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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Aiken County

James R. Barber, III, Circuit Court Judge

JOE LARKE WILLIAMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2013-000095

APPENDIX

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State of South Carolina)	
County of Aiken)	Court of General Sessions
)	2009-GS-02-2008-2009

The State of South Carolina)	
Plaintiff)	
vs.)	Transcript of Record
Joe Larke Williams, Jr.)	
Defendant)	

January 12, 2010
Aiken, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge.

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

Elizabeth B. Young, Assistant Solicitor
Attorney for the Plaintiff

N. Staples Wood, Esq.
Attorney for the Defendant

Lisa H. Davenport, RPR
Official Court Reporter

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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(none offered)

1 (Whereupon, on January 12, 2010 the following
2 proceedings were held:)

3 JOE LARKE WILLIAMS, JR., after being duly sworn,
4 testified as follows:

5 THE COURT: All right. Mr. Woods, you represent Joe
6 Larke Williams, Jr., two indictments. Indictment
7 09-GS-02-2009 -- that's an indictment for distribution of
8 crack cocaine. They're allowing you to plea to a lesser
9 included offense of a second offense distribution?

10 MRS. YOUNG: That's correct, Your Honor.

11 THE COURT: The indictment was for what?

12 MRS. YOUNG: Third.

13 THE COURT: Third.

14 MR. WOOD: Yes, Your Honor.

15 THE COURT: That carries a minimum of five years and
16 maximum of 30 years?

17 MR. WOOD: Yes, Your Honor.

18 THE COURT: Have you advised your client of those
19 charges and the possible punishment?

20 MR. WOOD: Yes, Your Honor.

21 THE COURT: As to indictment 09-GS-02-2008, that's an
22 indictment for distribution of crack within proximity of a
23 school. What offense is that?

24 MRS. YOUNG: It's --

25 THE COURT: Straight up?

1 MRS. YOUNG: Straight up.

2 THE COURT: That carries a minimum of 10 years,
3 maximum of 15 years. Have you advised your client of
4 those charges and the possible punishment?

5 MR. WOOD: Yes, Your Honor.

6 THE COURT: As to both charges they are classified as
7 serious, but they occurred on the same date so it would be
8 simply one strike. Have you advised your client that
9 serious means that it is what we call a no-parole
10 85 percent sentence and that further serious means that he
11 has one strike under our enhancement laws which means that
12 if he becomes involved in criminal activity that it's
13 classified as serious two more times that would be three
14 strikes. Has he already got strikes?

15 MRS. YOUNG: He's got one.

16 THE COURT: He's already got one strike. This would
17 be the second strike. If he becomes involved in activity
18 that's classified as serious one more time it would be his
19 third strike. He would be subjecting himself to life in
20 prison without the the possibility of parole. Have you
21 advised him of that?

22 MR. WOOD: Yes, Your Honor.

23 THE COURT: Have you further advised him that he
24 would be released from incarceration into a community
25 supervision program?

1 MR. WOOD: Yes, Your Honor.

2 THE COURT: Have you further advised your client of
3 his right to trial by jury?

4 MR. WOOD: Yes, Your Honor.

5 THE COURT: How does he indicate to you that he
6 wishes to plead?

7 MR. WOOD: He wishes to plead guilty to these two
8 charges and serve 20 years, Your Honor. He does not wish
9 to go to trial.

10 THE COURT: After having reviewed all of the evidence
11 in the case and discussing the matter with your client,
12 are you in agreement with his decision?

13 MR. WOOD: Yes, Your Honor.

14 THE COURT: I see that both sentence sheets have
15 marked a negotiated sentence and it is my understanding
16 that it is a negotiated 20-year sentence.

17 Is that correct, Madam Solicitor?

18 MRS. YOUNG: That's correct on the proximity. Its
19 maximum was 15.

20 THE COURT: That runs concurrent.

21 MRS. YOUNG: Fifteen to run concurrent, yes, sir, and
22 all other pending charges against him will be nol prosed
23 as a result of his guilty plea if it goes through.

24 THE COURT: And, Mr. Wood, is that your
25 understanding?

1 MR. WOOD: Yes, Your Honor.

2 THE COURT: Have you explained that to your client?

3 MR. WOOD: Yes, Your Honor.

4 THE COURT: Madam Solicitor, you have, obviously, had
5 input from the law enforcement agency responsible for this
6 arrest?

7 MRS. YOUNG: I have, Your Honor. They are present in
8 the courtroom. They are favor of the 20-year plea in this
9 charge.

10 THE COURT: All right. Mr. Williams, good morning.
11 How are you?

12 THE DEFENDANT: All right, Your Honor.

13 THE COURT: I understand you have your mom here with
14 you this morning?

15 THE DEFENDANT: Yes, sir, Your Honor.

16 THE COURT: And other members of your family?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. You understand why you're
19 here?

20 THE DEFENDANT: Yes, sir, Your Honor.

21 THE COURT: We're dealing with two indictments
22 presently before me. One is an indictment for
23 distribution of crack cocaine. That was a third offense
24 or more; is that correct, ma'am?

25 MRS. YOUNG: That's correct, Your Honor.

1 THE COURT: The state is allowing you to plea to what
2 we call the lesser included offense of distribution second
3 offense. That carries a minimum of five years, maximum of
4 30 years. Understand that?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Do you understand that under that statute
7 that that is an 85 percent sentence? So, whatever
8 sentence I give you you will do 85 percent. It is a
9 no-parole sentence.

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: That when you're released you'll be
12 released into a community supervision program?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Do you further understand that it is
15 classified as serious and you just heard me go over with
16 your lawyer what that means, but you've already got one
17 serious strike. This is two strikes. If you become
18 involved with a similar type of activity or any type of
19 crime that's classified as serious to most serious that's
20 three strikes. The next time the state could seek to have
21 you incarcerated for the balance of your life without
22 parole. Do you understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: As to the other indictment -- that is
25 indictment 2009-2008 -- that's an indictment for

1 distribution of crack cocaine within proximity of a
2 school. That carries a minimum of 10 to 15 years, also
3 classified as serious. Do you understand those
4 ramifications?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Understanding the charges, the possible
7 punishment, the fact that they're classified as serious
8 and what that means, the fact that they are a no-parole
9 sentence and you'll do 85 percent, that you'll be released
10 to a community supervision program, considering all of
11 that, how do you wish to plead to these two charges, not
12 guilty or guilty?

13 THE DEFENDANT: Guilty.

14 THE COURT: Mr. Williams, when you enter a plea of
15 guilty you give up certain of your constitutional rights.
16 Do you understand that?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: The first right you give up is you give
19 up your right to remain silent. That right is guaranteed
20 to you by the constitution. You'll have to admit your
21 involvement. Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: Speak up for me.

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: The other right that you will give up is

1 your right to a trial by jury. We have a jury sitting
2 next door ready, willing, and able to be drawn this
3 morning. So, if you wanted a trial that jury is available
4 to hear your case. If we have a trial, obviously, through
5 your lawyer you will have the right to confront and cross
6 examine all the potential witnesses who are in the
7 courtroom today to testify against you. You would have
8 the right of confrontation. Do you understand that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: You would further have the right to
11 present your own case, your own defense. You do that if
12 you choose by calling witnesses to testify on your behalf,
13 by introducing relevant exhibits, and you can even testify
14 in your own defense if you chose to do so. If you have
15 exercised your constitutional right to remain silent then
16 I would instruct and tell that jury they could not hold
17 your failure to testify against you in any manner
18 whatsoever, and, in fact, I would instruct them that they
19 could not even consider the fact that you did not testify
20 when they deliberated your guilt or innocence.

21 You would be presumed innocent throughout the trial
22 and the State of South Carolina would have the burden of
23 proving you guilty as to each indictment beyond a
24 reasonable doubt to that jury of 12 people and in order
25 for the jury to convict you all 12 people would have to

1 unanimously agree that you were, in fact, guilty and even
2 if you were found guilty you would still have the right to
3 an appeal.

4 Now, do you understand, sir, your rights to trial by
5 jury?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Understanding your rights to trial by
8 jury, do you still wish to plead guilty or do you wish for
9 me to set this case for trial?

10 THE DEFENDANT: Plead guilty.

11 THE COURT: Now, there has been some plea
12 negotiations which happens in a lot of cases. I have been
13 told that as a result of the negotiations between you,
14 your lawyer, and the solicitor's office that a negotiated
15 sentence of 20 years has been reached. Is that your
16 understanding?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: In consideration of that plea, the state
19 will nol pros any and all indictments or warrants that are
20 pending currently against you other than these two. Is
21 that your understanding?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Is that correct, Madam Solicitor?

24 MRS. YOUNG: That's correct, Your Honor.

25 THE COURT: Now, I do not have to accept the 20

1 years. When it's a negotiated sentence I will listen to
2 everything and if I feel that I cannot go along with that
3 I will tell you and your lawyer. Then you will have your
4 opportunity to make whatever decisions you and your lawyer
5 discuss. If I decide that I can go along with it, then,
6 obviously, I would accept it. Most of the time I do
7 accept negotiations. Okay?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: But other than the negotiation, has
10 anyone promised you anything, held out any hope of reward,
11 or threatened you in any manner in order to make you plead
12 guilty?

13 THE DEFENDANT: No, Your Honor.

14 THE COURT: You are represented by Mr. Wood -- is it
15 Staples Wood?

16 MR. WOOD: Yes, Your Honor.

17 THE COURT: Retained or appointed.

18 MR. WOOD: Appointed, Your Honor.

19 THE COURT: Are you satisfied with his
20 representation?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: In your opinion has your lawyer had
23 enough time to spend with you so that he can go over all
24 of the facts, he can research the law, and he can
25 investigate the facts so that he can properly and

1 completely defend you here today?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Is there anything else you wish for your
4 lawyer to do for you today before we move forward other
5 than speak up on your behalf?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: Do you have any complaints against your
8 lawyer?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: And I ask you once again, Mr. Williams,
11 are you totally and completely and fully satisfied with
12 his legal representation?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Mr. Williams, are you today, sir, under
15 the influence of any alcoholic beverages, drugs, or
16 prescription medication?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: Mr. Williams, are you today aware of any
19 mental, nervous, or emotional conditions which would keep
20 you from understanding my questions or these proceedings?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: Have you understood all of my questions?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Do you have any questions you want to ask
25 me?

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: Do you have any complaints you want to
3 make to anyone about anything that's happened so far?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: Mr. Williams, as to each of these
6 indictments are you pleading guilty of your own free will
7 and accord?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Nobody is making you do this; is that
10 correct?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: Nobody is twisting your arm?

13 THE DEFENDANT: No, Your Honor.

14 THE COURT: As to indictment 2009 did you, sir, here
15 in Aiken County on May 26 of 2009 sell to an undercover
16 agent a quantity of crack cocaine?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: And as to the other indictment,
19 indictment number 2008, did you, sir, on that same day
20 when you sold that -- those drugs, the crack cocaine to
21 the undercover officer, that was within a one-half mile
22 radius of the Schofield Middle School; is that correct?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Are you pleading guilty to both of these
25 indictments because you are, in fact, guilty?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Are you pleading guilty because you did
3 what was alleged in the indictment?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Are you pleading guilty because you broke
6 the law?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: All right, Mr. Williams. I find your
9 decision to plead guilty to be freely, voluntarily, and
10 intelligently made. You've had the representation of a
11 lawyer in Mr. Wood with whom you tell me you're satisfied
12 and I will accept your plea. If you disagree with my
13 sentence today or these proceedings you have 10 days from
14 today's date to file a notice of intent to appeal. Do you
15 understand that right?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Madam Solicitor?

18 MRS. YOUNG: Thank you, Your Honor. May it please
19 the court.

20 THE COURT: Yes, ma'am.

21 MRS. YOUNG: On May 26, 2009 narcotics officers with
22 the Aiken County Sheriff's Office had developed a
23 confidential informant and were doing several undercover
24 buys with the informant. The informant advised them that
25 he could purchase from somebody that he knew to be Jo-Jo

1 and through previous dealings the officers knew that Jo-Jo
2 was Joe Larke Williams, Jr. His identity was confirmed
3 via a photograph with a confidential informant. The
4 confidential informant made a telephone call that was
5 recorded and set up the buy with Mr. Williams.

