

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

---

BENJAMIN L. MOORE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001172

---

A P P E N D I X

---

ROBERT M. PACHAK  
Appellate Defender

ALAN WILSON  
Attorney General

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

KAREN RATIGAN  
Assistant Attorney General

P. O. Box 11549  
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....i

GUILTY PLEA HEARING TRANSCRIPT (JUNE 23, 2011).....1

APPLICATION FOR POST-CONVICTION RELIEF.....13

RETURN.....33

POST-CONVICTION RELIEF HEARING TRANSCRIPT.....38

ORDER OF DISMISSAL.....69

CLERK OF COURT DOCUMENTS.....77



INDEX OF WITNESSES

BENJAMIN MOORE

Examination By The Court . . . . . 4

» > o < «

Sentencing . . . . . 11

Certificate of Reporter . . . . . 12

1 THE CLERK: Your Honor, this is case number  
2 2011-GS-23-561, Benjamin Logan Moore, indictment for  
3 trafficking ephedrine, pleading to the same, it is a true  
4 bill. 2011-GS-23-562, indictment for manufacturing  
5 methamphetamine, pleading to manufacturing  
6 methamphetamine, second. It is a true bill.  
7 2011-GS-23-563, indictment for possession of a weapon  
8 during the commission of a violent crime, pleading to the  
9 same. It is also a true bill.

10 Would you, please, raise your right hand.

11 BENJAMIN MOORE, after being duly sworn,  
12 testified as follows:

13 THE CLERK: Thank you.

14 THE COURT: Mr. Robinson, you've had the  
15 opportunity to fully consult with your client and agree  
16 with his decision to waive his right to plead guilty  
17 today, sir?

18 MR. ROBINSON: Yes, sir, Your Honor.

19 EXAMINATION

20 BY THE COURT:

21 Q Mr. Moore, I am going to advise you of your rights,  
22 if you would just listen to me patiently, I'm going  
23 to ask if you understood all of them, okay. You have  
24 a right to a jury trial. If you were to have a jury  
25 trial the State would have the burden of proving you

1 guilty beyond a reasonable doubt to a jury of 12 of  
2 your peers. You would not have the burden of proving  
3 yourself innocent in that proceeding. Because under  
4 the Constitution you have a right to remain silent.  
5 Which means you wouldn't have to say, do or prove  
6 anything to that jury. You could require the State  
7 to meet its burden of proving you guilty beyond a  
8 reasonable doubt. You, however, could, if you  
9 elected to take the stand in that proceeding and you  
10 could testify and tell the jury your side of the  
11 story and present witnesses and evidence. You could  
12 make motions before the Court to protect your legal  
13 interest. You could present defenses and you could  
14 also cross-examine any of the State's witnesses.  
15 Including those persons who are accusing you of this  
16 crime. Do you understand all of your rights?

17 A Yes, sir.

18 Q You want to waive them and plead guilty today?

19 A Yes, sir.

20 Q All right. Indictment 2011-561, you're pleading  
21 guilty to possession of ephedrine between 100 --  
22 let's see, less than 100 grams, second offense.

23 What's the max for that?

24 MS. SEAY: Twenty-five years. It's seven to 25  
25 years.

BENJAMIN MOORE-EXAMINATION BY THE COURT

1 BY THE COURT:

2 Q You recognize that you could be sentenced to a period  
3 of time between seven and 25 years for that, sir?

4 A Yes, sir.

5 Q Okay. And how do you wish to plead to that?

6 A Guilty.

7 Q In Indictment 2011-562, you're charged with  
8 distribution of methamphetamine, second offense.

9 What's the max on that?

10 MS. SEAY: Manufacturing meth, second offense,  
11 five to 30 years.

12 BY THE COURT:

13 Q Do you understand that you can receive between five  
14 and 30 years for that offense, sir? And you do  
15 recognize that to be a condition to and consecutive  
16 to the time that you could receive on the other  
17 charges?

18 A Yes, sir.

19 Q Okay. How do you wish to plead to that, sir?

20 A Guilty.

21 Q In Indictment 2011-563, you're charged with  
22 possession of a weapon during a violent crime.

23 Is that a five year offense?

24 MS. SEAY: Yes, sir.

25

1 BY THE COURT:

2 Q Do you recognize that you could be sentenced up to  
3 five years of incarceration for that, sir?

4 A Yes, sir.

5 Q Okay. How do you wish to plead to that, sir?

6 A Guilty.

7 Q Has anyone forced or threatened or made you plead  
8 guilty?

9 A No, sir.

10 Q Pleading guilty of your own free will because you are  
11 guilty, sir?

12 A Yes, sir.

13 Q Are you under the influence of any drugs or alcohol  
14 today?

15 A No, sir.

16 Q Suffer from any mental sickness that would affect  
17 your ability to understand what we're doing?

18 A No, sir.

19 Q Have you had the opportunity the discuss this matter  
20 with Mr. Robinson as much as you need to?

21 A Yes, sir.

22 Q Satisfied with his services?

23 A Yes, sir.

24 Q Have you understood all the questions I've asked you  
25 today?

1 A Yes, sir.

2 Q Do you have any questions that you would like to ask  
3 me?

4 A No, sir.

5 Q Or Mr. Robinson?

6 A No, sir.

7 Q You have 10 days to appeal my sentence.

8 I'll be happy to hear the facts.

9 MS. SEAY: Thank you, Your Honor, may it please  
10 the Court. On January 18th, 2010, Greenville County  
11 Sheriff's Office vice officers executed a search warrant  
12 on this Defendant's residence. They discovered the  
13 suspect was present along with three people who purchased  
14 pseudoephedrine for him. They located various containers  
15 that contained liquid methamphetamine or meth precursor  
16 and waste. Additionally, they found over 600 ephedrine  
17 tablets, syringes, coffee filters, tubing, baggies, over  
18 \$1,500.00, numerous riffles and pistols, two propane  
19 tanks, three sets of scales, pyrex speakers [sic] and  
20 numerous other items and caustic chemicals.

21 Various items had small amounts of meth on them  
22 with 2.6-grams of finished product. Additionally, the  
23 garage had a strong odor of ammonia which is indicative of  
24 meth manufacturing. Deputies stated that this was one of  
25 the largest meth labs that they had encountered.

1           The plea agreement in this case is a seven to 10  
2 year range sentence and all to run concurrent.

3           THE COURT: Okay.

4 BY THE COURT:

5 Q    Mr. Moore, you heard those facts, sir, is that what  
6 happened?

7 A    Yes, sir.

8 Q    And, sir, I forgot to ask you before and I apologize  
9 to you, you recognize that distribution and  
10 manufacturing of methamphetamine is classified as a  
11 violent offense?

12 A    Yes, sir.

13 Q    And you recognize that because it is classified as a  
14 violent offense, it effects the amount -- or, excuse  
15 me, percentage of time that you do on the sentence,  
16 you recognize that?

17 A    Yes, sir.

18 Q    Okay. And you still want to enter your plea of  
19 guilty, sir?

20 A    Yes, sir.

21           THE COURT: Okay, I will accept the plea. I  
22 find it's entered freely and voluntarily and with the  
23 advice of counsel with whom Mr. Moore indicates he's  
24 satisfied. There's a substantial, factual basis for the  
25 same.

1 Any prior record?

2 MS. SEAY: Yes. 1991, a federal conviction for  
3 PWID cocaine. And in 1997, possession of cocaine.

4 THE COURT: Does that sound like your prior  
5 record, Mr. Moore?

6 MR. MOORE: Yes, sir.

7 THE COURT: Mr. Robinson, I'll be glad to hear  
8 from you, sir.

9 MR. ROBINSON: May it please the Court?

10 THE COURT: Yes, sir.

11 MR. ROBINSON: Your Honor, the negotiations that  
12 have taken place between Mr. Steinberg and myself have  
13 been a seven -- with a seven to 10 year cap in this case  
14 to run concurrent. Your Honor, he's been very pleasant  
15 for me to work with. He's always come to all of his  
16 appointments with me. He does have a child that he takes  
17 care of. He -- if you notice his record, most of his in  
18 the past -- the last charge he had was in 1990 something,  
19 whatever the charge was. But, you know, he's really sorry  
20 for what happened. He's very remorseful. He's doing the  
21 best he can, he knows that he made a mistake.

