

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

RECEIVED

JUN 21 2010

S.C. SUPREME COURT

EDUARDO MARTINEZ,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

M. CELIA ROBINSON
Appellate Defender

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

ATTORNEY FOR PETITIONER

HENRY DARGAN MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General
P. O. Box 11549
Columbia, S. C. 29211

ATTORNEYS FOR RESPONDENT

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I N D E X

WITNESSES

No Witnesses

EXHIBITS

No Exhibits

1 THE COURT: All right, let the record reflect
2 the defendant is present. You are Eduardo Martinez?

3 THE DEFENDANT: Yes, sir.

4 THE INTERPRETER: Yes.

5 THE COURT: And Ms. Gainer is your interpreter?

6 THE DEFENDANT: Uh-hum, yes, ma'am (sic).

7 THE INTERPRETER: Uh, hum, yes, ma'am (sic).

8 THE COURT: If you'll answer yes or please that
9 will help me to not nod your head, please.

10 Is that agreeable?

11 THE DEFENDANT: Yes, ma'am (sic).

12 THE INTERPRETER: Yes, ma'am (sic).

13 THE COURT: All right. Ms. Gainer, you are
14 certified as an interpreter; is that correct.

15 THE INTERPRETER: Yes, Your Honor.

16 THE COURT: And how long have you been doing,
17 performing this service.

18 THE INTERPRETER: Since 2001, Your Honor.

19 THE COURT: Very well. I have had the pleasure
20 and privilege to work with you previously. Any
21 objection to her being qualified as the interpreter
22 from the state?

23 MS. CARDILLO: None from the state, Your Honor.

24 THE COURT: Very well. Ms. Gainer, if you
25 would raise your right hand.

1 Do you solemnly swear or affirm that you will
2 truly comply in every respect with your obligations as
3 an interpreter and specifically interpret verbatim to
4 the defendant what the court and other matters are
5 said, and that's simultaneous as well; is that
6 correct?

7 THE INTERPRETER: Yes, Your Honor.

8 THE COURT: And you will also give the verbatim
9 response from the defendant, Mr. Martinez.

10 THE INTERPRETER: I do, Your Honor.

11 THE COURT: Thank you very much.

12 Mr. Martinez, two indictments have been handed
13 charging you with drug offenses; do you understand
14 that?

15 THE DEFENDANT: Yes, ma'am (sic).

16 THE COURT: Indictment 2007-66 charges you with
17 trafficking in cocaine, the amount is over -- what's
18 the indictment amount?

19 MS. CARDILLO: Your Honor, the indictment
20 amount is over 200 grams and less than 400 grams

21 THE COURT: Okay. Charges you with over 200
22 but less than 400. Do you understand that?

23 THE DEFENDANT: Yes, ma'am (sic).

24 THE COURT: Your lawyer is Ms. Brough; is that
25 correct?

1 THE DEFENDANT: Yes, ma'am (sic).

2 THE COURT: She has explained that charge to
3 you?

4 THE DEFENDANT: Yes.

5 THE COURT: She has explained to you what we
6 call the lesser included offense?

7 THE DEFENDANT: Yes.

8 THE COURT: And do you understand the
9 difference between the two?

10 THE DEFENDANT: Yes.

11 THE COURT: And that carries normally 25?

12 MS. CARDILLO: 25 years, Your Honor.

13 THE COURT: Maximum?

14 MS. CARDILLO: Yes, Your Honor.

15 THE COURT: Normally the trafficking cocaine 28
16 to 100 carries a maximum sentence of 25 years. Do you
17 understand that?

18 THE DEFENDANT: Yes, ma'am (sic).

19 THE COURT: You, through your lawyer, have
20 negotiated a sentence of 18 years. Is that correct.

21 THE DEFENDANT: Yes, ma'am (sic).

22 THE COURT: Has your lawyer explained to you
23 that that is considered a serious offense?

24 THE DEFENDANT: Yes.

25 THE COURT: Has she explained to you that it is

1 a non-parolable offense?

2 THE DEFENDANT: Yes.

3 THE COURT: which means that you will serve a
4 minimum of 85 percent of that sentence.

5 THE DEFENDANT: Yes.

6 THE COURT: Understanding the nature of the
7 offense and the fact that if I accept the negotiated
8 sentence I would sentence you to 18 years, what is
9 your plea? Guilty or not guilty.

10 THE DEFENDANT: Guilty.

11 THE COURT: Are you satisfied with your lawyer?

12 THE DEFENDANT: Yes.

13 THE COURT: Has she explained to you that a
14 negotiated sentence is unusual in this regard, you are
15 coming here and asking me to sentence you to 18 years.
16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: It is your desire that I impose the
19 negotiated sentence, that is sentence you to 18 years?

20 THE DEFENDANT: Yes.

21 THE COURT: solicitor, are there any other
22 terms of the agreement other than the sentence, the
23 negotiated sentence of 18 years?

24 MS. CARDILLO: No, Your Honor.

25 THE COURT: He's pleading also to a proximity

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charge?

MS. CARDILLO: Yes, Your Honor, to run concurrent.

THE COURT: Is that your understanding, Mr. Martinez?

THE DEFENDANT: Yes.

THE COURT: Indictment 2007-65 charges you with possession with intent to distribute drugs in proximity of a school. And this is cocaine?

MS. CARDILLO: Yes, Your Honor.

THE COURT: For that I can sentence you up to 10 years in jail. Do you understand that?

THE DEFENDANT: .

THE COURT: And I'm advised that a part of your negotiated sentence is that this, whatever sentence I impose would be concurrent. Is that your understanding?

THE DEFENDANT: Yes.

THE COURT: Understanding the nature of that offense and the possible punishment what is your plea, guilty or not guilty?

THE DEFENDANT: I'm guilty.

THE COURT: Ms. Brough, you've discussed this matter fully with your client?

MS. BROUGH: Yes, Your Honor.

1 THE COURT: You have explained to him the
2 significance of the negotiated sentence?

3 MS. BROUGH: Yes, Your Honor.

4 THE COURT: Did you in fact negotiated this
5 sentence for your client?

6 MS. BROUGH: Yes, Your Honor.

7 THE COURT: Based on your investigation, do you
8 believe the negotiated sentence to be in your client's
9 best interest?

10 MS. BROUGH: Yes, Your Honor.

11 THE COURT: You have shared with your client
12 the results of your investigation?

13 MS. BROUGH: Yes, Your Honor.

14 THE COURT: And after fully consulting with you
15 he indicated a desire to plead guilty?

16 MS. BROUGH: Yes, Your Honor.

17 THE COURT: You have advised him specifically
18 the rights that he would be relinquishing if I accept
19 his negotiated sentence?

20 MS. BROUGH: Yes, Your Honor.

21 THE COURT: Does he fully appreciate and
22 understand those rights?

23 MS. BROUGH: Yes, Your Honor.

24 THE COURT: Do you agree with the decision,
25 based on your investigation?

1 MS. BROUGH: Yes.

2 THE COURT: Is your client lawfully in this
3 country?

4 MS. BROUGH: I can't speak to that fully.

5 THE COURT: Mr. Martinez, are you lawfully in
6 this country?

7 THE DEFENDANT: No.

8 THE COURT: Does he understand that once he is
9 released from the punishment that he could be
10 deported?

11 MS. BROUGH: It is my understanding that he
12 understands the consequences.

13 THE COURT: Is that correct, Mr. Martinez?

14 THE DEFENDANT: Yes.

15 THE COURT: You still wish me to go through
16 with this and impose the negotiated sentence?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you understand that you are
19 giving up your right to remain silent by pleading
20 guilty?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand you are giving up
23 your right to a jury trial by pleading guilty?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you realize that at the trial

1 the state would have to prove your guilt, you do not
2 have to prove your innocence?

3 THE DEFENDANT: Yes.

4 THE COURT: In order to do that they'd have to
5 present witnesses, do you realize that.

6 THE DEFENDANT: .

7 THE COURT: If you had a trial you would have
8 an opportunity and right to confront those witnesses.
9 Do you realize that?

10 THE DEFENDANT: Yes.

11 THE COURT: You will not have that right
12 because we are not having a trial. Is that your
13 understanding?

14 THE DEFENDANT: Yes.

15 THE COURT: Has anyone threatened you in any
16 way to get you to plead guilty?

17 THE DEFENDANT: No.

18 THE COURT: other than the negotiated sentence,
19 has anyone promised you anything to get you to plead
20 guilty?

21 THE DEFENDANT: No.

22 THE COURT: Are you entering your guilty plea
23 because you are guilty of each offense?

24 THE INTERPRETER: I have no other choice.

25 THE COURT: Yes, you do. You have a right to

1 make the state prove your guilt beyond a reasonable
2 doubt. You don't have to do anything. You don't have
3 to say anything, you don't have to present evidence,
4 the state has to prove your guilt. Do you understand
5 that?

6 THE DEFENDANT: Yes.

7 THE COURT: I ask you again, are you pleading
8 guilty because you are guilty? And is that your sole
9 reason for pleading guilty?

10 THE DEFENDANT: Yes.

11 THE COURT: Is there any question of your guilt
12 in this matter.

13 THE DEFENDANT: No.

14 THE COURT: Are you under the influence of any
15 alcohol or any drugs here today?

16 THE DEFENDANT: No.

17 THE COURT: Do you know of anything that is
18 affecting your ability to make this decision?

19 THE DEFENDANT: No.

20 THE COURT: solicitor, if you would tell me a
21 condensed version of the facts, please.

22 MS. CARDILLO: Thank you, Your Honor, may it
23 please the Court. August 7, 2006 at the Food Lion
24 parking lot in Mount Pleasant, South Carolina, the
25 defendant -- a co-defendant met with an undercover

1 officer to set up a drug deal.

2 They sat in the car and discussed the drug deal
3 for approximately 45 minutes. The undercover officer
4 was equipped with video, this was all on video and
5 audio. Undercover officers, other officers were
6 located about the perimeter to observe what was going
7 on.

8 The defendant in this case, Mr. Martinez,
9 showed up with two other people -- I'm sorry, he
10 showed up and was introduced to Detective Hembree, who
11 was the undercover officer in the car. They talked
12 about money. He left and retrieved the drugs from two
13 other co-defendants who pulled up behind the vehicle,
14 handed the drugs. Mr. Martinez handed the drugs to
15 Detective Hembree, and that's when they were all
16 arrested on scene.

17 The drugs field tested presumptive as cocaine.
18 And later CPD lab weight came back as positive for
19 252.28 grams of cocaine. This all occurring within a
20 half of mile of the Bell Hall Elementary School
21 located at 385 Egypt Road, also in Mount Pleasant.

22 THE COURT: Are those facts correct, Mr.
23 Martinez?

24 THE DEFENDANT: Yes.

25 THE COURT: Have you fully understood all of my

1 questions?

2 THE DEFENDANT: Yes, ma'am (sic).

3 THE COURT: Have you truthfully responded to
4 those questions?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you realize that I will be
7 relying on your responses?

8 THE DEFENDANT: Yes.

9 THE COURT: I find that Mr. Martinez has had
10 the benefit of competent counsel. He has indicated to
11 me that he is totally satisfied with her
12 representation. I find there is a sufficient factual
13 basis to support the pleas, and therefore will accept
14 the pleas being freely, voluntarily, knowingly and
15 intelligently made and entered.

16 I now will hear from you, Ms. Brough, as to why
17 I should accept and impose the negotiated sentence.

18 MS. BROUGH: Your Honor, Mr. Martinez is only
19 25 years old. As Ms. Cardillo said he has been in the
20 Charleston County Detention Center, I don't know that
21 she actually mentioned this, but he has been there
22 since August 7, 2006 without incident.

23 He has been in some drug programs, he has
24 actually been in two different drug programs while in
25 the detention center voluntarily.

1 He has two children. And he is a young man.
2 And he has been involved in his representation in the
3 matter.

4 THE COURT: Is there anything Mr. Martinez
5 wishes to say?

6 THE DEFENDANT: No.

7 THE COURT: Sentence of the Court of indictment
8 2007-66 is that you be committed to the department of
9 corrections, as agreed, for the term of 18 years.

10 How much time has he served?

11 MS. CARDILLO: Your Honor, he has been in since
12 August 7, '06. I did not add those numbers up.

13 THE COURT: That's all right, I will put since
14 August 7th; is that correct?

15 MS. CARDILLO: Yes, Your Honor.

16 THE COURT: Credit for time served since August
17 7, 2006. Sentence of the court in 2007-65 is that you
18 be committed, Mr. Martinez, to the department of
19 corrections for a term of eight years, given credit
20 for time served since August 7, 2006, and it is
21 concurrent. Good luck, sir.

