

October 11, 2013

Fate T. McClurkin, #263209
Kershaw Corr. Inst. PA-47
4848 Goldmine Hwy.
Kershaw, SC 29067

Jenny Abbott Kitchings
Clerk of Court
PO Box 11629
Columbia, SC 29211

Re: Fate T. McClurkin v. State of South Carolina
Appellate Case NO. 2-13-001987

Dear Honorable Kitchings:

Please find enclosed Explanation and Appendix of Designated Matter in support of Explanation along with Proof of service, for filing with the Court.

Thank you for your assistance.

Sincerely,

Fate McClurkin

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OCT 17 2013

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Certiorari to York County
Roger L. Couch, Chief Administrative Judge

FATE T. MCCLURKIN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2013-001987

E X P L A N A T I O N

FATE T. MCCLURKIN
PRO SE PETITIONER

Kershaw Corr. Inst.
PA-47
4848 Goldmine Hwy.
Kershaw, SC 29067

Other Counsel of Record:

James Rutledge Johnson
Assistant Attorney General
PO Box 11549
Columbia, SC 29211
Attorney for Respondent

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OCT 17 2013

SC Court of Appeals

I N D E X

INDEX i.
ISSUE PRESENTED 1.
STATEMENT 2.
ARGUMENT 3,4.
CONCLUSION 5.

ISSUE PRESENTED

Did the lower court error in finding Petitioner had abandon second amendment issue due to Petitioner's failure to call attention to the court by a Rule 59(e) motion?

STATEMENT

Petitioner proceeded to trial by jury before the Honorable John C. Hayes, III, and was found guilty as indicted on December 8, 1999. The Honorable Court sentence Petitioner to thirty (30) years for trafficking cocaine base, five (5) years for possession of a firearm, one (1) year for unlawfully carrying a pistol, and fifteen (15) years for the proximity of a park, with all sentences to run concurrently.

Timely Notice of Appeal was filed by Mr. Collins, on the Petitioner's behalf an appeal was perfected. The South Carolina court of appeals affirmed the Petitioner's conviction and sentence. See state v. McClurkin, Op. No. 2002-UP-588. The Petitioner filed a petition for rehearing. Petition was denied on November 20, 2002. The remitter was filed by York County Clerk's Office on Jan. 2, 2003.

Petitioner subsequently filed his first PCR application on February 24, 2003. Respondent (state) made its return on December 12, 2004. An evidentiary hearing was convened on March 10, 2005. Order of dismissal with prejudice was filed August 4, 2005.

The Petitioner filed a second successive application, July 30, 2012. Setting forth the argument that in the interest of justice pursuant to PCR Act §17-27-20(a)(4), find that the application shall be entertain on the merits, although it is successive to first application, where Petitioner did not knownly, voluntarily or intelligently waived the right to raise the present issue in his original, amended and supplemental application, but rather was denied the opportunity to have the issue heard initially.

ARGUMENT

THE LOWER COURT ERRED IN FINDING PETITIONER HAD ABANDONED
SECOND AMENDMENT ISSUE DUE PETITIONER'S FAILURE TO CALL
ATTENTION TO THE COURT BY A RULE 59(e) MOTION.

Second amendment issue was properly filed with the court on August 16, 2004, by counsel. (App. 01 -App. 13 . By PCR counsel.

However, although counsel made the necessary amendments to application as requested by the Petitioner, counsel failed to raise the Second Amendment at the hearing held on March 10, 2005. Petitioner was prevented through no fault of his own, from receiving one full bite of the apple in his first PCR application, had the Second Amendment been raised and ruled upon by the PCR court at the evidentiary hearing, the Amendment would had resulted in the Petitioner being granted relief.

In response to post-conviction relief order. (Order of Judge Lee S. Alford, dated August 2, 2005) App. 14 -App. 23 . Petitioner contacted PCR counsel and ask if he was going to file a 59(e) motion,, fact being, the order did not address the Second Amendment issue. Counsel's reply was that a 59(e) would be improper at this juncture. Counsel clarified his statement by stated. After review of the order, the court ruled upon all of the issues raised. App. 24. Counsel's letter dated August 16, 2005.

There is a sufficient "issue of material fact" to pursue and support "default claim." Petitioner can show both (1) "cause" for non-compliance with state rule and (2) "actual prejudice resulting from the alleged constitutional violation" the state as well as the federal court may consider the claim. Smith, 477 U.S. at 533 quoting Wainwright v. Sykes, 433 U.S. 72, 81 (1977).

Not every intervening decision or constitutional error justifies the issuance of a writ of habeas corpus; the test is whether there has been a violation, which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice. (Code 1976, §17-17-10 et seq.) Hunter v. State, (S.C.1994) 316 S.C. 105, 447 S.E.2d 203. Willians v. Ozmint, 671 S.E.2d 600 S.C. 2008 (defendant who seeks a writ of habeas corpus based on an error recognized as a constitutional violation after his conviction denied him fundamental fairness.)

South Carolina Supreme Court has and does recognize a violation of due process and equal protection of the law grounds for issuance of a writ of habeas corpus.

An evidentiary hearing on the material facts within the Second Amendment could prove sufficient to grant Petitioner relief that would result in his release and upon that decision being made, there would not be any other charge which could prevent the release.

Therefore, this action should not be dismissed; for to do so would be to deny the Petitioner the fundamental right to have his claims heard and adjudicated upon their legal and constitutional merits. Keeney v. Tamayo-Reyes, 112 S.Ct. at 1715; Washington v. State, 478 S.E.2d 833 (1996).

Due process prohibits estopping litigants who never had a fair chance to present their arguments on a claim, due to no fault of their own. Butler, (Constitutional principles recognized after trial).

Petitioner presents a colorable claim for relief and has never been accorded a state hearing on the claim, and each of the courts that he applied ruled without granting an evidentiary hearing on his claims.

Denying Petitioner's request for an evidentiary hearing necessarily results from an "unreasonable determination" of the facts.

CONCLUSION

Based on the above , this case should be granted an evidentiary hearing.

Respectfully submitted,

Fate T. McClurkin
Pro Se Petitioner

This ____ day of October, 2013

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)
 2005 AUG -4 AM 11:52)
 FILED - RECEIVED IN THE COURT OF COMMON PLEAS)
 SIXTEENTH JUDICIAL CIRCUIT)
 2003-CP-46-502)

Fate T. McClurkin, No. 263209,)
 DAVID HAMILTON)
 C.C.C.P. & GS)
 YORK COUNTY, SC)

Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

**ORDER OF DISMISSAL
 WITH PREJUDICE**

Phillip J. Corson, Esquire, appearing for the Applicant.

Julie M. Thames, Assistant Attorney General, appearing for the Respondent.

This is a post conviction relief (PCR) matter. The Applicant filed an application for PCR on February 24, 2003. He filed a First Amended Application for Post Conviction Relief on May 13, 2004, and a Second Amended Application on August 16, 2004. The Respondent made its Return on December 21, 2004. The Applicant then filed a third Amended Application for Post Conviction Relief on March 7, 2005. The Applicant alleges that he is being held in custody unlawfully due to ineffective assistance of trial counsel, ineffective assistance of appellate counsel, insufficiency of evidence, and Constitutional violations. An evidentiary hearing was convened at the Moss Justice Center in York County on March 10, 2005.

I. PROCEDURAL BACKGROUND

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The York County Grand Jury indicted the Applicant at the July and October, 1996 terms of General Sessions for Trafficking in Crack Cocaine (1996-GS-46-2044), Possession of a Gun During the Commission

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of a Violent Crime (1996-GS-46-2045), Carrying Pistol Unlawfully (1996-GS-46-2046), and Distribution of Crack Cocaine within Proximity of a Park (1996-GS-46-2047). Harry Collins, Esquire, represented the Applicant.

On December 8, 1999, the Applicant proceeded to trial in front of the Honorable John C. Hayes, III, and a jury. He was found guilty as indicted and was sentenced to confinement for thirty (30) years for trafficking crack, five (5) years for possession of a firearm, one (1) year for unlawfully carrying a pistol, and fifteen (15) years for the proximity charge, with all sentences running concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. McClurkin, Op. No. 2002-UP-588 (S.C. Ct. App. filed September 24, 2002). The Applicant filed a petition for rehearing. That petition was denied on November 20, 2002. The remittitur was issued on January 2, 2003.

II. APPLICABLE LAW

A. Ineffective assistance of counsel

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, *supra*.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

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rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry v. State, 300 S.C. at 117, 385 S.E.2d at 625, *citing Strickland, supra*. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625.

B. Ineffective Assistance of Appellate Counsel

A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S. Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S. Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to

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appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

III. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR EVIDENTIARY HEARING

At the PCR evidentiary hearing and in his application, the Applicant alleged that trial counsel was ineffective in failing to make a timely directed verdict motion causing the Applicant to lose the merits of this issue on appeal. The Applicant argues primarily that the trial court erred in not granting the directed verdict motion. The Applicant also alleged that trial counsel was ineffective in failing to call witnesses he requested trial counsel call. He also alleged that no testimony or any proof was offered to show that the Applicant was trafficking and that he was prejudiced by this lack of evidence. The Applicant argued that all of the evidence was circumstantial and that trial counsel should have done more.