22 We'd ask, Your Honor, to consider in this case,  
23 based on the record that he has, consider a seven year  
24 sentence in this matter. He only did a few --

25 How many days did you do?

1 MR. MOORE: Twenty-three days.

2 MR. ROBINSON: He did 23 days in jail, Your  
3 Honor, in this matter. He does work full-time. But, Your  
4 Honor, we'd ask for the minimum amount which is seven  
5 years in this case if the Court does see fit in this  
6 matter.

7 THE COURT: Mr. Moore, I'll be happy to hear  
8 from you, sir. Is there anything that you'd like to tell  
9 me?

10 MR. MOORE: I just made a bad mistake and I  
11 stand accountable for what I did. I'm sorry.

12 SENTENCING

13 THE COURT: I do find that range is appropriate.  
14 That's probably the range in which I would have found  
15 myself not withstanding any recommendation. Seven years  
16 is the minimum, obviously. Because -- excuse me, seven  
17 years is the minimum. So I have to give you that, I don't  
18 have much choice in that matter. And because you have a  
19 fairly small minor record, the lower end of the range is  
20 appropriate. But you do have some record, okay. I'm  
21 taking that into consideration. Sentence of the Court is  
22 that you be committed to the Department of Corrections for  
23 a period of eight years. And that's both on the  
24 manufacture of methamphetamine and on possession of  
25 ephedrine to run concurrent, credit for time served, 23

1 days. Then on possession of a weapon, that's five years,  
2 concurrent, credit for 23 days.

3 Mr. Moore, good luck to you, sir.

4 MR. ROBINSON: Thank you, Your Honor.

5 MS. SEAY: Thank you, Your Honor.

6 (WHEREUPON, the proceedings were concluded.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25



FORM 5

STATE OF SOUTH CAROLINA )  
County of GREENVILLE )

IN THE COURT OF COMMON PLEAS

Benjamin Logan MOORE 346663  
Full name and prison number (if any) of Applicant )

2011-CP-23-

08176  
9 2011 JUN 6 AM 10:26

v. )

APPLICATION FOR

State of South Carolina )  
)  
)  
)  
)

POST-CONVICTION RELIEF

**INSTRUCTIONS B READ CAREFULLY**

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

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

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

1. Place of detention WATER BEE RIVER Correctional Institution  
P.O. Box 189 Rembert, SC 29128
2. Name and location of Court which imposed sentence GREENVILLE COURT  
of General Sessions
3. Name(s) of co-defendant(s) (if any) \_\_\_\_\_
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:  
 (a) 1 Trafficking cocaine  
2 manufacturing meth 2nd offense  
3 possession of a firearm during a violent crime

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) JUNE 23, 2010/manufacturing meth (5 yrs)
- (b) Trafficking PSEUDOEPHEDRINE (8 yrs)
- (c) Possession of A firearm during a violent crime (8 yrs)

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? NO

8. If you answered Ayes@ to (7), list:

- (a) the name of each Court to which you appealed:
  - i. N/A
  - ii. N/A
  - iii. N/A

- (b) the result in each such Court to which you appealed:
  - i. \_\_\_\_\_
  - ii. N/A
  - iii. \_\_\_\_\_

- (c) the date of each such result:
  - i. \_\_\_\_\_
  - ii. N/A
  - iii. \_\_\_\_\_

- (d) if known, citations of any written opinion or orders entered pursuant to such results:
  - i. \_\_\_\_\_
  - ii. N/A
  - iii. \_\_\_\_\_

9. If you answered Ano@ to (7), state your reasons for not so appealing:

- (a) Counsel failed to inform me that I had a right to appeal

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

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

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

(a) SEE Attachment

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

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

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

(a) see Attachment

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

(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? \_\_\_\_\_

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? \_\_\_\_\_

(d) any other petitions, motions or applications in this or any other Court? \_\_\_\_\_

13. If you answered Ayes<sup>e</sup> to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

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

(c) the disposition thereof:

NA

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

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

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

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

(d) the date of each such disposition:

NA

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

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

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

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

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

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

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

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

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

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

NO

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

(a) which grounds have been presented:

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

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

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

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

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

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) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea? YES
- (b) your trial, if any? NA
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

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

- (a) the name and address of each attorney who represented you:
  - i. MR. SCOTT ROBINSON  
13th JUDICIAL CIRCUIT
  - ii. GREENVILLE County Courthouse  
305 East North Street (Rm 123)
  - iii. GREENVILLE, SOUTH CAROLINA 29601
- (b) the proceedings at which each such attorney represented you:
  - i. General Sessions Court
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

I would move the Court for A [Discharge]  
of my imprisonment under S.C. Code ANN 317-27-80

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA )  
County of Sumter )

VERIFICATION

I, Benjamin Logan Moore, 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.

Benjamin Logan Moore

SWORN to and subscribed before me this 30<sup>th</sup> day of November 2011.

Kenneth D. Heath (L.S.)  
Notary Public

My Commission Expires: 3/15/2011

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

I, Benjamin Logan Moore, 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.

Benjamin Logan Moore  
Applicant

SWORN or affirmed to and subscribed before me this  
30<sup>th</sup> day of December 2011.

Renee D. Hatfield  
Notary Public

My Commission Expires: 3/31/2012

IN THE STATE OF South Carolina  
County of GREENVILLE  
Benjamin Logan Moore 346663  
Applicant

IN The Court of Common  
pleas 13<sup>th</sup> Judicial Circuit

VS

C/A NO.

FILED - COURT OF COMMON PLEAS GREENVILLE COUNTY SOUTH CAROLINA  
2011 DEC - 9 AM 10: 26

state of South Carolina

Respondent

Amendment To PCR Application

Comes Now, \_\_\_\_\_ and I would show  
unto This Court of Common pleas respectfully The following :

[ PREAMBLE ]

This is an [A]mendment to my PCR Application submitted To this  
Court pursuant To The S.C. Code ANN § 17-27-10  
This Amendment is submitted to this Court pursuant to rule 71(d)  
SCRCP. This Amendment is not to be Construed to [E]rase any of  
my prior Allegations, but amplifies [m]ore grounds for RELIEF for  
Consideration on The merits by This Court.

Hence to support section [10] of my PCR Application, I would forwith the following Language

[10] (a) I would aver that The Circuit Court of Greenville County Lacked jurisdiction to entertain my Case, and sentence me, Thus Violating my Rights under The S.C. Constitution Art. I § section 3 and The 14<sup>th</sup> Amendments to The U.S. CONSTITUTION.

[10] (b) I would aver that The Circuit Court of Greenville County Lacked subject matter jurisdiction to entertain my case and sentence me, Thus Violating my rights under The S.C. Const. Art. I § section 3, and under The 14<sup>th</sup> Amendment to the U.S. Constitution.

[10] (c) I would aver that I received ineffective assistance of Court Counsel, Thus Violating my rights under The S.C. Const. Art. I § section 3 + 14, and under the 6<sup>th</sup> and 14<sup>th</sup> Amendments to The U.S. Constitution.

STATE of South Carolina  
County of GREENVILLE  
Benjamin Logan Moore 346663

IN THE COURT of Common Pleas,  
13<sup>th</sup> Judicial Circuit

Pocket NO: \_\_\_\_\_

VS

STATE of  
South Carolina

FILED - CLERK OF COURT  
GREENVILLE, S.C.  
2011 DEC - 9 AM 10:24

Respondent memorandum of Law To  
Support PCR Application

: To The PCR Hearing Court Judge

Hence The hereto Captioned Applicant would assert and invoke the S.C. Code ANN. § 17-27-20 sub sections (a)(1), (a)(2), and (a)(4), for an exclusiveness of A remedy in this focus, scope, and venue therein The supporting memorandum to support The PCR Application The Applicant [has] used [Federal Law] which is [Cognizable in] A PCR Hearing, *Finklea vs State*, 273 S.C. 157, 255 S.E. 2d 447 (1979). Likewise The Applicant also raises A issue of subject matter jurisdiction, inasmuch This issue can be raised at [ANY] Time including in A PCR Hearing, see *Mark F. Robertson vs State*, 276 S.C. 356, 278 S.E. 2d 770 (1981) and its progeny.