22 MS. CARDILLO: Thank you, Your Honor.

23 (Court Reporter's Note: "THE DEFENDANT"
24 denotes when the defendant responded in English. "THE
25 INTERPRETER" denotes when the interpreter responded in

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English.)

(Whereupon, the proceedings in this matter
before the Court were adjourned.)

* * * * *

C E R T I F I C A T E

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I, the undersigned, ANNE BOULEY MEYER, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record, and of all the proceedings had and evidence introduced in the above captioned case, relative to appeal, in the Circuit Court for South Carolina, on the indicated date.

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

Anne Bouley Meyer

Anne Bouley Meyer, RPR
Circuit Court Reporter

08 CP 10-4561

FORM 5

FILED 17

AUG - 7 2008

STATE OF SOUTH CAROLINA)

County of Charleston)

Eduardo Martinez #328852)

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

v.)

State of South Carolina)

JULIE J. ARMSTRONG
IN THE COURT OF COMMON PLEAS, CLERK, S.P. & G.S.

APPLICATION FOR
POST-CONVICTION RELIEF

FILED
JUL - 7 2008
JULIE J. ARMSTRONG
CLERK, S.P. & G.S.
Checked in

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be written (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 an additional page. Applicant shall make clear to which questions 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 for prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

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

1. Place of detention Lieber Correctional Inst. P.O. Box 205, Ridgewille S.C. 29412
2. Name and location of Court which imposed sentence Charleston County Court house 100 Broad St Charleston S.C. 29401
3. Name(s) of co-defendant(s) (if any) FORTINO ESPINOSA BETANCURT @ Jose Luis Gutierrez Hernandez @ Luis Alberto Lambarré Sastre
4. The indictments number or numbers (if known) upon which and the offences for which sentence was imposed:
(a) K-120732 K-120733

(b) _____

(c) _____

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

(a) March 3, 2008 (18 yrs)

(b) _____

(c) _____

6. Check whether a finding of guilty plea was made:

(a) after a plea of guilty Plea of Guilty

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

NO

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

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

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

(c) the date of each such result:

i. N/A

ii. N/A

iii. N/A

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

i. _____

- ii. _____
- iii. _____

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

- (a) I was locked up and could not inform my
- (b) attorney of my intention to appeal
- (c) _____

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

- (a) Ineffective Assistance of Counsel
- (b) _____
- (c) _____

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

- (a) Counsel failed to investigate
- (b) Counsel failed to interview certain witnesses
- (c) I was coerced into pleading guilty

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) Any petition in State or Federal Courts for habeas corpus or post - convictions relief? NO
- (c) Any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8) NO
- (d) Any other petitions, motions or applications in this or any other Court? NO

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

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

iii. N/A

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

i. _____

ii. _____

iii. _____

(c) the disposition thereof

i. _____

ii. N/A

iii. _____

(d) the date of each such disposition:

i. _____

ii. N/A

iii. _____

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

i. _____

ii. N/A

iii. _____

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?

N/A

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

(a) which grounds have been presented:

i. _____

ii. N/A

iii. _____

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

i. _____
 ii. _____
 iii. _____

N/A

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) _____

N/A

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? _____
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?

 (e) preparation, presentation or consideration of any petition, motion or applications with respect to this conviction, which you filed? N/A

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. Jacqueline G. Grou. 473 Savannah Highway
 ii. Charleston, South Carolina 29407
 iii. _____
 (b) the proceeding at which each attorney represented you:
 i. Guilty plea proceeding
 ii. _____
 iii. _____

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

~~A New Trial~~
~~A Time Out~~

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of Charleston }

VERIFICATION

I, Eduardo Martinez #326852, 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 include 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.

Eduardo Martinez EDUARDO MARTINEZ

SWORN to and subscribed before me this 5th
Day of August 2008

[Signature] (L.S.)
Notary Public

My Commission Expires: 4/4/2017

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

I, Eduardo Martinez #328852, hereby apply for leave to
proceed in this action without prepayment of fees or costs or security therefore. 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.

EDUARDO MARTINEZ
[Signature]

Applicant

SWORN to and subscribed before me this 5th
Day of August, 2008
[Signature] (L.S.)
Notary Public

My Commission Expires: 4/4/2009

Aug 5, 1908

#328852
 Mr. Eduardo Martinez
 Wando-171-c
 Lichen Corn, First
 P. O. Box 205
 Ridgville S.C. 29422

Charleston County
 Clerk of Court
 100 Broad Street
 Charleston S.C. 29401

RE: (A.P.C.R) Post Conviction Relief.

Dear Clerk of Court I am writing to request that you please file my application for post conviction relief. Please clock it, docket it, and make a copy of it. And please mail a copy of it back to me. I want to thank you in advance for helping me.

Respectfully
 Eduardo Martinez

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

2008-CP-10-4561

Eduardo Martinez, #326852,)
)
Applicant,)

RETURN

v.)

State of South Carolina,)
)
Respondent.)

FILED
2009 MAR 24 PM 1:39
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

The Respondent, making its Return to the application for post-conviction relief (PCR) filed August 7, 2008, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the January 2007 term of the Charleston County Grand Jury for trafficking in cocaine (2007-GS-10-0066) and possession with intent to distribute (PWID) cocaine within proximity of a school (2007-GS-10-0065). Jacqueline G. Grau, Esquire, represented the Applicant. On March 3, 2008, the Applicant pled guilty to the proximity charged and to the lesser-included offense of trafficking in cocaine (28-100 grams, 1st offense). Pursuant to a negotiated plea agreement, the Honorable R. Markley Dennis, Jr. sentenced him to confinement for eighteen (18) years for trafficking cocaine and eight (8) years for the proximity charge. The sentences were to run concurrently. The Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript.

II.

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

1. Ineffective assistance of counsel in that counsel
 - a. Failed to investigate.
 - b. Failed to interview certain witnesses.
 - c. Coerced Applicant into pleading guilty.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in the 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, 286 S.C. 441, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

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

V.

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

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

By: Math J. Friedman
ATTORNEYS FOR RESPONDENT

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

March 23, 2009.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

2008-CP-10-4561

Eduardo Martinez #326852,)

Applicant,)

vs)

State of South Carolina,)

Respondent.)

AFFIDAVIT OF SERVICE BY MAIL

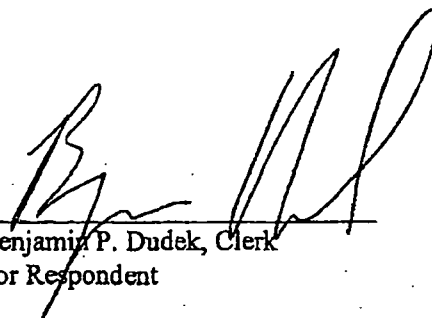
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1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return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

Barrett R. Brewer, Esq.
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492

DATED this 23rd day of March, 2009.



Benjamin P. Dudek, Clerk
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
DOCKET NO. 2008-CP-10-4561

EDUARDO MARTINEZ,

TRANSCRIPT OF PCR HEARING

Applicant,

November 20, 2009

VS.

Charleston, South Carolina

STATE OF SOUTH CAROLINA,

Respondent.

BEFORE:

THE HONORABLE KRISTI LEA HARRINGTON, Judge.

APPEARANCES:

BARRETT R. BREWER, ESQ.
ATTORNEY FOR APPLICANT

MATTHEW J. FRIEDMAN, ESQ.
ASSISTANT ATTORNEY GENERAL
ATTORNEY FOR RESPONDENT

HEATHER GAYLE BURNS, RDR
OFFICIAL COURT REPORTER
9TH JUDICIAL CIRCUIT

INDEXWITNESSES

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1 **THE COURT:** Next case
2 is Eduardo Martinez versus the
3 State of South Carolina.

4 Please state your
5 name for the record.

6 **MR. BREWER:** Your
7 Honor, Barrett Brewer and I am
8 here for -- here for the
9 plaintiff in this case.

10 **THE COURT:** All right.
11 You are Mr. Martinez?

12 (The interpreter
13 interprets the Court's
14 question to the defendant and
15 the defendant's response to
16 the Court.)

17 **A** Yes.

18 **THE COURT:** If you
19 will, please swear the
20 interpreter in and the
21 applicant.

22 (The interpreter,
23 Carla Collins, is sworn.)

24 **THE COURT:** And we're
25 going to need Mr. Martinez

1 sworn in as well.

2 (The interpreter
3 interprets the oath to the
4 defendant as well as the
5 defendant's response to the
6 Court.)

7 **THE COURT:** Mr. Brewer,
8 what grounds are you going
9 forward on here today?

10 **MR. BREWER:** May it
11 please the Court, your Honor,
12 Mr. Martinez is moving forward
13 on ineffective assistance of
14 counsel, and primarily the
15 argument for the Court here
16 today is that Mr. Martinez
17 during the course of being
18 represented by his attorney
19 and prior to the time of the
20 trial, his attorney failed to
21 get an interpreter to help and
22 assist in his own defense, to
23 help him communicate plea deal
24 offers.

25 He ultimately did

1 accept a plea deal offer but
2 said that it was in -- said
3 that previous offers were
4 ineffectively communicated to
5 him, therefore he was not, he
6 was deprived of his
7 constitutional right to
8 counsel, to -- or, excuse me,
9 his constitutional right to
10 effective counsel, to get
11 properly communicated plea
12 deals, and to properly prepare
13 him for trial.

14 He ultimately says
15 what happened is that when he
16 showed up at trial he did have
17 an investi -- an interpreter
18 present. At that time he
19 fully and finally understood
20 there was a plea deal on the
21 table, that he had previously
22 had a plea deal that would
23 have been a better deal to
24 him, and at that point he says
25 I didn't know what had

1 happened. I ultimately was
2 unprepared to try this case.
3 I didn't know that I had these
4 previous deals and ultimately
5 my attorney pressured me into
6 accepting a plea deal on that
7 date, and that is his basis
8 for post conviction relief
9 before the Court today.

10 **THE COURT:** Mr.
11 Friedman, are you prepared to
12 go forward on that ground?

13 **MR. FRIEDMAN:** Yes,
14 your Honor.

15 **THE COURT:** Mr. Brewer,
16 please call your first
17 witness.

18 **MR. BREWER:** Thank you,
19 your Honor. At this time we
20 would call -- actually we
21 would call Miss Jackie Grau at
22 this time.

23
24
25

GRAU -- DIRECT

1 JACQUELINE GRAU,
2 having been called as a
3 witness, is duly sworn and
4 testifies as follows:

5 DIRECT EXAMINATION BY
6 MR. BREWER:

7 Q And, Miss Grau, how
8 are you doing today?

9 A I'm okay.

10 Q Good. I know just
11 for the record you used to be an
12 attorney here in Charleston.
13 Right?

14 A Right.

15 Q And you're now in
16 Columbia?

17 A Well, I'm --

18 Q From Lexington. I'm
19 sorry. And at one point you were
20 representing Mr. Eduardo Martinez
21 in his criminal trial as an
22 appointed attorney. Is that
23 correct?

24 A That's right. It was
25 originally assigned to Warren

GRAU -- DIRECT

1 Moise in my office and as a
2 partner he delegated it to me.

3 Q Okay. And my
4 understanding is that Mr. Martinez
5 ultimately, when you represented
6 him, there was ultimately a trial
7 date that was called and you had
8 arranged to have an interpreter
9 appointed for Mr. Martinez. Is
10 that correct?

11 A If I remember
12 correctly, that's -- that's right.

13 MR. BREWER: Permission
14 to approach the witness with
15 an exhibit.

16 THE COURT: Yes, sir.
17 (An order to appoint
18 an interpreter dated January
19 24, 2008 is marked as
20 Petitioner's Exhibit No. 1 for
21 identification.)

22 (An order to appoint
23 an interpreter dated February
24 22, 2008 is marked as
25 Petitioner's Exhibit No. 2 for

GRAU -- DIRECT

1 identification.)

2 (A request to appoint
3 an interpreter is marked as
4 Petitioner's Exhibit No. 3 for
5 identification.)

6 Q All right. Miss
7 Grau, I'm handing you exhibits one
8 through three, and I represent to
9 you those are -- it's a request
10 for appointment of an interpreter
11 as well as two orders that you
12 subsequently got appointing the
13 interpreter. Is that correct?

14 A That's what -- that's
15 what I see. I don't remember
16 exactly the time line of it, but
17 that's what the documents show me.

18 Q Okay. And in fact do
19 you remember having to obtain an
20 interpreter for Mr. Martinez?

21 A Yes. I think I had
22 to get two of them --

23 Q Right.

24 A -- for an upcoming
25 trial.

GRAU -- DIRECT

1 Q Now in looking at the
2 orders, and I don't know if your
3 recollection would assist you in
4 this, but you didn't -- never
5 obtained an interpreter for the
6 purpose of communicating with Mr.
7 Martinez prior to trial or
8 otherwise helping prepare him for
9 trial?