6 The confidential informant was searched and was found
7 to be free of any contraband and he was wired with
8 surveillance equipment. He was actually driven to a
9 certain location by Lieutenant Powell with the Aiken
10 County Sheriff's Office and then he walked to [REDACTED]
11 [REDACTED] which is where this incident took place.

12 This was an incident that was captured on video. On
13 video you can see the confidential informant following
14 Mr. Williams inside the house. You can hear them talking.
15 You can see the crack cocaine as Mr. Williams pulls it out
16 and exchanges it for money with the confidential informant
17 who had been supplied the money by the Aiken County
18 Sheriff's Office. In addition there are several other
19 women present who are referring to Mr. Williams as Jo-Jo.
20 The video inside of the house is dark because the light is
21 behind him; however, there is a side shot of him going
22 into the door and I believe that if a jury were to view
23 that they would find that evidence to be very compelling.

24 The confidential informant left the location and went
25 back and turned over the contraband to Lieutenant Powell.

1 It was taken in and tested and found to be positive for
2 cocaine base .57 grams. [REDACTED] is
3 approximately .12 -- .19 miles from Schofield Middle
4 School. That distance was confirmed by Investigator
5 Anders, the investigating officer in this case.

6 The reason that we entered into this negotiation for
7 what is a lengthy sentence, Your Honor, Mr. Williams has
8 two other pending distribution cases, one of which is a
9 buy-bust. We feel like that is an extremely strong case
10 as well. However, we're satisfied with the 20-year
11 sentence if Your Honor chooses to accept the negotiations.
12 That is a lengthy sentence. He will do 85 percent.

13 His prior record is as follows. He has a CDV in
14 1997, simple assault in '97, avoiding payment for
15 telecommunications '98, malicious injury to personal
16 property in 1998, shoplifting and resisting arrest in
17 2000. He also has in 2000 a conviction for distribution
18 of crack cocaine within proximity. In 2005 he has a
19 possession with intent to distribute. In 2007 and in 2008
20 he has giving false information to police.

21 THE COURT: Thank you. Mr. Wood?

22 MR. WOOD: Your Honor, I'll agree with all of the
23 facts laid out by the solicitor. My client does contend
24 the date in question where the controlled buy was on May
25 28, not that that makes much of a difference. In addition

1 my client also contends that he was in prison in 2005.
2 So, there must be some sort of mistake as far as his
3 record of prior possession with intent to distribute in
4 2005, but other than that, I'm in agreement with the facts
5 that have been presented.

6 THE COURT: Well, the indictment says May 26. Your
7 client says it's May twenty-what?

8 MR. WOOD: May 28.

9 MRS. YOUNG: On or about.

10 THE COURT: On or about is what it says so that
11 encompasses May 28. So there is no question about that.

12 MR. WOOD: Yes, Your Honor.

13 THE COURT: Go ahead.

14 MR. WOOD: My client is emotional right now so I was
15 wondering if we could hear first from his mother.

16 THE COURT: I'll be glad to. However you want to do
17 it.

18 Are you Mrs. Williams? Good morning, Mrs. Williams.

19 MRS. WILLIAMS: Good morning. Thank you.

20 THE COURT: You're quite welcome.

21 MRS. WILLIAMS: I came in reference to my son. I
22 know what he did was wrong. My husband and I are both
23 sick and my husband don't have long to live and maybe not
24 even me because they found -- I had two strokes on the
25 brain. The only thing I am asking you is to have mercy

1 upon him so we'll be able to be close to him. This is my
2 child. That's all.

3 THE COURT: I understand. I have two boys and I can
4 certainly -- well, I can't understand you how you feel.
5 Mrs. Williams, he has a rather significant record. He has
6 two earlier drug charges, and this actually by allowing
7 him to plead to the second instead of the third he's
8 getting somewhat of a break. He's getting rid of two
9 other charges. He could technically be facing with these
10 strikes life in prison without the possibility of parole.

11 MRS. WILLIAMS: Yes, sir.

12 THE COURT: But if you sit in here day-in and day-out
13 like I do and like all of these court people do --
14 officers, solicitors, court personnel -- crack cocaine is
15 like a cancer on our society.

16 MRS. WILLIAMS: Yes, sir.

17 THE COURT: It makes young boys, young men like your
18 son for whatever reason, you know, they sell it or use it
19 or whatever, they end up in prison for a long time taking
20 them away from their mom, dad and both parents are sick.
21 Not only that, you ought to see what it does to the
22 people. We had people in here yesterday that were
23 stealing from from their grandmother, stealing from their
24 stepmother. They'd do anything to get this stuff. You --
25 Does he have children?

1 MRS. WILLIAMS: Yes, sir. He got four children.

2 THE COURT: How old are they?

3 MRS. WILLIAMS: Ten, twelve --

4 THE DEFENDANT: Nine.

5 MRS. WILLIAMS: Two are nine.

6 THE COURT: You certainly don't want people selling
7 cocaine and drugs or crack to them, do you?

8 MRS. WILLIAMS: No, sir.

9 THE COURT: Well, that's why we have to take people
10 who insist on continuing to sell drugs off the street.

11 MRS. WILLIAMS: Yes, sir.

12 THE COURT: It is tough.

13 MRS. WILLIAMS: Yes, sir. I understand. Thank you.

14 THE COURT: It is tough on moms, but when they make
15 that conscious decision -- this is not the first time. If
16 it was the first time, obviously, we would be giving him
17 somewhat of a second chance. It's not the second time.
18 It's the third.

19 MRS. WILLIAMS: Yes, sir.

20 THE COURT: Even though he is pleading to a second.

21 MRS. WILLIAMS: Yes, sir.

22 THE COURT: Thank you very much.

23 MRS. WILLIAMS: Thank you.

24 THE COURT: My Williams, anything you want to tell

25 me?

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: Anything else?

3 MR. WOOD: No, Your Honor. Thank you.

4 THE COURT: All right. Mr. Williams, in indictment
5 2009 the sentence of this court is that you be committed
6 to the State Department of Corrections for a period of 20
7 years. You'll be given credit for time served. As to
8 indictment 2008 the sentence of this court is that you be
9 committed to the State Department of Corrections for a
10 period of 15 years. That runs concurrent to 2009. Good
11 luck to you.

12 (End of transcript of record.)

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CERTIFICATE OF REPORTER

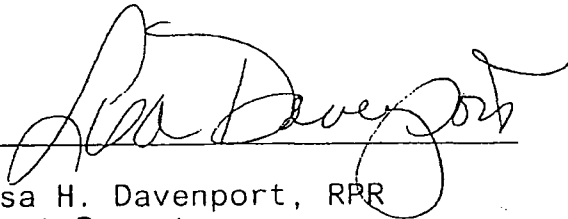
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State of South Carolina)
County of Aiken)

I, Lisa H. Davenport, Official Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Aiken County, South Carolina, on the 12th day of January, 2010.

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

February 10, 2011



Lisa H. Davenport, RPR
Court Reporter

STATE OF SOUTH CAROLINA

County of Aiken

Joe Larke Williams Jr.
Full name and prison number (if any) of Applicant

v.

State of South Carolina

FORM 5

M010631
M010623

2010-02-04-70
2009-02-02-0009

IN THE COURT OF COMMON PLEAS

C.C.P. & G.S. Aiken County
Deputy Clerk
Trial Judge
Trial Atty.: NOT
Court Reporter
Sec: PCR Petitioner
General Sessions
Appointed Atty.

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.

- Place of detention McCormick Correctional Institution
- Name and location of Court which imposed sentence General Session Court, Aiken County
- Name(s) of co-defendant(s) (if any) N/A
- The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - 2009-GS-02-02009
 - 2009-GS-02-02008

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

OCT 20 2010

Liz Godard
C.C.P. & G. S., Aiken County, S.C.
Anita Smeeple
Deputy Clerk

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 1-12-2010, 20 years,
 - (b) 1-12-2010, 15 years concurrent
 - (c) _____

- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty ✓
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____

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

- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals
 - ii. _____
 - iii. _____

- (b) the result in each such Court to which you appealed: Dismissed
 - i. _____
 - ii. _____
 - iii. _____

- (c) the date of each such result: 2/22/10
 - i. _____
 - ii. _____
 - iii. _____

- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. No. 2009-GS-02-02008
 - ii. No. 2009-GS-02-02009
 - iii. Hon. Doyet A. Early, III Aiken County

- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) _____
 - (b) _____

- (c) _____
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) Ineffective Assistance of Counsel
 - (b) Involuntary guilty plea
 - (c) _____
- 11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 - (a) See Attached of issues presented
 - (b) pages 1-10 of 4 issues
 - (c) _____
- 12. Prior to this application have you filed with respect to this conviction:
 - (a) any petition in a State Court under South Carolina Law? 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. _____ *N/A*
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____ *N/A*
- ii. _____
- iii. _____
- iv. _____

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

- i. _____ *N/A*
- 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?

_____ *N/A*

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

(a) which grounds have been presented:

- i. _____ *N/A*
- ii. _____
- iii. _____

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

- i. _____ *N/A*
- ii. _____
- iii. _____

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

- (a) Ineffective Assistance of Counsel.
- (b) Action limited to Post Conviction Relief
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? ✓
- (b) your trial, if any? _____
- (c) your sentencing? ✓
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? ✓
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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. Mr. N. Staples Wood, 4141 Columbia Rd.
Suite D Marietta, GA 30907
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Plea
Appeal
 - ii. _____
 - iii. _____

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

Withdrawal of plea,
Reconsideration of sentence

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

No

STATE OF SOUTH CAROLINA)

County of Aiken)

VERIFICATION

I, John Williams Jr #216411, 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.

John Williams Jr

SWORN to and subscribed before me this 18 day of June, 2010.

J C Franklin (L.S.)
Notary Public

My Commission Expires: 12.16.2019

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

I, Joe L Williams Jr 266611, 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.

Joe L Williams Jr
Applicant

SWORN or affirmed to and subscribed before me this
18 day of June, 2010.

J. Franklin
Notary Public

My Commission Expires: 12-16-2019

Ineffective Assistance of Counsel

Issue I

Counsel was ineffective in failing to object to the use of an invalid prior charge for enhancement purpose.

Argument

The applicant asserts that the indictment charging distribution of cocaine base alleges the applicant as being a third (3rd) offender under S.C. Code Ann section 44-53-375(B)(3) which serves, in effect, to enhance sentence for his crime of distribution.

The applicant contends, however, that he has only one prior drug offense for the purpose of this section; as the Manufacturing/possession charge used to classify him as a third (3rd), was an invalid charge which the applicant informed counsel of prior to his plea.

Cont....

ISSUE II

Counsel fail to inform the applicant as to the lesser included charge of simple possession, based on the less than one gram of cocaine base in evidence, as being a jury option.

Argument

Counsel in his duty to inform the applicant that based on the quantity of cocaine base in evidence, a lesser included offense charge of simple possession would have been an option for a jury to consider had he taken a jury trial.
See: State v. Adams, 352 S.E.2d 489 (1987).

The applicant asserts that had counsel informed him of this right, a possibility exist that he would have taken a jury trial.

Issue III

Failure to object to illegal sentence.

Argument

Applicant asserts that counsel was ineffective for failing to object to the illegal sentence imposed by the court as a result of a guilty plea to Distribution of cocaine base.

The only amount of cocaine base submitted for the court consideration regarding the drug transaction was 0.57 grams. The applicant sentence was therefore unconstitutional insofar that the sentence was beyond the maximum of ten years as require by subsection 44-53-375(A), in so much as the quantity of cocaine base was less than one gram.