Applicant avers that Counsel was ineffective for failing to come and visit him and having a informed evaluation of his potential defenses, and discussing the realities of his case. It must be reiterated that the [S]ame standard for assessing ineffective Assistance of Counsel claims, enunciated in Strickland vs Washington, supra. This Court concludes that informed evaluations of [P]otential defenses to charges, and a meaningful discussion with ones Client of the realities of his case are [C]orner [S]tones of Effective Assistance of Counsel. Stevens' vs Johnson, 575 F. Supp. at 885 (1983) citing Gaines vs Hopper, 575 F.2c 1147, (5th Cir. 1978). Inasmuch it would defy logic under the Strickland doctrine to find Counsel effective when s/he has [N]ever interviewed the client to prepare a defense and because Smith vs Robinson, supra is [F]ederal law as determined by the U.S. Supreme Court, This Court is [O]b bound to enforce the holding in this precedent as a matter of [C]onstitutional law, (U.S. Const. VI 32) The Court is mindful of the Common law maxim "Eadem Est Ratio, Eadem Est Lex", which means "if The Reason is the same, The Law is the same", and this Court concludes that Counsel cannot be effective assistance of Counsel if Counsel fails to visit the client and loses the case, therefore Court Counsel is also ineffective for failing to interview the client and loses the case. There is a reasonable probability that if Counsel would have visited the Applicant and discussed the case the material variance in this case would have been disclosed, and raised, and the outcome of this case could have been different, and a reasonable probability is a probability sufficient to undermine confidence in the outcome, Strickland supra

[4]

suffi client

Hence to support section [10] of my PCR Application, I would forthwith the following:

[10] (a)(1) [Lack of Jurisdiction]

I would aver that The Circuit Court of GREENVILLE COUNT. Lacked jurisdiction to entertain my Case, and sentence me... The Ratio Legis for this premise is my indictmen-  
-s are [Not] "filed" with The Greenvilly County Clerk of Court Likewise for the proposition that The Court Lacked jurisdiction to entertain The Applicants Case, and sentence him, because The indictment is Not filed with The Clerk of Court, The Applicant evokes the doctrine of stare decisis et non quita movere when the Court stated in Haec Verba;

"The filing of a valid indictment is a prerequisite to The Courts jurisdiction"

U.S. vs Hill, 210 F.3d at 884 (2000)

Sharp vs Johnson 107 F.3d 282 (5th Cir 1997)

Logic moreover Common sense dictates that if The prerequisite to obtain jurisdiction is Not executed, Then surely the Court had no jurisdiction to do anything. In the state of South Carolina Rule 3(c) SCR Crimp mandates that indictments ~~be~~ shall be "filed" with the Clerk of Court [Before] The indictments are taken to The Grand jury, which was [Not] done in This Case and on that ipso facto, The Circuit Court lack jurisdiction ipso jure.

[10](b)(1)

I would further aver That The Circuit Court of GREEN-ville County Lacked subject matter jurisdiction to entertain my Case, and sentence me, because my indictment on The Charge of Possession of ephedrine did [NOT] sufficiently apprise me of what I had to face at Court. Insofar it is well recognized in the state of South Carolina That for an indictment to be valid, it [must] state the offense with [sufficient] certainty and particularity to enable the defendant to know what he is called upon To Answer at Court.

IN RE BASON T, 340 S.C. 455, 531 S.E. 2d 544 (S.C. App 2000), Carter vs State, 329 S.C. 355, 495 S.E. 2d 173 (S.C. 1998)

I WAS [NOT] informed by The charging instrument that I would be pleading to Trafficking ephedrine and on That ipso facto Logic dictates that I was [NOT] informed of The Nature and The Cause of The accusation against me, which is the first, and most universally recognized requirement of "DUE PROCESS"

Smith vs O'Brady, 312 U.S. 329, 61 S.Ct. 572 (1941).

The S.C. Supreme Court ~~has~~ has stated, and reiterated The following language,

" The True test of the sufficiency of an indictment is [NOT] whether it Contains the Necessary elements of The offense intended to be charged and [S]ufficiently apprises the defendant of what he must be prepared to meet at Court.

Brown vs state, 343 S.C. 342, 540 S.E. 2d 846 (2001)

citing Browning vs state, 320 S.C. 366, 465 S.E. 2d 358 (1995)

Issues related to subject matter jurisdiction may

[6] be raised at any time  
 CARTER VS STATE 495 S.E. 2d 773 (S.C. 1998)

Likewise it is The Applicants position That The Circuit Court Lacked Subject matter Jurisdiction because The indictment Possession of ephedrine did [N]ot Contain The any elements of Trafficking ephedrine and logic dictates That The Applicant ~~was~~ [Not] sufficiently apprised of what he had to face at Court.

Our Supreme Court has [H]eld;

A Court acquires subject matter to hear a Criminal Case by way of a legally sufficient indictment, or a valid waiver thereof,

State vs Johnston, 333 S.C. 459, 510 S.E.2d 423 (S.C. 1999)

There ~~was~~ **NO** waiver, and the indictment is [NOT] legally sufficient, and on that ~~IPSO~~ fact, The Circuit Court lacked subject matter jurisdiction ~~IPSO~~ **JURE**;

[10](C)(1) [Ineffective Assistance of Court Counsel]

I would aver that my Court Counsel was inept and Constitutionally ineffective for failing to investigate, research and prepare my defense for Court.

It is well recognized under the American Jurisprudence that to investigate is the way to know what things are truly lawful. (Quaerere Dat sapere uae sunt legitima uere). moreover it is incumbent upon Counsel to investigate a criminal case [B]oth factually and legally to determine if a possible defense can be developed, Sneed vs Smith, 670 f.2d 1348 (4th Cir 1982)

likewise at the heart of effective representation is the independent duty to [I]nvestigate and [P]repare Goodwin vs Balkom, 684 f.2d 794 (5th Cir 1982)

stare desis dictates that the failure of Counsel to investigate, research, and prepare, is equivalent to "NO REPRESENTATION AT ALL"!!

Wallace vs Kern, 392 f. Supp at 846 (Reversed on other grounds) Counsel did [Not] investigate, research, and prepare my defense on the following particulars. To wit;

A] Counsel did [NOT] investigate, research, and prepare me a defense for The 4th Amendment Requisites to The U.S. Constitution Not being met in this case. Sub Judice.

The Ratio Legis for this premise is There is NO OATH OR Affirmation from a person with personal knowledge of the facts for The Arrest warrants to be issued. Likewise for The sake of clarity The statements in this instant case was written By Randall EUGENE Williams. who was previously a Convicted fellow, while Mr. Williams was on 30. Bond he violated a protection order and was [C]

arrested for manufacturing meth, and possession of firearms. After Mr. Williams wrote statements on me all his charges was dismissed. This makes the second time Mr. Williams a convicted felon used me as a bargaining chip for his freedom he did it once in 2008 December and now. ~~and now~~ The [framers] of The United States Constitution was unequivocal when The 4th Amendment was drafted, and made The Supreme Law of the land, and The language therein The 4th Amendment states in haec verba;

"NO WARRANTS SHALL ISSUE, BUT UPON PROBABLE CAUSE, SUPPORTED BY OATH OR AFFIRMATION  
(U.S. Const. Amend. 4, CT. 2)

HAD my Counsel investigated, researched and prepared me a defense for lack of oath and Affirmation for the warrant to issue and the prior convictions of Mr. Williams and the deal he made. The outcome of this case would be different and a reasonable probability is a probability sufficient to undermine the confidence in the outcome. *Strickland vs Washington* 466 U.S. at 694, 104 S. Ct at 2068 (1984)

[B] I would further aver that my Counsel was inept and constitutionally ineffective for failing to investigate, research and preparing me a defense for lack of [probable cause] for my warrants to be issued. The Ratio legis for this premise is that it is federal law as determined by The U.S. Supreme Court that A magistrate CAN [NOT] make a independent assessment of [Probable Cause] when The Complaint contains IN To Affirmative allegations [9]

that the affiant spoke with personal knowledge of matters herein, does not indicate any sources for complainant's belief, and does [N]ot set forth any other sufficient basis upon which a finding of probable cause could be made, *Giordano v. U.S.* 357 U.S. 480 (1958)

*Illinois v. Gates* 103 S.Ct 2317 (1983) The Applicant stands on All "four's" with this Argument. The Complaints in this Case does not Compare to the 4th Amendment Jurisprudence or Federal Law as determined by the U.S. Supreme Court, because there is [no] affirmative allegation that the affiant spoke with personal knowledge. The statement does not indicate any sources for the officer's beliefs, as to the officer stating the Applicant committed a *actus reus*, moreover under the *Corpus Juris* there is [N]o sufficient basis upon which a finding of probable cause could be made.

