

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

**RECEIVED**

**May 07 2025**

S.C. SUPREME COURT

Certiorari to Marion County

Honorable Clifton Newman, Circuit Court Judge

---

CYNTONIO HOWARD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001314

---

APPENDIX

---

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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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| STATE OF SOUTH CAROLINA | ) | COURT OF GENERAL SESSIONS |
| COUNTY OF MARION        | ) | 2019-GS-33-00324          |
|                         | ) |                           |
|                         | ) |                           |
|                         | ) |                           |
|                         | ) |                           |
| State of South Carolina | ) | TRANSCRIPT OF RECORD      |
| vs.                     | ) |                           |
| Cyntonio T. Howard      | ) |                           |
|                         | ) | November 5, 2019          |
| DEFENDANT               | ) | Marion, South Carolina    |

B E F O R E:

THE HONORABLE THOMAS A. RUSSO, JUDGE.

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

JOHN JEPERTINGER, DEPUTY SOLICITOR  
Attorney for the State

KEVIN ETHERIDGE, ESQ.  
Attorney for the Defendant

KESHIA REED  
Official Court Reporter

I N D E X

(WHEREUPON, no witnesses were called.)

1 THE CLERK: Would you please raise your right  
2 hand. Do you swear to tell the truth, the whole truth,  
3 and nothing but the truth so help you God?

4 THE DEFENDANT: I do.

5 THE CLERK: Thank you.

6 MR. JEPERTINGER: Please the Court, Your Honor.

7 THE COURT: Yes, sir.

8 MR. JEPERTINGER: Standing in front of you is  
9 Cyntonio Terosi (sic) Howard on 2019-324. He's pleading  
10 to distribution of cocaine base third offense. He's  
11 represented by Mr. Etheridge today. He's also been  
12 represented by Mr. Suggs. They both have spoken to  
13 Mr. Howard in terms -- in regards to this. He has been  
14 informed I understand -- that he understands his  
15 distribution of cocaine base third is a no parole offense  
16 and a serious offense and there is a negotiated sentence  
17 of the mandatory minimum of ten years on this charge,  
18 Judge. And I will present the facts and his record for  
19 enhancement purposes. The only other plea bargain that  
20 has taken place in this case is he had another indictment  
21 for PWID cocaine base third and PWID marijuana third and  
22 that case which is 2019-32 is going to be dismissed in its  
23 entirety.

24 THE COURT: Okay. All right. Thank you,  
25 Mr. Jepertinger.

1 Sir, you are Cyntonio Howard?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Mr. Howard, indictment  
4 2019-GS-33-324 is a true bill of indictment for  
5 distribution of cocaine base, that being a third or  
6 subsequent offense. Mr. Howard that charge carries a  
7 penalty of not less than ten years nor more than 30 years  
8 and a fine of \$50,000. Do you understand that, sir?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: It is also as Mr.  
11 Jepertinger mentioned it is classified under our law as a  
12 serious offense. You understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Understanding the nature of the  
15 charge against you and the possible punishment, how do you  
16 plead to that offense, sir, guilt or not guilty?

17 THE DEFENDANT: Guilty.

18 THE COURT: Thank you, sir.

19 Mr. Etheridge, you represent Mr. Howard?

20 MR. ETHERIDGE: I do, Your Honor.

21 THE COURT: Have you discussed with him this  
22 charge, his constitutional rights to a trial?

23 THE DEFENDANT: Yes, sir, Your Honor.

24 THE COURT: Okay. Thank you, sir. Mr. Howard,  
25 sir, am I correct you're 32 years of age?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Now, before today -- before you came  
3 up here today, had you spent any time in jail on this  
4 charge before?

5 THE DEFENDANT: I say about week or something.

6 MR. ETHERIDGE: Your Honor, I believe it's  
7 seven days he spent.

8 THE COURT: Okay. All right. Mr. Howard, I  
9 know you spoken with both Mr. Etheridge and Mr. Suggs.  
10 And I'm going to just briefly go over some things with  
11 you. If at any time during our conversation if you have  
12 any questions about anything that I'm going over or if you  
13 need to speak with Mr. Etheridge, you let me know and I'll  
14 stop and give you whatever time you need, okay. Any time  
15 someone enters a guilty plea, they give up certain  
16 constitutional rights. You have the right to remain  
17 silent. You have the right to a jury trial, but when you  
18 enter a guilty plea, you waive or you give up those two  
19 important constitutional rights. When you give up your  
20 right to a jury trial, you give up the rights that are  
21 connected to that or associated with that. For example,  
22 if you were to have a jury trial, you would be presumed  
23 innocent of this charge and that presumption of innocence  
24 would place the burden of proof on the State. They would  
25 bring witnesses into court and those witnesses would take

1 the stand and be placed under oath and they would testify.

2 You would have the right through your attorney  
3 Mr. Etheridge and or Mr. Suggs to question those  
4 witnesses, to cross-examine them regarding the testimony,  
5 that is your right of confrontation under the  
6 constitution. But when you plead guilty, you give up the  
7 presumption of innocence that I spoke about. You relieve  
8 the State of their burden of proof. And since they don't  
9 have to prove your guilt, they don't have to bring their  
10 witnesses into court. And so you give up the right to  
11 question those witnesses. Do you understand that? I need  
12 you to answer out loud, sir.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. Now, the State's not the only  
15 one that could call witnesses. If you had a trial, you  
16 could call witnesses in your defense. You could testify  
17 yourself if you chose to do that, but the important thing  
18 to understand is that you don't have to do anything. The  
19 burden of proof is on the State. You don't have to prove  
20 anything and you could remain silent. And if you chose to  
21 do that, I would instruct the jury that that is your  
22 constitutional right. And the fact that you chose not to  
23 testify could be considered by them in their  
24 deliberations. I would tell them the fact that you chose  
25 not to testify could not even be discussed in the jury

1 room because that's your right and the burden of proof is  
2 not on you, it's on the State. You understand that? I  
3 need you to answer out loud.

4 THE DEFENDANT: Yes, sir. Yes, sir.

5 THE COURT: Okay. Now, the State if you were to  
6 have a jury trial, the State would have to prove your  
7 guilt to a unanimous decision. In other words, they would  
8 have to convince all 12 members of the jury that you were  
9 guilty or they could not convict you. But if you did have  
10 a jury trial and if you were convicted, you could appeal  
11 that conviction to a higher court if you felt that was  
12 appropriate. You also have an appellate right as it  
13 relates to a guilty plea. In other words, if you wish to  
14 appeal this court's decision, you may do that, but you  
15 would have to file a notice of intent to appeal within ten  
16 days of today's date. You understand, sir?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. Now, these are the rights  
19 that all of us have, Mr. Howard, but when you plead  
20 guilty, you waive or you give up these rights. And for  
21 purposes of your plea, you will not have a jury trial and  
22 your case will be resolved pursuant to your plea here  
23 today. Understanding that, do you still wish to go  
24 forward with your plea?

25 THE DEFENDANT: Yes, sir.

1           THE COURT: All right, sir. Now, it's my  
2 understanding if I understood Mr. Jepertinger that in  
3 exchange for your plea to this charge, the State is making  
4 -- has entered into negotiations and has negotiated for  
5 the Court to sentence you to the least amount under the  
6 law which would be the ten years. Also, they are  
7 dismissing the other charges that Mr. Jepertinger  
8 mentioned earlier. Is that your understanding of the  
9 negotiations?

10           THE DEFENDANT: Yes, sir.

11           THE COURT: Other than these negotiations that  
12 we just discussed, has anyone promised you anything, held  
13 out any hope of reward or threatened you in any way to get  
14 you to enter this plea?

15           THE DEFENDANT: No, sir.

16           THE COURT: Are you satisfied with the  
17 representation and the advice that both Mr. Suggs and  
18 Mr. Etheridge have provided?

19           THE DEFENDANT: Yes, sir.

20           THE COURT: Mr. Howard, as you stand before the  
21 Court today, are you under the influence of any substance  
22 that would affect your ability to understand what you're  
23 doing?

24           THE DEFENDANT: No, sir.

25           THE COURT: Are you entering this plea of your

1 own freewill, sir?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And are you guilty of this charge?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right, sir. I'm going to ask  
6 Mr. Jepertinger to go over the facts for me briefly if you  
7 please listen carefully, I'll get back with you in a  
8 moment.

9 Mr. Jepertinger.

10 MR. JEPERTINGER: Your Honor, on June the 15th  
11 2018, here in Marion County an informant of the Marion  
12 County Combine Drug Unit was outfitted with audio-visual  
13 equipment and provided state funds to purchase a quantity  
14 of cocaine base from this individual. The deal was  
15 consummated here in Marion County for the amount alleged  
16 or provided -- not alleged but provided to the  
17 confidential informant by the narcotics unit. These were  
18 still photographs. Some photos are on the back. I showed  
19 these to Mr. Suggs yesterday.

20 Mr. Suggs also had the opportunity to view the  
21 video in the case. These photos were taken from the video  
22 tape of the incident. It's clear that this individual --  
23 the defendant is sitting in the car and distributing what  
24 appears to be cocaine base in the car.

25 After the sell was consummated, the CI gave the

1 substance sold to her by this defendant and gave it back  
2 to the drug unit. They sent it to SLED for analysis. It  
3 came back positive for cocaine base per Lawrence  
4 Zitzcovich (sic) who is the SLED chemist and was .18 grams  
5 of cocaine base, Judge, commonly known as crack.

6 Judge, in plea negotiations with the defendant,  
7 no one likes going to jail I understand that, but I think  
8 this individual -- I told him this in so many words  
9 yesterday and I told him in so many words today, that he's  
10 basically exhausted every type of mercy that the State  
11 could afford him. In 2010, he was convicted of possession  
12 of cocaine base and received a probationary sentence first  
13 offense. In 2012, he pled to manufacturing distribution  
14 or possession with the intent to distribute cocaine base  
15 second was given a probationary sentence. In 2017, he  
16 pled to a manufacturing distribution possession with  
17 intent to distribute cocaine base. They took it as a  
18 first offense was given a probationary sentence.

19 I wasn't going to have that happen again, Judge,  
20 you know and I know he may have changed. He may have  
21 gotten a job. He may have done this, but it's a mockery  
22 in my opinion of this whole -- of all our laws if he just  
23 keep getting probation and I don't -- the State  
24 probably -- those were probably recommendations or  
25 negotiations back then. We bear the brunt of having to

1 prosecute him all the time for the same charges. And the  
2 system means nothing in my opinion if people are not held  
3 accountable for their crimes.

4 THE COURT: Okay. All right. Thank you,  
5 Mr. Jepertinger.

6 Mr. Howard, the facts surrounding this  
7 distribution case, are those facts correct, sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. And let me ask you this,  
10 Mr. Howard, I didn't ask it earlier. I mentioned it to  
11 you, but I didn't ask it earlier. I mention to you that  
12 this charge was classified as a serious offense under  
13 South Carolina law.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You understand that the reason that  
16 that's significant is -- and Mr. Jepertinger just went  
17 over your record, so it doesn't appear that you have any  
18 prior serious offenses on your record, but this would be  
19 considered a serious offense on your record. So that in  
20 the future if you were to pick up two more serious  
21 offenses, on that third serious offense, the State could  
22 seek life without parole. You understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay. And you understand that this  
25 would be considered one of those -- we call it a

1 three-strike rule. You understand this would be  
2 considered one of those strikes on your record?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right, sir. I find that the  
5 State has provided a substantial factual basis to support  
6 the charge that Mr. Howard has pled guilty to. I think  
7 that his decision to enter this plea has been done freely,  
8 voluntarily and intelligently, having had the advice and  
9 counsel of two outstanding attorneys in both Mr. Etheridge  
10 and Mr. Suggs. Mr. Howard has indicated his satisfaction  
11 with that representation. I'm going to accept his plea.

12 Mr. Etheridge.

13 MR. ETHERIDGE: Thank you, Your Honor. This is  
14 a negotiated sentence. I talked to Mr. Howard's Family  
15 several times. Cyntonio's mother is the fine a person you  
16 ever want to meet. I do believe he's changed a lot of his  
17 ways, but as Mr. Jepertinger alluded to, there has been  
18 some trouble in the past.

19 At the onset of this, he did say he wanted to  
20 get this behind him for his family. He has four children  
21 -- three young children. Well, the youngest is four  
22 months old and try to be a better example for them. He  
23 has never varied in the fact that he is wrong. He's  
24 never done anything but admit he was wrong, but he wanted  
25 to get this behind him as quickly as possible and try to

1 get this behind him so he could be a better example for  
2 his family.

3 He has made some mistakes in the past, but I can  
4 tell you I was talking to the chief of police over  
5 Darlington about him earlier. Chief Washington knows his  
6 family. He does come from a good family. He is a good  
7 person but made some mistakes, but that's why he's  
8 standing in front of you today, Your Honor. Again, Your  
9 Honor, this is a negotiated recommendation. We ask you to  
10 go along with it, but I do feel that he has learned from  
11 these mistakes. I do believe that this will be the thing  
12 hopefully that will make him a better father that he seeks  
13 to be, so ask you to go along with the negotiations.

14 THE COURT: All right. Thank you, sir.  
15 Anything further, Mr. Howard?

16 THE DEFENDANT: No, sir.

17 THE COURT: All right, sir. All right. On  
18 indictment 2019-GS-33-324 sentence of the Court is that  
19 you be committed to the state department of corrections  
20 for a period of ten years, give you credit for the seven  
21 days that you have served. Good luck to you, sir.

22 END OF REQUESTED TRANSCRIPT  
23  
24  
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF FLORENCE )

I, Keshia Reed, Court Reporter in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed paged, numbered 1 through 14, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of General Sessions for Marion County, South Carolina, on the 5th day of November, 2019.

I do further certify that I am neither of kin,  
counsel nor interest to any party hereto. In witness  
whereof, I have hereunto affixed my signature this 5th  
day of December 2020.

Keshia Reed

Keshia Reed, Court Reporter

WITNESSES

Bobby J. Davis Marion County Combined Drug Unit

DOCKET NO. 2019-GS-33-00324

The State of South Carolina

County of

MARION

COURT OF GENERAL SESSIONS

AUGUST

TERM

2019

THE STATE

vs.