10 A Well, I had an
11 interpreter for -- I believe for
12 an original plea that we had
13 planned --

14 Q Okay.

15 A -- if I remember it
16 right. And at that time I think
17 we actually got to court and at
18 that time Mr. Martinez decided not
19 to take the deal while the
20 interpreter was there.

21 Q Okay. But prior I
22 guess it was -- now you had gone
23 and met with Mr. Martinez in the
24 prison I assume?

25 A A good deal.

GRAU -- DIRECT

1 Q Okay. Did you have
2 an interpreter with you when you
3 did that?

4 A No.

5 Q When you sent Mr.
6 Martinez the letters updating him
7 on what was going on with his case
8 did you use Spanish to communicate
9 to him?

10 A In the letters I
11 wrote in English.

12 Q Did -- did you
13 arrange to have an interpreter
14 read the letters you sent him?

15 A No. But I will add
16 that I do speak some Spanish and I
17 met with him quite a few times and
18 my impression was that he
19 understood me and he told me that
20 he understood me, and I would not
21 have carried forward if I, I
22 didn't think he understood me. I
23 felt that we communicated in a mix
24 of my Spanish and some of his
25 English and that he knew what was

GRAU -- DIRECT

1 going on. I -- for my own sake I
2 would not have gone forward if I
3 thought he was in the dark with
4 it.

5 Q Are you
6 conversational in Spanish?

7 A I -- once I start
8 speaking I can speak some Spanish.
9 I mean I took it in college. I
10 spent a semester in Spain and, you
11 know, I had a background in
12 Spanish.

13 Q Okay. Mr -- just to
14 make sure for the Court that Mr.
15 Martinez is a Mexican national as
16 opposed to a Spanish national?

17 A Right. And the
18 accent in some things are a little
19 bit different but I believe that
20 the, the verbs and the major words
21 are the same.

22 Q I understand.

23 MR. BREWER: Now
24 permission to approach the
25 witness with an additional

GRAU -- DIRECT

1 exhibit?

2 THE COURT: Yes, sir.

3 (A letter dated
4 January 2, 2008 is marked as
5 Petitioner's Exhibit No. 4 for
6 identification.)

7 MR. BREWER: Now I'm
8 going to be approaching the
9 witness with a letter of
10 January the second, 2008 from
11 the Solicitor's Office.

12 Q Now, Miss Grau, I'm
13 handing you what's been marked as
14 exhibit four and is this the
15 letter that you received from the
16 Solicitor's Office on January
17 second, 2008 offering an initial
18 plea deal to Mr. Martinez of
19 fifteen years for twenty-eight to
20 one hundred grams of cocaine?

21 A That's what it looks
22 like.

23 Q And is your
24 recollection, and I think it's
25 expressly mentioned in the letter

GRAU -- DIRECT

1 here, that initially Mr. Martinez
2 was being charged with two hundred
3 to four hundred grams. Correct?
4 I think it's in the upper, the
5 first part of that paragraph.

6 A Yeah. I think that's
7 what it says. I don't have my
8 files. It's in the possession of
9 Grimball and Cabaniss, but it
10 looks like that was his indictment
11 and then she was offering to, to
12 let him plead to a lesser amount.

13 MR. BREWER: Okay.

14 Now, your Honor, permission to
15 approach the witness with a
16 second exhibit?

17 THE COURT: Yes, sir.

18 (A letter dated
19 January 3, 2008 is marked as
20 Petitioner's Exhibit No. 5 for
21 identification.)

22 MR. BREWER: Your
23 Honor, I'm approaching Miss
24 Grau now with a letter of
25 January third, 2008 which is

GRAU -- DIRECT

1 her letter to Eduardo Martinez
2 communicating the deal that we
3 just discussed.

4 Q Miss Grau, I'm
5 handing you petitioner's five. Do
6 you recognize this letter?

7 A It does look like my
8 signature. I think this is my
9 letter.

10 Q Okay. And would this
11 be the letter on January third,
12 2008 communicating your letter of
13 January -- excuse me.
14 Communicating the plea deal offer
15 in the letter of January second,
16 2008 that I --

17 A Yes. I mean as soon
18 as I heard that we had an offer of
19 course I related it to him as soon
20 as I could. That was something
21 that I take seriously, so --

22 Q Now do you have
23 your -- I do actually have your
24 file with me. If it would help
25 you I can certainly get that for

GRAU -- DIRECT

1 you. But is this to your
2 recollection the only
3 communication that you made in
4 writing to Mr. Martinez that plea
5 deal?

6 A Well, there are a
7 couple plea deals.

8 Q Okay.

9 A I don't know if this
10 was the only one. I know I wrote
11 to him a good deal as his trial
12 approached and I visited him a
13 good deal. I believe I sent him
14 earlier on the statutes that I
15 attached to this letter and now as
16 far as his actual plea, I don't
17 know.

18 Q Right. Right.
19 Right. And but as far as this
20 particular deal do you have any
21 recollection of sending him any
22 other correspondence?

23 A I don't but I, I
24 don't know for sure.

25 Q And the reality is

GRAU -- DIRECT

1 just you would have sent this.
2 This one letter was in English and
3 not in Spanish. Correct?

4 A Right.

5 Q You have no
6 information today that this, that
7 this letter or the contents of
8 this letter of January third,
9 2008, exhibit five, was
10 communicated to Mr. Martinez by an
11 official interpreter?

12 A No. I don't know if
13 it was.

14 Q Okay. Do you
15 understand that, that you had the
16 ability as his attorney to have
17 obtained an interpreter prior to
18 any of his days in court?

19 In other words you
20 could have one to go to visit with
21 him in jail or otherwise when you
22 were communicating the letters to
23 him?

24 A Yes. It was
25 difficult as being not in the

GRAU -- DIRECT

1 Public Defender's Office where
2 they have an interpreter ready,
3 readily available. If I had
4 wanted it I think I could have,
5 but I didn't feel that I needed it
6 to talk to him.

7 Q Now ultimately you
8 did have a day in court. What was
9 it, February of 2008 where
10 ultimately there was a plea agreed
11 to?

12 A That seems correct
13 based on the time line. Might
14 have been March. I'm not sure,
15 but around there.

16 Q And do you recall
17 actually being in court with Mr.
18 Martinez the day he accept --
19 ultimately did accept a plea deal?

20 A Yes.

21 Q And on that date did
22 he have an interpreter with him?

23 A I believe so.

24 MR. BREWER: Okay.

25 Your Honor, I have no further

GRAU -- CROSS

1 questions for Miss Grau.

2 THE WITNESS: Thank
3 you.

4 MR. FRIEDMAN: Thank
5 you.

6

7

8

9 CROSS-EXAMINATION BY

10 MR. FRIEDMAN:

11 Q Miss Grau, how long
12 have you been practicing law?

13 A Six years.

14 Q How much of your time
15 has been in criminal law?

16 A Definitely not as
17 much as civil. I had maybe about
18 five criminal or four criminal
19 cases before Mr. Martinez,
20 although I did have some P. C.
21 R.'s but, you know, brought me
22 into that area.

23 Q Okay. You recall
24 about how many times you met with
25 Mr. Martinez?

GRAU -- CROSS

1 A I mean I feel like it
2 was ten to twenty times but, you
3 know, I have to see a log to know
4 that.

5 Q Did you have any
6 trouble communicating with him?

7 A It was, it was not
8 fluid all the time but I did
9 feel like -- I mean I spent extra
10 time with him every time and made
11 sure that he understood me and I
12 feel like he did understand me.

13 In fact he knew some
14 of the laws before I even came in
15 and that he had spoken to other
16 people and knew about what I was
17 going to tell him about
18 eighty-five per cent and things
19 like that, so I felt like he
20 understood me.

21 Q Do you recall if you
22 discussed the elements of the
23 charges or what the State was
24 required to prove?

25 A I don't know that we

GRAU -- CROSS

1 actually discussed that in full,
2 but I know I sent him the statute
3 to look at and we talked about the
4 evidence, we talked about the
5 witnesses who'd be called, and I,
6 I probably got into the burden of
7 proof that the prosecutor would
8 have and how I thought our
9 evidence would be received.

10 Q All right. Now did
11 the applicant speak English, speak
12 much English?

13 A He spoke -- my
14 understanding is he does speak
15 some English. I mean I don't know
16 if he was afraid to initially
17 speak to me in English but I am
18 fairly certain that he does
19 understand some English.

20 Q You recall if he
21 answered any of the judge's
22 questions in the plea in English?

23 A I don't remember.

24 Q Did you communicate
25 all the plea offers to the

1 applicant?

2 A Oh, yes.

3 Q You think he
4 understood them?

5 A I believe so, yes.

6 Q Did you inform him of
7 the consequences of the plea?

8 A Yes, and we did have
9 substantial talks about that
10 because he knew how much time he
11 was going to get and he was upset
12 about that, so that's why he
13 didn't take the fifteen years
14 which was the first offer.

15 I did relay that to
16 him and he decided not to take
17 that and as his trial came closer
18 we had more and more discussions
19 about what a trial would be like
20 in this county for him, all the
21 evidence against him. The
22 narcotics officer was videotaped
23 with him. Other witnesses who had
24 already decided to plea and he
25 would be -- have been, would be

GRAU -- CROSS

1 testifying against him.

2 I surely felt that he
3 needed to take a negotiated plea
4 as opposed to going to, to go on
5 to trial.

6 Q All right. And this
7 was a negotiated sentence of
8 eighteen years that he accepted?

9 A Yes.

10 Q Do you think he
11 understood what was meant by a
12 negotiated sentence?

13 A Yes.

14 Q Whose decision was it
15 to plead guilty?

16 A It was his decision.

17 MR. FRIEDMAN: I have
18 nothing further, your Honor.

19 THE COURT: Mr. Brewer.

20

21

22

23

24

25

GRAU -- REDIRECT

1 REDIRECT EXAMINATION

2 BY MR. BREWER:

3 MR. BREWER: Permission
4 to approach the witness with
5 an exhibit?

6 THE COURT: You may.

7 (A transcript is
8 marked as Petitioner's Exhibit
9 No. 6 for identification.)10 Q Miss Grau, I'm just
11 handing you petitioner's exhibit
12 six and this is -- I submit to you
13 this is the transcript from the
14 day of the, the plea deal that Mr.
15 Martinez made that day and just to
16 flip through it.17 The question, the
18 question I'm going to ask about it
19 is just ask whether or not Mr.
20 Martinez responded in English at
21 all. What I'm asking is you to
22 look through it and see if at the
23 beginning that the interpreter was
24 sworn in for Mr. Martinez and it
25 does appear had spoken for him

GRAU -- REDIRECT

1 through the, through the plea
2 bargain.

3 A I really can't tell
4 based on the way the transcript is
5 done because at some point the
6 transcript switches to the
7 defendant as opposed to the
8 interpreter at about page five.

9 Q Do you see where the
10 interpreter is in fact sworn in,
11 though?

12 A Yes.

13 Q Okay. And do you see
14 any point where in his -- after
15 the point that the interpreter is
16 sworn in, that the testimony
17 becomes the defendant?

18 A Yes.

19 Q Okay. Now, Miss
20 Grau, let me ask you this. You
21 discussed with Mr. Friedman
22 earlier how you discussed with Mr.
23 Martinez multiple times that the
24 evidence, that the burdens against
25 him, what the witnesses were going

1 to testify to. As I understood he
2 had witnesses that were going to
3 testify against him. Is that
4 right?

5 A Testify against him?

6 Q Or he had some
7 codefendants that were going to
8 testify.

9 A Oh, yes.

10 Q And you had explained
11 what those witnesses were going to
12 testify about?

13 A Yeah. We talked
14 about them a great deal. He was
15 concerned that two of them I
16 believe had -- I believe they had
17 private counsel and had taken
18 earlier deals.

19 Q Okay.

20 A He was concerned
21 about, you know, getting what they
22 got and, you know, comparing
23 himself.

24 Q Would those have
25 been -- would, would those

GRAU -- REDIRECT

1 communications have been
2 communications you had with him at
3 prison when you went to visit with
4 him and prepare for this trial?

5 A We talked about that
6 stuff definitely when he was in
7 jail.

8 Q Okay. And he
9 definitely -- where he was
10 incarcerated at that time?

11 A Right. Right.

12 Q And during that time,
13 that would be the same time frame
14 that you were using your own
15 Spanish ability as opposed to a
16 professional interpreter. Is that
17 correct?