The Applicant was prejudiced by his Counsel's ineptitude, and ineffectiveness of [NOT] investigating, researching, and preparing the Applicant a defense into this matter, because there is a reasonable probability that the case could have been dismissed if Counsel would have investigated, researched and prepared me a defense for lack of probable cause, and conveyed the defense to the Court. Inasmuch a reasonable probability is a probability [sufficient] to undermine confidence in the outcome.

*Strickland v. Washington* 466 U.S. at 694, 104 S.Ct at 2068 (1984)

[C]

I would further aver that my Counsel was inept, and Constitutionally ineffective for failing to investigate, research and prepare me a defense for my indictments [not] being filed with the Greenville County Clerk of Court. The [no]

Ratio Legis for this premise is NONE of my indictments are filed with the Clerk of Court, which is contrary to Rule 3C SCR Crimp. I was prejudiced by my Counsel's ineptitude, and ineffectiveness of failing to investigate, research, and preparing me a defense for my indictments. Not being filed with the Clerk of Court, because the Court lacked jurisdiction to entertain my case and sentence me... Likewise for the proposition that the Court lack jurisdiction to entertain my case, and sentence me for my indictment not being filed with the Clerk of Court. I would evoke the language therein U.S. vs Hill supra

The filing of a valid indictment  
is a prerequisite to the Court's jurisdiction  
U.S. vs Hill 210 F.3d at 884 (2000)

Likewise There is a reasonable probability that the outcome of my case would be different if Counsel would have investigated, research, and prepared a defense for lack of jurisdiction for my indictments not being filed with the Clerk of Court, and a reasonable probability is a probability [sufficient] to undermine the confidence in the outcome Strickland vs Washington supra

STATE OF South Carolina  
County of ~~Greenville~~ Sumter  
Benjamin Logan Moore 346663

IN THE Court of Common  
pleas 13<sup>th</sup> Judicial Circuit

VS

Docket No. 03-CP-02-231

FILED  
NOV 9 9 AM 10:26  
CLERK OF COURT  
GREENVILLE, S.C.

STATE OF South Carolina  
respondent

Certificate of Service

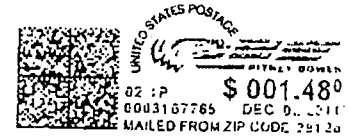
I, MR. Benjamin Logan Moore, do hereby certify that I did on the date hereunder deposit a copy of the foregoing Amendment to my PCR Application with The Water River C. I. mailroom, Cord. with sufficient first class postage attached and addressed as follows;

GREENVILLE County Clerk of Court  
305 EAST NORTH STREET  
GREENVILLE, SOUTH CAROLINA 29601

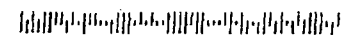
Subscribed before me this  
30<sup>th</sup> day of November 2011  
Pamela D. Hestfeld  
Notary Public for S.C.  
MY Comm. Exp. 3/15/2021

s/ Benjamin Logan Moore 346663  
Benjamin Logan Moore 346663

Benjamin Logan Moore # 346663  
WRCT W2-39A  
PO. Box 189  
Rembert, SC 29128



Greenville County Clerk of Court  
305 East North Street  
Greenville, SC 29601



|                          |   |                              |
|--------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS |
|                          | ) | C.A. No. 2011-CP-23-8176     |
| COUNTY OF GREENVILLE     | ) |                              |
|                          | ) |                              |
| Benjamin Logan Moore,    | ) |                              |
| S.C.D.C. No. 346663,     | ) |                              |
|                          | ) |                              |
| Applicant,               | ) |                              |
|                          | ) | <b>RETURN</b>                |
| v.                       | ) |                              |
|                          | ) |                              |
| State of South Carolina, | ) |                              |
|                          | ) |                              |
| Respondent.              | ) |                              |
| _____                    | ) |                              |

In response to the post-conviction relief application filed December 9, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Applicant was indicted at the February 2011 term of the Greenville County Grand Jury for trafficking ephedrine (100 or more grams) (2011-GS-23-0561), manufacturing methamphetamine (2011-GS-23-0562), and possession of a weapon during the commission of a violent crime (2011-GS-23-0563). Scott D. Robinson, Esquire represented the Applicant.

On June 23, 2011, the Applicant pled guilty. The Honorable Robin B. Stilwell sentenced the Applicant to concurrent terms of eight (8) years for possession of ephedrine, second offense, eight (8) years for manufacturing methamphetamine, second offense, and five (5) years for possession of a weapon during the commission of a violent crime. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South

Carolina Department of Corrections, and the guilty plea transcript.

## II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel.
  - a. "I would aver that my Court Counsel was inept and Constitutionally ineffective for failing to investigate, research, and prepare my defense for Court."
  - b. "Counsel failed to inform me that I had a right to appeal."
2. Lack of subject matter jurisdiction.
  - a. "I would aver that the Circuit Court of Greenville County lacked jurisdiction to entertain my case and sentence me ... The Ratio Legis for this premise is my indictments are [not] 'filed' with the Greenville County Clerk of Court."

## III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must

overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983).

#### IV.

The Respondent submits the Applicant's assertion that the plea court lacked subject matter jurisdiction is without merit. The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet. State v. Gentry, 363 S.C. 93, 103, 610 S.E.2d 494, 500 (2005). The

Respondent further notes that indictments are not evidentiary or jurisdictional documents – they are merely notice documents. Id. at 102, 610 S.E.2d at 500. The indictment in this case was true-billed and clearly sufficient to put the Applicant on notice of the charge he was facing. See State v. Tumbleston, 376 S.C. 90, 95-96, 654 S.E.2d 849, 852 (Ct. App. 2007).

V.

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

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON  
Attorney General

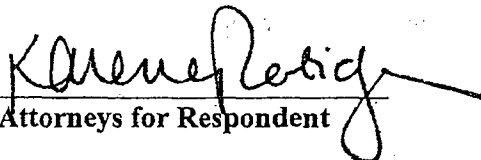
JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN  
Assistant Deputy Attorney General

P.O. Box 11549  
Columbia, S.C. 29211

By:

  
Attorneys for Respondent

June 5, 2012

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 )  
 )  
 BENJAMIN LOGAN MOORE, 346663 )  
 )  
 ) Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 ) Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

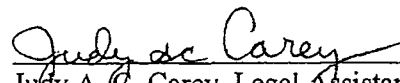
2011-CP-23-8176

AFFIDAVIT OF SERVICE BY MAIL

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

**Benjamin Logan Moore, 346663  
 Wateree River Correctional Institution  
 Post Office Box 189  
 Rembert SC 29128**

DATED this 5th day of June, 2012.

  
 Judy A. C. Carey, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

BENJAMIN MOORE, )  
 )  
 PLAINTIFF, )  
 )  
 -VS- )  
 )  
 THE STATE OF SOUTH CAROLINA, )  
 )  
 DEFENDANT. )  
 \_\_\_\_\_ )

2011-CP-23-08176

APRIL 16, 2013

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

BRIAN P. JOHNSON, ESQUIRE  
ATTORNEY FOR THE PLAINTIFF

KAREN RATIGAN, ESQUIRE  
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS  
CIRCUIT COURT REPORTER

**INDEX**

| <b>WITNESSES</b> | <b>DIRECT</b> | <b>CROSS</b> | <b>REDIRECT</b> | <b>RECROSS</b> |
|------------------|---------------|--------------|-----------------|----------------|
| Benjamin Moore   |               |              |                 |                |
| Johnson          | 5             |              | 17              |                |
| Ratigan          |               | 13           |                 |                |
| Scott Robinson   |               |              |                 |                |
| Johnson          | 18            |              |                 |                |
| Ratigan          |               | 27           |                 |                |
|                  |               |              |                 | <b>PAGE</b>    |
| Certificate      |               |              |                 | 31             |

## PLAINTIFF'S EXHIBITS

| NO | DESCRIPTION | ID | EV |
|----|-------------|----|----|
|    | NONE        |    |    |
|    |             |    |    |

## DEFENDANT'S EXHIBITS

|  |      |  |  |
|--|------|--|--|
|  | NONE |  |  |
|  |      |  |  |

## COURT'S EXHIBITS

|  |      |  |  |
|--|------|--|--|
|  | NONE |  |  |
|  |      |  |  |



1 right hand.