CYNTONIO TYROSSI HOWARD

John C Jepertinger

ARREST WARRANT NUMBER

2019A3310100142 ✓

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

DISTRIBUTION OF COCAINE BASE

FILED  
Not Recorded  
2019 JUL 32 PM 1:26  
MARION COUNTY SC  
CHRISTY M GRAY  
CLERK OF COURT

FILED  
2019 AUG -1 PM 1:44  
MARION COUNTY SC  
CHRISTY M GRAY  
CLERK OF COURT

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF MARION )

INDICTMENT FOR  
DISTRIBUTION OF COCAINE BASE

At a Court of General Sessions, convened on AUGUST 01, 2019 the Grand Jurors of MARION County present upon their oath:

**COUNT ONE- DISTRIBUTION OF COCAINE BASE**

That **CYNTONIO TYROSSI HOWARD** did in Marion County, on or about June 15, 2018, distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver a quantity of Cocaine Base, a controlled substance to a confident informant with the Marion County Combined Drug Unit, under provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law, and being in violation of Section 44-53-375(B)(3), S. C. Code of Laws, 1976, as amended.

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

E. L. Clements III

**E.L. Clements, III**  
TWELFTH CIRCUIT SOLICITOR

## STATE OF SOUTH CAROLINA

COUNTY OF Marion  
 STATE VS.  
Cyntonio Tyrossi Howard

AKA:  
 Race: Black Sex: M Age: 32  
 DOB: 1987 SS#: [REDACTED]  
 Address: Willie Hodge Road  
 City, State, Zip: Mullins, SC 29574-6141  
 DL#: [REDACTED] SID#: [REDACTED]

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was  
 TO: Drugs / Distribution, etc. of cocaine base, 3rd or sub. Offense

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

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

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

ATTEST:

[Signature] Solicitor 9826 SC Bar# [Signature] Defendant [Signature] Attorney for Defendant 76911 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
 for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
 and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
 of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDoc.

Credit for 7 days

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

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

## SPECIAL CONDITIONS:

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

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

Payment Terms: \_\_\_\_\_

☐ Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine:  
 § 14-1-206 (Assessments 107.5 %) \$ \_\_\_\_\_  
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00  
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_  
 § 56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_  
 § 56-1-286 (DUI Breath Test) \$25 \$ \_\_\_\_\_  
 Proviso (Public Def/Probation) \$500 \$ \_\_\_\_\_  
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00  
 § 14-1-213 (Drug Court Surcharge) \$150 \$ 150.00  
 § 50-21-114 (BUI Breath Test Fee) \$50 \$ \_\_\_\_\_  
 § 56-5-2942(I) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_  
 3% to County (if paid in installments) \$ 8.25

TOTAL \$ 283.25

Clerk of Court/ Deputy Clerk Christy M. Gray

Court Reporter: Kasha T. Rife

SCCA/217 (04/2018)

## IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019-GS-33-00324

A/W#: 2019A3310100142

Date of Offense: 6/15/2018

S.C. Code § : 44-53-0375(B)(3)

CDR Code #: 3039

## SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

(10-30150.00)

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

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

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

ATTEST:

[Signature] Solicitor 9826 SC Bar# [Signature] Defendant [Signature] Attorney for Defendant 76911 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
 for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
 and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
 of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDoc.

Credit for 7 days

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

## SPECIAL CONDITIONS:

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

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

Payment Terms: \_\_\_\_\_

☐ Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine:  
 § 14-1-206 (Assessments 107.5 %) \$ \_\_\_\_\_  
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00  
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_  
 § 56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_  
 § 56-1-286 (DUI Breath Test) \$25 \$ \_\_\_\_\_  
 Proviso (Public Def/Probation) \$500 \$ \_\_\_\_\_  
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00  
 § 14-1-213 (Drug Court Surcharge) \$150 \$ 150.00  
 § 50-21-114 (BUI Breath Test Fee) \$50 \$ \_\_\_\_\_  
 § 56-5-2942(I) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_  
 3% to County (if paid in installments) \$ 8.25

TOTAL \$ 283.25

Clerk of Court/ Deputy Clerk Christy M. Gray

Court Reporter: Kasha T. Rife

SCCA/217 (04/2018)

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

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

Presiding Judge [Signature]

Judge Code: 2141

Sentence Date: 11-5-2019

2020-CP-33-507

FILED  
FORM 5

2020 OCT 19 AM 11:00

STATE OF SOUTH CAROLINA

COUNTY OF MARION

CYNTONIO HOWARD, # 00382668

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

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention Kershaw Correctional Institution
2. Name and location of Court which imposed sentence Twelfth Judicial Circuit, Marion County, SC
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) Distribution, etc. of cocaine base, 3rd or subsequent offense (2019GS3300324)
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:

- (a) Ten (10) years imprisonment, 11/05/2019
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
- (b) after a plea of not guilty
- (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Counsel failed to advise Applicant on his right to direct appeal and did not file a  
Notice of Intent to Appeal on his behalf.
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

(a) Applicant was deprived of his constitutional right to the effective assistance of counsel and due process in violation of the Sixth Amendment and Fourteenth Amendment.

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

(a) Counsel failed to adequately review discovery with Applicant and advise him accordingly. Counsel failed to explain the nature of the charges as well as the consequences or implications that would result from the imposition of his sentence. Counsel also failed to adequately explain the plea agreement's terms and its relative advantages and disadvantages. Counsel also failed to sufficiently advise Applicant on the implications and consequences of pleading guilty. Each error not only impacted Applicant's decision on whether to plead guilty or proceed to trial, but also rendered his guilty plea not knowingly, intelligently, or voluntarily entered. But for Counsel's errors, Applicant would not have pleaded guilty and instead would have proceeded to trial.

(b) Counsel failed to investigate evidence, witnesses, potential defenses, and potential dispositive pre-trial motions prior to advising Applicant to plead guilty. But for Counsel's errors, Applicant would not have pleaded guilty and instead would have proceeded to trial.

(c) Counsel failed to adequately investigate mitigating circumstances relevant to sentencing and consequently failed to adequately present such mitigating circumstances to the sentencing judge.

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

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

13. If you answered “yes” to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
    - iv. \_\_\_\_\_
  - (b) the name and location of the Court in which each was filed:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
    - iv. \_\_\_\_\_
  - (c) the disposition thereof:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
    - iv. \_\_\_\_\_
  - (d) the date of each such disposition:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
    - iv. \_\_\_\_\_
  - (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
    - iv. \_\_\_\_\_
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?  
No
15. If you answered “yes” to (14) identify:

- (a) which grounds have been presented:
    - i. N/A
    - ii. N/A
    - iii. N/A
  - (b) the proceedings in which each ground was raised:
    - i. N/A
    - ii. N/A
    - iii. N/A
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) N/A
  - (b) N/A
  - (c) N/A
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
  - (b) your trial, if any? Yes
  - (c) your sentencing? Yes
  - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
  - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
    - i. Kevin Ray Etheridge, Esq.  
Gardner Law Firm, P.A.  
2184 W Evans Street, Suite A  
Florence, SC 29502  
(843) 662-9899
    - ii.

iii. \_\_\_\_\_

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

i. through plea and sentencing

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

Vacate conviction and sentence and remand for a new trial

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

No.

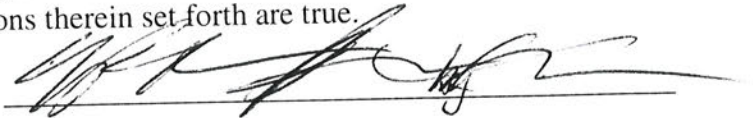
STATE OF SOUTH CAROLINA

County of Marion

)  
)  
)

VERIFICATION

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



SWORN to and subscribed before me this 13  
day of October, 2019.

Alisa Cherry (L.S.)  
Notary Public

My Commission Expires: 4-22-29

NOTARY PUBLIC  
STATE OF SOUTH CAROLINA  
COMMISSION EXPIRES 4/22/29

2020 OCT 19 AM 11:01

FILED

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the PCR application filed on behalf of Cyntonio Howard was served upon the Respondent this 7 day of October, 2020 by depositing it in the U.S. postal mail with sufficient postage attached, addressed to:

The Honorable Alan Wilson, SC Attorney General  
ATTN: PCR Division of SC Attorney General's Office  
P.O. Box 11549  
Columbia, SC 29211

This 7 day of October, 2020.

  
William G. Yarborough III, Attorney at Law, LLC

2020 OCT 19 AM 11:00  
CLERK OF COURT  
SOUTH CAROLINA  
COUNTY 98

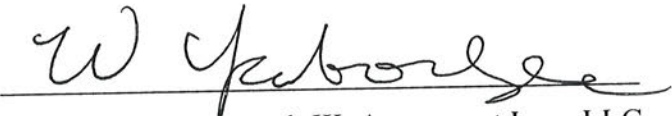
FILED

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the Verification of the PCR application filed on behalf of Cyntonio Howard was served upon the Respondent this 13 day of October, 2020 by depositing it in the U.S. postal mail with sufficient postage attached, addressed to:

The Honorable Alan Wilson, SC Attorney General  
ATTN: PCR Division of SC Attorney General's Office  
P.O. Box 11549  
Columbia, SC 29211

This 13 day of October, 2020.

  
William G. Yarborough III, Attorney at Law, LLC

**FILED**

2020 OCT 19 AM 11:01

NOTARY PUBLIC  
COLUMBIA, SC  
GREEN 07/17/20

STATE OF SOUTH CAROLINA

COUNTY OF MARION

Cyntonio Howard,  
SCDC# 00382668,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON S  
TWELFTH JUDICIAL CIRCUIT

2020CP3300507

MOTION TO AMEND APPLICATION  
FOR POST-CONVICTION RELIEFMARION COUNTY S.C.  
CHRISTY M. GRAY  
CLERK OF COURT

1021 APR 22 PM 3:19

FILED

NOW COMES the Applicant, Cyntonio Howard, by and through undersigned counsel, and hereby moves this Honorable Court for leave to amend his application for post-conviction relief.

Applicant filed his initial PCR application with the Marion County Court of Common Pleas on October 19, 2020, raising the following allegations:

10. (a) Applicant was deprived of his constitutional right to the effective assistance of counsel and due process in violation of the Sixth Amendment and Fourteenth Amendment.
11. (a) Counsel failed to adequately review discovery with Applicant and advise him accordingly. Counsel failed to explain the nature of the charges as well as the consequences or implications that would result from the imposition of his sentence. Counsel also failed to adequately explain the plea agreement's terms and its relative advantages and disadvantages. Counsel also failed to sufficiently advise Applicant on the implications and consequences of pleading guilty. Each error not only impacted Applicant's decision on whether to plead guilty or to proceed to trial, but also rendered his guilty plea not knowingly, intelligently, or voluntarily entered. But for Counsel's errors, Applicant would not have pleaded guilty and instead would have proceeded to trial.
- (b) Counsel failed to investigate evidence, witnesses, potential defenses, and potential dispositive pre-trial motions prior to advising Applicant to plead guilty. But for Counsel's errors, Applicant would not have pleaded guilty and instead would have proceeded to trial.
- (c) Counsel failed to adequately investigate mitigating circumstances relevant to sentencing and consequently failed to adequately present such mitigating circumstances to the sentencing judge.

Applicant respectfully submits the following allegations and supporting facts in addition to the grounds reproduced above for this Court's consideration:

- I. Pursuant to *Strickland v. Washington*,<sup>1</sup> Plea Counsel's deficient and prejudicial performance deprived Applicant of his right to the effective assistance of counsel guaranteed by the Sixth Amendment, in violation of due process pursuant to the Fourteenth Amendment.

Prior to Applicant's guilty plea hearing, Applicant had only dealt with his attorney of record, Kevin Ray Etheridge, Esq. ("Plea Counsel"), and had neither met nor worked with B. Suggs, Esq., whom was unaffiliated with Plea Counsel's firm. Plea Counsel had arranged for Mr. Suggs to handle to the plea hearing without adequate notice to Applicant. Mr. Suggs appeared at the hearing unprepared and unfamiliar with Applicant's case, and his advisement and explanation to Applicant regarding the plea and proceedings just shortly before the hearing began conflicted with Mr. Etheridge's previous communications with Applicant. Making matters worse, neither attorney had sufficiently advised Applicant on the nature of the charge nor thoroughly reviewed discovery with him. Applicant was confused and conflicted about the decision to plead guilty as a result. Due to these omissions and sudden, unconsented switch of counsel, Applicant consequently lacked adequate understanding of the evidence the State was expected to present against him at trial, as well as the implications of pleading guilty. Applicant was therefore deprived of a full and fair opportunity to decide whether to invoke his constitutional right to proceed to trial or to plead guilty.

Plea Counsel likewise failed to investigate several viable dispositive pre-motions, trial strategies, and defenses available to Applicant. Specifically, the State's discovery reveals the missed opportunity at trial to challenge the deficient chain of custody in the case and the lack of

---

<sup>1</sup> 466 U.S. 668 (1984).

evidence to prove the charges beyond a reasonable doubt. Plea Counsel also did not advise Applicant of the availability of a trial defense or strategy on the grounds of depletion or destruction of evidence due to testing, which not only implicated the State's duty to maintain chain of custody, but also deprived Applicant of the opportunity to investigate and independently challenge the accuracy and reliability of the testing procedures used and the drug weight, as well as rendered the State unable to meet its burden of proof. Counsel neither communicated the viable defenses available to him nor advised Applicant on the implications such defense would have on the potential trial outcome. Counsel also failed to sufficiently advise him on the trial rights waived by way of his guilty plea, specifically the waiver of his right to present a defense to the charges, submit evidence in support thereof, call supporting witnesses to testify etc. These omissions directly impacted Applicant's decision-making on whether to plead guilty or proceed to trial.

These errors, taken individually or together, rendered Applicant's guilty plea not knowingly, voluntarily, or intelligently entered. But for the ineffective performance of his attorneys, Applicant would not have pleaded guilty and instead would have proceeded to trial. Applicant was prejudiced by their deficient performance because had he been made aware of all of the State's discovery, and the potential defenses and dispositive pretrial motions available to him, and been advised accordingly, he would not have pleaded guilty and would have insisted on proceeding to trial. Applicant accordingly seeks vacation of his conviction and sentence and a remand of his case for a new trial.

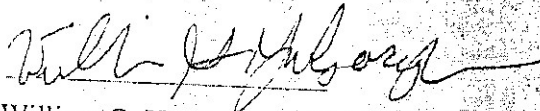
**II. Plea Counsel was ineffective for failing to advise Applicant of his right to direct appeal, as well as the right to the effective assistance of appellate counsel.**

The time to file an appeal following Applicant's conviction and the imposition of his sentence expired without Plea Counsel filing a notice of intent to appeal on his behalf. Plea Counsel

also did not inform Applicant of his right to seek direct appeal nor how to commence the process on his own by filing even a *pro se* notice of intent to appeal. Applicant did not knowingly waive his right to seek direct appeal or his right to the effective assistance of appellate counsel. In the alternative to the relief requested above, Applicant seeks a belated appeal on this ground.