The Applicant alleged that the "card"¹ bearing the Applicant's name, was erroneously entered in to evidence when the trial judge did not require the card to be authenticated. The Applicant also alleged that the trial court erred in denying his motion for a mistrial based upon the assistant solicitor's closing argument, and that trial counsel erred in requesting a mistrial only two times.

¹ The "card" showed amounts paid to or owed to "Fate."

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The Applicant alleged that appellate counsel was ineffective in failing to properly include or cite a pre-trial motion in the record, which resulted in the refusal of the Court of Appeals to consider the merits of the argument. The Applicant also alleged that appellate counsel was ineffective in failing to include the directed verdict motion on appeal, which also resulted in the Court of Appeals' refusal to decide the issue on the merits.

Appellate counsel testified at the PCR hearing. He testified that he did raise the issue of whether the card was properly admitted, but that the Court of Appeals had previously ruled that the card was not hearsay, therefore, he argued that the card was not properly admitted because it was not authenticated, as trial counsel had argued below.

Appellate counsel testified that he did raise the issue of the comments made by the solicitor because he felt the comments were prejudicial and that the solicitor was overreaching. Appellate counsel testified that he disagreed with the trial court's ruling that the comments were not an attack on the Applicant's character.

Trial counsel also testified at the PCR hearing. He testified that he objected to the introduction of the card in a pre-trial motion on the basis that it was hearsay. His motion was denied, and on appeal, the Court of Appeals found that the card was not hearsay. Trial counsel testified that he then objected during trial on the basis that the card was not authenticated. Again, his motion was denied. Trial counsel testified that he moved for a directed verdict because the evidence was entirely circumstantial, but that his motion was not granted.

Trial counsel testified that he objected repeatedly to the assistant solicitor's comments during opening and closing arguments, but that his objections were overruled, although the trial judge give a curative instruction and did caution the solicitor.

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The assistant solicitor also testified at the PCR hearing. He testified that in his opening and closing arguments he wanted to emphasize the serious nature of the charges. He testified that he was trying to paint a picture of the crack activity for the jury. The assistant solicitor testified that he believed the comments were proper as invited response.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the trial transcript, and legal arguments of counsel. Pursuant to S.C. Code Ann. § 17-27-80 (1985), this Court makes the following findings of fact based upon all of the probative evidence presented.

The Applicant's allegation that the trial court erred in not granting a directed verdict is a direct appeal issue that is not cognizable in PCR. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974)(PCR is not a substitute for issues that could have been raised on direct appeal). Further, in evaluating whether trial counsel was ineffective in failing to timely make the motion for a directed verdict, this Court finds that trial counsel's failure did not result in prejudice to the Applicant. Viewing the evidence in the light most favorable to the State, there was substantial evidence from which the jury could have found that the State had proven the elements of the charges. A timely motion for a directed verdict would have preserved the issue for appeal, but there is no prejudice to the Applicant since the motion would have been denied and that ruling would have been affirmed on appeal.

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The Applicant's allegation of insufficiency of the evidence also raises a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for an appeal. Simmons v. State, supra. A post-conviction relief application cannot assert any issues that could have been raised **at trial or on appeal**. Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as a ground for relief. Therefore, this Court finds that this allegation is without merit and is dismissed.

This Court finds that the allegation that trial counsel's representation fell below reasonable professional norms is without merit. Trial counsel objected often and vigorously to the comments made by the assistant solicitor. He moved for a mistrial and requested a directed verdict. The fact that he did not prevail does not make him ineffective. Trial counsel requested and received a curative instruction that properly addressed the comments. This Court finds that the comments by the assistant solicitor in opening statement and closing argument did not rise to the level that they infected the trial with prejudice to the Applicant to the extent that a mistrial was warranted. A timely objection to the sufficiency of the curative instruction by the trial court would not have been sustained either by the trial court or on appeal. This Court finds there was no prejudice to the Applicant even if trial counsel should have made further objection to preserve the issue for appeal. The State is allowed to argue inferences to be drawn from the evidence and an inference which could be made from the evidence is that the Applicant was a drug dealer.

This Court finds trial counsel was not ineffective in failing to have the card suppressed. He tried two different tactics to get it suppressed but was unsuccessful. After the Court of Appeals ruled the card was not hearsay and that it was admissible as circumstantial evidence, he

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tried unsuccessfully to have the card suppressed on the basis that it was not properly authenticated. The jury was free to determine the weight, if any, to be given that evidence.

This Court finds the allegation that Appellate counsel was ineffective is without merit. Appellate counsel made informed decisions based on reasonable professional judgment as to which issues to pursue on appeal. Griffin v. Aiken, supra. The allegation in the application contends that appellate counsel failed to include materials in the Appendix. This Court finds that even if this were error, it was harmless as there was substantial evidence of guilt. In addition, as stated above, this Court finds that neither a timely motion for directed verdict, nor a timely objection to the sufficiency of the evidence would have been sustained by the trial court; and these ruling would have been affirmed on appeal. The Applicant has not met his burden of proof to show that appellate counsel was deficient in his representation, nor has he shown any resulting prejudice. Southerland v. State, supra. Further, the failure to raise issues does not automatically render appellate counsel ineffective. Jones v. Barnes, supra.

With the benefit of hindsight, almost any trial lawyer reviewing a trial transcript is likely to find places where an objection could have been made or a question could have been asked. Such hindsight does not automatically render the lawyer's performance ineffective. A review of the trial transcript in this case shows that trial counsel, while perhaps not making every possible objection, did represent the Applicant with zeal and vehemence. Trial counsel testified, and the record reflects, that he objected repeatedly and vigorously to the comments made by the assistant solicitor. He also tried two different strategies to get the card suppressed. A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the

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conduct from counsel's perspective at the time. Butler v. State, supra. Judicial scrutiny of counsel's performance is highly deferential and not subject to the distorting effects of hindsight, and counsel may reasonably choose from a wide range of acceptable strategies. Strickland v. Washington, supra.

The jury was required to weigh the evidence and to render a decision. This they did. The fact that they did not render the decision expected by the Applicant does not invalidate the verdict. This Court finds from a review of the record that the benchmark in Strickland v. Washington, supra, has not been contravened and that when deferential judicial scrutiny is applied, the conduct of trial counsel fell within the wide range of reasonable professional assistance.

CONCLUSION

This Court concludes that the Applicant failed to carry his burden of proof to show that trial counsel's representation fell below reasonable professional norms or that he was prejudiced by the alleged deficient representation. The Applicant's former trial counsel rendered reasonably effective assistance under prevailing professional norms and demonstrated a normal degree of skill, knowledge, and professional judgment that is expected of an attorney in a criminal case. Strickland v. Washington, supra; Cherry v. State, supra. Additionally, the Applicant did not carry his burden to show a reasonable probability that the result at trial would have been different had trial counsel done what the Applicant alleges should or should not have been done. Johnson v. State, supra.

As to any and all allegations, which were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds

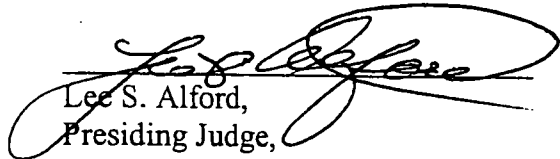
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that the Applicant failed to present any probative evidence regarding such allegations. These allegations are not supported by any law and were not addressed at the hearing. Accordingly, this Court finds that the Applicant waived the allegations and failed to meet his burden of proof regarding them. Accordingly, they are denied and dismissed with prejudice.

IT IS THEREFORE ORDERED THAT:

1. The post-conviction relief application is **DENIED AND DISMISSED WITH PREJUDICE;**
2. The Court advises the Applicant and his attorney of record that any Notice of Appeal must be filed within thirty (30) days of service of the signed copy. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures on appeal.
3. The Applicant is remanded to the custody of the Respondent for the completion of his sentence.

AND IT IS SO ORDERED.


 Lee S. Alford,
 Presiding Judge,
 Sixteenth Judicial Circuit

York, South Carolina
August 2, 2005.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Certiorari to York County
Roger L. Cough, Chief Administrative Judge

FATE T. MCCLURKIN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001987

A P P E N D I X

Fate T. McClurkin, #263209
Kershaw Corr. Inst., PA-47
4848 Goldmine Hwy.
Kershaw, SC 29067
PRO SE PETITIONER

James Rutledge Johnson
Assistant Attorney General
PO Box 11549
Columbia, SC 29211
Attorney for Respondent

I N D E X

SECOND AMENDMENT FOR POST-CONVICTION RELIEF 1, 13.
ORDER OF DISMISSAL (JUDGE LEE ALFORD)..... 14, 23.
COUNSEL'S LETTER (PHILIP J. CORSON) 24.
STATE HABEAS CORPUS 25, 43.
ORDER (DISMISSING HABEAS CORPUS 44, 48.

Petitioner is entitled to a "bite of the apple," "the apple" being presentation of the allegations of the referenced second amendment to his application for post-conviction relief.

The issue Petitioner alleges was not properly pursued in his initial application is that the second amendment was not raised at the merits hearing on his initial application. The second amendment raised, as issues, trial counsel's failure to discover that a co-defendant had pled guilty and that trial counsel failed to object to portions of the Solicitor's opening and closing statements. The second amendment alleges that the co-defendant's guilty plea, allegedly discovered after Applicant's trial, is after-discovered evidence. A review of the post-conviction relief judge's order on Petitioner's initial application establishes that the order took into consideration all of Petitioner's testimony² regarding all issues Petitioner presented at his hearing. None of the referenced testimony (the order refers to Petitioner's testimony as "allegations") touches on the issues Petitioner now claims trial counsel should have raised. Not only was Petitioner afforded a full bite at the apple, but it was Petitioner, not trial counsel who failed to present to the Court those matters set forth in his second amendment.

