

The State Of South Carolina
In The State Supreme Court
Appeal from Florence County
Court Of Common Pleas

Honorable, Steve DeBerry; Circuit Court Judge

Case No. #2024-CP-21-00870

RECEIVED

APR 04 2025

S.C. SUPREME COURT

Timothy Johnson,

Petitioner,

Vs.

State Of South Carolina,

Respondent,

Record on Appeal

Timothy Johnson#370487

Lee Correctional Institution

990 Wisacky Highway/ F6B-2243

Bishopville, South Carolina 29010

Exhibit 1

- a) Letter to Florence County Clerk
- b) Response from Florence County Clerk

Exhibit 1A

- a) Letter to Florence County Clerk

CERTIFIED: A TRUE COPY
Donna Parks Ottana
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

2024 AUG 30 PM 3:00

Clerk of Court

I'm aware that you've told me on numerous occasions to file anything pertaining to my case with the state grand jury clerk of court but I received notice from the state grand jury court stating that I have to file my response with the Florence County Clerk of Court. I received this notice on today even though the letter states that it was sent out at an earlier date. I'm confused as to where I'm supposed to be filing my mail with so I've sent mail to the state grand jury clerk of court, Judge De Berry, and the state grand jury clerk of court. Now I'm filing this motion with the Florence County Clerk of Court. Thank You

Respectfully

Jimmy Johnson

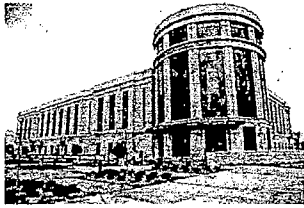
8-27-24

Ordered 6-24-21 page 13 of 13

Received 8-27-24

Exhibit 1B

b) Response from Florence County Clerk



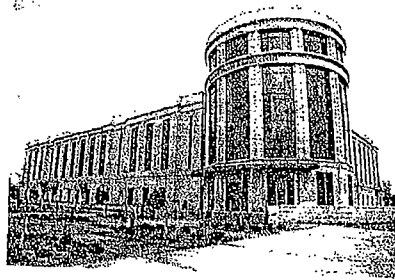
**Doris Poulos O'Hara
Clerk of Court
181 N. Irby Street
SUITE 1100
Florence, SC 29501**

Date: *June 2, 2021*

To:

Information Requested: Mr. Johnson, I am mailing you your letter back with the Red Clock In Cancelled Not Recorded stamp. You will need to send your letters to the Clerk of Court's office where you were indicted. The number you have on this letter is not a Florence County General Sessions court indictment number.

Deputy Clerk for General Sessions



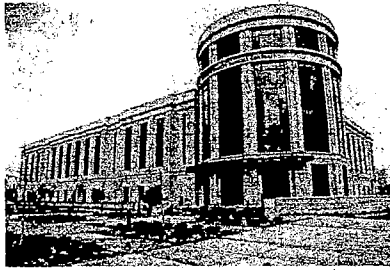
Doris Poulos O'Hara
Clerk of Court
181 N. Irby Street
Suite 1100
Florence, SC 29501

Date: *June 14, 2022*

To:

Information Requested: Mr. Johnson, I am mailing you back your original unfiled letter. You will need to address this mail to Williamsburg County Clerk of Court not Florence County Clerk of Court.

Deputy Clerk for General Sessions



**Doris Poulos O'Hara
Clerk of Court
181 N. Irby Street
Suite 1100
Florence, SC 29501**

Date: *July 25, 2022*

To:

Information Requested: Mr. Johnson, The Florence County Clerk of Court's Office received your certified letter and I am mailing you a copy of your letter. The Florence County Clerk of Court Records do not show where you had a trial in our court. You will need to contact the Clerk's office where your case was handled.

Deputy Clerk for General Sessions

Exhibit 2

Letter to Williamsburg County Clerk of Court

June 28, 2022

Williamsburg County Clerk of Court

Dear Clerk,

Please take notice that I have been directed to file My Motion for New trial and my motion to amend the attached in Williamsburg County Court System by the Clerk of Florence County Doris Poulos O'Hara. Enclosed is a copy of the letter she sent explaining for me to do so. Can you please file these motions and forward me a clocked stamped copy in your earliest convenience.

Thank you for your attention,

Timothy Johnson

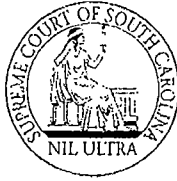
6-28-22

Exhibit 3

- a) Order from State Supreme Court
- b) Protective Order For State Grand Jury
- c) Conditional Order Of Dismissal

Exhibit 3A

A) Order from State Supreme Court



The Supreme Court of South Carolina

Patricia A. Howard
CLERK OF COURT

Brenda F. Shealy
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

August 14, 2023

The Honorable Doris Poulos O'Hara
Florence County Clerk of Court
181 N. Irby Street MSC-E
Florence, SC 29501

The Honorable Sharon W. Staggers
Williamsburg County Clerk of Court
125 W Main St
Kingstree, SC 29556-3343

Re: Timothy L. Johnson v. State of South Carolina
Appellate Case No. 2023-000270

Dear All:

Timothy L. Johnson has filed a letter with this Court, which is being construed as a request for relief in this Court's original jurisdiction. A copy is enclosed. Please file a return to this petition within ten (10) days from the date of this letter. Also, we will need proof that you have served your return on Mr. Johnson.

Very truly yours,

Chief Deputy Clerk

The Supreme Court of South Carolina

Timothy L. Johnson, #370487, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2023-000270

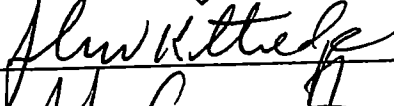
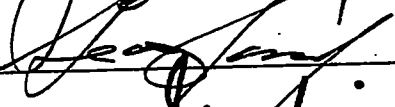
ORDER

Petitioner has sent a letter asking this Court to require the clerks of court in Williamsburg County and Florence County to accept his motion for a new trial challenging his 2016 conviction in Florence. We construe Petitioner's letter as a request for a writ of mandamus in this Court's original jurisdiction.

By letter dated August 14, 2023, the Clerk of this Court requested both county clerks file returns. The Clerk in Florence responded that the county had no record pertaining to Petitioner's indictment number because Petitioner was indicted by the State Grand Jury. However, Petitioner previously filed two post-conviction relief (PCR) applications in Florence.

We clarify that clerks of court cannot reject an application for PCR for any reason. *See Barnes v. State*, 433 S.C. 399, 403, 859 S.E.2d 260, 262 (2021) (stating the clerk of court's ministerial duty to docket filings requires the clerk to accept a PCR application for filing despite any ostensible or perceived procedural flaws in the application because, absent authority conferred by statute or court rule, the clerk cannot exercise a judicial function reserved for a judge); *see also* S.C. Code Ann. § 17-27-40 (2014) ("The clerk *shall* docket the [PCR] application upon its receipt and promptly bring it to the attention of the court and deliver a copy to the solicitor of the circuit in which the applicant was convicted and a copy to the Attorney General." (emphasis added)). If the PCR was filed in the wrong county, or if there is some other defect in the filing requiring dismissal, the clerk may bring the situation to the attention of a judge, who will deal with it as required by law.

Petitioner challenges the validity of his conviction based on after-discovered evidence, for which a PCR application must be filed in the county where Petitioner was convicted. Because Petitioner pled guilty in Florence County, the Florence County Clerk of Court has a ministerial duty to accept Petitioner's filing. *Barnes*, 433 S.C. at 403, 859 S.E.2d at 262. Therefore, we direct Petitioner to refile his PCR application in Florence County and issue a writ of mandamus requiring the Florence County Clerk of Court to accept Petitioner's filing. See *Miller v. State*, 377 S.C. 99, 101, 659 S.E.2d 492, 493 (2008) ("Mandamus is the highest judicial writ and is issued to compel a public official to perform a ministerial duty, not a discretionary duty, and only when there is a specific right to be enforced, a positive duty to be performed, and no other available legal remedy."). We deny the request to require the Williamsburg County Clerk of Court to accept Petitioner's PCR application for filing.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina
March 28, 2024

cc:

Alan McCrory Wilson, Esquire
Doris Poulos O'Hara
Sharon W. Staggers
Timothy L. Johnson, 370487

Exhibit 3B

B) Protective Order For State Grand Jury

FILED

APR 01 2016

JAMES R. PARKS
CLERK, STATE GRAND JURY

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA)

VS.)

TIMOTHY LEVERNE JOHNSON,)

(A.K.A. "TIMMY"),)

(A.K.A. "FAT BOY"),)

WILLIE JAMES WILSON,)

(A.K.A. "FAT DADDY"),)

(A.K.A. "FATS"),)

ANTHONY LEMONT WILSON,)

(A.K.A. "PETER RABBIT"),)

(A.K.A. "RABBIT"),)

ANDERSON COOPER, JR.,)

(A.K.A. "STINKY"),)

ERIC HOLMES, JR.,)

(A.K.A. "E"),)

ROBERT EARL DAVIS,)

(A.K.A. "BOBBY"),)

DANIEL MARQUIS BARR,)

(A.K.A. "BLACK"),)

JOSEPH WILLIAM COKER,)

(A.K.A. "JOE BRICKS"),)

ASHLEY BROOK COKER,)

GEORGE SKINNER,)

BRANDON GERALD MORRIS,)

KARLA OLIVIA PROSSER,)

ARKELIOUS DWAYNE ADAMS,)

(A.K.A. "SLIM"),)

DAWN MARIE RILEY,)

SHEILA RENEE WEBB,)

CRAIG SHAWN AVANT,)

(A.K.A. "BOOGER"),)

JEFFREY WITHERSPOON,)

NICHOLAS WILSON,)

(A.K.A. "LURCH"),)

ROY DAVIS DRAUGHN, JR.,)

(A.K.A. "SNOWMAN"),)

(A.K.A. "LITTLE ROY"),)

TRAVILLE CHAVIS WATERMAN,)

(A.K.A. "VELLIE"),)

DEFENDANTS.)

INDICTMENT NOS.: 2015-GS-47-21

2015-GS-47-22

2015-GS-47-23

PROTECTIVE ORDER

This matter comes before the Court on motion of the Attorney General of South Carolina (the "Attorney General") requesting authorization to disclose State Grand Jury material to the attorneys for the Defendants in the above-captioned case for purposes of providing the pre-trial discovery required in criminal cases. South Carolina Code Ann. § 14-7-1720 generally provides that State Grand Jury material is secret, but allows disclosure for the purpose of "complying with constitutional, statutory, or other legal requirements or to further justice". See S.C. Code Ann. § 14-7-1720(A)(5). Additionally, Defendants are entitled to discovery in criminal cases, pursuant to the constitution, statute, and rule. See Brady v. Maryland, 373 U.S. 83 (1963); Evans v. State, 363 S.C. 495, 611 S.E.2d 510 (2005); S.C. Code Ann. § 14-7-1700; Rule 5, SCRCrimP.

However, the State Grand Jury statute also provides that disclosure of State Grand Jury evidence and testimony "must be made in that manner, at that time, and under those conditions as the court directs". See S.C. Code Ann. § 14-7-1720(A). Moreover, this Court has the jurisdiction and duty to protect the secrecy and integrity of the grand jury process, and to punish for contempt for violations of orders or process issued in a State Grand Jury case. See generally South Carolina Code Ann. § 14-7-1730; State v. Blanton, 278 S.C. 597, 300 S.E.2d 286 (1983) (in contempt case for attempting to influence a grand juror, noting that the court has an implied and necessary common law power to punish for contempt). Therefore, pursuant to the Court's power to direct the manner and conditions of disclosure, and in order to protect the integrity and secrecy of the State Grand Jury process, any disclosure is strictly subject to the conditions set forth below.

IT IS HEREBY ORDERED that the Attorney General is authorized to disclose to the attorneys for the Defendants in the above-captioned case testimony and evidence received by the State Grand Jury and interviews of witnesses and other documents which must be disclosed under normal circumstances of criminal discovery in preparation for a trial. This State Grand

Jury material is being provided only for purposes of the trials of the above-captioned case. The State Grand Jury material is not to be shown to anyone with the exception of the defendant, his or her attorney, and necessary staff employed within the attorney's office.

Any necessary staff of the attorney who receive access to or disclosure of State Grand Jury material are prohibited from showing it to anyone other than the defendant, the attorney, and other necessary staff employed within the attorney's office, and necessary staff of the attorney are similarly subject to the provisions of this Order. It is the responsibility of the attorney to ensure any staff to which disclosure is made is aware of and complies with the provisions of this Order.

This Order does not limit the attorney from discussing the case with other attorneys for co-Defendants (if applicable and if the codefendants' attorneys have also been provided the same State Grand Jury evidence or testimony pursuant to a disclosure or protective order). However, subject to the provisions below, the information provided through discovery cannot be photocopied, scanned, digitized, etc. and disseminated even to other co-Defendants or their attorneys except that if a court-appointed attorney or public defender purchases copies of the State Grand Jury transcripts from the court reporter, that attorney may share and disseminate copies of the State Grand Jury transcripts to other court-appointed attorneys or public defenders involved with this case in order to prevent multiple copies from being purchased by the Commission on Indigent Defense.

The Defendant and his or her attorney are prohibited from photocopying, scanning, digitizing, etc. and disseminating copies of any State Grand Jury testimony, interviews of witnesses and any other documents that may be disclosed to the defendant and their attorneys in reference to the above-captioned case, except for internal use by the attorney and necessary employees of that attorney's office or for submission to the Court during a trial or other hearing.

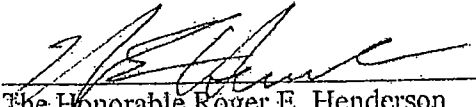
Further, unless otherwise ordered by this Court, all material disclosed pursuant to this Order and all copies of such material must remain in the secured custody and control of defense counsel, not the defendant, at all times, and, absent order of the court, must be retained in a secure location by defense counsel unless and until it is destroyed pursuant to any applicable rule regarding file retention.¹

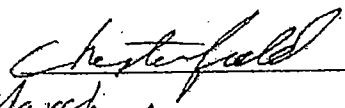
IT IS FURTHER ORDERED that if defense counsel should intend to hire any outside, independent experts, investigators, or other consultants; counsel may distribute copies of the necessary materials as needed for the purposes of that individual. However, counsel must first provide a copy of this Order and obtain a signed agreement from such experts, investigators, or consultants that these individuals will not disclose or disseminate any of the discovery materials without explicit permission from this court. All experts, investigators, and consultants to whom defense counsel discloses discovery material shall be bound by this Order to the same extent as defense counsel. FURTHER, defense counsel must notify the Court of any individuals to whom counsel intends to disclose protected materials prior to any disclosures. This notification may be accomplished by *ex parte* communication with the Court.

IT IS FURTHER ORDERED that individuals, whether attorneys, Defendants, necessary staff of attorneys, or experts or investigators hired by attorneys, who receive disclosure of State Grand Jury material pursuant to this Order are all bound by the secrecy provisions of this Order and subject to contempt of court for any willful violation of these secrecy provisions. This Order shall also be binding upon any Defendants who may be revealed following future orders to unseal these indictments or who may be added in any superseding or amended versions of these

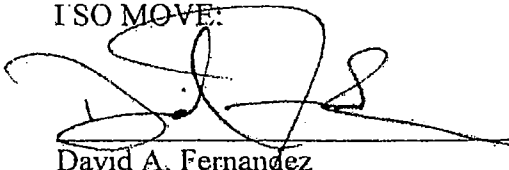
¹ For purposes of this Order defense counsel may secure physical copies of this protected material by keeping the material in his or her actual possession or by keeping the material in the attorney's law office in a place and manner to ensure that the material is only accessible by the attorney and necessary employees of the attorney's office. Digital copies of protected material are to be secured by placing passwords on all devices containing such material so that only the attorney and necessary employees of the attorney's office will have access to said material.

indictments as well as the attorneys, necessary staff of attorneys, or experts or investigators hired by attorneys representing any such Defendant.


The Honorable Roger E. Henderson
Presiding Judge

 , South Carolina
~~March 28~~ March 29 , 2016

ISO MOVE:


David A. Fernandez
Assistant Attorney General

March 25 , 2016

Exhibit 3C

c) Conditional Order Of Dismissal

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Timothy L. Johnson, #370487,
Applicant,

v.

State of South Carolina,
Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE TWELFTH JUDICIAL CIRCUIT

) CASE NO. 2024-CP-21-00870

) **CONDITIONAL ORDER OF DISMISSAL**

2024 JAN 24 PM 3:48
DENISE J. OLLIVERA
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

FILED

This matter comes before this Court by way of a successive application for post-conviction relief filed by Applicant Timothy L. Johnson on April 10, 2024. In response, Respondent, the State of South Carolina, moved for the matter to be summarily dismissed as untimely, barred by the statute of limitations, successive to Applicant's previous application, barred by the doctrine of *res judicata*, for failing to make a *prima facie* showing of newly discovered evidence pursuant to S.C. Code Ann. § 17-27-20, § 17-27-45, and § 17-27-90, and for failing to comply with the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 *et seq.* (2014). After a review of all records before this Court, the current application, and Respondent's motion to dismiss, this Court provisionally dismisses this action based on the following:

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for the State Grand Jury. On October 22, 2015, the State Grand Jury indicted Applicant for one count of trafficking in heroin greater than 28 grams, seven counts of distribution of heroin, one count of possession with intent to distribute heroin, and one count of trafficking heroin greater than 28 grams (conspiracy) (2015-GS-47-0021, -0022) as part of a multi-count, multi-defendant

CERTIFIED: A TRUE COPY

Denise J. Ollivera
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

249

indictments stemming from an investigation into a heroin trafficking ring. Brendan P. Barth, Esquire (Plea Counsel), represented Applicant. Assistant Attorney General David Fernandez of the South Carolina Attorney General's Office prosecuted the case.

On August 1, 2016, Applicant entered into a written plea agreement, in which he agreed to "fully and truthfully cooperate with the Office of the Attorney General of South Carolina, and any local, state and federal law enforcement agents in their investigation of importation, possession, and distribution of controlled substances and related unlawful activities," in exchange for a negotiated sentence range of an aggregate eighteen to twenty-two years imprisonment. As part of this plea agreement, Applicant expressly waived his right to both a direct appeal and post-conviction relief action. ("The Defendant, Timothy Leverne Johnson, agrees that as a part of the consideration for this plea he will not appeal his plea of guilty or any sentence he receives in General Sessions Court in South Carolina. The Defendant, Timothy Leverne Johnson, acknowledges that he understands that he has a right of direct appeal of his guilty plea or sentence and that he knowingly, voluntarily and expressly waives this right of direct appeal. Additionally, the Defendant, Timothy Leverne Johnson, understands that he has a right to file a post-conviction relief (PCR) action in this case but agrees to knowingly and voluntarily waive any post-conviction relief action except for claims that directly attack the effectiveness of advice to agree to this waiver.") Applicant initialed each page of this written plea agreement and signed this plea agreement.

The following day (August 2, 2016), Applicant appeared in the Florence County Court of General Sessions before the Honorable Roger E. Henderson, circuit court judge, and pursuant to the signed plea agreement, pled guilty to seven counts of distribution of heroin and one count of possession with intent to distribute heroin as indicted, and to the lesser-included offenses of

trafficking in heroin (4-14 grams) and trafficking in heroin (4-14 grams) (conspiracy). Judge Henderson accepted Applicant's plea and deferred sentencing.

On November 14, 2016, Applicant again appeared before Judge Henderson for a sentencing proceeding. At this hearing, Judge Henderson sentenced Applicant to an aggregate nineteen years imprisonment. Applicant did not file a notice of appeal.

FIRST PCR ACTION AND APPEAL: 2017-CP-21-0952

On April 13, 2017, Applicant filed a *pro se* application for post-conviction relief (2017-CP-21-0952), alleging the following ground for relief:

1. Ineffective assistance of counsel: "Trial counsel failed to conduct factual and legal investigation"
2. "State Grand Jury unconstitutional assembled, evidence inadmissible: Grand Jury lacked probable cause to indict and violate fair cross section"
3. "Conviction obtained in violation of constitutional rights: rights were violated when no warrants were served for arrest-detention."

On October 6, 2017, Respondent served its return to the application and made a partial motion to dismiss, seeking summary dismissal of all claims beyond whether counsel was ineffective for advising him to enter the written plea agreement waiving his rights to challenge his conviction through post-conviction relief pursuant to the written plea agreement.

On January 25, 2018, Applicant, through counsel, amended his application to include the following additional allegations:

1. Counsel was ineffective for failing to properly advise Applicant regarding entry into a plea agreement that would constitute a waiver of Applicant's appellate and post-conviction relief rights.
2. Counsel was ineffective for failure to meet with Applicant in a sufficient amount for Applicant to understand the nature of the allegations against him, any potential defenses he may have had, and the State's burden of proof with respect to his charges, thus rendering Applicant's plea involuntarily entered into. Counsel was ineffective for misleading and misinforming Applicant that

all other defendants alleged in the indictment had agreed to cooperate against Applicant and that Applicant was the final remaining defendant, thus rendering Applicant's plea involuntarily entered into.

3. Counsel was ineffective for failure to investigate the facts and circumstances of alleged video and photographic evidence.

An evidentiary hearing was convened on February 2, 2018, at the Florence County Courthouse before the Honorable Michael G. Nettles, circuit court judge. Applicant was present at the hearing and represented by Jonathan D. Waller, Esquire. Senior Assistant Deputy Attorney General Megan Harrigan Jameson from the South Carolina Attorney General's Office appeared on behalf of the State. Testimony was taken from Applicant and Plea Counsel.

Judge Nettles denied the application from the bench. A written order of dismissal was filed on March 20, 2018, finding Plea Counsel's credible testimony established he properly advised Applicant of the terms of the plea agreement, including the waiver of post-conviction relief on all ground other than whether counsel was ineffective in advising him to enter into the plea agreement. Judge Nettles' written ruling made specific findings that Plea Counsel's testimony on the issues before the court were credible and dispositive while Applicant's testimony was not credible.

Applicant appealed the denial of post-conviction relief and was represented by Appellate Defender Victor R. Seeger of the South Carolina Commission on Indigent Defense-Office of Appellate Defense, who raised the following issue on appeal, "[w]hether trial counsel provided ineffective assistance of counsel when he failed to fully explain the consequences of the appellate review and post-conviction relief waiver in Petitioner's guilty plea, such that Petitioner's post-conviction relief waiver was not knowingly, voluntarily, or intelligently made?" Following receipt of Respondent's return, the matter was transferred to the South Carolina Court of Appeals pursuant to Rule 243(I), SCACR. The Court of Appeals subsequently denied the petition for certiorari on October 15, 2020. The Remittitur was returned on November 5, 2020.

SECOND PCR ACTION: 2020-CP-21-02925

Applicant filed his *second* application for post-conviction relief on December 17, 2020, and alleged he was being held in custody unlawfully based on: "structural error, usurp autonomy." As requested relief, Applicant asked for his plea to be vacated. The State made its Return and Motion to Dismiss on February 4, 2021. Applicant made his Objection to State's Motion to Dismiss on February 19, 2021. The Honorable D. Craig Brown filed the Conditional Order of Dismissal on February 19, 2021. Applicant made another Objection to State's Motion to Dismiss on February 24, 2021. Applicant made a Motion for a New Trial on March 15, 2021. The Final Order of Dismissal was filed on April 9, 2021.

Applicant did not appeal.

CURRENT ACTION BEFORE THE COURT

In his successive application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on:

1. Newly Discovered Evidence
 - a. Arrest warrants were based on false evidence, and new affidavits exonerate Applicant.¹
2. Involuntary Guilty Plea
 - a. Waiver of rights are invalid without informing Applicant of terms.

Applicant requests relief in the form of his conviction being vacated.

Attached to Respondent's Return and before this Court are the records of the State Grand Jury Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the records from Applicant's first post-conviction relief action and subsequent appeal, second post-conviction relief action, and the records of the current PCR action.