Subsection 44-53-375(A) provides:

"A person possessing or attempting to pose

Cont-----

less than one gram of cocaine base, as defined in section 44-53-110, is guilty and upon conviction for a third or subsequent offense, the defender is guilty of a felony and upon conviction must be imprisoned not more than ten years." Subsection 44-53-375(B) requires one gram or more to establish prima facie evidence of a violation of this section. The court erred in determining sentence base on section 44-53-375 (B) and 44-53-370 respectively.

Which requires one gram or more to establish prima facie evidence of a violation of this subsection.

ISSUE IV

Counsel was ineffective in failing to object to a sentence imposed by the court which exceed the maximum authorized by law.

Argument

The applicant asserts that the sentence imposed by the court for distribution of cocaine base within proximity of a school exceed the maximum authorized by statute.

S.C. Code Ann section 44-53-445 provides:

" Any person committing such act shall upon conviction be punished by a fine not to exceed ten thousand dollars, or by confinement not to exceed ten (10) years, or both."

The was given fifteen (15) years pursuant to this statute which therefore should have been object to by counsel. That counsel was ineffective in failing to do so. Prejudicing the applicant with an unauthorized sentence.

Conclusion

The applicant prays that this court will grant his request for a hearing on the claims listed above and whatever else the court deems proper and just.

Date: 6-18-60.

151pc D Williams - H
Joe L. Williams Jr. #264611
McCormick Cnty. Inst.
389 Redemption Way
McCormick, S.C. 29899

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN)	
)	
)	2010-CP-02-1470
)	
Joe Larke Williams, #266611,)	
)	
Applicant,)	
)	
v.)	RETURN
)	(Appointment of Counsel Requested)
State of South Carolina,)	
)	
Respondent.)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed June 23, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was indicted for Distribution of Cocaine Base Within Proximity of a School (2009-GS-02-2008) and Distribution of Cocaine Base (2009-CP-02-2009). He was represented by Norman Staples Wood, Esquire. On January 12, 2010, the Applicant pled guilty to before the Honorable Doyet A. Early, III. He was sentenced to fifteen (15) years imprisonment for Distribution of Cocaine Base Within Proximity of a School and to twenty (20) years imprisonment for Distribution of Cocaine Base (2nd Offense). The sentences were to be served concurrently. A notice of appeal was filed, but the appeal was dismissed by the South Carolina Court of Appeals on February 22, 2010. The Remittitur was sent on March 16, 2010.

Attached herewith and incorporated herein are the records of the Aiken County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript.¹ The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel.
 - a. Failed to object to use of prior charge for purposes of sentence enhancement.
 - b. Failed to advise as to lesser-included offense of simple possession could be a possibility at trial.
 - c. Failure to object to illegal sentence.
 - d. Failure to object to sentence which exceeds the maximum allowed by law.
2. Involuntary guilty plea.

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be

¹ As of the date of this Return, the transcript has been ordered but not yet received. The same will be forwarded upon receipt.

relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

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

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

IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

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

VI.

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

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

December 16 2010.

1 STATE OF SOUTH CAROLINA

CIRCUIT COURT
2010-CP-02-01470

2 COUNTY OF AIKEN

3
4 JOE LARKE WILLIAMS,
Applicant,

5 -vs-

TRANSCRIPT OF RECORD

6 STATE OF SOUTH CAROLINA,
7 Respondent.

8
9 Post Conviction Relief Hearing

10 Heard on Friday, July 15, 2011

11 Aiken, South Carolina

12
13 BEFORE:

14 THE HONORABLE JAMES R. BARBER, III

15
16 APPEARANCES:

17 Counsel on Behalf of the Applicant:
Jeffrey R. Moorehead, Esq.

18
19 Counsel on Behalf of the Respondent, State of SC:
20 Rob D. Corney, Esq.

21
22
23 Cheri L. Young, RPR
Circuit Court Reporter
24 P O Box 5232
Aiken, SC 29803-5232
25

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EXHIBIT INDEX

(NO EXHIBITS IDENTIFIED/INTRODUCED.)

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1 ON FRIDAY, JULY 15, 2011 AT 10:17 A.M.:

2 MR. CORNEY: Joe Larke Williams.

3 (Applicant enters courtroom.)

4 MR. CORNEY: May it please the Court, Your Honor.

5 THE COURT: All right.

6 MR. CORNEY: This is Joe Larke --

7 THE COURT: Do we need to get this other person on the
8 phone?

9 MR. CORNEY: Yeah, I guess we'll have to do that. I
10 didn't know if we had to do that now.

11 THE COURT: Well, I don't know if he has to be present
12 or not. I don't know that he has to be present.

13 MR. CORNEY: I mean, not present. I mean, if you want
14 him on the phone for the entirety of the hearing. I
15 imagine so.

16 THE COURT: All right. Why don't y'all see if you can
17 get him on the telephone?

18 MR. CORNEY: Yes, Your Honor. I'll step out briefly
19 and call him so he can call back.

20 THE COURT: Is that what he's got to do?

21 THE CLERK: Yes, sir. He has to call in to us.

22 THE COURT: Does he have the number?

23 THE CLERK: Yes, sir. I gave it to the AG earlier,
24 642-2121.

25 THE COURT: 642?

1 THE CLERK: 2121. That rings right here to my phone.

2 (At 10:19 a.m., Mr. Corney leaves courtroom to place
3 telephone call. The witness called the courtroom and the
4 hearing resumed at 10:23 a.m., as follows:)

5 THE COURT: All right. Mr. Wood?

6 MR. WOOD: Yes.

7 THE COURT: This is Judge Barber. Can you hear me all
8 right?

9 MR. WOOD: Yes, Your Honor. I can hear you loud and
10 clear.

11 THE COURT: All right. We have Mr. Moorehead who is
12 representing Mr. Williams, and we have Mr. Corney who is
13 representing the State of South Carolina, and of course
14 Mr. Williams is in the courtroom as well, and --

15 MR. WOOD: Yes, Your Honor.

16 THE COURT: -- I think I'm going to turn it over to
17 the Attorney General and let him tell us what we got and
18 we'll go from there.

19 MR. WOOD: Yes, Your Honor. Thank you. Could I have
20 a list of all the people that are in courtroom? Just
21 their names.

22 THE COURT: I just gave them to you. I mean -- the
23 only ones we know that are participating. I mean, we have
24 a number of people sitting in the courtroom.

25 MR. WOOD: Okay. Is Beth Ann Smith in there? I'm

1 just curious.

2 THE COURT: No. Beth Ann who?

3 MR. WOOD: Beth Ann Smith. She was the prosecutor. I
4 was wondering if she's in there.

5 THE COURT: She is not.

6 MR. WOOD: Okay.

7 THE COURT: Not at this time. I don't know if they
8 were planning on calling her or not. If she were, I
9 wouldn't recognize her.

10 All right. Mr. Corney?

11 MR. CORNEY: Yes, Your Honor.

12 This is Joe Larke Williams, Jr. Case Number 2010-CP-
13 02-1470.

14 Mr. Williams was indicted November 2009 by the Aiken
15 County Grand Jury for distribution of cocaine base third
16 offense and distribution of cocaine within proximity of a
17 school -- or cocaine base, rather, within proximity of a
18 school. I apologize.

19 He pled guilty before Judge Early on January 12th,
20 2010, to distribution of cocaine base within proximity of
21 a school and a lesser included distribution of cocaine
22 second. Sentenced to 20 years on the distribution second
23 charge, 15 years on the proximity charge to be served
24 concurrently. And that was part of a negotiated sentence.

25 He filed a timely PCR application and is represented

JOE LARKE WILLIAMS - DIRECT

1 today by Mr. Jeffrey Moorehead.

2 THE COURT: All right. Mr. Moorehead?

3 MR. MOOREHEAD: Thank you. I call Mr. Joe Larke
4 Williams.

5 THE COURT: Mr. Williams, if you'll come up here and
6 be sworn, please, sir

7 JOE LARKE WILLIAMS, having been duly sworn, was
8 examined and testified as follows:

9 THE CLERK: Please have a seat in the witness box.
10 State your full name for the Court.

11 THE COURT: All right. Mr. Williams, the only thing
12 I'm going to ask you is to make sure you speak up because,
13 this is a little unusual, we've got somebody participating
14 by telephone. And he's got to hear you, and I've got to
15 hear you, and these two lawyers have to hear you, and of
16 course the court reporter has got to hear you. So make
17 sure you speak up.

18 Mr. Moorehead, if you would, please.

19 MR. MOOREHEAD: Mr. Wood, can you hear me?

20 MR. WOOD: Yes, yes.

21 MR. MOOREHEAD: Okay.

22 DIRECT EXAMINATION

23 BY MR. MOOREHEAD:

24 Q. Mr. Williams, are you currently incarcerated in
25 McCormick County?

JOE LARKE WILLIAMS - DIRECT

1 A. Yes, sir.

2 Q. And what are you incarcerated for?

3 A. Distribution of crack cocaine in a half-mile proximity
4 of a school zone.

5 Q. I can barely hear you. So I know you're going to have
6 to speak up real loud so Mr. Wood can hear you.

7 A. Distribution of crack cocaine base in a half-mile
8 proximity of a school.

9 Q. Okay. And after -- you were arrested for that in
10 Aiken County?

11 A. Yes, sir.

12 Q. Okay. Was that back in 2007 or '8?

13 A. 2009.

14 Q. 2009. Okay. And did you have a public defender
15 representing you?

16 A. Yes, sir.

17 Q. Was that Mr. Wood who's on the telephone?

18 A. Yes, sir.

19 Q. Okay. And during his representation of you, were you
20 able to confer with him and talk with him about your case
21 and the facts of the case and legal strategies?

22 A. He came to the county jail several times, but he never
23 really explained to me about the included lesser offense
24 that I could have went to jury trial and got. He never
25 explained none of that to me.

JOE LARKE WILLIAMS - DIRECT

1 He was just telling me they trying to give me 45 years
2 for this and they ain't trying to give me no plea or
3 nothing like that. He was just explaining I could get 45
4 years.

5 Q. Okay. What sort of discussions did you have about
6 what type of plea you were going to accept with Mr. Wood?

7 A. They wouldn't come at me with no plea. They wanted me
8 to go in front of the judge with an open plea to 45 years
9 and I told him I didn't want to do that.

10 Q. Okay. Did -- was there a negotiated plea that was
11 presented to the Court?

12 A. The day that I came over here for trial.

13 Q. Okay. And that negotiated plea, was it for -- on the,
14 the manufacturing, distribution of cocaine base second
15 offense a negotiated plea of 20 years?

16 A. Yes, sir.

17 Q. And for the distribution or to sell or purchase crack
18 cocaine in the proximity of a school, was that a
19 negotiated plea of 15 years?

20 A. Yes, sir.

21 Q. And were those -- part of the negotiation was that
22 they were to run concurrently?

23 A. Yes, sir.

24 Q. And when -- you did plead guilty to those charges; is
25 that right?

JOE LARKE WILLIAMS - DIRECT

1 A. Yes, sir.

2 Q. Okay. And what was the sentence imposed upon you
3 again? Was it 20 years concurrent?

4 A. Twenty years. Right. Everything, right, concurrent
5 with the 20.

6 Q. When you were arrested, how much cocaine did you
7 actually have?

8 A. At that time I didn't know. And then when I got my
9 drug analyst sheet it said 0.57 grams. That was way less
10 than a gram of crack cocaine.

11 Q. Okay. .57 grams?

12 A. Yes, sir.

13 Q. Is that set forth in the transcript from your guilty
14 plea on page 16?

15 A. Yes, sir.

16 Q. And was that presented -- the .57 was -- the first
17 time it was mentioned in the guilty plea by Mrs. Young,
18 and she was the solicitor?

19 A. Yes, sir.

20 Q. Okay. Now, you've filed this PCR application
21 asserting ineffective assistance of counsel, and also
22 counsel's failure to object to an improper sentence; is
23 that correct?

24 A. Yes, sir.

25 Q. Okay. With regard to the amount of drugs that you had

JOE LARKE WILLIAMS - DIRECT

1 versus what you pled guilty to, what's your understanding
2 of what you pled guilty to versus what should have
3 occurred?