In his order, the post-conviction relief trial judge took note of Petitioner's application and its first and second amendments (Order of Judge Lee S. Alford, dated August 2, 2005). Therefore, the order addressed all averments of Petitioner. If the order of August 2, 2005 did not dispose of any issue properly raised by the application and its amendments, this should have been called to the Court's attention by a Rule 59(e) SCRCP motion. Failure to do so works as abandonment of any concerns Petitioner had or now has as to said application and its amendments.

Trial counsel testified, at the post-conviction relief hearing, that he repeatedly objected to the Solicitor's opening and closing statements at trial. This testimony was noted positively in the

² The undersigned has not read the transcript of the post-conviction relief hearing.

post-conviction relief judge's order, and, as to the arguments, he found that even if trial counsel was deficient in objecting to the arguments, the possible error in failing to object resulted in no prejudice to Petitioner.

As to co-defendant Bozzy Taylor, his file reflects that he pled guilty to companion charges to Petitioner, i.e. crimes committed May 2, 1996, at 1313 Russell Street, Rock Hill, South Carolina. It is worthy of note that Petitioner did not, in his second amended application, assert that he did not know of Bozzy Taylor's plea of August 15, 1996, entered and disposed of almost three and one-half years before Petitioner's trial. Based on this time frame, it is difficult for the Court to even consider that Applicant was unaware of his co-defendant's plea. In any event, Petitioner presented no evidence on the matter at his post-conviction relief hearing, according to Judge Alford's order, when he knew his second amendment made allegations regarding trial counsel's failure to discover the Taylor plea or the State's failure to disclose the plea. This after Petitioner had made it an issue by virtue of the Second amendment.

It is worthy of note, also, that in Petitioner's testimony at his post-conviction relief hearing, according to Judge Alford's recitation of Petitioner's presentation, Petitioner did not mention Bozzy Taylor's plea, and there is nothing in Judge Alford's order that reflects any attempt by Petitioner to have Taylor appear and testify at the hearing.

Petitioner cites Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (S. Ct. 1991) as support for his claim of right to a successive application for post-conviction relief.

Aice holds that § 17-27-90, South Carolina Code of Laws, 1976, as amended, allows for successive applications for post-conviction relief only when:

...the Court finds a ground for relief asserted which for *sufficient reason* was not asserted or was inadequately raised in the original, supplement or amended application. 305 S.C. at 450.

The Supreme Court goes on to hold that the phrase "sufficient reason" is to be interpreted very narrowly, citing from Rule 50(3), Supreme Court Rules which has no counterpart in Rule 71.1 SCRC. Rule 50(3) referenced Section 8 of § 17-27-90, S.C. Code of Laws, 1976, as amended, which reads now as it did in 1991. The Aice court references Section 8 of § 17-27-90, S.C. Code of Laws, as amended, as follows:

Under Section 8 of the Act, successive applications for relief are not to be entertained, and the burden shall be on the applicant to establish that any new ground raised in a subsequent application *could not have been raised* by him in the previous application. 305 S.C. at 450.

In its analysis of the above, The Supreme Court stated:

Therefore, as long as it was possible to raise the argument in his first PCR application, an applicant may not raise it in a successive application. 305 S.C. at 450.

The Aice court held that, if a ground could have been raised in an initial application, it cannot be later raised in a successive application.

Petitioner's case differs from Aice, as Petitioner asserts he raised, in his initial application, the issues he now seeks to have resurrected. A review of the record reveals this to be true. However, like Aice, Petitioner, here, seeks a successive "bite" at the apple. Interestingly, Aice, like Petitioner, sought a successive post-conviction application under the rubric that initial post-conviction relief trial counsel was ineffective in failing to raise or present to the Court issues that Aice argued were of great merit, thus rendering his conviction fundamentally unfair. These issues had not been raised by Aice until such time as he sought certiorari of the order denying his post-conviction relief application.

Here, as in Aice, Petitioner's claims do not entitle him to a successive post-conviction application, as Petitioner has not presented to the Court any sufficient reason why the grounds he

now seeks to pursue, which were raised in the above-referenced application for post-conviction relief, should be allowed to be raised in a successive post-conviction relief application. Also, Petitioner has not presented any sufficient reason why the grounds now alleged were not adequately presented to the post-conviction relief judge, even though the post-conviction judge noted in his order Petitioner's second amendment.

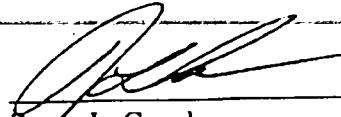
Petitioner's Petition for Habeas Corpus is dismissed for the following reasons:

1. Inquiry into habeas corpus is limited to the legality of a prisoner's present detention, and the only remedy which can be granted is release from custody, whether absolute or conditional. Gibson v. State, 329 S.C. 37, 495 S.E.2d 426 (S. Ct. 1998) *citing* McCall v. State, 247 S.C. 15, 145 S.E.2d 419 (S. Ct. 1965).
2. A matter which is cognizable under the Post-conviction relief Act may not be raised by a Writ of Habeas Corpus. Simpson v. State, 329 S.C. 43, 495 S.E.2d 429 (S. Ct. 1998).
3. Here, Petitioner seeks to be allowed a successive Post-Conviction Relief application, not release from confinement either absolutely or conditionally.
4. The matters Petitioner wishes to raise in a successive application have, in part, been raised in a previous application for post-conviction relief.
5. Petitioner has not made any showing, let alone a prima facie showing, that post-conviction relief counsel was ineffective in arguing trial counsel's ineffective handling of the Solicitor's opening and closing statements, or to any issue relative to the guilty plea of Petitioner's co-defendant.

Therefore, Petitioner's Petition for a Writ of Habeas Corpus is denied and dismissed.

IT IS SO ORDERED.

August 9 2013
Spartanburg, South Carolina



Roger L. Couch
Chief Administrative Judge

STATE OF SOUTH CAROLINA

COUNTY OF YORK

FATE T. MCCLURKIN, #263209

APPLICANT,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

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2004 AUG 15 2:10:11

DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

SECOND AMENDED
APPLICATION FOR
POST-CONVICTION RELIEF

03-CP-46-502

Applicant Fate T. McClurkin further amends his application for post-conviction relief as follows:

Ineffective Assistance of Trial Counsel

1. Trial counsel was ineffective for failing to call a critical witness or failing to discover exculpatory evidence. Mr. McClurkin was not the only person arrested and indicted in this matter. Bozzy Lee Taylor was also. It was Mr. Taylor's house where the arrest took place and Mr. Taylor's couch where the police found the crack. Most importantly, it was Mr. Taylor who later pleaded guilty to possessing, with the intent to distribute, that crack. Certified true copies of Mr. Taylor's arrest warrants and indictments along with the docket reports, sentencing sheet and accompanying order are attached hereto as Exhibit A and incorporated herein by reference. Mr. McClurkin was prejudiced because his trial counsel either ineffectively failed to discover Bozzy Taylor's plea and conviction, or because trial counsel failed to interview and subsequently call Mr. Taylor to testify that the crack found at his house was his and not Mr. McClurkin's, that it was he, not Fate McClurkin, who had possession of that crack, and that it was he, not Fate McClurkin, who intended to distribute that crack.
2. While the State is permitted in its opening statement to outline the facts it intends to prove, the State must introduce evidence to reasonably support the stated facts. *State v. Kornahrens*, 290 S.C. 281, 350 S.E.2d 180 (1986). During his opening statement, the solicitor said the police saw people standing around smoking crack they just "bought" from Mr. McClurkin, and that the State would prove Mr. McClurkin "sold" crack. Not one of the

Exhibit (A)

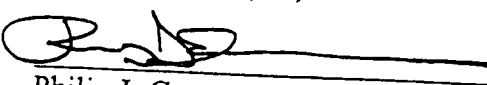
State's witnesses, however, testified that they bought crack from Mr. McClurkin. No one said Mr. McClurkin sold crack to them either. And not one witness said they saw Mr. McClurkin selling crack or saw anyone buying crack from him. Defense counsel's failure to object to these improprieties and move for a mistrial constitutes ineffective assistance of counsel and prejudiced Mr. McClurkin at trial and precluded review of the issue on appeal.

3. The solicitor's closing argument must stay within the record and reasonable inferences to it. *State v. Cooper*, 334 S.C. 540, 514 S.E.2d 584 (1999). During his closing argument, the solicitor says Mr. McClurkin had "a product he [was] selling," that he was "selling crack out of that house," and that he was "selling crack all night long." Not one of the State's witnesses, however, testified that they bought crack from Mr. McClurkin. No one said Mr. McClurkin sold crack to them either. And not one witness said they saw Mr. McClurkin selling crack or saw anyone buying crack from him. In this case, the solicitor's comments so infected the trial with unfairness that the resulting conviction constituted a denial of due process, and trial counsel's repeated failure to object or move for a mistrial precluded a ruling on this issue at trial as well as on appeal.