18 A Yes.

19 MR. BREWER: Your
20 Honor, I have no further
21 questions.

22 A Or English. Or he
23 spoke to me in English and I spoke
24 back in English.

25 MR. BREWER: Okay.

GRAU -- RECROSS

1 Thank you. Thank you, Miss
2 Grau.

3 THE COURT: Mr.
4 Friedman.

5 MR. FRIEDMAN: Briefly,
6 your Honor.

7

8

9

10

11

12

RECROSS EXAMINATION

13

BY MR. FRIEDMAN:

14

Q Miss Grau, if you

15 would look at page fourteen of the

16 transcript, line twenty-three is

17 the court reporter's note.

18

A Okay. Right. It

19 says: "The 'defendant' denotes

20 when the defendant responded in

21 English. The Interpreter, quotes,

22 denotes when the interpreter

23 responded in English."

24

Q So would that lead

25 you to believe that the defendant

GRAU -- RE CROSS

1 did answer some of the questions
2 in English?

3 A Yes. I think that's
4 what that means, that the
5 defendant is speaking in English
6 around page four or five.

7 MR. FRIEDMAN: I have
8 nothing further.

9 THE COURT: Miss Grau,
10 you may step down.

11 MR. BREWER: Your
12 Honor, may I have one moment,
13 please?

14 THE COURT: You may.

15 MR. BREWER: Your
16 Honor, at this time we call
17 Mr. Martinez to the stand.

18 THE COURT: All right.
19 Mr. Martinez, please come
20 forward. Mr. Martinez, please
21 take a seat. Mr. Martinez, I
22 remind you that you're still
23 under oath.

24

25

1 EDUARDO MARTINEZ,
2 previously sworn, takes the
3 witness stand and testifies as
4 follows:

5
6
7 DIRECT EXAMINATION BY
8 MR. BREWER:

9 Q Mr. Martinez, would
10 you, would you state your name,
11 please.

12 DEFENDANT: Eduardo
13 Martinez.

14 INTERPRETER: Eduardo
15 Martinez.

16 Q Mr. Martinez, just to
17 make sure that the record is
18 straight, I'm going to be asking
19 you questions. The interpreter is
20 going to translate the question.
21 You'll then give her the answer
22 and she'll repeat the answer for
23 the record. Is that okay?

24 A Yes.

25 Q Mr. Martinez, do you

MARTINEZ -- DIRECT

1 remember Miss Grau who was
2 testifying earlier being appointed
3 as your attorney?

4 A Yes.

5 Q And at the time that
6 Miss Grau was appointed as your
7 attorney were you able to
8 communicate effectively in
9 English?

10 A No.

11 Q Is your primary
12 language Spanish?

13 A Yes.

14 Q Did you communicate
15 to your attorney Miss Grau that
16 you needed an interpreter or
17 needed her to communicate in
18 Spanish with you primarily?

19 A Yes.

20 Q During Miss Grau's
21 visits with you in, while you were
22 incarcerated, did she ever bring
23 an interpreter with you to -- to
24 speak with you?

25 A No.

MARTINEZ -- DIRECT

1 Q Did Miss Grau use an
2 interpreter to communicate with
3 you or prepare you for the trial
4 of this case?

5 INTERPRETER: Repeat.

6 Q Let me -- I'll
7 rephrase the question.

8 Did Miss Grau use an
9 interpreter to help you prepare
10 your defense for the trial of this
11 case?

12 A Yes.

13 Q Did she use an
14 interpreter to communicate with
15 you at prison about this case?

16 A No.

17 Q During your meeting
18 with Miss Grau in the prison did
19 you understand what she was
20 explaining to you when she was
21 there?

22 A No.

23 MR. BREWER: With your
24 permission I'll grab these
25 exhibits.

MARTINEZ -- DIRECT

1 COURT REPORTER: Sure.

2 MR. BREWER: Thank you.

3 Your Honor, I'm going
4 to hand him, the witness, Mr.
5 Martinez, defendant's exhibit
6 five, the letter of January
7 third, 2008.

8 Q Mr. Martinez, I'm
9 handing you a letter that's marked
10 as January third, 2008. It is an
11 initial, an initial plea deal that
12 Miss Grau communicated to you on
13 that date. Do you remember
14 receiving that document?

15 A Yes.

16 Q Is it written in
17 English or Spanish?

18 (The interpreter does
19 not interpret the above question
20 to the defendant.)

21 DEFENDANT: English.

22 Q And were you able,
23 were you able to understand that,
24 plaintiff's exhibit five written
25 in English?

MARTINEZ -- DIRECT

1 A No. I just
2 understood that it was fifteen
3 years. I, I didn't know. I just
4 understood that it was fifteen
5 years. I didn't know if it was
6 for one or if it was for both
7 charges.

8 Q Okay. Did you recall
9 that you had two charges against
10 you?

11 A Yes.

12 Q And was that for the
13 trafficking cocaine and that being
14 in the school zone, those two
15 charges?

16 A Yes, they were.

17 Q And so you do -- is
18 your testimony to the Court that
19 you don't -- that you didn't
20 understand whether that letter was
21 reducing the charges to fifteen
22 years for one -- one of the --
23 those crimes or for both of them?

24 A No. I didn't
25 understand.

MARTINEZ -- DIRECT

1 Q Would you have
2 considered it a good deal or a
3 deal that you would have taken if,
4 if it was a plea bargain for
5 fifteen years on one charge only
6 but not the other?

7 A Yes.

8 Q But how did you have
9 that -- how did you have the --
10 how did you have that -- did you
11 attempt to have that letter read
12 to you?

13 A Yes.

14 Q How did you -- who
15 did -- who did you go to to get
16 that letter read to you?

17 A He was -- it was a
18 person that lived with me.

19 Q In the jail?

20 A Yes.

21 Q Was he a -- was he a
22 Hispanic person?

23 A White person.

24 Q And could he speak
25 Spanish?

MARTINEZ -- DIRECT

1 A No.

2 Q Were you able to
3 understand what your roommate read
4 to you from the letter given that
5 he couldn't speak Spanish?

6 A No.

7 Q When Miss Grau --

8 A A little bit. That's
9 all.

10 Q Okay. When Miss Grau
11 ultimately came to the prison to
12 help prepare you for trial, did
13 she speak Spanish with you?

14 A No.

15 Q Were you able to
16 understand Miss Grau when she came
17 to prison to help prepare you for
18 trial?

19 A No. A little bit. A
20 little bit.

21 Q Did you understand
22 her enough to effectively assist
23 you in preparing for your case?

24 A No.

25 Q Ultimately when -- do

MARTINEZ -- DIRECT

1 you remember the day in court when
2 you did enter into a plea
3 agreement?

4 A Yes.

5 Q Okay. March third,
6 2008. Does that sound correct?

7 A Yes.

8 Q Did Miss Grau have an
9 interpreter for you on that date?

10 A Yes.

11 Q And on that date did
12 they explain that they were
13 offering an eighteen year plea
14 deal?

15 A Yes.

16 Q And is that the
17 day -- did you also understand
18 that a previous plea deal had been
19 offered to you on January the
20 third, 2008, the letter you have
21 in front of you? Did your
22 interpreter explain that to you on
23 that date?

24 A Yes.

25 Q Okay. On this date

MARTINEZ -- DIRECT

1 of March third, 2008 was the first
2 day you were getting effective
3 assistance through a Spanish
4 interpreter with either the
5 defense of your trial or the
6 communication of plea bargains?

7 A Yes.

8 Q And had you prior to
9 this date made requests to your
10 attorney to get interpreters for
11 you to assist you prior to your
12 day in court?

13 A Yes.

14 Q Now on March third,
15 2008 I want you to explain to the
16 Court what happened, what happened
17 when you were offered a plea deal
18 and you realized that there was an
19 earlier plea deal on that January
20 third, 2008 letter that you didn't
21 understand?

22 A Okay. Well, I
23 thought it was a mistake because
24 if I would have known about the
25 fifteen years earlier I would have

MARTINEZ -- DIRECT

1 taken it. And as I said to my
2 attorney if I would have had an
3 interpreter so that as I asked her
4 I wanted an interpreter we would
5 have been able to understand each
6 other better and it would have
7 been better for both of us.

8 Q On the date of the
9 hearing, on March third, 2008, did
10 your attorney at all pressure you
11 into accepting that deal?

12 A Yes. Yes, because,
13 well, I felt a lot of pressure
14 from her. She pressured me a lot
15 because the case had already been
16 going on for a long time and she
17 said that she was not getting
18 paid, she said that she wasn't
19 getting paid and the case had been
20 going on for a long time and that
21 it was best for both of us so that
22 it would be over.

23 But I said to her
24 that it's not her life, it's my
25 life that I'm going to be spending

1 in jail. That's all.

2 Q Did you ultimately
3 accept the plea deal that Miss
4 Grau was trying to get you to
5 accept on March third, 2008?

6 A Yes.

7 Q Did you want to
8 accept that plea deal for eighteen
9 years on March third, 2008 knowing
10 that now that you previously had a
11 plea deal for fifteen years for
12 both charges?

13 A No.

14 Q So why did you accept
15 the plea deal for eighteen years?

16 A Well, I didn't have
17 any other option. There was no
18 other option. As I said I felt a
19 lot of pressure. What could I
20 have done? Well and since she
21 said to me if you don't take the
22 eighteen years then you're going
23 to spend thirty-five to forty
24 years in jail.

25 Q And under that, under

MARTINEZ -- DIRECT

1 that pressure is that why you
2 accepted the eighteen year plea
3 deal on March third, 2008?

4 A Yes.

5 MR. BREWER: Permission
6 to approach the witness with
7 this transcript.

8 THE COURT: You may.

9 MR. BREWER: Your
10 Honor, I'm going to be handing
11 the witness his transcript at
12 page six, line eleven.

13 Q Mr. Martinez, if you
14 would please read your transcript
15 and the question the Court asked
16 you at page six, line eleven and
17 your response on line twelve.

18 A Okay.

19 Q I just want you to
20 read it and tell me whenever
21 you've read it. You can't read
22 it, right?

23 (There is no
24 response.)

25 Q So on that day -- I'm

1 showing you this transcript and
2 through the interpreter I'm going
3 to ask you to ask her to read it.
4 I'm going to ask her -- no.
5 That's not the proper way to do
6 this.

7 I'm going to submit
8 to you what line eleven says and
9 ask the interpreter to read it to
10 you. Line eleven says: "Are you
11 satisfied with your lawyer?" And
12 you said: "Yes."

13 Do you remember
14 making that statement to the
15 Court?

16 A Yes, I did tell the
17 Court that, that I was satisfied
18 with my attorney but I was never
19 asked if she did a good job.

20 Q Okay. And do you
21 believe that your lawyer was
22 effective?

23 A What is effective?

24 Q Do you, do you
25 believe your, your attorney did a

MARTINEZ -- DIRECT

1 good job in representing you in
2 this case and in communicating all
3 plea deals to you?

4 A No.

5 Q Do you think your
6 lawyer's a nice person, though?

7 A No.

8 Q Miss Grau, did, did
9 you like Miss Grau personally?

10 A Yes. No. Well, as a
11 person, yes, she's a good person
12 but she did not do a good job.

13 Q And did you
14 understand the, if, when the Court
15 asked you were you satisfied with
16 your lawyer, did you understand
17 that they were asking you whether
18 your lawyer did a good job for
19 you?

20 A No. No. I didn't
21 understand. No. I didn't
22 understand. I thought that I was
23 being asked if she was a good
24 person. If I would have
25 understood that, if it was if she

MARTINEZ -- DIRECT

1 did a good job I would have said
2 no. If she had come to see me, if
3 she would have brought an
4 interpreter to interpret for me I
5 would have said no.

6 MR. BREWER: Your
7 Honor, I don't have any other
8 questions for Mr. Martinez at
9 this time.

10 THE COURT: Mr.
11 Friedman.

12 MR. FRIEDMAN: Thank
13 you, your Honor.

14

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19 CROSS-EXAMINATION BY

20 MR. FRIEDMAN:

21 Q Mr. Martinez, do you
22 recall that you told the Court you
23 understood the charges and the
24 possible punishment?

25 A Yes.

MARTINEZ -- CROSS

- 1 Q And you received a
2 negotiated sentence. Is that
3 right?
- 4 A Yes.
- 5 Q And that was eighteen
6 years?
- 7 A Yes.
- 8 Q So you -- did you
9 know what you were being sentenced
10 to before, before you were
11 sentenced?
- 12 A No.
- 13 Q You recall that you
14 told the Court you did not want a
15 jury trial?
- 16 A No.
- 17 Q You have the
18 transcript up there?
- 19 A What is a
20 transcription?
- 21 Q A transcript of the
22 guilty plea, exhibit six?
- 23 A Yes.
- 24 Q Can you turn to page
25 nine, line twenty-two.

