nolle prosequing as a result of this plea, and of
25 course, those charges have been pending for some time. I

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1 represent Mr. Collins on those charges and I've looked at them
2 very seriously. We've done quite a bit of investigation, and
3 quite frankly, in my estimation, even though I certainly
4 appreciate the fact that the State is dismissing those charges
5 because I'd hate to see him have to go to court and go to jail
6 on a 15-year sentence and then come back later on to be tried
7 on something that he may or may not be found guilty on, but
8 notwithstanding that the reason I'm mentioning that, Your
9 Honor, is I don't want the Court to think that perhaps there's
10 some quid pro quo as it relates to his plea at this time and
11 perhaps not give full consideration to our request that you
12 would give him a minimum sentence, and the only other thing,
13 Judge, he's a young man. He is - he's only 24 years old, and
14 quite frankly, I feel very sorry for him, but Your Honor, I
15 would think that if the Court should see fit to grant a
16 minimum sentence, I certainly do believe that with respect to
17 rehabilitation I think that there would be adequate time not
18 only for him to consider the mistake that he has made in this
19 particular case or in any other case as it relates to drug
20 dealing, but perhaps it'll give him some time to get his life
21 straightened out and by that time be prepared to reenter
22 society with a mindset that he can do something constructive
23 with his life. He'll still have some, do something
24 constructive with his life as opposed to doing something
25 involved in a drug trade.

1 Your Honor, the only other thing, and I want the record
2 to reflect that I have looked at the evidence in this case and
3 along with Mr. Collins, of course, the State has what I
4 anticipate that would have been the introduction into evidence
5 of a statement and also a video and in that video, we've
6 looked at the video, and quite frankly, that video is probably
7 compelling as on the issue of identity, and I've discussed
8 that with Mr. Collins. He knows that identity is an element
9 of any crime such as this, and of course, he has conceded that
10 because the evidence is perhaps somewhat overwhelming and
11 because I think he now understands the nature of the
12 consequences of selling drugs.

13 He's in court today with his grandmother. His mother is
14 usually here, but she had to go to work today, but in any
15 event I can simply say, and Judge I say this as a part of a
16 plea in mitigation because as an officer of the court I've had
17 - in the last 30 years I've had an opportunity to deal with a
18 whole lot of folks involved in selling drugs, and I have never
19 encountered a person who, in my opinion, has the disposition
20 that Mr. Collins has as it relates to humility.
21 Unfortunately, for whatever reason, he has gotten involved in
22 this drug business, and as a result of that here he stands
23 before you today having to plead guilty to a very serious
24 criminal charge.

25 Your Honor, I would just hope that you would take all of

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1 this into consideration and as part of the plea of course I
2 think you've granted us leave in the event that we should deem
3 it appropriate to petition for reconsideration, and I would
4 just want to make sure that that's part of this record and,
5 Judge, if you can find that somewhere with respect to the
6 latitude that you've got as it relates to a minimum sentence.
7 I think each time - the maximum that he's ever gotten has been
8 three years and some probation, and I'm not going to suggest
9 that that should have gotten through to him, but I really
10 think that had Mr. Collins really, really understood the
11 magnitude of what sentence enhancement means, then he probably
12 wouldn't be before you today because he is the kind of person
13 that has demonstrated to me over the years that he does have
14 the capacity to at least to understand things and to have an
15 appreciation for him such that he wouldn't be in front of this
16 Court at this time. Thank you, Judge.

17 THE COURT: All right, thank you.

18 Mr. Collins, anything you want to say or does anyone want
19 to speak on your behalf?

20 MR. COLLINS: I just want to say I'm sorry and ask the
21 Court to have mercy on me.

22 THE COURT: All right, all right, the State said they
23 want to be heard?

24 MS. BAILEY: Thank you, Your Honor. I'll ---

25 THE COURT: Excuse me, wait a minute. Wait a minute.

1 He's got somebody. You need to come forward, ma'am, and give
2 us your name.

3 MS. COLLINS: I'm his grandmamma and I please - for you
4 all to please give him a chance because he try to do the best
5 he knows how and I ain't never see him just do that, sell that
6 because he must be - if he did, I ain't, I ain't been know
7 nothing about it, and please, please be light on him.

8 THE COURT: All right.

9 MS. COLLINS: Please give him mercy.

10 THE COURT: Thank you, ma'am, and your name?

11 MS. COLLINS: Virginia Collins.

12 THE COURT: All right, Ms. Collins, thank you very ---

13 MS. COLLINS: Please, please give him a chance.

14 MR. BARR: Thank you, Ms. Collins.

15 MS. COLLINS: And be light on him.

16 THE COURT: Thank you, ma'am.

17 All right, Mr. Collins, anybody else want to speak on
18 your behalf?

19 MR. COLLINS: No, sir.

20 THE COURT: All right, what's the State's position?.

21 MS. BAILEY: Thank you, Your Honor, just a few things
22 I'd like to establish for the record before we go into
23 sentencing, one is that back between January and February,
24 Eric Fox was Mr. Collins's attorney and at that time I allowed
25 Mr. Fox to come view the video of the drug buy. It is a

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1 digital video, and at that time Mr. Fox counseled Mr. Collins,
2 and on February 24th, 2010, Mr. Collins was arraigned on the
3 record with Mr. Fox standing next to him, and Judge John
4 informed Mr. Collins at that time that 15 years was the
5 mandatory minimum, that the State was offering a negotiated 15
6 year sentence and that it would expire that week. So, back in
7 February, Mr. Collins was advised by Judge John as to what the
8 sentencing range was in this case and that an offer to the
9 minimum of that sentencing range was expiring on that date.
10 Since then Mr. Collins has hired Mr. Barr, and Mr. Barr has
11 had an opportunity to view the video and, in fact, Mr. Barr
12 and Mr. Collins viewed the video together in my office. I
13 just want the record to reflect that they did both have the
14 opportunity to review that discovery.

15 Mr. Collins does have a record. In 2002, he was
16 convicted of grand larceny; 2003, forgery, resisting arrest
17 and a burglary third. At that time he was placed on a
18 suspended YOA. One year later he violated that probation by
19 committing the crime of possession of 28 grams or less of
20 marijuana. At that time he was sent to SCDC to serve an
21 active YOA sentence.

22 He was released from SCDC after serving the active YOA on
23 YOA parole. Just two years later in 2006, he was convicted of
24 the distribution of crack and the distribution of cocaine
25 charges. At that time they revoked his YOA parole and the

1 court imposed a two-year active sentence.

2 Your Honor, the point is that Mr. Collins has had
3 escalating levels of sentencing, none of which seem to have
4 gotten through to him because he's still in the community
5 distributing crack cocaine. He's had the opportunity for
6 reformation through the Youthful Offender Act program. He's
7 had an opportunity to have a taste of hard time with the two-
8 year sentence and none of those have been persuasive to him as
9 to why he should not be making a living by selling crack
10 cocaine. I would like the Court to consider this escalating
11 level of drug involvement in the Court's sentence.

12 In addition, Your Honor, pursuant to the administrative
13 order on August 1st of 2010, the State disclosed to Mr. Collins
14 through his attorney who the confidential informant was in
15 this case. The State did that at great peril to the
16 confidential informant. The confidential informant is
17 currently in fear for his life because Mr. Collins and the
18 confidential informant live very close to each other. They
19 live around the corner from each other in Andrews, and the
20 confidential informant is extremely concerned about his family
21 and about the repercussions that may come from that within the
22 neighborhood.

23 Given that the State has had to disclose this
24 information, given that Mr. Collins was offered the minimum
25 sentence back in February and here we are in September and

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1 given his escalating level of drug involvement, the State
2 would request a deviation from the minimum. The State would
3 request that the Court impose more than the minimum sentence.

4 THE COURT: All right.

5 MR. BARR: Your Honor, if might I might be permitted
6 to respond briefly and I will be brief.

7 THE COURT: All right.

8 MR. BARR: The informant in this case, I really don't
9 think that - of course, as naturally and usually goes with
10 most informants, we probably are the only person - the only
11 people that don't know what Mr. Lewis was involved in in terms
12 of his reputation in the community as a person that was an
13 informant. Of course, when you take the position that somehow
14 Mr. Lewis's name being mentioned in this court proceeding now
15 exposes him to some kind of jeopardy, Mr. Lewis's record is
16 longer from here to that bench, and he is - he did this solely
17 to promote his own self gain, and Your Honor, I understand
18 that there was a discussion with Mr. Collins and his prior
19 attorney concerning what the State was offering at that time,
20 and quite frankly, Judge, with all deference for the offer
21 that was made, if I would have put myself in Mr. Collins's
22 place, quite frankly, I don't know that I would have even done
23 more to try to make certain that I got whatever that I could
24 possibly get. When you're confronted with 15 years in the
25 penitentiary with no parole, that is the better part of his

1 life. Now, while for some of us it may be almost axiomatic
2 that we simply dismiss these things and say, "Well, you know,
3 he could do that standing on his head," the simple fact of the
4 matter is in all likelihood, Mr. Collins, if he survives in
5 the penitentiary to be an old man in 15 years, Your Honor, I
6 just think in terms of proportionality that it as it relates
7 to punishment that's just based on the crime that's committed,
8 this young man sold less than a gram of cocaine. Now, I
9 thought it was acting rather foolish because, quite frankly, I
10 think he suspected that Mr. Lewis was wired and went on and
11 did it anyhow.

12 So, I had - I don't - hadn't seen anything to indicate
13 and I know that here in Georgetown County we've got some
14 people who are seriously in the drug trade. I mean, I'm not
15 talking about - I'm talking about instead of grams they deal
16 in keys. Now, to suggest that somehow Mr. Collins because he
17 has been in trouble before, somehow he deserves the ultimate
18 in terms of what the law could impose upon him, Judge, I think
19 that that from a purely - a rational standpoint, I don't know
20 that that would be an appropriate thing to do, and I don't
21 know that justice would be promoted by that, but Your Honor, I
22 would certainly hope that, you know, you're, you're - you've
23 been a lawyer a long time and I would certainly hope that you
24 would not take the State's concern to suggest that somehow Mr.
25 Collins has singled himself out simply by not taking what the

State v. Collins (8-30-10)

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1 State offered him initially for - to get an extra 50 lashes,
2 and Your Honor, I do believe that the legislature was very
3 wise in deciding that, "Well, when you get three convictions,
4 you know, it's time to get serious in terms of the medicine
5 that you're going to get," and, Judge, I thoroughly believe
6 that in terms of what is described for Mr. Collins under the
7 legislative scheme, the 15 years for without parole is for -
8 and I realize that he probably may have sold cocaine on other
9 - in other situations but perhaps didn't even get caught, but
10 in this incidence he did get caught and he is before the Court
11 at this time pleading guilty to the offense that he committed,
12 which is distribution of cocaine less than a gram and, Your
13 Honor, it's the one that has now rung the bell.

14 So, Judge, I certainly hope that the Court will seriously
15 consider Mr. Collins's youth as one of the things that would
16 concern me as it relates to a sentence in excess of 15 years.
17 Thank you, Judge.

18 THE COURT: All right, thank you.

19 MS. BAILEY: Can I just put on the record that we're
20 proceeding under the drug laws as they existed from 2005 till
21 - till June of 2010 because the incident date is from July of
22 2009, Your Honor.

23 THE COURT: All right, Mr. Collins, I will accept your
24 guilty plea. I find that it's made knowingly, voluntarily,
25 fully advised of your rights as a Defendant and the nature of

1 the charge against you and the consequences of your guilty
2 plea. I also find that there is a factual basis to support
3 the charge against you.

4 The sentence of the Court is that you be confined to the
5 State Department of Corrections for 20 years. You will be
6 given credit for any time served thus far. All right.

7 MS. BAILEY: Thank you, Your Honor.

8 THE COURT: Thank you.

9 (Adjourned.)

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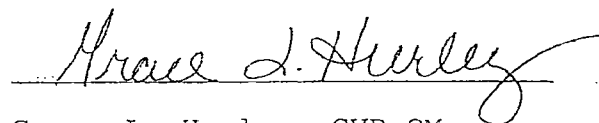
State v. Collins (8-30-10)

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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of The State versus Octavious Omar Collins, held in the Court of General Sessions for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on August 30, 2010 and September 1, 2010.