After-Discovered Evidence

4. If trial counsel was not ineffective for failing to discover Bozzy Lee Taylor's plea and conviction before the trial or the solicitor committed a discovery violation by failing to disclose it, then a new trial is warranted on the basis of after-discovered evidence. See *Gibson v. State*, 334 S.C. 515, 514 S.E.2d 320 (1999). Bozzy Taylor's plea and conviction is material and tends to clear Fate McClurkin from guilt. Mr. Taylor's testimony at a new trial could indicate that he, and not Mr. McClurkin, is responsible for the crimes charged, thereby extrinsically establishing Mr. McClurkin's innocence.

Respectfully submitted,
 HASELDEN, OWEN & BOLOYAN
 Attorneys for Applicant
 4609 Charlotte Hwy., Ste. 1
 Lake Wylie, SC 29710
 (803)831-2738 (phone)
 (803)831-0180 (fax)

By: 
 Philip J. Corson

Lake Wylie, SC
 August 11, 2004

CERTIFIED TRUE COPY

2004 JUL 29 PM 2:03

DAVID L. MITCHELL
CLERK OF COURT
YORK COUNTY, SC

GENERAL SESSIONS DOCKET REPORT FOR YORK COUNTY

REPORT RUN DATE - 052896

INDICTMENT NUMBER: 96GS46 *2058*

DEFENDANT NAME: TAYLOR, BOZZY LEE

AKA:

ADDRESS: 1313 RUSSELL ST

CITY: ROCK HILL

STATE: SC ZIP 29730

SOCIAL SECURITY NUMBER: 248174585

SEX: 1 MALE

RACE: 2 BLACK

DATE OF BIRTH: 021658

DRIVERS LICENSE STATE / NO.: SC / 999999999

MARITAL STATUS:

WARRANT OR TICKET NUMBER: E69755³

COUNTS: 01 OFFENSE CODE: 0108

NO WARRANT? 0

NAME OF OFFENSE: DRUGS/D.S. SELL,

DATE OF ARREST: 050296

DATE RECD BY CLERK: 052896

SUMMARY JUDGE:

DISP DATE: ~~000000~~ *8-27-96*

DISP TYPE: *Wolo Prose*

DISP TYPE EXPLANATION:

per plea agreement

JUDGE CODE/NAME:

COURT REPORTER:

CONVICTION: CTS: 00 OFFENSE: 0000

SENTENCE:

DEFENSE ATTORNEY: PUBLIC DEFEND

PROSECUTING ATTORNEY:

[Handwritten Signature]

EXHIBIT (B)

CERTIFIED TRUE COPY

2004 JUL 29 PM 2:03

CLERK OF COURT
YORK COUNTY SC

GENERAL SESSIONS DOCKET REPORT FOR YORK COUNTY

96-2057

REPORT RUN DATE - 052896

INDICTMENT NUMBER: 963346

DEFENDANT NAME: TAYLOR, BOZZY LEE

AKA:

ADDRESS: 1313 RUSSELL ST CITY: ROCK HILL STATE: SC ZIP 29730

SOCIAL SECURITY NUMBER: 248174585 SEX: 1 MALE RACE: 2 BLACK

DATE OF BIRTH: 021658 DRIVERS LICENSE STATE / NO.: SC / 999999999

MARITAL STATUS:

WARRANT OR TICKET NUMBER: E697553 COUNTS: 01 OFFENSE CODE: 0450

NO WARRANT? 0 NAME OF OFFENSE: DRUGS/TRAF-ICE,

DATE OF ARREST: 050296 DATE RECD BY CLERK: 052896 SUMMARY JUDGE:

DISP DATE: ~~000000~~ 8-5-96 DISP TYPE: 1

DISP TYPE EXPLANATION:

JUDGE CODE/NAME: 002

COURT REPORTER: Janet Libson

CONVICTION: CTS: 01 OFFENSE: 108 Dist - Cook - Prof

SENTENCE: 10 yrs susp
5 yrs Probation

\$250 P.D. Fund
\$25 P.D. app.

DEFENSE ATTORNEY: PUBLIC DEFEND

PROSECUTING ATTORNEY: Julie Hall / Selzer

Adrian Cross

THE STATE

VS

VERIFIED TRUE COPY

2004 JUL 29 PM 2:03

DAVID L. BLISS
CLERK OF COURT
YORK COUNTY, SC

COUNT NO. _____

CASE NO. 76 GS 46-203-7

WARRANT NO. F-697558

CHARGE: Distribution Crack
Cocaine # 108

Bobby Lee Taylor
Bobby Lee Taylor

The sentence of the Court is that _____, the defendant named in the indictment be confined to the State Board of Corrections/ York County Detention for a term of 10 Ten Year (and) (or) pay a fine of \$ _____; provided that upon the service of _____ (and) (or) payment of \$ _____ plus (pay) (waive) cost and assessments as applicable *, the balance

suspended and the defendant is placed on probation for Five 5 (months) (years).

RESTITUTION: (Yes) (No)

HEARING HELD OR WAIVED ON: _____

PAYABLE TO CLERK FOR (VICTIM) _____

PHYSICAL INJURY \$ _____
(and) (or)
PROPERTY DAMAGE \$ _____
TOTALS \$ _____

SPECIAL CONDITIONS OF PROBATION AND/OR SENTENCE: _____

pass drug test - attend Drug Abuse Program
pay \$250 to P.D. Field of York County
pay \$25 to City Court

DATE: 8-15-96

YORK, SOUTH CAROLINA

*COST AND ASSESSMENTS:

FINE \$ _____
ACADEMY \$ _____
C.C.A. \$ _____
L.C.F. \$ _____
C.A.T. \$ _____
OTHER \$ _____
GRAND TOTAL \$ _____

~~NO FEE~~

Frank Egger
Presiding Judge

Paul Bevilacqua
Clerk of Court

Date of Birth 2-16-58

Social Security 248-17-4585

Drivers License _____

ATTORNEY FOR DEF A. Cooper

ADDRESS: 1212 Russell St
PH 29730

COPY RECEIVED BY: X Bobby Lee Taylor
Defendant

M/F
B/W

STATE OF SOUTH CAROLINA

COURT GENERAL SESSIONS

COUNTY OF YORK

August 5, 19 96
Term

STATE

2004 JUL 29 PM 2:03

PROBATION ORDER

-VS-

BOZZY LEE TAYLOR
Defendant

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

No. 96 - GS - 46 - 2057

OFFENSE Distribution of Crack Cocaine

The sentence of the court is that the defendant, Bozzy Lee Taylor, shall be in the custody of the South Carolina Department of Corrections for a term of ten years ~~(and pay the costs of the Department of Corrections)~~. However, the balance of this sentence is hereby suspended and the defendant is hereby ordered to be placed on probation for a period of five (5) years under the supervision of the South Carolina Department of Probation, Parole, and Pardon Services. During this period of probation, the Defendant shall be subject to the laws of South Carolina and the rules and orders of the Department and its agents. This suspended sentence may be revoked or modified at any time after the date of this order. The conditions of supervision are set forth below.

IT IS FURTHER ORDERED: that the Sheriff or other law enforcement officers who have the custody of the defendant is hereby ordered to deliver said defendant to the Probation Office of this county, or if the defendant is under bond, then such bond shall remain in full force until the defendant reports to the Probation Office. The conditions of probation begin (today/~~the date of the suspension of the suspended sentence~~). It is further ordered that the Clerk of Court file this order in his office and that he forthwith forward a certified copy to the County Office of the Department.

This 5th day of August, 19 96 /s/ Frank Eppes Frank Eppes
York, S.C. Sixteenth Presiding Judge
Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any special conditions it deems proper; or it may extend your period of probation not to exceed five (5) years. You shall be subject to arrest, upon order of the Court, or upon a warrant issued by the Probation Agent. At any time within the period of your probation, the Court may, upon proof of a violation resentence you and impose any sentence it might have imposed in the first instance. This is to certify that I have read or have had read to me this Order of Probation and the Conditions set out herein. I agree to comply with these conditions during the period of my probation. I have received a copy of this court order.

Witnessed by: [Signature] Signed: Bozzy Lee Taylor
Signed this 5th day of August, 1996, York Probationer, S.C.

CONDITIONS ORDERED BY THE COURT:

- Waive Costs and Assessments. (NOTE: Some costs cannot be waived.)
- Complete _____ (hours) Public Service Employment.
- Intensive Supervision for an indeterminate period not to exceed 6 months, as determined by the Department.
- Home Detention for an indeterminate period not to exceed 6 months, as determined by the Department.
- Electronically Monitored Home Detention for an indeterminate period not to exceed 90 days, as determined by the Department.
- Participate and successfully complete an evaluation/referral for alcohol/drug abuse as determined by the Department.
- Fine/Costs and Assessments payable as directed by the Court.
- \$ 250; \$25 restitution payable to the Clerk of Court as directed by the Department or its agents.
- Restitution Center.
- Community Control Center.
- Case to end upon Certification by the Clerk of Court that all monies have been paid (Sec. 24-21-550).
- Other: pass drug test, attend drug abuse program as directed by probation agent. Pay \$250.00 to Public Defender Fund and \$25.00 for Application fee at \$50/month beginning September 5, 1996 include 3% collection fee to York County Clerk of Court, P.O. Box 649, York, SC 29745

WITNESSES

RHPD / GRANT

S. Shevetales

DOCKET NO. 96-GS-46-2057

The State of South Carolina,

County of YORK

COURT OF GENERAL SESSIONS

JULY 11TH, TERM 1996

THE STATE

vs.