1 **MR. BREWER:** Your
2 Honor, I ask that the
3 interpreter be able to help
4 him. His hands are the
5 cuffed. He can't turn
6 anything.

7 **THE COURT:** Yes, sir.

8 **MR. BREWER:** Also, and
9 we also object that, obviously
10 he's established he can't read
11 that, so we ask that the
12 interpreter by virtue of the
13 question read the line to him.

14 **THE COURT:** Mr.
15 Martinez, are you able to read
16 any English?

17 **A** No.

18 **MR. FRIEDMAN:** Your
19 Honor, I would ask the
20 interpreter to read it, to
21 look at page nine, line
22 twenty-two, and please read
23 lines twenty-two through
24 twenty-four.

25 **THE COURT:** Would you

MARTINEZ -- CROSS

1 like the interpreter to
2 translate it for the witness?

3 MR. FRIEDMAN: Yes,
4 your Honor.

5 INTERPRETER: Okay. I
6 just wanted to make sure.

7 A So what does it say?
8 Yes. Yes.

9 Q Okay. Do you recall
10 telling the judge that you did not
11 want a jury trial?

12 A Yes.

13 Q Do you recall telling
14 the judge that no one threatened
15 you or promised you anything to
16 get you to plead guilty?

17 A Yes.

18 Q You recall telling
19 the Court that you were in fact
20 guilty of these offenses?

21 A Yes.

22 Q Did you use an
23 interpreter for the entire plea
24 hearing?

25 A Yes.

MARTINEZ -- CROSS

1 Q Do you recall if you
2 responded to any of the judge's
3 questions in English?

4 A No, no, because they
5 weren't in Spanish, in Spanish.
6 When I was asked and the
7 interpreter interpreted for me I
8 answered everything in Spanish,
9 si, si.

10 MR. FRIEDMAN: Nothing
11 further, your Honor.

12 THE COURT: Mr. Brewer.

13 MR. BREWER: Just one
14 follow-up question, your
15 Honor.

16

17

18

19 REDIRECT EXAMINATION

20 BY MR. BREWER:

21 Q Mr. Martinez, you,
22 you testified earlier that Miss
23 Grau pressured you into, into
24 accepting a plea agreement. Is
25 that right?

MARTINEZ -- REDIRECT

1 A Yes.

2 Q Did she threaten --
3 she didn't threaten you with any
4 physical harm or anything, though,
5 did she?

6 A No.

7 MR. BREWER: That's all
8 the questions I have, your
9 Honor.

10 THE COURT: Any
11 follow-up? Mr. Friedman, any
12 recross?

13 MR. FRIEDMAN: No, your
14 Honor. No.

15 THE COURT: Mr.
16 Martinez, if I grant your
17 application for post
18 conviction relief what do you
19 understand will happen to your
20 charges?

21 A What do I understand?
22 Well, I understand that, I think
23 that it will be resolved better.

24 THE COURT: Mr.
25 Martinez, do you think that if

1 I grant your application that
2 you will be released on these
3 charges?

4 A Well, that depends on
5 her.

6 THE COURT: And who is
7 "her"?

8 A The person who will
9 give me my decision. The judge.

10 THE COURT: Thank you.

11 Mr. Friedman, what is
12 the penalty for trafficking
13 two hundred to four hundred
14 grams? Is it twenty-five to
15 life?

16 MR. FRIEDMAN: I
17 believe it is twenty-five
18 mandatory minimum.

19 MR. BREWER: Your
20 Honor, I have additional
21 exhibits before we close.

22 MR. FRIEDMAN: It's
23 twenty-five, your Honor.

24 THE COURT: Just
25 twenty-five? Straight

MARTINEZ. -- REDIRECT

1 twenty-five?

2 MR. FRIEDMAN: Yes,
3 your Honor.

4 THE COURT: And the
5 charge that he pled to, up to
6 twenty-five. Is that correct?

7 MR. FRIEDMAN: That's
8 up to ten I believe, your
9 Honor. I'm sorry. The
10 trafficking is up to
11 twenty-five. The proximity is
12 up to ten. But the two
13 hundred to four hundred is
14 just a non-discretionary, just
15 twenty-five year sentence and
16 a fine.

17 THE COURT: Mr.
18 Martinez, if I grant your
19 application for post
20 conviction relief your case
21 starts all over. It will be
22 no negotiations or
23 recommendations. It will be
24 no reduction. You will go
25 back to the charges as

1 indicted. Do you understand
2 that?

3 A Yes.

4 THE COURT: You are
5 facing twenty-five years on
6 the trafficking and up to
7 fifteen years on the
8 proximity. Do you understand
9 that?

10 A Yes.

11 THE COURT: So if your
12 charges are run consecutive
13 you are facing forty years.
14 Do you understand that?

15 A Yes.

16 THE COURT: Do you
17 still wish for the Court to
18 grant your application for
19 post conviction relief?

20 A Yes.

21 THE COURT: Anything,
22 Mr. Brewer?

23 MR. BREWER: Nothing
24 more of the witness, your
25 Honor.

1 **THE COURT:** All right.
2 Anything based upon my
3 questions?

4 **MR. FRIEDMAN:** No, your
5 Honor. Not from this witness.

6 **THE COURT:** Mr.
7 Martinez, you may step down.

8 **MR. BREWER:** Your
9 Honor, just to speed things
10 along, I just have one exhibit
11 I'd like to introduce to the
12 Court.

13 **THE COURT:** All right.
14 If you'll wait just one
15 moment.

16 **MR. BREWER:** No
17 problem, your Honor.

18 **THE COURT:** Mr.
19 Martinez, have a seat.

20 **MR. BREWER:** Thank you,
21 your Honor. This is already
22 in. This is already part of
23 the record. It's an order
24 that we had obtained from
25 Judge Jefferson. Just going

1 to have that marked as an
2 exhibit.

3 (The court order is
4 marked as Petitioner's Exhibit
5 No. 7 for identification.)

6 MR. BREWER: And this
7 is for the Court, your Honor.
8 It simply shows the previous
9 exhibits that are here marked
10 one through six including this
11 transcript.

12 Your Honor, they
13 include orders from Miss Grau
14 that were signed by Judge
15 Jefferson as well -- these two
16 exhibits, one and two, both
17 say that interpreters for the
18 defendant are to be appointed
19 for the trial of the matter.

20 The one I handed you
21 had an interpreter appointed
22 for the trial and for the
23 preparation of the defendant
24 in communication of attorney
25 client meetings.

1 And we'll save any
2 other comment for the closing
3 if the Court wishes.

4 **THE COURT:** Thank you.

5 **MR. BREWER:** And all
6 the exhibits are here on your
7 Honor's bench. Thank you.

8 **THE COURT:** Mr.
9 Friedman, do you have any
10 witnesses?

11 **MR. FRIEDMAN:** Your
12 Honor, we briefly recall
13 Jackie Grau in response to the
14 applicant's testimony.

15 **THE COURT:** All right.
16 Miss Grau, please come
17 forward.

18 **MS. GRAU:** Yes, ma'am.

19 **THE COURT:** And, Miss
20 Grau, please come forward, and
21 I remind you you're still
22 under oath.

23 **MS. GRAU:** Yes, ma'am.

24

25

GRAU -- REBUTTAL

1 JACQUELINE GRAU,
2 previously sworn as a witness,
3 resumes the witness stand and
4 testifies as follows:

5 DIRECT REBUTTAL

6 EXAMINATION BY MR. FRIEDMAN:

7 Q Miss Grau, the
8 applicant testified that he asked
9 for an interpreter. Is that your
10 recollection?

11 A Definitely not.

12 Q He never asked you
13 for an interpreter?

14 A No.

15 Q He also testified
16 that you never spoke any Spanish
17 with him and it is your testimony
18 earlier that you spoke some
19 Spanish and some English?

20 A Well, let me just say
21 I think a P. C. R. is a
22 different -- is a difficult thing
23 because I hate breaking privilege
24 but it's been called upon me to do
25 that.

GRAU -- REBUTTAL

1 I think Mr. Martinez
2 speaks a lot more English than
3 he's letting on. It's to his
4 benefit today to represent he
5 doesn't speak English, but we did
6 communicate in English a good deal
7 and some words -- if he didn't
8 know a word I would try to
9 translate it into Spanish. But my
10 belief is that he does not need an
11 interpreter to understand English.

12 Q He also testified
13 that you pressured him into
14 accepting a plea. Is that your
15 recollection?

16 A No. Not --
17 definitely not pressured him. I
18 was prepared to go to trial. In
19 fact we were going to be tried
20 with a codefendant who was
21 represented by someone in the
22 Public Defenders Office and I had
23 meetings with him -- I think it
24 was Andrew Grimes -- on a regular
25 basis. We were going to present

1 the case together and I was trying
2 to decide the theory of how I
3 would strategize, if we wanted
4 separate or what not. But I was
5 prepared to go to trial.

6 I believe that Mr.
7 Martinez was told by one of the
8 plea judges in either the first
9 time or the second time that it
10 was to his benefit to take that
11 plea. And I do know that his
12 codefendants, one of them went to
13 trial and got a stricter sentence.
14 Was convicted and got a stricter
15 sentence. And I just told him
16 that I thought the offer was
17 definitely to his benefit, that it
18 would be a really good idea for
19 him to go ahead and take it.

20 And let me say that I
21 would never tell a client that I'm
22 not getting paid for this and I
23 want to hurry up. I mean I
24 haven't had that, that strong
25 ethical pull. I think he asked me

GRAU -- REBUTTAL

1 how I got appointed to him, how
2 come he didn't have a Public
3 Defender, and I told him the State
4 appoints us so, you know, it
5 wasn't our choice but it was our
6 job to represent him. That's what
7 I would have communicated to him.

8 Q Did you ever tell him
9 that he would get thirty-five to
10 forty years if he did not accept
11 the negotiated eighteen year plea?

12 A I would never have
13 said he will get this. I would
14 have said here's what the statute
15 allows for. Here's how I think
16 the evidence will be perceived and
17 there's a possibility if you are
18 guilty that you will get this
19 maximum amount.

20 And he did have prior
21 offenses, you know, which made it
22 even more difficult when dealing
23 with the solicitor to get any sort
24 of offer from her.

25 Q And I believe that it

GRAU -- REBUTTAL

1 was your testimony earlier that he
2 rejected the fifteen year offer?

3 A Yes. He did.

4 Q And he testified that
5 he didn't know there was a fifteen
6 year offer on the day that he was,
7 was pleading for eighteen years?

8 A No. That's not my
9 recollection at all.

10 MR. FRIEDMAN: I have
11 nothing further, your Honor.

12 THE COURT: Mr. Brewer.

13

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CROSS REBUTTAL

19 EXAMINATION BY MR. BREWER:

20 Q Miss Grau, it's true
21 that you are being paid for, to
22 represent Mr. Martinez. Correct?

23 A Well, actually the
24 Office of Indigent Defense pays
25 forty dollars out of court, sixty

GRAU -- CROSS REBUTTAL

1 in court, so I wouldn't say that I
2 wasn't being paid, but, you know,
3 he didn't retain me. He didn't
4 pay me.

5 Q All right. And at
6 your normal time your rates would
7 have been much higher than that.
8 Correct?

9 A Yes. But I was
10 working at a firm so it wouldn't
11 come from out of my pocket and,
12 yeah, that's how it, that's how it
13 works. But for me to take a case
14 and for Warren to take a case,
15 would be billing more per hour.

16 MR. BREWER: Yes. I
17 understand. No further
18 questions, your Honor.

19 MR. FRIEDMAN: Nothing
20 further, your Honor.

21 THE COURT: Miss Grau,
22 you may step down. Thank you.

23 Anything further, Mr.
24 Friedman?

25 MR. FRIEDMAN: No other

1 witnesses, your Honor.

2 MS. GRAU: Your Honor,
3 may I be excused?

4 THE COURT: You may be
5 excused.

6 MS. GRAU: Thank you.

7 THE COURT: You may.
8 Have a safe trip back and a
9 nice weekend, Miss Grau.

10 MS. GRAU: Thank you.

11 THE COURT: Mr. Brewer,
12 I'd be happy to hear from you
13 regarding any argument.

14 MR. BREWER: Yes, your
15 Honor. Just very briefly.
16 You know, we handed the Court
17 basically a track record that
18 shows Mr. Martinez essentially
19 was not communicating with --
20 effectively in Spanish either
21 during the preparation for
22 trial or for proper plea
23 communication. That's
24 effectively what this case is.
25 Mr. Martinez says, you know, I

1 didn't have an interpreter or
2 anyone to effectively
3 communicate with me to the day
4 I'm there at the hearing. And
5 now I've got an interpreter
6 and now I got my attorney. I
7 understand my attorney's
8 telling me the case has gone
9 on too long. I'm not getting
10 paid for the thing. You need
11 to take this deal. I didn't
12 understand I had a previous
13 plea deal on the table months
14 ago and now I understand that
15 and it was a whirlwind around
16 him.