4 A. I feel that if my attorney would have explained to me
5 the circumstances of me going to trial, of being my
6 charges could have been dropped to a lesser offense, I
7 would have went to trial instead of taking a 20-year plea.

8 Q. Okay. Did your attorney ever confer with you about
9 pleading guilty to possessing less than one gram of meth
10 for a third or subsequent offense?

11 A. No, sir.

12 Q. Okay. What he had you plead guilty to, was it for a
13 ten to 30-year sentence under Section 44-53-375?

14 A. Yes, sir.

15 Q. Okay. And you said he came to the jail and talked to
16 you, and I assume you talked here in the courtroom as well
17 before your guilty plea?

18 A. Uh-huh.

19 Q. Did he talk to you about your, about the possibility
20 of you pleading guilty to possessing less than one gram of
21 cocaine --

22 A. No, sir.

23 Q. -- and being sentenced under Code Section 44-53-375,
24 Subsection A?

25 A. No, sir. He never mentioned none of that.

JOE LARKE WILLIAMS - DIRECT

1 Q. And that would have been -- would that have been for a
2 third or subsequent offense?

3 A. Yes, sir.

4 Q. Okay. You've had priors on your record; correct?

5 A. Yes, sir.

6 Q. Okay. One prior, it looks like, back in 2004 for
7 crack distribution within proximity of a school?

8 A. I never had a distribution in 2004.

9 Q. Well, let me talk to you about that for a second. I'm
10 just going off what your, what the record sheet shows.
11 Okay?

12 A. Yes, sir.

13 Q. On your record sheet it shows nonpayment of
14 telecommunication services back in 2000?

15 A. Uh-huh.

16 Q. It shows a crack distribution, proximity of school
17 back in November, on November 12, sentence start date
18 November 12th of 2004. And marijuana possession with
19 intent to distribute back on, a sentence start date of
20 2-23-2005.

21 Now, for the crack distribution and proximity of a
22 school back in November of 2004, are you telling the Court
23 that that is not correct?

24 A. That's not correct.

25 Q. Okay. Why is that not correct?

JOE LARKE WILLIAMS - DIRECT

1 A. I never possessed any crack in 2004.

2 Q. Okay. Can you tell the Court why you didn't, or where
3 were you?

4 A. I was already in the county jail at that point in
5 time.

6 Q. Okay. Do you recall those charges being leveled
7 against you?

8 A. Not, not the crack charge. No, sir.

9 Q. Do you recall pleading guilty or having a jury trial
10 or an attorney or anything on those charges?

11 A. No, the only thing I pled guilty to around that time
12 was a probation violation.

13 Q. Okay. Now going back to the current charge under
14 44-53-375 for possession of the cocaine. At the jail or
15 at any time or before the plea agreement, did you have any
16 discussion with Mr. Wood about you pleading guilty to
17 possessing .57 grams or less than one gram?

18 A. No, sir. At all, never.

19 Q. Would you have acted differently at that time if you
20 would have been given that advice about pleading guilty to
21 that charge?

22 A. Yes, sir. I would have wanted to go to trial.

23 Q. Okay. Why would you have wanted to go to trial on
24 that?

25 A. I feel that I had a better chance of getting ten years

JOE LARKE WILLIAMS - DIRECT

1 for the less-than-a-gram of crack cocaine than taking a
2 plea of 20 years of 85 percent of my life (verbatim).

3 Q. Is it your assertion that Mr. Wood should have
4 informed you about that possible plea or going to trial on
5 that charge alone?

6 A. Yes, sir.

7 Q. Okay. Now do you recall the guilty plea being in
8 front of Judge Early back in 2009?

9 A. Yes, sir.

10 Q. Okay. And he did go through some questions with you
11 about. In the transcript it sets forth what you were
12 pleading guilty to?

13 A. Yes, sir.

14 Q. The possible sentences?

15 A. Yes, sir.

16 Q. And a litany of questions, if you understood what you
17 were doing; do you recall all of that?

18 A. I recall some of it, sir.

19 Q. Okay. When -- during -- and at the end of the
20 hearing, Judge Early did sentence you to 20 years on the
21 possession charge and 15 years on the school charge?

22 A. Yes, sir.

23 Q. To run concurrent; correct?

24 A. Yes, sir.

25 Q. Okay. What is your -- do you assert that your

JOE LARKE WILLIAMS - DIRECT

1 attorney was ineffective in, at the time of sentencing?

2 A. No, because he did what he did on the day of the plea.

3 Q. Okay.

4 A. But if he would have explained to me before I took
5 that plea about the lesser offense, I would have went to
6 trial.

7 Q. Okay. And in your PCR application you assert that he
8 should have objected to the sentence?

9 A. Yes, sir. He should have.

10 Q. Okay. On what grounds should he have objected to the
11 sentence?

12 A. To inform me about the lesser offense.

13 Q. And he did not do that before or after?

14 A. No, sir.

15 Q. And during your conversations with Mr. Wood, were
16 family present at times?

17 A. My mother.

18 Q. Okay. Was she privy to the conversations that you had
19 with Mr. Wood about what you were doing and what you
20 expected to happen?

21 A. She -- they escorted her back to the back and he was
22 explaining about the plea. That's all he ever explained
23 to me in front of her.

24 Q. Okay. So, you've reviewed your sentencing sheets from
25 this matter; correct?

JOE LARKE WILLIAMS - DIRECT

1 A. Yes, sir.

2 Q. Okay. And on the drugs and distribution under
3 44-53-0445 which was the school charge --

4 A. Uh-huh.

5 Q. -- up near the top of the sentence sheet, you're aware
6 it says ten to 15 years and then 15 years CC meaning
7 concurrent?

8 A. Yes, sir.

9 Q. Okay. And is it your assertion that that is not a
10 proper sentence?

11 A. Yes, sir.

12 Q. And that was under Section B, under Subsection B-Two.
13 And under Section B-One, have you read the law on it?

14 A. Section B-One. I don't remember it, sir.

15 Q. Okay. Does it state that if -- to the best of your
16 knowledge, ten years max?

17 A. Yes, sir.

18 Q. Okay. And then going back to the possession charge.
19 Again, is it your assertion that you should have been
20 advised about the lesser-included offense and either
21 making a decision to plead guilty to that charge or going
22 to trial on the more substantive charge?

23 A. Yes, sir.

24 Q. Okay. And what relief are you seeking here today?

25 A. Just to try to get a chance to go back to trial to get

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1 found guilty of a lesser-included offense.

2 Q. Are you also asking the Court to reconsider your
3 sentence?

4 A. Yes, sir.

5 Q. Okay.

6 THE COURT: Well --

7 BY MR. MOOREHEAD:

8 Q. Is there any other relief you're asking?

9 THE COURT: -- let's understand this. You understand
10 the Court -- I don't have any authority to do anything
11 with your sentence here today.

12 THE APPLICANT: Yes, sir.

13 THE COURT: I mean, if you prevail it will go back and
14 you'll be tried on whatever the charges were pending at
15 that time.

16 THE APPLICANT: Yes, sir.

17 THE COURT: Which I guess would be third offense
18 possession with intent to distribute.

19 THE APPLICANT: Yes, sir.

20 THE COURT: Which is, what, up to 30? Twenty-five to
21 30?

22 MR. CORNEY: Yes, sir. It's, I think it's five to 30.

23 MR. MOOREHEAD: Five to 30.

24 THE COURT: Five to 30?

25 THE APPLICANT: Yes, sir.

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1 THE COURT: And then you would be, within the
2 proximity charge as well. I don't know if there's any
3 other charges that were nolle prossed.

4 MR. MOOREHEAD: There were two charges that were nolle
5 prossed.

6 MR. CORNEY: I think two distribution charges. I
7 think it was a buy-bust charge also, or one of those was a
8 buy-bust.

9 THE COURT: You could be tried on those charges as
10 well; do you understand that?

11 THE APPLICANT: Yes, sir. I had two court dates on
12 those other two charges. Trial date, the informant didn't
13 show up. Asked Mr. Staple to file a motion to dismiss --

14 THE COURT: Well, I just want you to understand what
15 authority this Court has.

16 THE APPLICANT: Yes, sir. I understand that.

17 THE COURT: I don't have the authority to change the
18 sentence. If you're successful in your efforts it will go
19 back and you'll be tried on whatever the charges are,
20 total charges pending. And somebody mentioned 90-some
21 years. Is that what y'all said? Is that what you said
22 the potential penalties on all of these were?

23 MR. CORNEY: Including the nolle prossed charges, Your
24 Honor, I don't know off the top of my head. I think life
25 without parole because it's more than three strikes on the

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1 distribution charges.

2 THE COURT: Do you understand the potential penalties
3 if you go back?

4 THE APPLICANT: Yes, sir.

5 THE COURT: I just want you to know this Court nor
6 would any other Court have the authority to change the
7 sentence. Maybe if you'd take another plea, but nobody
8 can just go back and change the sentence.

9 THE APPLICANT: Yes, sir. I understand that.

10 THE COURT: All right.

11 BY MR. MOOREHEAD:

12 Q. Mr. Williams, what you're asking for today is then to
13 overturn your guilty plea; is that right?

14 A. Yes, sir.

15 MR. MOOREHEAD: No further questions, Your Honor.

16 THE COURT: All right. Mr. Corney?

17 CROSS-EXAMINATION

18 BY MR. CORNEY:

19 Q. Mr. Williams, do you recall meeting with Mr. Wood to
20 discuss your case?

21 A. He came to the county detention center.

22 Q. Do you remember the number of times you met with him?

23 A. Around seven, eight times.

24 Q. Okay. If I told you ten times, would that be far off
25 or do you think that's pretty accurate?

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1 A. Could be pretty accurate, I'd say. Something like
2 that.

3 Q. What did you discuss with Mr. Wood -- or, yeah,
4 Mr. Wood during those discussions?

5 A. The only thing he ever discussed with me was he came
6 to me saying if I knew somebody I could buy a quarter key
7 (verbatim) from or half a key of cocaine from which I
8 don't know. I was a petty hustler at that time. I don't
9 know nobody like that.

10 Then he left. He came back a few more times asking
11 the same questions. And he came back another time saying
12 they're trying to get you 45 years. That's all he ever
13 discussed with me.

14 Q. Okay. Do you remember speaking with him about a
15 videotape of this drug purchase that the State turned
16 over?

17 A. I asked to see the videotape. Never seen the
18 videotape.

19 Q. You never saw the videotape?

20 A. No, sir.

21 Q. Did he ever discuss with you what was on the tape?

22 A. I mean, he can -- he said what he seen on there, but I
23 would like to see it for myself.

24 Q. So he reviewed the tape, what was on the tape with
25 you? Not showed you the tape, but reviewed what he saw on

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1 the tape?

2 A. He told me what he saw on the tape.

3 Q. You allege that the solicitor stated during your plea
4 hearing that you had a 2005 possession of marijuana with
5 intent to distribute charge but you didn't commit that
6 crime?

7 A. 2005? Yeah, I had a possession charge in 2005.

8 Q. You did have a possession charge in 2005?

9 A. Yeah, but I didn't have a distribution in 2005, no.

10 Q. But you do have a 2000 distribution of crack in
11 proximity possession; right?

12 A. No. I never was convicted of a distribution charge in
13 2005.

14 Q. I'm talking about in 2000.

15 A. Yeah, 2000, yeah.

16 Q. Okay. And as part of your plea at the plea hearing
17 you had two pending distribution charges nolle prossed;
18 right?

19 A. Yes.

20 Q. Okay. So in reality you had one prior distribution in
21 2000, plus the one you pled to, plus two that were nolle
22 prossed. You had four distribution charges?

23 A. If he would have filed a motion of dismissal, those
24 other two charges would have been dismissed.

25 Q. But you realize under the three-strike rule that three

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1 of those charges would subject you to life without parole;
2 right?