2 Do you solemnly swear or affirm that the testimony  
3 you're about to give in this case will be the truth, the  
4 whole truth and nothing but the truth, so help you God?

5 THE WITNESS: Yes.

6 THE CLERK: Thank you. You may be seated.  
7 Please state your full name for the record.

8 THE WITNESS: Benjamin Logan Moore.

9 **BENJAMIN LOGAN MOORE,**

10 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

11 **DIRECT EXAMINATION**

12 **BY MR. JOHNSON:**

13 Q. Okay, Mr. Moore, obviously you know why I'm here  
14 today; is that correct?

15 A. That's correct.

16 Q. Now, from what you recall, what were the circumstances  
17 of your guilty plea to these charges? And please also  
18 communicate to the Court which charges you pled guilty to?

19 A. I pled guilty to manufacturing second, possession  
20 second of ephedrine and possession of a firearm during a  
21 violent crime.

22 Q. Okay. And what was your sentence on those matters?

23 A. I was given eight years violent for the manufacturing;  
24 eight years non-violent for the possession second; and five

*Benjamin Moore -vs- The State of South Carolina (2011-CP-23-08176)*  
*PCR Hearing*

6

1 years non-violent for the weapon.

2 Q. Now, as you understand it, are those the original  
3 charges that you were charged with? Was there anything  
4 else dismissed or -- what was your recollection of that?

5 A. Those were not the original charges.

6 Q. What were the original charges?

7 A. Well, as the warrants state, it was for manufacturing  
8 first, a possession of ephedrine first and a possession of  
9 a firearm first.

10 Q. Well, the possession of a firearm is just possession  
11 of firearm?

12 A. Right. Yes.

13 Q. But the manufacturing, manufacturing what first?

14 A. Manufacturing meth, first offense.

15 Q. Okay. Now, had you gone over the case with your  
16 attorney, Scott Robinson?

17 A. Briefly. We did not get into a whole lot of detail on  
18 the case.

19 Q. Well, for example, did you discuss the discovery in  
20 the case?

21 A. We went over some of the discovery. However, there  
22 were no indictments then, nor were they ever explained to  
23 me.

24 Q. Did you ask to see the indictments?

25 A. No, sir, I did not.

1 Q. And so that's something that you were leaving to him?

2 A. That's correct.

3 Q. Did you ever ask him to investigate anything with  
4 regards to the indictments before or after the case?

5 A. No. I did not -- I do not recall talking with Scott  
6 about the indictments at all.

7 Q. Did you ever request to speak to him about the  
8 indictments?

9 A. No, I did not.

10 Q. Now, Mr. Moore, we're here today based upon your  
11 assertion of ineffective assistance of counsel. Is that  
12 true?

13 A. That's correct.

14 Q. Based upon your post investigation of these events and  
15 your conversations with me, what have you determined -- how  
16 have you determined he was ineffective?

17 A. I've determined my counsel was ineffective due to the  
18 fact he allowed me to plea to a manufacturing meth second  
19 when the indictment was only for manufacturing meth first.  
20 In addition to that, he allowed me to plead to a possession  
21 of ephedrine second, to which there was no indictment.

22 Q. And the other charge you plead to was possession of a  
23 weapon during the commission -- or possession of a weapon  
24 during a violent crime?

25 A. That's correct.

*Benjamin Moore -vs- The State of South Carolina (2011-CP-23-08176)*  
*PCR Hearing*

8

1 Q. All right. These are already in the record, Mr.

2 Moore, but are these the sentencing sheets that you're  
3 referring to, front and back?

4 A. Yes, they are.

5 Q. Okay. Now, you also were there doing a guilty plea;  
6 correct?

7 A. Correct.

8 Q. Obviously you're the one that pled guilty; correct?

9 A. Correct.

10 Q. Now, did you -- you went through the questions with  
11 the Judge; didn't you?

12 A. I did.

13 Q. And the Judge asked you if your -- well, essentially  
14 if your overall plea was intelligently and voluntarily  
15 given; wasn't it?

16 A. Yes.

17 Q. Now, at this point in time you still pled guilty. Can  
18 you communicate to the Court why you still pled guilty, or  
19 was ---

20 A. Well, I think the main reason that I pled guilty, if  
21 you will refer back to the sentencing sheet on the  
22 manufacturing, if you notice there, the box is checked that  
23 I was pleading to the same offense I was indicted for.

24 Q. So it ---

25 A. As that turns -- excuse me. Go ahead.

1 Q. Go ahead, sir.

2 A. As that turns out, that wasn't the case.

3 Q. So as you understood it, you were pleading guilty to  
4 the same charges you were indicted and that you understand  
5 you were indicted for first offense?

6 A. Now, I understand I was indicted for a first offense.  
7 Then, because I had not spoken with Scott in regards to the  
8 indictments, I was going off of the sentencing sheet here  
9 that says that, you know, that I was -- as indicted. I  
10 know now that that's not the case.

11 Q. Okay. Can you communicate to the Court how you know  
12 that's not the case?

13 A. Okay. In the top left hand corner of the sentencing  
14 sheet for the manufacturing, it describes the warrant  
15 number, which the warrant was obviously for a first  
16 offense. If you go down to the South Carolina Code, which  
17 is 44-53-0375, and in parenthesis is (B)(1), with a CDR  
18 Code of 3198, that reflects the first offense. And the CDR  
19 Code describes how you do the time, so to speak, as far as  
20 the amount of it and what you're eligible for.

21 Q. When you say eligible for, are you speaking of parole  
22 or otherwise?

23 A. Well, I'm speaking of several things. First of all,  
24 3198, you're only going to do fifty-one percent of your  
25 time. Okay. You're also eligible for parole, you're

1 eligible for work release; are just a few that I can name  
2 off the top of my head.

3 Q. And that's in contrast to the charge you pled guilty  
4 to?

5 A. Yes. If you look down to the violation that it  
6 actually was changed to, it's 44-53-0375, and in  
7 parenthesis is (B)(2). And the CDR Code is now a 3199  
8 instead of 3198, which makes the nature of the offense  
9 violent and expels you from a lot of the -- and makes you  
10 do eighty-five percent of your time versus fifty-one, for  
11 one thing.

12 Q. So as you understand it -- as you understand these  
13 laws, you did not plead guilty as indicted?

14 A. That's correct.

15 Q. And what is checked on the sentencing sheet as far as  
16 whether you waive presentment to the Grand Jury or ---

17 A. I did not waive presentment.

18 Q. In fact, what is checked?

19 A. It is marked, as indicted, and let's see, recommended  
20 by the State -- what is checked is as indicted, to answer  
21 your question. I'm sorry.

22 Q. Now, did you ever have discussions about your issues  
23 with the sentencing sheets with Mr. Robinson?

24 A. You're taking ---

25 Q. Did you ever discuss what you just portrayed to ---

1 A. Oh, before?

2 Q. Yes?

3 A. No, I did not.

4 Q. Did you ever communicate or try or attempt to  
5 communicate with him about these issues afterwards?

6 A. I had wrote him a letter pertaining to the findings on  
7 this one particular charge and told him that I felt that it  
8 was an error, but he never responded back.

9 Q. Now, you say the other issue you had was with the  
10 possession of ephedrine charge?

11 A. Possession second.

12 Q. Possession second?

13 A. Yes.

14 Q. Similar to what you just did with the manufacturing,  
15 can you portray to the Court what the issue is there?

16 A. Well, there is no indictment for possession second.  
17 There was an indictment for trafficking. But there is no  
18 indictment for possession second. The nature of the  
19 offense, ever if the trafficking was dropped to a lesser  
20 included offense, but the nature of the offense from first  
21 to second was changed when they moved it back to  
22 possession. Is that understandable?

23 Q. So you're portraying to the Court -- well, I  
24 understand you.

25 A. Okay.

*Benjamin Moore -vs- The State of South Carolina (2011-CP-23-08176)*  
*PCR Hearing*

12

1 Q. But the Court must understand.

2 A. Right.

3 Q. Are you portraying to the Court that while it was  
4 reduced to a lesser included offense, it should have been a  
5 second offense, is what you're saying?

6 A. The actual -- the charge starting out was possession  
7 of ephedrine first offense. I never had seen or heard the  
8 word trafficking at all until I stood before the Judge that  
9 day at sentencing.