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



Grace L. Hurley, CVR-CM

Official Reporter

December 6, 2010.

**STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN**

EXHIBITS

Case #: 2010-GS-22-74
 Judge: Culbertson
 Trial Date: 8-30-10 / 9-1-10
 Attorney: Bailey
 Attorney: Barr

Plaintiff(s) State
 vs.
 Defendant(s) Octavious Omar Collins

PLAINTIFF'S EXHIBITS	DEFENDANT'S EXHIBITS	COURT'S EXHIBITS
1 <u>Plea sheet</u> <u>04-0581</u>	1	1
2 <u>"</u> <u>05-1254</u>	2	2
3 <u>"</u> <u>05-1255</u>	3	3
4	4	4
5	5	5
6	6	6
7	7	7
8	8	8
9	9	9
10	10	10
11	11	11
12	12	12
13	13	13
14	14	14
15	15	15
16	16	16
17	17	17
18	18	18
19	19	19
20	20	20

Court
Reporter

Grace J. Hurley
Th. S. A. M. A. M.

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATEGeorgetown

VS.

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

INDICTMENT/CASE#:

AW#:

Date of Offense:

S.C. Code §:

CDR Code #:

☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Simple Possession Marijuanain violation of § 44-53-37(d)(2) the S.C. Code of Laws, bearing CDR Code # 0161519☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of 1 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of time served days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 1 day

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ set by SCDPPPS Recipient:

*Fine:

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

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

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

\$56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

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

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

	\$
\$100	\$100.00
\$100	\$
\$12	\$
\$500	\$
\$25	\$25.00
\$100	\$100.00
\$50	\$
\$40/ea	\$
\$6.75	\$
\$231.75	\$

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

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

pmts. of \$ 20.00 beginning 11/24/04\$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: Sentence Date: June 24, 2005Court Reporter:

Clerk of Court/Deputy Clerk

CERTIFIED A TRUE
AND CORRECT COPY

DEPUTY CLERK OF COURT

White - Clerk

Green - Corrections

Canary - Georgetown County, SC Defendant

SCCA/217 (7/2003)

WITNESSES:
GEORGETOWN SHERIFFS DEPARTMENT
ARREST WARRANT/TICKET NUMBER:

H-562860

0186 44-53-0370(b)(2)

SID: SC01419371

DOI: 3-10-04

D/L

ACTION OF GRAND JURY

Shue Brie

5-12-04

Date

Adeline M. McLeod
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

DOCKET NO. 04-GS22-0581

**The State of South
Carolina,**

County of Georgetown

19929 001

MJM

COURT OF GENERAL
SESSIONS

May

TERM 2004

THE STATE

VS.

OCTAVIUS OMAR COLLINS

Andrews, SC 29510

DOB:

SS#:

J. GREGORY HEMBERG,
SOLICITOR

INDICTMENT FOR

DISTRIBUTION OF MARIJUANA

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT FOR

Distribution of Marijuana

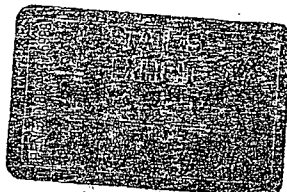
At a Court of General Sessions, convened on May 12, 2004, the Grand Jurors of Georgetown County present upon their oath:

That Octavius Omar Collins did in Georgetown County on or about March 10, 2004, distribute, dispense, or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver, a quantity of Marijuana, a controlled substance under provisions of Section 44-53-370, et. Seq. S.C. Code of Laws 1976, as amended, such possession not having been authorized by law, and being in violation of Section 44-53-370(b)(2), South Carolina Code of Laws, 1976, as amended.

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



SOLICITOR



STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Georgetown

STATE

VS.

Octavious Omar Collins

AKA:

Race: BSex: MAge: 20

DOB: _____ SS#: _____

Address: _____

City, State, Zip

DL# _____

Andrews, SC 29510SID# SC 01419371

INDICTMENT/CASE#:

05-GS- 221254

A/W#:

H-827238

Date of Offense:

9-2-05

S.C. Code §:

44-53-0375(B)(2)

CDR Code #:

3 / 0 / 1 / 1 / 5☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Possession with intent to distribute cocaine base (crack) (1st offense)in violation of § 44-53-0375(B)(2) of the S.C. Code of Laws, bearing CDR Code # 3 / 0 / 1 / 1 / 5☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

David C. Beasly
SolicitorDonell C. BeaslyWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 3 ~~years~~ years or ☐ under the Youthful Offender Act not to exceed _____ years

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

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

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,

which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: with 10 months of this date☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-18-40 to be calculated and applied by the State

Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS _____

Recipient:

*Fine: \$ _____

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

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

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

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

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

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

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

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

3% to County (if paid in installments) \$ 16.75TOTAL \$ 231.75David C. Beasly
Clerk of Court/Deputy ClerkCourt Reporter: Dixie Eubank

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

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

pmts. of \$ 30.00 beginning mo. after release

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date: 3/2/06

AND CORRECT COPY

DEPUTY CLERK OF COURT
GEORGETOWN COUNTY, SC

WITNESSES:

Sheriff's Office

ARREST WARRANT NUMBER:

A/W: H-827238

CDR: 3015 §44-53-0375(B)(2)

vs.

DOI: 9-2-05

SID: SC01419371

ACTION OF GRAND JURY

James Bill

Date *November 30, 2005*

Foreman of Grand Jury *Harry L. Parker*

VERDICT

Foreman of Petit Jury

21012

DCB

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2005

County of Georgetown

THE STATE

vs.

OCTAVIOUS OMAR COLLINS

Andrews, SC 29510

DOB:

SSN:

J. GREGORY HEMBREE, SOLICITOR

INDICTMENT FOR

POSSESSION WITH INTENT
TO DISTRIBUTE COCAINE
BASE (CRACK)

STATE OF SOUTH CAROLINA

INDICTMENT FOR:

COUNTY OF GEORGETOWN

) POSSESSION WITH THE INTENT TO DISTRIBUTE
) COCAINE BASE (CRACK)

At the Court of General Sessions, Convened on November 30, 2005, the Grand Jurors of Georgetown County present upon their oath:

That Octavious Omar Collins did in Georgetown County on or about September 2, 2005, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver a quantity of Cocaine base, a controlled substance under the provisions of Section 44-53-110, et.seq., Code of Laws of South Carolina, 1976, as amended, such possession not having been authorized by law, and being in violation of Section 44-53-0375(B), S. C. Code of Laws, 1976, as amended

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


SOLICITOR DOB

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Georgetown

VS.

Octavious Omar Collins

AKA:

Race:

B

Sex:

M

Age:

20

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

Andrews, SC 29510
SC01419371

INDICTMENT/CASE#:

05 -GS- 22-1255
A/W#: H-827239

Date of Offense:

9-2-05

S.C. Code §:

44-53-0370(b)(1)

CDR Code #:

0 / 1 / 8 / 3

☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO: Possession with intent to distribute cocaine (1st off.)in violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0 / 1 / 8 / 3☒ NON-VIOLENT☐ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Erica H. McCall
SolicitorOctavious Omar Collins
DefendantRichard F. Blum
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 3 years or ☐ under the Youthful Offender Act not to exceed _____ years

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

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

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 05-65-22-1254E with YOA☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

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

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

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

\$56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

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

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

\$	
\$	
\$100	\$100.00
\$100	\$
\$12	\$
\$500	\$
\$25	\$25.00
\$100	\$100.00
\$50	\$
\$40/ea	\$
\$16.75	
\$231.75	

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

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

pmts. of \$ 20.00 beginning 1 mo. after release

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date: 3/2/06
AND CORRECT COPYDEPUTY CLERK OF COURT
GEORGETOWN COUNTY, SC
Pink - Defendant

White - Clerk

Green - Corrections

Canary - Probation

SCCA/217 (7/2003)

DOCKET NO. 05 GS22 1255

The State of South Carolina,

County of Georgetown

21012

DCB

COURT OF GENERAL SESSIONS
NOVEMBER TERM 2005

WITNESSES:
Sheriff's Office

ARREST WARRANT NUMBER:

AWW: H-827239

CDR: 0184 §44-53-0370(b)(1)

T:

DOI: 9-2-05

SID: SC01419371

ACTION OF GRAND JURY

True Bill

Date *November 30, 2005*

Gregory L. Hembree
Foreman of Grand Jury

VERDICT

POSSESSION WITH INTENT
TO DISTRIBUTE COCAINE

Foreman of Petit Jury

OCTAVIOUS OMAR COLLINS

Andrews, SC 29510

DOB:

SSN: 7-

J. GREGORY HEMBREE, SOLICITOR

INDICTMENT FOR

STATE OF SOUTH CAROLINA)

INDICTMENT FOR:

COUNTY OF GEORGETOWN)

POSSESSION WITH THE INTENT TO DISTRIBUTE
COCAINE ~~BASE (CRACK)~~ DCB

ZFC

At the Court of General Sessions, Convened on November 30, 2005, the Grand Jurors of Georgetown County present upon their oath:

That Octavious Omar Collins did in Georgetown County, on or about September 2, 2005 possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense, or deliver a quantity of Cocaine, a controlled substance under provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina, (1976), as amended, such possessor not having been authorized by law, and being in violation of §44-53-370(b)(1), S. C. Code of Laws 1976, as amended.

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


SOLICITOR DCB

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

IN THE COURT OF GENERAL SESSIONS

10-GS-22-00074/00075

STATE OF SOUTH CAROLINA,

PLAINTIFF,

vs.

OCTAVIOUS O. COLLINS,

DEFENDANT.

TRANSCRIPT OF RECORD

SEPTEMBER 23, 2010

GEORGETOWN, SOUTH CAROLINA

BEFORE:

THE HONORABLE, BENJAMIN H. CULBERTSON, JUDGE

APPEARANCES:

BY: ERIN E. BAILEY, ESQ.
SCOTT R. HIXSON, ESQ.
ATTORNEY FOR STATE

BY: CHARLES D. BARR, ESQ.
ATTORNEY FOR OCTAVIOUS O. COLLINS

BRENDA R. BABB
Circuit Court Reporter

2

INDEX

CALL OF CASE

3

ARGUMENT BY MR. BARR

4

ARGUMENT BY MS. BAILEY

9

RULING OF COURT

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CERTIFICATE OF REPORTER

19

MOTION TO RECONSIDER - SEPTEMBER 23, 2010

3

1 MS. BAILEY: STATE V. OCTAVIOUS OMAR COLLINS, HE
2 WAS BEFORE YOU LAST MONTH AND PLED GUILTY RIGHT AFTER JURY
3 SELECTION IN A DISTRIBUTION OF CRACK COCAINE THIRD OFFENSE
4 CASE. AT THAT TIME THE COURT SENTENCED HIM TO A 20-YEAR
5 SENTENCE AND MR. COLLINS FILED WITHIN THE TEN-DAY TIME
6 PERIOD A MOTION TO RECONSIDER THE SENTENCE SO THE STATE
7 ARRANGED TO HAVE HIM TRANSPORTED BACK FROM THE DEPARTMENT
8 OF CORRECTIONS FOR A HEARING TO THAT. SINCE IT'S THE
9 DEFENSE'S MOTION THEN WE'LL LET MR. BARR.

10 THE COURT: ALL RIGHT, SO WHAT WAS THE SENTENCE?

11 MS. BAILEY: TWENTY YEARS.

12 THE COURT: JUST STRAIGHT 20 YEARS?

13 MS. BAILEY: YES, YOUR HONOR, IT WAS A STRAIGHT
14 20 YEARS, I BELIEVE, LET ME DOUBLE CHECK THE SENTENCING
15 SHEET.

16 MR. BARR: TWENTY YEARS, JUDGE.

17 MS. BAILEY: YOUR HONOR, FOR THE COURT'S
18 INFORMATION THIS WAS A THIRD OFFENSE; THE STATE AT THE TIME
19 OF SENTENCING PUT IN AS A COURT'S EXHIBIT TWO PREVIOUS
20 CERTIFIED CONVICTIONS SINCE SENTENCING RANGE WAS 15 TO 30
21 WITH UP TO A \$50,000 FINE.