17 And, your Honor, as
18 you, you have seen, Mr.
19 Martinez doesn't understand
20 the, the transcript that's in
21 front of him. The Court
22 appointed an interpreter to
23 speak with him the whole time.
24 And, and what I think will be
25 the easiest for the Court to

1 see is simply this: It is
2 possible to get him a Court
3 appointed interpreter for Mr.
4 Martinez prior to the day of
5 the hearing. The, just by the
6 reading of the testimony as
7 the paper work we handed up to
8 the Court clearly shows these
9 two things. One, that the
10 original plea deal of fifteen
11 years was never communicated
12 in Spanish to Mr. Martinez.
13 And I don't think there's any,
14 any testimony here today that
15 that was ever done.

16 There's a letter
17 written in English. That's
18 the only evidence of any
19 communicated plea and he
20 testified in Court the only
21 person who could read it to
22 him was a white guy sitting in
23 his cell who couldn't even
24 speak Spanish.

25 The other testimony

1 you heard from Mr. Martinez
2 today is about the interpreter
3 and about his ability to
4 prepare for trial and
5 obviously Miss, Miss Grau met
6 with him multiple times in
7 jail. He could not understand
8 what she was saying and the
9 Court order that you'll see
10 clearly show that it was
11 within Miss Grau's
12 capabilities to get an
13 interpreter to take with her
14 to prepare for this case much
15 like we've done for Mr.
16 Martinez in this case.

17 And that is Mr.
18 Martinez's case for post
19 conviction relief based on
20 ineffective assistance of
21 counsel, assistance of
22 counsel, Miss Grau.

23 Thank you, your
24 Honor.

25 THE COURT: Mr.

1 Friedman.

2 MR. FRIEDMAN: Thank
3 you, your Honor. The State
4 would submit that the
5 applicant failed to meet his
6 burden. Counsel testified
7 that she believed the
8 applicant understood their
9 communications. She testified
10 that he spoke -- she spoke
11 some Spanish, that she
12 believed he was able to
13 understand her in English.
14 She testified that she
15 communicated all the plea
16 offers including the fifteen
17 year offer and he rejected
18 that offer. The record
19 reflects that he answered some
20 of the judge's questions in
21 English.

22 He denied that today
23 but the record will speak for
24 itself. And he also told the
25 judge that he understood that

1 there was a negotiated
2 sentence and he understood he
3 was receiving eighteen years
4 and that's what he received.
5 We would ask that you deny and
6 dismiss the application.

7 **THE COURT:** Mr. Brewer,
8 anything further?

9 **MR. BREWER:** No, your
10 Honor. We stand on our
11 argument. Thank you.

12 **THE COURT:** Thank you.
13 Mr. Martinez, did you
14 understand your interpreter
15 during your plea?

16 **A** Yes.

17 **THE COURT:** And did you
18 feel that you could ask her
19 any questions if you didn't
20 understand?

21 **A** Yes. It could have
22 been. Yes.

23 **THE COURT:** And did you
24 take the opportunity to ask
25 either your interpreter or

1 your attorney through your
2 interpreter any questions
3 during your plea?

4 A No. I didn't ask any
5 questions.

6 **THE COURT:** And, Mr.
7 Martinez, can you explain to
8 the Court why you did not ask
9 any questions of either your
10 attorney or the Court while
11 you had an interpreter
12 present?

13 A Well, I didn't ask
14 any questions because it was the
15 last day that I was going to get
16 my decision and the pressure, and
17 the pressure since my attorney was
18 looking at me like with her eyes,
19 telling me that you are guilty.
20 Well, yes. That's all.

21 **THE COURT:** Mr. Brewer,
22 do you have any -- based upon
23 my questions of your client,
24 do you have anything further?

25 **MR. BREWER:** No, your

1 Honor.

2 THE COURT: Mr.

3 Friedman, anything?

4 MR. FRIEDMAN: No, your
5 Honor. Nothing further.

6 THE COURT: Mr.

7 Martinez, I am going to review
8 the transcript in light of the
9 testimony that you have
10 presented here today along
11 with your application for post
12 conviction relief. You will
13 have my ruling by close of
14 business today.

15 Good luck to you, Mr.
16 Martinez.

17 MR. BREWER: Thank you,
18 your Honor.

19 MR. FRIEDMAN: Thank
20 you, your Honor.

21 (Whereupon, the
22 matter was concluded.)

23

24

25

CERTIFICATION

I, the undersigned HEATHER GAYLE BURNS, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the proceedings in the captioned case, relative to appeal, heard in the Court of Common Pleas for Charleston County, South Carolina on the 20th day of November, 2009.

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

DATED: January 17, 2010

Heather Gayle Burns RDR
HEATHER GAYLE BURNS, R. D. R.
Official Court Reporter

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Eduardo Martinez, #326852,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
2008-CP-10-4561

ORDER OF DISMISSAL

FILED
2009 DEC 14 AM 9:12
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 7, 2008. The Respondent made its Return on March 23, 2009. An evidentiary hearing into the matter was convened on November 20, 2009 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Barrett Brewer, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Applicant's plea counsel, Jacqueline Grau, Esquire, also testified at the hearing. Carla Collins served as Applicant's interpreter during the PCR hearing. This Court had before it the guilty plea transcript, the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, Respondent's Return thereto, Request to Appoint Interpreter dated January 18, 2008, Order to Appoint Interpreter dated January 24, 2008, Order to Appoint Interpreters dated February 22, 2008, a letter from Assistant Solicitor Julia Cardillo to counsel dated January 2, 2008 making an offer of fifteen (15) years, and a letter from counsel to Applicant dated January 3, 2008 explaining the offer.

[Handwritten signature]
12/14/09

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the January 2007 term of the Charleston County Grand Jury for trafficking in cocaine (2007-GS-10-0066) and possession with intent to distribute (PWID) cocaine within proximity of a school (2007-GS-10-0065). Jacqueline G. Grau, Esquire, represented the Applicant. On March 3, 2008, the Applicant pled guilty to the proximity charged and to the lesser-included offense of trafficking in cocaine (28-100 grams, 1st offense). Pursuant to a negotiated plea agreement, the Honorable R. Markley Dennis, Jr. sentenced him to confinement for eighteen (18) years for trafficking cocaine and eight (8) years for the proximity charge. The sentences were to run concurrently. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel in that counsel
 - a. Failed to investigate.
 - b. Failed to interview certain witnesses.
 - c. Coerced Applicant into pleading guilty.
 - d. At the hearing, Applicant asserted that counsel failed to hire an interpreter prior to the plea and failed to adequately explain the prior plea offers to Applicant.

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 his or her 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

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(2003).

The Applicant testified that he was not able to communicate with counsel in English. He asserted that he asked for an interpreter, but she never hired one prior to the plea hearing. Applicant testified that he received counsel's letter dated January 3, 2008, but he did not understand the letter. He understood that there was an offer for fifteen (15) years, but he did not know if it was for one charge or two charges. Applicant testified that counsel did not speak Spanish. He asserted that he understood some of what she said but not enough for effective assistance. Applicant testified that his interpreter at the plea hearing explained the prior plea offer of fifteen (15) years to him. He asserted that he would have accepted the prior offer if he had understood it. He testified that he was pressured by counsel to plead guilty because the case had been going on for so long and she had not been paid. Applicant testified that he told the court he was satisfied with counsel because he thought the judge was asking if counsel was a good person. He testified that the plea judge did not ask him if counsel did a good job.

Plea counsel testified that she met with Applicant 10-20 times. She testified that she communicated with Applicant in English and some Spanish. She testified that Applicant understood their discussions. She asserted that Applicant speaks more English than he was letting on. Counsel testified that Applicant never asked for an interpreter. She asserted that she did not need an interpreter during his meetings with the Applicant. She testified that Applicant understood the offer for fifteen (15) years, but he was upset about getting that much time so he rejected the offer. Counsel asserted that she did not pressure Applicant into accepting the plea offer and she would never tell a client she was not getting paid. She testified that she was prepared for trial. She testified that she and Applicant had substantial discussions about the consequences of the plea, and she believed Applicant understood the terms of the negotiated

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sentence.

Ineffective Assistance of Counsel / Coerced Plea

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

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

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. at 625 (citing Strickland, 466 U.S. 668). 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." Id. at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and

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that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

This Court finds that Applicant's testimony is not credible while also finding that counsel's testimony is credible. This Court finds that counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof. This Court finds that the record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. Applicant acknowledged that he understood the nature of the charges, the possible punishments, and his constitutional rights. Applicant admitted that he was guilty of these offenses. Applicant told the plea court that he was satisfied with counsel and that no one had threatened him or promised him anything to accept the plea offer. This Court finds

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that Applicant understood the terms of the negotiated sentence. The record reflects that Applicant answered some of the plea judge's questions in English and he did not use the interpreter for the entire plea hearing.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in her representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that counsel was not ineffective for failing to hiring an interpreter prior to the plea hearing. Counsel testified that she was able to adequately communicate with Applicant using English and some Spanish. Counsel properly communicated all plea offers to Applicant, and Applicant rejected all prior plea offers. The record reflects that Applicant was able to speak and understand some English. Moreover, counsel obtained a favorable negotiated sentence on Applicant's behalf, and Applicant accepted the offer for eighteen (18) years and received the benefit of the bargain. This Court finds that counsel did not pressure Applicant into pleading guilty and it was Applicant's decision to accept the plea offer.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence

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that counsel committed either errors or omissions in her representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by plea counsel's performance. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

All Other Allegations

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

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

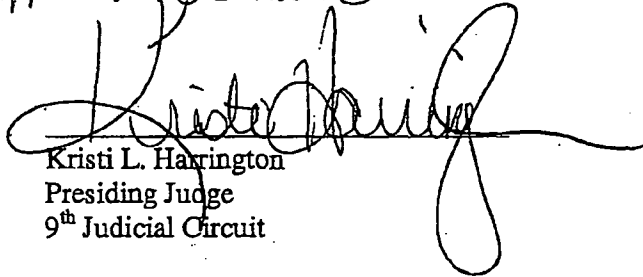
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 227 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

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IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 11th day of December, 2009.



Kristi L. Harrington
Presiding Judge
9th Judicial Circuit

Charleston, South Carolina.

07-65-66, 65

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 State of South Carolina,)
)
 Plaintiff,)
)
 v.)
)
 Eduardo Pacheco Martinez,)
)
 Defendant.)

IN THE COURT OF GENERAL SESSIONS
 Warrant Nos. K-120732, K-120733

ORDER TO APPOINT INTERPRETER

COMES NOW before this Court Defendant's Request to Appoint Interpreter, and being duly advised in the premises, it is thereby ORDERED AND ADJUDGED that Maricella Villalobos is hereby appointed State Certified interpreter for Defendant for the trial of this matter, and that the Court will arrange for payment of the same.

DONE AND ORDERED this 24th day of January, 2008, at Charleston, SC.

Deadra L. Jefferson
 DEADRA L. JEFFERSON
 CHIEF ADMINISTRATIVE JUDGE
 COMMON PLEAS

PENCAR-849400, R. 1
PETITIONER'S EXHIBIT
 1

FILED
 2008 JAN 25 AM 9:30
 CLERK OF COURT

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P., G.S. & F.
 BY *Julie J. Armstrong*
 DEPUTY CLERK

FILED 07-98-10-65, 66

STATE OF SOUTH CAROLINA IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON FEB 25 AM 8:49 Warrant Nos. K-120732, K-120733

JULIE J. ARMSTRONG
CLERK OF COURT
State of South Carolina

BY JJB
Plaintiff,)

ORDER TO APPOINT INTERPRETERS

v.)
Eduardo Pacheco Martinez,)
Defendant.)

COMES NOW before this Court Defendant's Second Request to Appoint Interpreters, and being duly advised in the premises, it is thereby

ORDERED AND ADJUDGED that Luna Gainer and Cynthia Hernandez are hereby appointed State Certified interpreters for Defendant for the trial of this matter, and that the Court will arrange for payment of the same.

DONE AND ORDERED this 22nd day of February, 2008, at Charleston, SC.

Deadra L. Jefferson
DEADRA L. JEFFERSON
CHIEF ADMINISTRATIVE JUDGE
COMMON PLEAS



STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF GENERAL SESSIONS
Warrant Nos. K-120732, K-120733

State of South Carolina,)
)
Plaintiff,)
)
v.)
)
Eduardo Pacheco Martinez,)
)
Defendant.)