WHEREFORE, Applicant respectfully requests this Honorable Court to grant Applicant leave to amend his APCR and to elicit testimony on the grounds raised herein at the evidentiary hearing.

Respectfully submitted,



William G. Yarborough, III  
Attorney for the Applicant

308 W. Stone Ave., Greenville, SC 29609  
(864) 331-1612

SC Bar No.: 10271

Greenville, SC

FILED

STATE OF SOUTH CAROLINA 7:21 APR 22 PM 3:15 THE COURT OF COMMON PLEAS

COUNTY OF MARION

CYNTONIO HOWARD, # 00382668  
Full name and prison number (if any) of Applicant.MARION COUNTY SC  
CHRISTY M. GRAY  
CLERK OF COURT

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

**INSTRUCTIONS - READ CAREFULLY**

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

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

1. Place of detention Kershaw Correctional Institution
2. Name and location of Court which imposed sentence Twelfth Judicial Circuit, Marion County, SC
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) Distribution, etc. of cocaine base, 3rd or subsequent offense (2019GS3300324)
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:

Revised 3/2003

- (a) Ten (10) years imprisonment, 11/05/2019
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
- (b) after a plea of not guilty
- (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Counsel failed to advise Applicant on his right to direct appeal and did not file a  
Notice of Intent to Appeal on his behalf.
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

(a) Applicant was deprived of his constitutional right to the effective assistance of counsel and due process in violation of the Sixth Amendment and Fourteenth Amendment.

(b) Pursuant to Strickland v. Washington, Plea Counsel's deficient and prejudicial performance deprived Applicant of his right to the effective assistance of counsel guaranteed by the Sixth Amendment, in violation of due process pursuant to the Fourteenth Amendment.

(c) Plea Counsel was ineffective for failing to advise Applicant of his right to direct appeal, as well as the right to the effective assistance of appellate counsel.

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

(a) Counsel failed to adequately review discovery with Applicant and advise him accordingly. Counsel failed to explain the nature of the charges as well as the consequences or implications that would result from the imposition of his sentence. Counsel also failed to adequately explain the plea agreement's terms and its relative advantages and disadvantages. Counsel also failed to sufficiently advise Applicant on the implications and consequences of pleading guilty. Each error not only impacted Applicant's decision on whether to plead guilty or proceed to trial, but also rendered his guilty plea not knowingly, intelligently, or voluntarily entered. But for Counsel's errors, Applicant would not have pleaded guilty and instead would have proceeded to trial.

(b) Counsel failed to investigate evidence, witnesses, potential defenses, and potential dispositive pre-trial motions prior to advising Applicant to plead guilty. But for Counsel's errors, Applicant would not have pleaded guilty and instead would have proceeded to trial.

(c) Counsel failed to adequately investigate mitigating circumstances relevant to sentencing and consequently failed to adequately present such mitigating circumstances to the sentencing judge.

(d) Prior to Applicant's guilty plea hearing, Applicant had only dealt with his attorney of record, Kevin Ray Etheridge, Esq. ("Plea Counsel"), and had neither met nor worked with B. Suggs, Esq., whom was unaffiliated with Plea Counsel's firm. Plea Counsel had arranged

for Mr. Suggs to handle to the plea hearing without adequate notice to Applicant. Mr. Suggs appeared at the hearing unprepared and unfamiliar with Applicant's case, and his advisement and explanation to Applicant regarding the plea and proceedings just shortly before the hearing began conflicted with Mr. Etheridge's previous communications with Applicant. Making matters worse, neither attorney had sufficiently advised Applicant on the nature of the charge nor thoroughly reviewed discovery with him. Applicant was confused and conflicted about the decision to plead guilty as a result. Due to these omissions and sudden, unconsented switch of counsel, Applicant consequently lacked adequate understanding of the evidence the State was expected to present against him at trial, as well as the implications of pleading guilty. Applicant was therefore deprived of a full and fair opportunity to decide whether to invoke his constitutional right to proceed to trial or to plead guilty.

Plea Counsel likewise failed to investigate several viable dispositive pre-motions, trial strategies, and defenses available to Applicant. Specifically, the State's discovery reveals the missed opportunity at trial to challenge the deficient chain of custody in the case and the lack of evidence to prove the charges beyond a reasonable doubt. Plea Counsel also did not advise Applicant of the availability of a trial defense or strategy on the grounds of depletion or destruction of evidence due to testing, which not only implicated the State's duty to maintain chain of custody, but also deprived Applicant of the opportunity to investigate and independently challenge the accuracy and reliability of the testing procedures used and the drug weight, as well as rendered the State unable to meet its burden of proof. Counsel neither communicated the viable defenses available to him nor advised Applicant on the implications such defense would have on the potential trial outcome. Counsel also failed to sufficiently advise him on the trial rights waived by way of his guilty plea, specifically the waiver of his right to present a defense to the charges, submit evidence in support thereof, call supporting witnesses to testify etc. These omissions directly impacted Applicant's decision-making on whether to plead guilty or proceed to trial.

These errors, taken individually or together, rendered Applicant's guilty plea not knowingly, voluntarily, or intelligently entered. But for the ineffective performance of his attorneys, Applicant would not have pleaded guilty and instead would have proceeded to trial. Applicant was prejudiced by their deficient performance because had he been made aware of all of the State's discovery, and the potential defenses and dispositive pretrial motions available to

him, and been advised accordingly, he would not have pleaded guilty and would have insisted on proceeding to trial. Applicant accordingly seeks vacation of his conviction and sentence and a remand of his case for a new trial.

(e.) The time to file an appeal following Applicant's conviction and the imposition of his sentence expired without Plea Counsel filing a notice of intent to appeal on his behalf. Plea Counsel also did not inform Applicant of his right to seek direct appeal nor how to commence the process on his own by filing even a pro se notice of intent to appeal. Applicant did not knowingly waive his right to seek direct appeal or his right to the effective assistance of appellate counsel. In the alternative to the relief requested above, Applicant seeks a belated appeal on this ground.

12. Prior to this application have you filed with respect to this conviction:
  - (a) any petition in a State Court under South Carolina Law? No
  - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
  - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
  - (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
  - (a) the specific nature thereof:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
    - iv. \_\_\_\_\_
  - (b) the name and location of the Court in which each was filed:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
    - iv. \_\_\_\_\_
  - (c) the disposition thereof:
    - i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

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

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A

(b) N/A

- (c) N/A
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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

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

i. Kevin Ray Etheridge, Esq.  
Gardner Law Firm, P.A.  
2184 W Evans Street, Suite A  
Florence, SC 29502  
(843) 662-9899

ii. B. Scott Suggs, Esquire  
The Suggs Law Firm, PC  
P.O. Drawer 591  
506 W. Evans St.  
Florence, SC 29503  
(843) 629-5050  
thesuggslawfirm@sc.twcbc.com

iii. \_\_\_\_\_

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

i. Up until plea hearing

ii. Guilty plea and sentencing hearing

iii. \_\_\_\_\_

19. State clearly the relief you seek in filing this application:  
Vacate conviction and sentence and remand for a new trial
20. Are you now under sentence from any other court that you have not challenged?  
No.

STATE OF SOUTH CAROLINA )

VERIFICATION

County of Marion )

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

*Cyntonio Howard*  
*as counsel*

SWORN to and subscribed before me this 16th

day of April 2021  
*[Signature]* (L.S.)  
 Notary Public

My Commission Expires:

Christine M. Robbins  
 Notary Public, State of South Carolina  
 My Commission Expires November 12, 2020

FILED  
 2021 APR 22 PM 3:50  
 MARION COUNTY SO  
 CHRISTY M. GRAY  
 CLERK OF COURT

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

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

\_\_\_\_\_  
*Applicant*

SWORN or affirmed to and subscribed before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

\_\_\_\_\_  
*Notary Public*

My Commission Expires: \_\_\_\_\_

|                           |   |                                  |
|---------------------------|---|----------------------------------|
| STATE OF SOUTH CAROLINA   | ) | IN THE COURT OF COMMON PLEAS     |
| COUNTY OF MARION          | ) | FOR THE TWELFTH JUDICIAL CIRCUIT |
|                           | ) |                                  |
| Cyntonio Howard, #382668, | ) |                                  |
| Applicant,                | ) | Case No.: 2020-CP-33-0507        |
|                           | ) |                                  |
| v.                        | ) |                                  |
|                           | ) | <b>RETURN</b>                    |
| State of South Carolina,  | ) | <b>(Counsel Retained)</b>        |
| Respondent.               | ) |                                  |

FILED  
 2021 APR 22 PM 3:29  
 MARION COUNTY CLERK  
 CHRISTY M. GRAHAM  
 CLERK OF COURT

In response to Cyntonio Howard's (Applicant) action for post-conviction relief (PCR) commenced October 19, 2020, the State makes this return:

### **I. Procedural History**

Applicant is confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Marion County Clerk of Court. Applicant was indicted at the August 2019 term of the Marion County Grand Jury for distribution of cocaine, 3rd or subsequent offense (2019-GS-33-0324). Applicant was represented by Kevin Etheridge, Esquire. Deputy Solicitor John Jepertinger prosecuted the case.

On November 5, 2019, Applicant pleaded guilty, as indicted, pursuant to a negotiated plea agreement with the State, before the Honorable Thomas A. Russo. Judge Russo sentenced Applicant as negotiated to a term of ten years' imprisonment. Applicant did not appeal.

### **II. Facts**

The facts for this indictment were articulated by the State at Applicant's plea hearing as follows:

[O]n June the 15th 2018, here in Marion County an informant of the Marion County Combine Drug Unit was outfitted with audio-visual equipment and provided state funds to purchase a quantity of cocaine base from this individual. The deal was consummated here in Marion County for the amount alleged or provided -- not alleged but provided to the confidential informant by

the narcotics unit. These were still photographs. Some photos are on the back. I showed these to Mr. Suggs yesterday.

Mr. Suggs also had the opportunity to view the video in the case. These photos were taken from the video tape of the incident. It's clear that this individual -- the defendant is sitting in the car and distributing what appears to be cocaine base in the car.

After the sell was consummated, the CI gave the substance sold to her by this defendant and gave it back to the drug unit. They sent it to SLED for analysis. It came back positive for cocaine base per Lawrence Zitzcovich (sic) who is the SLED chemist and was .18 grams of cocaine base, Judge, commonly known as crack.

Plea Tr. 9-10.

### **III. Current Application**

Applicant timely commenced this PCR action on October 19, 2020. Applicant asserts he is being held in custody unlawfully, alleging:

1. Ineffective assistance of counsel:
  - a. Counsel failed to adequately review discovery with Applicant and advise him accordingly. Counsel failed to explain the nature of the charges as well as the consequences or implications that would result from the imposition of his sentence. Counsel also failed to adequately explain the plea agreement's terms and its relative advantages and disadvantages. Counsel also failed to sufficiently advise Applicant on the implications and consequences of pleading guilty or proceed to trial, but also rendered his guilty plea not knowingly, intelligently, or voluntarily entered. But for Counsel's errors, Applicant would not have pleaded guilty and instead would have proceeded to trial.
  - b. Counsel failed to investigate evidence, witnesses, potential defenses, and potential dispositive pre-trial motions prior to advising Applicant to plead guilty. But for Counsel's errors, Applicant would not have pleaded guilty and instead would have proceeded to trial.
  - c. Counsel failed to adequately investigate mitigating circumstances relevant to sentencing and consequently failed to adequately present such mitigating circumstances to the sentencing judge.

- d. Counsel failed to advise Applicant on his right to direct appeal and did not file a Notice of Intent to Appeal on his behalf.<sup>1</sup>

Applicant requests his sentence be vacated and remanded for a new trial as his relief.

Attached herewith and incorporated herein are the Marion County Clerk of Court records regarding the subject conviction, Applicant's SCDC records, the plea transcript, and the records of this PCR action. The State reserves the right to amend this Return upon receipt of any relevant materials

#### **IV. Response to Allegation of Ineffective Assistance of Counsel**

Applicant's allegations of ineffective assistance of plea counsel are without merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989).

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). "[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To prove prejudice, the applicant

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<sup>1</sup> The state interprets this allegation as claiming Applicant is entitled to a belated direct appeal pursuant to *White v. State*, 263 S.C. 110, 113, 208 S.E.2d 35, 36 (1974).

must show a reasonable probability he would not have pleaded guilty and would have insisted on going to trial absent plea counsel's alleged deficiency. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

*Strickland* requires trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688-689. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." *Id.* at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. *Id.* at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). In making a fair assessment of attorney performance, a court must make every effort to "eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Strickland*, 466 U.S. at 689.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). To support a claim that trial counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the

PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. *Id.*

Applicant cannot satisfy either requirement of *Strickland*. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

#### V. Response to Failure to Inform of Right to Appeal<sup>2</sup>

Applicant claims Counsel was ineffective for failing to tell him of his right to appeal. However, during the plea colloquy with Judge Russo, Applicant was informed of his right to appeal and confirmed he understood this right. Plea Tr. 7. "[A]bsent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea." *Weathers v. State*, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995). "The bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief." *Id.* "One extraordinary circumstance[] . . . would arise when the defendant inquires about an appeal." *Id.*

Here, Applicant entered a valid plea. Thus, absent extraordinary circumstances, Applicant is not entitled to relief on this ground. Applicant did not indicate extraordinary circumstances

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<sup>2</sup> Pursuant to *White v. State*, 263 S.C. 110, 113, 208 S.E.2d 35, 36 (1974).

existed in this case. However, this allegation probably raises questions of fact the record does not conclusively refute. Accordingly, the State respectfully requests an evidentiary hearing to resolve this issue. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (“Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.”).

#### **VI. Any Future Amendments and Invocation of Discovery**

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *See id.* at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

Pursuant to section 17-27-150 of the South Carolina Code, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Further, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to

request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

**VII. Any and All other Allegations**

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

**VIII. Conclusion**

WHEREFORE, the State requests an evidentiary hearing be held on the claim of ineffective assistance of counsel.

Respectfully submitted,

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December 21, 2020

STATE OF SOUTH CAROLINA )  
COUNTY OF MARION )

IN THE COURT OF COMMON PLEAS

Cyntonio Howard, #382668 )

2020-CP-33-0507

Applicant, )

vs )

AFFIDAVIT OF SERVICE BY MAIL

State of South Carolina, )

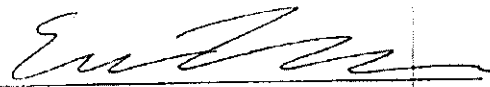
Respondent, )

FILED  
2021 APR 22 PM 3:38  
MARION COUNTY SC  
CHRISTY M. GRAY  
CLERK OF COURT

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

Cyntonio Howard, #382668  
(PA-0034-T)  
Kershaw Correctional Institution  
4848 Goldmine Highway  
Kershaw, SC 29067

DATED this the 21<sup>st</sup> day of December, 2020.