22 THE COURT: ALL RIGHT, SO I DIDN'T ORDER A FINE
23 OR ANYTHING, JUST STRAIGHT 20 YEARS?

24 MS. BAILEY: NO, YOUR HONOR, JUST STRAIGHT 20
25 YEARS, WOULD YOU LIKE A COPY OF THE SENTENCING SHEET?

MOTION TO RECONSIDER - SEPTEMBER 23, 2010

4

1 THE COURT: IF YOU'VE GOT IT, YEAH, LET ME TAKE
2 A LOOK AT IT.

3 MS. BAILEY: AND THIS WAS THE ONE THAT MONDAY
4 MORNING WE STARTED TO DO A PLEA AND MR. COLLINS SAID HE
5 WANTED A TRIAL AND THEN WE PICKED A JURY AND THEN MR.
6 COLLINS PLED.

7 THE COURT: YEAH, I REMEMBER NOW. ALL RIGHT,
8 MR. BARR, YOU REPRESENT OCTAVIOUS OMAR COLLINS?

9 MR. BARR: YES, JUDGE.

10 THE COURT: IN THIS, ON THIS CHARGE OF
11 POSSESSION WITH INTENT TO DISTRIBUTE COCAINE BASE THIRD
12 OFFENSE?

13 MR. BARR: YES, SIR.

14 THE COURT: ALL RIGHT, THIS IS YOUR MOTION?

15 MR. BARR: THIS IS MY MOTION.

16 THE COURT: ALL RIGHT, LET ME HEAR FROM YOU?

17 MR. BARR: JUDGE, IF IT PLEASE THE COURT, AT THE
18 TIME THAT MR. COLLINS WAS SENTENCED ONE OF THE ISSUES WAS
19 WHETHER OR NOT THE OMNIBUS CRIME REDUCTION SENTENCING
20 REFORM ACT OF 2010, WHETHER OR NOT THAT ACT WAS APPLICABLE
21 TO THE OFFENSE COMMITTED BY MR. COLLINS.

22 THE PROSECUTION PRESENTED AT THAT TIME A BRIEF
23 WHICH ESSENTIALLY SAID THAT, THAT MR. COLLINS COULD NOT
24 TAKE ADVANTAGE OF, OF THE REDUCTION IN THE SENTENCE THAT
25 WAS PROVIDED BY THE NEW ACT AND, OF COURSE, THE DEFENSE WAS

MOTION TO RECONSIDER - SEPTEMBER 23, 2010

5

1 GRANTED LEAVE TO PETITION THE COURT FOR RECONSIDERATION TO
2 PRESENT EVIDENCE TO MAKE ARGUMENTS AND TO AT LEAST TO
3 ADVANCE THE PROPOSITION THAT, THAT THE ACT WAS APPLICABLE.

4 JUDGE, JUST TO CLEAR WHAT WE'RE BEFORE THE COURT
5 FOR TODAY, WE DO NOT TAKE THE POSITION THAT THE ACT IS
6 APPLICABLE TO THE SENTENCE THAT WAS GIVEN TO MR. COLLINS.
7 I'VE LOOKED AT THE ACT AND, AND CLEARLY I THINK THAT THE
8 ALLEGED OFFENSE TOOK PLACE IN JULY AND THE ACT SAVING
9 CLAUSE ACTUALLY GOES BACK AS FAR AS JUNE 2ND, SO CLEARLY HE
10 WOULD BE WITHOUT PARAMETERS OF THE ACT, HOWEVER, WE ARE
11 STILL BEFORE THE COURT AND ASKING THE COURT TO RECONSIDER
12 THE 20 YEAR SENTENCE.

13 NOW, YOUR HONOR, YOU, YOU GRANTED US LEAVE
14 INITIALLY TO COME BACK BEFORE YOU TO AT LEAST ARGUE THAT A
15 SENTENCE OF LESS THAN 20 YEARS WOULD BE APPROPRIATE. THE
16 PROSECUTION'S POSITION AND THEY ARGUED TO YOU WAS THAT WELL
17 HE WAS ARRAIGNED AND HE DID NOT TAKE ADVANTAGE OF A PLEA
18 OFFER THAT WAS MADE AND HE WAS OFFERED 15 YEARS BUT HE DID
19 NOT TAKE ADVANTAGE OF IT WITHIN THE TIME OF IT THAT WE
20 PLACED UPON HIM AND, THEREFORE, NOT ONLY DID HE NOT TAKE
21 ADVANTAGE OF IT BUT HE DECIDED THAT HE WANTED TO GET
22 ANOTHER LAWYER AND PRIOR TO THE TIME THAT I REPRESENTED
23 MR., MR. COLLINS HE WAS REPRESENTED BY THE PUBLIC DEFENDERS
24 OFFICE, SPECIFICALLY MR. FOX.

25 NOW, YOUR HONOR, HERE'S, HERE'S WHERE THE POLICY

MOTION TO RECONSIDER - SEPTEMBER 23, 2010

1 ISSUE IS, I THINK THAT, AND I THINK THAT THE STATE'S
2 POSITION THAT, WELL BECAUSE HE DID NOT ACCEPT THE OFFER
3 WHEN IT WAS MADE AND WITHIN THE TIME LIMITS THAT WE GAVE
4 HIM WE ARE, THEREFORE, SUGGESTING TO THE COURT THAT HE
5 SHOULD BE SENTENCED TO SOMETHING ABOVE WHAT THE MINIMUM
6 REQUIRES. AND IN THIS CASE THE MINIMUM WOULD HAVE BEEN 15
7 YEARS BUT HE'S GOT A SENTENCING RANGE OF FROM 15 TO 30,
8 AND, YOUR HONOR, I THINK THAT TO SOME DEGREE, AND I SAY
9 THIS AS A TRIAL LAWYER. I THINK TO SOME DEGREE THAT
10 ARGUMENT WAS PERSUASIVE AND WAS EVEN PERSUASIVE WITH MR.
11 COURT, WITH THE COURT, BUT, YOUR HONOR, I THINK IT'S A
12 DANGEROUS THING BECAUSE, YOU KNOW, IT'S, THE PROSECUTION
13 HAS A LOT OF CONTROL WHEN IT COMES TO CRIMINAL CASES. THEY
14 ABSOLUTELY CONTROL THE DOCKET, AT LEAST THEY'VE BEEN DOING
15 THAT FOR THE LAST 30 YEARS. THE CASES THAT THEY CALL THEY
16 CALL THE CASES THEY, THEY FEEL LIKE USUALLY THAT THEY, THAT
17 ARE FAVORABLE AND THEY ALSO CONTROL THE TIMING AND, OF
18 COURSE, JUDGE, THE TIMING IS, IS SOMETHING THAT BECOMES
19 CRUCIAL WHEN YOU START DEALING WITH SAY, FOR INSTANCE, AN
20 ISSUE SUCH AS WHAT THIS YOUNG MAN HAD TO DEAL WITH WHEN HE
21 WAS LOOKING AT A THIRD DRUG OFFENSE AND, OF COURSE, THE
22 THIRD DRUG OFFENSE ITSELF, I THINK HE MAY HAVE SOLD COCAINE
23 FOR SOMETHING LIKE LESS THAN \$200 AND THAT WAS THE THIRD
24 DRUG OFFENSE. BUT NEVERTHELESS, IT WAS STILL AN OFFENSE,
25 AND BUT WHAT YOU'RE LOOKING AT HERE IS NOT A YOUNG MAN

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7

1 THAT'S THE PRODUCT OF A BIG TIME DRUG DEALER AND QUITE
2 FRANKLY I, I, I THINK IT'S JUST LACK OF EDUCATION THAT
3 ANYBODY WOULD, WOULD, WOULD CONSISTENTLY GET INVOLVED IN
4 THIS KIND OF ACTIVITY AND, AND, AND, AND, AND WHEN, WHEN
5 THE PROSPECTS OF BENEFIT IS SO LOW.

6 NOW WHEN I SAY LACK OF EDUCATION I'M NOT
7 SUGGESTING THAT THE OPPORTUNITY WASN'T THERE BUT, JUDGE, I
8 THINK HIS YOUTH, AND I THINK WE HAVE TO UNDERSTAND THAT
9 WHEN YOU'RE DEALING WITH YOUNG PEOPLE SOMETIMES THEY JUST
10 DON'T THINK AS MATURELY AS THEY OUGHT TO; AND IN THIS
11 INSTANCE MR. COLLINS WAS 20 YEARS OLD AND I WATCHED HIM
12 BREAK DOWN IN THIS COURT BECAUSE THE REALITY OF, OF, OF A
13 MINIMUM SENTENCE OF NOT LESS THAN 15 YEARS IT TOOK HIM BY
14 SURPRISE. I THINK FOR THE FIRST TIME HE, HE ACTUALLY FELT
15 WHAT THAT KIND OF SENTENCE WOULD BE, SO, YOUR HONOR, I
16 THINK IT'S ONE OF THOSE KIND OF SITUATIONS WHERE SAY, FOR
17 INSTANCE, IF YOU'RE, YOU'VE GOT AN ILLNESS AND YOU DECIDE
18 YOU WANT TO GET A SECOND OPINION, AND I DON'T KNOW ANYBODY
19 THAT'S GOT GOOD SENSE THAT WILL HAVE A SERIOUS ILLNESS AND
20 IF THE DOCTOR IS TELLING THEM THAT IT'S TERMINAL THAT THEY
21 DON'T WANT, WILL NOT SEEK A SECOND OPINION, THAT'S JUST
22 COMMON SENSE, AND THAT'S WHAT THIS YOUNG MAN DID IN THIS
23 CASE AND, OF COURSE, THAT'S WHAT I BELIEVE COST HIM.

24 I THINK IT COST HIM BECAUSE HE DECIDED TO GET THE
25 OPINION OF ANOTHER LAWYER OTHER THAN THE PUBLIC DEFENDER.

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1 AND TO PUT HIM OUTSIDE THE TIME THAT THE STATE SAID, WELL,
2 LOOK HERE'S THE TIME THAT YOU'VE GOT TO MAKE A DECISION
3 AND, YOUR HONOR, I THINK FOR THAT REASONS HE STANDS BEFORE
4 YOU TODAY WITH AN ADDITIONAL FIVE YEARS ONTO WHAT COULD
5 HAVE, AND WHAT PROBABLY MAY HAVE BEEN A 15-YEAR SENTENCE.
6 NOW, YOUR HONOR, I'M NOT SUGGESTING THAT, THAT
7 WHAT, WHAT, THAT THE 15-YEAR SENTENCE OR 20-YEAR SENTENCE
8 WAS, WAS NOT UNDER THE CIRCUMSTANCES A REASONABLE SENTENCE.
9 YOUR HONOR, I'M, I'M, IMPLORING AND I'M, I'M SUGGESTING TO
10 THE COURT THAT UNDER THE CIRCUMSTANCES AND CONSIDERING SOME
11 DEGREE OF MERCY PARTICULARLY AS IT RELATES TO THE POSITION
12 THAT HE WAS IN THAT, YOUR HONOR, THAT YOU WOULD CONSIDER
13 SENTENCING HIM TO THE MINIMUM SENTENCE OF 15 YEARS AS
14 OPPOSED TO FOLLOWING THE STATE'S POSITION WHICH SAYS, WELL
15 LOOK IF YOU DON'T DO WHAT WE SAY WE WANT YOU TO DO WHEN WE
16 WANT YOU TO DO IT THEN WE WILL INSIST THAT YOU GET THE MAX
17 AND IN THIS CASE IT WASN'T THE MAX, IT WAS 20 YEARS BUT,
18 JUDGE, WHEN YOU LOOK AT THIS YOUNG MAN'S AGE AND, AND, AND
19 THE AMOUNT OF TIME THAT HE'S GOING TO HAVE TO SPEND IN THE
20 PENITENTIARY HE'S GOING TO BE A RELATIVELY OLD MAN WHEN HE
21 GET OUT AND, JUDGE, I JUST BELIEVE AND I, AND I ASK THE
22 COURT TO RECONSIDER AND GIVE HIM A 15-YEAR SENTENCE BECAUSE
23 A 15-YEAR SENTENCE WOULD CERTAINLY IN, IN MY MIND AND, AND
24 I THINK IN, IN THE INTEREST OF JUSTICE BE A FAIR SENTENCE.
25 MOREOVER, YOUR HONOR, I THINK IT WOULD BE ALSO ADDRESS THE