3 A. Yes, sir.

4 Q. Okay. And you remember the Court advising you of the
5 maximum and minimum sentences you were facing based on
6 these charges?

7 A. Yes, sir.

8 Q. Distribution of crack second carried five to 30 years;
9 right?

10 A. Yes, sir.

11 Q. And you got 20 years on that; right?

12 A. Yes, sir.

13 Q. So that 20 years is well within the five to 30 range;
14 right?

15 A. Uh-huh.

16 Q. Okay. And the distribution within proximity is ten to
17 15 years, and you got the maximum of 15 years on that;
18 right?

19 A. The max that I read was ten years.

20 Q. Okay. Did the Court advise you that it was ten to 15
21 years during the plea hearing?

22 A. That's what my attorney came and told me at that time.

23 Q. And the solicitor and the Court both told you exactly
24 what you were going to get sentenced to if the Court
25 accepted the negotiated plea; right?

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1 A. Yes, sir.

2 Q. Okay. So you knew exactly that you were going to get
3 a 20-year sentence that you'd have to serve 85 percent of?

4 A. That's what they said, yeah.

5 Q. All right. And you are guilty of not just possessing
6 but actually distributing cocaine base in this instance;
7 right?

8 A. Yes, sir.

9 Q. And you admitted that to Judge early at the plea
10 hearing?

11 A. Yes, sir.

12 Q. And the police have you on videotape making this drug
13 sale; right?

14 A. I never seen the videotape.

15 MR. CORNEY: That's all I have, Your Honor.

16 THE COURT: All right. Mr. Moorehead, anything?

17 MR. MOOREHEAD: Just one question.

18 REDIRECT EXAMINATION

19 BY MR. MOOREHEAD:

20 Q. Assuming that you were subjected to three strikes is
21 that something -- if you would have been advised properly
22 by Mr. Wood, were you willing to accept that chance at
23 trial?

24 A. Yes, sir. I still would have gone to trial.

25 MR. MOOREHEAD: No further questions of Mr. Williams.

WANDA WILLIAMS - DIRECT

1 THE COURT: All right. Thank you. You may step down.

2 All right. Mr. Moorehead, anything further?

3 MR. MOOREHEAD: One more witness. Wanda Williams.

4 WANDA WILLIAMS, having been duly sworn, was examined
5 and testified as follows:

6 THE CLERK: Have a seat in the witness box and state
7 your full name for the Court.

8 THE WITNESS: My name is Wanda Williams.

9 DIRECT EXAMINATION

10 BY MR. MOOREHEAD:

11 Q. Ms. Williams, are you the mother of Joe Williams?

12 A. Yes.

13 Q. Okay. And were you present in court on January 12th
14 of 2010 when your son pled guilty?

15 A. Yes.

16 Q. Do you recall going back into this room over here to
17 my left and having a conversation with your son and with
18 Mr. Wood?

19 A. Yes.

20 Q. Okay. And what was said during that conversation?

21 A. Basically he was talking about if he went to trial he
22 would probably get life, I guess. And if he take the plea
23 he would get 20 years.

24 Q. Okay. Do you recall if Mr. Wood ever advised your son
25 about the sentence ranges of what he was pleading guilty

1 to?

2 A. No.

3 Q. Do you recall if Mr. Wood ever advised your son about
4 the three-strikes rule?

5 A. No, sir.

6 Q. Okay. Do you know what that is?

7 A. Yes, I know.

8 Q. Okay. And do you recall Mr. Wood ever advising your
9 son about possibly going to trial on a lesser-included
10 offense because he only had .57 grams of cocaine as
11 compared to one gram or more of cocaine?

12 A. No, sir.

13 MR. MOOREHEAD: Okay. No further questions, Your
14 Honor.

15 THE COURT: Anything?

16 CROSS-EXAMINATION

17 BY MR. CORNEY:

18 Q. Ms. Williams, were you there during these ten or so
19 meetings that your son had with Mr. Wood?

20 A. I didn't understand you.

21 Q. Were you present at the ten or so meetings that your
22 son had with Mr. Wood prior to --

23 A. No, just that one in there.

24 Q. So there's no way way for you to really know what they
25 discussed before they entered the courtroom?

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1 A. No.

2 MR. CORNEY: That's all I have, Your Honor.

3 THE COURT: Thank you, ma'am. You may step down.

4 THE WITNESS: Thank you.

5 THE COURT: Mr. Moorehead, anything further?

6 MR. MOOREHEAD: No, Your Honor.

7 THE COURT: Anything from the State?

8 MR. CORNEY: We would like to call Mr. Staples Wood,
9 please.

10 THE COURT: All right. Mr. Wood, where are you?

11 MR. WOOD: I am in the process of -- where am I, like,
12 geographical location?

13 THE COURT: Yeah. Are you in a law office?

14 MR. WOOD: I'm in Mobile, Alabama. I am in the middle
15 of moving, and I'm in my new kitchen right now.

16 THE COURT: Well, we're going to -- as an officer of
17 the Court, we are going to trust that you are Mr. Wood.

18 MR. WOOD: Yes.

19 THE COURT: I don't know if anybody knows Mr. Wood who
20 can verify the voice, but I'm going to let the clerk swear
21 you if you don't mind. If you'll raise your right hand.

22 NORMAN STAPLES WOOD, having been duly sworn, was
23 examined and testified via telephone as follows:

24 THE CLERK: Please state your full name for the Court.

25 THE WITNESS: Norman Staples Wood.

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1 THE COURT: All right.

2 DIRECT EXAMINATION

3 BY MR. CORNEY:.

4 Q. Mr. Wood, I'm Rob Corney. I'm going to try to take my
5 time with this, make sure I don't talk over you while
6 you're giving us your answers and whatnot. It's not
7 something I'm so great at, but I'm going to give it a
8 try.

9 Mr. Wood, do you recall meeting with Mr. Williams to
10 discuss these charges?

11 A. I do.

12 Q. Okay. Do you recall the number of times you met with
13 him?

14 A. I don't. It was as needed. Every time something came
15 up or, you know, we basically had to prepare for two
16 trials. They wanted to try two different times, first for
17 the first distribution and another time for the second
18 distribution.

19 So in preparation for two trials and discussing this
20 case in general, we had to meet, I mean, you know, a
21 good -- a lot. So I met with him however many times it
22 was necessary to do the work that we had to do.

23 Q. Okay. If you had to roughly estimate how many times,
24 is there any estimation you can give us or you don't have
25 any idea?

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1 A. You know, the estimation that Mr. Williams gave of
2 about ten seemed about right.

3 Q. Okay. And do you recall what you discussed with
4 Mr. Williams during those meetings?

5 A. I'm looking at my time sheets right now. You know,
6 like I do with every client, I got my file in the mail. I
7 got the little packet. I only -- as far as criminal cases
8 are concerned in Aiken, I only took, you know, the court-
9 appointed stuff. I was on a court-appointed basis. So I
10 got the little mail from the clerk.

11 And, uh, I know that clients don't like to be in the
12 jail for long without talking to their lawyer. So I
13 looked at the charges and printed all of this stuff out
14 and thought about it.

15 And so I got that on 9-29-09, and my notes reflect
16 that the very next day I worked two, almost three hours on
17 the case and I met with him in jail. So we basically just
18 talked about the charges and, you know, what they meant.

19 And then as the case progressed and I got a better
20 idea what we were looking at, I met with the solicitor.
21 And we just, you know, sort of worked through the cases
22 together.

23 Q. Okay. And do you recall discussing his constitutional
24 rights with him? Like his right to trial by jury?

25 A. Absolutely. And, I mean, I told him, you know, I

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1 would be ready for trial if he wanted to go to trial. We
2 talked about, you know, everything there was to talk about
3 and we went over, basically, everything.

4 We went over trial tactics, you know; everything.

5 Q. Okay. Were you able to discuss his version of the
6 facts with him?

7 A. Yes. Well, that's one thing I explain to everybody.
8 If he was in the room, you know, with me and I said, look,
9 Mr. Williams, right now you are innocent. You are
10 innocent. You're an innocent man, and the State has to
11 prove you guilty beyond a reasonable doubt.

12 So, there are certain things the State has to do to do
13 that. And my job is to make it very difficult for them to
14 do that. And that's exactly what I'm going to do. I'm
15 going to do my best to poke holes in their case.

16 And the first thing we got to do is, you know, look at
17 their case and ascertain whether or not I'm going to be
18 able to do that. And so we went from there, you know.
19 Yeah, absolutely.

20 Q. Okay. Do you recall any investigations you did in
21 this case for him?

22 A. Sure. Well, I looked at all the State's evidence and
23 I, you know, they had two different cases and two
24 different videotapes.

25 And then on another -- on the first case they had a

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1 voice recording. So, in the first case I had to -- I
2 looked into the confidential informant. I think her name
3 -- I can't remember her name right off the top of my
4 head.

5 But Joe basically called her up -- she called up Joe
6 and asked for, well, presumably she asked for drugs.
7 That's what it sounded like on the voice recording.

8 So what I did was, it was in the Sav-A-Lot parking
9 lot. I think it's not far from downtown. So I went to
10 the parking lot, sort of took a look around. If you start
11 doing stuff like that, it's amazing when you're going to
12 have an aha moment.

13 So I went and looked at the parking lot and, you know,
14 just checked it out, checked out what kind of area it
15 was. You know, basically what I was hoping to happen was
16 some sort of eureka moment, you know, to maybe find
17 something to give me what I needed to poke holes in the
18 State's case.

19 So what I ultimately determined was that, you know, at
20 no time in that -- and I'm talking about the first case,
21 not the case that Joe ultimately pled to, the first case.
22 That at no time did Joe actually ever state on the phone
23 that, you know -- he never really said, I'm going to sell
24 you drugs. He never mentioned crack cocaine or anything
25 like that on the phone. He just said, yeah, yeah, uh-huh,

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1 uh-huh.

2 And the confidential informant was doing all the
3 talking. She said, I need some Gs and all of that kind of
4 stuff. Well, I started thinking well, you know, uh,
5 video -- a voice recording can be manipulated and of
6 course, you know -- and then I looked at the videotape of
7 the confidential informant. At no time could you ever
8 actually see Mr. Williams hand her anything. I mean, it
9 was all just -- they're videotaping in a dark car. And
10 then of course when the police swarmed the car, she had
11 the drugs on her.

12 Well, I looked at her records. And she had a rap
13 sheet. I mean, it was -- it was pretty impressive --

14 THE COURT: Hold on a minute.

15 THE WITNESS: -- for the convictions that involved
16 dishonesty --

17 THE COURT: Mr. Wood, Mr. Wood. This is Judge
18 Barber. Does this have something to do with the case that
19 we're here today on?

20 THE WITNESS: Yes. That's right. This is
21 something -- I mean, this has to do with my investigation
22 of the case in general.

23 THE COURT: Well, let's talk about the one we're here
24 on today on if we could.

25 THE WITNESS: Okay. This is -- I mean, this is a case

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1 that he was charged with.

2 THE COURT: Well, he's not filed an application on
3 this. So on that case --

4 THE WITNESS: Okay. So you want me to just, you just
5 want me to stick to just this one, the controlled or the
6 buy that he did right on, right near or allegedly right
7 downtown in Aiken?

8 THE COURT: Mr. Corney, is there any reason to go into
9 the other case?

10 THE WITNESS: Well, it just shows how, you know -- I
11 mean, I can see where it's relevant if we're talking about
12 my representation of Mr. Williams. I think I did an
13 outstanding job in preparing for that trial, if I do say
14 so myself. I worked very hard on it.

15 MR. CORNEY: He represented him on both sets of these
16 charges. I think it's important to go into it to show the
17 investigation he did overall for his client.

18 He's claiming ineffective assistance of counsel. I
19 think it's relevant to show how he represented him on all
20 charges that he had.