BOZZY LEE TAYLOR

ACTION OF GRAND JURY

TRUE BILL

Foreman of Grand Jury

Date:

Sharon G. Jennings 7-11-96

VERDICT

Indictment for

Distribution of Crack Cocaine
within Proximity of a Park

S.C. Code 44-53-445
CDR Code 108

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment to

Bozzy Lee Taylor
Defendant

Witness:

James E. Clark
C.O.C. PLS. AND G.S. *Clark*

Foreman of Petit Jury

Date:

Form 32 (12/87)

STATE OF SOUTH CAROLINA
COUNTY OF YORK


CERTIFIED TRUE COPY
2004 JUL 29 PM 2:03
INDICTMENT FOR
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

Distribution of
within Pro:

At a Court of General Sessions, convened on July 11, 1996, the Grand
present upon their oath:

That Bozzy Lee Taylor did on or about May 2, 1996, willfully and un-
Sell, Purchase, Manufacture, or Unlawfully Possess With Intent to Distribute a co
to wit: Crack Cocaine within a one-half mile radius of the grounds of Lige St
Distribution not having been authorized by law, in violation of Section 44-53-445,
South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in su
provided.


ASSISTANT SOLICITOR

mac

ARREST WARRANT
E-697554

STATE OF SOUTH CAROLINA)
County/ Municipality of)
ROCK HILL)

AFFIDAVIT

STATE OF SOUTH CAROLINA)
County/ Municipality of)
ROCK HILL)

THE STATE
against

ROD PEARL
C.O.P. # 0108
YORK COUNTY S.C.

BOZZY LEE TAYLOR
1313 RUSSELL ST
ROCK HILL, S.C.

Phone: M Race: H Height: 6 SSN: 248-17-4585
DL State: 2/16/58 DL #: Weight: 170

DOB: 2/16/58 Agency ORI #: SC0460300

Prosecuting Agency: ROCK HILL POLICE DEPARTMENT
Prosecuting Officer: C. GRANT

Offense: POSS CRACK W/INTENT DIST PROXIMITY PARK

Code/Ordinance Sec: 44-53-445 Offense Code:

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

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

Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to defendant Bozzy Taylor on 5-2-96

Signature of Constable/Law Enforcement Officer D. Williams

RETURN WARRANT TO:

Incident # 9605020410

Personally appeared before me the affiant C. GRANT
being duly sworn deposes and says that defendant BOZZY LEE TAYLOR
did within this county and state on 5/02/96 violate the criminal laws
State of South Carolina (or ordinance of County/ Municipality of)
in the following particulars:
DESCRIPTION OF OFFENSE: 44-53-445 POSS CRACK W/INTENT DIST PROXIMITY PARK

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

Did willfully and unlawfully violate S.C. Drug Laws by possessing crack which intent distribute while at 1313 Russell St. Rock Hill S.C. Police Investigation This being within 1/2 mile of Lige St. Park Recovery of more than 10 grams of white rock substance believed to be crack

Sworn to and subscribed before me on 5-3-96

Signature of Issuing Judge (L.S.)

Signature of Affiant
Affiant's Address 120 BLACK ST EIGHT
Affiant's Telephone ROCK HILL SC 29178
803-329-5691

STATE OF SOUTH CAROLINA)
County/ Municipality of)
ROCK HILL)

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe on 5/02/96 did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of) as set forth below:
DESCRIPTION OF OFFENSE: 44-53-445 POSS CRACK W/INTENT DIST PROXIMITY PAR

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

Signature of Issuing Judge (L.S.)
Judge's Address ROCK HILL SC
Judge's Telephone 803-329-5691
Issuing Court: Magistrate Municipal Circ

ORIGINAL

Generated Ref # 9605020013

WITNESSES

1 RHPD /GRANT *S/Shevekas*

DOCKET NO. # 95-GS-46- 2058

The State of South Carolina,

County of YORK

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

ARREST WARRANT NO. E - 697553

COURT OF GENERAL SESSIONS

JULY 11TH, TERM 1996

THE STATE

VS.

ACTION OF GRAND JURY

BOZZY L. TAYLOR

Defendant

TRUE BILL

Witness:

Foreman of Grand Jury: _____ Date: _____

7-11-96

Trafficking in Crack Cocaine

S.C. Code 44-53-375(C)
CDR Code 450

C.C.C. PLS. AND G.S.

VERDICT

Shawn C. Semiors

701088858
8-27-96

Foreman of Petit Jury

Date:

[Signature]

Amount due \$0.00
(12/87)

UNRECORDED COPY

STATE OF SOUTH CAROLINA

2004 JUL 29 PM 2:03

COUNTY OF YORK

INDICTMENT FOR Trafficking Crack Cocaine

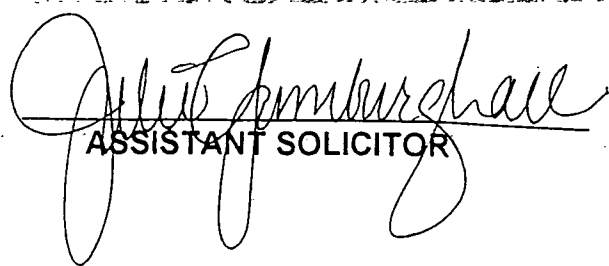
CLERK OF COURT
YORK COUNTY-SC

At a Court of General Sessions, convened on July 11, 1996, the Grand Jury of York County present upon their oath:

TRAFFICKING CRACK COCAINE

That **Bozzy L. Taylor** did in York County on or about **May 2, 1996**, wilfully, unlawfully and knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of a quantity of **Ice, Crank, or Crack Cocaine**, as defined and otherwise limited in Sections 44-53-110, 44-53-210(b)(4), 44-53-210(d)(1), or 44-53-210(d)(2), and did **Traffick in Crack Cocaine in an amount being more than 10 grams but less than 28 grams**, in violation of Section 44-53-375(C), *Code of Laws of South Carolina, (1976)*, as amended.

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


ASSISTANT SOLICITOR

mac

E-697553

STATE OF SOUTH CAROLINA

County/ Municipality of ROCK HILL

FILED-RECEIVED ROCK HILL 500K MAY 29 1996

THE STATE against

BOZZY LEE TAYLOR

Address: 1313 RUSSELL ST ROCK HILL, S.C.

Phone: # B SSN: 248-17-4585

Sex: M Race: B Height: 6 Weight: 170

DL State: 2716/58 DL #: SC0460300

Prosecuting Agency: ROCK HILL POLICE DEPARTMENT

Prosecuting Officer: C. GRANT

Offense: TRAFFICKING CRACK

Code/Ordinance Sec. 44-53-375 Offense Code:

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

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

Date: Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to defendant BOZZY TAYLOR on 5-2-96

Signature of Constable/Law Enforcement Officer D. Williams

RETURN WARRANT TO:

Incident # 9605020410

STATE OF SOUTH CAROLINA County/ Municipality of

AFFIDAVIT

Form Approved S.C. Attorney General July 29, 1995 SCCA 518

Personally appeared before me the affiant C. GRANT being duly sworn and says that defendant BOZZY LEE TAYLOR on 5/02/96 in this county and state on State of South Carolina (or ordinance of County/ Municipality of) violate the criminal laws of the following particulars: ROD REYNOLDS C.O.P. & YORK COUNTY, S.C.

44-53-375

TRAFFICKING CRACK

0450

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts: Did willfully and unlawfully violate S.C. Drug Laws by trafficking in crack white at 1313 Russell St. Rock Hill, S.C. Police Investigation Recovery of more than 10 grams of white rock substance believed to be crack

Sworn to and subscribed before me on 5-3-96

Signature of Issuing Judge (L.S.)

Signature of Affiant Affiant's Address 120 BLACK ST E ROCK HILL SC Affiant's Telephone 803-329-5691

STATE OF SOUTH CAROLINA County/ Municipality of ROCK HILL

ARREST WARRANT

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

It appearing from the above affidavit that there is probable cause to believe that defendant BOZZY LEE TAYLOR did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of) as set forth below:

44-53-375

TRAFFICKING CRACK

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

Signature of Issuing Judge (L.S.)

Judge's Address 120 BLACK ST E ROCK HILL SC

Signature of Affiant Judge Code: 5586

Judge's Telephone 803-329-5691

Issuing Court: Municipal Circuit

ORIGINAL

Generated Ref # 9605020012

STATE OF SOUTH CAROLINA

County of York

**AFFIDAVIT OF
BOZZY LEE TAYLOR**

PERSONALLY APPEARED BEFORE ME, Bozzy Lee Taylor, who swears and/or affirms:

1. That it was I who resided at the home address where Fate T. McClurkin was an invited guest on the evening when police "raided" the residence in search of drugs;

2. That, as a result of that "raid", Fate T. McClurkin was arrested and charged with trafficking in crack cocaine, carrying a pistol unlawfully, possession of crack cocaine with intent to distribute within proximity of a park, and possession of a gun during the commission of a violent crime.

3. That, I plead guilty to all of the drug charges because the drugs (11.3 grams of crack cocaine) discovered during the "raid" were in fact drugs which belonged to me alone.

4. That, at no time did Fate T. McClurkin actually display or possess any drugs (specifically crack cocaine) while at my home on the subject date and time the "raid" was conducted.