MOTION TO RECONSIDER - SEPTEMBER 23, 2010

9

1 ISSUE OF PROSECUTORIAL DISCRETION.

2 I'M NOT SUGGESTING THAT THE LAW IN SOUTH CAROLINA
3 CHANGE. I'M GLAD TO SEE THAT I'VE LIVED LONG ENOUGH TO SEE
4 THAT WE'VE GONE TO A SYSTEM NOW WHERE THE PROSECUTION DON'T
5 HAVE ABSOLUTE CONTROL OVER THE TIMING OF THE CALLING OF
6 CASES AND THIS WHOLE ROLL CALL BUSINESS THAT'S BEEN ABUSED
7 FOR SO LONG, BUT AT LEAST NOW WE'RE IN A SITUATION WHERE
8 THERE ARE SOME CONSTRAINTS ON THE PROSECUTION'S DISCRETION
9 AS IT RELATES TO THE TIMING OF BRINGING CASES TO COURT AND,
10 YOUR HONOR, I THINK THE TIMING IN THIS CASE IS WHAT GOT
11 THIS YOUNG MAN AND, AND, AND I THINK THAT BECAUSE HE HAS NO
12 CONTROL OVER WHEN A CASE IS GOING TO BE CALLED FOR TRIAL
13 AND HE FINDS HIMSELF CONFRONTED WITH THE SITUATION WHERE HE
14 WAS GETTING READY TO SPEND THE BETTER PART OF HIS LIFE IN
15 THE PENITENTIARY HE SAID, LOOK I NEED TO GET A SECOND
16 OPINION. AND, JUDGE, I THINK THAT'S ONLY REASONABLE AND,
17 YOUR HONOR, I WOULD JUST SIMPLY ASK THE COURT TO, TO
18 RECONSIDER HIS SENTENCE AND GIVE HIM A 15-YEAR SENTENCE AS
19 A MINIMUM AS OPPOSED TO A 20-YEAR SENTENCE. THANK YOU,
20 JUDGE.

21 THE COURT: ALL RIGHT, THANK YOU. MS. BAILEY?

22 MS. BAILEY: THANK YOU, YOUR HONOR. FIRST OF
23 ALL I WOULD SUBMIT THAT YOUR HONOR IS THE ONLY ONE THAT
24 SENTENCED MR. COLLINS AND IT'S ONLY IN YOUR HONOR'S MIND
25 THAT WE KNOW WHAT YOU WERE THINKING ABOUT, WHETHER THE

MOTION TO RECONSIDER - SEPTEMBER 23, 2010.

10

1 STATE DID MENTION THAT THERE WAS PREVIOUSLY A PLEA OFFER
2 FOR 15 YEARS, BUT THERE WERE OTHER ASPECTS OF THIS CASE
3 THAT WERE PRESENTED TO YOUR HONOR WHEN YOU DECIDED TO
4 IMPOSE THIS 20 YEAR SENTENCE.

5 ONE OF THE ASPECTS WAS MR. COLLINS CRIMINAL
6 RECORD. MR. COLLINS IN THE PAST WAS ON PROBATION. HE
7 RECEIVED A YOA AND HE RECEIVED AT ONE TIME A SHORT
8 PROBATION SENTENCE, A TWO-YEAR PROBATION SENTENCE.

9 THE COURT: WHAT IS HIS PRIOR RECORD?

10 MS. BAILEY: HE HAS IN 2002 A GRAND LARCENY,
11 2003 A FORGERY, A RESISTING ARREST, AND A BURG THIRD,
12 THAT'S WHEN HE GOT A YOA SUSPENDED TO PROBATION. HE
13 VIOLATED THAT PROBATIONARY SENTENCE AND WAS SENT AWAY TO
14 THE YOA IN 2004 WHEN HE COMMITTED THE CRIME OF POSSESSION
15 OF 28 GRAMS OR LESS OF MARIJUANA.

16 IN 2006 HE WAS CONVICTED OF TWO SEPARATE COUNTS
17 OF VIOLATION OF DRUG DISTRIBUTION LAW. THERE WAS A
18 DISTRIBUTION OF CRACK AND A DISTRIBUTION OF COCAINE, EACH
19 OF THOSE WERE FIRST OFFENSES BUT THEY WERE TWO SEPARATE
20 OFFENSES AND AT THAT TIME HE WAS SENTENCED TO SOME ACTIVE
21 TIME.

22 EVERY AVAILABLE OPTION UNDER OUR SENTENCING
23 SCHEME TO REHABILITATE MR. COLLINS HAS BEEN EXHAUSTED AND
24 NONE OF THEM HAVE WORKED. IN ADDITION TO THAT NO ONE WHO
25 HAS EVER REPRESENTED MR. COLLINS EVER APPROACHED THE STATE

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1 ABOUT SERIOUS PLEA NEGOTIATIONS, EVER, UNTIL THERE WAS A
2 JURY SITTING IN THIS BOX AND MR. COLLINS ENTERED A GUILTY
3 PLEA OR ATTEMPT TO NEGOTIATE A GUILTY PLEA. THE STATE
4 ISSUED BACK, WHEN THE CASE WAS BRAND NEW, THE STATE ISSUED
5 A PLEA OFFER OF 15 YEARS WITH AN EXPIRATION DATE. NO ONE
6 EVER PICKED UP THE PHONE TO CALL ME TO TRY TO NEGOTIATE
7 THAT CASE AND WHEN MR. COLLINS CAME INTO ROLL CALL MR.
8 COLLINS TOLD ME THAT HE WANTED A TRIAL.

9 AT THAT TIME WE BROUGHT MR. COLLINS IN WITH HIS
10 ATTORNEY. BY THE WAY, HIS FIRST ATTORNEY VIEWED THE VIDEO,
11 THE DIGITAL VIDEO, THAT WAS TAKEN IN THIS CASE. HIS FIRST
12 ATTORNEY TALKED TO MR. COLLINS, ADVISED HIM. MR. COLLINS
13 SAID HE WANTED A TRIAL SO I BROUGHT HIM IN HERE AND HAD HIM
14 ARRAIGNED IN FRONT OF JUDGE JOHN IN FEBRUARY. FEBRUARY
15 JUDGE JOHN TOLD HIM THAT THE 15-YEAR PLEA OFFER EXPIRED AT
16 THE END OF THE WEEK, IF HE WISHED TO TAKE IT HE NEEDED TO
17 CONTACT OUR OFFICE. MR. COLLINS DID NOT COME BACK. HE DID
18 NOT TAKE THE PLEA OFFER.

19 JUDGE JOHN ALSO TOLD MR. COLLINS THAT SWITCHING
20 ATTORNEYS WOULD NOT BE A DELAY TACTIC, THAT SWITCHING
21 ATTORNEYS WOULD NOT CHANGE THE PLEA OFFER AND THAT HE COULD
22 BE TRIED IN HIS ABSENCE.

23 THEN IN THE NEXT COUPLE OF MONTHS MR. COLLINS
24 WENT AND GOT A NEW ATTORNEY, MR. BARR. THE STATE PROVIDED
25 MR. BARR WITH THE DISCOVERY IN THIS CASE AND THE STATE DID

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11

1 NOT CALL THE CASE FOR TRIAL BECAUSE WE WANTED MR. BARR TO
2 HAVE AMPLE OPPORTUNITY TO PREPARE FOR THE CASE. IN FACT IT
3 WAS ON THE TRIAL ROSTER FOR THREE CONSECUTIVE MONTHS BEFORE
4 THE STATE CALLED IT FOR TRIAL BECAUSE WE WANTED MR. BARR TO
5 HAVE AN OPPORTUNITY TO REVIEW THAT DISCOVERY. IT WAS SUCH
6 A STRONG CASE THAT AT TIMES THE STATE THOUGHT THAT THERE
7 WOULD BE SERIOUS PLEA NEGOTIATIONS BUT NO ONE EVER PICKED
8 UP THE PHONE AND TRIED TO NEGOTIATE ANY TYPE OF PLEA IN
9 THIS CASE, SO I FIND IT A LITTLE DISINGENUOUS TO SAY WE
10 DIDN'T OFFER HIM A PLEA OFFER FAR ENOUGH AHEAD OF TIME WHEN
11 NOBODY EVER ATTEMPTED TO NEGOTIATE ANY KIND OF PLEA OFFER.

12 IN ADDITION THE STATE ALSO HAD TO DISCLOSE THE
13 IDENTITY OF A CONFIDENTIAL INFORMANT PRIOR TO TRIAL, THAT
14 CONFIDENTIAL INFORMANT WAS SITTING BACK THERE IN LOCK UP
15 READY TO TESTIFY TWO DAYS IN A ROW, READY TO TESTIFY
16 AGAINST MR. COLLINS. MR. COLLINS AND THAT CONFIDENTIAL
17 INFORMANT ARE NEIGHBORS. THAT PLACED THE CONFIDENTIAL
18 INFORMANT ALONG WITH HIS FAMILY AT SUBSTANTIAL PERIL.
19 DURING THE DIGITAL VIDEO OF THE DRUG BUY IN THIS CASE MR.
20 COLLINS SEEMED TO HAVE SOME IDEA THAT THIS WAS A
21 CONFIDENTIAL INFORMANT. HE ACTUALLY PADDED HIM DOWN AT ONE
22 POINT. GIVEN THAT BEHAVIOR I DON'T THINK THIS WAS AN
23 ISOLATED INCIDENT, THAT HE SUSPECTED THAT IT WAS AN
24 INFORMANT AND THAT HE CHECKED TO SEE IF THERE WAS ANY
25 RECORDING DEVICES.

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13

1 FOR ALL THOSE REASONS AND ALL THE REASONS THAT
2 YOUR HONOR SAW FIT TO SENTENCE MR. COLLINS PREVIOUSLY TO
3 THE 20-YEAR SENTENCE THE STATE WOULD REQUEST THAT YOU LEAVE
4 THE CURRENT SENTENCE INTACT.

5 MR. BARR: YOUR HONOR, IF I MIGHT AND I'LL BE
6 VERY BRIEF, THERE ARE JUST TWO ISSUES THAT, THAT I'M
7 EXTREMELY CONCERNED ABOUT THAT, THAT HAVE BEEN TOUCHED ON
8 AND I'D LIKE TO REPLY TO; AND THAT'S THE ISSUE REGARDING MY
9 REPRESENTATION OF MR. COLLINS. AS, AS PER MY RECOLLECTION
10 I PROBABLY REPRESENTED MR. COLLINS, I DON'T, I DON'T RECALL
11 IT. I KNOW IT HAD TO BE LESS THAN SIX MONTHS, AND I KNOW
12 THAT, SO I DON'T THINK WE HAD A VERY LONG TIME TO ASSESS
13 MR. COLLINS' CASE AND MAKE A DETERMINATION REGARDING THE
14 STRENGTH OF THAT CASE.

15 I WILL SAY THAT I THOUGHT WE DID IT IN A
16 REASONABLE TIME AND, AND, AND BUT ASIDE FROM THAT, JUDGE, I
17 THINK THAT WHEN IT COMES TO CRIMINAL LITIGATION WHEN WE
18 START LOOKING AT FIXED TIME TABLES REGARDING MAKING CERTAIN
19 DECISIONS, AND I'M NOT SAYING THAT IN SOME SITUATIONS IT'S
20 NOT NECESSARY BUT HOWEVER IN THIS, IN THIS PARTICULAR
21 SITUATION FROM THE TIME THAT MR. COLLINS WAS ARRAIGNED
22 UNTIL THE TIME THAT HE CAME TO SEE ME, WHICH HE DID NOT
23 CAME, COME TO SEE ME INITIALLY AFTER HE WAS ARRAIGNED, BUT
24 HE CAME TO SEE ME SHORTLY BEFORE HE WAS DUE TO COME BACK TO
25 COURT; AND I KNOW IT WAS PROBABLY LESS THAN SIX, I KNOW IT

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1 WAS LESS THAN SIX MONTHS BECAUSE I DON'T THINK WE HAD A
2 TERM OF COURT IN BETWEEN THERE WHEREBY I WOULD HAVE BEEN
3 ABLE TO DO ANYTHING WITH MR. COLLINS OTHER THAN COME TO
4 COURT TO ASSESS HIS SITUATION AND GIVE HIM A SECOND
5 OPINION.