10 Q. Okay. And you didn't plead to a trafficking?

11 A. I did not plead to a trafficking.

12 Q. Now, you've seen the plea transcript; haven't you?

13 A. Yes, I have.

14 Q. Okay. Now, is it true that they presented an  
15 indictment for trafficking?

16 A. They did.

17 Q. Now, did you ever discuss this issue with your  
18 attorney, Mr. Robinson, or otherwise objected on your own?

19 A. No. To be honest with you, I was kind of in a state  
20 of awe when I went over this thing, so some of that stuff  
21 went over my head.

22 Q. Now, similarly to the manufacturing, did you write or  
23 otherwise have contact with Mr. Robinson about this issue?

24 A. No.

25 Q. So you didn't write him about this issue, but you

1 wrote him about the other one?

2 A. Correct.

3 Q. So overall, Mr. Moore, do you feel that your plea was  
4 knowingly, intelligently and voluntarily given based upon  
5 the circumstances now?

6 A. Yes.

7 Q. You do feel that it was ---

8 A. Well, say that again. I'm sorry.

9 Q. Do you feel like your plea was knowingly,  
10 intelligently and voluntarily given, based upon ---

11 A. No. No. I'm sorry. I misunderstood.

12 MR. JOHNSON: Your Honor, I have nothing further  
13 for this witness at this time.

14 THE COURT: You may cross examine.

15 MS. RATIGAN: Thank you, Your Honor.

16 **CROSS EXAMINATION**

17 **BY MS. RATIGAN:**

18 Q. So how many times would you say you met with Mr.  
19 Robinson before your plea? Do you remember?

20 A. Let's see, let me think. I went to his office -- the  
21 first time I met with his investigator, I guess it was,  
22 Paul..

23 Q. Okay.

24 A. And then I met with him one time at his office. And  
25 then I saw him before that day at Court.

1 Q. Okay. So you had one meeting with the investigator  
2 and two with Mr. Robinson?

3 A. Well, I would say one with Mr. Robinson and then I saw  
4 him the day of Court.

5 Q. Okay. So you were out on bond?

6 A. Correct.

7 Q. Did you want to have more discussions with Mr.  
8 Robinson than what you had?

9 A. I had -- there were some issues that I was trying to  
10 get Mr. Robinson to look into concerning my charges at the  
11 time. I met with him about them, as well as his  
12 investigator. I had told him -- his investigator told me  
13 to make a list of any inconsistencies that I found and that  
14 he would get on them and investigate them.

15 Q. Okay.

16 A. Well, I did that. And I did the same with Mr.  
17 Robinson, but I never heard any reply back from them.

18 Q. Did you ever try and make another appointment to go  
19 talk to someone in his office?

20 A. I had -- the issues that I -- the last time I met with  
21 him at his office, I met with him in regards to my  
22 concerns. He was -- the last conversation I had with him  
23 was he was going to talk with the solicitor and find out  
24 what the deal was, that he would get back with me.

25 Q. Uh-huh (affirmative.)

1 A. From that point, I think on -- that was in about the  
2 third week of May 2011. I went to roll call on June, I  
3 think it was the 16th, 2011. Mr. Robinson was late getting  
4 there. There were several people waiting on him. And when  
5 he came into Court, the Solicitor had requested that I stay  
6 and wait on him. When he got there, he dismissed me, told  
7 me to go home.

8 Q. Okay. All right. But the question I asked you was,  
9 while you were out on bond, did you ever try to make  
10 another appointment to talk to Mr. Robinson about your  
11 case?

12 A. I guess the answer to that would be no.

13 Q. Okay. Now, I believe you testified you reviewed some  
14 of the discovery with Mr. Robinson?

15 A. Yes.

16 Q. Okay. Do you know what it is that you did not review  
17 with him, aside from your indictments? Is there anything  
18 else you can think of that y'all didn't talk about?

19 A. I can't recall right off the top of my head.

20 Q. Did you tell Mr. Robinson kind of your version of what  
21 had happened with this charge?

22 A. Yes.

23 Q. And did you have other charges that were pending at  
24 the time?

25 A. Other charges that were pending?

1 Q. Yes, sir.

2 A. Just related to this incident alone.

3 Q. And you have a couple of prior drug convictions; is  
4 that correct?

5 A. Yes.

6 Q. And did you review that with Mr. Robinson?

7 A. Yes.

8 Q. Now, the day you pled guilty, did you know it was to a  
9 second offense that day?

10 A. That was the first I heard of it, yes, ma'am.

11 Q. And what you're saying now, basically, is that it  
12 should have been a first offense because of the CDR Codes  
13 on your indictments?

14 A. Well, what I'm saying is, not only the CDR Codes are  
15 different, but if you review the sentencing sheet, it -- on  
16 the manufacturing references 44-53-0375 (B)(1), and the  
17 violation that I was convicted of was 44-53-0375 (B)(2)  
18 under CDR Code 3199.

19 Q. Okay. Now, did Mr. Robinson explain to you that you  
20 were pleading guilty -- that the possession of ephedrine  
21 charge was going to be a lesser included offense? Did he  
22 explain that to you before you got there?

23 A. No.

24 Q. Okay.

25 MS. RATIGAN: That's all I have, Your Honor.

1 THE COURT: Any redirect?

2 MR. JOHNSON: Just briefly, Your Honor.

3 **REDIRECT EXAMINATION**

4 **BY MR. JOHNSON:**

5 Q. Mr. Moore, she just asked you some questions about the  
6 sentencing sheets as far as what you believe you were  
7 charged with in that CDR Code and what you pled to in that  
8 CDR Code.

9 A. Yes, sir.

10 Q. And you stated that you didn't, you didn't understand  
11 -- you didn't know at the time that the indictment was for  
12 a first and you were pleading to a second without, as you  
13 understand it, an indictment for the second?

14 A. Correct. I mean, the sentencing sheet tells me it's  
15 the same.

16 Q. Then at that point in time, did Mr. Robinson explain  
17 that to you before your plea?

18 A. No.

19 Q. When did you find this out?

20 A. Actually the first time I ever saw my indictments was  
21 once I had been incarcerated for about four months and  
22 started to look into the post conviction process. I  
23 contacted the Clerk of Court and they sent them to me, as  
24 well as my sentencing sheets. I never got a copy of any of  
25 that stuff.

1 MR. JOHNSON: Your Honor, I have nothing further  
2 from this witness.

3 THE COURT: All right. Thank you, sir. You may  
4 step down.

5 MR. JOHNSON: All right. Your Honor, I'm ready  
6 to proceed.

7 THE COURT: Yes, sir, you may call your next  
8 witness.

9 MR. JOHNSON: I call Mr. Robinson to the stand,  
10 please.

11 THE CLERK: Mr. Robinson, place your left hand on  
12 the bible and raise your right hand.

13 Do you solemnly swear that the testimony you're about  
14 to give in this case will be the truth, the whole truth and  
15 nothing but the truth, so help you God?

16 MR. ROBINSON: I do.

17 THE CLERK: Thank you. You may be seated.  
18 Please state your full name for the record.

19 MR. ROBINSON: Scott David Robinson.

20 SCOTT DAVID ROBINSON,

21 HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION

23 BY MR. JOHNSON:

24 Q. Mr. Robinson, do you remember Mr. Moore's case?

25 A. I do.

1 Q. You heard the testimony that he just gave on the  
2 stand; is that correct?

3 A. Yes.

4 Q. Now, you heard his -- you heard -- well, first of all,  
5 let me ask you this. He was asked how often he met with  
6 you. Do you recall how often you met with him or does your  
7 file indicate?

8 A. I don't. But he would come to the office and meet  
9 with me and I would meet with him up at the -- because I  
10 had an investigator, I think, at that time, and we would  
11 also meet up at the courthouse. He was out, he was out in  
12 plain clothes.

13 Q. Who was your investigator at that point?

14 A. Paul Savaggio.

15 Q. Paul Savaggio. Do you recall whether you went over  
16 the discoverable issues in this case?

17 A. We would have, yes.

18 Q. Do you know how often or how long you did that?

19 A. I don't. Originally there were nine charges in this  
20 case. We would have gone over each one and the discovery  
21 and so forth. It was a busted house. It was -- there were  
22 video recordings of Mr. Moore buying the ephedrine wherever  
23 he was buying it, in the store or pharmacy or something.  
24 Several pictures. When the police went in they found a lot  
25 of ephedrine and drugs at the house. And also, there was a

1 child at the house, too. That's where the unlawful conduct  
2 toward a child came into play.