Erik Marcusson, Legal Assistant  
for Respondent

1 STATE OF SOUTH CAROLINA      **TRANSCRIPT OF RECORD**

2 COUNTY OF MARION      CASE NO.:2020-CP-33-00507

3 **TRANSCRIPTION OF WEBEX AUDIO/VIDEO HEARING**

4 -----  
5                      October 21, 2022

6      **BEFORE:**    The Honorable Clifton Newman

7 -----  
8      CYNTONIO HOWARD,

9      Plaintiff,

10     vs.

11     THE STATE OF SOUTH CAROLINA,

12     Defendant.

13 -----  
14  
15     APPEARANCES:

16  
17                      W.D. Yarborough, Jr., Esq.  
                         Appearing for the Plaintiff.

18                      Danielle Dixon, Esq.  
19                      Appearing for the State.

20  
21  
22     Recorded by:    WebEx Video Courtroom

23     Transcriber:    Natalie Dahl, RPR

24

25

NOTE: Pursuant to Rule 607 (H)(1)(B), SCACR "A Court REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." All requests for a copy of the enclosed transcript shall be sent to: Natalie Dahl, RPR, P.O. Box 762, Conway, SC 29526

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### Transcript Legend

|                |                                                                      |
|----------------|----------------------------------------------------------------------|
| Dash (--)      | Indicates an interruption in speech                                  |
| Ellipses (...) | Indicates trailing off in speech                                     |
| Phonetic (ph)  | Indicates a phonetic word                                            |
| (Inaudible)    | Indicates word(s) are not discernable due to audio recording quality |

## 1 P R O C E E D I N G S

2 THE COURT: We're ready to proceed with  
3 Mr. Cyntonio Howard.

4 If you will swear Mr. Howard, please.

5 (CYNTONIO HOWARD, having been duly sworn,  
6 testified as follows:)

7 THE COURT: All right. Ms. Dixon.

8 MS. DIXON: Danielle Dixon for the State of  
9 South Carolina. This is the case of Cyntonio  
10 Howard v. State, Docket No. 2020-CP-33-507.

11 Mr. Howard is serving a 10-year sentence. He was  
12 indicted by the Marion County Grand Jury August of  
13 2019 for distribution of cocaine base. That  
14 indictment number is 2019-GS-33-324. This was  
15 basically a situation where a confidential  
16 informant did a control purchase. This occurred on  
17 June 15<sup>th</sup> of 2018. He pled guilty before  
18 Honorable Thomas Russo on November 5, 2019. He was  
19 represented by Kevin Etheridge at the plea hearing.  
20 It does look like he may have consulted with Scott  
21 Suggs. Deputy Solicitor John Jepertinger  
22 represented the State. He did not file a direct  
23 appeal. He timely filed this PCR application  
24 October 19 of 2020. The State made a return  
25 requesting an evidentiary hearing. He did file a

1 motion to amend the application, and based on the  
2 most recent filings, our understanding is that he's  
3 going forward on eight claims today, which would  
4 be: Counsel was ineffective for failing to  
5 adequately review discovery; failing to explain the  
6 nature of the charges and the consequences of the  
7 sentence; failing to adequately advise him about  
8 plea terms, advantages and disadvantages; failing  
9 to investigate the chain of custody; failing to  
10 advise and investigate depletion of evidence;  
11 failing to investigate or present mitigation; had  
12 Mr. Etheridge fill in without prior notice, and Mr.  
13 Etheridge was unprepared; and failed to advise of  
14 trial rights he was waiving.

15 I would just ask Mr. Yarborough to clarify if  
16 that is also his understanding.

17 MR. YARBOROUGH: That's correct, Your Honor.

18 THE COURT: All right. Yes, he clarifies  
19 that is his understanding.

20 MS. DIXON: Thank you. I'll turn it over to  
21 Mr. Yarborough, sorry.

22 THE COURT: Yes, sir, Mr. Yarborough.

23 MR. YARBOROUGH: Your Honor, I call  
24 Mr. Howard.

25 THE COURT: Mr. Howard, if you will come to

1 the witness stand.

2 **DIRECT EXAMINATION**

3 **BY MR. YARBOROUGH:**

4 **Q** State your name for the record.

5 **A** Cyntonio Howard.

6 **Q** Mr. Howard, are you presently incarcerated?

7 **A** Say again?

8 **Q** Where are you incarcerated?

9 **A** Dillon County --

10 **THE COURT:** Mr. Howard, take down your mask  
11 so we can hear you better.

12 **A** Dillon County Detention Center.

13 **Q (BY MR. YARBOROUGH)** You are going to need to  
14 speak up into that mic, okay?

15 **A** Okay.

16 **Q** Do you know what you were convicted of?

17 **A** Yes, sir.

18 **Q** What was it?

19 **A** Distribution, third offense.

20 **Q** Were you represented by a lawyer?

21 **A** Yes, sir.

22 **Q** Who was your lawyer?

23 **A** Mr. Kevin Etheridge.

24 **Q** Is that who you paid?

25 **A** Yes, sir.

1     **Q**     So you went -- you were arrested on March 24,  
2     2019; does that sound about right?

3     **A**     Yes, sir.

4     **Q**     And do you recall what the date of the  
5     offense was that they said you had sold drugs?

6     **A**     I don't recall.

7     **Q**     If I refresh your recollection, would you  
8     agree with me that it was July 15, 2018?

9     **A**     Oh, yes, sir.

10    **Q**     Where were you between July 15, 2018 and  
11    March 24, 2019?

12    **A**     (Inaudible).

13    **Q**     Where were you?

14    **A**     In Mullins.

15    **Q**     Were you working?

16    **A**     Yes, sir.

17    **Q**     And were you hiding from anybody?

18    **A**     No, sir.

19    **Q**     So is there any explanation why it took them  
20    so long to find you?

21    **A**     I don't know. I guess they were trying to  
22    build the case or something. I don't know.

23    **Q**     Okay. So, at some point, did you get out on  
24    bond?

25    **A**     Yes.

1 Q How long were you out on bond?

2 A I don't -- I was out on bond the whole time  
3 until I went to court.

4 Q And while you were out on bond, did you  
5 regularly see Mr. Etheridge in regard to this case?

6 A Once in a while.

7 Q Did you all talk about the charges or the  
8 possible outcomes of the case?

9 A Not really.

10 Q Okay. How many times do you think you met  
11 with him?

12 A I would say about twice.

13 Q Did your mother help you pay Mr. Etheridge?

14 A Yeah.

15 Q So, at some point, did you get caught up on  
16 what was called the trial docket down here?

17 A Yes.

18 Q Okay. Tell me a little bit about -- go over  
19 that day. And I guess that day, just so the Court  
20 will know, that would have been November the 4th,  
21 2019 --

22 A Yeah.

23 Q -- is that correct?

24 So you go to the courthouse. Did you see  
25 Mr. Etheridge?

1     **A**     No, sir.

2     **Q**     Why not?

3     **A**     I guess he sent Mr. Suggs.

4     **Q**     And did you know you were going over there  
5 for a jury trial?

6     **A**     No, sir.

7     **Q**     Okay. So when you got over there, what did  
8 Mr. Suggs tell you?

9     **A**     Well, he said he was coming and doing a favor  
10 for Mr. Etheridge.

11    **Q**     And that favor was to try your case?

12    **A**     Yes.

13    **Q**     What did you think about that?

14    **A**     I didn't think it was right.

15    **Q**     Did you tell Mr. Suggs that?

16    **A**     Yes, sir -- well, just told him, you know....

17    **Q**     I'm sorry?

18    **A**     I didn't think it was right, and I was -- I  
19 was really wanting Kevin to be there.

20    **Q**     Had you been over the case at all with Mr.  
21 Suggs?

22    **A**     Just at the courthouse.

23    **Q**     Had you ever met him before?

24    **A**     Never.

25    **Q**     So you hired Mr. Etheridge, and Mr. Suggs

1 showed up to help you with this jury trial.

2 Were you scared?

3 A Yes.

4 Q What did Mr. Suggs tell you about the case at  
5 that point?

6 A The same way, too. He said that we can take  
7 it to trial and -- well, I wasn't comfortable  
8 taking it to trial, I told Mr. Suggs. He didn't  
9 know much about my case, obviously.

10 Q And who did you -- did you hire him, Mr.  
11 Suggs?

12 A No, sir.

13 Q Okay. You hired Mr. Etheridge.

14 Were you concerned why he wasn't at your  
15 hearing before the trial?

16 A Yes.

17 Q Okay. And did you end up going home that  
18 day?

19 A Yes.

20 Q Before you went home, did you meet with the  
21 Solicitor?

22 A Yes.

23 Q Tell me about that.

24 A Well, I had talked to him, and I asked him if  
25 I could go home because, you know, I have -- I

1 didn't know that I was going on the trial docket,  
2 and I hadn't spoken with my family. And he told me  
3 that he'll let me go home if I can be there in the  
4 morning, and if I don't, they'll try me in my  
5 absence.

6 Q So did that make you uncomfortable?

7 A Yes.

8 Q Did you go home and talk to your mother?

9 A Yeah.

10 Q And what did you all decide you were going to  
11 do?

12 A Couldn't really do anything, you know. It  
13 was like my hand was forced, so I just went along  
14 with it.

15 Q Did you know anything about what the evidence  
16 was against you at that point?

17 A No.

18 Q Had you ever watched the videotape or listen  
19 to any kind of tape-recording?

20 A No.

21 Q Were you aware of any pictures that alleged  
22 you selling drugs?

23 A No, just the picture in the motion of  
24 discovery (inaudible).

25 Q And from looking at that picture, did you

1 think it made it look like you were selling  
2 anything?

3 A No.

4 Q It just -- did you explain that to Mr. Suggs,  
5 you were concerned about all of that?

6 A Yes. And, I mean, I felt like he didn't feel  
7 the same way I felt.

8 Q And so did you explain all of that to Mr.  
9 Etheridge on the November 5<sup>th</sup>, 2019 when you went  
10 there for your plea date?

11 A Well, we didn't really talk. We didn't  
12 really talk. It was just, you know....

13 Q Did you feel like they were representing you  
14 to the best of their ability?

15 A No, sir.

16 Q Do you know if there's a reason why it was so  
17 quick that you got called for trial? It looks like  
18 it was about eight months. Are you aware of that?

19 A No, I wasn't aware, and I don't know why. I  
20 guess they was trying to rush it.

21 Q Why do you think they were trying to rush it?

22 A I had other charges, and I pleaded -- well, I  
23 told Mr. Etheridge that I was not guilty for those  
24 charges and, you know, I guess they rushed -- I  
25 never got a motion of discovery from all the

1 charges pending, you know, so....

2 Q And so did you feel like you understood you  
3 knew what was doing -- what you were doing the day  
4 you went over to the courthouse on the 5th?

5 A I didn't understand.

6 Q Did you understand what you were going to the  
7 courthouse for on November the 5th?

8 A Yes. To get time.

9 Q Did you think that was fair?

10 A No.

11 Q Did you have a good understanding of what it  
12 was all about?

13 A No.

14 Q Did anybody discuss with you at that point  
15 that this was a non-parolable offense?

16 A No.

17 Q Did they talk about how much time you would  
18 do? Did they you tell about 85 percent?

19 A Yeah. It was the last minute. I didn't -- I  
20 just know the charge was non-violent, and from my  
21 understanding, I thought it was 65 percent. I  
22 didn't know it was 85.

23 Q Right. So you thought because it was  
24 non-violent, it would have been 65 percent, right?

25 A Yes.

1 Q And did you -- did you rely on Mr. Suggs or  
2 Mr. Etheridge to tell you that?

3 A Yeah.

4 Q And were they mistaken -- you are doing  
5 85 percent or 65 percent?

6 A I'm doing 85.

7 Q Did that surprise you?

8 A Yes.

9 Q To this day, does that still surprise your  
10 family?

11 A Yes.

12 Q Do you know the amount of drugs they said you  
13 sold on June 15<sup>th</sup>?

14 A I think in my motion it said 0.17.

15 Q That sounds like a very small amount of  
16 drugs; is it? Do you know?

17 A Sounds about right.

18 Q Excuse me?

19 A Sounds about right.

20 Q How long had you been dealing with Mr.  
21 Etheridge?

22 A Well, it was my first time dealing with Mr.  
23 Kevin Etheridge. I dealt with his father in the  
24 past.

25 Q Did he talk to you about the prior charges

1 that they were using to enhance you to a third  
2 offense?

3 A No.

4 Q Were you aware of what that meant, that they  
5 were charging you for a third offense?

6 A No. I just know it carried 10 to 30.

7 Q Did Mr. Etheridge bring any other offers to  
8 you during the course of your representation?

9 A 12 years.

10 Q 12 years?

11 A The first offer was 20. The second offer was  
12 12.

13 Q Did -- how did you find out you had to go to  
14 court on November the 3rd?

15 A I was -- they had -- he had called me and  
16 told me I had to be there, and he told me that he  
17 wasn't going to be there, but that someone would be  
18 there. So I didn't think I was going to -- that I  
19 was on the trial docket.

20 Q You didn't know you were going to have to go  
21 to trial that day?

22 A Right.

23 Q Was that concerning to you?

24 A Yes.

25 Q Okay. Did you try to explain that to either

1 Mr. Suggs or Mr. Etheridge?

2 A No, I didn't.

3 Q Did you go to the Solicitor and ask him what  
4 the deal was?

5 A Yes.

6 Q So you were frustrated with your lawyer, so  
7 you went to the prosecutor and asked for help; is  
8 that right?

9 A Yes.

10 Q Is that because you were so concerned that  
11 they called you on the 3rd and you were over on the  
12 trial docket on the 4th?