6 NOW THE OTHER THING, JUDGE, IS THE, IS THE, IS
7 THE INFORMANT. NOW QUITE FRANKLY, YOUR HONOR, THE
8 PROSECUTION IS QUITE RIGHT IN AS MUCH AS, AS THE INFORMANT
9 IN THIS CASE LIVED ACROSS THE STREET FROM MR. COLLINS,
10 HOWEVER, THE IDENTITY OF THE INFORMANT, JUDGE, EVERYBODY IN
11 THE NEIGHBORHOOD KNEW WHO THE INFORMANT WAS. EVERYBODY IN
12 THE NEIGHBORHOOD KNEW WHO HE WAS PRIOR TO THE TIME THAT,
13 THAT, THAT MR. COLLINS' CASE WAS SO, SO THIS ISSUE OF
14 SOMEHOW HAVING TO BURN THE INFORMANT IN SOME WAY SETS A BAD
15 PRECEDENT. IF YOU LOOK AT THE VIDEOS THE IDENTITY OF THE
16 INFORMANT CANNOT BE DETERMINED SOLELY BY LOOKING AT THE
17 VIDEO. THE ONLY WAY THE IDENTITY OF THE INFORMANT COULD
18 HAVE BEEN DETERMINED WAS THAT IN THE EVENT THE STATE
19 DECIDED TO USE THE INFORMANT AS A WITNESS AT TRIAL. JUDGE,
20 THEY DON'T EVEN HAVE TO DISCLOSE HIS IDENTITY, HIS NAME,
21 UNLESS THEY INTEND TO USE HIM AT TRIAL. SO NOW, OF COURSE,
22 WE WOULD SUBMIT THAT FROM THE STANDPOINT OF PLACING THE
23 INFORMANT IN SOME KIND OF JEOPARDY AS A RESULT OF, OF HIS,
24 HIS IDENTIFY HAVING BEEN DISCLOSED THEN IT'S REALLY A MOOT
25 ISSUE BECAUSE EVERYBODY KNEW WHO HE WAS AND, AND, AND, YOUR

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1 HONOR, IN A LOT OF THESE CASES, ESPECIALLY IN ONE SUCH AS
2 WHAT WE'RE DEALING WITH HERE, THE IDENTITY OF THE INFORMANT
3 IS, IS NOT SO MUCH AN ISSUE WHEN THERE HAVE BEEN OTHER
4 PROSECUTIONS AND THERE'S STILL SUBSEQUENT PROSECUTIONS; AND
5 MOREOVER THE, THE DEFENDANT HIMSELF, ONCE HE SEES THE
6 VIDEO, I MEAN HE KNOWS WHO, WHO HE SOLD DOPE TO. SO IT'S
7 NOT SO MUCH LIKE SOMEHOW THE INFORMANT'S IDENTITY IS A
8 MYSTERY BECAUSE IT'S NOT A MYSTERY; AND IN THIS CASE, YOUR
9 HONOR, I DON'T SEE OF ANY, I DON'T SEE ANYTHING THAT COULD
10 BE ATTRIBUTABLE TO WHERE THE INFORMANT'S SAFETY WOULD BE IN
11 ANY WAY JEOPARDIZED BY THE PROCEDURE THAT WAS IMPLEMENTED
12 IN THIS CASE AND QUITE FRANKLY, YOUR HONOR, I THINK IT'S
13 GOOD, IT'S GOOD, IT'S HOW THE JUDICIAL SYSTEM WORKS. IT
14 WORKS IN, IN, IN SUCH A WAY THAT, THAT IT'S, THAT IF YOU,
15 YOU ACKNOWLEDGE TO A CERTAIN DEGREE THE RIGHTS OF THE
16 ACCUSED AS WELL AS THE PUBLIC INTEREST IN MAKING CERTAIN
17 THAT, THAT THIS KIND OF CONDUCT IS, IS, IS DETERRED. BUT
18 AT THE END OF THE DAY, AT THE END OF THE DAY IF YOU LISTEN
19 AT THE SENTENCES THAT THE DEFENDANT IN THIS CASE HAS HAD
20 ISSUED TO HIM, YOUR HONOR, I DON'T RECALL ANYTHING
21 INVOLVING ANY SUBSTANTIAL TIME BUT A 15-YEAR SENTENCE.
22 YOUR HONOR, I BELIEVE A 15-YEAR SENTENCE FOR A YOUNG MAN
23 THAT'S 20 YEARS OLD IS LOUD ENOUGH FOR SOMEBODY TO GET THE
24 MESSAGE AND, JUDGE, IF HE DOESN'T GET THE MESSAGE WITH A,
25 WITH A 15-YEAR SENTENCE THEN, YOUR HONOR, I THINK THAT THE

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1 JUDICIAL SYSTEM AND, AND THE CRIMINAL JUSTICE SYSTEM WOULD
2 CERTAINLY HAVE DONE ITS BEST TO MAKE SURE THAT NOT ONLY
3 THIS GOAL OF PROSECUTION BUT THIS GOAL OF REHABILITATION
4 WHICH WHEN YOU'RE DEALING WITH A YOUNG PERSON THEN THAT'S
5 VERY MUCH ONE OF THE THINGS THAT, THAT THIS SYSTEM IS, IS
6 DESIGNED TO DO; AND I CERTAINLY BELIEVE THAT IN THIS, IN
7 THIS CASE, YOUR HONOR, A 15-YEAR SENTENCE WOULD NOT OFFEND
8 JUSTICE PARTICULARLY WHEN YOU TAKE INTO CONSIDERATION THE
9 FACT THAT THIS YOUNG MAN HAS NEVER, HE'S NEVER DONE A
10 STRETCH IN JAIL. BUT WITH 15 YEARS, JUDGE, I THINK THAT
11 WOULD GIVE HIM ENOUGH TIME THAT IF THERE'S ANY GOOD IS
12 GOING TO COME OUT OF HIM IT WILL DEVELOP IN 15 YEARS, THANK
13 YOU, JUDGE.

14 THE COURT: ALL RIGHT, IS THIS THE CASE WHERE
15 THE DEFENDANT SAID HE WANTED A TRIAL, IT WAS PUT ON THE
16 TRIAL ROSTER THE TERM BEFORE THIS, AND THEN HE SAID HE
17 WANTED TO PLEAD GUILTY AND YOU TURNED THE JURY LOOSE AND
18 AFTER YOU TURNED THE JURY LOOSE HE CHANGED HIS MIND AND
19 SAID, NO, I WANT A TRIAL NOW; IS THIS THAT CASE?

20 MR. BARR: JUDGE, I THINK, I THINK THIS IS WHAT,
21 AND IF YOU REMEMBER YOU WERE ACTUALLY TAKING HIS PLEA AND,
22 AND WHEN HE FOUND OUT THAT, AND, AND WHEN HE HEARD FROM THE
23 COURT THAT THIS SENTENCE WAS, THAT THE POTENTIAL SENTENCE
24 WAS A MINIMUM OF 15 YEARS HE COULDN'T STAND IT. HIS KNEES
25 BUCKLED ---

MOTION TO RECONSIDER - SEPTEMBER 23, 2010

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1 THE COURT: YEAH, BUT I MEAN WE HAD ---

2 MR. BARR: YES, SIR, WE HAD, WE HAD, AND WE
3 RECONVENED AFTER HE HAD THOUGHT ABOUT IT, AFTER WE
4 DISCUSSED IT WITH HIS FAMILY, AFTER HE DISCUSSED IT WITH
5 ME, THAT'S WHEN THE REALITY, JUDGE, OF WHAT WAS INVOLVED
6 THAT'S WHEN IT SET IN AND HE KNEW HE HAD DONE WRONG AND
7 THAT'S WHEN HE CAME BACK AND SAID, LOOK, YOUR HONOR, I, I,
8 I, ADMIT WHAT I DID AND HERE'S WHAT, WHAT I'M PLEADING
9 GUILTY TO.

10 THE COURT: BUT THE TERM BEFORE THAT HE SAID HE
11 WANTED TO PLEAD GUILTY SO THEY CUT THE JURY TO GET OUT OF
12 THE TRIAL THEY, HE CUT THE JURY LOOSE AND THEN HE CHANGED
13 HIS MIND AND SAID, NO, I WANT A TRIAL?

14 MR. BARR: MY RECOLLECTION IS IT WAS EITHER ONE
15 OF TWO DAYS THAT, THAT ACTUALLY ELAPSED BETWEEN HIS
16 DECISION, HIS INITIAL DECISION TO PLEAD AND WHEN WE FINALLY
17 CAME BACK. IN FACT I THINK IT WAS EITHER TWO OR THREE
18 DAYS, NO MORE THAN THREE DAYS.

19 THE COURT: ALL RIGHT.

20 MR. HIXSON: THAT'S CORRECT, YOUR HONOR, WE
21 SUBPOENAED HIM, HE WAS FIRST UP ON THE TRIAL ROSTER. WE
22 WERE WORKING OUT A TRIAL ROSTER. MR. BARR INDICATED TO
23 ERIN BAILEY THAT HE, THIS WAS A GUILTY PLEA. WE MOVED IT
24 TO SECOND TRIAL ON THE TRIAL ROSTER, ASKED THAT DURING THE
25 COURSE OF TAKING THE PLEA AFTER THE JURY HAD BEEN EXCUSED

MOTION TO RECONSIDER - SEPTEMBER 23, 2010

1

1 HE INDICATED HIS RESISTANCE TO DO, ADJOURNED, SAID HE
2 WANTED A TRIAL. WE PROVIDED THAT FOR HIM THE NEXT DAY. W
3 THEN BROUGHT THE JURY BACK, TAXPAYERS THAT CAME BACK AND A
4 THAT TIME HE INDICATED HIS WILLINGNESS TO PLEAD GUILTY.

5 MS. BAILEY: I ALSO WANT TO ADD THAT ---

6 THE COURT: THAT'S ALL RIGHT, THAT'S FINE, I'VE
7 HEARD ENOUGH. MR. BARR, I UNDERSTAND YOUR MOTION BUT I'M
8 GOING TO DENY IT. I'M GOING TO LEAVE THE 20-YEAR SENTENCE
9 IN PLACE.

10 MS. BAILEY: THANK YOU, YOUR HONOR.

11 THE COURT: ALL RIGHT, THANK YOU.

12 END OF REQUESTED TRANSCRIPT....

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED BRENDA R. BABB, OFFICIAL COURT REPORTER THE SOUTH CAROLINA COURT ADMINISTRATION, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR GEORGETOWN COUNTY, SOUTH CAROLINA.

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

May 20, 2011
Brenda R. Babb
BRENDA R. BABB, CVR

OFFICIAL REPORTER

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Octavious O. Collins, Appellant.

Appeal From Georgetown County
Benjamin H. Culbertson, Circuit Court Judge

Unpublished Opinion No. 2012-UP-176
Submitted March 1, 2012 – Filed March 14, 2012

AFFIRMED

Appellate Defender Elizabeth Franklin-Best, of Columbia,
for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, Assistant Deputy Attorney
General Salley W. Elliott, and Assistant Attorney General
Christina J. Catoe, all of Columbia; and Solicitor John
Gregory Hembree, of Conway, for Respondent.

PER CURIAM: Octavious O. Collins appeals his sentence of twenty years' imprisonment for distribution of cocaine base, third offense, arguing the trial court abused its discretion in light of Collins's age, the small amount of cocaine at issue, and because Collins has never spent any substantial time in prison. We affirm^[1] pursuant to Rule 220(b)(1), SCACR, and the following authority: Brooks v. State, 325 S.C. 269, 271-72, 481 S.E.2d 712, 713 (1997) ("A trial [court] is allowed broad discretion in sentencing within statutory limits. A sentence is not excessive if it is within statutory limitations and there are no facts supporting an allegation of prejudice against a defendant." (citations omitted)).

AFFIRMED.

PIEPER, KONDUROS, and GEATHERS, JJ., concur.