21 THE COURT: Well, my understanding he's claiming --
22 the basis is that he's upset that the case didn't go to
23 trial because he didn't know that the jury might be able
24 to decide, hey, he wasn't selling, he was just possessing
25 and it was something less than a sufficient amount of

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1 cocaine to be possession with intent to distribute even
2 though the State's claiming that, that they have somebody
3 that went in and actually bought from him which does
4 amount to distribution.

5 But, all right.

6 THE WITNESS: Well, Your Honor, since you're -- if I
7 may interrupt. And I apologize, Your Honor. I know it's
8 a little bit different from me being on speaker phone with
9 the Court right now, but if we can just jump into that
10 issue and get back to anything else you need.

11 On that particular issue, they had a tape of
12 Mr. Williams. A guy looked -- I'm giving Mr. Williams the
13 benefit of the doubt now.

14 It looked just like Mr. Williams. He had a gun in one
15 hand and crack cocaine in the other and he's selling to
16 somebody on videotape. You can tell -- sir?

17 THE COURT: We didn't say anything. Go ahead.

18 THE WITNESS: Oh, okay.

19 So it looked just like Mr. Williams.

20 And, I mean, I know I discussed the lesser included
21 issue with Mr. Williams, but, you know, when it comes to
22 going for a lesser included case like that, you either got
23 to go for broke or, you know, I mean, you got to go all
24 the way.

25 You can't just say, well, you know -- basically, I

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1 mean, it was just no hiding it. He would have been -- I
2 mean, he would have -- you're staring into a videotape.
3 So the way I would have attacked that would be some sort
4 of predicate issue or some sort of, you know, if the
5 opportunity arises, some sort of chain of custody issue or
6 something like that.

7 But the lesser included argument would not have worked
8 at all. That would have been a terrible strategy because
9 you're just telling the jury, yeah, he did have some
10 cocaine but, you know, cut him some slack.

11 That wouldn't have worked in this case, not when
12 you're holding a gun in one hand and you're holding crack
13 cocaine in another.

14 So, I mean, we -- you know, I actually went to the
15 place where he allegedly -- and I'm giving Mr. Williams
16 the benefit of the doubt again, allegedly sold the drugs.
17 I talked to the person who owned the house, I interviewed
18 him.

19 I took a look around. I took a look around. I talked
20 to some people who lived in the neighborhood, spent about
21 45 minutes doing that. Again, I was hoping for some sort
22 of aha moment but when it boils down to it, you know, the
23 only thing Mr. Williams was sure he wanted a trial. And I
24 was prepared, you know. I was familiar with the case.

25 But the only thing there really was for me to do in

NORMAN STAPLES WOOD (VIA TELEPHONE) - DIRECT

1 this case was to go into court and basically fall on the
2 sword.

3 So, and I've convicted people using videotape before
4 so, I mean, I've been a prosecutor before so. That was
5 sort of -- if you want to -- if you would like to lay your
6 focus on some particular issues that you all brought up,
7 you know, that's -- I mean, that's really what happened.

8 BY MR. CORNEY:

9 Q. All right. Mr. Wood, did the weight of the crack that
10 he had on him, less than one gram, did that concern you?
11 Or did you ever look into possession of less than one gram
12 of crack as a lesser-included charge?

13 A. I mean, like I said, in this particular case that
14 would not have been -- I mean, it wouldn't have been a
15 good tactic because, I mean, you can't go to the jury and
16 say, you know, well, he had this, you know, this cocaine
17 but I want y'all to cut him some slack because, you know,
18 he was selling it.

19 But, you know -- so, as far as a tactic, that wouldn't
20 have been a good idea. But, I mean, we discussed lesser
21 included charges in our first conferences but, you know,
22 as far as getting a plea deal, the State wasn't willing to
23 cut him any slack or they weren't willing to, you know,
24 plead him out to anything less.

25 You know, the deal was what they -- he got the deal

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1 that they offered, and I felt that he was lucky to get
2 that.

3 Q. Did you discuss his prior criminal record with him and
4 how many drug-type distributions and possession charges he
5 had prior to this?

6 A. Yes, I did. And of course that made him, you know,
7 vulnerable to, you know, an enhanced sentence had he -- if
8 he was to be convicted for any of these other charges that
9 he was -- he -- that the State ultimately nolle prossed.

10 Q. Okay. The 2005 possession of marijuana with intent to
11 distribute, I believe, is the charge he said that -- he
12 stated on the record was erroneous. He still had a 2000
13 charge that would have counted as a strike as well; right?

14 A. I believe so. According to, yeah, you know -- yeah.

15 Q. I mean, he had sufficient charges from these two
16 incidents you're talking about to give him at least two if
17 not three or more strikes; right?

18 A. That's correct. And I remember -- yeah, I mean, that
19 is the whole situation when the time came. And, yeah, I
20 looked at all the issues. And I remember him telling me
21 that it was impossible for him to be charged. Back, I
22 think it was 2005 distribution of cocaine, he said he was
23 already in jail for something.

24 And I did bring that up during the plea colloquy.
25 But, it's on paper so.

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1 Q. It was ultimately -- was it ultimately Mr. Williams'
2 decision to take this plea?

3 A. Yes, it was.

4 Q. And you discussed that with him and his mom before he
5 actually entered it on the record; right?

6 A. Yes. And, I mean, I remember I told him I was ready
7 to go to trial and he said that's fine but wanted to, he
8 wanted to plead.

9 Q. Do you feel you coerced him in any way or you
10 threatened him or there was some threat out there that
11 made him plead guilty to this?

12 A. Absolutely not.

13 MR. CORNEY: That's all I have, Your Honor.

14 THE COURT: Mr. Moorehead, anything?

15 MR. MOOREHEAD: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. MOOREHEAD:

18 Q. Mr. Wood, can you hear me?

19 A. I can, Mr. Moorehead. Thank you.

20 Q. Thank you. You reviewed the videotape; correct?

21 A. That's right.

22 Q. Okay. And is it true that the videotape is somewhat
23 dark because the lighting inside the house was not great?

24 A. I mean, I guess you could say, you know -- you could
25 use that. It was somewhat dark. I wouldn't call it -- I

NORMAN STAPLES WOOD (VIA TELEPHONE) - CROSS

1 mean, yeah, you could say somewhat dark. It wasn't dark
2 by any means though.

3 Q. You have reviewed the trial transcript from
4 Mr. Williams' guilty plea before today's hearing?

5 A. I have.

6 Q. And in there it does mention that the video is dark
7 because the light is on back -- it's back-lit; correct?

8 A. I, I don't remember that in the transcript. Am I
9 supposed to look at the transcript right now to refresh my
10 recollection? Who said that on the transcript?

11 Q. Sure. I'll find that out in a second for you.

12 On page 15, it's Mrs. Young speaking. On line number
13 20 it states that the video inside of the house is dark
14 because the light is behind him, referring, I guess, to
15 Mr. Williams. However there is a side shot of him going
16 into the door. And I, meaning Mrs. Young, believes that
17 if a jury were to review that they would find that
18 evidence to be very compelling.

19 Do you see that?

20 A. I do see that. And my recollection of the video is
21 that the guy walks in, Joe Larke Williams is sitting on
22 the couch. And, you know, there's light from all the
23 windows around the room.

24 So, I mean, I, I -- after knowing Joe Larke Williams
25 and sitting with him in jail and looking at the video, I

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1 could tell it was him.

2 Q. Okay. The side shot of Mr. Williams going through the
3 door, do you recall that being on the videotape?

4 A. I don't. Of course, and I don't have the video right
5 in front of me, but I just remembered the scene of him
6 sitting on the couch and there's a gun and then there's
7 the cocaine.

8 Q. Okay. Did you ever review that videotape in the
9 presence of Mr. Williams?

10 A. I wasn't able to. I could not -- they do not have a
11 video recorder in the jail. And I suggested that they
12 bring some sort of videotape to the jail or some sort of
13 machine that I could do that, but they didn't have it
14 available.

15 And they were having some sort of technical difficulty
16 with the actual .jpeg or .ipeg or whatever the format was,
17 getting it to me. Actually they ended up being able to
18 get it to me but at the time I didn't have a laptop that I
19 could take it to Mr. Williams to see.

20 So what they did was they printed out some still shots
21 of Mr. Williams and I showed it to Mr. Williams. So he
22 was able to review those. Just the still shots, you know,
23 not the video but the still shots.

24 Q. Okay. Did you maybe before -- at the courthouse
25 before his guilty plea, was there maybe a laptop or a

NORMAN STAPLES WOOD (VIA TELEPHONE) - CROSS

1 video, a VCR available for you to review the tape at that
2 time?

3 A. No. I mean, there probably was in the courthouse but,
4 I mean, he didn't -- nobody -- I never showed it to him.
5 He didn't ask to see it, you know. It just wasn't an
6 issue.

7 Q. Okay. Do you think it would have been important for
8 Mr. Williams to review the videotape and make a final
9 determination as to whether that was in fact him sitting
10 on the couch?

11 A. He didn't really seem to be interested after I showed
12 him still shots. And, you know, I guess I would have --
13 he could have gone down to the solicitor. They don't have
14 a video in the courtroom. So, I mean, I guess it means by
15 what you mean available.

16 They weren't letting him out of the holding cell, you
17 know, the holding cell where they keep the people before.
18 So I guess for him to see the video he would have to be
19 unshackled, put in handcuffs, he would have had to be
20 taken down to the solicitor's office to watch it.

21 And, I mean, they just -- they just wasn't -- I just
22 actually don't see that happening.

23 Q. Okay. During your conversations with Mr. Williams at
24 the jail or at the courthouse before his plea -- and
25 backing up a second.

NORMAN STAPLES WOOD (VIA TELEPHONE) - CROSS

1 Was his mother present during the courthouse
2 conversation you had with Mr. Williams at some point in
3 time?

4 A. She was. And it was very, I guess it was very
5 emotional for her and for him.

6 Q. Do you recall discussing with Mr. Williams about him
7 actually going to trial and taking his chance regardless
8 of the potential three strikes issue?

9 A. Yes.

10 Q. Okay. Did -- do you recall having a discussion with
11 him about him possibly pleading to the possession charge
12 of .57 grams?

13 A. Well, that wasn't on the table but, yes. I mean, they
14 weren't offering that though. So, you know, there really
15 wasn't -- you know, when we first met I said, there's
16 going to be lesser included charges here. There's going
17 to be, you know -- there's a lot of different ways this
18 case could go. We're going to see what we can do and see
19 which direction, you know, we can take this case.

20 But at that time, at that particular time -- are you
21 asking -- let me back up. Are you asking me if the State
22 was offering that?

23 Q. I'm asking you if you had discussed that possibility
24 with Mr. Williams first?

25 A. Well, without the State offering it, I mean, they

NORMAN STAPLES WOOD (VIA TELEPHONE) - CROSS

1 brought me their best offer. It wasn't a possibility at
2 that time.

3 Q. Okay. Did you ever make a counteroffer to the State
4 about him pleading to possessing .57?

5 A. Whatever I did, I don't remember exactly how the
6 negotiations went, but let me put it this way. They were
7 ready to send him to jail for life and they wanted him to
8 be in jail for a long time.

9 And whatever I did it was, I mean, it was the best
10 deal possible. I mean, what basically happened that was,
11 that was him accepting my counteroffer. The plea that he
12 took was the counteroffer.

13 Q. Okay.

14 A. And that was a good counteroffer at that.

15 Q. Did you have a chance to review Mr. Williams' criminal
16 history prior to making a final decision about going to
17 trial or doing a plea?

18 A. Yes.

19 Q. And what did his criminal history show as far as
20 priors that would have affected him?

21 A. I mean, right off the top of my head I remember, you
22 know, he had some priors. He had some stuff that happened
23 when he was much younger, maybe 13 years old. Of course
24 that doesn't count.

25 And then he had, you know, I know he had some other

NORMAN STAPLES WOOD (VIA TELEPHONE) - CROSS

1 stuff. I think he had something that happened in 2000.

2 But, yeah, we talked about all of this stuff and we went
3 over it with a fine-tooth comb.

4 It was actually -- from me going over it with him in
5 such detail, I became aware that one of the charges that's
6 on his record, according to him, is not something that he
7 could have been convicted of. So that's why I objected to
8 it during the plea colloquy.