13 A Yes. And I asked the Solicitor for more  
14 time, and he was like, No. He was very direct. He  
15 said, No.

16 Q Before you got there on the 3rd, did you ever  
17 meet Mr. Suggs?

18 A No. That was my first time, I think.

19 Q Is that when you also asked to speak to the  
20 Solicitor?

21 A Yes.

22 Q When you talked to Mr. Suggs at the  
23 courthouse that day, did he review the discovery  
24 with you or not?

25 A No. He reviewed it on his own.

1 Q How do you know that?

2 A Because he told me.

3 Q But he didn't show you anything?

4 A No.

5 Q At that point, had you seen pictures or  
6 anything from your discovery, or you all got that  
7 afterwards?

8 A I seen pictures, like, before, like, on my  
9 own in my discovery, but when I was at the  
10 courthouse with Mr. Suggs, he didn't --

11 Q Did you think that it looked like you were  
12 guilty?

13 A Did I think it looked like I was guilty?

14 Q Yeah.

15 A No. No, I didn't.

16 Q So you didn't want to plead guilty, right?

17 A No.

18 Q All right. And you certainly didn't  
19 understand what a third offense was, right?

20 A Right.

21 Q Why didn't you stop the plea when the judge  
22 was talking to you?

23 A I didn't understand (inaudible).

24 Q You didn't understand you could do that?

25 A No.

1 Q Did you feel like the Solicitor had a chip on  
2 his shoulder about you?

3 A Yes, sir.

4 Q Tell the Court about that.

5 A He was just like very -- he was just like  
6 being, you know -- even though, you know, I had a  
7 job and, you know, I was doing better, he didn't  
8 take that into consideration or nothing. He was  
9 just like I'm a bad guy, you know. And he's trying  
10 to paint me as a bad guy (inaudible).

11 Q Was that extremely intimidating because you  
12 didn't know Mr. Suggs and the Solicitor was talking  
13 to you that way?

14 A Right.

15 Q Is that why you ended up entering into a  
16 guilty plea where you went to jail for ten years at  
17 85 percent?

18 A Yes.

19 Q Do you regret that decision?

20 A Yes.

21 Q Do you understand that if this Court  
22 overturns that decision, all of your cases would  
23 come up, right?

24 A Yes.

25 Q We've talked about that at length?

1     **A**     Yes.

2     **Q**     Did you feel like Mr. Etheridge or Mr. Suggs  
3     were prepared for your case when you got over  
4     there?

5     **A**     No.

6     **Q**     Did you think they could have tried your  
7     case?

8     **A**     Yes, they probably could have. But, you know  
9     -- I know the other charges were bogus, so....

10    **Q**     So because you were scared, is that why you  
11    entered your guilty plea?

12    **A**     Yes.

13           MR. YARBOROUGH: I don't have any further  
14    questions.

15           THE COURT: Ms. Dixon.

16           MS. DIXON: Hold on just a second, Your  
17    Honor.

18                           **CROSS EXAMINATION**

19    **BY MS. DIXON:**

20    **Q**     Mr. Howard, how are you today?

21    **A**     All right.

22    **Q**     I just want to make sure before we get  
23    started that you do understand the type of relief  
24    that the Court can grant. Now, you know that if  
25    your guilty plea is vacated, these charges do not

1 go away. The State can still come back and try you  
2 on this charge. Do you understand that?

3 A Yes, ma'am.

4 Q And do you understand the minimum is -- well,  
5 do you know what the minimum is for distribution  
6 third offense?

7 A Ten years.

8 Q Ten years. And what sentence did you get?

9 A Ten years.

10 Q Ten years. So you got the minimum sentence;  
11 you would agree with that, right?

12 A Yes.

13 Q You got the minimum sentence. Okay.

14 And if you go back and you're retried on  
15 this, do you know what the maximum sentence is?

16 A Thirty.

17 Q Thirty years, okay.

18 So if you are tried on this charge and  
19 convicted, the judge can sentence you to up to 30  
20 years. Now, knowing that, do you wish to proceed  
21 today?

22 A Yes.

23 Q Okay.

24 Going over some of your allegations, you had  
25 alleged -- well, let's start off with who -- who

1 actually did you hire?

2 A Mr. Kevin Etheridge.

3 Q Mr. Etheridge. And you met with Mr.

4 Etheridge prior to your guilty plea?

5 A Prior to my guilty plea? No, I met with Mr.

6 Suggs.

7 Q Did you meet with Mr. Etheridge at all before

8 the time you pled guilty, maybe on a day other than

9 your guilty plea?

10 A Well, I pleaded guilty that day with Mr.

11 Suggs.

12 Q Okay. While you were on bond --

13 A (Inaudible). I didn't plead guilty -- I

14 pleaded guilty with Mr. Suggs.

15 Q Okay. While you were on bond, did you go to

16 Mr. Etheridge's office and meet with him?

17 A Yes. Two times.

18 Q And you reviewed pictures with him, correct?

19 A Once.

20 Q One time you reviewed pictures.

21 So you saw the pictures the State had,

22 correct?

23 A Yes.

24 Q Was that you in the pictures?

25 A Was that me in the pictures? I don't know.

1 Q You don't know if it was you or not? Did it  
2 look like you?

3 A (No verbal response.)

4 Q Did it look like you?

5 A It looked like me, but I don't know if it was  
6 me, you know.

7 Q Okay. So did it look like you -- you're just  
8 not quite sure if it was you; that's fair.

9 Now, you did mention during your direct  
10 testimony, you said, I know the other charges was  
11 bogus. What about this charge, was this a bogus  
12 charge?

13 A I have no idea.

14 Q You have no idea? Okay. Fair enough.

15 Now, we've established that you hired Mr.  
16 Etheridge, and you met with Mr. Etheridge, and he  
17 showed you some pictures, correct?

18 A Yeah.

19 Q All right. Now, if the plea transcript  
20 reflects that Mr. Etheridge actually represented  
21 you at the plea hearing, would you dispute that?

22 A Say again? I didn't understand that.

23 Q So I have in my hand -- and I'm not there for  
24 you to see it, but I'll try to hold it up to the  
25 camera. What I have here is the plea transcript.

1 Can you see that? This is your name up at the top.

2 You see that?

3 A Yes.

4 Q It is probably backwards. Going down a  
5 little further, who does it say is representing  
6 you?

7 A Mr. Kevin Etheridge.

8 Q So if the plea transcript reflects that Mr.  
9 Etheridge actually represented you at the plea  
10 hearing, would you dispute that?

11 A He represented me at the plea hearing, but I  
12 will dispute that he didn't represent me at the  
13 time that I got my time.

14 Q What is this hearing that you -- that Mr.  
15 Suggs attended? I'm very confused about what  
16 that --

17 A The original trial docket, that was the  
18 original day that I was supposed to go with Mr.  
19 Suggs, but I didn't go with Mr. Suggs that day  
20 because I had told them that I had not spoken with  
21 my family. And he -- the Solicitor let me go home  
22 that day, and that's when the next day Mr.  
23 Etheridge came back.

24 Q Okay. But you would agree that at the time  
25 you pled guilty, the lawyer that you hired and that

1 you met with, was the lawyer that was, in fact,  
2 with you at the guilty plea?

3 A Yeah, he was there at the guilty plea.

4 Q Okay. And did you understand this was a  
5 negotiated plea?

6 A Somewhat.

7 Q Somewhat? You knew going in you were getting  
8 a ten-year sentence, correct?

9 A Yes.

10 Q All right. And you've alleged that your  
11 attorneys failed to investigate. Tell me what it  
12 -- was there anything you asked them to  
13 investigate?

14 A A lot of stuff. Like, first of all, the  
15 other charges there was -- it was -- the negotiated  
16 plea -- you know, there was a negotiated plea. I  
17 felt like those other charges should have been  
18 dropped, because if I told -- if you're my lawyer  
19 and I tell you I plead not guilty to these charges,  
20 you know, then I'm not guilty. It's not supposed  
21 to be a plea bargain with those charges, you know.  
22 I'm supposed to go to trial on the other charges,  
23 and I didn't have time to do anything. I didn't  
24 have the time to go to trial. I never got a motion  
25 of discovery for those charges, nothing.

1 Q Have you been convicted of those charges?

2 A Well, no, they dismissed them.

3 Q So they were dismissed?

4 A Part of the plea bargain.

5 Q Okay. So I'm a little bit confused about --  
6 we're here today on your plea to distribution third  
7 offense, and you're talking about other charges  
8 that you weren't convicted on. What about this  
9 specific charge did you want them to investigate?

10 A Witnesses, you know, the weight.

11 Q Who were those witnesses?

12 A Different witnesses.

13 Q What are the names of the people that you  
14 told your lawyer, hey, I need you to go talk to  
15 this person? What are their names?

16 A I didn't have a chance to tell them anything,  
17 you know. We didn't really have -- we didn't  
18 really have any time to talk about anything, you  
19 know. And it's just not that, it's like the chain  
20 of custody of the drugs and....

21 Q So let me understand. You are out on bond,  
22 correct?

23 A Uh-huh.

24 Q And you hire a lawyer, correct?

25 A Yes.

1 Q And you pay that lawyer money to represent  
2 you, correct?

3 A Yes.

4 Q And you never had time to meet with him?

5 A Like I said, I met with him twice.

6 Q Okay. You did meet with him twice, okay.

7 MS. DIXON: Your Honor, I have no further  
8 questions.

9 THE COURT: Mr. Yarborough.

10 MR. YARBOROUGH: Quickly, Your Honor.

11 **REDIRECT EXAMINATION**

12 **BY MR. YARBOROUGH:**

13 Q Did you ever go over the discovery with Mr.  
14 Etheridge in his office?

15 A Briefly.

16 Q Excuse me?

17 A It was briefly.

18 Q Did you understand it?

19 A Well, no. We never -- we really didn't go  
20 over it like that. We just looked over the  
21 pictures, and he was just basically saying, oh, I  
22 can see what I can do to help you out. And, you  
23 know, it was very brief.

24 Q Did you tell him that wasn't you selling  
25 drugs?

1     **A**     I just told him I don't know if it was me.

2     **Q**     Did you all discuss any strategy or potential  
3 defenses?

4     **A**     No.

5     **Q**     Did you all discuss the fact that the weight  
6 was very small?

7     **A**     No.

8             MR. YARBOROUGH: I don't have any further  
9 questions, Your Honor.

10            MS. DIXON: Nothing from the State.

11            THE COURT: You may step down.

12            MR. YARBOROUGH: Mr. Howard's mother.

13            THE CLERK: Ms. Howard, if you will stop  
14 here.

15                    (CYNTHIA HOWARD, having been duly sworn,  
16 testified as follows:)

17                               **DIRECT EXAMINATION**

18     **BY MR. YARBOROUGH:**

19     **Q**     Would you state your name for the record,  
20 please?

21     **A**     Cynthia Howard.

22     **Q**     Do you have a son in the courtroom -- well,  
23 you have two sons in the courtroom. Is Cyntonio  
24 your son?

25     **A**     Yes, sir.

1 Q Were you around him most of the time back at  
2 the time of this offense and the arrest, and then  
3 the eventual plea?

4 A Yes.

5 Q Was he living in and out of the house with  
6 you?

7 A Yes, he was.

8 Q And did you all talk on a regular basis?

9 A Yes, we did.

10 Q Did you have any idea on November the 4,  
11 2019 that he was going up for a jury trial?

12 A No, sir, I didn't.

13 Q How did you find out about it?

14 A Cyntonio told me about it.

15 Q That night?

16 A Yes.

17 Q Was he upset?

18 A He was.

19 Q And did he -- based on your knowledge of what  
20 he was saying, did he understand what was going on?

21 A No, he didn't.

22 Q Okay. Did you ever know anything about him  
23 going up and meeting with Mr. Etheridge about a  
24 possible plea or trial strategies?

25 A He told me he had to.

1 Q He told you what?

2 A He told me he had to speak with him.

3 Q Did he tell you that he had met with Mr.

4 Suggs at the courthouse?

5 A I didn't what if Mr. Suggs was there or not.

6 I didn't know until after everything about Mr.

7 Suggs.

8 Q Okay. Did you hire Mr. Suggs or Mr.

9 Etheridge?

10 A Sir?

11 Q Did you hire Mr. Suggs or Mr. Etheridge?

12 A I hired Mr. Etheridge, the father.

13 Q And you had known him for some period of

14 time?

15 A Yes, I did.

16 Q Would it be safe to say the next day, was

17 your son nervous about going to the courthouse?

18 A He was.

19 Q Did you have any idea he was going to get a

20 ten-year sentence?

21 A No idea at all.

22 Q Would you have gone up there with him if that

23 was the case?

24 A I would have.

25 Q Does he rely on you for advice?

1     **A**     Yes, he does.

2           MR. YARBOROUGH: I don't have any further  
3 questions of this witness, Your Honor.

4           THE COURT: Ms. Dixon.

5           MS. DIXON: Nothing, Your Honor.

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

7           MS. DIXON: Nothing from the State.

8           MR. YARBOROUGH: I call Mr. Suggs.

9           THE COURT: All right.

10           (SCOTT SUGGS, having been duly sworn,  
11 testified as follows:)

12                           **DIRECT EXAMINATION**

13     **BY MR. YARBOROUGH:**

14     **Q**     Mr. Suggs, will you state your name and tell  
15 us your credentials, how long you've been  
16 practicing law?

17     **A**     Scott Suggs, practicing since 1989.

18     **Q**     Is the majority of your practice criminal?

19     **A**     No, I wouldn't say that. I think it's more  
20 of a mixture.

21     **Q**     Were you doing criminal defense in November  
22 of 2019?

23     **A**     Yes.

24     **Q**     And do you remember you all went to the  
25 courthouse for Mr. Etheridge as a favor in dealing

1 with Mr. Howard?

2 A No, I don't remember specifically going. I  
3 may have been there. I don't know if I was going  
4 specifically for Mr. Howard or not.

5 Q Do you remember meeting with Mr. Howard?

6 A Yes.

7 Q Okay. But you weren't his lawyer, right?

8 A That's correct.

9 Q And so did you talk to him about the case  
10 against him?

11 A Yes.

12 Q Do you remember what the facts were about  
13 that?

14 A Yes, sir, I remember.

15 Q Sir?

16 A Yes, sir, I do.

17 Q What did you tell him he should do?

18 A I don't know that I told him to do anything.  
19 I laid out the case for him and told him it's his  
20 decision to make whether he wanted to accept the  
21 plea offer or go to trial.

22 Q Had you ever met him before?

23 A Well, the first time I met him, no, I had not  
24 met him before.

25 Q That was at the courthouse on November 4,

1 2019?

2 A I probably had.

3 Q And was he on the trial docket that day?

4 A I can't remember.

5 Q Do you remember anything specifically about  
6 that case?

7 A Yes, sir. I remember some things.

8 Q Well, tell me about the plea negotiations  
9 with you and the Solicitor.

10 A Well, I don't think I was actively involved  
11 in any plea negotiations directly with the  
12 solicitor's office on behalf of Mr. Howard. I  
13 think instead I was actually advised what the plea  
14 offer was by Mr. Etheridge and by Mr. Jepertinger.