REQUEST TO APPOINT INTERPRETER

Defendant Eduardo Pacheco Martinez, by and through his undersigned attorneys, hereby requests the Court to Appoint an Interpreter for the trial of this matter. Maricela Villalobos is State Certified and available to interpret for Defendant. Ms. Villalobos can be reached at (404) 580-1429.

GRIMBALL & CABANISS, L.L.C.



BY: Jacqueline G. Grau
JACQUELINE G. GRAU
ATTORNEYS FOR THE DEFENDANT
473 SAVANNAH HIGHWAY
CHARLESTON, SC 29407
Tel: (843) 722-0311
Fax: (843) 722-1374

Charleston, South Carolina
January 18, 2008

FILED
2008 JAN 25 AM 9:30
JENNIFER S. JOHNSON
CLERK OF COURT
BY _____

The State of South Carolina



Solicitor

Solicitor, Ninth Judicial Circuit
CHARLESTON AND BERKELEY COUNTIES
101 MEETING STREET, FOURTH FLOOR
CHARLESTON, SC 29401
TELEPHONE: (843) 958-1900
FAX: (843) 958-1905
www.scsolicitor9.org

Scarlett A. Wilson

January 2, 2008

Jacqueline G. Grau, Esquire
Grimball & Cabaniss, L.L.C.
473 Savannah Hwy
Charleston, SC 29407

Re: State of South Carolina vs. Eduardo Pacheco Martinez

Dear Ms. Grau:

I am writing to you today to discuss a plea offer regarding the above-mentioned case. As you are aware, your client has been charged with Trafficking Cocaine 200 to 400 grams and Proximity Cocaine. After careful review of the facts in this case, I am willing to offer to your client Trafficking Cocaine 1st 28 to 100 grams and Proximity Cocaine with a negotiated fifteen (15) year sentence.

This case will be placed on the plea docket for the week of January 14, 2008. Should your client fail to accept the offer by the end of that week, the offer will be rescinded at that time and the case will be placed on the trial docket for the week of January 28, 2008. If you have any questions or concerns regarding this case or the plea offer, please contact me at my direct line of 958-1919 or my email at gardnerj@scsolicitor9.org. With kind regards, I am

Sincerely yours,

Julie Gardner Cardillo
Julie Gardner Cardillo
Assistant Solicitor
Ninth Judicial Circuit



GRIMBALL & CABANISS, L.L.C.

ATTORNEYS AT LAW
473 SAVANNAH HIGHWAY

CHARLESTON, SOUTH CAROLINA 29407

MAX G. MAHAFFEE, S.C. & N.C.
EUGENE P. CORRIGAN, III
E. WARREN MOISE
MICHAEL J. FERRI
LAURA C. WARING
JACQUELINE G. GRAU
HARRY V. RAGSDALE

OF COUNSEL
JOSEPH W. CABANISS

POST OFFICE BOX 816
CHARLESTON, S.C. 29402-0816
TELEPHONE (843) 722-0311
FACSIMILE (843) 722-1374
E-MAIL law@grimcab.com
www.grimcab.com

PEE DEE REGION OFFICE
POST OFFICE BOX 14045
FLORENCE, S.C. 29504

WILLIAM H. GRIMBALL
(1917-1999)

January 3, 2008
Jackie.Grau@grimcab.com
Extension 316

ATTORNEY CORRESPONDENCE
Eduardo Martinez
Unit 3
Charleston County Detention Center
3841 Leeds Ave.
Charleston, SC 29405

Re: State of South Carolina v. Eduardo Pacheco Martinez
Warrant Nos. K-120732, K-120733
Our File No. 27047

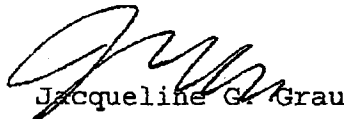
Dear Eduardo:

The solicitor has given me an offer for you to plea, that I need to relay to you to consider. As you know, you are charged with possession of cocaine of 200 grams, within a school zone. The solicitor will drop the first offense to the amount of between 28 and 100 grams, if you also plea to the within a school zone charge. She tells me she is offering this to the other men as well. These charges carry 15 years, with a mandatory 85% service. We need to tell her by the week of January 14 whether or not you are going to accept this deal, or whether you instead want to proceed to trial.

I will come by to visit you so we can discuss the solicitor's offer.

With kindest regards, I am

Sincerely,


Jacqueline G. Grau

JGG:slf



Excerpts from the South Carolina Code of Laws:

SC Code § 44-53-370 (possession of cocaine)

(b) twenty-eight grams or more, but less than one hundred grams:

1. for a first offense, a term of imprisonment of not less than seven years nor more than twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;
2. for a second offense, a term of imprisonment of not less than seven years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;
3. for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years and not more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

S.C. Code § 44-53-445 (within a school zone)

(A) It is a separate criminal offense for a person to distribute, sell, purchase, manufacture, or to unlawfully possess with intent to distribute, a controlled substance while in, on, or within a one-half mile radius of the grounds of a public or private elementary, middle, or secondary school; a public playground or park; a public vocational or trade school or technical educational center; or a public or private college or university.

(B) (1) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both.

1. (2) When a violation involves the distribution, sale, manufacture, or possession with intent to distribute crack cocaine, the person is guilty of a felony and, upon conviction, must be fined not less than ten thousand dollars and imprisoned not less than ten nor more than fifteen years.

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I N D E X

WITNESSES

No Witnesses

EXHIBITS

No Exhibits

1 THE COURT: All right, let the record reflect
2 the defendant is present. You are Eduardo Martinez?

3 THE DEFENDANT: Yes, sir.

4 THE INTERPRETER: Yes.

5 THE COURT: And Ms. Gainer is your interpreter?

6 THE DEFENDANT: Uh-hum, yes, ma'am (sic).

7 THE INTERPRETER: Uh, hum, yes, ma'am (sic).

8 THE COURT: If you'll answer yes or please that
9 will help me to not nod your head, please.

10 Is that agreeable?

11 THE DEFENDANT: Yes, ma'am (sic).

12 THE INTERPRETER: Yes, ma'am (sic).

13 THE COURT: All right. Ms. Gainer, you are
14 certified as an interpreter; is that correct?

15 THE INTERPRETER: Yes, Your Honor.

16 THE COURT: And how long have you been doing,
17 performing this service?

18 THE INTERPRETER: Since 2001, Your Honor.

19 THE COURT: Very well. I have had the pleasure
20 and privilege to work with you previously. Any
21 objection to her being qualified as the interpreter
22 from the state?

23 MS. CARDILLO: None from the state, Your Honor.

24 THE COURT: Very well. Ms. Gainer, if you
25 would raise your right hand.

1 Do you solemnly swear or affirm that you will
2 truly comply in every respect with your obligations as
3 an interpreter and specifically interpret verbatim to
4 the defendant what the court and other matters are
5 said, and that's simultaneous as well; is that
6 correct?

7 THE INTERPRETER: Yes, Your Honor.

8 THE COURT: And you will also give the verbatim
9 response from the defendant, Mr. Martinez?

10 THE INTERPRETER: I do, Your Honor.

11 THE COURT: Thank you very much.

12 Mr. Martinez, two indictments have been handed
13 charging you with drug offenses; do you understand
14 that?

15 THE DEFENDANT: Yes, ma'am (sic).

16 THE COURT: Indictment 2007-66 charges you with
17 trafficking in cocaine, the amount is over -- what's
18 the indictment amount?

19 MS. CARDILLO: Your Honor, the indictment
20 amount is over 200 grams and less than 400 grams

21 THE COURT: Okay. Charges you with over 200
22 but less than 400. Do you understand that?

23 THE DEFENDANT: Yes, ma'am (sic).

24 THE COURT: Your lawyer is Ms. Brough; is that
25 correct?

1 THE DEFENDANT: Yes, ma'am (sic).

2 THE COURT: She has explained that charge to
3 you?

4 THE DEFENDANT: Yes.

5 THE COURT: She has explained to you what we
6 call the lesser included offense?

7 THE DEFENDANT: Yes.

8 THE COURT: And do you understand the
9 difference between the two?

10 THE DEFENDANT: Yes.

11 THE COURT: And that carries normally 25?

12 MS. CARDILLO: 25 years, Your Honor.

13 THE COURT: Maximum?

14 MS. CARDILLO: Yes, Your Honor.

15 THE COURT: Normally the trafficking cocaine 28
16 to 100 carries a maximum sentence of 25 years. Do you
17 understand that?

18 THE DEFENDANT: Yes, ma'am (sic).

19 THE COURT: You, through your lawyer, have
20 negotiated a sentence of 18 years. Is that correct.

21 THE DEFENDANT: Yes, ma'am (sic).

22 THE COURT: Has your lawyer explained to you
23 that that is considered a serious offense?

24 THE DEFENDANT: Yes.

25 THE COURT: Has she explained to you that it is

1 a non-parolable offense?

2 THE DEFENDANT: Yes.

3 THE COURT: which means that you will serve a
4 minimum of 85 percent of that sentence.

5 THE DEFENDANT: Yes.

6 THE COURT: Understanding the nature of the
7 offense and the fact that if I accept the negotiated
8 sentence I would sentence you to 18 years, what is
9 your plea? Guilty or not guilty.

10 THE DEFENDANT: Guilty.

11 THE COURT: Are you satisfied with your lawyer?

12 THE DEFENDANT: Yes.

13 THE COURT: Has she explained to you that a
14 negotiated sentence is unusual in this regard, you are
15 coming here and asking me to sentence you to 18 years.
16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: It is your desire that I impose the
19 negotiated sentence, that is sentence you to 18 years?

20 THE DEFENDANT: Yes.

21 THE COURT: solicitor, are there any other
22 terms of the agreement other than the sentence, the
23 negotiated sentence of 18 years?

24 MS. CARDILLO: No, Your Honor.

25 THE COURT: He's pleading also to a proximity

1 charge?

2 MS. CARDILLO: Yes, Your Honor, to run
3 concurrent.

4 THE COURT: Is that your understanding, Mr.
5 Martinez?

6 THE DEFENDANT: Yes.

7 THE COURT: Indictment 2007-65 charges you with
8 possession with intent to distribute drugs in
9 proximity of a school. And this is cocaine?

10 MS. CARDILLO: Yes, Your Honor.

11 THE COURT: For that I can sentence you up to
12 10 years in jail. Do you understand that?

13 THE DEFENDANT: .

14 THE COURT: And I'm advised that a part of your
15 negotiated sentence is that this, whatever sentence I
16 impose would be concurrent. Is that your
17 understanding?

18 THE DEFENDANT: Yes.

19 THE COURT: Understanding the nature of that
20 offense and the possible punishment what is your plea,
21 guilty or not guilty?

22 THE DEFENDANT: I'm guilty.

23 THE COURT: Ms. Brough, you've discussed this
24 matter fully with your client?

25 MS. BROUGH: Yes, Your Honor.

1 THE COURT: You have explained to him the
2 significance of the negotiated sentence?

3 MS. BROUGH: Yes, Your Honor.

4 THE COURT: Did you in fact negotiated this
5 sentence for your client?

6 MS. BROUGH: Yes, Your Honor.

7 THE COURT: Based on your investigation, do you
8 believe the negotiated sentence to be in your client's
9 best interest?

10 MS. BROUGH: Yes, Your Honor.

11 THE COURT: You have shared with your client
12 the results of your investigation?

13 MS. BROUGH: Yes, Your Honor.

14 THE COURT: And after fully consulting with you
15 he indicated a desire to plead guilty?

16 MS. BROUGH: Yes, Your Honor.

17 THE COURT: You have advised him specifically
18 the rights that he would be relinquishing if I accept
19 his negotiated sentence?

20 MS. BROUGH: Yes, Your Honor.

21 THE COURT: Does he fully appreciate and
22 understand those rights?

23 MS. BROUGH: Yes, Your Honor.

24 THE COURT: Do you agree with the decision,
25 based on your investigation?

1 MS. BROUGH: Yes.

2 THE COURT: Is your client lawfully in this
3 country?

4 MS. BROUGH: I can't speak to that fully.

5 THE COURT: Mr. Martinez, are you lawfully in
6 this country?

7 THE DEFENDANT: No.

8 THE COURT: Does he understand that once he is
9 released from the punishment that he could be
10 deported?

11 MS. BROUGH: It is my understanding that he
12 understands the consequences.

13 THE COURT: Is that correct, Mr. Martinez?

14 THE DEFENDANT: Yes.

15 THE COURT: You still wish me to go through
16 with this and impose the negotiated sentence?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you understand that you are
19 giving up your right to remain silent by pleading
20 guilty?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand you are giving up
23 your right to a jury trial by pleading guilty?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you realize that at the trial

1 the state would have to prove your guilt, you do not
2 have to prove your innocence?