5. That, to the best of my knowledge and recollection, Fate T. McClurkin is innocent of the crimes mentioned in paragraph number two (2) because those items discovered during the "raid" - except for the pistol related charges - all belonged to me.

FURTHER, AFFIANT SAYETH NOT.

Bozzy Lee Taylor
Bozzy Lee Taylor

SWORN to and Subscribed before me

this 5 day of June 2008

[Signature]
Notary Public for South Carolina

Bozzy Lee Taylor
Affiant: Bozzy Lee Taylor

My commission expires: _____

My Commission Expires June 2, 2011

EXHIBIT (C)

HASELDEN, OWEN & BOLOYAN

ATTORNEYS AT LAW
4809 CHARLOTTE HWY.
SUITE 1

LAKE WYLIE, SOUTH CAROLINA 29710
TELEPHONE 803/831-2738
FAX 803/831-0180

ALFORD HASELDEN
JAMES H. OWEN, JR.
MYRON B. BOLOYAN
PHILIP J. CORSON

CLOVER OFFICE:
TELEPHONE 803/222-4783
FAX 803/222-2444

August 16, 2005

Via First Class Mail

Mr. Fate T. McClurkin
SCDC#263209
Broad River Corr. Inst.
4460 Broad River Rd.
Monticello Rm. 267B
Columbia, SC 29210

Re: McClurkin v. State
03-CP-46-502

Dear Mr. McClurkin:

Subsequent to your letter received August 15, 2005, I have re-reviewed the Final Order of Dismissal in the above-referenced matter and it does address the issue you raise in your letter. The Order says, "The Applicant alleged that appellate counsel was ineffective in failing to properly include or cite a pre-trial motion in the record, which resulted in the refusal of the Court of Appeals to consider the merits of the argument. The Applicant also alleged that appellate counsel was ineffective in failing to include the directed verdict motion on appeal, which also resulted in the Court of Appeals' refusal to decide the issue on the merits." The Court concluded, however, that even if appellate counsel's failure to include these materials was error, it was harmless error, as there was substantial evidence of guilt. Therefore, I believe your right to raise this allegation again on appeal is preserved, and a motion to alter or amend the judgment pursuant to S.C. R. Civ. P. 59(e) is improper.

If I can be of assistance to the Office of Appellate Defense, please ask them to call me.

With kind regards, I am

Very truly yours,



Philip J. Corson
Haselden, Owen & Boloyan

STATE OF SOUTH CAROLINA
In The Court of Common Pleas

FATE T. MCCLURKIN, #263209 Petitioner

v.

STATE OF SOUTH CAROLINA Defendant

PETITION FOR HABEAS CORPUS

Petition1-8

Exhibit(s) Attached hereto1-8

Verification

STATE OF SOUTH CAROLINA
In The Court of Common Pleas

FATE T. McCLURKIN, #263209)
)
 Petitioner,)
)
 v.)
)
 STATE OF SOUTH CAROLINA,)
)
 Defendant.)

CASE NO.: 2012-CP-46-02725

MEMORANDUM OF LAW WITH POINTS
AND AUTHORITIES IN SUPPORT OF
PETITION FOR WRIT OF HABEAS
CORPUS

Now comes Fate T. McClurkin, hereafter denoted "petitioner," with writ of habeas corpus requiring the "respondent," State of South Carolina, to respond forthwith.

JURISDICTION

The above named Petition, Fate T. McClurkin, moving this Honorable Court, pursuant to South Carolina Code Ann. §17-17-10 to 17-17-200 (1976-2003); S.C. Rules of Civil Procedure, Rule 65(f)(1); and Article 1, Sec. 18 of the South Carolina Constitution, to conduct a hearing upon Petitioner's "Motion for Writ of Habeas Corpus. Petitioner declares exhaustion of remedies, Pennington v. State, (S.C.1994) 312 S.C. 436, 441 S.E.2d 315.

STATEMENT OF CASE

The Petitioner is presently incarcerated in the South Carolina Department of Corrections at the Kershaw Correctional Institution pursuant to the commitment of the York County court of General Sessions. The Petitioner was indicted by the York County Grand Jury during the July and October, 1996 terms of General Sessions for trafficking in cocaine base. (1996-GS-46-2045). Possession of a Gun during the commission of a violant crime (1996-GS-46-2047), carrying a pistol unlawfully (1996-GS-46-2046), and Distribution of cocaine base with in proximity of a park (1996-GS-46-2047). The Petitioner was represented by Mr. Harry Coolins, esquire.

1.) The Petitioner proceed to trial by jury before the Honorable John C. Hayes, III, and was found guilty as indicted on December 8, 1999. The Honorable court sentenced the Petition to thirty (30) years for trafficking cocaine base, five years for possesssion of a firearm, one (1) year for unlawfully carrying a postol, and fifteen (15) years for the proximity of a park, with all sentences to run concurrently.

2.) A timely Notice of Appeal was filed by Mr. Collins, on the Petitioner's behalf and an appeal was perfected. The South Carolina court of appeals affirmed the Petitioner's conviction and sentence. See State v. McClurkin, Op.No: 2002-UP-588. The Petitioner filed a petition for rehearing. The petition was denied on November 20, 2002. The remitter was filed by York County Clerk's Office on January 2, 2003.

3.) The Petitioner subsequently filed his first PCR application on February 24, 2003. The Respondent (state) made its return on December 21, 2004. The Petitioner in his first application alleged that he was being held in custody unlawful due to Ineffective Assistance of trial Counsel. Ineffective Assistance of Appellate Counsel. Insufficiency of Evidence, and Constitutional Violations. On March 10, 2005, an evidentiary hearing was convened at the Moss Justice Center in York County.

4.) The Petitioner filed a second successive application July 30, 2012. Setting forth the argument that in the interest of justice pursuant to PCR Act §17-27-20(a)(4), find that the application shall be entertain on the merits, although it is successive to the Petitioner's first application, where the Petitioner did not knowingly, voluntarily or intelligently waived the right to raise the present issue in his original, amended and supplemental application, but rather was denied the opportunity to have the issue heard initially.

The Application through the record and the exhibit(s) from the previous proceedings will meet the burden placed upon him by establishing sufficient reason for failing to raise the issue in the first action. Land v. Sate, 262 S.E.2d 735.

§17-27-90 provides as follows:

"Grounds for relief."

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

Although successive application are disfavorable and the burden is obviously on the Applicant to establish that any new ground raised by him in his previous application, the issue that the Petitioner currently presents to this court was not presented to the court previously due to the erroneous actions of the Petitioner's PCR counsel's failure to comply with the mandatory requirements of Rule 50 (5), of the South Carolina Supreme Court and Rule 71.1 (d), of the South Carolina Rules of Civil Procedure.

In the case of Land, supra; the South Carolina Supreme Court adopted procedural rules designed to aid in the PCR Act process. Furthermore, one such adoption was that of rule 50 (5), which strictly mandates the enforcement of PCR counsel's duty to assert from the Applicant whether he has included all available grounds known to the Applicant as a basis for attacking the judgment and sentence and to amend the application to include

any grounds not already included. See, Id. @ 736. Nonetheless, these rules forbids a successive PCR Application unless an Applicant can point to a "sufficient reason why the new ground for relief he asserts were not raised, or were not raise properly." Id.

- A SUFFICIENT REASON WHY THIS ISSUE WAS NOT HEARD PREVIOUSLY

The Petitioner asserts although the issue he currently raises before this court was originally amended to the first application, pursuant to §17-27-90, he was prevented through no fault of his own, from having the issue raised properly in the original proceedings. Clearly, it is the Petitioner's contention that due to PCR counsel's erroneous actions for failing to comply with aforesaid rules, entitled him to raise the current issue in an successive application, where in the first proceedings he was denied due process of the Law in violation of his 14th Amendment Right to the U.S. Constitution.

Insomuch as the Petitioner was a laymen and was represented by appointed counsel, he was without the expertise let alone the legal right to exercise the necessary power to have raised the current issue at the hearing, due to the simple fact he was no longer a pro se litigant. See, State v. Sanders, 237 S.C.2d 53 (1977) (holding "that after filing a pro se application, and after being given court appointed counsel, a pro se litigant cannot file any further pleadings, and any amendments to the application must be made by counsel.") Also, see, Foster v. State, 379 S.E.2d 907 (1989).

Nonetheless, the court's mandate and adoption where implemented with the intent that rule 50(5), used inconjunction with rule 71.1 (d), both would operate together in harmony to protect the constitutional rights of PCR applicant's to receive one full bite of the apple. See, Odom v. State, 523 S.E.2d 753 (S.C.1999) (Holding that "all applicant's are entitled to a full and fair opportunity to present claims in PCR application).

In the case of Aice v. State, 409 S.E.2d 392, 393 (1991), the court held "that at some juncture finality must be realized except in those rare cases where to continue an Applicant's incarceration without full review of the merits, would amount to a gross miscarriage of justice. Thus the Petitioner asserts that his case fits squarely within that exception of rare cases as held by the court's ruling in Aice, supra. This erroneous legal action by PCR counsel denied the Petitioner the opportunity in the first proceeding to a full and fair hearing, and has surely amounted to a gross miscarriage of justice. See, Matthew v. Perry, 208 F.3d 284 (2006).

ARGUMENT**WHY THIS CASE SHOULD BE HEARD AND RULED UPON**

Applicant filed an Application for Post-Conviction Relief in the York County Court of Commons Pleas on February 24, 2003 (Case No.: 2003-CP-46-502). On March 10, 2005, an evidentiary hearing was convened at the Moss Justice Center in York County.