¹ Notably, there were no "new affidavits" attached to Applicant's PCR application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the pleadings, the records submitted to it by the parties, and the applicable law. Pursuant to South Carolina Code Annotated Sections 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application as there is no genuine issue of material fact which would necessitate an evidentiary hearing. See S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief); Re: Appointment of Counsel in Post-Conviction Relief Cases Before the Circuit Court, S.C. Sup. Ct. Order filed October 6, 2008; Rule 71.1(d), SCRPC (providing for appointment of counsel only where there is a question of law or fact which necessitates a hearing). Respondent moved for summary dismissal, and this Court finds summary dismissal is appropriate for the following reasons:

SUMMARY DISMISSAL BASED ON NEWLY DISCOVERED EVIDENCE

Respondent moved this Court to summarily dismiss the application because Applicant's assertion that he is being held in custody unlawfully due to newly discovered evidence, such that he should be entitled to PCR, is without merit. The Uniform Post-Conviction Procedure Act states that a person may institute a PCR action "if there exists evidence or material facts not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of a material fact not previously presented, under the discovery rule, the PCR application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-

45(C). Otherwise, a PCR must be filed within one year of sentencing or, if a direct appeal is filed, within one year of the remittitur. S.C. Code Ann. § 17-27-45(A).

In his current application, Applicant claims he has new affidavits that exonerate him. However, Applicant has provided no such affidavits. A party requesting a new trial based on newly discovered evidence must show that the evidence:

1. Is such as would probably change the result if a new trial was had;
2. Has been discovered since the trial;
3. Could not by the exercise of due diligence have been discovered before the trial;
4. Is material to the issue of guilt or innocence; and,
5. Is not merely cumulative or impeaching.

Clark v. State, 315 S.C. 385, 387–88, 434 S.E.2d 266, 267 (1993); see Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (setting forth the five factors to be analyzed when considering a newly-discovered evidence claim) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979))). However, the granting of a new trial based on after-discovered evidence is disfavored. State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011); see also State v. David, 14 S.C. 428, 432 (1881) ("There can be no doubt that motions of this sort should be received with the utmost caution, because, as it is said by a learned judge, there are but few cases tried in which something new may not be hunted up . . .").

Applicant has provided nothing to the Court to substantiate his claim of newly discovered evidence.

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). This Court finds Applicant has failed to make a *prima facie* showing of newly discovered evidence. Because his claims do not meet the

high threshold of newly discovered evidence, they are barred by the one-year statute of limitations set forth in S.C. Code Ann. § 17-27-45(A). Thus, Applicant is not entitled to an evidentiary hearing, and this matter shall be summarily dismissed.

SUMMARY DISMISSAL BASED ON SUCCESSIVENESS

Respondent moved to summarily dismiss the application because it is successive to Applicant's prior post-conviction relief application. This Court agrees this action should be summarily dismissed as successive.

Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Section 17-27-90 is clear—successive post-conviction relief applications are forbidden unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications or actions challenging this conviction. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id. at 450, 409 S.E.2d at 394. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. Applicant bears the

burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

The South Carolina Supreme Court held the PCR rules "contemplate an adjudication on the merits of the original petition, one bite at the apple as it were." Aice, 305 S.C. at 452, 409 S.E.2d at 395 (citing Gamble v. State, 298 S.C. 176, 178, 379 S.E.2d 118, 119 (1989)). The Court also noted, "[f]inality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice." Id. at 451, 409 S.E.2d at 395. Here, Applicant has failed to show that a successive application is appropriate or why he could not have raised these claims, except for newly discovered evidence, in his prior post-conviction relief action. Accordingly, this Court finds this application should be dismissed as successive to Applicant's prior post-conviction relief action and intends to dismiss it on this ground unless Applicant can provide sufficient reasons why the successive action should be allowed to proceed forward.

SUMMARY DISMISSAL BASED ON THE STATUTE OF LIMITATIONS

Respondent also moved to summarily dismiss this application for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

- (A). An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.
- (B). When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one

year after the date on which the standard or right was determined to exist.

- (C). If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

S.C. Code Ann. § 17-27-45.

The South Carolina Supreme Court has held the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). Additionally, S.C. Code Ann. § 17-27-70(c) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law."

In the present case, Applicant is alleging he is entitled to post-conviction relief based on allegations of newly discovered evidence and involuntary guilty plea. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Therefore, the application shall be summarily dismissed as barred by the statute of limitations. Accordingly, this application is untimely pursuant to § 17-27-45 and this Court finds it shall be dismissed for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act unless Applicant can provide a sufficient reason why he should be allowed to proceed forward on this untimely action.

SUMMARY DISMISSAL BASED ON THE DOCTRINE OF RES JUDICATA

Additionally, this application is barred by the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286,

414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits of a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id.; see also Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

Applicant had a full opportunity to litigate any and all his allegations, other than newly discovered evidence, in his prior two PCR actions. The prior PCR Courts issued final judgments on the merits of the same or similar issues Applicant raised in this successive action. The finality of the previous court's rulings should be respected, and the application shall be summarily dismissed as barred by the doctrine of *res judicata*.

FRUSTRATION OF FINALITY OF CONVICTIONS

As a final matter, both the United States Supreme Court and the South Carolina Supreme Court have emphasized the necessity for finality of litigation in criminal cases. The Court in Aice explained that:

Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice. At some juncture judicial review must stop, with only the very rarest of exceptions, when the system has simply failed a defendant and where to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice. . . . [Here], Aice seeks to have more than one procedural "bite" at the apple. Aice has filed an original PCR application, and has been allowed to seek review of the ruling against him. We refuse to grant his request for a second chance, and again we do so in order to effectuate the purposes of the Act and rules.

305 S.C. at 451-52, 409 S.E.2d at 394-95 (citations omitted).

The United States Supreme Court has explained that "the principle of finality . . . is essential to the operation of our criminal justice system. Without finality, the criminal law is deprived of much of its deterrent effect." Teague v. Lane, 489 U.S. 288, 309 (1989). "Relitigation of a

conviction is a rear-view mirror, while a respect for finality encourages those in custody to contemplate the future prospect of "becoming a constructive citizen." United States v. Fugit, 703 F.3d 248, 252 (4th Cir. 2012) (quoting Schneckloth v. Bustamonte, 412 U.S. 218, 262 (1973) (Powell, J., concurring)). In his concurring and dissenting opinion in Mackey v. United States, Justice Harlan wrote:

Finality in the criminal law is an end which must always be kept in plain view. . . . At some point, the criminal process, if it is to function at all, must turn its attention from whether a man ought properly to be incarcerated to how he is to be treated once convicted. If law, criminal or otherwise, is worth having and enforcing, it must at some time provide a definitive answer to the question litigants present or else it never provides an answer at all. Surely it is an unpleasant task to strip a man of his freedom and subject him to institutional restraints. But this does not mean that in so doing, we should always be halting or tentative. No one, not criminal defendants, not the judicial system, not society as a whole is benefited by a judgment providing that a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation.

401 U.S. 667, 691 (1971) (Harlan, J., concurring in part and dissenting in part). Seven years after Mackey, the South Carolina Supreme Court quoted Justice Harlan's opinion with approval in Anderson v. Leeke, 271 S.C. 435, 441-42, 248 S.E.2d 120, 123 (1978). Applicant's attempt to relitigate his convictions and sentences through this successive and time-barred application is contrary to the recognized need for finality of litigation.

[CONCLUSION PAGE FOLLOWS]

NSD

CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Florence County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
PCR Division – 12th Circuit
P.O. Box 11549
Columbia, South Carolina 29211

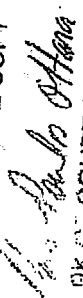
Applicant is cautioned that his response to this order must be actually received by the Florence County Clerk of Court and opposing counsel within twenty days, and the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 24 day of June, 2021.


THE HONORABLE H. STEVEN DEBERRY, IV
Chief Administrative Judge
Twelfth Judicial Circuit

Florence, South Carolina

2024 JUN 24 PM 3:48
DORIS POLLINS O'HARA
Clerk of Court C.P. & G.S.
FLORENCE COUNTY, SC

ORIGINAL A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

FILED

Exhibit 4

- a) Case Number 15-GS-47-21
- b) Case Number 15-GS-47-21
- c) Warrant Number 2014A4510100276
- d) Warrant Number 2014A4510100277
- e) Warrant Number 2014A4510100278
- f) Warrant Number 2014A4510100413
- g) Warrant Number 2014A4510100416
- h) Warrant Number 2015A4510100015
- i) Warrant Number 2015A4510100015
- j) Sentencing Sheet

Exhibit 4A

A) Case Number 15-GS-47-21

Exhibit 1A

TSG/21 (78-4)

Agent

STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

WARRANT FOR ARREST

VS.

TIMOTHY LEVERNE JOHNSON
A/K/A TIMMY, FAT BOY

CASE NUMBER: 2015-GS-47-21

TO: Any Law Enforcement Officer of this State, or
Any County or Municipal Officer Within his Jurisdiction

JAMES A. HODGSON
CLERK, STATE GRAND JURY

YOU ARE HEREBY COMMANDED to arrest TIMOTHY LEVERNE JOHNSON A/K/A TIMMY, FAT BOY and bring him or her forthwith before me to answer an Indictment of the State Grand Jury of South Carolina charging him or her with:

TRAFFICKING HEROIN GREATER THAN 28 GRAMS
DISTRIBUTION OF HEROIN (7 COUNTS)
POSSESSION WITH INTENT TO DISTRIBUTE HEROIN

in violation of 1976 Code of Laws of South Carolina, as amended, Section(s) 44-53-370(e)(3)(c), 44-53-370(b)(1). A copy of this Warrant for Arrest shall be delivered to the defendant at the time of its execution, or as soon thereafter as practicable.

November 9, 2015
Date

Robert E. Hood
Name of Presiding Judge

Columbia, SC
Location

Re Hood
Signature of Presiding Judge

RETURN

This warrant was received and executed with the arrest of the above-named defendant at 6719 Emerald Field Rd, Effingham, SC. A copy of this warrant was delivered to the defendant on November 11, 2015.

Date Received: _____

Name and Title of Arresting Officer

Signature of Arresting Officer

Date of Arrest: 11/11/2015

S/A Rodney Bastick

R. Bastick

Fired

Exhibit 4 B

B) Case Number 15-GS-47-21

Exhibit 1 B

Agent

STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

WARRANT FOR ARREST

vs.

TIMOTHY LEVERNE JOHNSON
A/K/A TIMMY, FAT BOY

CASE NUMBER: 2015-GS-47-22

TO: Any Law Enforcement Officer of this State, or
Any County or Municipal Officer Within his Jurisdiction

NOV 12 2015

CLERK, STATE COURT

YOU ARE HEREBY COMMANDED to arrest TIMOTHY LEVERNE JOHNSON A/K/A
TIMMY, FAT BOY and bring him or her forthwith before me to answer an Indictment of the State
Grand Jury of South Carolina charging him or her with:

TRAFFICKING HEROIN GREATER THAN 28 GRAMS (CONSPIRACY)

in violation of 1976 Code of Laws of South Carolina, as amended, Section(s) 44-53-370(e)(3)(c). A copy
of this Warrant for Arrest shall be delivered to the defendant at the time of its execution, or as soon
thereafter as practicable.November 11, 2015

Date

Robert E. Hood

Name of Presiding Judge

Columbia, SC

Location

Re Hood

Signature of Presiding Judge

RETURN

This warrant was received and executed with the arrest of the above-named defendant at
6919 Friendfield Rd, Ewingham, SC. A copy of this warrant was delivered to the defendant on
November 11, 2015.

Date Received: _____	Name and Title of Arresting Officer	Signature of Arresting Officer
Date of Arrest: <u>11/11/2015</u>	<u>S/A Rodney Bostick</u>	<u>R B</u>

Fired

Exhibit 4 C

C) Warrant Number 2014A4510100276

County ☒ Municipality of ☐
Williamsburg
THE STATE
against
Timmy Johnson
Address: 127 Solomon Circle
Nesmith, SC 29580-
Phone:
Sex: M Race: B Height: SSN:
DL State: DL #: Weight:
DOB:
Prosecuting Agency: Agency ORI #: SC0450000
Prosecuting Officer: Williamsburg County Sheriff
S Coker - 0037
Offense: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c),
LSD, and Sched. II (Cocaine)- 1st offense
Offense Code: 0183
Code/Ordinance Sec: 44-53-0370(B)(1)
This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of
is to be arrested and brought before me The accused
dealt with according to the law. to be
Date: Signature of Judge (L.S.)

RETURN
A copy of this arrest warrant was delivered to
defendant on Timothy L. Johnson
5-9-14
Richard [Signature]
Signature of Constable/Law Enforcement Officer
RETURN WARRANT TO:
General Sessions
125 W. Main Street
Kingstree, SC 29556

ORIGINAL
ORIGINAL

Williamsburg Municipality of ☐
Exhibit C
AFFIDAVIT
ORIGINAL
78-11-0057
Personally appeared before me the affiant S Coker
being duly sworn deposes and says that defendant Timmy Johnson
did within this county and state on or about 8/27/2012
State of South Carolina (or ordinance of ☒ County/
in the following particulars: ☐ Municipality of Williamsburg
DESCRIPTION OF OFFENSE: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II (Cocaine)- 1st offense

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
That on or about 08-27-2012 one Timmy Johnson distributed Heroin. Johnson did distribute a powder substance represented as
Heroin to a reliable confidential informant working at the direction of the Williamsburg County Sheriff's Office and SLED. This
transaction took place on Solomon Circle, Nesmith within Williamsburg County. The C.I. has known Johnson and has dealt with
him in the past. The C.I. is known by this affiant to be reliable. Distribution of Heroin is in violation of the S.C. Code of Laws.

Signature of Affiant
STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Williamsburg
Affiant's Address 126 South Jackson Street
Kingstree, SC 29556-
Affiant's Telephone (843)355-6381
SGJ 2015-246
218

ARREST WARRANT
TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that
on or about 8/27/2012
did violate the criminal laws of the State of South Carolina that there are reasonable grounds to believe that
☒ County/ ☐ Municipality of defendant Timmy Johnson
Williamsburg (for ordinance of
DESCRIPTION OF OFFENSE: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II (Cocaine)- 1st offense
Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me
on 4/16/2014
William Driggers
Signature of Issuing Judge
William Clayton Driggers
Judge Code: 5990

ORIGINAL
ORIGINAL

Judge's Address 209 Short Street
Kingstree, SC 29556-
Judge's Telephone (843)355-9565
Issuing Court ☒ Magistrate ☐ Municipal ☐ Circuit
ORIGINAL
ORIGINAL
ORIGINAL

Exhibit 4 D

D) Warrant Number 2014A4510100277

2014A4510100277

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Williamsburg

THE STATE

against

14001407

Timothy Laverne Johnson

Address: 127 Solomon Circle

Nesmith, SC 29580-9719

Phone:

Sex: M

Race:

Height:

5

8

Weight:

290

DL State:

SC

DL #:

DOB:

Agency ORI #:

SC0450000

Prosecuting Agency:

Williamsburg County Sheriff

Prosecuting Officer:

S Coker - 0037

Offense: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c),
LSD, and Sched. II (Cocaine)- 1st offense

Offense Code:

0183

Code/Ordinance Sec:

44-53-0370(B)(I)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/☐ Municipality ofIs to be arrested and brought before me The accused
dealt with according to the law. to be

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant on

Timothy Laverne Johnson

5-9-14

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
125 W. Main Street
Kingstree, SC 29556

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

☒ County/☐ Municipality of

Williamsburg

Personally appeared before me the affiant S Coker

being duly sworn deposes and says that defendant

did within this county and state on or about 3/29/2011

State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Williamsburg

in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II (Cocaine)- 1st offense

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on or about 03-29-2011 Timmy Johnson did distribute Heroin. Johnson did distribute a quantity of a powder substance
represented as Heroin to a reliable confidential informant working at the direction of the State Law Enforcement Division and the
Williamsburg County Sheriff's Office. This transaction took place at 127 Solomon Circle, Nesmith within Williamsburg County the
residence of Johnson. The informant is familiar with Johnson and has dealt with him in the past. Distribution of Heroin is in
violation of the S.C. Code of Laws.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Williamsburg

Affiant's Address

126 South Jackson Street

Kingstree, SC 29556-

Affiant's Telephone

(843)355-6381

SGJ 2015-246

210

ARREST WARRANT

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

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

on or about 3/29/2011

did violate the criminal laws of the State of South Carolina defendant Timothy Laverne Johnson

☒ County/☐ Municipality of

Williamsburg

DESCRIPTION OF OFFENSE: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II (Cocaine)- 1st offense

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

on 4/16/2014

William Driggers (L.S.)
Signature of Issuing Judge

William Clayton Driggers

Judge Code:

5990

Judge's Address

209 Short Street

Kingstree, SC 29556-

Judge's Telephone

(843)355-9565

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

Exhibit 4 E

E) Warrant Number 2014A4510100278

2014A4510100278

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Williamsburg

THE STATE

14001409

against

Timothy Leverage Johnson

Address: 127 Solomon Circle

Nesmith, SC 29580-9719

Phone: SSN: [REDACTED]
Sex: M Race: Height: 5 8 Weight: 290

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0450000

Prosecuting Agency: Williamsburg County Sheriff

Prosecuting Officer: S Coker - 0037

Offense: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c),
LSD, and Sched. II (Cocaine)- 1st offense

Offense Code: 0183

Code/Ordinance Sec: 44-53-0370(B)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Timothy L. Johnson
on 5-9-14

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
125 W. Main Street
Kingstree, SC 29556

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Muncip, of

Williamsburg

Personally appeared before me the affiant S Coker

being duly sworn deposes and says that defendant Timothy Leverage Johnson

did within this county and state on or about 8/23/2012

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Williamsburg)

In the following particulars:

DESCRIPTION OF OFFENSE: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II (Cocaine)- 1st offense

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on or about 08-23-12 one Timothy Johnson did distribute Heroin. Johnson did distribute a quantity of powder substance
represented as Heroin to a reliable confidential informant working at the direction of the State Law Enforcement Division and the
Williamsburg County Sheriff's Office. This transaction took place at 127 Solomon Circle, Nesmith within Williamsburg County the
residence of Johnson. The informant is familiar with Johnson and has dealt with him in the past. Distribution of Heroin is in
violation of the S.C. Code of Laws.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Williamsburg

Affiant's Address 126 South Jackson Street

Kingstree, SC 29556-

Affiant's Telephone (843)355-6381

SGJ 2015-246
211

ARREST WARRANT

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

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

on or about 8/23/2012

defendant Timothy Leverage Johnson

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Williamsburg) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II (Cocaine)- 1st offense

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

Sworn to and subscribed before me

on 4/16/2014

Signature of Issuing Judge
William Clayton Driggers (L.S.)

William Clayton Driggers

Judge Code: 5990

Judge's Address 209 Short Street

Kingstree, SC 29556-

Judge's Telephone (843)355-9565

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

Exhibit 4 F

F) Warrant Number 2014A4510100413

2014A4510100413

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Williamsburg

THE STATE

14003229

against

Timothy Leverage Johnson

Address: 127 Solomon Circle

Nesmith, SC 29580-9719

Phone:

SSN: [REDACTED]

Sex: M

Race: B

Height: 5' 8"

Weight: 290

DL State: SC

DL #: [REDACTED]

DOB: [REDACTED]

Agency ORI #: SC0450000

Prosecuting Agency: Williamsburg County Sheriff

Prosecuting Officer: Shannon Coker - 0052

Offense: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c),
LSD, and Sched. II (Cocaine)- 1st offense

Offense Code: 0183

Code/Ordinance Sec: 44-53-0370(B)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant

on

Timothy L. Johnson

Signature of Constable, Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
125 W. Main Street
Kingstree, SC 29556

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

☒ County/☐ Municipality

Williamsburg

Personally appeared before me the affiant Shannon Coker

being duly sworn deposes and says that defendant Timothy Leverage Johnson

did within this county and state on or about 4/3/2014

State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Williamsburg

violate the criminal laws of the

In the following particulars:

DESCRIPTION OF OFFENSE: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II (Cocaine)- 1st offense

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:THAT ON OR ABOUT 04-03-2014 ONE TIMOTHY JOHNSON DID COMMIT THE OFFENSE OF DISTRIBUTION OF
HEROIN. JOHNSON DID DISTRIBUTE A QUANTITY OF A POWDER SUBSTANCE REPRESENTED AS HEROIN TO A
RELIABLE CONFIDENTIAL INFORMANT WORKING AT THE DIRECTION OF THE STATE LAW ENFORCEMENT
DIVISION AND THE WILLIAMSBURG COUNTY SHERIFFS OFFICE FOR THE SUM OF \$100.00 IN STATE
DOCUMENTED FUNDS. THIS TRANSACTION TOOK PLACE ON HWY 512 HEMINGWAY WITHIN WILLIAMSBURG
COUNTY. THE INFORMANT IS FAMILIAR WITH JOHNSON AND HAS DEALT WITH HIM IN THE PAST. DISTRIBUTION
OF HEROIN IS IN VIOLATION OF SC CODE OF LAWS.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Williamsburg

Affiant's Address

126 South Jackson Street

Kingstree, SC 29556-

Affiant's Telephone

(843)355-6381

SGI 2015-246

214

ARREST WARRANT

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

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

on or about 4/3/2014

defendant Timothy Leverage Johnson

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Williamsburg

) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II (Cocaine)- 1st offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicableSworn to and subscribed before me
on 5/9/2014

Signature of Issuing Judge (L.S.)

Delores Franklin Williams

Judge Code: 5992

Judge's Address

209 Short Street

Kingstree, SC 29556-

Judge's Telephone

(843)355-9565 x 2277

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

Exhibit 4 G

G) Warrant Number 2014A4510100416

2014A4510100416

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Williamsburg

THE STATE
against

Timothy Leverne Johnson

Address: 127 Solomon Circle

Nesmith, SC 29580-9719

Phone: S&N: [REDACTED]

Sex: M Race: B Height: 5 8 Weight: 290

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0450000

Prosecuting Agency: Williamsburg County Sheriff

Prosecuting Officer: Shannon Coker - 0052

Offense: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c),
LSD, and Sched. II (Cocaine)- 1st offense

Offense Code: 0183

Code/Ordinance Sec: 44-53-0370(B)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Timothy Leverne Johnson
on 5-9-14

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
125 W. Main Street
Kingstree, SC 29556

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

☒ County/☐ Muni of

Williamsburg

Exhibit G AFFIDAVIT

78-11-0057

Personally appeared before me the affiant Shannon Coker

who

being duly sworn deposes and says that defendant Timothy Leverne Johnson

did within this county and state on or about 4/8/2014

violate the criminal laws of the

State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Williamsburg

In the following particulars:

DESCRIPTION OF OFFENSE: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II (Cocaine)- 1st offense

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

THAT ON OR ABOUT 04-08-2014 ONE TIMOTHY JOHNSON DID COMMIT THE OFFENSE OF DISTRIBUTION OF
HEROIN. JOHNSON DID DISTRIBUTE A QUANTITY OF A POWDER SUBSTANCE REPRESENTED AS HEROIN TO A
RELIABLE CONFIDENTIAL INFORMANT WORKING AT THE DIRECTION OF THE STATE LAW ENFORCEMENT
DIVISION AND THE WILLIAMSBURG COUNTY SHERIFFS OFFICE FOR THE SUM OF \$100.00 IN STATE
DOCUMENTED FUNDS. THIS TRANSACTION TOOK PLACE AT 127 SOLOMON CIRCLE, NESMITH WITHIN
WILLIAMSBURG COUNTY THE RESIDENCE OF JOHNSON. THE INFORMANT IS FAMILIAR WITH JOHNSON AND HAS
DEALT WITH HIM IN THE PAST. DISTRIBUTION OF HEROIN IS IN VIOLATION OF SC CODE OF LAWS.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Williamsburg

Affiant's Address 126 South Jackson Street

Kingstree, SC 29556-

Affiant's Telephone (843)355-6381

SGI 2015-246

212

ARREST WARRANT

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

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

on or about 4/8/2014

defendant Timothy Leverne Johnson

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Williamsburg

) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II (Cocaine)- 1st offense

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

on 5/9/2014

Signature of Issuing Judge (L.S.)