15 Q Do you remember Mr. Howard getting concerned  
16 and asking to speak to the Solicitor himself?

17 A I don't remember that specifically, but it's  
18 not that unusual in criminal cases for folks to  
19 feel maybe cornered or trapped or something, and  
20 they are looking for somebody else to talk to. So  
21 I don't remember specifically, but it would not  
22 surprise me.

23 Q Well, isn't it unusual for a lawyer to show  
24 up and represent someone on the trial docket that  
25 they never met?

1     **A**     Well, that would be unusual. It wouldn't --  
2     it wouldn't be appropriate, I wouldn't think.

3     **Q**     That's what happened that day?

4     **A**     You mean in reference to me?

5     **Q**     In reference to Mr. Howard. Not in reference  
6     to you. Mr. Howard was not your client, right?

7     **A**     No, he was not.

8     **Q**     But you did meet with him when he was there  
9     on the trial docket?

10    **A**     Well, I don't know when I met with him. I  
11    just know that I did meet with him, because we  
12    talked about the video that I looked at, but I  
13    don't know the date that that occurred, sorry.

14    **Q**     Did you know anything about his prior record?

15    **A**     Yeah.

16    **Q**     You did?

17    **A**     Yes.

18    **Q**     What was it?

19    **A**     I know he had two prior drug offenses, which  
20    I think were not marijuana, but some other  
21    substance -- some other schedule crack cocaine,  
22    meth, something. I know he had two priors.

23    **Q**     Did you understand why the solicitor's office  
24    wouldn't drop this down to a possession case?

25    **A**     I can't really testify as to what

1 Mr. Jepertinger's motives were. I can only answer  
2 your question by saying that -- and in reading the  
3 transcript, it seemed to me that Mr. Jepertinger  
4 was somewhat frustrated with Mr. Howard because he  
5 had had prior contact with his office towards the  
6 same offense.

7 Now, you know, in Mr. Howard's defense, you  
8 know, the amount of the drugs was very small. I  
9 think it was -- it was maybe a \$20 rock or  
10 something in this case, which is not a lot compared  
11 to what we see today. But it was a distribution  
12 case, and in those cases the weight doesn't really  
13 matter.

14 Q At that point when you were meeting with him,  
15 did you tell him that this was a non-parolable  
16 offense?

17 A Yes, I did.

18 Q And did you get him to sign anything saying  
19 that you are telling him that?

20 A No, I didn't get him to sign anything. The  
21 judge told him that, too.

22 Q Did you tell him it was an 85 percent case?

23 A Yep. Yes, sir.

24 Q But did you also tell him it was non-violent?

25 A Yes.

1     Q     Did he understand the difference between  
2 non-violent and the 85 percent?

3     A     I can't -- again, I can't testify as to what  
4 someone else is thinking. He appeared to  
5 understand the difference between violent,  
6 non-violent, parolable, non-parolable, strikes  
7 versus serious, non-serious, versus no strikes. He  
8 seemed to understand that, at least in my  
9 conversations with him. But -- and so, typically,  
10 it happens. Many times you have to -- you explain  
11 something to a client, and they shake their head as  
12 if they understand, but they really don't. So I  
13 think there is an art to it after a while. You  
14 have to keep explaining the same thing in a lot of  
15 different ways until you see the lightbulbs come  
16 on. And that's not anything against Mr. Howard.  
17 It is very complicated even to a lot of lawyers to  
18 understand these differences and these (inaudible).

19     Q     Maybe you understand, but I don't know what  
20 your understanding of something that is  
21 non-violent, but still requires 85 percent? Do you  
22 know why that is?

23     A     No. You would have to go to the legislature  
24 for that. I don't know. There are a few offenses  
25 which are non-parolable, which are non-violent. I

1 mean, there are some that are violent and  
2 parolable, so....

3 Q Do you know anything about the old charges  
4 that were dismissed that Mr. Howard is referring to  
5 just a second ago during the plea hearing?

6 A No more than what was in the transcript.

7 Q But it is safe to say that before November  
8 the 4th, you had never gone over any discovery with  
9 Mr. Howard; is that right?

10 A I can't answer that. Again, I don't know the  
11 specific dates when I met with him, so I couldn't  
12 answer that question.

13 Q But if he said the first time he met you was  
14 that day, would you agree with him?

15 A On which day?

16 Q November the 4th.

17 A And the significance of that day is what, I'm  
18 sorry?

19 Q Is the day that he was called up on the trial  
20 docket.

21 A And I can't answer that either, because being  
22 called up on the trial docket doesn't really mean  
23 that you are going to trial right then and there.  
24 You might be one of seven or eight or ten. I don't  
25 really -- I don't know that I can really answer

1 that question.

2 Q Well, let me ask: Did you call Mr. Howard on  
3 November the 3rd and ask him to come to the  
4 courthouse on November the 4th?

5 A I don't know.

6 Q Did you have any kind of working relationship  
7 with Mr. Howard?

8 A No. Again, I wasn't his lawyer.

9 Q And so it's safe to say if you weren't his  
10 lawyer, you probably wouldn't have gone over the  
11 discovery with him before (inaudible), right?

12 A Well, I would have, yeah. Because I was  
13 asked by Mr. Etheridge to assist, and I was willing  
14 to assist. Part of that would have been to -- to  
15 look at the video, which I did. And I would not  
16 have thought about looking at the video and not  
17 talk to the client about what I saw. That would  
18 be, sort of -- be pointless.

19 Q You don't have any independent recollection  
20 of that?

21 A Of what?

22 Q Of going over this information with  
23 Mr. Howard before November the 4th?

24 A Specifically, no, I do not.

25 Q Do you know the dates of his prior

1 conviction?

2 A No, sir. Not unless I look at the -- look at  
3 my file.

4 Q Do you have your file with you?

5 A Yes, I do.

6 Q Does it show his prior convictions?

7 A He has -- looks like he has a juvenile  
8 conviction for drugs, and looks like sometime in  
9 2004 he had some adult convictions of drugs. In  
10 2010, he has another adult conviction, looks like  
11 from distribution of cocaine base second. In 2012,  
12 another conviction for cocaine base third. Ten  
13 years in 2017. I think that's it.

14 Q Is it safe to say that Mr. Howard has never  
15 been sentenced to incarceration?

16 A It appears so. It appears that all of his  
17 convictions resulted in probation.

18 THE COURT: How many adult convictions did  
19 you just read out?

20 THE WITNESS: Three.

21 THE COURT: How many?

22 THE WITNESS: Three.

23 THE COURT: Three. And for drugs? Three?

24 THE WITNESS: Three.

25 THE COURT: As an adult?

1 THE WITNESS: Yes, sir.

2 THE COURT: Other than marijuana?

3 THE WITNESS: Yes, sir. They were all  
4 (inaudible).

5 THE COURT: All right.

6 Q (BY MR. YARBOROUGH) The 2010 possession for  
7 crack first offense, the first one, what was the  
8 date of that incident?

9 A According to the NCIC, it appears to say  
10 October 7, 2009.

11 Q What was the date of this incident?

12 (A brief pause in the proceedings.)

13 Q You can't find it, Mr. Suggs? Would you  
14 agree with me that the offense date of this one was  
15 July 15, 2018, but he wasn't arrested until  
16 March 24 of 2019?

17 A If you say so, Mr. Yarborough. Unless you  
18 want me to try to find that.

19 Q I'm just wondering, did you try to go to the  
20 solicitor's office and say this thing barely made  
21 it past that first offense level? I mean, I know  
22 you said the solicitor's office would not negotiate  
23 very well, but it just seems like it was -- would  
24 you agree with me that it barely was enough to get  
25 into that third offense?

1     **A**     I'm sure I don't understand the question.

2     **Q**     I mean, you've been doing this a long time,  
3 right?

4     **A**     Yes, sir.

5     **Q**     And, I mean, in looking at prior records,  
6 would you consider his prior record bad?

7     **A**     Would I consider it bad?

8     **Q**     Yeah, compared to other people that you've  
9 seen that got mandatory sentences?

10    **A**     Relatively speaking, no, I don't consider his  
11 record bad. I say that from experience and also as  
12 a criminal defense lawyer. But I don't pass  
13 judgment on folks. I don't want to (inaudible).

14    **Q**     You and I have both been doing this for a  
15 long time. You would agree with me you've seen  
16 much worse; is that right?

17    **A**     Yes, I would agree.

18           MR. YARBOROUGH: I don't have anything  
19 further. Thank you, Mr. Suggs.

20           THE WITNESS: Yes, sir.

21           MR. YARBOROUGH: Always nice to see you.

22           THE COURT: Ms. Dixon.

23                   **CROSS EXAMINATION**

24    **BY MS. DIXON:**

25    **Q**     Hi, Mr. Suggs. How are you today?

1           Hold on. I did not hear that.

2     **A**     I'm sorry. I'm fine. Good morning.

3     **Q**     Good morning.

4           Just real quickly, you would agree you did  
5 not represent Mr. Howard at his guilty plea  
6 hearing, correct?

7     **A**     That's correct.

8     **Q**     And you were asked by Kevin Etheridge to  
9 assist with trial; is that correct?

10    **A**     Yes. It came to that, because it was a  
11 control buy, and I've tried a lot of those cases.

12    **Q**     In preparation for that, you did review the  
13 evidence, correct?

14    **A**     Yes.

15    **Q**     And you met with Mr. Howard?

16    **A**     Yes, I did.

17    **Q**     And explained his rights?

18    **A**     I'm sure I did. I don't have any independent  
19 knowledge of going through his Constitutional  
20 rights. I don't know that that would have been my  
21 function in this case, but it's possible that I may  
22 have.

23    **Q**     Got you.

24           And you would agree he didn't even actually  
25 proceed to trial, correct?

1     **A**     No, he didn't go to trial. He pled guilty.

2     **Q**     And then going back to his conviction, he had  
3 three prior convictions that were drug related as  
4 an adult, correct?

5     **A**     Yes. That's what the NCIC showed.

6     **Q**     All right.

7             MS. DIXON: I have no further questions.

8             MR. YARBOROUGH: Nothing further of this  
9 witness.

10            THE COURT: Thank you, sir.

11            THE WITNESS: Thank you, Your Honor.

12            MR. YARBOROUGH: I call Mr. Etheridge.

13                    (KEVIN ETHERIDGE, having been duly sworn,  
14 testified as follows:)

15                               **DIRECT EXAMINATION**

16     **BY MR. YARBOROUGH:**

17     **Q**     Would you state your name for the record and  
18 background, Mr. Etheridge, please?

19     **A**     Kevin Etheridge, attorney, own my own law  
20 firm.

21     **Q**     You practice criminal?

22     **A**     I do.

23     **Q**     How long?

24     **A**     Approximately -- a little over ten years.

25     **Q**     Were you practicing law in 2019?

1     **A**     Yes, sir.

2     **Q**     Did you represent Mr. Cyntonio Howard?

3     **A**     I did.

4     **Q**     Can you tell us about that representation?

5     **A**     I'm not sure I understand the question.

6     **Q**     How many times did you meet with him?

7     **A**     I don't recall. I have an open-door policy,  
8     so appointments aren't needed. My clients have my  
9     phone number. So any time he wanted to come by, he  
10    would have been welcomed, but I don't recall the  
11    number of times we met.

12    **Q**     Do you recall sending Mr. Suggs to the  
13    courthouse in November when Mr. Howard is on the  
14    jury trial docket?

15    **A**     I do not.

16    **Q**     (Inaudible)

17    **A**     I do not remember that.

18    **Q**     Mr. Howard was your client, right?

19    **A**     That's correct.

20    **Q**     Was it safe to say that both Mr. Howard and  
21    his mother were upset the next day when you did  
22    come to the courthouse?

23    **A**     I don't recall anyone being upset, no, sir.  
24    I'm not saying they weren't, I'm just saying I  
25    don't remember anyone being upset.

1 Q Do you recall the facts and the circumstances  
2 of the case against Mr. Howard?

3 A Broadly speaking, yes, sir.

4 Q It was an extremely small amount of drugs  
5 involved in the case, correct?

6 A Yes.

7 Q .17, that is less than a \$20 rock; does that  
8 sound right?

9 A I'm not sure how much rock it was for.

10 Q Could you not -- would they not negotiate a  
11 lower sentence?

12 A Again, I don't remember the back-and-forth.  
13 I'm sure I had numerous negotiations with  
14 Mr. Jepertinger about this case.

15 Q And you don't remember going over the  
16 discovery with Mr. Howard?

17 A I do not. I do not. I remember looking at  
18 the pictures and showing him the picture, which was  
19 pretty damning evidence. But as far as the  
20 particulars of going over it -- I mean, we  
21 (inaudible) Rule 5 Brady pretty much when we get  
22 them. So they can get a copy of them and come see  
23 me any time, as we prepare for trial or whenever  
24 they would like to come by my office, as long as  
25 I'm there. Again, they have my cell phone and can

1 get to me any time they like.

2 Q Any preparation for trial in this case?

3 A Particularly (inaudible).

4 Q If Mr. Howard said that you all didn't  
5 prepare for trial, would you agree with him?

6 A No, sir.

7 Q So what preparation would have been done?

8 A Going forward, I mean, at this point we were  
9 still negotiating and trying to get the best deal  
10 in the case. As far as the credit itself, I just  
11 don't recall it happening. But normally in this  
12 situation of getting your witnesses -- I mean, just  
13 the usual stuff you do in preparation for trial,  
14 but I can't say in specificity what was done.

15 Q (Inaudible)

16 A No.

17 Q Did you request the Solicitor to turn over  
18 that information?

19 A I did not.

20 Q You were there on the day -- you didn't come  
21 to the first day of trial, so you were not there on  
22 the 4th to ask them that?

23 A Well, there wasn't a trial.

24 Q But you were on the trial docket, right?

25 A Well, yes, but that doesn't necessarily

1 mean -- and I don't remember what order, but the  
2 trial can be 20, 30 deep. Just because you are on  
3 a trial docket doesn't mean it's going forward that  
4 day.

5 Q Did you know if it was going to trial that  
6 week?

7 A I don't recall. My recollection was I think  
8 it was down the docket a little bit, so I didn't  
9 think it would go that week. But, again, I could  
10 be wrong, but I think that is correct that we were  
11 down on the docket.