9 Q. Okay. We're talking about the crack distribution
10 within proximity of a school from 2004?

11 A. Something -- yeah. That rings a bell.

12 Q. What did you inform the State or the Court about that?

13 A. I'm sorry. What?

14 Q. What was your -- did you talk with the solicitor's
15 office about that charge possibly being an error?

16 A. I might have. But with the 2000 charge and with him
17 pleading to the second offense -- I think it was a 2000
18 charge, yeah. I know I'm not supposed to ask, ask
19 questions but, I mean that -- even with that charge not
20 being considered, I think he pled to a second offense.
21 So, so, I mean, it was likely it didn't get considered
22 anyway, so...

23 Q. Did he inform you for the 2004 charge that he was
24 incarcerated?

25 A. I'm sorry. I don't understand.

1 Q. Well, for the -- on his -- in the Department of
2 Corrections' sheet for previous offenses for the crack
3 distribution within proximity of a school back on,
4 sentence start date of 11-12-2004, did he inform you that
5 he was in fact incarcerated at that time?

6 A. Yes, yes, he did. And I brought that up during the
7 plea.

8 Q. Okay.

9 THE COURT: Anything further, Mr. Moorehead?

10 MR. MOOREHEAD: If I can have just one brief second,
11 Your Honor. (Pause:)

12 No, I don't believe so.

13 THE COURT: Anything further?

14 MR. CORNEY: Nothing further from the State, Your
15 Honor.

16 THE COURT: Thank you, Mr. Wood. Thank you very much
17 for your courtesy.

18 MR. WOOD: Yes, Your Honor. Thank you.

19 Should I stay on the phone? Is there going to be some
20 conclusion to this?

21 THE COURT: Well, I'm going to give them an
22 opportunity to make any further statement. Do you have
23 any further witnesses from the State?

24 MR. CORNEY: No further witnesses.

25 THE COURT: Anything from the Applicant?

1 I mean, you're welcome to stay on. But if you want to
2 get back to moving boxes, we'll certainly allow you to do
3 that, too.

4 MR. WOOD: Well, actually, I would like to stay on.
5 You know, I understand and I support my, I guess, my
6 ex-client's constitutional right to say I was ineffective
7 counsel, but I would like to stay on to the conclusion of
8 this hearing.

9 THE COURT: Let me ask you something. Do you all have
10 a copy of his rap sheet in front of you?

11 MR. MOOREHEAD: Yes, Your Honor.

12 THE COURT: All right. It shows he had a conviction
13 in 2000 of something? A drug conviction?

14 MR. MOOREHEAD: 2000 drug, crack distribution
15 proximity of a school.

16 THE COURT: And then he had something, you say, in
17 2004?

18 MR. CORNEY: On the sheet it says but --

19 THE COURT: What is that, a probation revocation
20 because of the 2000 charge?

21 MR. CORNEY: Yeah, these are just SCDC records. These
22 aren't rap sheets.

23 THE COURT: Then he has another conviction in 2005,
24 marijuana?

25 MR. MOOREHEAD: Yes.

1 THE COURT: So he had two prior conviction regardless.

2 MR. CORNEY: From his SCDC record, that's what it
3 looks like.

4 THE COURT: Pardon me?

5 MR. CORNEY: From his SCDC record that's what it looks
6 like, but I don't know if he's contesting the 2004 charge
7 or the 2005 charge.

8 THE COURT: I think he admitted on the stand: Didn't
9 you admit you had a marijuana conviction?

10 THE APPLICANT: Yes, Your Honor.

11 THE COURT: And you had the 2000 distribution
12 conviction?

13 THE APPLICANT: 2000, yeah.

14 THE COURT: So there was two priors prior to this. So
15 this would have been his third or greater; correct?
16 That's not an issue in this case then; is it?

17 MR. MOOREHEAD: Doesn't appear to be, Your Honor.

18 THE COURT: All right. Anything you want to tell me,
19 Mr. Moorehead?

20 MR. MOOREHEAD: Just, Your Honor, that, you know,
21 according to Mr. Williams' testimony and speaking with him
22 that he was never afforded a reasonable opportunity to
23 review this videotape and make a rational decision based
24 on advice of counsel as to whether he -- even if he
25 exposed himself to three strikes, about proceeding to go

1 to trial because he was only possessing .57 grams.

2 And, Your Honor, it's Mr. Williams' assertion that,
3 you know, he should have been advised of that, and that he
4 shouldn't have been subjected to the sentence that he was
5 actually incarcerated for, you know, despite what's on the
6 transcript.

7 And it's his assertion that he was not given effective
8 assistance of counsel and he would have made an entirely
9 different decision if he would have known exactly all the
10 options that he had and was specifically able to review
11 the videotape beforehand.

12 THE COURT: Anything you want to say?

13 MR. CORNEY: I don't think I have anything to bring
14 before you after the testimony today and the facts in the
15 record and his prior record, Your Honor. I believe that
16 all speaks for itself.

17 And I think it's just ridiculous to say he was
18 ineffective to where -- that he had already said the
19 solicitor was ready to lock him up for life without parole
20 on a third strike. And he got 20 years on both of these
21 charges and he's only going to serve 15 years on it.

22 That's all I have, Your Honor.

23 THE COURT: I normally don't rule from the bench but
24 many times I like to give the Applicants the opportunity
25 that they ask for to go back and be retried on all the

1 charges that they had pending so that they can see whether
2 they really made a smart decision when they did that and
3 sometimes you got to protect them from themselves.

4 I'm going to deny his application. I'm going to find
5 that clearly this was a case where he was charged with
6 selling. He was -- all the evidence seemed to indicate
7 that the evidence was that he was selling. They had a
8 video of which he received the still photographs of the
9 video. Apparently that seems to be a fairly common
10 occurrence here in Aiken County that they, because of the
11 videos they just make stills of the video.

12 And it just, you know, he's got the benefit of his
13 bargain. I think he clearly understood. He acknowledged
14 today that he was just selling and he's just unhappy with
15 sentence and I can certainly understand that. It's a
16 severe sentence.

17 But if the State will prepare me an order. I'm going
18 to find that the representation was more than sufficient
19 in this case.

20 MR. CORNEY: Thank you, Your Honor.

21 MR. MOOREHEAD: Thank you.

22 THE COURT: All right. Thank you all.

23 MR. WOOD: Gentlemen, it was -- well, have a nice day.

24 THE COURT: Yes, sir.

25 END OF CASE: 11:15 A.M.

* * * * *

CERTIFICATE OF REPORTER

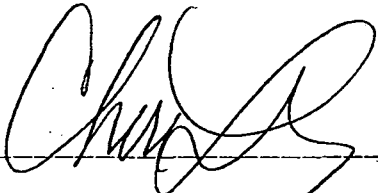
STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

I, Cheri L. Young, Registered Professional Reporter and Official Court Reporter for the State of South Carolina, Second Circuit-At Large, do hereby certify that the foregoing is a true, accurate and complete transcript of record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Aiken County, on the 15th day of July, 2011.

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

I have hereunder set my hand this 23rd day of May, 2013.



Cheri L. Young, RPR
Official Court Reporter

Early, III. He was sentenced to fifteen (15) years imprisonment for Distribution of Cocaine Base Within Proximity of a School and to twenty (20) years imprisonment for Distribution of Cocaine Base (2nd Offense). The sentences were to be served concurrently. A notice of appeal was filed, but the appeal was dismissed by the South Carolina Court of Appeals on February 22, 2010. The Remittitur was sent on March 16, 2010.

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

1. Ineffective assistance of counsel.
 - a. Failed to object to use of prior charge for purposes of sentence enhancement.
 - b. Failed to advise as to lesser-included offense of simple possession could be a possibility at trial.
 - c. Failure to object to illegal sentence.
 - d. Failure to object to sentence which exceeds the maximum allowed by law.
2. Involuntary guilty plea.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief 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. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

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, 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, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland). With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Failure to Object to Use of Prior Conviction For Enhancement of Sentence

Applicant has alleged counsel was ineffective for failing to object to the State using prior charges to enhance his Distribution of Cocaine Base charge to a third offense. Namely, Applicant

alleges that during the plea hearing, the solicitor stated Applicant had a prior drug charge from 2004 that Applicant alleges could not be on his record as he was incarcerated in 2004 when the charge occurred. This misstatement was brought to the Court's attention immediately by plea counsel on the record. Additionally, this misstatement did not affect the charges Applicant plead to as Applicant testified at the PCR that he did in fact have a prior conviction for distribution of crack within proximity of a school or park in 2000, as well as a possession of marijuana with intent to distribute charge from 2005. Applicant also testified that as part of the plea negotiations in this case, the solicitor agreed to *nolle prosequere* two (2) pending drug distribution charges. Based on these facts, this Court finds that Applicant's allegation involving improper use of prior convictions for enhancement purposes is without merit. Including the distribution charge which Applicant pled to here (2010-GS-02-2009), Applicant has a total of four (4) total drug charges that could have been brought before the court for enhancement purposes. Applicant ultimately pled to this drug charge as a second offense, which was a generous plea deal considering Applicant could have been facing life without parole under the "three strike" rule in South Carolina. Therefore, the Court finds there was no objection to be made by plea counsel in this regard as there were more than sufficient prior drug charges to enhance Applicant's charge to at least a second offense.

Failure to Advise of Lesser Included Sentence

Applicant has also alleged that counsel was ineffective for failing to advise Applicant of the possibility of the lesser included offense of simple possession of crack, as the amount Applicant sold was less than one gram. Counsel testified at the PCR hearing that he thoroughly investigated the lesser offense as well as had several discussions with Applicant about the potential of seeking a lesser offense, both through a plea and at trial. Counsel articulated that

after speaking with the prosecutor on the case several times regarding the possibility of pleading to a lesser offense, the solicitor's office made it clear that they would not offer a plea to "simple possession" for Applicant. Further, counsel testified that based on his review of the State's discovery, it was very unlikely that any jury would buy into a lesser charge of simple possession. According to counsel's testimony, there was a videotape of the controlled drug purchase in which the camera clearly shot Applicant holding a gun in one hand and a bag of what appeared to be crack in the other, at which time he undertook selling the crack to the confidential informant. Counsel testified that he had reviewed what was on the tape with Applicant during his meetings with him, as well as provided Applicant with still-shots from the videotape, and discussed the likelihood that a jury would not buy into a lesser included offense based on that videotape. Finally, counsel testified it was in fact Applicant's ultimate decision whether or not to enter this plea for the negotiated sentence, which Applicant made the voluntary and knowing decision to do based on the evidence against him, his prior criminal history and potential sentences he was facing.

Upon resting their case at the PCR hearing, the Court inquired into Applicant's prior drug convictions at which time Applicant and PCR counsel conceded Applicant's prior record, including a 2000 distribution of crack charge, a 2005 possession of marijuana with intent to distribute charge, the charge pled to here, as well as two additional distribution charges that were dropped by the solicitor. Based on these facts, this Court finds that not only did plea counsel fully investigate the possibility of a lesser offense, but he did his best to negotiate the best plea offer possible for Applicant based on the circumstances, kept Applicant informed of all possible plea deals and trial strategies available, and gave the Applicant all the information necessary for him to make a knowing and voluntary decision whether to enter this plea. Ultimately, Applicant

made the decision that it was in his best interest to enter this plea to a second drug offense with full knowledge of the negotiated sentence that would be imposed.