Delores Franklin Williams

Judge Code: 5992

Judge's Address 209 Short Street

Kingstree, SC 29556-

Judge's Telephone (843)355-9565 x 277

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

Exhibit 4 H

H) Warrant Number 2015A4510100015

ARREST WARRANT

STATE OF SOUTH CAROLINA

County of Williamsburg

2015A47001000015

THE STATE

Against

Timothy Levern JOHNSON

(Defendant)

Address: 127 Solomon CircleNesmith, SC 29580

Phone: _____

SSN: _____

Sex: M Race: B Height: 5'08" Weight: 290DL State: SC DL# 7489439DOB: 4-15-1979 Agency ORI#: SCLED0001Prosecuting Agency: SLEDProsecuting Officer: S/A Glenn WoodOffense: Distribution of HeroinOffense Code: 0183Code/Ordinance Section: 44-53-370 (b)(1)This warrant is **CERTIFIED FOR SERVICE** in the County of _____.

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

(L.S.)

Signature of Judge

Date: _____

RETURNA copy of this arrest warrant was delivered to defendant Timothy L. Johnsonon September 14, 2015

Signature of Constable/Law Enforcement Officer

Exhibit H

STATE OF SOUTH CAROLINA)

County of Williamsburg)**AFFIDAVIT**

Personally appeared before me the affiant S/A Glenn Wood who being duly sworn deposes and says that defendant Timothy Levern JOHNSON did within this County and State on 9-9-2015 violate the criminal laws of the State of South Carolina (or ordinance) of the County of Williamsburg.

In the following particulars:

DESCRIPTION OF OFFENSE: Distribution of Heroin

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

On September 9, 2015, one Timothy Levern JOHNSON did distribute a quantity of heroin, a controlled substance, to a Confidential Informant working at the direction of the South Carolina Law Enforcement Division. This violation taking place at 127 Solomon Circle, located in or near Nesmith, in Williamsburg County, South Carolina. This being in violation of Section 44-53-370, South Carolina Code of Laws, 1976, as amended.

Sworn to and subscribed before me on)

September 11, 2015)[Signature] (L.S.)

Signature of Judge

Signature of Affiant

Affiant's Address

Affiant's Telephone

SLEDP.O. Box 21398Columbia SC 29221803-737-9000

STATE OF SOUTH CAROLINA)

County of Williamsburg)**ARREST WARRANT****TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MINICIPALITY OR ANY CONSTABLE OF THIS COUNTY:**

It appearing from the above affidavit that there are reasonable grounds to believe that on 9-9-2015 defendant Timothy Levern JOHNSON did violate the criminal laws of the State of South Carolina (or ordinance of the County of Williamsburg) as set forth below:

DESCRIPTION OF OFFENSE: Distribution of Heroin

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge

Judge Code: 2164 Judge's address: 1701 Main Street, Columbia, SC 29210, TEL: (803)576-1746

Exhibit 4 I

I) Warrant Number 2015A4510100132

Williamsburg

☐ Municipality of

THE STATE
against

Timothy Laverne Johnson

Address: 127 Solomon Circle
Nesmith, SC 29580-9719

Phone: _____
Sex: M Race: B Height: 5 8 Weight: 290
DL State: SC DL #: 007489439
DOB: 4/15/1979 Agency ORI #: SCLED0000

Prosecuting Agency: State Law Enforcement Division
Prosecuting Officer: Glenn Wood - 990019

Offense: Drugs / Trafficking in Heroin, morphine, etc., 28 g or more

Offense Code: 0149
Code/Ordinance Sec: 44-53-0370(e)(3)

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Timothy Laverne Johnson
on 2-20-15

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
125 W. Main Street
Kingstree, SC 29556

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Personally appeared before me the affiant Glenn Wood

being duly sworn deposes and says that defendant Timothy Laverne Johnson
did within this county and state on or about 2/19/2015

State of South Carolina (or ordinance of ☒ County/
in the following particulars:

☐ Municipality of

Williamsburg

violate the criminal laws of the

DESCRIPTION OF OFFENSE: Drugs / Trafficking in Heroin, morphine, etc., 28 g or more

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

Beginning on February 17, 2015 and continuing through February 19, 2015, one Timothy Laverne Johnson and others, did aid, abet,
and conspire to possess a quantity of heroin, a controlled substance, exceeding 28 grams. This violation taking place in
Williamsburg County, South Carolina. This being in violation of Section 44-53-0370, South Carolina Code of Laws, 1976, as
amended.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Williamsburg

Affiant's Address P. O. Box 21398
Columbia, SC 29210-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 2/19/2015 defendant Timothy Laverne Johnson
did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of Williamsburg

DESCRIPTION OF OFFENSE: Drugs / Trafficking in Heroin, morphine, etc., 28 g or more

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable Sworn to and subscribed before me
on 2/20/2015

Signature of Issuing Judge Delores Franklin Williams (L.S.)

Delores Franklin Williams

Judge Code: 5992

Judge's Address 209 Short Street

Judge's Telephone (843)355-9565 x277

Issuing Court: ☒ Magistrate

☐ Municipal

☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

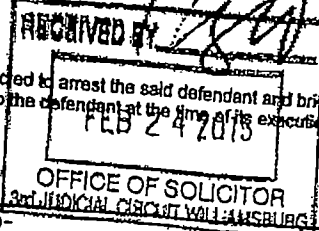


Exhibit 4 J

J) Sentencing Sheet

Exhibit 1 J
FILED 1-25

STATE OF SOUTH CAROLINA

NOV 14 2016

IN THE COURT OF GENERAL SESSIONS

COUNTY OF FLORENCE

JAMES R. PARKS

STATE

CLERK, STATE GRAND JURY

INDICTMENT/CASE#: 2015-GS-47 - 22 (Count 1)

TIMOTHY LEVERNE JOHNSON

A/W#: DIRECT PRESENTMENT

AKA: TIMMY, FAT BOY

Date of Offense: 1/1/2011 - 10/22/2015

Race: B Sex: M Age: 35

S.C. Code §: 44-53-370(e)(3)(c)

DOB: 1/1/1979 SS#: Age: 35

CDR Code #: 0149

Address: 127 SOLOMON CIRCLE

City, State, Zip: NESMITH, SC 29580

DL#: SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☒

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was
TO: TRAFFICKING HEROIN, 4-14g, CONSPIRACY

☐ CONVICTED OF or ☒ PLEADS

In violation of § 44-53-370(e)(3)(a)(1)

of the S.C. Code of Laws, bearing CDR Code # 2361

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST-SERIOUS

☐ Mandatory GPS ☐ \$17-25-45

The charge is: ☐ As Indicted, ☒ Lesser Included Offense

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence

☐ Defendant Waives Presentment to Grand Jury (def.'s initials)

☐ Recommendation by the State

ATTEST

Assistant Attorney General

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the

State Department of Corrections

County Detention Center

for a determinate term of

19 days/months/years or

under the Youthful Offender Act not to exceed

years

and/or to pay a fine of \$

plus costs and assessments as applicable, the balance is suspended with probation for

days/months/years and/or payment

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on

2015-GS-47-22 (Count 1)

☐ 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

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

Pursuant to 18 U.S.C. Section 322, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP:

Total: \$ plus 20% fee: \$

days/hours Public Service Employment:

Payment Terms:

Obtain GED: ☐

☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp.:

Recipient:

May serve W/E beginning

Substance Abuse Counseling: ☐

*Fines:

Random Drug/Alcohol Testing: ☐

\$14-1-205 (Assessments 107.5%)

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

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

\$56-5-2995 (DUI Assessment)

\$56-1-285 (DUI Breath Test)

Proviso §1.6 (Public Def/Probation)

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

\$14-1-213 (Drug Court Surcharge)

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

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

3% to County (if paid in installments)

\$100

\$100

\$12

\$25

\$500

\$25

\$150

\$50

\$40/ea

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other: Sentencing Deferred

☐ Appointed PD or appointed other counsel, Proviso §1.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Order: 2015

Sentence Date: 11-14-16

SCCA/2.17 (07/2016)

Exhibit 5

Preliminary Hearing Transcript

Exhibit 2

STATE OF SOUTH CAROLINA)
) COURT OF MAGISTRATE
COUNTY OF WILLIAMSBURG)
THE STATE,)
)
Plaintiff,)
-vs-) PRELIMINARY
)
TIMOTHY L. JOHNSON,)
)
Defendant.)
)

MAGISTRATE The Honorable Randy Foxworth
DATE: April 15, 2015
TIME: 10:05 a.m..
LOCATION: Williamsburg County Magistrate's Office,
Kingstree S. C.
TAKEN BY: Mr. Charles David Barr
TRANSCRIBED BY: Andrea R. Kelly

APPEARANCES:

FOR THE STATE:

Deputy Watson
Williamsburg County Sheriff's Office
Kingstree, S. C. 29440

FOR THE DEFENDANTS:

Mr. Charles David Barr
Barr and Barr
P. O. Box 83
Kingstree, S. C. 29556

ANDREA R. KELLY
401 WITHERSPOON DRIVE
KINGSTREE, S. C. 29556
PHONE: 843-354-7169

1 Magistrate Foxworth Good morning. These are preliminary hearings
2 this on this 15th day of April, 2015.. We will
3 begin by getting some things either continued or
4 dismissed and so forth.

5 Solicitor, call your next case? Please state your
6 name for the record also and the agency that you
7 work for.

8 GLEN WOODS, HAVING BEEN DULY
9 SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION BY MR. BROWN:

11 Q Glen Wood, South Carolina Law Enforcement
12 Division.

13 Magistrate Thank you very much. Please answer any
14 questions the Solicitor has for you.

15 Q Is it special agent Woods?

16 A Yes, sir.

17 Q And Special Agent Woods, what law enforcement
18 division do you work in this state?

19 A With the South Carolina Law Enforcement
20 Division commonly referred to as SLED.

21 Q Okay. And can we refer to it as SLED here
22 today?

23 A Yes, sir.

24 Q What division do you work with in SLED?

25 A I work in the narcotics and alcohol unit.

1 Q

And do you work here in the Pee Dee region?

2 A

Yes, sir.

3 Q

Was there an occasion where you and other members of SLED and/or Joint Task Force with the Law Enforcement Division had the occasion to investigate a Mr. Timothy Levern Johnson?

4

5 A

Yes, sir.

6 Q

And was he a co-Defendant with Ms. Dawn Riley that y'all investigated?

7

8 A

Yes, sir.

9 Q

Can you please tell us how that investigation began?

10

11 A

In February of 2015, myself and other law enforcement agents approached two individuals who in the meantime decided to cooperate with us and become confidential informants.

12

13

14

15 Q

Okay:

16 A

They provided us information that they were couriers or people that traveled to pick up heroine fro Mr. Johnson, and they would leave Hemingway or the Hemingway area and deliver money to New York, the City of New York.

17

18

19

20

21 Q

New York City?

22 A

New York City.

23 Q

In New York state?

1 A

Yes, sir, in New York state, and more specifically in the Harlem area, and they would return back with a quantity of heroine. They would deliver it to Mr. Johnson and Ms. Riley, most of the time at Mrs. Riley's residence.

2
3
4
5
6 Q

Ok, and having met these confidential informants did y'all begin to form a plan about how to investigate this?

7
8
9 A

Yes, sir.

10 Q

And can you please tell us about that plan?

11 A

The two confidential informants decided that they were going to cooperate with law enforcement, and that being said on February 17, I referred to one of the CI's as CI-1 and CI-2, CI-1 Was contacted by Ms. Dawn Riley to go with her to the Enterprise Rental Dealership in Florence, to get a rental car. They traveled and got a Toyota Corolla, and they traveled back to Ms. Riley's house and Ms. Riley gave CI-1 her Honda Accord to take home and said standby that Mr. Johnson would be calling you or CI-2 when to leave to make the trip.

12
13
14
15
16
17
18
19
20
21
22
23 Q

Okay.

24 A

The following morning I was contacted by CI-2 and was informed that he had been advised by Mr.

25

1 Johnson that everything was ready and to come
2 on. He explained to me that that meant that all
3 the arrangements had been made, and for the two
4 CI's to travel to Ms. Riley's house and pick up the
5 vehicle and go towards New York.

6 Q Based on them telling you this what did they do
7 next?

8 A They came and met with us in a location in
9 Florence County where we searched the vehicle,
10 and then provided them some electronic
11 surveillance equipment where we could monitor
12 them for their safety and also to record any
13 conversations that would occur at Ms. Riley's
14 house. They departed from that location and
15 traveled to Ms. Riley's house in Williamsburg
16 County on Henry Road.

17 Q Is that in the Hemingway community?

18 A Yes, sir, outside of the Hemingway community.

19 She provided them the keys to the vehicle, and I
20 think the vehicle was running. She handed CI-2
21 three hundred dollars and I think it was six wax
22 packets of heroine that were stamped Safe House.

23 Q Does Safe House mean anything to you?

24 A Safe House during this investigation and it
25 extends back for some years, each packet of those

1 wax slips have got unique stamps on them, and
2 for the last several months when we were doing
3 controlled purchases and other law enforcement
4 actions, we were seeing a lot of Safe House, and it
5 was a unique stamp. Based on my experience a
6 lot of times based on geographical locations and
7 time, you can use those stamps to kind of tie
8 people and an investigation together.

9 Q Were their prior drug distributions made by
10 Timothy Johnson in the Williamsburg Community
11 that also had Safe House stamped on top of the
12 heroine?

13 A I'm not sure that there were any prior ones that he
14 distributed that had Safe House, but let me refer
15 to my notes.

16 Q Please.

17 A On December 11, 2014 Williamsburg County
18 Sheriff's office conducted a controlled purchase
19 from Mr. Johnson at his residence, and he
20 delivered two, CI-3, ten packets of heroine that
21 were labeled Safe House.

22 Okay, so y'all had seen him sell Safe House
23 before?

24 A Yes, sir.

25 Q Go on please. What happened next, and I think at

Exhibit 2A

Preliminary Hearing Transcript from (4-15-15) for Trafficking Heroin, "Specifically page 18, lines 13-16", are actual evidence that proves defendant was not involved in the trafficking charge that he was arrested for.

Officers committed the crime of Trafficking Heroin when he admitted crossing the South Carolina state line to purchase heroin with informants; page 6, lines 1-2; page 18, lines 22-25. New York City Police department states that they did not give or receive any orders allowing or agreeing to allow South Carolina Law Enforcement Division to execute a drug buy or to investigate a drug buy in the State of New York City. This has to be a tactic by the South Carolina Law Enforcement Division because they are sure that S.L.E.D is aware that it is illegal to do such things in another State that would result in their arrest.

Officers executed an illegal buy and investigation because they are employed by the State of South Carolina and do not have jurisdiction to cross State's line.

False arrest—Officer testified that he conducted a 72 hour audio/video investigation (February 17-19) in which the defendant was not involved in at no time, but Officer arrested him for it anyway; page 16, lines 23-25; page 17, lines 1-3; page 17, lines 12-20; page 18, lines 13-16; page 21, lines 14-19.

Officer testified that he arrived in Williamsburg County at 11 AM where he then executed simultaneous searches of defendant and 1 of other co-defendants home. Defendant was not present at either home. This resulting in an illegal search of defendants home because the search warrant was issued at 1:20 PM after Officers had already arrested and searched defendants home; page 10, lines 10-12; page 19, lines 15-18.

No probable cause because Officer knew defendant was not involved in the 2-19-15 trafficking heroin crime before and after his trip to New York City to purchase heroin, but still had him arrested. Defendant was served the arrest warrant the next day after he was arrested.

This transcript was sent to the defendant on February 18, 2021 along with other material evidence from defendant's attorney. This was new evidence at that time. Defendant attempted to file a motion for new trial at that time but was constantly ignored by Florence County, Williamsburg County and the State Grand Jury Court System.

1 this point we are now at Dawn Riley's house
2 where she had given I believe you said thirty
3 packs of Safe House heroine and three hundred
4 dollars. What happened then?
5 A It was six packets of heroine.
6 Q Six, my apologies.
7 A Six packets that were labeled Safe House and
8 three hundred dollars in one dollar bills.
9 Q Okay.
10 A They left her house and met back with law
11 enforcement. We searched the vehicle and they
12 surrendered the six packets of heroine that were
13 labeled Safe House, the three hundred dollars
14 which they had spent part of that money putting
15 fuel in the vehicle, so I think we ended up
16 counting two hundred and seventy dollars. Then
17 in the back trunk area when you lift it up where
18 spare tires are kept, was a black plastic bag that
19 was knotted and heat sealed and from their
20 previous trips they said that that was the currency.
21 I did not open the bag, but just by feeling it, and
22 manipulating the contents of the bag, it was the
23 same size, shape and consistency of currency.
24 Q What happened next?
25 A We took possession of the heroine and the

1 currency and we traveled to Manhattan, New
2 York and met with the DEA from New York City..
3 Q On the trip to New York City were there any
4 phone calls made to or from the confidential
5 informants?

6 A As we got closer CI-2 informed me that he had
7 received a call from Mr. Johnson wanting to know
8 where he was at, and what was taking so long,
9 and what time did they estimate being there.
10 Q Okay.

11 A We met with the DEA agents in New York, we
12 provided the money back to CI-2, and they
13 traveled to a location in Harlem and exchanged
14 that package of money for another package of
15 heroine. They met back with us, and we
16 examined the heroine and from our calculations it
17 appeared to be 6,000 packets of heroine.

18 Q Six thousand?

19 A Six thousand.

20 Q Go on?

21 A They had the unique Sate House stamp on those.
22 We took custody of the heroin and then returned
23 back to South Carolina. We get back in the
24 Kingstree area approximately 11:00 o'clock the
25 following day. It's about a twenty four hour round

1 trip. We did a controlled delivery of heroine to
2 Ms. Dawn Riley's house on Henry Road, in
3 Williamsburg County.

4 Q What did you do next?

5 A Immediately following we executed a search
6 warrant at her house where the heroin was
7 recovered after it had been taken out of the
8 package.

9 Q These were labeled Safe House?

10 A Yes, sir.

11 Q Have y'all had the occasion to do an official count
12 of the heroine packets and also weight?

13 A Yes, sir, the heroine was packaged and submitted
14 to the SLED laboratory on February 20, 2015 and
15 upon analysis and further count it was determined
16 to be five thousand nine hundred and ninety
17 packets of heroine and the total net weight of the
18 substance only was 274 grams.

19 Q Of heroine?

20 A Yes, sir.

21 Q Obviously this was found at Dawn Riley's house,
22 but is it your testimony here today that the
23 confidential informants received instructions and
24 support from - - -

25 Mr. Barr Objection, he's leading the witness, Judge.

1 Q

2 Mr. Barr

3 Q

4 Magistrate

5

6 Q

7

8

9

10

11 A

12

13

14

15

16

17 Q

18

19

20 A

21 Q

22

23 A

24 Q

25 A

Your Honor, I haven't finished the question yet.

You are leading him already.

And I haven't even finished the question.

Hold on, hold on; let him finish it, Mr. Barr. Go ahead.

Is it your testimony here today that Mr. Timothy Johnson and the importation of this heroine was actively helping in the planning, the instructions and the support of brining this heroine into the State of South Carolina?

The information that we had received from the CI's that were directly involved with this particular incident, and their prior trips to New York stated that Mr. Johnson instructed them and provided the currency to go to New York and come back.

And you said prior, had there been prior occasions where there were similar trips made like that?

Yes, sir.

And those prior trips was Timothy Johnson involved in those?

Yes, sir.

Was he more involved in some of those as well? From the information received from the CI's on

- 1 some occasions he was at the house and they
2 delivered the heroine packages to him.
- 3 Q And was this done in a similar fashion as those
4 prior purchases?
- 5 A Yes, sir.
- 6 Q What happened after you executed the search
7 warrant at Dawn Riley's house and found it. Did
8 y'all try to execute any search warrant at Timothy
9 Johnson's house?
- 10 A Simultaneous to the search warrant at Ms. Riley's
11 house, there was a search warrant executed at Mr.
12 Johnson's house on Solomon Circle. There was
13 approximately 30 packets of heroine located at his
14 residence also labeled Safe House.
- 15 Q They were labeled Safe House the same as the
16 other ones?
- 17 A Yes, sir, and also approximately forty five
18 thousand dollars in currency.
- 19 Q Forty five thousand?
- 20 A Yes, sir.
- 21 Q And his house is his house as well as Dawn
22 Riley's house is in the Williamsburg community?
- 23 A Yes, sir. I think they refer to it as Nesmith.
- 24 Q Nesmith, okay. The court's indulgence.
- 25 Magistrate All right.

1 Q

2 A

3 Q

4

5

6

7

8 A

9 Q

10

11

12

13 A

14 Q

15

16

17

18

19 A

20 Q

21 A

22 Q

23 CROSS EXAMINATION BY MR. BARR:

24 Q

25

What else do you know about this case?

I think that pretty well sums it up.

Okay, and Timothy Johnson who is seated beside Mr. Barr is the same Timothy Johnson who has been found selling Safe House heroine before and was identified by the CI's as calling and checking on the status of their trip in this particular case?

Yes, sir.

And the same Safe House heroine that was imported from Harlem, New York down to Dawn Riley's house here in the Hemingway

Community?

Yes, sir.

And the same Timothy Johnson that was identified by CI's as having taken part in similar trips in the past with Ms. Dawn Riley and in those trips also provided money and/or transportation to help facilitate these transactions?

Yes, sir.

And this all happened in Williamsburg County?

Yes, sir.

Please answer any questions Mr. Barr may have.

Agent Glen, how long have you worked as a narcotics investigator with SLED?

1 A I was hired with SLED on March 17, 2014, so a
2 little over a year.

3 Q And before you started working as an investigator
4 in narcotics what were you doing?

5 A I was a narcotics investigator in Marion County,
6 for Marion County since October, 2007 and I was
7 also assigned to the DEA Task Force in Florence.
8 as a Task Force officer for approximately four
9 years.

10 Q During your experience in Marion or with SLED,
11 had you ever encountered drugs in the form or
12 heroine?

13 A Well, working in Marion County heroine was not
14 one of the predominant drugs that we
15 investigated.

16 Q So you had never seen any heroine packed as Safe
17 House?

18 A Not in Marion, no, sir.

19 Q And have you, other than the heroine that you saw
20 that was supposedly the one from New York,
21 have you ever actually seen any other heroine
22 packed that said Safe House?

23 A I have not seen any other packages of heroine
24 labeled Safe House, other than this investigation
25 at Williamsburg and Florence Counties.

1 Q

2

3

4

5

6

7 A

8 Q

9

10

11

12 A

13

14 Q

15

16 A

17 Q

18 A

19 Q

20 Mr. Brown

21 Q

22

23

24 Magistrate

25 A

And during the course of your investigation in Williamsburg County and Florence County, as far as it relates to heroine packaging or packaging with Safe House, have you ever seen Mr. Timothy Johnson with his hand on a package of heroine that says Safe House?

I personally have not, no, sir.

And do you have any other law enforcement officers that have seen or claimed to have seen Timothy Johnson with his hands on a package of heroine labeled Safe House?

There was that controlled purchase which was recorded via video and audio.

You say a controlled purchase, the purchase that you are talking about, it was controlled?

Yes, sir.

And it was done by a CI?

Yes, sir.

And is there an audio or video recording?

Objection, he's going outside the scope of direct.

Judge, he testified to it and is using it as a basis to identify this heroine and establish probable cause, and I think I've got a right to ask him that?

Yes, I will allow it, go ahead.

Traditionally there is an audio and video

1 recording, but I can't sit here and say for certain
2 that there is one in this instance because I didn't
3 do it.

4 Q So would it be fair to say that with respect to what
5 you asking him, you are asking him to rely the
6 integrity of two people as it relates not to this
7 incident but the other incident that you are talking
8 about when you said drugs were purchased from
9 Mr. Johnson, the integrity of a confidential
10 informant.

11 Mr. Brown I would object to the question, your Honor. Can
12 you ---

13 Q Is that what you are doing?

14 Mr. Brown I have an objection your Honor.

15 Magistrate Mr. Barr, I sustain the objection.

16 Q Tell me this much, you said that heroine was
17 purchased from his house at an earlier occasion.

18 A Yes, sir.

19 Q Tell me why you are in the court room today, as
20 far as what his charge is now, when are you
21 claiming that he trafficked in heroine?

22 A We are here today specifically in reference to the
23 incident of the trafficking heroine between
24 February 17 and February 19, 2015.