12 Q What Mr. Howard was contesting about pleading  
13 guilty, wasn't he?

14 A Yes. He was very (inaudible) about pleading  
15 guilty, yes.

16 Q Especially since he had never been to jail  
17 before, right?

18 A Yeah, I don't believe he had. I was looking  
19 at the same thing Mr. Suggs was perusing  
20 (inaudible), and I'm assuming I saw it was 2014  
21 that he was sentenced to ten years and three years  
22 probation, which gave me pause. But if he is  
23 saying he didn't do any time, I assume that's  
24 correct that he got probation in the prior charges.

25 Q Did you go and look at the prior convictions

1   that he had at the courthouse?

2   **A**    I got a copy.

3   **Q**    You were not prepared to challenge that this  
4   was a third offense, correct?

5   **A**    At that time? We were just in plea  
6   negotiations at that time.

7   **Q**    Were you representing him on other charges at  
8   the time?

9   **A**    Just the distribution and the possession with  
10  the intent on the marijuana, possession with intent  
11  to distribute cocaine base. So three different  
12  charges. Not the other -- if there is a way I can  
13  get everything behind the client, I'm not going to  
14  allow something to stay out there, you know, when  
15  they come back they have to deal with something  
16  else. So I don't mind helping any way I can in  
17  those situations.

18  **Q**    You said he was charged in burglary?

19  **A**    No, sir.

20  **Q**    Do you recall the facts of that case?

21  **A**    What case?

22  **Q**    The burglary case.

23  **A**    I didn't say anything about burglary. I  
24  don't know if it sounded like I did, but....

25  **Q**    Okay. Did you look at possible defenses to

1 this small amount of drugs?

2 A Yes. I'm assuming we did. Again, I don't  
3 remember.

4 Q What were those defenses?

5 A Again, I don't remember.

6 Q You don't remember much about this case?

7 A I mean, I remember -- the part I recall is  
8 the day going through that process with him, having  
9 those conversations with him about it was a  
10 negotiated plea and it was parolable. I think the  
11 judge went through that with him, and I think  
12 Mr. Jepertinger also discussed that with him. But  
13 as far as my recollection (inaudible), I just don't  
14 remember the details.

15 Q Since it was non-violent, were you surprised  
16 he had to do 85 percent?

17 A No, sir. I mean, they are all different.  
18 Again, I think Mr. Suggs alluded to the fact  
19 that -- I mean (inaudible).

20 Q Do you remember talking to him about that?

21 A About it being?

22 Q 85 percent.

23 A Yes, sir.

24 Q Does it surprise you now that Mr. Howard  
25 didn't know about that? Am I right or wrong?

1     **A**     Know about?

2     **Q**     I mean, if you didn't negotiate this deal  
3 with the solicitor's office, did Mr. Suggs do it?

4     **A**     I would assume that these talks had been  
5 going on for quite some time. I mean, it wasn't  
6 the first offer. I'm assuming we had numerous  
7 conversations about it.

8     **Q**     When you say some time, he was arrested in  
9 March, and you had a plea hearing in November; that  
10 doesn't seem like a whole lot of time, does it?

11    **A**     No. There's older cases.

12    **Q**     Did you try to explain the situation to  
13 Mr. Howard's family?

14    **A**     I don't recall.

15           MR. YARBOROUGH: I don't have any further  
16 questions.

17           THE COURT: Ms. Dixon.

18           MS. DIXON: Yes, sir. May it please the  
19 Court.

20                               **CROSS EXAMINATION**

21    **BY MS. DIXON:**

22    **Q**     Mr. Etheridge, how are you today?

23    **A**     Good. Thank you.

24    **Q**     Can you make sure you talk into the  
25 microphone. I'm sorry, I just need to be able to

1 hear.

2 A Is that better?

3 Q That's better. Thank you.

4 Just going through his allegations really,  
5 really quick. He has alleged that you did not  
6 review discovery. Do you recall the State's  
7 evidence that you received in the Rule 5?

8 A I'm sorry. Say that -- do I recall?

9 Q Do you recall the evidence that the State  
10 turned over in the Rule 5 discovery?

11 A Yes. I mean, I recall there was photographs.  
12 There was the NCIC. I mean, the incident report.

13 Q Was -- this was a control buy?

14 A Yes, it was a control buy.

15 Q Did the State have pictures?

16 A Yes.

17 Q Did you review the pictures with Mr. Howard?

18 A Yes, ma'am.

19 Q And did the pictures appear to be him?

20 A It certainly appeared so. I mean, it seemed  
21 to be him.

22 Q Okay. And based on our review of the file  
23 today, did you discuss with him the sentence that  
24 he was going to be getting as part of this  
25 negotiated plea?

1     **A**     Yes.

2     **Q**     I'm sorry, will you say that one more time?

3     I didn't hear you.

4     **A**     Yes.

5     **Q**     And is there anything he asked you to

6     investigate specifically in this case?

7     **A**     Not that I recall.

8     **Q**     Do you recall any issues with the chain of

9     custody?

10    **A**     I do not.

11    **Q**     Do you recall any issues with the weight of

12    the drugs?

13    **A**     Do not.

14    **Q**     Okay. And let's see. I believe -- oh, just

15    to clarify, he had three prior drug convictions as

16    an adult?

17    **A**     That's correct.

18    **Q**     And ten years was the minimum sentence for

19    this charge he was facing?

20    **A**     It was the minimum sentence.

21    **Q**     And so he got the minimum sentence.

22            MS. DIXON: I have no further questions.

23            MR. YARBOROUGH: I have (inaudible) redirect,

24    Your Honor.

25

## EXAMINATION

BY THE COURT:

Q Mr. Etheridge, did you have the transcript of the record?

A Yes.

Q On Page 3 of it, Mr. Jepertinger, when he started saying: "Standing in front of you is Cyntonio Trosee (phonetic) Howard. He's pleading guilty to distribution of cocaine base third offense. He's been informed, as I understand, that -- that his distribution of cocaine base third is a no-parolable offense and a serious offense, and there is a negotiated sentence of a mandatory ten years of this charge," you recall discussing that with him prior to Mr. Jepertinger putting that on the record?

A Judge, I apologize. What page were you?

Q I said Page 3 of the transcript, at the very beginning, the transcript of record.

A Do I remember speaking with Mr. Howard about that?

Q Mr. Jepertinger, on Line No. 8, calls the case and explains to the judge that Mr. Howard is before him and what he's pleading guilty to and stating that it's -- that he understands -- on Line

1 14 -- that this is a distribution of cocaine base  
2 third, and it is a no-parolable offense and a  
3 serious offense, and there's a negotiated sentence  
4 of the mandatory minimum of ten years on this  
5 charge. Do you recall speaking with Mr. Howard  
6 about this being a no-parolable offense, serious  
7 offense, and a mandatory minimum sentence of ten  
8 years that has been negotiated? Do you recall  
9 speaking with Mr. Howard about that prior to  
10 Mr. Jepertinger telling the judge that?

11 A Yes, sir, Your Honor.

12 Q And so he understood at the time that he was  
13 pleading guilty that he was pleading to a serious  
14 offense and a no-parolable offense? Mr. Howard  
15 understood that?

16 A Yes, sir, Your Honor.

17 Q There's been some discussion about him  
18 believing that he didn't have to do 85 percent of  
19 the time -- or something to that effect. Do you  
20 recall Mr. Howard testifying this morning on that  
21 subject?

22 A Yes, sir.

23 Q What is your understanding as to what he  
24 said? Maybe I didn't recall -- don't recall.

25 A Today what he said?

1 Q Yes.

2 A That he did not realize it (inaudible).

3 Q And if the offense is a no-parole offense,  
4 that means it is 85 percent or 65 percent, or what  
5 does it mean?

6 A Essentially, since it was a non-parolable  
7 offense, it was 85 percent.

8 Q And did he know that?

9 A Yes, sir.

10 Q And Counsel has referred to you and many  
11 other witnesses about a small amount of drugs.  
12 Does the quantity matter on a distribution case  
13 where there is a -- when the offense is not based  
14 on the weight, but the fact of an admission of a  
15 crime? Does the weight matter?

16 A Judge, in theory, sometimes when it's -- you  
17 can have conversations and things work out. But,  
18 in this instance, with a prior record and all of  
19 that, we had many back-and-forths, and it wasn't  
20 something that the Solicitor was willing to  
21 (inaudible).

22 Q Yeah. It says in the record, in effect, that  
23 I'm not going to tolerate this anymore. This is  
24 his third time in ten years to sell drugs -- let's  
25 see how he phrases it. I think he started at the

1 beginning.

2 (A brief pause in the proceedings.)

3 Q (BY THE COURT) Beginning on Page 9, where  
4 Mr. Jepertinger starts explaining what occurred in  
5 this case, Mr. Howard being caught on camera, and  
6 photos taken from the videotape, it's clear that  
7 this individual -- the defendant -- is sitting in  
8 the car and distributing what appears to be cocaine  
9 base.

10 And then the next page, Page 10, where he  
11 talks about plea negotiations, starting on Line 9,  
12 he's exhausted basically every type of mercy that  
13 the State can afford him. He was convicted in 2010  
14 of possession, got probation. Pled to  
15 manufacturing and distribution of cocaine second in  
16 2012, and got probation. 2017, he pled to  
17 manufacturing, distribution, possession with intent  
18 to distribute cocaine base, and they took it as a  
19 first offense and gave him probation, though it  
20 would have been a third offense -- he didn't say  
21 that. And then on Line 19: "I wasn't going to  
22 have that happen again, Judge. You know and I  
23 know, he may have changed. He may have gotten a  
24 job. He may have done this, but it's a mockery, in  
25 my opinion, of this -- all of our laws if he just

1 keeps getting probation. And the State probably --  
2 those were probably recommendations or negotiations  
3 back then, and we bear the brunt of having to  
4 prosecute him all the time for the same charges.  
5 And the system means nothing, in my opinion, if  
6 people are not held accountable for their crime."

7 So did it appear to you that Mr. Jepertinger  
8 has just really had it up to his wits end with  
9 Mr. Howard?

10 A Yes, sir, Your Honor.

11 Q And was ready to make him do the mandatory  
12 minimum sentence, and that was the extent of what  
13 he was willing to offer as a guilty plea?

14 A Yes, sir.

15 Q And did it appear to you that the State had a  
16 strong case?

17 A Oh, yes, sir.

18 Q And that had he gone to trial, and not gotten  
19 the minimum, he could have gotten the maximum of up  
20 to 30 years?

21 A Yes, sir.

22 Q And all of that would have been non-parolable  
23 as well?

24 A Yes, sir.

25 Q Do you know of anything you could have done

1 differently to help him out?

2     **A**     Judge, you can always say, Could I have done  
3 things different, and revisit these issues, but I  
4 really think this was a good resolution for him,  
5 considering.

6     **Q**     Did he seem interested in having a trial?

7     **A**     Judge, I don't recall that. I don't think  
8 that was something -- from our conversations, I  
9 think he wanted to work it out. I think he wanted  
10 the plea to be different and, unfortunately, it  
11 wasn't. This was the deal.

12           THE COURT: Okay. Any further questions of  
13 this witness?

14           MR. YARBOROUGH: One question.

15                   **REDIRECT EXAMINATION**

16     **BY MR. YARBOROUGH:**

17     **Q**     Were you prepared for trial?

18     **A**     Yeah. I'm assuming we were prepared for  
19 trial, yes, sir. The trial would be going forward.  
20 I'm sure we were prepared.

21           THE COURT: Anything further, Ms. Dixon?

22           MS. DIXON: No, Your Honor.

23           THE COURT: Thank you, sir.

24           THE WITNESS: Thank you, Judge.

25           THE COURT: Any additional witnesses?

1 MR. YARBOROUGH: No, sir.

2 MR. DIXON: None from the State.

3 THE COURT: Any argument?

4 MS. DIXON: I can't hear.

5 THE COURT: Ms. Dixon can't hear you. She  
6 said she can't hear you.

7 MR. YARBOROUGH: Your Honor, just briefly. I  
8 think Mr. Howard sat at the courthouse on  
9 November 4<sup>th</sup> and was told he was on the trial  
10 docket, and he met with a lawyer that was not the  
11 lawyer he was retained and hired, and that  
12 concerned him some.

13 Going back and looking at the strength -- or  
14 lack of strength -- of the State's case, it is -- I  
15 agree with the Court that it doesn't matter the  
16 amount of drugs, but normally on something that was  
17 this small, there would have been a lot of ways to  
18 attack it as to whether or not a jury would have  
19 returned a guilty verdict on a distribution for  
20 that amount. That would have been something that  
21 he could have considered. It doesn't seem to me  
22 that when you are called up on a trial docket, you  
23 are sitting there and you are not there with the  
24 attorney you have hired, and they are negotiating  
25 for you, that it's -- it's not unusual for a young

1 man or a defendant to go back -- go to his mother  
2 and say, you know, there's not much hope. I don't  
3 know what to do. So they go over and they enter a  
4 guilty plea, whether they are or aren't.

5 I think just the system in this case let him  
6 down. I can see where the Court is saying he got a  
7 minimum sentence, and I don't disagree with that on  
8 its face. I just think that the fact that -- you  
9 and I very well know what a trial docket is, but  
10 the average person doesn't know that when you get  
11 called on a trial docket, that doesn't mean you are  
12 going to go to trial that week.

13 So I would urge the Court to grant the  
14 application based on that, and let him have a new  
15 trial. He told you that he understands he could be  
16 facing a lot of time, and I would urge the Court to  
17 grant the post-conviction relief application.

18 THE COURT: All right.

19 Ms. Dixon.

20 MS. DIXON: Your Honor, may it please the  
21 Court. The State submits he has not met his burden  
22 of proof in this regard. As an initial matter, I  
23 would submit that this whole incident about Mr.  
24 Suggs showing up on November 4<sup>th</sup> is kind of a red  
25 herring. I'm not sure even what prejudice that

1 would have caused him. He didn't go to trial that  
2 day. He didn't plead guilty that day. He pled  
3 guilty on November 5<sup>th</sup>, and the lawyer that he  
4 hired to represent him was, in fact, at his guilty  
5 plea hearing on November 5<sup>th</sup>.

6 We would further submit this was a voluntary  
7 plea. He understood it was a negotiated ten-year  
8 sentence. That is clearly on the record. The  
9 Solicitor did state at the beginning of the hearing  
10 this was a no-parole offense.

11 In addition to that, the judge gave a very  
12 thorough explanation of all of the Constitutional  
13 rights he was waiving, and I believe those are on  
14 pages -- goodness gracious -- it starts on Page 5  
15 around Line 8 and goes all the way through Page 7.  
16 That is correct. Yeah. So pretty much three pages  
17 of explaining all of the rights that he was  
18 waiving, and he did indicate that he understood he  
19 was waiving those rights.