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

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Georgetown)Octavious Omar Collins #303278)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2012-CP-22-00384

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
GEORGETOWN COUNTY, SC
2012 APR 20 AM 9:18
ALMA Y. WHITE
CLERK OF COURTINSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Corr Inst.
2. Name and location of Court which imposed sentence General Sessions, Georgetown, South Carolina
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 3039-44-53-0375 (B)(3) Distribution of Crack Cocaine 3rd offense
 - (b) Indictment number 2010-GS-22-00074
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Sept. 1, 2010 20 yrs. Non-violent, No parole, and got to do 85% of my time.
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Appeal to Georgetown County for post trial motion (motion to reconsider time).
- ii. South Carolina Court of appeals
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal to Georgetown Court got Denied.
- ii. Court of appeals. A trial Court is allowed broad discretion in sentencing within statutory
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. South Carolina Court of appeals March 14th 2012
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. South Carolina Court of appeals affirm pursuant to Rule 220(b)(1) (citation or
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) At Mercy of Judge Discretion
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) _____
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Do to my age, time they give me ~~2~~ shouldn't have gotten 20 years.
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? yes
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. motion to reconsider time
- ii. State Appeal Court for sentence reduce
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Georgetown town General Sessions
- ii. ~~Citation~~ State Appeal Court
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. Denied
- ii. Citation omitted
- iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. March 14th 2012 State Appeal Courts
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. State Appeal Court Citation omitted. A trial Judge allowed broad discretion in Sentence
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- yes
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. ~~Abuse of Discretion~~ Abuse of Judge discretion
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. because of my age, and I haven't serve no more than a year on other bids.
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

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

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

- (a) the name and address of each attorney who represented you:
 - i. Charles David Best / Po Box #83, Kingstree, S.C. 29556
 - ii. Elizabeth A. Franklin-Best / Po Box #11589, Columbia, S.C. 29211
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Motion to reconsider
 - ii. Direct Appeal
 - iii. _____

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

I would like the mandatory minimum of 15 years

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

No

2012-CP-22-00384

STATE OF SOUTH CAROLINA)

County of Georgetown)

VERIFICATION

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

Octavious Omer Collins #303278
At Coll. #303278

SWORN to and subscribed before me this 30th
 day of March, 2012.

Luchean Bryant (L.S.)
 Notary Public

My Commission Expires: May 26, 2026

FILED
 GEORGETOWN COUNTY, S.C.
 2012 APR 20 AM 9:18
 ALMA Y. WHITE
 CLERK OF COURT

2012-CP-22-00384

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

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

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

Octavious Omar Collins #303278

Octavious Omar Collins #303278

Applicant

SWORN or affirmed to and subscribed before me this

30th day of March, 2012.

Ludrean Bryant
Notary Public *LB*

My Commission Expires: ~~March~~ May 26, 2020

FILED
GEORGETOWN COUNTY, S.C.
2012 APR 20 AM 9:19
ALMA Y. WHITE
CLERK OF COURT

CLERK OF COURT
GEORGETOWN COUNTY, S.C.

2012 APR 20 AM 9:19

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS

2012-CP-22-384

Octavious Omar Collins, 303278)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

RETURN

ALMA Y. WHITE
CLERK OF COURT

2012 JUL -3 PM 2:47

FILED
GEORGETOWN COUNTY, S.C.

Respondent, making its Return to the Application for post conviction relief (PCR) filed April 20, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. Applicant was indicted at the January 2010 term of the Georgetown County Grand Jury for distribution of crack cocaine (2010-GS-26-74). Charles Barr, Esquire, and Elizabeth Franklin-Best, Esquire, represented Applicant.

On September 1, 2010, the Applicant pled guilty as indicted. The Honorable Benjamin H. Culbertson sentenced Applicant to twenty years imprisonment. Applicant filed a timely notice of intent to appeal the sentence, and the South Carolina Court of Appeals affirmed applicant's sentence in an unpublished opinion No. 2012-UP-176, filed March 14, 2012. The Remittitur was sent March 30, 2012.

Attached herewith and incorporated herein are the records of the Georgetown County Clerk of Court regarding the subject conviction, Applicant's SCDC records, the transcript of the Motion to Reconsider, and the guilty plea transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant fails to allege any claims in response to question ten on his Application. In response to question eleven, Applicant states "Due to my age, time they give me shouldn't have gotten 20 years." Respondent construes this claim as a claim of ineffective assistance of counsel.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient.

Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 1/14
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

6-14

, 2012.

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

2012-CP-22-384

OCTAVIOUS OMAR COLLINS, #303278)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

AFFIDAVIT OF SERVICE BY MAIL

FILED
GEORGETOWN COUNTY, S.C.
2012 JUL -3 PM 2:47
ALMA Y. WHITE
CLERK OF COURT

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:

Octavious Omar Collins, #303278
Lieber Corr. Inst.
P.O. Box 205
Ridgeville, SC 29472

DATED this 14TH day of June, 2012.


Norma Bigbee, Legal Assistant
For Respondent

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN) 2012-CP-22-00384

OCTAVIOUS OMAR COLLINS,)

Plaintiff,)

Transcript of Record

vs.)

November 16, 2012

STATE OF SOUTH CAROLINA,)

Defendant.)

B E F O R E:

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

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

Paul Archer, Esquire
Attorney for Plaintiff

Tyson Andrew Johnson, Sr., Esquire
Attorney for Defendant

Kay H. Richardson, CVR
Circuit Court Reporter

Collins v. State - 2012-CP-22-00384

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E X H I B I T S

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No.ID EV

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(There were no exhibits marked during the hearing.)

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Collins v. State - 2012-CP-22-00384
OCTAVIOUS OMAR COLLINS - DIRECT BY MR. ARCHER

3

1 (November 16, 2012)

2 THE COURT: All right. Mr. Attorney General, call the
3 case, please, sir.

4 MR. JOHNSON: Your Honor, this is Octavious Omar Collins;
5 it's 2012-CP-22-384. September 1st, 2010, Mr. Collins pled to
6 distribution of crack cocaine. He was represented by Mr.
7 Charles Barr and received twenty years imprisonment. He filed
8 a notice of intent to appeal; the appeal was not successful.
9 He's represented today by Mr. Paul Archer.

10 THE COURT: All right. Mr. Archer, you want to proceed
11 with the application?

12 MR. ARCHER: Yes, sir.

13 THE COURT: All right. Come around up here, Mr. Collins,
14 come around up here to be sworn.

15 OCTAVIOUS OMAR COLLINS, HAVING BEEN SWORN,
16 TESTIFIED AS FOLLOWS:

17 CLERK: Please be seated and state your name for the
18 record.

19 THE COURT: All right. Mr. Archer, you may proceed.

20 DIRECT EXAMINATION OF OCTAVIOUS OMAR COLLINS BY MR. ARCHER:

21 Q: Yes, sir. Mr. Collins, you were indicted for distribution
22 of cocaine third; is that correct?

23 A: Yes, sir.

24 Q: And I understand that Mr. Barr was your attorney in this
25 matter?

Collins v. State - 2012-CP-22-00384

4

OCTAVIOUS OMAR COLLINS - CROSS BY MR. JOHNSON

1 A: Yes, sir.

2 Q: And I understand that you had a plea offer. Could you
3 tell the Court what the plea offer was?

4 A: I had a plea offer for fifteen years.

5 Q: All right. And you went to trial and they picked a jury;
6 is that correct?

7 A: Yes, sir.

8 Q: And you did not except the fifteen-year plea offer,
9 correct?

10 A: Yes, sir.

11 Q: And after the jury was picked, you pled guilty and you
12 received twenty years; is that correct?

13 A: Yes, sir.

14 Q: And basically what your argument is is that you would like
15 your old plea offer back of fifteen years; is that what your
16 complaint is?

17 A: Yes, sir.

18 Q: I have no further questions.

19 THE COURT: Cross examination?

20 CROSS EXAMINATION OF OCTAVIOUS OMAR COLLINS BY MR. JOHNSON:

21 Q: Mr. Collins, at the time you received an offer of fifteen
22 years was Mr. Barr your attorney?

23 A: No, Eric Fox was my attorney ---

24 Q: All right.

25 A: --- at my arraignment.

Collins v. State - 2012-CP-22-00384
OCTAVIOUS OMAR COLLINS - CROSS BY MR. JOHNSON

5

1 Q: Well, but you understand this proceeding is normally about
2 ineffective assistance of counsel and -- is that your
3 understanding of what you're here for today?

4 A: Yes, sir.

5 Q: Okay. So, are you alleging that Mr. Barr was ineffective
6 in some way?

7 A: Yes, sir.

8 Q: And would you explain what your allegation is?

9 A: Well, after my -- well, after my arraignment, Eric Fox
10 advised me to get Charlie Barr to represent on all my charges
11 so I might would get a better deal. When I went to see
12 Charles Barr, he tell me that the solicitor wasn't willing to
13 work with me. So, when I went to court, the solicitor said
14 that Charles Barr never presented any plea deal or nothing to
15 them. So, that's how I end up with the twenty.

16 Q: But you understand that it's up to the State to engage in
17 plea negotiations; it's not up to Mr. Barr to demand certain
18 term that you would find -- one that you could deal with?

19 A: Yeah, but the solicitor said he never tried and she said
20 she was waiting on -- after my, after my arraignment or
21 whatever, I got Charles Barr, she was waiting on a plea deal
22 or something for him but he never called them or nothing about
23 it.

24 Q: All right. So, you were offered fifteen years and you
25 turned it down.

Collins v. State - 2012-CP-22-00384

6

OCTAVIOUS OMAR COLLINS - CROSS BY MR. JOHNSON

1 A: Yes, sir.

2 Q: Now, let me ask you this. You got a sentence of twenty
3 years and that's what you're complaining of today. Here's the
4 question, If you had gotten a sentence of three years, would
5 you have filed a PCR?

6 A: Three years?

7 Q: Yes, sir.

8 A: No, sir.

9 Q: You'd be happy with that sentence, wouldn't you?

10 A: Well, I wouldn't be happy going to prison at all but I'd
11 say I'd have took it.

12 Q: And so isn't it true that the only thing you're unhappy
13 about today is the length of your sentence, not anything that
14 Mr. Barr did?

15 A: Yes, cause if he would've tried to get me a better plea
16 deal or something like that, I probably wouldn't have had this
17 much.

18 Q: And why is it that you think the twenty years is not an
19 appropriate sentence for you?

20 A: I have no violent -- I have no violent record, nothing
21 violent on my record, my charge non-violent, and I get -- all
22 I had -- well, I had some other charges but twenty years is a
23 lot of time.

24 Q: And if your PCR is granted today, do you know how much
25 time that you'll be facing if you're granted a new hearing?

Collins v. State - 2012-CP-22-00384
OCTAVIOUS OMAR COLLINS - CROSS BY MR. JOHNSON

7

1 A: Thirty.

2 Q: Sir?

3 A: Thirty.

4 Q: And you're willing to give up your current max out date
5 and risk facing up to that amount of time, thirty years?

6 A: Yes, sir.

7 Q: All right. Why did you wait until after you picked a jury
8 to enter your plea?

9 A: See when I -- when I -- when I went to court, I be there
10 the day before, when I went to court and Charles Barr tell me
11 my charge would've been for parole but when I went in front of
12 the judge, he tell me a whole different thing and I got stuck.
13 And I wouldn't talk and they took that as a non -- as a non-
14 guilty, as a not guilty plea. So, they tell me the next time
15 I come in, I would've had -- I would've had to pick a jury and
16 I'd either had a charge -- plea or go to trial. So, they make
17 me pick a plea on it and that day I went.

18 Q: Now, at some point in time, there was an outstanding offer
19 of fifteen years that you could have accepted; is that right?

20 A: Yes, sir.

21 Q: And you did not?

22 A: Yes, due to Eric Fox judgment.

23 Q: But the decision was yours to make, wasn't it?

24 A: Yes, sir.

25 Q: And you chose not to take that fifteen years at that time?

Collins v. State -- 2012-CP-22-00384
OCTAVIOUS OMAR COLLINS - BY THE COURT

8

1 A: Yes, sir.

2 Q: And now you're unhappy about that?

3 A: Yes, sir.

4 Q: Thank you.

5 THE COURT: All right. Any redirect?

6 MR. ARCHER: No, sir.

7 THE COURT: All right. Just so that we're clear about
8 this, sir, you understand -- and I saw in here, you were
9 facing a number of charges, correct?