3 THE DEFENDANT: Yes.

4 THE COURT: In order to do that they'd have to
5 present witnesses, do you realize that?

6 THE DEFENDANT: Yes.

7 THE COURT: If you had a trial you would have
8 an opportunity and right to confront those witnesses.
9 Do you realize that?

10 THE DEFENDANT: Yes.

11 THE COURT: You will not have that right
12 because we are not having a trial. Is that your
13 understanding?

14 THE DEFENDANT: Yes.

15 THE COURT: Has anyone threatened you in any
16 way to get you to plead guilty?

17 THE DEFENDANT: No.

18 THE COURT: Other than the negotiated sentence,
19 has anyone promised you anything to get you to plead
20 guilty?

21 THE DEFENDANT: No.

22 THE COURT: Are you entering your guilty plea
23 because you are guilty of each offense?

24 THE INTERPRETER: I have no other choice.

25 THE COURT: Yes, you do. You have a right to

1 make the state prove your guilt beyond a reasonable
2 doubt. You don't have to do anything. You don't have
3 to say anything, you don't have to present evidence,
4 the state has to prove your guilt. Do you understand
5 that?

6 THE DEFENDANT: Yes.

7 THE COURT: I ask you again, are you pleading
8 guilty because you are guilty? And is that your sole
9 reason for pleading guilty?

10 THE DEFENDANT: Yes.

11 THE COURT: Is there any question of your guilt
12 in this matter?

13 THE DEFENDANT: No.

14 THE COURT: Are you under the influence of any
15 alcohol or any drugs here today?

16 THE DEFENDANT: No.

17 THE COURT: Do you know of anything that is
18 affecting your ability to make this decision?

19 THE DEFENDANT: No.

20 THE COURT: solicitor, if you would tell me a
21 condensed version of the facts, please.

22 MS. CARDILLO: Thank you, Your Honor, may it
23 please the Court. August 7, 2006 at the Food Lion
24 parking lot in Mount Pleasant, South Carolina, the
25 defendant -- a co-defendant met with an undercover

1 officer to set up a drug deal.

2 They sat in the car and discussed the drug deal
3 for approximately 45 minutes. The undercover officer
4 was equipped with video, this was all on video and
5 audio. Undercover officers, other officers were
6 located about the perimeter to observe what was going
7 on.

8 The defendant in this case, Mr. Martinez,
9 showed up with two other people -- I'm sorry, he
10 showed up and was introduced to Detective Hembree, who
11 was the undercover officer in the car. They talked
12 about money. He left and retrieved the drugs from two
13 other co-defendants who pulled up behind the vehicle,
14 handed the drugs. Mr. Martinez handed the drugs to
15 Detective Hembree, and that's when they were all
16 arrested on scene.

17 The drugs field tested presumptive as cocaine.
18 And later CPD lab weight came back as positive for
19 252.28 grams of cocaine. This all occurring within a
20 half of mile of the Bell Hall Elementary School
21 located at 385 Egypt Road, also in Mount Pleasant.

22 THE COURT: Are those facts correct, Mr.
23 Martinez?

24 THE DEFENDANT: Yes.

25 THE COURT: Have you fully understood all of my

1 questions?

2 THE DEFENDANT: Yes, ma'am (sic).

3 THE COURT: Have you truthfully responded to
4 those questions?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you realize that I will be
7 relying on your responses?

8 THE DEFENDANT: Yes.

9 THE COURT: I find that Mr. Martinez has had
10 the benefit of competent counsel. He has indicated to
11 me that he is totally satisfied with her
12 representation. I find there is a sufficient factual
13 basis to support the pleas, and therefore will accept
14 the pleas being freely, voluntarily, knowingly and
15 intelligently made and entered.

16 I now will hear from you, Ms. Brough, as to why
17 I should accept and impose the negotiated sentence.

18 MS. BROUGH: Your Honor, Mr. Martinez is only
19 25 years old. As Ms. Cardillo said he has been in the
20 Charleston County Detention Center, I don't know that
21 she actually mentioned this, but he has been there
22 since August 7, 2006 without incident.

23 He has been in some drug programs, he has
24 actually been in two different drug programs while in
25 the detention center voluntarily.

1 He has two children. And he is a young man.
2 And he has been involved in his representation in the
3 matter.

4 THE COURT: Is there anything Mr. Martinez
5 wishes to say?

6 THE DEFENDANT: No.

7 THE COURT: Sentence of the Court of indictment
8 2007-66 is that you be committed to the department of
9 corrections, as agreed, for the term of 18 years.

10 How much time has he served?

11 MS. CARDILLO: Your Honor, he has been in since
12 August 7, '06. I did not add those numbers up.

13 THE COURT: That's all right, I will put since
14 August 7th; is that correct?

15 MS. CARDILLO: Yes, Your Honor.

16 THE COURT: Credit for time served since August
17 7, 2006. Sentence of the court in 2007-65 is that you
18 be committed, Mr. Martinez, to the department of
19 corrections for a term of eight years, given credit
20 for time served since August 7, 2006, and it is
21 concurrent. Good luck, sir.

22 MS. CARDILLO: Thank you, Your Honor.

23 (Court Reporter's Note: "THE DEFENDANT"
24 denotes when the defendant responded in English. "THE
25 INTERPRETER" denotes when the interpreter responded in

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English.)

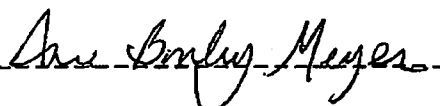
(whereupon, the proceedings in this matter
before the court were adjourned.)

* * * * *

1 C E R T I F I C A T E
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6 I, the undersigned, ANNE BOULEY MEYER,
7 Official Court Reporter for the Ninth Judicial
8 Circuit of the State of South Carolina, do hereby
9 certify that the foregoing is a true, accurate, and
10 complete transcript of record, and of all the
11 proceedings had and evidence introduced in the
12 above captioned case, relative to appeal, in the
13 Circuit Court for South Carolina, on the indicated
14 date.

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

17
18 

19 Anne Bouley Meyer, RPR
20 Circuit Court Reporter
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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Eduardo Martinez, #326852

Plaintiff,

vs.

State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 08-CP-10-4561

PROPOSED ORDER TO APPOINT
INTERPRETER

FILED
2009 JUL -2 PM 2:58
JULIE J. ARMSTRONG
CLERK OF COURT

COMES NOW before this Court, Petitioner's Motion to Appoint An Interpreter, and being duly advised in the premises, it is thereby

ORDERED AND ADJUDGED that Luna Ganier and Cynthia Hernandez are hereby appointed State Certified Interpreters for Petitioner for the Post Conviction Relief Hearing, any proceedings in addition to any other attorney-client meetings from this point forward in this matter, and that the Court will arrange for payment of the same.

DONE AND ORDERED this 29th day of June, 2009.

S/O D. Jefferson

Honorable Deandra L. Jefferson
Chief Administrative Judge, Charleston Co.



ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By: *[Signature]*
DEPUTY CLERK

ALF 2006-08-01643

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1
WITNESSES
JEFF OSBURN AND/OR

MATT CASEY

HEMBREE, MPPD

06-P9820

ARREST WARRANT NUMBER
K120733

AUGUST 7, 2006

ACTION OF GRAND JURY

TRUE BILL

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-10-0005

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

JANUARY TERM 2007

THE STATE

VS.

EDUARDO PACHECO MARTINEZ

06-4556(2)

FILED

JAN 24 2007

JULIE J. ARMSTRONG
CLERK, C.P. & G.S.



Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE COCAINE WITHIN
PROXIMITY OF A SCHOOL

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT FOR
POSSESSION WITH INTENT TO DISTRIBUTE
COCAINE WITHIN PROXIMITY OF A SCHOOL

At a Court of General Sessions, convened on January 9, 2007 the Grand Jurors of Charleston County present upon their oath:

That EDUARDO PACHECO MARTINEZ did in Charleston County on or about August 7, 2006 while at 697 Long Point Road, Mt. Pleasant, SC, knowingly manufacture, distribute, dispense, deliver, purchase or did aid, abet, attempt or conspire with others to manufacture, distribute, possess with intent to distribute, dispense, deliver, or purchase or did possess with intent to distribute, dispense, or deliver a controlled substance, to wit: Cocaine, within one half (1/2) mile proximity of Belle Hall Elementary School located at 385 Egypt Road, Mt. Pleasant, SC. This is in violation of §44-53-445 of the South Carolina Code of Laws (1976) as amended.

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


ASSISTANT SOLICITOR

ALF 2006-08-01643

133
WITNESSES
JEFF OSBURN AND/OR

MATT CASEY

HEMBREE, MPPD

06-P9820

ARREST WARRANT NUMBER

K120732

AUGUST 7, 2006

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-10-*Obley*

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

JANUARY TERM 2007

THE STATE

VS.

EDUARDO PACHECO MARTINEZ

06-4556 (1)

Indictment for

TRAFFICKING IN COCAINE

FILED

JAN 24 2007

JULIE J. ARMSTRONG
CLERK, C.P. & G.S.



STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT FOR
TRAFFICKING IN COCAINE

At a Court of General Sessions, convened on January 9, 2007 the Grand Jurors of Charleston County present upon their oath:

That EDUARDO PACHECO MARTINEZ did in Charleston County on or about August 7, 2006 knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State; or was knowingly having actual or constructive possession or knowingly attempted to become in actual or constructive possession of a controlled substance or a controlled substance analogue, to wit: Cocaine, in excess of Two Hundred (200) Grams but less than Four Hundred (400) Grams. This is in violation of §44-53-370 of the South Carolina Code of Laws (1976) as amended.

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE _____ VS. _____

EDUARDO MARTINEZ

AKA: _____

Race: O Sex: M Age: 24

DOB: _____ SS#: 000-00-0000

Address: _____

NOLA

DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

135

INDICTMENT/CASE#: 2007GS100065

A/W#: K120733

Date of Offense: 8/7/2006

S.C. Code § : 44-53-0445(B)(1)

CDR Code #: 0107

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: PWID/Dist Drugs in Proximity of School

in violation of § 44-53-0445(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0107

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 initial)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

concurrent with 2007 GS 100066

ATTEST:

Gardner Cardillo, Julie

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 8 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. *since Aug 7, 2006*

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %)		\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$	<u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$	
§ 56-5-2995 (DUI Assessment)	\$12	\$	
§ 35.13 (Public Def/Prob)	\$500	\$	
§ 73.3, 1B TP (Law Enforce. Funding)	\$25	\$	<u>25.00</u>
§ 33.7, 1B TP (Drug Court Surcharge)	\$100	\$	<u>100.00</u>
§ 50-21-114(BUI Breath Test Fee)	\$50	\$	
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea		\$	
3% to County (if paid in installments)		\$	<u>6.75</u>
TOTAL		\$	<u>231.75</u>

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Callahan
Clerk of Court/ Deputy Clerk

Court Reporter: Anne Meyer

PRESIDING JUDGE Markley

Judge Code: 2

Sentence Date: 3/3/08

SCCA/217 (10/2007)

136
 STATE OF SOUTH CAROLINA)
 COUNTY OF Charleston)
 STATE VS.)
 EDUARDO MARTINEZ)
 AKA:)
 Race: O Sex: M Age: 24)
 DOB: SS#: 000-00-0000)
 Address:)
 DL#: SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS100066
 A/W#: K120732
 Date of Offense: 8/7/2006
 S.C. Code § : 44-53-0370(e)(2)(d)
 CDR Code #: 0288

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Trafficking in cocaine, 28--100 g. 1st offense

in violation of § 44-53-0370(e)(2)(b)1 of the S.C. Code of Laws, bearing CDR Code # 2359
 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 initial)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Gardner Cardillo, Julie Defendant (18 years) Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 18 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____
 The Defendant is to be given credit for time served, pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Since Aug 7, 2006
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

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

_____ days/hours Public Service Employment
 Obtain GED _____
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling _____
 Random Drug/Alcohol testing _____
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

Recipient: _____
 *Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 35.13 (Public Def/Prob)	\$500	\$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 33.7, 1B TP (Drug Court Surcharge)	\$100	\$ <u>100.00</u>
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea	\$	\$
3% to County (if paid in installments)	\$	\$ <u>6.75</u>
TOTAL		\$ <u>231.75</u>

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

Callahan
 Clerk of Court/ Deputy Clerk
 Court Reporter: Anne Meyer

PRESIDING JUDGE R. M. ...
 Judge Code: 210
 Sentence Date: 3/3/08
 SCCA/217 (10/2007)