Amendments:

Prior to scheduling hearing, Petitioner sent many amendments to PCR counsel, Phillip Carson, which were to be included to the application as additional grounds to attack his conviction and sentence. Eventually, counsel made the first of three amendments on May 13, 2004. Second and Third Amendments were filed with the Clerk's Office on August 16, 2004 and March 7, 2005. See Exhibit A, Second Amendment.

However, although counsel made the necessary amendments to application as requested by the Petitioner, counsel failed to raise the Second Amendment at the hearing held on March 10, 2005. As a result, Petitioner was prevented through no fault of his own, from receiving one full bite of the apple in his first PCR application, had the Second Amendment been raised and ruled upon by the PCR court at the evidentiary hearing, the Amendment would have resulted in the Petitioner being granted relief.

Second PCR filed July 30, 2012, (Case No.: 2012-CP-46-2725) was dismissed as being successive.

Now Petitioner files Alternative Petition for State Habeas Corpus. For this Honorable Court to dismiss the Petitioner's Petition without holding an evidentiary hearing on the Merits of the allegations would be error for many stated factual and legal reasons that now follow:

1. Presently, there is no constitutional right to effective assistance of counsel for Post-Conviction Relief Applicants. However, there are several Rules and Statutes governing the PCR Counsel, which requires them to perform the necessary functions for their clients. The basic function are not limited. PCR Counsel should, in order to assist his or her client to meet their burden of proof, serve subpoenas, perform Interrogatories, Depositions, and/or Sworn Affidavits of Any/All Witnesses; re-investigate and research the necessary law inrelation to the Issues of the case, and Conducting a through Discovery all pursuant to Rules 26-36, 71.1 SCRCF; The South Carolina Uniform Post- Conviction Procedural Act, S.C. Codes §§17-27-10-150;

2. Petitioner's rights (due process) went down hill as his Appointed Attorney failed to follow the Rules and Statutes outlined by the Courts to ensure redress of all of his Constitutional claims in a fair and meaningful manner at a meaniful time. Matthews v. Eldridge, 96 S.Ct. 892 (1976); Armstrong v. Monzo, 85 S.Ct. 1187 (1965). See Gamble v. State, 298 S.C. 176, 379 S.E.2d 118 (1998) (fear bite of the apple).

3. Petitioner did not intentionally or voluntarily relinquish or abandon his statutory and due process rights to have all his grounds raised in the first PCR action. Mailsource LLC v. M.A. Baily & Assoc. Inc., 356 S.C. 370, 588 S.E.2d 639 (2003); State v. Thompson, 355 S.C. 255, 584 S.E.2d 131 (2003). Waivers of Constitutional rights not only must be voluntary but must be knowing and intelligent acts. Gibson v. State, 514 S.E.2d 320 (1999) Logically speaking it would be wrong to blame or disadvantage Petitioner for the procedural error of his PCR Counsel or others. Harris v. U.S. Retirement Bd., 198 F.3d 139 (4th. Cir. 1999); Weatherford v. Price, 340 S.C.572, 532 S.E.2d 310 (2000).

4. Petitioner's claim of Counsel default present vital questions of law and facts, as well as, a prima facie showing of constitutional violations requiring a hearing upon the merits, as they cannot be refuted by the record. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

DISCUSSION:

When the fundamental fairness of a criminal trial falls in question, (had the evidence within Second Amendment been presented - the outcome of the trial would have been different) then it is shocking to the universal sense of Justice, as any American citizen could very well be placed in the same situation as the Petitioner in this instant case. Butler v. State, 498 U.S. 972, 111 S.Ct. 442 (1990); Jackson v. State, 489 S.E.2d 915 (1997). U.S. Const. Amend. Fourteen.

CONCLUSION

The Petitioner's Petition should be granted, with a hearing given, Counsel Appointed, and ruling made by this Honorable Court.

Respectfully submitted,

Fate T. McClurkin,
SCDC #263209
Kershaw Corr. Inst.
4848 Gold Mine Hwy.
Kershaw, SC 29067

Date: _____ 2013.

Exhibits(s)

- 1.....(A) Second Amendment
- 2.....(B) Mr. Taylor's Arrest Warrant & Indictment.
- 3.....(C) Mr. Taylor's Affidavit

(H) 31

STATE OF SOUTH CAROLINA
COUNTY OF YORK

FATE T. MCCLURKIN, #263209

APPLICANT,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

FILED-RECORDED
2004 AUG 15 2:10:17
DAVID W. HUGHES
CLERK OF COURT
COURT HOUSE
COLUMBIA, S.C.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

SECOND AMENDED
APPLICATION FOR
POST-CONVICTION RELIEF

03-CP-46-502

Applicant Fate T. McClurkin further amends his application for post-conviction relief as follows:

Ineffective Assistance of Trial Counsel

1. Trial counsel was ineffective for failing to call a critical witness or failing to discover exculpatory evidence. Mr. McClurkin was not the only person arrested and indicted in this matter. Bozzy Lee Taylor was also. It was Mr. Taylor's house where the arrest took place and Mr. Taylor's couch where the police found the crack. Most importantly, it was Mr. Taylor who later pleaded guilty to possessing, with the intent to distribute, that crack. Certified true copies of Mr. Taylor's arrest warrants and indictments along with the docket reports, sentencing sheet and accompanying order are attached hereto as Exhibit A and incorporated herein by reference. Mr. McClurkin was prejudiced because his trial counsel either ineffectively failed to discover Bozzy Taylor's plea and conviction, or because trial counsel failed to interview and subsequently call Mr. Taylor to testify that the crack found at his house was his and not Mr. McClurkin's, that it was he, not Fate McClurkin, who had possession of that crack, and that it was he, not Fate McClurkin, who intended to distribute that crack.
2. While the State is permitted in its opening statement to outline the facts it intends to prove, the State must introduce evidence to reasonably support the stated facts. *State v. Kornahrens*, 290 S.C. 281, 350 S.E.2d 180 (1986). During his opening statement, the solicitor said the police saw people standing around smoking crack they just "bought" from Mr. McClurkin, and that the State would prove Mr. McClurkin "sold" crack. Not one of the

Exhibit (A)


State's witnesses, however, testified that they bought crack from Mr. McClurkin. No one said Mr. McClurkin sold crack to them either. And not one witness said they saw Mr. McClurkin selling crack or saw anyone buying crack from him. Defense counsel's failure to object to these improprieties and move for a mistrial constitutes ineffective assistance of counsel and prejudiced Mr. McClurkin at trial and precluded review of the issue on appeal.

3. The solicitor's closing argument must stay within the record and reasonable inferences to it. *State v. Cooper*, 334 S.C. 540, 514 S.E.2d 584 (1999). During his closing argument, the solicitor says Mr. McClurkin had "a product he [was] selling," that he was "selling crack out of that house," and that he was "selling crack all night long." Not one of the State's witnesses, however, testified that they bought crack from Mr. McClurkin. No one said Mr. McClurkin sold crack to them either. And not one witness said they saw Mr. McClurkin selling crack or saw anyone buying crack from him. In this case, the solicitor's comments so infected the trial with unfairness that the resulting conviction constituted a denial of due process, and trial counsel's repeated failure to object or move for a mistrial precluded a ruling on this issue at trial as well as on appeal.

After-Discovered Evidence

4. If trial counsel was not ineffective for failing to discover Bozzy Lee Taylor's plea and conviction before the trial or the solicitor committed a discovery violation by failing to disclose it, then a new trial is warranted on the basis of after-discovered evidence. See *Gibson v. State*, 334 S.C. 515, 514 S.E.2d 320 (1999). Bozzy Taylor's plea and conviction is material and tends to clear Fate McClurkin from guilt. Mr. Taylor's testimony at a new trial could indicate that he, and not Mr. McClurkin, is responsible for the crimes charged, thereby extrinsically establishing Mr. McClurkin's innocence.

Respectfully submitted,
HASELDEN, OWEN & BOLOYAN
 Attorneys for Applicant
 4609 Charlotte Hwy., Ste. 1
 Lake Wylie, SC 29710
 (803)831-2738 (phone)
 (803)831-0180 (fax)

By: 
 Philip J. Corson

Lake Wylie, SC
 August 11, 2004

STATE OF SOUTH CAROLINA)
COUNTY OF YORK) VERIFICATION

PERSONALLY appeared before me, Fate T, McClurkin, who being first duly sworn, deposes and says that he is the applicant in the foregoing action and that the allegations and facts alleged in the foregoing First Amended Application for Post-Conviction Relief are true and correct of his own knowledge, except for those matters and things alleged on information and belief in any, and as to those, he believes same to be true.

Fate T. McClurkin
Fate T. McClurkin

Sworn to and subscribed before me this
5th day of Aug, 2004
[Signature] (SEAL)
Notary Public for South Carolina
My Commission Expires: 3-16-06

Form 32 (12/87)

STATE OF SOUTH CAROLINA
COUNTY OF YORK

DECLARED TRUE COPY
JUL 25 PM 2:03
INDICTMENT FOR
CLERK OF COURT
YORK COUNTY, SC

Distribution
within Pro:

At a Court of General Sessions, convened on July 11, 1996, the Grand
present upon their oath:

That Bozzy Lee Taylor did on or about May 2, 1996, willfully and un
Sell, Purchase, Manufacture, or Unlawfully Possess With Intent to Distribute a cc
to wit: Crack Cocaine, within a one-half mile radius of the grounds of Lige St
Distribution not having been authorized by law, in violation of Section 44-53-445,
South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in su
provided.