10 A: Yes, sir.

11 THE COURT: All right, sir. And as a result of your
12 plea, the State nolle prossed and here -- here it is --
13 apparently, you pled on this one charge and the State
14 dismissed a proximity charge in 2010-GS-22-75, and also
15 dismissed 2007-GS-22-1382, 1383, 1384, 1385 and 2007-GS-22-
16 1413 when you pled guilty, correct?

17 A: Yes, sir.

18 THE COURT: All right, sir. Now, you understand that
19 should you go forward with your application and just assume,
20 I'm not saying that I will but just assume I granted your post
21 conviction relief application, you will go back into the
22 position you were in before you pled guilty. That is, you're
23 not only facing the charges here, on this one charge, you're
24 gonna be facing all those other charges again also, do you
25 understand that?

1 A: Yes, sir.

2 THE COURT: All right, sir. And you understand that if
3 you went to the trial or whatever the resolution is, the Court
4 is not bound and, I'm not saying the Court would, but the
5 Court could give you, if you're found guilty of all these,
6 consecutive sentences on all those sentences; you understand
7 that?

8 A: Yes, sir.

9 THE COURT: All right. Very good. Now, so I understand
10 how it transpired, you started to plead guilty with Mr. Barr,
11 you decided not to plead guilty, you started the trial and
12 then you decided to plead guilty; is that what happened?

13 A: Correct.

14 THE COURT: All right, sir. Thank you very much.

15 You may step down. Thank you very much.

16 Further witnesses on behalf of the Applicant?

17 MR. ARCHER: No, sir.

18 THE COURT: All right, Mr. Johnson, you may proceed.

19 MR. JOHNSON: We would call Charles Barr, Your Honor.

20 THE COURT: All right, sir. Mr. Barr come around and be
21 sworn.

22 CHARLES DAVID BARR, HAVING BEEN

23 SWORN, TESTIFIED AS FOLLOWS:

24 CLERK: Please be seated and state your name for the
25 record.

Collins v. State - 2012-CP-22-00384
CHARLES DAVID BARR - DIRECT BY MR. JOHNSON

10

1 MR. BARR: My name is Charles David Barr.

2 THE COURT: All right, Mr. Johnson.

3 DIRECT EXAMINATION OF CHARLES DAVID BARR BY MR. JOHNSON:

4 Q: Mr. Barr, how did you come to represent Mr. Collins?

5 A: He came to my office and asked me to represent him.

6 Q: And at that time, was there an outstanding offer for Mr.
7 Collins to enter a plea?

8 A: At the time, if I'm not mistaken, I think they had taken
9 his offer off the table. After he refused to accept the
10 fifteen years, Eric Fox -- I think they took that offer off
11 the table.

12 Q: Did you make any attempt to communicate with the State to
13 perhaps reinstate the offer?

14 A: I certainly did. I even asked him to give him a better
15 deal than the fifteen years.

16 Q: And how did the State respond?

17 A: The State did not do that. In fact, we had a -- I thought
18 after he was sentenced by Judge Culbertson, I filed a motion
19 for reconsideration and we essentially argued the issue of the
20 State's policy that once they took an offer off the table,
21 they would no longer -- if he later on decided to plead
22 guilty, that offer was withdrawn and my position was that the
23 Defendant should not have been punished for getting a second
24 opinion which is what it amounted to and -- but the sentence
25 was not commuted on the reconsideration.

Collins v. State - 2012-CP-22-00384
CHARLES DAVID BARR - DIRECT BY MR. JOHNSON

11

1 Q: Well, and there's been no -- he wasn't -- the Judge was
2 not a party to any of the negotiations.

3 A: No, no, sir; he was not. He was not.

4 Q: And he was not being punished for ---

5 A: Well, it was -- it was my position that as a purely policy
6 matter, because he decided to consult with another lawyer
7 that, that he should not be punished by whatever favorable
8 deal that he had that that deal shouldn't have been withdrawn
9 because he decided to get another lawyer. Now, I understand
10 the State was not -- but that's -- that's was the State's
11 policy. And my argument was against the policy.

12 Q: Yes, sir. Let's back up just a little bit. Before or
13 perhaps concurrent with your attempt to get a plea offer
14 reinstated, what efforts were made towards working towards an
15 actual trial defense in the case, if indeed he had decided
16 that he wanted to try the case?

17 A: Well, I'd done all the discovery and everything and the --
18 I think the most critical piece of evidence was the
19 identification issue. And the State had a video of a fellow
20 riding a bicycle, rode up to him and bought the dope from him.

21 Q: This was clear on the video?

22 A: Yes, sir.

23 Q: And you felt it was an overwhelming evidence of guilt kind
24 of case?

25 A: He looked the same way he look today. I think he maybe

Collins v. State - 2012-CP-22-00384

12

CHARLES DAVID BARR - DIRECT BY MR. JOHNSON

1 had on a hat.

2 Q: And you feel that -- you felt at the time a jury would've
3 convicted him had the case been tried?

4 A: I know he would have.

5 Q: Do you still feel the same way?

6 A: Yes, sir.

7 Q: Did he ever indicate to you that he just wanted to -- that
8 he never wanted a trial, just wanted to enter a plea?

9 A: At the time that we entered the plea, he -- it was done
10 with his consent and that's what he wanted. He had a lot of
11 -- a whole bunch of charges there and ---

12 Q: Did he tell you there's a sentencing range that he would
13 be happy with?

14 A: I don't specifically remember him telling me that he would
15 be happier with something else other than what the -- what the
16 prosecution was willing to do at the time, they were pretty
17 adamant about that, about not going to fifteen years or a
18 sentence of not less than twenty years.

19 Q: Do you remember any discussions about whether he hoped
20 that the Judge would just give him the fifteen that they'd
21 originally offered?

22 A: If I'm not mistaken, we asked the Judge to do that at the
23 original sentencing and I thought about it for a while and
24 decided to file a motion to reconsider. I thought that maybe
25 I could -- maybe I could convince the Judge to take it into

Collins v. State - 2012-CP-22-00384
CHARLES DAVID BARR - CROSS BY MR. ARCHER

13

1 consideration his past record, which I don't think that he's
2 ever done anything violent that the Judge would consider a
3 lesser sentence but he didn't do it.

4 Q: So, there were no -- to your recollection and you're
5 saying you don't remember any discussion of a specific term of
6 years and he would have been more content with?

7 A: He wasn't content with anything, I mean, as far as ---

8 Q: You heard his testimony, if he'd have gotten a three-year
9 sentence he wouldn't have -- we wouldn't be here today, he
10 wouldn't have filed an appeal?

11 A: We never discussed any numbers like that. I mean, that
12 was just out of the question.

13 Q: Yes, sir. All right. Please answer any questions Mr.
14 Archer or the Court may have.

15 THE COURT: Mr. Archer?

16 MR. ARCHER: Yes, sir.

17 CROSS EXAMINATION OF CHARLES DAVID BARR BY MR. ARCHER:

18 Q: I just have one question to ask you which I'd just like to
19 clear up for the record. Eric Fox was a public defender; is
20 that correct?

21 A: Yes.

22 Q: Okay. So, I understand that you are retained counsel?

23 A: Yeah.

24 Q: He paid you?

25 A: He paid part of it, yeah.

Collins v. State - 2012-CP-22-00384
CHARLES DAVID BARR - CROSS BY MR. ARCHER

14

1 Q: And just to clear this up, did he -- was there some
2 conversation that you could get him a better plea?

3 A: No.

4 Q: So, why did he retain you?

5 A: I -- well, I guess he felt that -- he obviously at that
6 time for whatever reason felt that I could do something better
7 for him, I'm assuming that that's what most people -- clients
8 that I represent and I do my best for all of the ones that --
9 the ones that hire me.

10 Q: Okay. Well, thank you. I just wanted to clear that up.

11 A: Yes, sir.

12 THE COURT: All right. Gentlemen, reading the transcript
13 of record here, I see something that I think needs to be
14 brought to the attention of the State and the Applicant and
15 Applicant's counsel. It appears that when Mr. Collins was
16 represented by Mr. Fox, the matter came before me for an
17 arraignment. This is in the Transcript of Record, the
18 solicitor informing the sentencing Judge or the trial Judge at
19 that point in time, Judge Culbertson, of what had occurred
20 prior. It says on February 24th, 2010, Mr. Collins was
21 arraigned on the record with Mr. Fox standing next to him and
22 Judge John informed Mr. Collins at that time that fifteen
23 years was the mandatory minimum. That the State was offering
24 a negotiated fifteen-year sentence and that it would expire
25 that week. So, in February, this is the State's argument, Mr.

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BY THE COURT

15

1 Collins was advised by Judge John as to what the sentencing
2 range was in this case, that an offer to the minimum of that
3 sentencing range was expiring on that date. And the State's
4 argument was since that time Mr. Collins has hired Mr. Barr
5 and that he's reviewed the discovery and the State wanted to,
6 to put the Court on notice that the State had given all the
7 discovery over to Mr. Barr for review. All right. Based upon
8 that, I don't know that that disqualifies me in any fashion
9 but I -- I need to hear from you, Mr. Archer, what's the
10 position of the Applicant and then I'll hear from the Attorney
11 General.

12 MR. ARCHER: The testimony and what I've gone over with
13 my client, I don't see where there's a conflict. He's just
14 asking if it would be you or any other plea -- any other PCR
15 judge to have his sentence changed, it can't be changed, so --
16 and I explained that to him. There's no way any judge can do
17 this in a PCR. You can't change his sentence.

18 THE COURT: All right. Mr. Johnson?

19 MR. JOHNSON: The State sees no conflict, Your Honor,
20 because in this case, at this -- you were not the sentencing
21 judge. Even if you were the sentencing judge, I think there's
22 a case or two out there that says it's still discretionary
23 whether you would hear the PCR but that's not the case here,
24 small state, so in a case like this where you have an
25 arraignment and appearance and two different hearings, it's

Collins v. State - 2012-CP-22-00384
BY THE COURT

16

1 very possible that PCR court may have been somehow involved in
2 the matter prior but this does not appear to have any -- would
3 cause no concern on behalf of the State for any kind of
4 conflict, so obviously we would have no objection.

5 THE COURT: Thank you. All right. I just wanted to be
6 clear on the record, the Court does not find there to be a
7 conflict. His application does not affect the arraignment or
8 does not make any argument regarding the arraignment process.

9 The Transcript of Record further indicates that the
10 sentencing judge, Judge Culbertson was informed that Mr.
11 Collins had a record, 2002 he was convicted of grand larceny;
12 2003 forgery, resisting arrest and burglary third; the year
13 after that he violated probation -- possession of 28 grams or
14 less of marijuana; 2006 he was convicted of distribution of
15 crack and distribution of cocaine charges.

16 All right. Mr. Barr, you did argue and the transcript of
17 record reflects that you did ask the sentencing judge to
18 impose the fifteen-year sentence. It's clear that you made
19 that argument before the sentencing judge, Judge Culbertson.
20 And so what you're telling me is even besides making that
21 argument before Judge Culbertson, after Judge Culbertson
22 sentenced the Applicant, you went further and filed a motion
23 for reconsideration and argued that point again asking him,
24 please, Judge, impose the fifteen-year sentence because that's
25 what you thought was proper under those circumstances.