25 Q And as far as any other alleged, distribution of

1 heroine, you're not prosecuting that in this case?

2 A Not today.

3 Q And of course, being a law enforcement officer
4 you knew it was a violation of the law, generally
5 you would make certain that somebody get
6 arrested for it, right?

7 A We attempt to, yes, sir.

8 Q Have you ever arrested Mr. Johnson before for
9 heroine distribution other than on the occasion
10 that you are talking about here when you said he
11 was trafficking?

12 A I myself have not, sir.

13 Q Are you aware of him ever having been arrested
14 before?

15 A I think he was arrested earlier in 2014.

16 Q How about the incident that you are talking about
17 that you mentioned earlier when you said he sold
18 heroine to a customer?

19 A On December 11, the later part of last year?

20 Q Yes, sir.

21 A No, sir, he has not been arrested for that.

22 Q Look at the confidential informants, CI-1 and
23 CI-2 that you said went to New York, and you
24 traveled with them to New York?

25 A Yes, sir, it was a long trip.

1 Q

Did you make any stops?

2 A

We got gas a couple of times.

3 Q

And had you ever used these two people to accomplish a drug transaction prior to this time?

4

5 Mr. Brown

Your Honor, I would ask for a limited objection to anything that this investigator feels might identify the identity of the confidential informants that he be able to not answer those questions.

6

7

8

9 Magistrate

Yes, I sustain that. Within the scope of the identification of the CI's, you can respond to the question.

10

11

12 Q

Judge, if the men exist and they are witnesses, I'm going to get their names anyhow, but I'm not asking him to tell me what they are now but I will get them.

13

14

15

16 Magistrate

But for the purposes of this hearing right now - - -

17 Q

I haven't asked. As far as the two people you are talking about, have you ever used them before?

18

19 A

Yes, sir.

20 Q

And is there a recording or you indicated that this drug purchase was orchestrated by Mr. Johnson.

21

22 A

Yes.

23 Q

Do you have a recording of any conversation between Mr. Johnson and CI-1 or CI-2 prior to the time that you and the confidential informant

24

25

1

left and went to New York?

2 A

No, sir. There are some partial recordings but I wouldn't call them quality.

3

4 Q

Do you have a recording from any phone conversation which took place either in traveling to New York before you picked up heroine or after you returned from New York after you claim you and some other people went and bought heroine?

5

6

7

8

9

10 A

Any recordings?

11 Q

Yes, sir.

12 A

There is one that is just a partial recording but to the extent of your question, no, sir, I don't feel comfortable saying I have one.

13

14

15 Q

You don't feel comfortable telling this court that you have a recording whereby you can substantiate that Mr. Johnson ever had a phone conversation or a phone call or received a phone call from any of your confidential informants?

16

17

18

19

20 A

I don't have a recording, no, sir.

21 Q

Of course, if you don't have a recording then what you are saying is you are relying on what the two drug dealers told you?

22

23

24 A

And telephone tolls.

25 Q

Telephone tolls?

1 A

Yes, sir, or records of the telephone company that match, tolls.

2

3 Q

And you don't know what was said if anything?

4 A

No, sir.

5 Q

Do you know who the phone calls were made to?

6 A

As far as I can't say specifically that's his number at this time.

7

8 Q

You said that you conducted a search of Mr.

9

Johnson's residence, and found heroine. As I

10

understand it, that's not the heroine that you are

11

charging him with?

12 A

He has not been charged at this time.

13 Q

And you are charging him with heroine that you

14

found at somebody else's house, and in somebody

15

else's possession?

16 A

Yes, sir.

17 Q

Of course, you would admit that or initially you

18

indicated that CI-2 called Mr. Johnson or Mr.

19

Johnson called him and there was a phone

20

conversation which arranged the heroine purchase

21

to begin with. You don't know whether that was

22

true or not, do you?

23 A

I don't have any proof of it other than what the CI

24

told me. I know the CI informed me that he

25

received a phone call and he said everything was

1 on go, and go to Dawn's house and get the
2 vehicle, and they went and got the vehicle.

3 Q They got the vehicle from Dawn?

4 A Yes, sir.

5 Q Did you ever see Mr. Johnson at Dawn's house?

6 A I did not see Mr. Johnson at Dawn's house.

7 However, Investigator Shannon Coker of the
8 Williamsburg County Sheriff's Office did observe
9 Mr. Johnson leave his house and travel to Dawn's
10 house at the same time that I was informed by CI-
11 2 that he had received a telephone call. Mr.

12 Johnson stayed a short period of time and left. Mr.
13 Johnson was not at the house when we got there
14 with the vehicle.

15 Q He wasn't at the house with any drugs there as far
16 as you know?

17 A I can't say that he was. I was there at the same
18 time he was not.

19 Q Didn't Shannon take him and bring him there?

20 A This is prior to going to New York?

21 Q What did Shannon take him there for?

22 A Shannon didn't take Mr. Johnson there. Shannon
23 was observing Mr. Johnson travel and Mr.
24 Johnson traveled in this vehicle on his own
25 accord that morning prior to us going to New

1 York.

2 Q I have no further questions at this time.

3 REDIRECT EXAMINATION BY MR. BROWN:

4 Q Every briefly. You mentioned this telephone
5 call?

6 A Yes, sir.

7 Q Can you tell us a little bit about that.

8 A Initially when we talked to the CI's, to get
9 information to corroborate their stories, and I did
10 order tolls on the numbers that they provided to
11 me that were specifically how they said they
12 communicated with Mr. Johnson. I did get
13 instances showing where they were
14 communicating with that number, and the number
15 does come back to Mr. Timothy Johnson. I don't
16 know what they talked about on the telephone but
17 I do know there was conversation.

18 Q But it shows from the record that they were
19 getting phone calls?

20 A Yes, sir.

21 Q And they in turn had cell phone calls out, is that
22 correct?

23 A Yes, sir.

24 Q Also, did you testify earlier about something that
25 Dawn told them about when they would be

1 contacted? The day that they were to pick up the
2 car, did Dawn tell you that they were contacted
3 while traveling?

4 A Ms. Riley told CI-1 to be ready, and they would
5 be contacted this evening or first thing the
6 following morning.

7 Q And did she in fact say they were contacted?

8 A She said I hate to say, and be wrong.

9 Q You don't recall at this time?

10 A Yes, sir.

11 Q I just wanted to make sure. I have no further
12 questions.

13 RECROSS EXAMINATION BY MR. BARR:

14 Q The conversations that you are talking about were
15 made, do you know who was on the phone?

16 A No, sir.

17 Q So you certainly don't know whether or not it was
18 Mr. Johnson?

19 A No, sir.

20 Q Thank you.

21 Magistrate Solicitor, anything to summarize.

22 Mr. Brown Nothing further, your Honor from this witness.

23 Magistrate Mr. Barr?

24 Mr. Barr I have an argument. Judge, I have never seen
25 such a sorry case. Distribution for crack/cocaine

1 requires possession. It requires a certain quantity
2 of cocaine, and it's different from possession with
3 intent to distribute. IT's different from
4 distribution, distribution is when you transfer
5 cocaine. Possession with intent to distribute can
6 be applied from circumstances or whatever, but
7 there has to be some cocaine somewhere. There
8 has to be possession. Now, in many instances the
9 intent to distribute is implied from money or
10 quantity, but when you are dealing with the
11 offense of trafficking in cocaine, it is defined by
12 definition as possession of a certain quantity of
13 cocaine. In this case, it is more than 28 grams,
14 but possession is one of the elements. Now,
15 possession can be shown by two ways. It's either
16 actual possession or constructive possession, one
17 of the two. If it's not one of those two, then
18 there's no distribution. What this officer has
19 testified to, he took the two crooks that he had
20 with him, and really their credibility at most if
21 you took that as true, that would be conspiracy.
22 That's what it would be, it certainly wouldn't be
23 distribution. I would move to dismiss the warrant
24 for trafficking in cocaine, because the prosecution
25 has not presented any evidence in which you

1 could reasonably conclude that this man
2 possessed cocaine, either constructively or
3 actually. Judge, whatever Tyler says, I'm sure he
4 will have something to say, it is irrelevant.
5 Mr. Brown I do.
6 Mr. Barr I would move to dismiss for lack of probable
7 cause.
8 Magistrate Mr. Brown.
9 Mr. Brown Your Honor, it would the hands of one are the
10 hands of all. There were two people who were
11 actively taking part in this, when you had
12 conspiracy and add to that fashion Dawn Riley
13 actually became Timothy Johnson's and that is
14 recognized law in the state. That being said we
15 would say for the definition of trafficking it
16 includes providing financial assistance, it also
17 includes conspiring to purchase, conspiring to
18 bring into this state, it includes constructively or
19 actively actually possessing it. I believe
20 constructive possession exists here, and I believe
21 that this is circumstantial but when you have
22 circumstantial evidence of phone calls that
23 cultivate and facilitate trafficking in itself you
24 have drug possession and the evidence of the type
25 of heroine that was being brought in, the Safe

1 House, which is already documented in some
2 other matter. You have the constructive
3 possession where he is taking part with Dawn
4 Riley and has taken part in the process with Daw
5 Riley in bringing this heroine into the state in a
6 similar fashion with these confidential informants,
7 I am very clear that we could certainly get past a
8 standard at a preliminary hearing where it is just a
9 much lower threshold even to make anything else
10 that Mr. Barr has to say would be simply a jury
11 question at a General Sessions level.

12 Mr. Barr

Judge, if I could say one thing. It's not a jury
13 question, because this issues comes before you
14 and you are the person that is charged with the
15 responsibility of making certain that the case has
16 merit before it even goes to a grand jury.

17 Magistrate

Yes, sir.

18 Mr. Barr

19 Now, assistant solicitor Tyler Brown is dead
20 wrong. Constructive possession implies dominion
21 and control. That's just the law. Unless you can
22 show dominion and control there cannot be any
23 possession. I can't very well have dominion over
24 something that's a hundred yards from me or in
25 the next town or I can't very well control it. I'm
sorry but the trafficking statute turns on

1 possession of a quantity of cocaine. It doesn't
2 turn on - - - the prosecution had evidence that he
3 committed some crime at some other point, then
4 arrest the man but what they are coming in here
5 asking you to do is to give credence to some
6 allegations about something that took place some
7 other time to boost the credibility of some
8 evidence that they have that's not really evidence.
9 You cannot get around the fact that constructive
10 possession is dominion and control and it's actual
11 possession or constructive possession. No theory
12 of the hands of one is hands of all, there is
13 nothing presented here with any aiding and
14 abetting. This is not an aiding and abetting type
15 offense. Moreover there is no evidence of that
16 because in terms of whether or not any of this
17 ever took place, we don't know, and that's neither
18 here nor there. The issue is here and now is
19 whether or not the prosecution has proven
20 possession either by way of factual possession or
21 constructive possession. I've got the dominion
22 and control over this pen, and it's in my hand and
23 that's actual possession. I've got it right here, and
24 I still have possession, and I've got dominion and
25 control over it. That's the short and the long of it.

1 Mr. Brown

2

3

4

5

6

7

8

9

10

11

12

13

14 Magistrate

15 Mr. Barr

16 Magistrate

I might clarify one point he said. You can't
dissuade dominion and control over something.
I've got dominion and control over the remote
control that is forty five minutes away at my
computer sitting on my desk. There was an active
purchase to bring it into the State, a large quantity
over 200 grams of heroine that Mr. Timothy
Johnson had a part in. He helped with financial
assistance which help traffic. He worked with
Dawn Riley so there were the hands of one are the
hands of all. I won't go into the plan from the
preponderance of the evidence but we believe we
have more than reached that level.

Anything else, Mr. Barr?

No, sir.

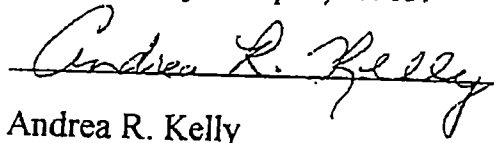
I find probable cause in this case.

1 STATE OF SOUTH CAROLINA
2 COUNTY OF WILLIAMSBURG

3 I, Andrea R. Kelly, Reporter and Notary Public for South
4 Carolina hereby certify that I reported the preliminary hearing
5 in the above matter, and the foregoing pages constitute a true and
6 correct transcription of my stenographic report.

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

10 DATED At Kingtree, S. C. this 15th day of April, 2015.

11 
12 Andrea R. Kelly

13 Reporter and Notary Public

14 My Commission expires: 1/20/2019

15
16
17
18 ANDREA R. KELLY
19 401 WITHERSPOON DRIVE
20 KINGSTREE, S. C. 29556
21

Exhibit 6

Guilty Plea Transcript

Plea Hearing Transcript Exhibit 3

State of South Carolina)
County of Florence)

In Circuit Court of the
Fourth Judicial Circuit
2015-GS-47-21; 22

The State,

Plaintiff,

vs.

Timothy Johnson

Defendant.

Transcript of Record

Marlboro, South Carolina
August 2, 2016

B E F O R E:

The Honorable Roger E. Henderson

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

Mr. David Fernandez, Esquire
Attorney for the Plaintiff

Mr. Brendan P. Barth, Esquire
Attorney for Defendant, Mr. Wilson

Lisa Carter
Circuit Court Reporter

I N D E X

PAGE

WITNESSES

(NO WITNESSES INTRODUCED DURING HEARING)
(NO EXHIBITS INTRODUCED DURING HEARING)

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

1 MR. FERNANDEZ: We can do both, Your Honor, if Your
2 Honor, wants to.

3 THE COURT: Yeah, if that's okay with you.

4 MR. FERNANDEZ: It's fine with us. Your Honor, David
5 Fernandez for the Attorney Generals Office. We would call
6 the following cases for pleas today. State v. Timothy
7 Leverne Johnson and State v. Anthony Lamont Wilson. Your
8 Honor, Timothy Johnson is charged under indictment 2015-GS-
9 47-22, Count I. He's also charged under indictment 2015-
10 GS-47-21, Counts I, II, III, IV, V, VI, VIII, XII and XIII.
11 He'll be pleading to a number of charges today, ten total.
12 Most of them -- two lesser included's of Count I on both
13 indictments and then the remaining Counts on indictment 21,
14 he'll be pleading as indicted. Those would be
15 distributions and possessions with intent to distribute.
16 I'll be more specific in a second. Now, I'll move to
17 Anthony Wilson.

18 Mr. Wilson is charged under indictment 2015-GS-47-22.
19 Under that indictment he's indicted under Counts, I, III,
20 and IV. He'll be pleading to Count I, a lesser included of
21 the trafficking by conspiracy of 28 grams or greater.
22 He'll be pleading to the trafficking of heroine 4 to 14
23 grams. Counts III and IV, are distribution of heroine
24 which he'll be pleading to as well. I have for Mr. Wilson
25 a copy, I'll pass up to, Your Honor, he had entered into a

1 plea agreement with the State and also signed sentencing
2 sheets for Mr. Wilson. At the appropriate time, the State
3 does have a recommendation for Mr. Wilson. I'll note for
4 the record pursuant to the plea agreement requires a number
5 of things including full cooperation with law enforcement.
6 To include interviews, de-briefings and testimony at trial,
7 if that becomes necessary. In addition, he waives certain
8 rights such as direct appeal and PCR with the exception of
9 PCR relief concerning your, the attorney's advise governing
10 the signing of that agreement and entering into a plea.

11 Similarity, Mr. Johnson and I'm passing forward this
12 as well, as entered into a plea agreement with the State as
13 well as signed setencing sheets.. Mr. Johnson's sentence is
14 a little different than other and that is a negotiated
15 sentence. So, Your Honor, would have to make a
16 determination whether or not you're willing to accept that
17 negotiated range.

18 In addition, Mr. Johnson has entered into the same
19 plea agreement with the exception of certain language
20 struck from the, I believe, one of the end pages concerning
21 forfeiture of assets. The State did seize a number of
22 vehicles and firearms from Mr. Johnson and in addition to
23 some cash money. The agreement that we have will be the
24 return of vehicles that, I believe, Williamsburg County
25 currently has and some firearms to his family. The State

1 will be seizing the cash money, I believe, it's about
2 \$60,000 dollars and we will provide, Your Honor, at the
3 appropriate time in sentencing, a consent order for that
4 forfeiture, more specifically outlined the precise figures
5 and the return of the vehicles. But that's why that
6 portion is struck from the agreement.

7 Specifically, Mr. Johnson is pleading to Count I, the
8 lesser included of Count I on indictment number 22, the
9 trafficking heroine greater than 28 grams. He'll be
10 pleading to the charge of trafficking heroin 4 to 14 grams
11 by conspiracy. Count I of indictment number 21, is again a
12 trafficking heroin greater than 28 grams and he'll be
13 pleading to the lesser included charge of trafficking
14 heroin 4 to 14 grams.

15 Of the remaining Counts on indictment 21, Count, II,
16 III, IV, V, VI, VII, and XII are all distribution of heroin
17 which he will be pleading to as indicted. Count XIII is
18 possession with intent to distribute which he will also be
19 pleading to as indicted. The State's negotiated range is 18
20 to 22 years and the agreement would be that all sentences
21 be, run current with each other within that range.

22 I would note for -- I would note for the record, Your
23 Honor, also that these charges or, at least, the
24 trafficking charges for both individuals are considered
25 violent and serious. I would just ask, Your Honor, to

1 outline what that means to someone who is pleading under
2 those terms. Also I've mentioned it's a negotiated
3 sentence. And, in addition, once these pleas are taken, we
4 would ask to lift the no contact order provisions of the
5 bond for those that are housed in the Florence County Jail.
6 It is a burden for the jail to constantly have to arrange
7 people so they can not contact each other. And once Mr.
8 Johnson has plead that largely remains the need for folks
9 to be separated in the first place.

10 THE CLERK: Mr. Wilson and Mr. Johnson, if you
11 would raise your right hand, I'm going to administer the
12 oath. Do you solemnly swear to tell the truth, the whole
13 truth, and nothing but so help you God. Mr. Wilson?

14 MR. WILSON: I do.

15 THE CLERK: Mr. Johnson?

16 MR. JOHNSON: I do.

17 THE CLERK: Thank you.

18 THE COURT: You said the range was from 18 to 22?

19 MR. FERNANDEZ: Correct, Your Honor,

20 THE COURT: Bear with me. We don't have much room
21 to work with up here.

22 MR. FERNANDEZ: I know it's a lot of paperwork.

23 THE COURT: Mr. Fernandez, do either one of these
24 gentlemen already have a violent, serious conviction or is
25 this ---

1 MR. FERNANDEZ: This would be their first.

2 THE COURT: It would be their first. All right.
3 Mr. Johnson and Mr. Wilson, let me make sure I've got the
4 right one, this is Mr. Johnson?

5 MR. JOHNSON: Yes, sir.

6 THE COURT: I'm going to ask you to move down a
7 little bit. This lamp is in my way. I can't see Mr.
8 Wilson. Thank you, gentlemen. And you're Mr. Kata?

9 MR. KATA: Yes, Your Honor.

10 THE COURT: We missed you the other day when I was
11 in Florence. Your name was mentioned a couple of times.

12 MR. KATA: I heard.

13 THE COURT: All right. Mr. Wilson and Mr. Johnson,
14 first thing I want to discuss with you is the fact that
15 this matter is being heard today in Marlboro County and you
16 have the right to have this heard in Florence County, do
17 you understand that?

18 MR. WILSON: Yes, sir.

19 MR. JOHNSON: Yes, sir.

20 THE COURT: Are you telling me now that you are
21 freely and voluntarily waiving venue and allow this matter
22 to be taken up in Marlboro County?

23 MR. WILSON: Yes, sir.

24 MR. JOHNSON: Yes, sir.

25 THE COURT: You're doing this after consultation

1 with your attorney, correct?

2 MR. WILSON: Yes, sir.

3 MR. JOHNSON: Yes, sir.

4 THE COURT: I'm going to ask both of your gentlemen
5 to please speak a little bit louder. My court reporter has
6 got to take down everything that is being said and if you
7 don't speak up she can't hear you, do you understand that?

8 MR. WILSON: Yes, sir.

9 MR. JOHNSON: Yes, sir.

10 THE COURT: All right. That's a little bit better.
11 Try to be better than that, if you would. All right. I
12 think the way I want to handle this, is I'm going to
13 explain each one of you, explain to each one of you at the
14 same time, your rights to a jury trial and then I'll come
15 back and sort of deal with the pleas individually with each
16 one of you.

17 Mr. Wilson and Mr. Johnson, I want you both to
18 understand that you have the right to a trial by a jury.
19 I'm sure you've discussed some of these things with your
20 attorney already but I want you to understand that. You do
21 have the right to a trial by a jury. If you decide that
22 you want to exercise that right to a jury trial, then you
23 and your attorney will participate in the selection of that
24 jury. In other words, you would have some say so in who
25 sat in judgement of you as far as the trial of the case is

1 concerned. If you decide that you want to exercise your
2 right to a jury trial, then the burden of proof would fall
3 on the State of South Carolina to convince that jury of
4 guilt beyond a reasonable doubt. The State would have to
5 convince all twelve jurors of your guilty. In other words,
6 the jury verdict would have to be unanimous one before you
7 can be found guilty of any of these charges. Your attorney
8 would have the right to confront any witnesses that testify
9 against you at that trial. In other words, your lawyer can
10 cross examine or ask questions of any witness that
11 testifies during the course of a trial against you.
12 Further, you have the right to put forth a defense on your
13 own behalf if you so desire. Included in the defense is
14 your right to testify on your own behalf. However, if you
15 wish to remain silent throughout the entire trial, you
16 have that right as well. If you exercise the right to
17 remain silent that can not be held against you in anyway
18 whatsoever. And, of course, at this stage I'm sure this
19 has already been accomplished but for the record, you have
20 the right to discover. Which means, you have right to
21 obtain from the State any and all evidence that it has in
22 it's possession that can benefit you in the preparation of
23 your defense. Now, do you gentlemen understand this
24 explanation of your rights?

25 MR. JOHNSON: Yes, sir.

1 THE COURT: All right. Let me get this straight
2 for the court reporter. If you would answer first Mr.
3 Wilson and you second and let's keep this orderly. You
4 understand this explanation of your rights, Mr. Wilson?

5 MR. WILSON: Yes, sir.

6 THE COURT: Mr. Johnson?

7 MR. JOHNSON: Yes, sir.

8 THE COURT: Do you understand that by pleading
9 guilty you give up all of these rights?

10 MR. WILSON: Yes, sir.

11 MR. JOHNSON: Yes, sir.

12 THE COURT: Do you have any questions about these
13 rights that you need to ask me at this point in time?

14 MR. WILSON: No, sir.

15 MR. JOHNSON: No, sir.

16 THE COURT: All right. Now, Mr. Wilson I'm going
17 to address you first. All right. In looking at the
18 sentencing sheet, you're 38 years of age?

19 MR. WILSON: Yes, sir.

20 THE COURT: And you live in Hemmingway, South
21 Carolina?

22 MR. WILSON: Yes, sir.

23 THE COURT: Is that in Williamsburg County?

24 MR. WILSON: Yes, sir.

25 THE COURT: Now, the offense that you are pleading

1 to it, offenses, excuse me, they took place in Florence
2 County, is that correct?

3 MR. WILSON: Yes, sir.

4 THE COURT: Do you understand that the trafficking
5 and heroin case, the conspiracy the first offense carries
6 anywhere from 7 to 25 years in prison?

7 MR. WILSON: Yes, sir.

8 THE COURT: Do you understand that the distribution
9 of heroine charges carry up to 15 years in prison?

10 MR. WILSON: Yes, sir.

11 THE COURT: Knowing the potential sentences in
12 these matter, how do you wish to plea?

13 MR. WILSON: Guilty.

14 THE COURT: Now, has anyone promised you anything
15 in order to get you to plea guilty?

16 MR. WILSON: No, sir.

17 THE COURT: Has anybody threaten you in anyway to
18 get you to plea guilty?

19 MR. WILSON: No, sir.

20 THE COURT: Are you under the influence of any
21 alcohol or drugs today?

22 MR. WILSON: No, sir.

23 THE COURT: Do you suffer from any kind of
24 physical, mental or emotional problem that keep you from
25 being able to understand things clearly?