Will Campbell
ASSISTANT SOLICITOR

mac

unlawfully and Amount
(12/87)

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

6
JUL 23 1996

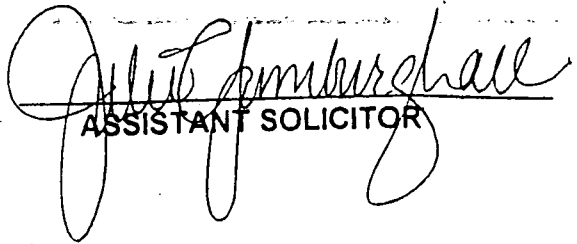
INDICTMENT FOR Trafficking Crack Cocaine

At a Court of General Sessions, convened on July 11, 1996, the Grand Jury of York County present upon their oath:

TRAFFICKING CRACK COCAINE

That **Bozzy L. Taylor** did in York County on or about **May 2, 1996**, wilfully, unlawfully and knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of a quantity of **Ice, Crank, or Crack Cocaine**, as defined and otherwise limited in Sections 44-53-110, 44-53-210(b)(4), 44-53-210(d)(1), or 44-53-210(d)(2), and did **Traffick in Crack Cocaine in an amount being more than 10 grams but less than 28 grams**, in violation of Section 44-53-375(C), *Code of Laws of South Carolina, (1976)*, as amended.

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


ASSISTANT SOLICITOR

mac

20

ARREST WARRANT

E-697553

STATE OF SOUTH CAROLINA
County/ Municipality of
ROCK HILL

FILED-RECEIVED
COURT
MAY 28 1996

THE STATE
against

BOZZY LEE TAYLOR
Address: 1313 RUSSELL ST
ROCK HILL, S.C.
Phone: # _____ Race: B Height: 6 SSN: 248-17-4585
DL State: 2/16/58 DL #: _____ Weight: 170

DOB: _____ SC0460300
Prosecuting Agency: ROCK HILL POLICE DEPARTMENT
Prosecuting Officer: C. GRANT
Offense: TRAFFICKING CRACK

Code/Ordinance Sec: 44-53-375
Offense Code: _____

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of _____
The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge _____ (L.S.)

RETURN

A copy of this arrest warrant was delivered to
defendant BOZZY LEE TAYLOR
on 5-2-96

Signature of Constable/Law Enforcement Officer
D. Williams

RETURN WARRANT TO:

Incident # 9605020410

STATE OF SOUTH CAROLINA
County/ Municipality of _____

AFFIDAVIT

Personally appeared before me the affiant

BOZZY LEE TAYLOR
being duly sworn deposes and says that defendant BOZZY LEE TAYLOR
did violate the criminal laws of this county and state on 5/02/96

in the following particulars:
ROCK HILL, S.C.

DESCRIPTION OF OFFENSE:
TRAFFICKING CRACK

44-53-375

TRAFFICKING CRACK

0450

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:
Did willfully and unlawfully violate S.C. Drug Laws by trafficking in crack while at 1313 Russell St. Rock Hill, S.C.
Police Investigation
Recovery of more than 10 grams of white rock substance believed to be crack

Sworn to and subscribed to before me on 5-3-96

Signature of Issuing Judge _____ (L.S.)

Signature of Affiant _____
Affiant's Address: 120 BLACK ST E
ROCK HILL SC
Affiant's Telephone: 803-329-5691

STATE OF SOUTH CAROLINA
County/ Municipality of _____
ROCK HILL

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe it on 5/02/96

did violate the criminal laws of the State of South Carolina (or ordinance of _____) as set forth below:
defendant BOZZY LEE TAYLOR

DESCRIPTION OF OFFENSE: TRAFFICKING CRACK
44-53-375

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to it defendant at the time of its execution, or as soon thereafter as is practicable.
Judge's Address: 120 BLACK ST E
ROCK HILL SC

Signature of Issuing Judge _____ (L.S.)
Judge's Telephone: 803-329-5691
Issuing Court: Magistrate Municipal Circuit

ORIGINAL

Generated Ref # 9605020012

WITNESSES

1 RHPD / GRANT S/Shevekas

DOCKET NO. # 96-GS-46- 2058

The State of South Carolina,

County of YORK

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant:

ARREST WARRANT NO. E-697553

COURT OF GENERAL SESSIONS

JULY 11TH, TERM 1996

I hereby appear in my own proper person and plead guilty to the within indictment to

THE STATE

vs.

BOZZY L. TAYLOR

Defendant:

ACTION OF GRAND JURY

TRUE BILL

Witness:

Foreman of Grand Jury Date

7-11-96

Trafficking in Crack Cocaine

S.C. Code 44-53-375(C)
CDR Code 450

C.C.C. PLS. AND G.S.

VERDICT

Shawn C. Semmons

Yaller Bossle
4-27-96

Foreman of Petit Jury

Date:

John P. [Signature]

267

ARREST WARRANT
E-697554

STATE OF SOUTH CAROLINA
County/ Municipality of
ROCK HILL

THE STATE
against

RODNEY LEE TAYLOR
YORK COUNTY, S.C.

BOZZY LEE TAYLOR
Address: 1313 RUSSELL ST
ROCK HILL, S.C.

Phone: _____ SSN: 248-17-4585
Sex: Male Female Height: 6 Weight: 170

DL State: 2/16/58 DL #: _____
DOB: 2/16/58 Agency ORI #: SC0460300

Prosecuting Agency: ROCK HILL POLICE DEPARTMENT
Prosecuting Officer: C. GRANT

Offense: POSS CRACK W/INTENT DIST PROXIMITY PARK
Code/Ordinance Sec: 44-53-445 Offense Code: _____

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of _____
The accused is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge _____ (L.S.)

RETURN

A copy of this arrest warrant was delivered to
defendant Bozzy Taylor
on 5-2-96

Signature of Constable/Law Enforcement Officer
D. Williams

RETURN WARRANT TO:

Incident # 9605020410

STATE OF SOUTH CAROLINA
County/ Municipality of
ROCK HILL

AFFIDAVIT

C. GRANT
BOZZY LEE TAYLOR

Personally appeared before me the affiant _____
being duly sworn deposes and says that defendant _____
did within this county and state on 5/02/96 violate the criminal laws of
State of South Carolina (or ordinance of _____ County/ _____ Municipality of _____
in the following particulars:
DESCRIPTION OF OFFENSE: _____

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
Did willfully and unlawfully violate S.C. Drug Laws by possessing
crack with intent distribute while at 1313 Russell St. Rock Hill, S.C.
Police Investigation This being within 1/2 mile of Lige St. Park
Recovery of more than 10 grams of white rock substance believed to be
crack

Sworn to and subscribed before me _____
on 5-3-96 Signature of Affiant _____
Affiant's Address _____
Signature of Issuing Judge _____ (L.S.)
Affiant's Telephone _____

STATE OF SOUTH CAROLINA
County/ Municipality of
ROCK HILL

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
If appearing from the above affidavit that there are reasonable grounds to believe
on 5/02/96 defendant _____
did violate the criminal laws of the State of South Carolina (or ordinance of _____
County/ _____ Municipality of _____) as set forth below:
DESCRIPTION OF OFFENSE: _____

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
defendant at the time of its execution, or as soon thereafter as is practicable.
Judge's Address _____
ROCK HILL SC
Judge's Telephone _____
803-329-5691

Signature of Issuing Judge _____
Judge Code: 5586 (L.S.)
Issuing Court: _____
Magistrate Municipal Circuit

Generated Ref # 96050200:13

ORIGINAL

Form Approved by
SC Attorney General
July 26, 1990
SCCA 518

CONFIDENTIAL TRUE COPY

2004 JUL 23 AM 2:03

CLERK OF COURT
YORK COUNTY, SC

GENERAL SESSIONS DOCKET REPORT FOR YORK COUNTY

REPORT RUN DATE - 052896

INDICTMENT NUMBER: 96GS46 2058

DEFENDANT NAME: TAYLOR, BOZZY LEE AKA:

ADDRESS: 1313 RUSSELL ST CITY: ROCK HILL STATE: SC ZIP 29730

SOCIAL SECURITY NUMBER: 248174585 SEX: 1 MALE RACE: 2 BLACK

DATE OF BIRTH: 021658 DRIVERS LICENSE STATE / NO.: SC / 999999999

MARITAL STATUS:

WARRANT OR TICKET NUMBER: E697554³ COUNTS: 01 OFFENSE CODE: 0108

NO WARRANT? 0 NAME OF OFFENSE: DRUGS/DIS, SELL,

DATE OF ARREST: 050296 DATE RECD BY CLERK: 052896 SUMMARY JUDGE:

DISP DATE: ~~000000~~ 8-27-04 DISP TYPE: *W/No Prose*

DISP TYPE EXPLANATION: *per plea agreement*

JUDGE CODE/NAME:

COURT REPORTER:

CONVICTION: CTS: 00 OFFENSE: 0000

SENTENCE:

DEFENSE ATTORNEY: PUBLIC DEFEND PROSECUTING ATTORNEY:

[Handwritten Signature]

EXHIBIT (B)