20 And in addition to that, Mr. Etheridge  
21 testified that he also reviewed these things with  
22 him at the plea. So we would submit he hasn't  
23 shown that this was an involuntary plea. Of course  
24 any defenses he thought he had, he waived when he  
25 pled guilty. He understood that.

1           We would just submit that he has not met his  
2 burden of proof.

3           THE COURT: All right. Very well. I'll take  
4 the matter under advisement and issue a written  
5 order.

6           MS. DIXON: Thank you, Your Honor.

7           (Whereupon, the Webex audio/video concluded.)  
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1                   **CERTIFICATE OF TRANSCRIBER**2  
3       Case Name:   Cyntonio Howard v. State of SC

4       Case No.: 2020-CP-33-00507

5       Date of Hearing: October 21, 2022

6       \* \* \* \* \*

7  
8           I, Natalie Dahl, do hereby certify that the  
9       foregoing transcript is a true and correct record  
10      of the recorded proceedings; **that said proceedings**  
11      **were transcribed to the best of my ability from the**  
12      **audio recording.**13           I do further certify that I am neither of  
14      kin, counsel, nor have interest to any party  
15      hereto.16  
17                   *Natalie Dahl, RPR*  
18           Natalie Dahl, Registered Professional  
19           Reporter and transcriber for the State of  
20           South Carolina  
21  
22  
23  
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|                           |   |                                  |                                               |
|---------------------------|---|----------------------------------|-----------------------------------------------|
| STATE OF SOUTH CAROLINA   | ) | IN THE COURT OF COMMON PLEAS     | 2020<br>12<br>2020-CP-33-0507<br><b>FILED</b> |
| COUNTY OF MARION          | ) | FOR THE TWELFTH JUDICIAL CIRCUIT |                                               |
| Cyntonio Howard, #382668, | ) |                                  |                                               |
| Applicant,                | ) | Case No.: 2020-CP-33-0507        |                                               |
| v.                        | ) | <b>ORDER OF DISMISSAL</b>        |                                               |
| State of South Carolina,  | ) |                                  |                                               |
| Respondent.               | ) |                                  |                                               |

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Cyntonio Howard (Applicant) on October 19, 2020. The State made its return requesting an evidentiary hearing. On October 21, 2022, an evidentiary hearing convened before me. Applicant was present and represented by William G. Yarborough, III, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. Following a thorough review of the records before this Court and the testimony and evidence presented at the hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

#### **PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections serving a ten-year sentence. In August 2019, the Marion County Grand Jury indicated Applicant for distribution of cocaine, 3rd or subsequent offense (2019-GS-33-0324). This charge arose from a controlled purchase by a confidential informant on June 15, 2018.

On November 5, 2019, Applicant appeared before the Honorable Thomas A. Russo and pled guilty as indicted pursuant to a negotiated plea agreement. Kevin Etheridge, Esquire, represented Applicant, and Deputy Solicitor John Jepertinger represented the State. Judge Russo sentenced Applicant as negotiated to ten years. Applicant did not appeal.

**CURRENT APPLICATION**

On October 19, 2020, Applicant timely commenced this PCR action alleging he is being held in custody unlawfully based on the following allegations of ineffective assistance of counsel:

- a. Counsel failed to adequately review discovery and advise Applicant accordingly; explain the nature of the charges as well as the consequences or implications that would result from the imposition of his sentence; adequately explain the plea agreement's terms and its relative advantages and disadvantages; sufficiently advise Applicant on the implications and consequences of pleading guilty or proceeding to trial, which rendered his guilty plea not knowingly, intelligently, or voluntarily entered.
- b. Counsel failed to investigate evidence, witnesses, potential defenses, and potential dispositive pre-trial motions prior to advising Applicant to plead guilty.
- c. Counsel failed to adequately investigate mitigating circumstances relevant to sentencing and consequently failed to adequately present such mitigating circumstances to the sentencing judge.

Prior to the hearing, Applicant amended his application to allege counsel was ineffective for the following reasons:

- d. Plea counsel Kevin Ethridge arranged for B. Scott Suggs to handle Applicant's plea without giving Applicant notice, and Suggs provided advice that contradicted Ethridge's advice;
- e. Counsel failed to investigate several viable dispositive pre-trial motions, trial strategies, and defenses, including a deficient chain of custody;
- f. Counsel failed to advise Applicant of his right to appeal.

At the hearing, Applicant proceeded on the allegations in his original and amended application. Applicant, however, did not present any testimony or argument at the PCR hearing related to allegations (c) and (f). Thus, this Court finds Applicant did not meet his burden of proof on these claims. As set forth below, this Court likewise finds Applicant did not meet his burden

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of proof on the remaining allegations.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Before this Court are the Marion County Clerk of Court records of the underlying convictions, Applicant's records from the Department of Corrections, the plea transcript, and the records of this PCR action. This Court has had the opportunity to review these records and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

***Ineffective Assistance of Counsel***

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813. "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." Watson v. State, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption to received relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Strickland, 466 U.S. at 687–88; Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625. To prove prejudice following a guilty plea, the applicant “must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” Hill v. Lockhart, 474 U.S. 52, 59 (1985).

The test for determining the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” North Carolina v. Alford, 400 U.S. 25, 31 (1970). “[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999).

*Failed to review discovery and advise / Involuntary Plea<sup>1</sup>*

Applicant first contends counsel was ineffective for failing to review discovery with him; explain the nature of the charges and the consequences or implications that would result from the sentence; adequately explain the plea agreement’s terms and its advantages and disadvantages; and sufficiently advise Applicant on the implications and consequences of pleading guilty or proceeding to trial. He further contends his plea was not entered knowingly, intelligently, or voluntarily. This Court finds Applicant has failed to prove counsel was ineffective in this regard or that his plea was involuntary.

At the PCR hearing, Applicant testified he retained Kevin Etheridge to represent him and met with him “about twice.” He testified they did “not really” discuss the charges or possible

<sup>1</sup> This section addresses allegation (a) as set forth above.

outcomes. Applicant claimed he did not know what evidence the State had. Although he initially denied watching a video, he clarified he saw a picture from his discovery motion; he claimed he did not appear to be selling drugs in the picture. Applicant likewise agreed the person in the picture looked like him, although he was unsure if it was him. Applicant testified Scott Suggs, Esquire,<sup>2</sup> told him he had reviewed the discovery, but Suggs did not discuss it with him.

Applicant testified he had other charges, and he told Etheridge he was not guilty of those charges. He averred the State rushed his case and he never received discovery for the other charges. Applicant claimed counsel never advised him that he was pleading to a non-parolable, 85% offense; rather, he believed it was a 65% offense. He also stated counsel never discussed with him the prior charges the State was using to enhance his crime, but he knew the offense carried ten to thirty years. Applicant testified he did not understand what a third offense meant. He agreed he understood he would be getting a ten-year sentence.

Applicant testified the State initially offered twenty years, then offered twelve years. Applicant testified he was on the trial docket for November 3; he spoke to the solicitor and asked for more time, but the solicitor said no. Applicant testified he did not want to plead guilty. He stated that on the day he pled guilty, he did not really talk to Etheridge and did not feel Etheridge was representing him to the best of his ability. When asked whether he believed Etheridge and Suggs could have tried his case, he replied, "Yes, they probably could have, but you know, I know the other charges were bogus so." He stated he ultimately pled guilty because he was scared.

Cynthia Howard, Applicant's mother, testified she did not know Applicant would receive a ten-year sentence. She stated Applicant told her the evening of November 4 that he was on the

<sup>2</sup> According to PCR testimony, Suggs met with Applicant at the courthouse the day before Applicant pled guilty. Etheridge, however, was present and represented Applicant at the plea hearing.

trial docket, but she did not believe he understood what was going on. Howard stated she had hired Etheridge's father to represent Applicant.

Etheridge testified he had an open-door policy, and Applicant (who had been released on bond) was welcome to call or stop by any time he wanted to talk. He recalled "looking at the pictures and showing the picture [he] thought was pretty damning evidence." Etheridge testified he showed the pictures to Applicant, and the pictures appeared to be of Applicant. He testified his office mails clients a copy of Rule 5 discovery when they receive it. Etheridge averred the State had a strong case.

Etheridge stated Applicant was hesitant about pleading guilty. He recalled reviewing with Applicant the plea process, explaining it was a negotiated plea, and advising Applicant of the sentence. He also recalled telling Applicant it was an 85% offense. Etheridge testified Applicant knew he was pleading to a non-parolable 85% offense.

Suggs recalled meeting with Applicant; he testified he discussed the video with Applicant, which Suggs had seen before. Suggs testified he advised Applicant he was pleading to a non-parolable 85% offense, and Applicant "appeared to understand the difference between violent, nonviolent, parolable, non-parolable strikes versus serious versus nonserious versus no strike." Suggs testified Applicant had three prior drug convictions other than marijuana as an adult (2010, 2012, and 2017). Suggs testified he laid out the case for Applicant and advised him it was his decision to accept the plea or go to trial.

This Court finds Etheridge and Suggs's foregoing testimony credible. This Court specifically finds Applicant knew this was a non-paroable 85% offense, and counsel reviewed the photos and discovery with Applicant. Based on counsel's foregoing testimony, counsel adequately advised Applicant about the plea and the State's discovery and thus was not deficient. Likewise,

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this Court finds the plea court advised Applicant of the constitutional rights he was waiving and the sentence he faced, and Applicant entered this plea freely, knowingly, and voluntarily. (Tr. 4-8). Applicant has not shown deficiency or prejudice, or that his plea was involuntary. Thus, this claim is denied.

*Failed to investigate<sup>3</sup>*

Applicant next contends counsel was ineffective for failing to investigate. This Court finds Applicant did not meet his burden of proof on this claim.

At the PCR hearing, when asked what he asked counsel to investigate, Applicant replied, “A lot of stuff. Like, first of all, the other charges . . . I felt like those other charges should have been dropped . . .” He acknowledged, however, that the State dismissed the other charges as part of the negotiated plea. Applicant also asserted he wanted counsel to investigate witnesses, although he could not name any specific witnesses. He stated, “I didn’t have a chance to tell him anything, you know. We didn’t really have . . . time to talk about anything, you know, and it’s just not—it’s like the chain of custody of, you know, the drugs and . . .” He acknowledged he was out on bond prior to his plea.

Etheredge stated he did not recall Applicant asking him to investigate anything. He did not see any issues with the chain of custody or the weight of the drugs.

This Court finds Applicant failed to prove counsel was ineffective in this regard. Applicant did not specify what he believed counsel would have discovered upon a further investigation. Although Applicant generally averred “it’s like the chain of custody of, you know, the drugs,” he did not set forth what he believed was lacking from the chain of custody. This Court finds credible Etheridge’s testimony that he did not see any issues with the chain of custody or the weight of

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<sup>3</sup> This sections addresses allegations (b) and (d) as set forth above.

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drugs. This Court further finds counsel's investigation was reasonable under prevailing professional norms and not deficient. Likewise, Applicant did not call any witnesses at the PCR hearing who had any material testimony that would have foreseeably changed Applicant's decision to plead. Although he called his mother as a witness, she did not offer any testimony that was material to any viable defense or Applicant's guilt or innocence. Applicant likewise did not introduce the chain of custody to show what was allegedly deficient, leaving this Court to merely speculate as to what it would have shown. Applicant did not prove deficiency or prejudice, and this claim is denied.

*Failed to investigate or present mitigation*

Initially, this was a negotiated sentence; thus, counsel's failure to present mitigation was reasonable under prevailing professional norms. Applicant did not present any testimony at the PCR hearing regarding what he believed counsel should have investigated for mitigation. He likewise did not present any evidence at the hearing that could have been used for mitigation. Thus, Applicant failed to prove deficiency or prejudice, and this claim is denied.

*Had Mr. Suggs fill in without prior notice*

At the PCR hearing, Applicant testified that when he appeared for court, Etheridge was not there. He stated Etheridge sent Suggs on his behalf, and Suggs told him he was doing Etheridge a favor. Applicant testified he had never met Suggs; Suggs told him they could try the case, but he was not comfortable trying the case with Suggs because Suggs did not know much about his case.

Applicant clarified he did *not* plead guilty or proceed to trial the day Suggs spoke to him at the courthouse. He stated he met with the solicitor, and the solicitor told him he could go home and talk to his family, and they would continue his case until the following day. Applicant stated he went home that evening and discussed this with his mother; he explained, "I couldn't really do

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anything, you know. It was like my hand was forced and, you know, I just went along with it.” He acknowledged Etheridge was with him when he pled guilty the following day.

Suggs testified Etheridge asked him to assist with trial because Suggs had tried several cases involving controlled buys. He stated he reviewed the evidence and met with Applicant, laid out the case for Applicant, and advised him it was his decision to accept the plea or go to trial. Suggs explained he was not involved in the plea negotiations but Etheridge and the solicitor had advised him of the offer. Suggs could not recall the specific dates he met with Applicant.

The evidence before this Court shows Etheridge consulted with Suggs in the event this case went to trial. This Court finds the decision to bring on an additional attorney to assist at trial is reasonable under prevailing professional norms and not deficient. This Court further finds Etheridge adequately investigated and advised Applicant regarding the plea. Applicant thus has not shown deficiency. Likewise, Applicant has not shown prejudice. At the hearing, Applicant acknowledged Etheridge was present at the plea hearing. This is consistent with the plea transcript. Thus, Applicant has not shown deficiency or prejudice, and this claim is denied.

*Failed to file an appeal*

“Following a trial, counsel is required to make certain the defendant is made fully aware of the right to appeal.” Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). “However, the standard for a guilty plea differs. Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.” Id.

Applicant did not present any testimony or evidence at the PCR hearing related to this

claim and thus did not meet his burden of proof. Likewise, there were no extraordinary circumstances from this plea hearing that would have given counsel a reason to believe a rational defendant would want to appeal. Thus, this claim is denied and dismissed with prejudice.

### **Conclusion**

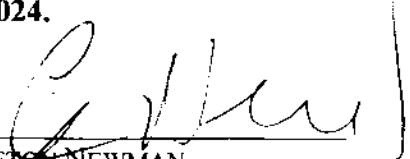
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, \_\_ S.E.2d (1991), an applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Pursuant to Rule 71.1(g), SCRCP, if an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

### **IT IS THEREFORE ORDERED:**

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant must be remanded to and remain in the custody of the State.

**AND IT IS SO ORDERED THIS 3<sup>rd</sup> day of April 2024.**

  
 CLIFTON NEWMAN  
 Presiding Judge  
 Twelfth Judicial Circuit

Columbia, South Carolina

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