3 Q. Now, regarding the situation of my client's plea, I  
4 see on the sentencing sheets that they said there was a  
5 recommendation by the State. And that was true, there was  
6 a recommendation?

7 A. I'd have to check the sentencing sheet. I've got it  
8 right here. I think it says on page nine, beginning at  
9 line eleven, negotiations had taken place between Mr.  
10 Steinburg and myself with a seven, with a seven to ten year  
11 cap in this case, to run concurrent.

12 Q. Let me get you the sheets, because that's -- do you  
13 have the sheets?

14 A. Uh-huh (affirmative.)

15 Q. All right. Now we're looking at the sentencing  
16 sheets; correct?

17 A. Yes.

18 Q. And on those sheets one of the things selected was the  
19 recommendation by the State; correct?

20 A. It's checked. The box is checked, yes.

21 Q. Okay. And as you recall was there a recommendation?

22 A. Yes. It was also -- as I just stated, it was also  
23 stated on the page in the transcript.

24 Q. In the transcript. Now, with regards to this

1 recommendation, do you remember when this was communicated  
2 to my client; when this specific recommendation?

3 A. I don't know the exact date, but when he was there in  
4 Court we communicated outside with Mr. Steinburg. We were  
5 kind of going back and forth with negotiations. I wanted a  
6 lot of cases dropped for him. I wanted to see if I could  
7 get the minimum sentence. That's what I remember. As far  
8 as communicating, he took part in the negotiation process.

9 Q. Now, as you understand it, he was originally charged,  
10 for example, with trafficking first, with possession first  
11 and with manufacturing first; is that correct?

12 A. I believe so.

13 Q. Now, it's my client's contention, obviously, -- well,  
14 he pled to second offenses; is that true?

15 A. He did because of his prior record.

16 Q. Because of his prior record. Now, it's my client's  
17 contention that he was not indicted for the second offense.  
18 Is that true? Or how does that work?

19 A. I don't know. I have the original indictments here,  
20 which there are nine of them, and there's a trafficking  
21 indictment. I can't -- I'm not going -- do you want me to  
22 go through all nine indictments?

23 Q. Well, no, just the ones, just the ones he pled to. I  
24 guess the trafficking was a lesser included ---

25 A. Yeah. I know he had trafficking ephedrine is one.

1 Possession of ephedrine, one hundred grams, second offense.

2 Just whatever he pled to. He pled to three charges.

3 Q. Well, let's -- I want to look at one indictment in  
4 specific and that's ---

5 A. Okay.

6 Q. --- the manufacture of methamphetamine.

7 A. The sentencing sheet or the indictment?

8 Q. The indictment.

9 A. Manufacturing of ---

10 Q. Of methamphetamine?

11 A. That would be indictment 2011-GS-23-562? Is that  
12 right?

13 Q. Yes, sir.

14 A. Okay.

15 Q. Now, on that indictment what charge is this and what's  
16 the CDR Code?

17 A. I have the indictment here, which I just described to  
18 you.

19 Q. Yes.

20 A. Do you want me to tell you what the CDR Code?

21 Q. Yes.

22 A. I don't have a book with me to really give you that  
23 information.

24 Q. Well, it should be on the indictment.

25 A. 3198.

1 Q. 3198.

2 A. 3198.

3 Q. Now, on -- now, he obviously pled to a second offense  
4 and we went over that; right? A second offense for  
5 manufacturing methamphetamine?

6 A. Second offense, right.

7 Q. And what's the CDR Code for a second offense?

8 A. I don't know that.

9 Q. Well, it should be on the sentencing sheet.

10 A. The sentencing sheet, on top of here, it's 3198.

11 3198; right?

12 Q. See.

13 A. Yeah, 3198. 3199.

14 Q. That's 3199; correct?

15 A. All right.

16 Q. Now, those -- obviously that's -- so the indictment  
17 was 3198 and then the sentencing sheet was 3199; correct?

18 A. Yes.

19 Q. Now, is that something -- did you discuss the  
20 ramifications or the different issues with regards to the  
21 way he would be situated at the Department of Corrections  
22 between two different ---

23 A. Mr. Johnson, I don't discuss with clients what's going  
24 to happen to them in the Department of Corrections as far  
25 as now they're going to be -- I don't discuss it, because I

1 don't know in terms of how the Department of Corrections is  
2 going to do something. I know we had a plea offer in this  
3 case. And this plea offer, where he was looking at twenty-  
4 five to thirty years, actually was getting him near the  
5 minimum sentence he could receive. That's what I, that's  
6 what I know. In terms of how they're going to classify him  
7 and things like that, I did not go over that with him.

8 Q. So it's your testimony that you didn't discuss the  
9 difference between violent and non-violent crimes or ---

10 A. I would have discussed that, but I don't give people  
11 information as far as what's going to happen to them when  
12 they get to the Department of Corrections.

13 Q. So did you discuss parole eligibility or anything of  
14 that nature with my client?

15 A. I don't know if I did or not. I'm not sure.

16 Q. Okay. Because the difference, say for instance,  
17 between a first and a second, could be -- could affect  
18 those sorts of issues; couldn't it?

19 A. They could.

20 MR. JOHNSON: Your Honor, I have ---

21 THE WITNESS: But I want to -- in response to  
22 that question ---

23 MR. JOHNSON: I'm actually done, Your Honor.

24 THE COURT: You don't want him to answer your  
25 question?

1 MR. JOHNSON: I thought he was finished.

2 MR. ROBINSON: I wasn't.

3 MR. JOHNSON: Oh, you weren't finished? Oh, I'm  
4 sorry?

5 A. In response to your question, when Mr. Moore came to  
6 Court that day, I don't know what -- he was looking at --  
7 if he had gone to trial at another date without accepting a  
8 plea in this case, he was looking at consecutive time,  
9 potentially. And he was also -- these charges, because of  
10 his prior record -- he had already gone through this before  
11 with other charges that he had. But he was looking at  
12 thirty years, all this stuff, because they found just  
13 mountains of this stuff in his house. And if -- you know,  
14 it was his decision whether or not to do this or not as far  
15 as whether he wished to accept this plea or not accept this  
16 plea. All I can tell him is, this is what they're offering  
17 you. This is what he's looking at. He's saying concurrent  
18 in this case, which means at the same time. You can  
19 accept it or not accept it in this case.

20 Q. Mr. Robinson, you stated they found mountains of  
21 stuff. Which stuff would that be?

22 A. They would have found -- let me see the ... They  
23 found six hundred ephedrine tablets, syringes, coffee  
24 filters, two big baggies, numerous rifles and pistols, two  
25 propane tanks, three sets of scales, Pyrex beakers,

1 numerous other items. Also, they found methamphetamine. A  
2 lot of stuff.

3 Q. So the meth that they found, it was less than ten  
4 grams of meth?

5 A. It was. But this was a large operation. There was a  
6 lot of ephedrine. There was a kid there. Guns. Well, he  
7 was charged with unlawful conduct towards a child in this  
8 case because of this. In fact, there were nine charges  
9 initially. He pled to, I think, three charges in this  
10 case, or whatever he pled to. And he received a very --  
11 almost the minimum sentence that he could have gotten  
12 concurrent in this matter. But there was a lot of drugs  
13 found there. His picture. There were three different  
14 times, two or three different times that he went to the  
15 drug store to get this stuff. This wasn't -- they weren't  
16 -- this was not just a fun thing. This was producing the  
17 stuff. And it could have been a lot worse for him, I  
18 believe, if he had gone to trial, with his prior record.

19 Q. So basically you're portraying to the Court that you  
20 advised him to plead guilty based upon the deal that he was  
21 offered?

22 A. It wasn't a deal. It was an offer that was made by  
23 the State. They made an offer to him. He had the  
24 opportunity, if he wished to, he could have said, I don't  
25 want this offer. I want to go to trial. And we would have

1 gone to trial in this case.

2 Q. Now, with regard to the offer and the plea itself, we  
3 talked about CDR codes and various parole eligibilities and  
4 things of that nature. Is it your testimony that you  
5 didn't particularly discuss that with him?

6 A. I would have discussed what the charges carry, violent  
7 and non-violent. That's what I would have discussed with  
8 him. As far as what was going to happen to him later on at  
9 the Department of Corrections, no, I didn't discuss that  
10 with him.