1 MR. WILSON: No, sir.

2 THE COURT: Do you clearly understand what
3 trafficking in heroine means?

4 MR. WILSON: Yes, sir.

5 THE COURT: Do you clearly understand what
6 distribution of heroine means?

7 MR. WILSON: Yes, sir.

8 THE COURT: So you clearly udnerstand what it is
9 you're pleading guilty to?

10 MR. WILSON: Yes, sir.

11 THE COURT: All right, sir. Now, you told me you
12 understood the explanation of your rights a few moments
13 ago, are you telling me that you are freely and voluntarily
14 giving up all of yours rights in order to plea guilty to
15 these charges?

16 MR. WILSON: Yes, sir.

17 THE COURT: All right. Your plea will have a
18 recommended sentence by the State at a later point in time,
19 do you understand that?

20 MR. WILSON: Yes, sir.

21 THE COURT: Do you understand that I'm not bound by
22 any recommendation that's made by the State, that I can
23 sentence you in my discretion at the point time of
24 sentencing?

25 MR. WILSON: Yes, sir.

1 THE COURT: Okay. And you're represented by Mr.
2 Kata?

3 MR. KATA: Yes, Your Honor.

4 THE COURT: Is that correct?

5 MR. WILSON: Yes, sir.

6 THE COURT: You had enough time to talk to him
7 about all of this?

8 MR. WILSON: Yes, sir.

9 THE COURT: Has he answered all of your questions
10 to your satisfaction?

11 MR. WILSON: Yes, sir.

12 THE COURT: Are you fully satisfied with his
13 services on your behalf?

14 MR. WILSON: Yes, sir.

15 THE COURT: Do you agree he's done everything he
16 possibly can for you under the circumstances as your
17 attorney?

18 MR. WILSON: Yes, sir.

19 THE COURT: Okay. Now, I want you to listen
20 carefully because I'm going to have Mr. Fernandez state for
21 me the facts which support these charges. Once that
22 statement of facts has been made I'll have a couple more
23 questions for you. Mr. Fernandez?

24 MR. FERNANDEZ: Thank you, Your Honor. May it please,
25 the Court?

1 The Count I in regarding the overall conspiracy
2 located in Florence County but covering counties
3 Darlington, Florence, and Williamsburg. This is the
4 overall trafficking conspiracy stemming from Mr. Johnson
5 who is also here today. Large amounts of heroin would be
6 obtained from New York, a New York source where various
7 individuals would travel to New York and traveled back to
8 Williamsburg County and in an effort to then distributed
9 the heroin to other dealers who would then deal in the
10 other Tri-counties.

11 Mr. Wilson's role, his relation to Mr. Johnson, I
12 believe, they are cousins and he would be a close confident
13 of Mr. Johnson, obtain large quantities of heroin and then
14 distributed throughout the counties. Numerous confidential
15 informants as well as cooperating co-defendants identified
16 Mr. Wilson's role in the overall scheme.

17 Count III is a substantive count distribution of
18 heroin. On November 7, 2014, Florence County Sheriff's
19 Department using a confidential informant met Mr. Wilson at
20 Westover Street in Lake City, Florence County. The CI gave
21 Wilson a \$180 and in turn was provided with seven packets
22 of heroin stamped 'Safe House'. The heroin was tested by
23 laboratory and bound to be heroin. 'Safe House' is a logo
24 that was used on various heroin packets that Mr. Johnson
25 was obtaining from New York City.

1 Count IV concerns November 19th, Lake City control
2 purchased government provided a \$180 in funds and Wilson in
3 turn provided a confidential informant with seven packets
4 stamped 'Harlem Nights'. Again another logo that was used
5 by Mr. Johnson in heroin that was provided from New York.
6 Heroin was tested and found to be positive. This was
7 captured on audio/video.

8 THE COURT: All right. Mr. Wilson?

9 MR. WILSON: Yes, sir.

10 THE COURT: You heard the statements of the facts
11 which support these charges, did you not?

12 MR. WILSON: Yes, sir.

13 THE COURT: Do you agree that, that statement of
14 facts made by Mr. Fernandez is substantially correct
15 concerning all of these charges?

16 MR. WILSON: Yes, sir.

17 THE COURT: After hearing that statement of the
18 facts and after considering all of my other questions, is
19 it still your desire to plead guilty to all three of these
20 charges?

21 MR. WILSON: Yes, sir.

22 THE COURT: All right. Mr. Kata, do you believe
23 that your client fully understands all of those rights?

24 MR. KATA: Yes, Your Honor.

25 THE COURT: Do you concur in his decision to plead

1 guilty based on the facts and circumstances presented?

2 MR. KATA: Yes, Your Honor.

3 THE COURT: All right. I find that the facts
4 support the plea to all of these charges, these three
5 charges.

6 I find that Mr. Wilson has freely, voluntarily and
7 intelligently enter the plea. He has done so upon the
8 advice of competent counsel with whom he indicates he is
9 satisfied. Therefore, I'm going to accept his guilty plea
10 to all three of these charges. It is my understanding that
11 we are going to defer sentencing in this case?

12 MR. FERNANDEZ: Yes, Your Honor

13 THE COURT: Okay. As such time as the sentence is
14 handed down in this case, Mr. Wilson, you understand you'll
15 have ten days to appeal that decision?

16 MR. WILSON: Yes, sir.

17 MR. FERNANDEZ: And, Your Honor, and I don't know if
18 you did it before but if there was some language about the
19 fact that one of the charges that Mr. Wilson and Mr.
20 Johnson, two charges are pleading to involves serious and
21 violent offenses, I think that would be, this might be the
22 appropriate time to advise them of that.

23 THE COURT: When I looked a while ago, I realized
24 it was marked serious, but anyway. All right. Mr. Wilson,
25 you understand that the trafficking heroin case and charge

1 considered under our law, a violent and serious offense, do
2 you understand that?

3 MR. WILSON: Yes, sir.

4 THE COURT: Okay. You understand that in South
5 Carolina if you are convicted of three serious offenses
6 that you would be, in all likelihood, the third strike is
7 what we call it, sentenced to life without parole, you
8 understand that?

9 MR. WILSON: Yes, sir.

10 THE COURT: You understand it. So you understand
11 the serious nature of these offenses ---

12 MR. WILSON: Yes ---

13 THE COURT: --- and this offense in which you are
14 charged in which you are pleading?

15 MR. WILSON: Yes, sir.

16 THE COURT: I'm sure you've gone over this with
17 your attorney, correct?

18 MR. WILSON: Yes, sir.

19 THE COURT: And you know this and knew this at the
20 time you just entered your plea, correct?

21 MR. WILSON: Yes, sir.

22 THE COURT: Anything else from the State?

23 MR. FERNANDEZ: That's -- thank you, Your Honor.

24 THE COURT: I understand this is his first serious
25 - - -

1 MR. FERNANDEZ: It is.

2 THE COURT: --- serious offense ---

3 MR. FERNANDEZ: It would be, Your Honor.

4 THE COURT: Okay. Now, Mr. Johnson?

5 MR. JOHNSON: Yes, sir.

6 THE COURT: You're 35 years of age?

7 MR. JOHNSON: Thirty-six.

8 THE COURT: Thirty-six, now, okay. All right, sir.

9 And you live in Nesmith, South Carolina?

10 MR. JOHNSON: Yes, ma'am. Yes, sir.

11 THE COURT: Where is that?

12 MR. JOHNSON: About fifteen minutes outside of
13 Kingstree.

14 THE COURT: So it's in Williamsburg County?

15 MR. JOHNSON: Yes, sir.

16 THE COURT: Okay. Now, these offenses that you're
17 charged with took place in Williamsburg and in Florence
18 County, is that correct?

19 MR. JOHNSON: Yes, sir.

20 THE COURT: And what he pleading to Mr. Fernandez,
21 does cover those two counties?

22 MR. FERNANDEZ: That's correct. He is -- that's
23 right. Not indicted in Darlington County indictment.

24 THE COURT: All right. Mr. Johnson, two of the
25 charges that I understand you wish to plead to, are the

1 trafficking heroin charge and the conspiracy to trafficking
2 heroin, both in which carry from 7 to 25 years in prison,
3 you understand that?

4 MR. JOHNSON: Yes, sir.

5 THE COURT: Okay. The remaining charges I believe
6 are all distribution of heroin charges, one, two, three,
7 four, five, okay, distribution of heroin charges which
8 carry up to 15 years in prison, you understand that?

9 MR. JOHNSON: Yes, sir.

10 THE COURT: There's another possession with intent
11 to distribute heroin charge, it carries up to 15 years in
12 prison, do you understand that?

13 MR. JOHNSON: Yes, sir.

14 THE COURT: And there still yet another, two
15 distribution of heroin charges, which as I stated earlier
16 carry up to 15 years in prison, do you understand that?

17 MR. JOHNSON: Yes, sir.

18 THE COURT: Understanding the potential sentences
19 in these indictments, how do you wish to plea?

20 MR. JOHNSON: Guilty.

21 THE COURT: Do you understand what trafficking in
22 heroin means?

23 MR. JOHNSON: Yes, sir.

24 THE COURT: Do you understand what distribution of
25 heroin means?

1 MR. JOHNSON: Yes, sir.

2 THE COURT: You understand what possession of
3 heroin with intent to distribute means?

4 MR. JOHNSON: Yes, sir.

5 THE COURT: So you clearly understand what it is
6 you're charged with?

7 MR. JOHNSON: Yes, sir.

8 THE COURT: And you clearly understand what you're
9 pleading guilty to?

10 MR. JOHNSON: Yes, sir.

11 THE COURT: Okay. Now, I understand that your plea
12 and sentence is negotiated, is that correct?

13 MR. JOHNSON: Yes, sir.

14 THE COURT: I will tell you, at this point time,
15 that if for some reason I am unable to accept any
16 negotiated plea, I will allow you to withdraw your plea, do
17 you understand that?

18 MR. JOHNSON: Yes, sir.

19 THE COURT: Now, I'll go ahead and cover the
20 serious nature of this charge in your case. You heard me
21 explain to Mr. Wilson, did you not, the situation
22 concerning the fact that you are pleading to a violent and
23 serious offense with regards to the trafficking heroin, you
24 understand that?

25 MR. JOHNSON: Yes, sir.

1 THE COURT: All right. You understand the
2 significance of that?

3 MR. JOHNSON: Yes, sir.

4 THE COURT: You understand that if you are
5 convicted or plea to three serious offenses that would be
6 what we would consider three strikes and you could be faced
7 with a sentence of life without parole?

8 MR. JOHNSON: Yes, sir.

9 THE COURT: Okay. You clearly understand that?

10 MR. JOHNSON: Yes, sir.

11 THE COURT: Talked to your attorney about that ---

12 MR. JOHNSON: Yes, sir.

13 THE COURT: --- before you entered this plea?

14 MR. JOHNSON: Yes, sir.

15 THE COURT: Okay. Has anybody threaten you in any
16 way to get you to plead guilty, Mr. Johnson?

17 MR. JOHNSON: No, sir.

18 THE COURT: Has anybody promised you anything to
19 get you to plead guilty?

20 MR. JOHNSON: No, sir.

21 THE COURT: Are you under the influence of alcohol
22 or drugs today?

23 MR. JOHNSON: No, sir.

24 THE COURT: Do you suffer from any kind of
25 physical, mental or emotional problems that keep you from

1 being able to understand things clearly?

2 MR. JOHNSON: No, sir.

3 THE COURT: All right. You heard me explain your
4 rights to you earlier, correct?

5 MR. JOHNSON: Yes, sir.

6 THE COURT: You tell me at that time you understood
7 the explanation of your rights, is that correct?

8 MR. JOHNSON: Yes, sir.

9 THE COURT: Are you telling me now that you are
10 freely and voluntarily giving up all of your rights in
11 order to plead guilty to all of these indictments?

12 MR. JOHNSON: Yes, sir.

13 THE COURT: Okay. Now, you're represented by Mr.
14 Barth?

15 MR. JOHNSON: Yes, sir.

16 THE COURT: You had enough time to discuss all of
17 these indictments with him?

18 MR. JOHNSON: Yes, sir.

19 THE COURT: Has he fully answered all of your
20 questions?

21 MR. JOHNSON: Yes, sir.

22 THE COURT: Are you fully satisfied with his
23 services on your behalf?

24 MR. JOHNSON: Yes, sir.

25 THE COURT: You agree that he's done everything he

1 possibly can for you under the circumstances as your
2 attorney?

3 MR. JOHNSON: Yes, sir.

4 THE COURT: Can you think of anything that he
5 should've done for you that he has not done for you?

6 MR. JOHNSON: No, sir.

7 THE COURT: You are completely satisfied with the
8 services on your behalf?

9 MR. JOHNSON: Yes, sir.

10 THE COURT: Okay. All right. At this time, I'm
11 going to ask Mr. Fernandez, with the Attorney General's
12 office, to give me any additional facts that I need to hear
13 which support the charges to which you are pleading to.
14 After he has stated the facts, I'll couple more questions
15 for you so listen carefully.

16 MR. FERNANDEZ: Thank you, Your Honor. Count I of the
17 indictment number 22 concerns the overall conspiracy. Your
18 Honor, heard much about Mr. Johnson prior to today.

19 This is a conspiracy that began sometime in and around
20 the end of 2011. It's an investigation that has been
21 conducted continuously since then, ending in the
22 indictments of 2015. It covered a vast network of heroin
23 distributors, like I said before, the heroin was obtained
24 from New York City through various carriers. Brought down
25 to Williamsburg County at the residence of Mr. Johnson.

1 Mr. Johnson would then distribute that heroin which is
2 already prepackaged to his various networks of dealers in
3 the general area. He would sometimes distribute the heroin
4 personally. However, when he became aware of law
5 enforcement or somewhat aware of law enforcement
6 investigating him, he decided to take a more approach where
7 he would try to separate himself from the heroin by having
8 other people directly deal to the users and the lower
9 levels of drug dealers. That's what Count I covers of
10 indictment 22.

11 The more substantive Counts are located in the
12 Williamsburg County indictment that would be indictment 21.
13 Count I, concerns a New York trip that sled conducted with
14 confidential informants where they went to the residence of
15 Dawn Marie Riley who share children in common with Mr.
16 Johnson. He, at some point, used Ms. Riley as a drop off
17 point for his heroin and she would also collect money and
18 distribute the heroin on his behalf. She would also
19 arrange for logistics for the trips to New York by renting
20 vehicles and providing some spending cash for gas and food
21 and some heroin to get the couriers to New York City
22 because they were required heroin in order to not get sick.

23 The Count I, of this indictment, concerns a New York
24 trip that was conducted by sled with assistance of
25 confidential informants. That occurred back in February

1 17' 2015. The confidential informants went to Dawn Marie
2 Riley's house, picked up the vehicle that had been rented
3 by her, were given six packets of heroin for the trip and
4 \$300 for spending money. The pair as well as the law
5 enforcement went to New York City, obtain 120 bricks of
6 heroin from New York City and then conducted a controlled
7 delivery to Williamsburg, South Carolina within a twenty-
8 four hour span.

9 After the controlled delivery, sled and other law
10 enforcement executed a search warrant where the funds and
11 the, where the, I'm sorry, the 120 bricks were located.
12 They were all tested positive subsequent by the sled
13 laboratory.

14 Count II, concerns on March 29, 2011, control
15 purchased by sled utilizing a confidential informant at the
16 residence of Timothy Johnson which is one 127 Solomon
17 Circle in Williamsburg County. Mr. Johnson was provide a
18 \$185 in government documented funds. In exchange he was
19 provided, the CI was provided with nine packets of heroin
20 stamped 'Black Mafia Family' which is a a logo that was
21 used by Mr. Johnson obtained by the New York City source.
22 This was captured on audio/video and the heroin was tested
23 positive in a lab.

24 Count III concerns on August 23, 2012, control
25 purchased off of Mr. Johnson at his residence, same

1 residence, 127 Solomon Circle. Confidential informants
2 provided Mr. Johnson with \$900 in government funds. In
3 turn, was provided with ninety packets of heroin stamped
4 'Exxon'. Again another stamp that was traced to Mr.
5 Johnson being in New York. This also tested positive for
6 heroin.

7 Count IV, concerns on August 27th, control purchased of
8 heroin utilizing a CI on Mr. Johnson at his same residence
9 in Williamsburg County. Sled provided Mr. Johnson with
10 \$1,100 in government funds. In exchange the CI was
11 provided with the hundred and ten packets of heroin stamped
12 'Sonoco'. Heroin was tested positive by the laboratory.

13 August -- April 3, 2014, sled conducted a controlled
14 purchase of heroin utilizing a CI from Mr. Johnson at 3752
15 Henry Road which is in Williamsburg County also.
16 Confidential informant provided Mr. Johnson with a \$100 in
17 documented funds. In return was given ten packets of
18 heroin stamped 'Fat Boy'. Heroin was later tested positive
19 by laboratory.

20 Count VI, concerns April 8, 2014, controlled purchase
21 by sled utilizing another CI from Mr. Johnson at his
22 residence at 127 Solomon Circle. The confidential
23 informant provided a \$100 in government funds for ten
24 packets of heroin stamped 'Hot Sauce'. Later tested
25 positive for heroin.

1 Count VIII concerns a December 11, 2014, control
2 purchased by the Williamsburg County Sheriff's office on
3 Mr. Johnson utilizing a confidential informant at his
4 residence 127 Solomon circle. Confidential informant
5 provided Mr. Johnson \$100 in government funds in exchange
6 for four packets of heroin stamped 'Safe House'. Tested
7 positive for heroin at a later date.

8 Count XII concerns a September 9, 2015, control
9 purchased by sled on Mr. Johnson at his residence 127
10 Solomon circle, Williamsburg County. Confidential
11 informant provided \$50 in government funds for five bags of
12 heroin. This heroin was later tested positive.

13 Count XIII, finally, is the possession with intent to
14 distribute. That concerns of February 19, 2015. A search
15 warrant of Mr. Johnson's residence in Solomon circle. As a
16 result of the search, a number of cash was discovered as
17 well as twenty-five packets of heroin marked 'Safe House'
18 at his residence. This was later tested positive for
19 heroin.

20 That should govern all, I believe, ten charges, Your
21 Honor. That should address all of them.

22 THE COURT: Mr. Johnson?

23 MR. JOHNSON: Yes, sir.

24 THE COURT: Did you hear what Mr. Fernandez just
25 stated to me concerning the facts that support all of these

1 charges?

2 MR. JOHNSON: Yes, sir.

3 THE COURT: Do you agree that that statement of the
4 facts is substantially correct?

5 MR. JOHNSON: Yes, sir.

6 THE COURT: After hearing that statement of the
7 facts and considering all of my other questions, is it
8 still your desire to plead guilty to all of these
9 indictments?

10 MR. JOHNSON: Yes, sir.

11 THE COURT: Mr. Barth, do you believe your client
12 fully understands all of his rights?

13 MR. BARTH: Yes, sir, Your Honor.

14 THE COURT: Do you concur in his decision to plead
15 guilty to all of these charges based on the facts and
16 circumstances presented?

17 MR. BARTH: I do, Your Honor.

18 THE COURT: If my calculation is correct, and
19 someone can correct me if I'm wrong, Mr. Johnson is
20 pleading to offenses that could garner him 170 years in
21 prison.

22 MR. FERNANDEZ: That sounds about right, Your Honor.

23 THE COURT: If I'm correct. I realize the work
24 that has gone into this with law enforcement, the Attorney
25 General's office and from the defendant's counsel, as well,

1 Mr. Barth. An 18 to 22 year range of sentencing is, quite
2 frankly, quite a deal for Mr. Johnson, but -- so I commend
3 your lawyer, Mr. Johnson, for a job he's done on your
4 behalf.

5 MR. JOHNSON: Yes, sir.

6 THE COURT: And the Attorney General's office for
7 the tremendous amount of work they've done in brining you
8 to justice, so to speak. All that being said, I do find,
9 as I said, the facts support the plea. I'm going to accept
10 the plea, I guess somewhat reluctantly based on what I see
11 the number of years that he's faced with, but with that
12 sentencing range we can get Mr. Johnson off the street for
13 a considerable period of time. This will be, what, an
14 eighty-five percent ---

15 MR. FERNANDEZ: Yes, Your Honor.

16 THE COURT: --- service of the sentence so that's a
17 substantial amount of time. I find that Mr. Johnson's plea
18 has been made freely, voluntarily, and intelligently. He's
19 done so upon the advice of very competent counsel which
20 whom he indicates he is satisfied. So as I said earlier, I
21 am going to accept the plea based on the fact that it is
22 supported by the facts. We will be deferring sentencing in
23 his case as well?

24 MR. FERNANDEZ: We'd ask that, Your Honor. Yes, sir.

25 THE COURT: So we've got the range set so

1 sentencing will be deferred. Anything else?

2 MR. FERNANDEZ: I don't believe anything concerning
3 these two defendants, Your Honor. Just a couple of other
4 housekeeping measures for next week but nothing concerning
5 these two folks.

6 THE COURT: Thank you, gentlemen.

7 MR. KATA: Thank you, Your Honor.

8 THE COURT: Thank you.

9 (CONCLUSION OF THE HEARING ON AUGUST 2, 2016)
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

I, the undersigned Lisa S. Carter, Official Court Reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fourth Circuit Court for Marlboro County, South Carolina, on the 2nd day of August, 2016.

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

Lisa S. Carter

Lisa S. Carter

Circuit Court Reporter

September 4, 2017

Exhibit 7

Post-Conviction Transcript

State of South Carolina	)	Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2017-CP-21-00952
	)	
Timothy Leverne Johnson,	)	
	)	
Applicant,	)	
	)	
-vs-	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

February 2, 2018
Florence, South Carolina

B E F O R E:

The Honorable Michael G. Nettles, Judge

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

Jonathan Waller, Esquire
Attorney for the Applicant

Megan H. Jameson, Esquire
Attorney for the Defendant

Krystal J. Smith
Circuit Court Reporter

I N D E X

	<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
1		
2		
3		
4	Motion to Dismiss.....	6
5	Ruling on Motion to Dismiss.....	7
6	Timothy L. Johnson	
7	Direct by Mr. Waller.....	9
8	Cross by Ms. Jameson.....	21
9	Redirect by Mr. Waller.....	28
10	Brendan Barth	
11	Direct by Mr. Waller.....	30
12	Cross by Ms. Jameson.....	34
13	Applicant Rests.....	42
14	State Rests.....	42
15	Arguments of Counsel.....	42
16	Ruling.....	45
17	Court Reporter Certification.....	47
18		
19		
20		
21		
22		
23		
24		
25		

E X H I B I T S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

NO.

DESCRIPTION

ID.

EV.

(No Exhibits Presented)

COURT REPORTER LEGEND

dashes -- intentional or purposeful interruption
or change in thought
ellipses . . . trailing off
[ph] phonetically written
[sic] written as said

1 FEBRUARY 2, 2018

2 (WHEREUPON, the proceedings began at 11:13 a.m.)

3 MS. JAMESON: May I approach with the packet?

4 THE COURT: Yes.

5 MS. JAMESON: May it please the Court?

6 THE COURT: Ms. Jameson, you're recognized.

7 MS. JAMESON: This is the matter of Timothy Johnson
8 versus the State of South Carolina, Docket No. 2017-CP-21-
9 0925.

10 On October 25th, 2015, the state grand jury indicted Mr.
11 Johnson for one count of conspiracy to traffic in heroin,
12 greater than 28 grams, seven counts of distribution of
13 heroin, one count of possession with the intent to distribute
14 heroin, and one part of -- one count of trafficking heroin,
15 greater than 28 grams, conspiracy, as part of a multi-count,
16 multi-defendant indictment stemming into an investigation
17 into a heroin trafficking ring throughout the state. Brendan
18 Barth represented Mr. Johnson.

19 On August 1st, 2016, Mr. Johnson entered into a written
20 plea agreement in which he agreed to fully and truthfully
21 cooperate with the office of the Attorney General of South
22 Carolina and any local, state, and federal law enforcement
23 agents in their investigation of the importation, possession,
24 and distribution of controlled substances and related
25 activities in exchange for a negotiated sentence range of an

1 aggregate 18 to 22 years' imprisonment. As part of this plea
2 agreement, Mr. Johnson expressly waived his right to both
3 direct appeal and post-conviction relief. Mr. Johnson
4 initialed each page of this plea agreement and signed the
5 plea agreement.