Failure to Object to Illegal Sentence

Applicant finally alleges counsel was ineffective for failing to object to what he calls an "illegal sentence" imposed by the plea court. This Court finds that this allegation is also without merit. Based on the testimony of Applicant and plea counsel, Applicant was fully advised by both counsel and the court of the maximum and minimum sentences he was facing based on the charges. Additionally, Applicant entered his plea under a negotiated sentence which he fully knew the conditions of. Under S.C. Code § 44-53-375(B)(2), the penalty for distribution of cocaine base (crack), second offense is "not less than five years nor more than thirty years, or fined not more than fifty thousand dollars, or both." All sentences recited to Applicant on the plea record, as well as the sentences imposed as part of the negotiated sentence, are within the limits provided for by law and therefore are not illegal sentences. "A sentence is not excessive if within statutory limitations and not the result of partiality, prejudice or corrupt motive." Cummings v. State, 274 S.C. 26, 260 S.E.2d 187 (1979). The Court finds no deficiency in representation on plea counsel's part in regards to objecting to an illegal sentence.

CONCLUSION

The Court finds Applicant has failed to carry his burden in proving ineffective assistance of counsel based on the Strickland v. Washington two-prong test. Applicant got the benefit of the bargain for which he pled after being afforded full, competent assistance of plea counsel. Counsel acted reasonably based on professional norms at all times during his representation of Applicant and Applicant has failed to present any evidence to the contrary. Based on the record and the facts adduced at the PCR hearing, this Court finds and concludes that the Applicant has

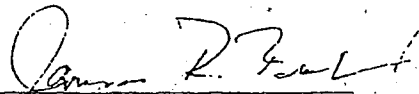
not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

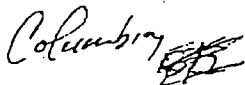
IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 2 day of August, 2001.



James D. Barber, III
Presiding Judge
Second Judicial Circuit



, South Carolina.

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

Joe Larke Williams, 266611)

Plaintiff)

v.)

State Of South Carolina)

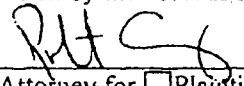
Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.

2010-CP-02-1470

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Jeffrey Moorehead, Bar No. Address: Post Office Box 5505 Aiken SC 29804 phone: (803) 648-0421 fax: e-mail: other:	Defendant's Attorney: Robert Corney, Bar No. Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Estimated Time Needed: Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	July 21, 2011 Date submitted
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: <input checked="" type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:	
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE: _____ CODE: Date:
CLERK'S VERIFICATION	
Collected by: _____ <input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	

Date Filed: 31 August 2011
 3:00 pm

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

JOE LARKE WILLIAMS,)
#266611)

PLAINTIFF'S
RULE 59e MOTION

Plaintiff,)

vs.)

2010-CP-02-1470

STATE OF SOUTH CAROLINA,)

Defendant.)

TO THE DEFENDANT AND ITS ATTORNEY, ROBERT CORNEY:

The Defendant files the aforementioned Rule 59e motion:

1. Defendant is informed and believe that the Order of Dismissal Order should be reviewed and modified as follows:

A. The original trial court did not have subject matter jurisdiction to accept Plaintiff's plea as he was improperly indicted. Plaintiff challenges the indictment's sufficiency, alleging that trial counsel failed to properly move to quash the indictment in accordance with SC Code of Laws §17-19-90. A claim of this nature is not subject to the procedural bar in the Uniform Post-Conviction Relief Procedure Act., notably the statute of limitations and successiveness (SC Code §17-27-45 and §17-27-90). Further, that Plaintiff can raise this issue at anytime. (See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001).

B. Plaintiff also alleges Interception of Wire, Electronic or Oral Communication, SC Code of Laws §17-30-10. In Plaintiff's Brady motion,


the Attorney General's office nor a Judge of any Court signed any documents for the sheriff's office or the solicitor's office to send a C/I into the residence wearing any kind of electronic device. No production of any paperwork was made by the sheriff's office, the solicitor's office, or the Attorney General's office in Plaintiff's Brady motion.

2. The undersigned affirms, pursuant to SCRPC 11, that prior to the filing of this motion, he has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the motion, or that consultation would serve no useful purpose or could not be timely held. Further, said attached motion is not interposed for delay and, to the best of my knowledge, information and belief, there is good ground to support said motion.

WHEREFORE, the Defendant moves this Court for relief pursuant to SCRPC 59 for an order altering or amending the judgment.

Aiken, SC
9/12/2011

By:



Jeffrey R. Moorehead
Attorney for Plaintiff
Post Office Box 5505
Aiken, South Carolina 29804
Telephone: 803-648-0421

STATE OF SOUTH CAROLINA)
 COUNTY OF AIKEN)
)
 JOE LARKE WILLIAMS,)
 #266611)
)
 Plaintiff,)
)
 vs.)
)
 STATE OF SOUTH CAROLINA,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 SECOND JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

2010-CP-02-1470

I, Jeffrey R. Moorehead, hereby certify that a true and correct copy of the PLAINTIFF'S
 RULE 59e MOTION were all served on the following persons on September 12, 2011 by US First
 Class Mail Postage Pre-Paid:

original filed with: Aiken County Court of Common Pleas
 Attn.: Clerk of Court
 POB 583
 Aiken SC 29802

The Honorable James Barber III
 POB 2766
 Columbia SC 29202

Robert Corney Esq.
 Atty. General Office
 POB 11549
 Columbia SC 29211

By: 
 Jeffrey R. Moorehead

cc: Joe Larke Williams

STATE OF SOUTH CAROLINA)
 COUNTY OF AIKEN)

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

Joe Larke Williams, # 266611,)

2010-CP-02-1470)

Applicant,)

v.)

RETURN TO MOTION TO ALTER OR)
 AMEND A JUDGMENT PURSUANT)
 TO RULE 59(e), SCRCP)

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of the Applicant's motion to alter or amend pursuant to Rule 59(e), SCRCP, received by Respondent on September 14, 2011. This matter originally came before the Court by way an Application for post-conviction relief (PCR) filed June 23, 2010. Respondent made its Return and Motion to Dismiss the application on or about December 16, 2010, and an evidentiary hearing into the matter was convened before this court on July 15, 2011. By order dated August 2, 2011, and filed August 31, 2011, the application was denied and dismissed with prejudice. This motion follows.

In the motion, Applicant alleges the Order of Dismissal entered on August 31, 2011, should be modified to show that, because of deficiencies in the indictment which trial counsel did not object to, the trial court lacked subject matter jurisdiction to accept Applicant's plea. Further, Applicant alleges the State failed to disclose the existence of improperly intercepted wire, electronic or oral communications used against Applicant in its discovery file turned over the Applicant.

Respondent submits that Applicant has failed to set forth a sufficient reason to persuade this Court to alter or amend the pending final order. Applicant's first contention is without merit. Defects in the indictment do not affect subject matter jurisdiction. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002) [*Defects in the*

language of an indictment do not divest an otherwise proper court of subject matter jurisdiction over a case.] The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). *See also* S.C. Code Ann. § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases and has nothing to do with the indictment document. *See Gentry; Dove v. Gold Kist, Inc.*, 314 S.c. 235, 442 S.E.2d 598 (1994). Further, “circuit courts obviously have subject matter jurisdiction to try criminal matters.” *Gentry* at 101, 499. Therefore, Applicant’s allegation is without merit.

More importantly, neither of the two issues presented in this motion were raised by Applicant either through his application for PCR or at the PCR evidentiary hearing; Applicant has attempted to improperly bring these allegations forward for first time through this Rule 59(e) Motion to Alter or Amend. Any allegations that could have been raised by Applicant at the evidentiary hearing are deemed waived and cannot be brought forward in a post-trial motion or through a successive PCR application.

Therefore, Respondent submits that Applicant has not set forth any sufficient grounds to persuade this Court to alter or amend the judgment. Respondent further submits that oral argument would not aid in the reconsideration of the original judgment as the previous order fully comports with the requirements of Rule 52(a), SCRCP.

WHEREFORE, having made its Return to Applicant’s Rule 59(e) Motion to Alter or Amend a Judgment, the Respondent requests that the motion be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

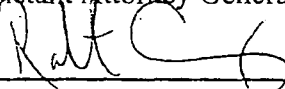
[Signature on Next Page]

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

ROBERT D. CORNEY
Assistant Attorney General

By:



ATTORNEYS FOR RESPONDENT
P.O. Box 11549
Columbia, S.C. 29211

September 15 2011.

Form 4

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2010CP021470

Joe Larke Williams

vs.

State of South Carolina

Plaintiff

RECEIVED
JAN 16 2013

S.C. SUPREME COURT

CHECK ONE:

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):
 - Rule 12(h), SCRCP;
 - Rule 41(a), SCRCP (Vol. Nonsuit);
 - Rule 43(k), SCRCP (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):
 - Rule 40(j) SCRCP;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____

DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):

- Affirmed;
- Reversed;
- Remanded;
- Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Applicant's Rule 59(e) Motion Denied without oral argument

Dated at Columbia, South Carolina, this 15th day of September, 2011.

James R. Dault
PRESIDING JUDGE

This judgment was entered on the 19 day of Sept, 2011, and a copy mailed first class this 19 day of Sept, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Jeffrey R. Moorehead

ATTORNEY(S) FOR THE PLAINTIFF(S)

Robert Corney

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard by Anita Knoepfle
Clerk of Court

SCRCP APP-24/FORM 4 FILED

9/19/2011

Liz Godard
C.C.P. & G.S.
Anita Knoepfle
Deputy Clerk

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this 17 day of December 2012.
Liz Godard
C.C.C.P. & G. S., Aiken County, S.C.
Shannon Gowers
Deputy Clerk

WITNESSES

Aiken County Sheriff

Sean Zeigler

Law Enforcement Case #: 09-029085

DOCKET NO. 2009GS0202008

The State of South Carolina

County of Aiken

ARREST WARRANT NUMBER

M010631

FILED November 5, 2009

P. J. [Signature]
Deputy Clerk
(Sealed at [Signature])

COURT OF GENERAL SESSIONS

NOVEMBER 2009 TERM 2009

THE STATE

vs.

JOE LARKE WILLIAMS, JR.

ACTION OF GRAND JURY

True Bill

CDR #: 0108

Indictment for

DISTRIBUTION OF COCAINE BASE
(CRACK COCAINE) WITHIN PROXIMITY
OF A SCHOOL

§ 44-53-0445(B)(2)

J. STROM THURMOND, SOLICITOR

VERDICT

[Signature]
Foreperson of Grand Jury

Date: November 5, 2009

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

INDICTMENT FOR
DISTRIBUTION OF COCAINE BASE (CRACK
COCAINE) WITHIN PROXIMITY OF A SCHOOL

§ 44-53-0445(B)(2)

At a Court of General Sessions, convened on November 9, 2009, the Grand Jurors of Aiken County present upon their oath:

That **JOE LARKE WILLIAMS, JR.** did in Aiken County, South Carolina on or about May 26, 2009, knowingly or intentionally distribute Cocaine Base (Crack Cocaine), a controlled substance under provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina (1976), as amended, while in, on, or within a one-half mile radius of the grounds of a public middle school, to wit: Schofield Middle School, such distribution not having been authorized by law.

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


STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

Phillip Anders

Law Enforcement Case #: 09-029085

DOCKET NO. 2009GSS0202009

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2009

ARREST WARRANT NUMBER
M010623

FILED November 5 2009
Deborah J. ...
Deputy Clerk

ACTION OF GRAND JURY

True Bill

JOE LARKE WILLIAMS, JR.

THE STATE
vs.

CDR #: 3039

Indictment for

DISTRIBUTION OF COCAINE BASE
(CRACK COCAINE)

§ 44-53-0375(B)(3)

For person of Grand Jury
Date: November 5, 2009

VERDICT

For person of Petit Jury
Date:

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

INDICTMENT FOR
DISTRIBUTION OF COCAINE BASE (CRACK
COCAINE)

§ 44-53-0375(B)(3)

At a Court of General Sessions, convened on November 9, 2009, the Grand Jurors of Aiken County present upon their oath:

That JOE LARKE WILLIAMS, JR. did in Aiken County, South Carolina, on or about May 26, 2009, distribute to an undercover operative a quantity of Cocaine Base (Crack Cocaine), a controlled substance under provisions of §44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such distribution not having been authorized by law.

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


J. STROM THURMOND, SOLICITOR