Collins v. State - 2012-CP-22-00384
RULING OF THE COURT

17

1 MR. BARR: Yes, sir.

2 THE COURT: All right. Very good. You may step down;
3 thank you very much.

4 All right. Mr. Johnson, any further evidentiary
5 presentation on behalf of the State?

6 MR. JOHNSON: Nothing further, Your Honor.

7 THE COURT: All right. Very good. Any arguments, Mr.
8 Archer?

9 MR. ARCHER: No, sir.

10 THE COURT: Any arguments, Mr. Johnson?

11 MR. JOHNSON: I don't think I have any argument, Your
12 Honor.

13 THE COURT: All right, sir. Very good.

14 RULING OF THE COURT:

15 THE COURT: In this particular matter, the post-
16 conviction relief application, the Applicant, and in this case
17 it's Mr. Collins, bears the burden of proving the allegations
18 in his application. The Applicant here basically his
19 allegation is ineffective assistance of counsel. He wants a
20 reduction in his sentence but in that he is alleging
21 apparently that his attorney was ineffective in some manner in
22 not having the Court impose a sentence that had been withdrawn
23 by the State prior to Mr. Barr even being involved in the
24 matter. I cannot find that and do not find in any way that
25 counsel's conduct undermined the proper functioning of the

Collins v. State - 2012-CP-22-00384
RULING OF THE COURT

18

1 adversarial process. I don't -- there is in no way that the
2 attorney's action in this case were anything but proper. His
3 advice was within the range of competence demanded of
4 attorneys in criminal cases and I have not also heard that
5 whatever these errors are, if there were any, which I don't
6 find there were any errors, that he would have not pled
7 guilty. His only argument is as to the sentence. And in
8 that, and I know that the Supreme Court has ruled when there
9 was a prior plea agreement in one of the cases -- there's been
10 more than one but one of the cases Davey versus the State of
11 South Carolina from 2009. I did not find that the Defendant
12 has failed -- or I do not find that the Defendant has -- the
13 Applicant here has shown that his counsel was ineffective in
14 any manner. He made an argument. The Applicant understood
15 what he was doing. The attorney made the argument to have
16 the Court impose a prior sentence. It was clearly
17 communicated to the Applicant and I do not find that he has
18 any grounds for proceeding with his post-conviction relief
19 application. Therefore, the application of Mr. Collins for
20 post conviction relief is denied.

21 Mr. Johnson, prepare a proposed order and forward it to
22 me within seven days, please, sir.

23 Thank you very much.

24 MR. JOHNSON: Yes, Your Honor.

25 (Adjourned.)

26

27

Collins v. State - 2012-CP-22-00384
CERTIFICATE OF COURT REPORTER

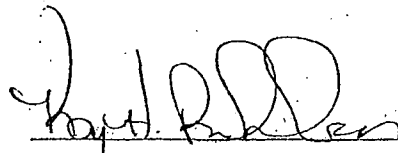
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19

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the PCR hearing held in the case of Octavious Omar Collins versus State of South Carolina, held in the Court of Common Pleas for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on November 16, 2012.

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



Kay H. Richardson, CVR
Official Reporter

April 22, 2013.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN)

12-CP-22-384

Octavious Omar Collins, 303278)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

FILED
GEORGETOWN COUNTY, S.C.
2012 DEC 14 AM 10:52
ALISA Y. WHITE
CLERK OF COURT

This matter is before this Court by way of an application for post-conviction relief (PCR) filed April 20, 2012. The State made a timely Return. A hearing on the matter was convened at the Georgetown County Courthouse on November 16, 2012. Applicant was present and represented by Paul Archer, Esquire. The State was represented by Tyson Andrew Johnson, Sr. of the South Carolina Office of the Attorney General.

Applicant testified on his own behalf at the hearing. His plea counsel, Charles D. Barr, Esquire, also testified. In addition, this Court had before it the transcript of Applicant's guilty plea proceeding, the Clerk of Court's records regarding the subject convictions, the Applicant's records from the Department of Corrections, the PCR application and the State's return.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Georgetown County Clerk of Court's orders of commitment. Applicant was indicted at the February 2010 term of the Grand Jury for distribution of crack cocaine. Applicant was represented by Charles D. Barr, Esquire. On September 1, 2010, Applicant pled guilty as indicted. Applicant was sentenced by the Honorable Benjamin H. Culbertson to twenty years

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imprisonment. Applicant appealed and the South Carolina Court of Appeals affirmed the sentence. The remittitur was sent March 30, 2012.

ALLEGATIONS

Applicant fails to allege clear claims of ineffective assistance on his Application. Applicant states that "Due to my age, time they give me shouldn't have gotten 20 years." At the hearing of this matter, the Applicant indicated he felt since the original offer was fifteen years, even though Applicant declined that offer, that his eventual sentence of twenty years indicated his counsel was ineffective.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1985).

Ineffective Assistance of Counsel and Involuntary Plea

The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRPC.

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. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant

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2/10

must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985); Stalk v. State, 383 S.C. 559, 681 S.E.2d 592 (2009); Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (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, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

This Court will now address Applicant's allegation:

Representation by Charles D. Barr, Esquire

Applicant testified that there was an offer of fifteen years that he could have accepted prior to picking a jury, but that after a jury was selected he received a twenty year sentence as a result of his plea. Applicant was originally represented by another attorney, and then retained Charles D. Barr, Esquire to represent him. Counsel testified that the state had taken the offer off the table by the time he came to represent Applicant. He attempted to obtain a better deal from the State than the originally offered fifteen years, but to no avail. After Applicant was

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AND

sentenced, counsel filed a motion for reconsideration and asked the sentencing court to consider a lesser sentence, but this request was not granted. Counsel testified he had reviewed all the discovery in the case, and viewed a video provided by the State, and confirmed that the video clearly showed Applicant engaging in a drug transaction.

This Court finds that applicant was aware of the charges, elements of the offense, and potential defenses. Further, this Court finds that Applicant was not coerced, pressured, or promised anything in return for his guilty plea. Applicant admitted his guilt at the plea hearing. Under these circumstances, Counsel's advice to Applicant to plead guilty was well within the professional norms of competent representation.

This Court further finds Applicant's hopes for a lighter sentence does not render his plea involuntary where he was advised of the possible sentences he could receive and chose to plead guilty. See Wolfe v. State, 326 S.C. 158, 164-165, 485 S.E.2d 367, 370 (1997) (finding "wishful thinking" does not equal misapprehension as to the possible sentence the applicant would receive). This Court denies this allegation.

CONCLUSION

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

This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right

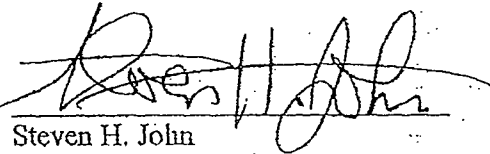
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A.H.

to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

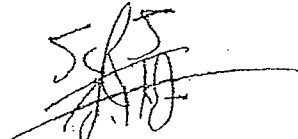
AND IT IS SO ORDERED this 30th day of November, 2012.



Steven H. John
Presiding Judge
15th Judicial Circuit

Resident

Causey, South Carolina



FILED
15137961

AFFIDAVIT

April 21, 2003
SCCA 516

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Georgetown

THE STATE

Octavious Omar Collins
against
ALMA Y. WHITE
CLERK OF COURT

Address: Andrews, SC 29510-

Phone: SSN:

Sex: M Race: B Height: 5 Weight: 185

DL State: SC DL #:

Agency ORI #: SC0220000

Prosecuting Agency: Georgetown County Sheriff

Prosecuting Officer: Reginald Grant - 0084

Offense: Drugs / manufacture, distribution, etc. of
methamphetamine or cocaine base, 1st

Offense Code: 3014
Code/Ordinance Sec: 44-53-0375 (B) (1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Octavious Omar Collins
on 10-14-09

Signature of Clerk of Court

RETURN WARRANT TO:

General Sessions
P. O. Box 479
129 Screven Street, Room 221
Georgetown, SC 29442

☒ County/ ☐ Municipality of
Georgetown

Personally appeared before me the affiant
being duly sworn deposes and says that defendant
did within this county and state on or about 07/20/2009
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of
Georgetown)

In the following particulars:

DESCRIPTION OF OFFENSE: Drugs / manufacture, distribution, etc. of methamphetamine or cocaine base, 1st

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

ON OR ABOUT JULY 20, 2009 THRU JULY 26, 2009 THE DEFENDANT DID SELL TO A CONFIDENTIAL INFORMANT
WORKING UNDER THE DIRECT CONTROL AND SUPERVISION OF THE GEORGETOWN COUNTY ORGANIZED
CRIME BUREAU 14 GRAMS OF AN OFF WHITE ROCK LIKE SUBSTANCE BELIEVED TO BE CRACK COCAINE
LOCATED IN THE ANDREWS SECTION OF GEORGETOWN COUNTY. THIS BEING AGAINST THE PEACE AND
DIGNITY OF THE STATE OF SOUTH CAROLINA AND A VIOLATION OF SOUTH CAROLINA CODE OF LAW
44-53-0375(B)(1).
CASE#07092321

Signature of Affiant

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Georgetown

Affiant's Address

430 N. Fraser Street
Georgetown, SC 29440

Affiant's Telephone (843)436-3600

ARREST WARRANT

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

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

on or about 7/20/2009 defendant Octavious Omar Collins

did violate the criminal laws of the State of South Carolina (or ordinance of Georgetown) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / manufacture, distribution, etc. of methamphetamine or cocaine base, 1st

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me
on 07/24/2009

Signature of Issuing Judge

Isaac Lester Pyatt (Magistrate)

Judge Code: 5899

Judge's Address

Post Office Box 807
Georgetown, SC 29442

Judge's Telephone

(843)545-3381

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

Don 10/14/89
Type and Amount: \$5,000.00 cks

Name of Surety:

PRELIMINARY HEARING held by

Judge

on

Defendant Attorney:

Disposition:

DISPOSITION before

Judge

on

by

(Indicate jury trial, bench trial, plea, not pros., etc.)

Disposition:

Sentence:

JURORS

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

CODEFENDANTS

56-577-61-32005

TRIMM, 10/14/89

WITNESSES

Georgetown County Sheriff's Office

DOCKET NO. 2010-GS22-00074 + ✓

The State of South Carolina

County of Georgetown

Erin Bailey

09G00952

COURT OF GENERAL SESSIONS

JANUARY, 2010 TERM

REST WARRANT NUMBER

J513796

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

DOI: July 20, 2009

THE STATE

VS.

OCTAVIOUS OMAR COLLINS

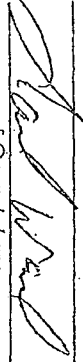
Andrews, SC 29510

DOB:

SSN:

B/M:

ACTION OF GRAND JURY


Foreperson of Grand Jury

ATTORNEY: Fox, J. Eric

Indictment for

VERDICT

Foreperson of Grand Jury

Date: 1-15-10

DISTRIBUTION OF CRACK
COCAINE

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)

INDICTMENT

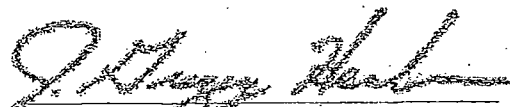
At a Court of General Sessions, convened on January 15, 2010, the Grand Jurors of Georgetown County present upon their oath:

DISTRIBUTION OF COCAINE BASE

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

That Octavious Omar Collins did in Georgetown County, on or about July 20, 2009, distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver a quantity of Cocaine Base, a controlled substance under provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law, and being in violation of Section 44-53-375(B), S. C. Code of Laws, 1976, as amended.

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


 J. GREGORY HEMBREE
 FIFTEENTH CIRCUIT SOLICITOR

SCANNED

COUNTY OF Georgetown
 STATE VS.
Octavious Omar Collins
 AKA:
 Race: B Sex: M Age: 24
 DOB: SS#
 Address:
 City, State, Zip: Andrews, SC 29510
 DL#: SID#: SC01419371

INDICTMENT/CASE#: 2010-GS22-00074
 A/W#: J513796
 Date of Offense: 7/20/2009
 S.C. Code §: 44-53-0375 (B) (3)
 CDR Code #: 3039

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
 TO: PWID/Dist/Mfg Cocaine Base or Meth, 3rd Offense (15-30 yrs +/- \$50,000)

in violation of § 44-53-0375 (B) (3) of the S.C. Code of Laws, bearing CDR Code# 3039
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

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

ATTEST: 7/20/10 SC Bar# Defendant Attorney for Defendant SC Bar#
Bailey, Erin

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed X years
 and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment
 of \$ X; plus costs and assessments as applicable*; the balance is suspended probation for X

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP
 Total: \$ plus 20% fee: \$
 Payment Terms:
☐ Set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5 %) \$

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

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

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

§ 47.12 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ \$25.00

§ 14-1-213 (Drug Court Surcharge) \$100 \$ 100.00

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

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

§ 90.7 (SCCJA Surcharge) \$5 \$ \$5.00

3% to County (if paid in installments) \$ 6.90

TOTAL \$ 236.90

Clerk of Court/ Deputy Clerk M. Moore

Court Reporter: Erin Hurley

Presiding Judge M. J. Cullen
 Judge Code: 2148
 Sentence Date: August 1, 2010
 (MCO) SCANNED