6 On the following day, August 2nd, he appeared in the
7 Florence County Court of General Sessions before Judge
8 Henderson and pursuant -- pursuant to the signed plea
9 agreement, pled guilty to seven counts of distribution of
10 heroin and one count of possession with intent to distribute
11 heroin as indicted and to the lesser-included offenses of
12 trafficking in heroin, 4 to 14 grams, and conspiracy to
13 traffic in heroin, 4 to 14 grams.

14 Judge Henderson accepted his guilty plea and deferred
15 sentencing. He again appeared before Judge Henderson on
16 November 14th, 2016, for sentencing and, at that time, Judge
17 Henderson sentenced him to 19 years' imprisonment. He didn't

18 file a notice of appeal. However, he did file a timely post-
19 conviction relief action on April 13th, 2017, which the State
20 alleges is in direct violation of his plea agreement.

21 In his application, he alleged ineffective assistance of
22 counsel for failing to conduct factual and legal
23 investigation into his case, that the state grand jury was
24 unconstitutionally assembled and the evidence was
25 inadmissible, and his conviction was obtained in violation of

1 his constitutional rights when no warrants were served for
2 his arrest detention.

3 On October 6th, 2017, the State made its return and
4 partial motion to dismiss, seeking summary dismissal of all
5 claims beyond whether counsel was ineffective in advising him
6 to enter into the written plea agreement pursuant to a 2015
7 case of Sanders v. State and, at this time, the State would
8 renew our motion to dismiss all claims beyond that limited
9 ground.

10 THE COURT: All right. What do you have to say with
11 regard to that motion? We'll deal with that initially.

12 MR. WALLER: Certainly, Your Honor, and I think that's
13 appropriate. Your Honor, I think it's -- I sort of think
14 it's something that is kind of a threshold, but we need to
15 deal with that motion first to see if we're able to go
16 forward.

17 Your Honor, it's my understanding from hearing what the
18 AG just put on the record is that the -- what can be
19 challenged at this stage is the entering into the overall
20 plea agreement.

21 THE COURT: Whether the trial counsel was ineffective in
22 allowing him to enter into the plea agreement.

23 MR. WALLER: And I'm just trying to make sure I --

24 THE COURT: Isn't that right?

25 MR. WALLER: Yes, sir. That's how I understand it. I'm

1 just making sure that everybody is on the same page, Your
2 Honor.

3 THE COURT: Right. And --

4 MS. JAMESON: That is the State's position.

5 THE COURT: And do you agree with that?

6 MR. WALLER: I agree with that's what their motion is,
7 Your Honor.

8 THE COURT: Okay. Do you agree that that's the state of
9 the law as it applies to this case?

10 MR. WALLER: Unfortunately, I believe that it is.

11 THE COURT: Okay. Well, then, I will grant their motion
12 in that regard.

13 MR. WALLER: Well --

14 THE COURT: But I'll be glad to hear from you, yes.
15 That's why -- that's what I recognized you for.

16 MR. WALLER: Well, Your Honor, I think that -- I think
17 that the state of the law is that Mr. Johnson can challenge
18 the effectiveness of his attorney in entering into the plea
19 agreement.

20 THE COURT: Right.

21 MR. WALLER: I think if we defeat that motion, that I
22 think it opens up, so to speak, to having -- to be able to
23 challenge the rest. If he was ineffective in entering into
24 the plea agreement, then we wouldn't have a guilty plea.

25 THE COURT: Right.

1 MR. WALLER: So I think that Mr. -- Mr. Johnson
2 certainly -- prior to dismissing all of the other
3 allegations, certainly I think Your Honor needs to hear
4 testimony and be able to rule on their motion.

5 MS. JAMESON: If I may respond, Your Honor? I believe
6 that the -- pursuant to the plea agreement and the status of
7 the law in South Carolina, he can only raise ineffective
8 assistance of counsel on that limited issue of whether
9 counsel was ineffective in advising him to enter into the
10 plea agreement.

11 And if Your Honor finds counsel was ineffective, then
12 PCR would be granted, and he would go back and be able to
13 renegotiate a different plea agreement or proceed to trial,
14 but that he wouldn't then be able to go forward and present
15 additional claims of post-conviction relief because those
16 claims are all waived, and Sanders is clear that that's the
17 only issue we can bring before this Court at this time.

18 THE COURT: Okay. I understand your motion. You've
19 articulated it very well, but the only matter -- all of the
20 other requests for post-conviction relief other than the
21 effectiveness of trial counsel in advising the applicant to
22 enter into the plea agreement is the only matter that we're
23 going to deal with here today.

24 MR. WALLER: Understood, Your Honor.

25 THE COURT: Very good. All right. You may call your

1 first witness.

2 MR. WALLER: Thank you, Your Honor. We would call
3 Timothy Johnson.

4 THE COURT: Mr. Johnson, please come forward. I'm going
5 to ask you, if you could, to place your left hand on the
6 Bible and raise your right hand as the clerk administers the
7 oath. And watch your step.

8 THE CLERK: Do you swear or affirm that the testimony
9 you give will be the truth, the whole truth, and nothing but
10 the truth, so help you God?

11 THE APPLICANT: Yes.

12 THE CLERK: Thank you.

13 THE COURT: Have a seat in the witness chair and pull up
14 real close to that microphone and speak loudly, clearly, and
15 slowly in order that we can hear everything that you have to
16 say, and let's start with your full name, Mr. Johnson.

17 THE APPLICANT: Timothy Leverne Johnson.

18 THE COURT: And spell that last one?

19 THE APPLICANT: J-o-h-n-s-o-n.

20 THE COURT: Very good. Mr. Waller?

21 MR. WALLER: Thank you, Your Honor. May it please the
22 Court.

23 TIMOTHY JOHNSON, being first
24 duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. WALLER:

2 Q: Good morning, Mr. Johnson. How are you today?

3 A: I'm fine. And yourself?

4 Q: I'm doing well. Thank you for asking.

5 All right. Mr. Johnson, you heard Judge Nettles' ruling
6 just a second ago as to the issues we're dealing with this
7 morning; is that right?

8 A: I hear -- I heard them, but I don't quite understand it.

9 Q: All right.

10 A: So I can --

11 Q: Well, if you can answer any questions that I have for
12 you and that Ms. Jameson has for you, we'll -- we'll proceed
13 in that fashion. Does that sound good?

14 A: Yes, sir.

15 Q: All right. Mr. Johnson, by way of background, when you
16 were first charged with these allegations, who was your
17 attorney?

18 A: When I was charged, I had -- Benjamin Stitely
19 represented me on the distribution charge, but I got indicted
20 a week later and I had no attorney. I filed for legal
21 representation from the State, and they never assigned me
22 anybody. They assigned Mr. Barth to me I think in June.

23 Q: Okay. And let me ask you this way. Were -- did you
24 have some charges that were local charges? County charges?

25 A: All my charges was out of Williamsburg County. I had no

1 Florence County charges.

2 Q: Okay. And then after that, those charges were adopted
3 by the state grand jury?

4 A: Yes, sir.

5 Q: Okay. And you were indicted on those charges by the
6 state grand jury?

7 A: Yes, sir.

8 Q: Okay. And that's how you got Mr. Barth?

9 A: Yes, sir.

10 Q: Okay. How long after the state grand jury picked up the
11 charges did Mr. Barth get appointed to represent you?

12 A: The state grand jury charged me the 11th or -- November
13 11th or November 13th of 2015. I immediately requested
14 representation the 18th of November. I wasn't assigned Mr.
15 Barth until June 10th I believe.

16 Q: Okay.

17 A: At that time, he came and saw me right then.

18 Q: Okay. When you -- when the charges were adopted by the
19 state grand jury, did you have a bond setting in Columbia?

20 A: No, sir. It was in Florence.

21 Q: It was in Florence?

22 A: Yes, sir.

23 Q: Okay. And what was your bond set at?

24 A: I was already on a \$500,000 cash for one distribution,
25 and they added another 500,000 to that and gave it a million

1 dollar million cash bond.

2 Q: Okay. So this might seem like a silly question. Were
3 you able to make that bond or were you incarcerated?

4 A: No, sir. I wasn't able to make the bond. I couldn't do
5 anything because I didn't have any legal representation. I
6 wrote Ms. Margaret Self requesting it. I wrote Judge Hood.
7 I wrote David Fernandez. Nobody assigned me any legal
8 representation until June.

9 Q: Okay. Because you didn't have a lawyer, did you have
10 access to any discovery materials or anything like that?

11 A: No, sir.

12 Q: When Mr. Barth got appointed to represent you, you said
13 it was June?

14 A: Yes, sir.

15 Q: Did he have any discovery materials?

16 Q: He came to see me that Saturday and informed me that he
17 was assigned to me and he gave me, first, a notice from the
18 judge saying that I could not keep the Rule 5, that he could
19 only show it to me.

20 Q: Okay. Was that a protective order? Do you know? Is
21 that how it was explained?

22 A: I don't know if it was a protective order. It was just
23 the judge's order. He said the judge said I can't keep it.
24 I could only see it.

25 Q: Okay. So you understood you could see it with him, but

1 you couldn't have a copy of it?

2 A: That's it. Yeah.

3 Q: Okay. How many times did you and Mr. Barth meet?

4 A: That one time, he met me -- I want to -- the 10th or
5 11th. It was a Saturday morning. He came up there and we
6 went through that, and they took me to a plea hearing that I
7 know nothing about the end of July, and Mr. Barth wasn't
8 present. I didn't know anything about a pre-hearing.

9 My family contacted him and the officers in the court
10 that day contacted him too wanting to know what was going on.
11 He came to see me after that and told me that he didn't know
12 anything about that either. That's why he wasn't there.

13 He came to see me -- when he came to see me to explain
14 that to me, at that time he told me they was ready to proceed
15 to court, and I was, like, how can we proceed to court if you
16 had not got any of the evidence that I told you would prove
17 that I was innocent of the charge and you ain't had time to
18 go over the case, period. I asked him to file a motion of
19 continuance and he didn't.

20 Q: Okay. So let me see if I understand what you just
21 testified to. You and Mr. Barth met on two separate
22 occasions; is that right?

23 A: Yeah. The first time in June and the next time after a
24 plea hearing.

25 Q: Okay. And the second one that he told you that y'all

1 were -- they were ready to get started with your case?

2 A: Yeah. He said the AG's office contacted him and said
3 they were ready to proceed forward. Him and one of his
4 colleagues came to see me. I don't know his name.

5 Q: Okay. And I know Ms. Jameson read into the record what
6 charges you were facing, but, if you can, what -- what do you
7 remember of the charges? How many charges and what they
8 carried?

9 A: I want to say eleven charges.

10 Q: Okay. And how much time were you facing?

11 A: Twenty-five to 40.

12 Q: On each of them?

13 A: No. I think -- I'm not sure if it was a combination of
14 all the charges or -- I'm not sure. I'm not -- I wasn't
15 familiar with the legal system; so I didn't know.

16 Q: Okay.

17 A: And at the time, I explained to him these charges I
18 didn't do and he was, like, there was nothing he could do for
19 me.

20 Q: Okay. And just for clarification, does it sound right
21 that the two trafficking charges would have been 25 to 40?

22 A: Yes, sir.

23 Q: Okay. And the other charges, the distribution charges,
24 would have been less, but still substantially severe
25 penalties?

1 A: Yes, sir.

2 Q: Okay. And you said you had eleven? Eleven total
3 charges?

4 A: I believe so.

5 Q: Okay. You testified just a second ago that Mr. Barth
6 told you there wasn't anything he could do for you. Okay.
7 So at some point, you made the decision to enter into a plea?

8 A: At that time, he came -- when he came to see me, that's
9 what he said. He had recommended to take a plea because all
10 my co-defendants had already took a plea to testify against
11 me, which I later found out was a lie, and he had not
12 received -- tried to retrieve the evidence that I asked him
13 to do or he didn't file any of the motions on my behalf,
14 which he should've done which would have ultimately dismissed
15 a majority of the charges. I asked to view the videos that
16 were alleged that I did that they say they had of me making
17 distribution sales, but I was told I wasn't allowed to see
18 the video.

19 Q: Okay. When you decided -- understanding all of that
20 that you just testified to, at some point though you did
21 decide to plead guilty; right?

22 A: After him and the officers met with me and brought one
23 video. And when I saw the video, I told him -- I said, well,
24 this video a lie. I got evidence that prove I wasn't there
25 that time and date. That video was reconstructed. If you

12
1 look at the video, it would show you that it was tampered
2 with.

3 Mr. Barth told me, well, it's just one video. There's
4 nothing we can do. Everybody already took a plea to tell
5 against -- tell on you or say it was you. So just take the
6 plea and salvage your life. Okay.

7 From that time, basically what you're telling me is I
8 got a gun, I'm going to shoot you. It's your choice whether
9 you get shoot in the head or the leg. You can get shoot in
10 the head and you know it's over, which is the 40 years. You
11 can get shoot in the leg, and salvage some of your life,
12 which is the 18 to 22 years. I had no other option. He
13 didn't do anything to defend me.

14 Q: And, Mr. Johnson, I certainly sympathize with that
15 difficult decision. To use your example though, you chose to
16 get shot in the leg; is that right?

17 A: Yes, sir.

18 Q: You said you didn't have any choice?

19 A: There's nothing -- nothing else he could do for me.

20 Q: Okay.

21 A: If I go to trial, he guarantee me -- I think the judge
22 was Mr. Henderson at the time and he said he's a family court
23 judge, he hate drug dealers, I'm getting the ultimate.

24 Q: Okay. When you agreed to plead guilty or when you
25 decided to plead guilty, do you recall signing an eight-page

1 contract about a plea?

2 A: I was in handcuffs. Nothing was explained to me. They

3 just said, well, you're going to take this plea, sign this

4 and initial here, initial here.

5 Q: Okay.

6 A: Nothing was read. I didn't -- I don't know. My

7 ignorance to the law played against me.

8 Q: Okay.

9 A: Nothing was explained to me.

10 Q: Did you read all eight pages of that contract?

11 A: No, sir.

12 Q: Okay. Did you and Mr. Barth discuss the contract

13 itself?

14 A: No, sir. What we did was, he -- I was in handcuffs. He

15 said put your initial here, put your initial here, flipped

16 the page and tell me where to sign it. That's it.

17 Q: Okay. Did you -- do you recall any of the parts of the

18 contract where you waived certain things?

19 A: I think forfeiture -- forfeiture of money.

20 Q: Okay. Do you recall that?

21 A: Yes. I remember it.

22 Q: Okay. Do you recall agreeing to submit to a polygraph

23 examination?

24 A: No. We never talked about no polygraph.

25 Q: You never talked about it? Okay. Do you recall

1 agreeing to cooperate with the State?

2 A: That's a part of the plea. He said that I had to answer
3 whatever questions they did. At the time, Mr. Ross came to
4 see me after that and said I had -- it was -- being that I
5 took the plea, I had to take the stand against the witnesses.

6 I said, well, if the plea said I've got to take the
7 stand, I'm not going to get up here and lie because that was
8 at that time he find out one of my co-defendants actually
9 didn't take the plea and he wanted me to get up there and
10 testify a lie and say that I was dealing with the man, but I
11 couldn't say that because he was in prison.

12 Q: Okay. Did you -- do you recall agreeing to -- you
13 talked about forfeiting cash. Do you recall agreeing to
14 forfeit other property or anything like that?

15 A: No. There was no forfeiture of property, just
16 forfeiture of the money, and the guns and the vehicles was
17 supposed to be turned over to my family.

18 Q: Okay. All right. And finally, did you -- do you recall
19 agreeing to not file an appeal or file a PCR?

20 A: I never know what a PCR or an appeal was until I got to
21 prison, sir.

22 Q: Okay. Have you ever been in the Department of
23 Corrections before?

24 A: No, sir.

25 Q: Have you ever filed a PCR on other charges?

1 A: No, sir. I've never been in no trouble.

2 Q: Okay.

3 A: Again, my -- my ignorance and knowledge to the law was
4 used against me.

5 Q: Okay. Did you and Mr. Barth ever discuss paragraph 16
6 on page 7 of this contract that you signed, the plea
7 agreement, which was your waiving your rights to file a PCR?

8 A: No, sir. He just flipped the papers and said give your
9 initials -- put your initial here, put your initial here.
10 This is the plea for the 18 to 22, and we're going to try to
11 get you the lower end of the 18 to 22.

12 Q: Okay. And you did initial each page; is that right?

13 A: Yes, sir.

14 Q: Okay. Did you and Mr. Barth have any other chance to
15 talk about this contract?

16 A: No, sir.

17 Q: Okay. Did you and Mr. Barth ever talk about an appeal?

18 A: No, sir.

19 Q: Did y'all ever talk about a PCR?

20 A: No, sir. I didn't -- I wasn't aware I could do any of
21 those things until I got to prison and started going to the
22 library. That's when I wrote Mr. Barth and asked. I didn't
23 even know that the PCR would be against him because I wrote
24 him and asked him to file it for me. I didn't know anything
25 about the law.

1 Q: Okay. Did he respond when you asked him that?

2 A: Yes. He said he wouldn't. He don't recommend me to do

3 it because I was facing the 40 years, and the judge told me

4 he could have given me 150 years, something along that line.

5 Q: Okay. Did he tell you you had waived your ability to

6 file one?

7 A: He mentioned that in that letter.

8 Q: Okay.

9 A: And I told -- I wrote him back, telling him that he

10 never told me that then.

11 Q: Okay. And ultimately, you did -- you did file a PCR,

12 obviously? That's why we're here.

13 A: Yes, sir. I didn't know anything about that.

14 Q: Okay. Mr. Johnson, right above where you -- you finally

15 signed on August 1st, it again acknowledges that you're

16 waiving your right to file an appeal or file a PCR?

17 A: Yes, sir.

18 Q: Did you have a chance to read that before you signed it?

19 A: No, sir. I was taken in the back right before I went

20 up by Mr. Barth and Mr. Fernandez, and they went over this

21 with me and said, well, if you say anything other than the

22 lines what you're told, the judge is going to deny your plea

23 and you will get the 40 years.

24 Q: Okay. Mr. Fernandez, for the record, is the assistant

25 attorney general?

1 A: Yes, sir.

2 Q: Prosecuting the case?

3 A: Yes, sir.

4 Q: Okay. Mr. Johnson, I've asked you all the questions
5 that I have. Is there anything else specifically about the
6 contract only that I have left out that the judge needs to be
7 aware of?

8 A: Just that I didn't know. Nothing was explained to me.
9 I was just told to sign. I did as I was told.

10 Q: Okay.

11 MR. WALLER: Please answer any questions that Ms.
12 Jameson has.

13 MS. JAMESON: May it please the Court.

14 THE COURT: Ms. Jameson, you're recognized for cross-
15 examination.

16 MS. JAMESON: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. JAMESON:

19 Q: Mr. Johnson --

20 A: Yes, ma'am.

21 Q: I believe you testified that you met with your attorney
22 the day you signed the plea agreement; correct?

23 A: My attorney and the officers.

24 Q: And the officers? What officers?

25 A: SLED agents.

1 Q: All right. So you didn't go over the plea agreement
2 with him one-on-one with you and Mr. Barth?

3 A: No, sir. No, ma'am.

4 Q: Someone from the State was there the whole time?

5 A: They stepped out. The officers stepped out, and me and
6 him was in there and he told me to sign the paperwork.

7 Q: How long did the officers step out for?

8 A: Until he finished the paperwork and left.

9 Q: How long was that?

10 A: I can't recall the exact time.

11 Q: Can you give us an approximation?

12 A: Maybe five or six minutes.

13 Q: And you testified he just told you to initial the bottom
14 of each page and then sign?

15 A: Yes, sir. Yes, ma'am.

16 Q: But he didn't explain any of that to you?

17 A: No, ma'am. We didn't go over anything. He did that. I
18 signed it. He walked out the door. Him and the officers was
19 high-fiving.

20 Q: So your testimony is your attorney was high-fiving the
21 SLED agents?

22 A: Yes.

23 Q: After the plea agreement?

24 A: Yes. They stepped out the door and, before the door
25 slammed, I see them shaking hands and hugging each other.

1 Then the -- then the officer came in and said you should --
2 he said I should be thankful for Mr. Barth.

3 Q: So your attorney was hugging the SLED agents after you
4 entered into the plea?

5 A: After I entered the plea, like.

6 Q: What happened after you entered the plea agreement?

7 A: They took me back to my cell.

8 Q: When did you see your attorney again?

9 A: I'm not sure how long.

10 Q: Did you plead guilty immediately after you signed it?

11 A: I'm not sure if I went to court the next day or did it
12 come on a weekend or something, but it wasn't long after
13 that.

14 Q: Did you meet with Mr. Barth before you entered your
15 plea?

16 A: In front of the judge?

17 Q: Yes.

18 A: Yes. Me and him and Mr. Fernandez was in the back.

19 Q: But did you get a chance to meet with him privately?

20 A: Yes. They sat us in the back before then, and then Mr.
21 Fernandez came in.

22 Q: So how long did you get to meet with Mr. Barth privately
23 on August 2nd?

24 A: I want to think the officer asked him to watch me or
25 something. I'm not sure.

1 Q: So your testimony is that a law enforcement officer --
2 A: Asked him to sit with me because --
3 Q: -- asked your attorney to watch you?
4 A: To sit with me in that room right there because of the
5 place that we was at, they had a whole bunch of people
6 pleading that day.
7 Q: Did you discuss your case during this --
8 A: No.
9 Q: -- meeting?
10 A: No, we didn't.
11 Q: So you just sat there in silence?
12 A: We talked about general things going on in life. There
13 was nothing else to talk about with the case because --
14 Q: What general things did you discuss?
15 A: I can't go into -- I don't know. I can't remember
16 specifically. It wasn't nothing about the case.
17 Q: Was it about your sentence that you were going to --
18 A: No.
19 Q: -- possibly get?
20 A: No. It was along the lines of how was I doing, how were
21 they treating me in the county, just stuff like that.
22 Q: What was your understanding the day you pled guilty of
23 the amount of time you could get?
24 A: I had no understanding. I just did what I was told.
25 Q: Do you recall telling Judge Henderson you understood you

1 could get 18 to 22 years pursuant to the plea agreement?

2 A: I was instructed by Mr. Fernandez and Mr. Barth right
3 before I went in to Judge Henderson that if I said anything
4 along the lines that they did -- you know, that they didn't
5 tell me, the judge was going to reject the plea and I was
6 going to get the 40 years.

7 Q: So when you were before Judge Henderson, you did know
8 you could get 18 to 22 years?

9 A: He told me I was getting 18 to 22 years.

10 Q: So you knew that?

11 A: Yeah. He told me that.

12 Q: What else did he tell you?

13 A: They went over things for me how to answer the judge and
14 said if I said anything different, the 18 to 22 years was off
15 the table and I was going to get the 40 years.

16 Q: What else did they tell you specifically how to answer
17 the judge, other than that, yes, you knew you were going to
18 get 18 to 22 years?

19 A: They went through the questions that the judge was going
20 to ask me and told me what to say.

21 Q: What were these questions?

22 A: Answer yes to this if I understand. If they asked me
23 something about did anybody force me or make me, say no.
24 Those questions.

25 Q: What other ones?

1 A: I don't remember all the questions, ma'am.

2 Q: And you don't deny that you initialed each page of this
3 plea agreement?

4 A: Yes, ma'am, I did.

5 Q: And you don't deny that you signed the end of it?

6 A: Yes, ma'am, I did.

7 Q: And your testimony is that you didn't read any of this?

8 A: It wasn't -- none of that -- no, we did not read any of
9 them. He just flipped the pages and signed. Nothing was
10 explained to me. Again, my lack of knowledge of the law was
11 used against me.

12 Q: So in the five to six minutes you were in there, it took
13 you five to six minutes to flip through eight pages and
14 initial them and then sign it?

15 A: Yes, ma'am. I was in cuffs. They weren't these kind of
16 cuffs. They were -- so.

17 Q: And I believe you answered this on direct from your
18 attorney, but directly above your signature on the plea
19 agreement, there's a paragraph where it says I have read this
20 plea agreement carefully and reviewed each part of it with my
21 attorney. I understand the terms of the plea and voluntary
22 agree to it, including the waivers of direct appeal and post-
23 conviction relief as set forth herein.

24 A: No.

25 Q: You signed right below that?

1 A: I signed where I was told to sign. Nothing was
2 explained to me.

3 Q: So you didn't read that portion directly above your
4 name?

5 A: No, ma'am, I did not.

6 Q: Do you recall telling Judge Henderson you had had plenty
7 of time to speak with Mr. Barth?

8 A: Yes, ma'am, I did.

9 Q: Do you recall telling Judge Henderson you were satisfied
10 with Mr. Barth's services?

11 A: Yes, ma'am. I told -- I told Judge Henderson everything
12 that I was told to tell Judge Henderson.

13 Q: But you were under oath during your guilty plea;
14 correct?

15 A: I was told -- I was told -- I told him what they told me
16 to tell him, ma'am. Again, I don't know anything about the
17 law. I was only doing as I was told.

18 Q: Did you know you were under oath during your guilty plea
19 proceeding?

20 A: Yes, ma'am. I knew I was under oath. I did as I was
21 told. At the same time -- like I explained to you earlier,
22 my scenario of things, I was getting shot. I had a choice of
23 where I was going to get shot, the head or the foot.

24 Q: I understand that, but you knew you were under oath
25 before Judge Henderson; correct?

1 A: I was directed to answer the questions as they told me,
2 and I did.

3 Q: But you knew you were under oath and had a duty to tell
4 the truth during your guilty plea proceeding; correct?

5 A: I did what I was told as they told me to; so I figured
6 them telling me to do that, it had to be okay. I don't know
7 the law.

8 Q: So you're testifying now that you were lying when you
9 were before Judge Henderson?

10 A: Yes. I was instructed to lie.

11 Q: But you were lying?

12 A: I was instructed to lie.

13 Q: But you lied to Judge Henderson?

14 A: I did what I was told, ma'am.

15 MS. JAMESON: No further questions, Your Honor.

16 THE COURT: Any -- any redirect?

17 MR. WALLER: Just briefly.

18 REDIRECT EXAMINATION

19 BY MR. WALLER:

20 Q: Mr. Johnson, what do you think would have happened if
21 you had not answered the questions as you were instructed to?

22 A: I was told if I did not answer the questions as I was
23 instructed to, the 18 to 22 years was off the table. Judge
24 Henderson was a family court judge and they was going to see
25 that I got the maximum.

1 Q: Okay. At the time -- at the time you entered into the
2 plea agreement and also at the time you pled guilty, what did
3 you understand -- or did you have any idea what the words
4 post-conviction relief meant?

5 A: No, sir. None of that was ever explained to me. I
6 didn't know anything about the law or any of that.

7 Q: Okay. So to you it was just three words put together?

8 A: That's it.

9 MR. WALLER: Nothing further, Your Honor.

10 THE COURT: All right. You may step down. Thank you.
11 Watch your step. You may call your next witness.

12 MR. WALLER: Thank you, Your Honor. I would call
13 Brendan Barth.

14 THE COURT: Mr. Barth, please come forward. I'm going
15 to ask you, if you could, to put your paperwork down, place
16 your left hand on the Bible, and raise your right hand as the
17 clerk administers the oath.

18 THE CLERK: Do you swear or affirm that the testimony
19 you give will be the truth, the whole truth, and nothing but
20 the truth, so help you God?

21 THE WITNESS: I do.

22 THE COURT: Have a seat in the witness chair and pull up
23 real close to that microphone and speak loudly, clearly, and
24 slowly in order that we can hear everything that you have to
25 say, and let's start with your full name.

1 THE WITNESS: Sure. It's Brendan Padgett -- P-a-d-g-e-
2 t-t -- Barth.

3 DIRECT EXAMINATION

4 BY MR. WALLER:

5 Q: Good morning still I think by a few minutes, Mr. Barth.
6 How are you today?

7 A: Doing okay.

8 Q: Mr. Barth, have you ever had a former client file a PCR
9 alleging you were ineffective before?

10 A: I have not.

11 Q: Okay. Have you ever represented clients in PCR
12 hearings?

13 A: I have.

14 Q: You have? What -- have you ever had a client enter into
15 a written plea agreement such as the one in this case?

16 A: Can you -- when you say such as one in this case, what
17 are you referencing? Just a written plea agreement in
18 general?

19 Q: Have you ever had a state grand jury case before?

20 A: I have not.

21 Q: Okay. Have you ever had written plea agreements where
22 clients agreed to forfeit assets and waive their appellate or
23 post-conviction relief rights?

24 A: I have. I do a significant amount of federal criminal
25 defense and, quite often, that same language is included in

1 each and every plea agreement that we get in federal court.
2 Q: Okay. What -- what conversations did you have with Mr.
3 Johnson about those particular aspects of this plea
4 agreement?

5 A: We met on August 1, the day the plea agreement was
6 signed, and Mr. Johnson is correct that at portions of the
7 time that we were there, SLED agents were there. They
8 stepped out when we were able -- we were discussing potential
9 years.

10 I believe the original plea offer was 20 to 25. We
11 received this plea offer that was 18 to 22 in written plea
12 agreement form. The officers or agents stepped out, and Mr.
13 Johnson and I discussed the plea agreement, each and every
14 page. At the negotiated sentence, we also talked through it.

15 Obviously, he was pleading to a significant number of
16 counts. We talked about the forfeiture provisions themselves
17 and what he would be giving up, what he could've possibly
18 contested. I'm sure you have a copy of the plea agreement.
19 We struck through a significant amount of the language
20 regarding forfeiture that had to do with vehicles and some
21 family guns that Mr. Johnson was requesting be returned to
22 his family. That he would not plead and agree to forfeit
23 those items.

24 You'll see I believe I struck through them. I wrote
25 language out on the side that he and I reviewed and reviewed

1 again the waivers and the summations at the end of the
2 agreement.

3 Q: Had you and Mr. Johnson discussed both appellate rights
4 and PCR rights prior to this plea agreement?

5 A: Prior to the plea agreement?

6 A: Just in general or during the course of the plea
7 agreement.

8 A: During the course of the plea agreement. I doubt we had
9 discussed it prior to receiving the plea agreement.

10 Q: Okay. What -- during the course of going through the
11 plea agreement, what did you all talk about?

12 A: Just generally that, you know, in any case you can have
13 a direct appeal, which is where if Mr. Johnson wanted to
14 accuse the Court of doing something wrong in its sentence
15 during the process, or that there were PCR rights where if he
16 was accusing me of being ineffective during the process, and
17 that this was a general waiver of those rights.

18 Q: Okay.

19 A: And I -- go ahead.

20 Q: Please continue.

21 A: What his questions focused on and what our conversation
22 focused on was that 18- to 22-year range. I mean we
23 generally discussed this waiver, but what he was concerned
24 about is that guaranteed range of 18 to 22 years.

25 Q: Okay. What advice or what did you tell him about the

1 post-conviction relief process, more than generally what you
2 just testified to that it's saying that you had done
3 something wrong?

4 A: I probably did not -- I mean I don't recall
5 specifically, but I probably did not go into much more detail
6 than he'd be waiving his right to accuse me of being
7 ineffective if he was trying to set it aside.

8 Q: Okay. Did you discuss with him that there are other
9 allegations he could raise in post-conviction relief, other
10 than allegations of ineffective assistance of counsel?

11 A: I don't recall.

12 Q: Okay. Did you discuss with him that constitutional
13 violations could also be raised?

14 A: Probably. I mean I discuss that with almost every
15 client, Mr. Waller.

16 Q: Okay. In the post-conviction relief aspect?

17 A: Generally and, yeah, in both. Yes, sir.

18 MR. WALLER: I beg the Court's indulgence, please.

19 THE COURT: Mr. Barth, did you high-five and hug any of
20 the SLED officers?

21 THE WITNESS: I did not, Your Honor.

22 THE COURT: Most of them are not very huggable people,
23 are they?

24 THE WITNESS: They are not.

25 THE COURT: All right.

0
1 THE WITNESS: Especially when you're on the other side
2 from them.

3 MR. WALLER: Nothing further. Thank you, Mr. Barth.

4 THE COURT: All right.

5 MS. JAMESON: Briefly, Your Honor.

6 THE COURT: Ms. Jameson.

7 CROSS-EXAMINATION

8 BY MS. JAMESON:

9 Q: Mr. Barth, how long have you been practicing law?

10 A: I passed the bar in 2009. I did a federal clerkship for
11 2 ½ years and have been in private practice since May of
12 2012.

13 Q: And I believe you testified previously that you
14 primarily do federal criminal defense?

15 A: I'm in a general practice. So I certainly do family
16 court and personal injury cases, criminal defense cases on
17 both the state and federal level, but I'm on the CJA
18 appointment list for federal criminal cases. So that makes
19 up the majority of criminal representation in my practice.

20 Q: And you were appointed to this case?

21 A: That's correct.

22 Q: Do you recall how you were appointed?

23 A: Via an email.

24 Q: From the clerk's office? If you weren't on the -- were
25 you on the appointment list for general sessions

1 appointments? 81

2 A: I was not.

3 Q: Did you feel prepared to represent a state grand jury
4 defendant?

5 A: I did. I mean the allegations in this case, the
6 conspiracy counts in this case, they are akin to what we see
7 in federal court.

8 Q: And I believe you testified you've had clients before
9 that have entered into similar plea agreements on the federal
10 level?

11 A: That's correct.

12 Q: Including the waiver of federal direct and collateral
13 attacks?

14 A: That's right.

15 Q: How many times did you meet with your client?

16 A: I believe it was five total over the -- over the course
17 of four different days. I first met with him in June of
18 2016. I met with him twice in July of 2016, I believe on
19 back to back days, and then met with him on two different
20 occasions on August 1st, which is the day that he signed this
21 plea agreement.

22 Q: Did you -- when did you receive discovery in this case?

23 A: Either May or early June. We had a status conference in
24 April I believe where Judge Henderson confirmed all the
25 appointments, established a scheduling order. It was

1 sometime thereafter that we received the written rediscovery.

2 Q: And this was a rather large heroin distribution ring
3 that was subject of these state grand jury indictments;
4 correct?

5 A: I would agree.

6 Q: Do you recall what the State was alleging was your
7 client's role in this conspiracy?

8 A: I do. They alleged that he was the ringleader, so to
9 speak, of this conspiracy. I believe Judge Henderson even
10 referenced a pyramid or chart that he had been provided to
11 help his understanding of the case with Mr. Johnson's name at
12 the top of it. They were accusing Mr. Johnson of hiring
13 individuals, whether you want to call them mules or runners,
14 to bring this heroin in from New York City, distribute it to
15 some of these other co-defendants in this case, who were then
16 selling it on the streets in and around this area.

17 Q: Do you recall what he was originally indicted for?

18 A: It was a conspiracy to traffic, as well as a trafficking
19 charge itself, 28 grams or greater, which would've carried
20 that 25 to 40 range on both of those counts.

21 Q: Did you explain to him that he was facing a mandatory
22 minimum of 25 years?

23 A: I did.

24 Q: Do you recall what the potential top-end of his exposure
25 was sentence-wise?

1 A: You know, obviously, that would depend on if a judge
2 chose to run some of these counts consecutive or concurrent,
3 but if the counts were added on top of each other, it would
4 have been easily in excess of 100 years. I believe Judge
5 Henderson referenced the number 170 during the guilty plea
6 proceeding.

7 Q: Do you -- did you watch the videos in this case?

8 A: I did. I rode to the AG's office in Columbia July 18th
9 of 2016 to watch the controlled-buy videos.

10 Q: Did you watch all of them?

11 A: I did. It took several hours to go through the videos.

12 Q: After you watched all these videos, did you discuss them
13 with Mr. Johnson?

14 A: I did. Like I said, I reviewed the videos in y'all's
15 office July 18th. Looking back through the file, I met with
16 Mr. Johnson then on July 28th and again on July 29th to
17 discuss the contents of the videos.

18 Q: What were the contents of the videos generally?

19 A: Sure. They were controlled-buy videos, some -- some
20 with CIs and some I believe with known -- known individuals
21 in there. I went through them. At least three or four of
22 the videos, Mr. Johnson's face appeared on them. That was
23 the main aspect that he and I discussed when I met with him
24 about the videos.

25 Q: Prior to -- prior to viewing these videos, did you ever

1 have any discussions with Mr. Johnson about whether he wanted
2 to plead guilty or proceed forward with the trial?

3 A: Sure. The first time I met with Mr. Johnson in June, he
4 was -- and I'll confirm for what his testimony that he said
5 he had been writing asking for an attorney and some of these
6 other items. I think he was frustrated at where the process
7 sat. He instructed me not to negotiate with your office, not
8 to pursue a plea agreement, and let's dive into the
9 discovery.

10 Q: And did you follow your client's wishes?

11 A: I did.

12 Q: At what point did he -- did he ever give you permission
13 to enter into plea negotiations with the AG's office?

14 A: He did. It was -- it was in late July after either the
15 28th or the 29th. As Mr. Johnson said, I met with him. He
16 referenced one of my colleagues. That would be Nick Lewis,
17 who is a partner of mine at my practice. He also does
18 criminal defense at both the state and federal level.

19 I believe we had ridden out there maybe together and he
20 sat in on part of it. Mr. Lewis, that is. And during that
21 conversation, you know, we asked Mr. Johnson what would be
22 the harm in at least letting me negotiate. Let me see what
23 offer we can get on the table and go from there and, at that
24 point, he said that I had authority to do that, which is when
25 I reached out to David Fernandez.

1 Q: And I believe you testified the first offer was 20 to 2
2 years?

3 A: Negotiated. That's correct.

4 MR. WALLER: Your Honor, I'm going to object. The
5 State's motion to dismiss, as I read it, is concerning the
6 waiver of post-conviction relief rights, not the
7 ineffectiveness of agreeing to or of advice for the waiver of
8 post-conviction relief rights, not the overall plea
9 agreement.

10 MS. JAMESON: Your Honor, I would submit that this goes
11 to his advice to enter into the plea agreement, but I can
12 move along to those portions, if Your Honor would prefer.

13 THE COURT: Let's move along here.

14 BY MS. JAMESON:

15 Q: Eventually, you were able to get a plea agreement from
16 the State for 18 to 22 years; correct?

17 A: Correct.

18 Q: Did you go over that with Mr. Johnson?

19 A: I did, on August 1st.

20 Q: Did you give him a copy of the plea agreement?

21 A: I don't recall if I gave him a copy that day or not. It
22 had not been signed by David Fernandez at that time.

23 Q: And I believe you testified on direct that you reviewed
24 every page and every paragraph of the plea agreement with
25 him?

1 A: As we went through the pages and initialed the bottom.

2 Q: And I believe you testified, at least regarding the
3 forfeiture aspects, there were several portions that Mr.
4 Johnson indicated he would not agree to and you struck
5 through those and wrote separate things on the side; correct?

6 A: That's correct.

7 Q: We're really here about paragraph 16, which is where he
8 waived his right to direct appeal or post-conviction relief
9 collateral attack. Did you discuss this? I believe you
10 testified you did discuss it with him, but generally?

11 A: Correct.

12 Q: And you told him what a post-conviction relief action
13 was, that it was ineffective assistance of counsel I believe
14 you testified, which was that you had done something wrong in
15 the case?

16 A: Correct.

17 Q: And you generally discussed constitutional claims with
18 him that can be raised either through direct appeal or post-
19 conviction relief?

20 A: Correct.

21 Q: Did he appear to understand these conversations with
22 you?

23 A: He did.

24 Q: Did he ever ask you to remove this portion like he did
25 with other portions of the plea agreement?

1 A: He had no questions about paragraph 16.

2 Q: And paragraph 16 doesn't prohibit him from filing a PCR
3 action? It only limits the issues on which he can raise;
4 correct?

5 A: That's my understanding, yes.

6 Q: Did he ever indicate to you he didn't want to waive his
7 right to post-conviction relief?

8 A: He did not.

9 Q: And I believe you were questioned by the Court, but
10 after the plea agreement, you didn't high-five SLED agents?

11 A: I did not.

12 Q: Or hug them?

13 A: I did not.

14 Q: Or do any of that with anyone from our office?

15 A: I did not.

16 MS. JAMESON: A moment's indulgence, Your Honor. No
17 further questions.

18 THE COURT: Redirect?

19 MR. WALLER: I don't have any further questions for this
20 witness, Your Honor.

21 THE COURT: You may step down.

22 THE WITNESS: Thank you.

23 THE COURT: Any objection to Mr. Barth being excused?

24 MR. WALLER: No objection.

25 MS. JAMESON: Do you have any further witnesses?

1 MR. WALLER: No.

2 MS. JAMESON: No objection, Your Honor.

3 THE COURT: You're free to leave.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: Very good. Mr. Waller, I'll be glad to hear
6 from you.

7 MR. WALLER: Your Honor, I believe this is the State's
8 motion, but I'll be happy to address it first, if you would
9 like.

10 THE COURT: Okay. All right. Well, let's do it that
11 way. That's the way I like to do it.

12 MS. JAMESON: I believe the State's motion was granted
13 on everything other than that ground. So I think our motion
14 has been addressed.

15 THE COURT: It's your burden on whether or not I'm going
16 to grant the post-conviction relief on his ineffectiveness.

17 MR. WALLER: Okay.

18 THE COURT: So -- but if there's any question in
19 anybody's mind about that, I'm going to let you go and I'm
20 going to let her go and I'm going to let you go and then I'll
21 let her go, if the spirit moves you in such a way.

22 MR. WALLER: I appreciate that, Your Honor. I apologize
23 for the confusion.

24 THE COURT: All right.

25 MR. WALLER: Your Honor, there's obviously conflicting

1 testimony as to whether the plea agreement was thoroughly
2 reviewed with Mr. Johnson. Mr. Barth testified that while
3 they did go over it, that most of Mr. Johnson's questions
4 concerned the amount of time he was going to receive. That
5 they would have generally discussed the post-conviction
6 relief waiver, but that Mr. Johnson was not focused on that.

7 I asked Mr. Barth on direct if he had a chance to
8 discuss other aspects that are not ineffective assistance of
9 counsel that could potentially be raised through the PCR
10 process, and he said he did not recall. He did testify that
11 he counsels his clients about constitutional issues that
12 could be waived, but, Your Honor, PCR can address more than
13 just ineffective assistance of counsel.

14 In Mr. Barth's explanation of both appellate rights and
15 post-conviction relief rights, he explained to the Court that
16 he explained to Mr. Johnson, as he does all of his clients,
17 that appellate rights are saying the Court did something
18 wrong and PCR is saying that the lawyer did something wrong.
19 Your Honor, I think that's an incomplete explanation.

20 Your Honor, based on that, I think that Mr. Barth did
21 not go over all the aspects with the waiver. This is a very
22 serious waiver, Your Honor, because essentially it denies or
23 it doesn't allow a person who has entered into the waiver, if
24 it's unknowing, to continue to have their constitutional
25 rights protected and addressed.

1 Plus, Your Honor, I think that based on that, the
2 applicant has met his burden and that Mr. Barth was
3 ineffective for -- excuse me -- allowing Mr. Johnson to enter
4 into this unknowing waiver.

5 THE COURT: Very good. Ms. Jameson?

6 MS. JAMESON: Thank you, Your Honor. The State would
7 submit that the testimony from the two witnesses here today
8 is inconsistent, but that Mr. Barth's testimony is credible
9 and what the Court should rely on in denying this
10 application, not Mr. Johnson's.

11 Mr. Johnson admitted on the stand that he lied to the
12 plea court for his own benefit to get the 18- to 22-year plea
13 agreement. He also provided incredible testimony about his
14 attorney high-fiving and hugging SLED agents after the plea
15 agreement.

16 On the other hand, we have Mr. Barth's credible
17 testimony that he advised Mr. Johnson of his post-conviction
18 relief rights, including ineffective assistance of counsel
19 and constitutional rights generally, that he explained all
20 aspects of the plea agreement to him and removed other
21 portions regarding forfeiture, but that his client never
22 asked him to remove any portions regarding his waiver of PCR
23 or direct appeal claims, and knowingly entered into this plea
24 agreement with an understanding that he was going to waive
25 these grounds and that his application should be denied and

1 dismissed.

2 RULING

3 THE COURT: Under these circumstances, I am going to
4 deny the motion for post-conviction relief.

5 The issue with regard to the limitation of the hearing
6 itself -- you're protected on the record in that regard for
7 appellate review.

8 And I do specifically find that Mr. Barth -- there was
9 some question about his experience, but he spent 2 ½ years in
10 federal court, and the statewide grand jury system is
11 actually modeled after the federal court system. They have a
12 grand jury. They have a lot of transcripts. They use the
13 method by which they have one co-defendant cooperate against
14 the other.

15 But it's the exact same thing. He spent 2 ½ years doing
16 nothing but that with the federal court, and he's done that
17 after -- after his clerkship and throughout his private
18 practice. He's very experienced in that field. I find that
19 he made adequate preparation. He met with the defendant on
20 four or five times. He viewed the video prior to entering
21 into the plea negotiations.

22 There was some allegation that he -- the applicant was
23 not allowed to see the videos. However, I anticipate that
24 they would have been provided to him if he elected to go to
25 trial.

1 I do specifically find based on the testimony as
 2 presented here that the waiver of the post-conviction relief
 3 and appellate review was adequately covered in his -- in Mr.
 4 Barth's conversations with Mr. Johnson.

5 Just as a matter of law in the facts that have been
 6 presented here today, the motion for post-conviction relief
 7 is denied, but as an aside, probably the very worst thing
 8 that could happen to Mr. Johnson would be that post-
 9 conviction relief be granted, given the circumstance that he
 10 finds himself in.

11 So good luck to you.

12 MR. WALLER: Thank you, Your Honor.

13 MS. JAMESON: Thank you, Your Honor.

14 (WHEREUPON, the proceedings ended at 12:05 p.m.)
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 State of South Carolina)
2)
3 County of Florence) Certificate
4)

5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 46, constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 Common Pleas for Florence County, South Carolina, on the 2nd
13 day of February, 2018.

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

17 s/Krystal J. Smith

18 Court Reporter

19
20 Florence, South Carolina

21 June 18, 2018
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Timothy Johnson, SCDC #370487

Applicant,

v.

State of South Carolina,

Respondent.

FILED

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT
2018 MAR 20 PM 3:35

DORIS PAULGS O'HARA
COC P & GS
FLORENCE COUNTY, SC
Case No.: 2017-CP-21-0952

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief filed April 13, 2017, by Timothy Johnson (Applicant). On October 6, 2017, the State (Respondent) made its return and partial motion to dismiss, seeking summary dismissal of all claims beyond whether counsel was ineffective for advising him to enter the written plea agreement waiving his rights to challenge his conviction through post-conviction relief pursuant to the written plea agreement. An evidentiary hearing into the matter was convened February 2, 2018, at the Florence County Courthouse. Applicant was present at the hearing and represented by Jonathan Waller, Esquire. Senior Assistant Deputy Attorney General Megan Harrigan Jameson from the South Carolina Attorney General's Office appeared on behalf of the State. Following the hearing, this Court denied the application from the bench. This order follows.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for the South Carolina State Grand Jury. On October 22, 2015, the State Grand Jury indicted Applicant for one count of trafficking in heroin greater than 28 grams, seven counts of

CERTIFIED: A TRUE COPY
Doris Paulgs O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Exhibit 8

Sentencing Transcript

EXHIBIT

Sentencing Hearing Transcript

State of South Carolina	)	Court of General Sessions
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2015-GS-47-00022

State of South Carolina,	)	
	)	
Plaintiff,	)	

-vs-

Transcript of Record

Timothy Johnson,	)	
	)	
Defendant.	)	

November 14, 2016
Florence, South Carolina

B E F O R E:

The Honorable Roger E. Henderson, Judge

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

David Fernandez, Esquire
Attorney for the Plaintiff

Brendan Barth, Esquire
Attorney for the Defendant

Krystal J. Smith
Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E XWITNESS/DESCRIPTIONPAGE NUMBER

Sentencing Hearing..... 4

Mitigation..... 7

Sentence..... 14

Court Reporter Certification..... 16

EXHIBITSNO.DESCRIPTIONID.EV.

(No Exhibits Presented)

1 NOVEMBER 14, 2016

2 (WHEREUPON, the proceedings began at 12:04 p.m.)

3 MR. HERNANDEZ: Your Honor, this would be State versus
4 Timothy Johnson. Your Honor, Mr. Johnson had previously pled
5 under Indictment 2015-GS-47-22, Count I of that indictment.
6 That would be the conspiracy.

7 And then under Indictment Number 21, Mr. Johnson pled
8 under Counts I, II, III, IV, V, VI, VIII, XII, and XIII to
9 charges ranging from -- with the most significant being
10 trafficking heroin, 4 to 14 grams, both by conspiracy and as a
11 substantive count, and then a -- the rest remaining would be
12 distribution of heroins with one -- with one possession with
13 intent to distribute heroin of those remaining counts.

14 Your Honor, Mr. Johnson was identified early into this
15 investigation as the head of the trafficking network in
16 Florence and Williamsburg and then Darlington Counties. The
17 evidence against Mr. Johnson was significant and substantial
18 with a number of controlled purchases utilizing confidential
19 informants, as well as other cooperating co-defendants who
20 identified Mr. Johnson as the head of the ring.

21 Essentially what Mr. Johnson would do -- he had a source
22 in New York where he would obtain his heroin through various
23 means, either -- typically by having someone or someones drive
24 up to New York, retrieve the -- the big bundle of heroin, for
25 lack of a better term, and then drive it back to South

1 Carolina in the span of about 48 hours, where then he would
2 distribute it to his network of folks.

3 Mr. Johnson is the head of this conspiracy and his plea
4 does reflect that. The State has the -- part of the sentence
5 -- I mean part of the plea was a negotiated 18 to 22 years,
6 Your Honor, which Your Honor did accept back when pleas
7 occurred.

8 To give Your Honor a little bit of history about Mr.
9 Johnson also, he does have no record. There is nothing, no
10 prior convictions.

11 He -- up until about the 11th hour, we believed we would
12 be trying Mr. Johnson and we did have the witnesses, both
13 confidential informants, as well as cooperating co-defendants
14 prepped and ready for trial. Mr. Johnson had a change of
15 heart at some point and we were able to negotiate a little bit
16 further with he and his attorney, where he did enter the plea.

17 Mr. Johnson then did cooperate with the State. He
18 provided cooperation in the form of his plea agreement, as
19 well as interviews with law enforcement. We will -- should a
20 trial be necessary for Mr. Skinner, Mr. Johnson will be a
21 State's witness against him.

22 I believe Mr. Johnson -- Mr. Johnson's main or one of his
23 main dealers in his network was a gentleman named Anthony
24 Wilson. That was -- is kin to him. I believe it's a cousin
25 or a relative of some sort. That is -- he also is responsible

1 for bringing in Dawn Marie Riley into the conspiracy. She
2 essentially was as close to a right-hand woman as you can
3 have. Her plea will be later in a few moments also.

4 Mr. Johnson is responsible for bringing in most of the
5 people. In this particular conspiracy, it's a combination of
6 folks who were addicts and some weren't. Mr. Johnson is not
7 an addict. He -- we don't believe that he used the drugs that
8 he was dealing. Some other folks, obviously as Your Honor has
9 heard, were addicts and did it as a matter of obtaining the
10 drug. However, Mr. Johnson did it purely for profit.

11 I believe I've covered all the bases. If there's any
12 other information Your Honor would like to know, I'm happy to
13 provide it.

14 There also is three consent orders for forfeiture of
15 seized funds in the amounts of \$8,290, \$6,224, and \$45,350.
16 Counsel has signed it and so has the defendant. And
17 permission to file this with the clerk?

18 THE COURT: Yes, sir.

19 MR. HERNANDEZ: And for Your Honor to review then in good
20 time.

21 THE COURT: All right.

22 THE CLERK: Mr. Johnson, can you raise your right hand as
23 best you can? Do you swear to tell the truth, the whole
24 truth, and nothing but the truth, so help you God?

25 THE DEFENDANT: I do.

1 THE CLERK: Thank you.

2 THE COURT: All right. Mr. Barth?

3 MR. BARTH: Yes, sir. Before I get into mitigation, Your
4 Honor, in regards to those forfeiture orders, I just wanted to
5 put this on the record, and it's part of the plea agreement
6 that was previously accepted.

7 There were two vehicles that were seized also, as well as
8 I believe two hunting rifles that belonged to his children.
9 Those are excluded from any forfeiture and they're not
10 included in those orders. It's my understanding from talking
11 to the agents today that those are going to be returned to
12 family members of Mr. Johnson. We just wanted to clarify that
13 for the record as a matter of housekeeping.

14 THE COURT: Okay.

15 MR. BARTH: And for Your Honor's consideration.

16 MR. HERNANDEZ: That's my -- that's my understanding as
17 well, Your Honor.

18 THE COURT: Okay.

19 MR. BARTH: Thank you.

20 THE COURT: Thank you, Mr. Barth.

21 MR. BARTH: As far as Mr. Johnson goes, he's currently 37
22 years old, Your Honor. Just a little bit by way of
23 background, he's the father of seven little girls, three boys,
24 six of which were residing with him at the time he was
25 arrested on -- on these charges.

1 At the time he was arrested, he was self-employed as a
2 car salesman and car repairman and lawn care business, along
3 with two of his sons. He had assisted with Hemingway Middle
4 School football team in the past, the Hemingway varsity
5 football team in the past, and I believe was still involved
6 with that at the time of his arrest for these charges.

7 You know, as far as Mr. Johnson's role in this offense, I
8 certainly can't stand up here today and defend his role in
9 this conspiracy, nor can my client. I think he'd be the first
10 to admit this was serious illegal drug activity. He knows it
11 was wrong. He knows he shouldn't have been involved in it. I
12 think he may tell you the same when -- when I'm done here in a
13 few moments, Your Honor.

14 You know, I've had the occasion through representing Mr.
15 Johnson to talk with him on a number of occasions. I think
16 he's truly sorry for what he was involved in. He apologizes
17 to the Court. Most of all, he apologizes to his family.
18 Obviously, the ripple effects of the sentence that he's about
19 to receive are going to be immense with that many children in
20 the area and other family members of his involved in this --
21 this same conspiracy.

22 With all that being said, Your Honor, he understands he's
23 pled guilty to a negotiated agreement, the 18 to 22 years.
24 Regardless of where this sentence falls today, he's looking at
25 significant time. I believe he's already been incarcerated

1 about a year and a half or a little in excess of a year and a
2 half between some of the substantive counts and the
3 conspiracy, most of which has been done at Effingham, and I
4 know you've heard numerous times today how difficult they all
5 contend time is at Effingham as far as the little bit of free
6 time that they do get during the day.

7 You know, he recognizes and he's phrased with me he's
8 going to be an old man when he gets out. His youngest two
9 children I confirmed with him today are around two years old.
10 He recognizes the fact he's not going to see either one of
11 them graduate high school. He's not going to see either one
12 of them go to college. He's going to be incarcerated for the
13 better part of two decades, if not more.

14 The bottom line is, Your Honor, we're asking you today to
15 respectfully consider giving him the bottom end of that range,
16 which I believe would be 18 years. I don't make the request
17 lightly. Again, I understand what Mr. Johnson was involved in
18 in this case, but I do want to note a few things for the
19 record.

20 One, you know, while the trafficking offense I know is
21 considered violent under the state statutes, out of all the
22 co-defendants in this case, all the discovery in this case,
23 there's no allegations that he's a violent individual. No
24 threats of violence. No bodily injury occurred to anybody in
25 this. I don't believe he ran from law enforcement or resisted

1 arrest.

2 Again, just our position that he's a non-violent
3 individual. I certainly think if he was violent, we'd have
4 just heard that a few moments ago from Mr. Hernandez.

5 Number two and most notably -- and I think this is the
6 fourth or fifth co-defendant to come before you today and I've
7 been here for all of them so far and what I believe makes Mr.
8 Johnson unique -- and Mr. Hernandez just touched on this. He
9 has zero criminal history. For somebody so involved, this is
10 the first time that he's been arrested, the first time
11 certainly that he's pled guilty to any charges, and the first
12 time he's going to do any time in any prison anywhere in the
13 state or the federal system, for that matter. I do think that
14 puts him in a little unique posture from some of the other co-
15 defendants in this case.

16 I would submit to the Court that 18 years -- 19 years --
17 22 years, somewhere in that range, is even more significant to
18 somebody who has never done a day in prison before. I do
19 believe the low end of that range would be just punishment for
20 his conduct in this case. I also think 18 years is going to
21 give Mr. Johnson plenty of time to sit there and reflect on
22 what he was involved in.

23 And certainly and hopefully, when he's released from
24 incarceration, that lengthy period of incarceration is going
25 to serve as a deterrent to any future criminal conduct. This

1 isn't somebody who dealt drugs in the past, caught a slap on
2 the wrist, dealt again, caught a year, dealt again, and here
3 we are. This is his first time standing before a judge of
4 this magnitude other than the guilty plea a few months ago
5 before Your Honor.

6 Lastly, Judge, without going into too much, you know, he
7 has cooperated, as Mr. Hernandez just put on the record. He
8 continues to cooperate. It's my understanding he was meeting
9 with agents as recent as last week and certainly remains
10 ready, willing, and able to continue to cooperate as part of
11 his plea agreement moving forward.

12 Again, you know, we're asking the Court to consider a
13 sentence on the bottom end of that plea agreement range based
14 on the fact that it's our position that this individual
15 standing next to me is a non-violent first offender who is
16 trying to cooperate at this time.

17 I do believe Mr. Johnson would like to address the Court,
18 if you're willing to hear from him.

19 THE COURT: Certainly. Mr. Johnson?

20 THE DEFENDANT: I apologize for all the trouble. I
21 didn't -- I have a good heart. I didn't force anybody to do
22 anything. I helped them the wrong way. It was wrong. I sold
23 my own drugs. I didn't make anybody sell drugs. It was just
24 wrong. I didn't mean to hurt all these people. Again, I just
25 found my own way to help them and helping myself. It was

1 wrong.

2 I didn't -- I definitely didn't mean to hurt anybody. I
3 love my kids. My life revolves around my kids. I have ten
4 kids, active and present in their life their entire lives up
5 until now. I love everybody else's kids.

6 My heart put me in a bad situation. I did right, but
7 from my perspective. From the outside world, my right was
8 wrong, but I didn't see it because I was living in the world
9 at the time and it was okay to me because that's what I saw.
10 But it was wrong and it was illegal and I should have left it
11 alone.

12 I'm sorry. I'm sorry for everybody that got involved and
13 everybody that got in trouble behind me. I just ask you to be
14 lenient on me and others as well. A few of my co-defendants
15 -- they really got caught in it wrong, being there at the
16 wrong time.

17 They're not no dealers. For one, Ms. Riley. She didn't
18 -- she wasn't selling any drugs. I used her to rent a car for
19 me. She's not a drug dealer. I tried to keep her out of my
20 business as much as possible. I was a very secretive person,
21 but I trust people a lot. That was my downfall. My downfall
22 was getting involved with drugs period, and I'm just sorry and
23 I just pray that you be as lenient as possible.

24 THE COURT: Thank you, Mr. Johnson. Anybody else wish to
25 speak on his behalf, Mr. Barth?

1 MR. BARTH: I don't believe so, Your Honor. With that
2 said, Your Honor, if I may, his family has stayed in contact
3 with me throughout my representation. He said his mother just
4 had surgery, but I've been in contact with his sisters and
5 other siblings, and they have stayed in contact but were
6 unable to make it here this morning for court.

7 THE COURT: Thank you, Mr. Barth. Anything else from the
8 State?

9 MR. HERNANDEZ: Just to point out -- Mr. Barth touched on
10 it. This is an 85 percent time charge, violent and serious.
11 I know Your Honor likely did it at the plea. I just wanted to
12 make sure that was on the record as well again.

13 (WHEREUPON, there was a pause in the proceedings, after
14 which the proceedings resumed as follows.)

15 THE COURT: All right. Mr. Johnson, when all of this
16 started, the State gave me a chart, sort of like a pyramid.
17 Of course, you were the top man at the top of that pyramid and
18 you sucked in a lot of other people, whether they were addicts
19 or whatever.

20 You know, you caused a lot of pain to them and, in
21 distributing all these drugs, you caused a lot of pain to
22 other people as well. You brought this poison down here from
23 New York and poisoned a lot of the citizens of this state, all
24 to make a profit for yourself. There's no getting around
25 that, particularly since you aren't an addict. Everybody says

1 you aren't an addict. I mean we got a seizure of what? Close
2 to \$60,000 here. You were making big money off of other
3 people, using other people.

4 I'm glad that you have finally begun to cooperate in this
5 situation, but I certainly can't ignore all that you have done
6 in the past and the harm that you've caused a lot of people.

7 I do take into consideration when I sentence you the fact
8 that you have no criminal record whatsoever. I believe you'll
9 be the only one I could hear that from probably, according to
10 your attorney and Mr. Fernandez. And you have begun to -- to
11 help and I take that into consideration as I sentence you.

12 SENTENCE

13 THE COURT: With regards to -- and you've got a number of
14 indictments, but with regards to Indictment 2015-GS-47-21,
15 Count I, trafficking heroin, first offense, the sentence of
16 the Court is you be committed to the State Department of
17 Corrections for a term of 19 years.

18 With regards to the Indictment 2015-GS-47-22, Count I,
19 trafficking heroin conspiracy, the sentence of the Court is
20 you be committed to the State Department of Corrections for a
21 term of 19 years.

22 There are seven indictments with regards to the
23 distribution of heroin: 2015-GS-47-21, Count II; 2015-GS-47-
24 21, Count V; 2015-GS-47-21, Count VI; 2015-GS-47-21, Count
25 III, 2015-GS-47-21, Count IV; 2015-GS-47-21, Count XII; and

1 2015-GS-47-21, Count VIII.

2 With regards to each and every one of these indictments,
3 the sentence of the Court is you be committed to the State
4 Department of Corrections for a term of 15 years.

5 And lastly with regards to Indictment 2015-GS-47-21,
6 Count XIII, possession with intent to distribute heroin, the
7 sentence of the Court is you be committed to the State
8 Department of Corrections for a term of 15 years.

9 All of these sentences will run concurrently. So it will
10 be 19 years and that'll give you a long time to stop and think
11 about what you did and the hurt and harm you've caused.

12 Thank you.

13 MR. HERNANDEZ: Thank you, Your Honor.

14 (WHEREUPON, the proceedings ended at 12:24 p.m.)

15

16 --- END REQUESTED TRANSCRIPT ---

17

18

19

20

21

22

23

24

25

1 State of South Carolina)

2) Certificate

3 County of Florence)

4
5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 15, constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 General Sessions for Florence County, South Carolina, on the
13 14th day of November, 2016.

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

16
17 Krystal J. Smith

18 Court Reporter

19
20 Florence, South Carolina

21 June 7, 2017

Exhibit 9

- a) Letter to advanced Auto Parts Manager
- b) Response To Letter

Exhibit 9 A

- a) Letter to advanced Auto Parts Manager

6-20-17

Mr. Scott

Hope all is well. Soon I will be heading back to court and I will need your help. I need you to write an Affidavit stating that I was in your physical appearance on the morning of 9-9-15. Please state who you are, where did you see me (address), the time, and that my last lawyer Did or Did NOT Contact you to retrieve any evidence that you would have to prove that I was with you on the morning of 9-9-15. State Rather OR NOT Brendan P. Barth (my old lawyer) or any of his Colleague Contact before I was sentenced to retrieve A statement or any other evidence that would help prove my case. After you've written your statement please have it Notarized. Once its been Notarized print 1 copy. Then mail the Original copy to my New lawyer and the printed copy to me here at Lee C.I. I would Really appreciate your help in this matter and I also request kindly that you do so at your earliest convenience. Thank You

My Attorneys Address

The Giese Law Firm
1315 Blanding St
Columbia SC 29201

Exhibit 9.B

c) Response To Letter

the 9-4-2015 Distribution Charge



ADVANCE AUTO PARTS 400 N. Main St. Hemingway, SC 29554

Exhibit 6B

July 19, 2016

Hello Timothy Johnson,

Here is a copy of the information you requested on September 9, 2015. It's what we referred to as a team member discount. The part was purchased for your sister Natalie Johnson. The year make and model of the vehicle was a 2007 Chevy Impala. The part was brake pads. You regularly coming to the store to buy parts with her discount. She works for our company in Georgia.

At 9:05 AM we looked up and you purchased brake pads for 2007 Chevy Impala, and you signed as the team member Timothy Johnson in behalf of Natalie Johnson. With a purchased like this, a manager has to sign, approving the transaction and verify the purchase. Richard Carmichael was the manager at the time that signed and approved that you were Timothy Johnson and Natalie Johnson's brother. I also remember this transaction.

Personal Best Regards -
General Manager Derek Scott

9-09-2015/9:05:41 Reg 04-

Advance Auto Parts
Service is our best part

Store # 06933
68933 558 1714
400 N Main St
Hemingway, SC 29554-919
9/09/2015 9:05:41 REG 04
Cashier: [Signature]

*** TEAM MEMBER SALE ***

ITEM	QTY	PRICE	TOTAL
BRAKE PAD SET-GOLD 1-PAIR 15520564			
GM001359	1	\$50.49	\$50.49
2007 Chevrolet Impala LT			
9-23-07 06.14			
Plan 57013-0000			\$10.10
Sub Total			\$60.59
Tax 7.0000%			\$4.24
Total			\$64.83
Amount			\$64.83
Change			\$0.00

Team Member [Signature]
Team Member Name: Timothy Johnson
Transaction: 17944
Manager [Signature]

TEAM MEMBER DISCOUNT

Exhibit 10

Shelia Affidavit

Exhibit 7①

Acknowledgment by Individual

WELLS
FARGO

State of

South Carolina

County of

Greenwood

On this 05 day of May

20 22

Before me, Kelly Lewis

Name of Notary Public

the undersigned Notary Public, personally appeared

Shella Parker

Name of Signer(s)

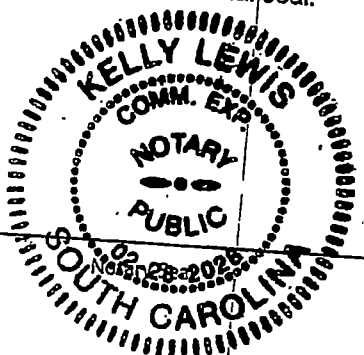
☐ Proved to me on the oath of

☐ Personally known to me

☒ Proved to me on the basis of satisfactory evidence SCDL EX 08/01/2027

to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed it. (Description of ID)

WITNESS my hand and official seal.



Kelly Lewis

(Signature of Notary Public)

My commission expires

2/28/28

For Bank Purposes Only
Description of Attached Document

Type or Title of Document

Statements

Document Date

04/18/2022

Number of Pages

6

Signer(s) Other Than Named Above

Account Number (if applicable)

Optional: A thumbprint is only needed if state statutes require a thumbprint.

Right Thumbprint of Signer

Top of thumb here

RECEIVED

JAN 17 2023

SC SUPREME COURT



F001-00000DSG5350-01

Exhibit 7②

4-18-22

1
2 I, Sheila Renee Webb-Parker, being
3 of sound mind and body. Do hereby
4 give the following statements truthfully
5 and to the best of my knowledge. The
6 following statements do pertain to the
7 distribution of heroin charges against
8 Timothy Havern Johnson, aka and
9 around September 9, 2015. I, Sheila
10 Renee Webb-Parker, along with my
11 late brother Craig Shawn Abbott, were
12 set up August 27, 2015 by a confidential
13 informant for the state. In an
14 attempt to persuade and and be
15 used by the state to set up Timothy
16 Havern Johnson. I am now free from
17 incarceration, parole and all court
18 ordered programs. My brother is
19 deceased due to an overdose because
20 at the time, while we were turned to
21 be informants for the state, were both
22 heroin addicts. And both still used
23 heroin the whole time. The officers
24 of the state were aware that
25 we were both still using before/
26 during and after we were used in
27 an attempt to make control buys
28

Exhibit 7③

①
2 From Timothy Johnson, A few days
3 before September 9, 2015, narcotics
4 officer Rollin Rhodes and Jay,
5 last name unknown, showed up at
6 our house informing us that we had
7 been set up and that we needed to
8 take a ride with them. This was
9 done so that no one would know
10 that we had been busted. In an
11 attempt to get us to help bust Timothy
12 Johnson. At the time Rhodes
13 informed us that we were to go
14 with them to the graveyard down
15 off the Fox Hwy. Hanna Cemetery
16 if I am not mistaken, Rhodes
17 stated that he knew our mom
18 was very sick and old, and did
19 not want to scare her by what he
20 had to say. He went on to say that
21 he had a warrant for my brother and
22 I. And that he knew that we
23 hung around and was involved
24 with Timothy Johnson. That we
25 were facing 40 years for our
26 involvement and that they had
27 statements that could make
28

Exhibit 7 (4)

1
2 the charges go federal. He knew that
3 we were just users and was just
4 being used by Johnson to do his
5 dirty work and that we would
6 take the fall for him. Rhodes said
7 it wasn't fair to put my mother in the
8 middle of things or make her suffer
9 and do time for the things we had
10 done and were involved in. That
11 she didn't know about what was
12 going on because she was so
13 sick. That we would go down if
14 we did not cooperate. And that it
15 would be shameful if she lost all of
16 her assistance and got locked up
17 as sick as she was for things that
18 we had done. We were told that
19 if we got Timothy Johnson, he would
20 never know and nothing would
21 come of the charges against us.
22 This did happen on September 9, 2015.
23 The actual date of the distribution
24 was on September 7, 2015. Between
25 8:30 am and 9:00 am. I am not sure
26 why the officers used the date
27 September 9, 2015. We attempted to

Exhibit 7 ⑤

1
2 Set Timothy L. Johnson up, but
3 after reviewing the video,
4 Timothy L. Johnson could not be
5 seen or identified, making it
6 unsuccessful. The officers were
7 upset. Timothy Johnson gave me a
8 scale (which is not illegal) and
9 asked me to take it to Villi. They
10 then gave me \$1500 in marked money
11 and told me to take it to Timothy
12 Johnson and to give it to him on
13 camera, since the distribution didn't
14 work. When we were close to Timothy
15 Johnson's home I called him and
16 he said he wasn't home. I then
17 asked him was Peter Rabbit home?
18 Anthony Wilson aka Peter Rabbit.
19 He said he didn't know. We
20 then went to Anthony Wilson's house
21 and he came out to the truck.
22 I then gave him the marked
23 money inside of the envelope
24 and said give this to Timothy
25 Johnson. Anthony Wilson nor
26 Timothy Johnson knew what
27 were in the envelope. Anthony

Exhibit 7⑥

1
2 Wilson and I did not talk about
3 what was in the envelope nor did
4 we exchange drugs or money. We
5 turned around and left. I only
6 did what the officers told me to
7 do to keep my sick mother from
8 being involved or getting her arrested.
9 My brother died shortly after
10 Johnson was arrested. My brother and
11 I were not offered any other help
12 for our addiction. We were used
13 against Johnson to get what they
14 wanted. I feel as though we were
15 done wrong and should have
16 never been used against Johnson
17 because of our addiction. My
18 brother ultimately died because
19 of our addiction. I feel as
20 though he should have been offered
21 some type of help but was not. And
22 it ultimately cost him his life. And
23 I regret ever being used by them
24 in their personal vendetta against
25 Johnson. He's always been a
26 good guy and did what he
27

Exhibit 7⑦

1
2 could to help me and my family.
3 I sincerely regret being used
4 by the state and taking him
5 away from his family and his
6 kids. I regret not coming forward
7 sooner.

8
9
10
11 Sincerely
12 Sherita Renee Webb Parker
13 Sherita Renee Webb -
14 Parker
15

16 Kelly Lewis
17

18 RECEIVED

19 JAN 17 2023

20 SC SUPREME COURT
21
22
23
24
25
26
27