11 Q. So you did discuss violent and non-violent, parole  
12 eligibility and things of that nature?

13 A. I think I said before I didn't.

14 Q. So you didn't do that?

15 A. I don't know if I did that.

16 MR. JOHNSON: Your Honor, I have nothing further.

17 THE COURT: You may cross examine.

18 MS. RATIGAN: Thank you, Your Honor.

19 **CROSS EXAMINATION**

20 **BY MS. RATIGAN:**

21 Q. Mr. Robinson, were you appointed in this case or were  
22 you retained?

23 A. Appointed.

24 Q. And did you file the usual Brady and Rule 5 motions?

25 A. I believe I did.

1 Q. Did you review those materials with your client?

2 A. I did. At my office.

3 Q. Did you review with your client kind of his version of  
4 events?

5 A. Yes. And he did admit to some of these things.

6 Q. And these nine charges that he originally faced, were  
7 they all kind of tied together from that one bust to the  
8 house?

9 A. It was all the same, the same basic scenario.

10 Q. And he pled to three out of the nine. Do you know if  
11 those other six charges were dismissed?

12 A. I believe they were. I don't have, I don't have the  
13 sheet in front of me. I believe they were, because he did  
14 not plead to those and there's not an active case, I  
15 believe.

16 Q. As part of the discovery you received from the State,  
17 did you get Mr. Moore's NCIC report?

18 A. Yeah. It comes in the packet.

19 Q. And did he have prior drug convictions on that NCIC  
20 report?

21 A. He did.

22 Q. Did you review with Mr. Moore that, you know, he was  
23 facing an enhanced sentence because of his prior  
24 convictions?

25 A. Yes.

1 Q. In your opinion was this a proper second offense based  
2 on his priors?

3 A. Yes. He had sentences going back to 1995. The same  
4 basic, same basic stuff. He's got these on his record.

5 Q. At any point was this case in the posture of going  
6 forward as a first offense, that you recall?

7 A. Not that I know of. I believe it was always a second  
8 offense because it qualified as a true second offense. I  
9 mean, if Mr. Moore had said I don't want this, we may have  
10 had more negotiations down the line. But I got the feeling  
11 this was going to be the best deal he was going to get.

12 Q. But Mr. Steinburg never came to you and offered to  
13 drop it down to first offense?

14 A. No. I wish he would have.

15 Q. Okay. Did you explain to Mr. Moore that the  
16 trafficking ephedrine charge was being reduced to the  
17 lesser included of possession?

18 A. I believe so. I can't tell you the exact day we were  
19 talking about this, but I believe we would have talked  
20 about it.

21 Q. Did you review the indictments as part of your  
22 discovery materials?

23 A. Yes. He had nine indictments.

24 Q. And the ones that he pled to, did you perceive there  
25 to be any defect to those indictments?

1 A. I didn't.

2 Q. In your experience if there is a second offense of a  
3 drug charged, is that usually spelled out in the  
4 indictment, just based on your experience?

5 A. It doesn't have to be because you -- the jury -- the  
6 Grand Jury is given this is what the charge is. They're  
7 not told it's a second, third, fourth offense or anything  
8 like that. I think, if anything, that would prejudice them  
9 in terms of what they would do.

10 Q. That's all I have, Your Honor.

11 THE COURT: Any redirect?

12 MR. JOHNSON: No, sir, Your Honor. And we --  
13 that's the applicant's case.

14 THE COURT: Thank you, Mr. Robinson. You may  
15 step down.

16 MS. RATIGAN: Your Honor, the State would just  
17 rest on the record before Your Honor.

18 THE COURT: All right. Thank you. I'll review  
19 the transcript and issue an order.

20 MR. JOHNSON: Thank you, Your Honor.

21

22 [END OF REQUESTED TRANSCRIPT OF RECORD]

23

## 1 CERTIFICATE OF REPORTER

2

3 I, the undersigned Danette P. Hanks, Official Court  
4 Reporter for the Thirteenth Judicial Circuit of the State  
5 of South Carolina, do hereby certify that the foregoing is  
6 a true, accurate, and complete transcript of record of all  
7 the proceedings had and evidence introduced in the  
8 trial/hearing of the captioned case, relative to appeal, in  
9 the Circuit Court for Greenville County, South Carolina, on  
10 the 16th of April, 2013.

11 This transcript may contain quoted material. Such  
12 material is reproduced as read by the speaker.

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

15 September 11, 2013

16

17

18

19



Circuit Court Reporter

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Benjamin Logan Moore, )  
 S.C.D.C.No. 346663, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 C.A. No. 2011-CP-23-8176

**ORDER OF DISMISSAL**

FILED  
 CLERK OF COURT  
 GREENVILLE COUNTY  
 SOUTH CAROLINA  
 2013 MAY -3 PM 4:38

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 9, 2011. The Respondent made its return on June 5, 2012. An evidentiary hearing into the matter was convened on April 16, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Brian P. Johnson, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Scott D. Robinson, Esquire. The Court had before it the transcript of the guilty plea hearing, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

**PROCEDURAL HISTORY**

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the February 2011 term of the Greenville County Grand Jury for trafficking ephedrine (100 or more grams) (2011-GS-23-0561), manufacturing methamphetamine (2011-GS-23-0562), and

possession of a weapon during the commission of a violent crime (2011-GS-23-0563). He was represented by Scott D. Robinson, Esquire.

On June 23, 2011, the Applicant pled guilty. The Honorable Robin B. Stilwell sentenced the Applicant to concurrent terms of eight (8) years for possession of ephedrine, second offense, eight (8) years for manufacturing methamphetamine, second offense, and five (5) years for possession of a weapon during the commission of a violent crime. The Applicant did not appeal.

### ALLEGATIONS

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

1. Ineffective assistance of counsel.
  - a. "I would aver that my Court Counsel was inept and Constitutionally ineffective for failing to investigate, research, and prepare my defense for Court."
  - b. "Counsel failed to inform me that I had a right to appeal."
2. Lack of subject matter jurisdiction.
  - a. "I would aver that the Circuit Court of Greenville County lacked jurisdiction to entertain my case and sentence me ... The Ratio Legis for this premise is my indictments are [not] 'filed' with the Greenville County Clerk of Court."

At the hearing, the Applicant proceeded upon the grounds of ineffective assistance of plea counsel and 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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly:

Set forth below are the relevant findings of fact and conclusions of law as required by

*[Handwritten Signature]*

S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel/Involuntary Guilty Plea

The Applicant alleges his guilty plea was involuntary and that 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).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Applicant stated he met once with plea counsel and once with the investigator before

<sup>3</sup> *Amoff*

a meeting at the courthouse on the day he pled guilty. The Applicant admitted he was on bond at the time, however, and failed to contact plea counsel to make additional appointments to review his case. The Applicant stated they discussed some of the discovery materials and his version of events. The Applicant confirmed he had prior drug convictions and knew he was pleading guilty to second offenses. The Applicant argued, however, that plea counsel should have challenged the pleas to second offenses because the CDR code on the indictments was for a first offense. The Applicant also argued he should not have been allowed to plead to the possession charge because there was no indictment for possession.

Plea counsel testified he was appointed in this case and filed the usual discovery motions. Plea counsel testified he reviewed the discovery materials (and the NCIC report) with the Applicant and also discussed his version of events. Plea counsel testified he reviewed the indictments and did not notice any defects. Plea counsel testified the Applicant pled guilty to second offenses because of his criminal record. Plea counsel testified there was no issue with the CDR code on the indictment indicating a first offense when the Applicant pled guilty to a second offense. Plea counsel testified he explained to the Applicant that the trafficking ephedrine charge was being reduced to possession of ephedrine. Plea counsel testified several additional charges were dismissed as a result of the Applicant's guilty plea.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

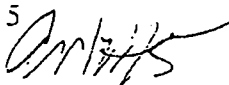
The Applicant admitted to the plea judge both that he was guilty and that the facts recited

<sup>4</sup> 

by the solicitor were true. (Plea transcript, p.6; p.8). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.3-4; p.6). This Court finds the Applicant entered a knowing and voluntary guilty plea. See Boykin v. Alabama, 395 U.S. at 243-44, 89 S. Ct. at 1712.

This Court finds the Applicant failed to meet his burden of proving to adequately investigate his case and prepare a defense. Plea counsel testified he met with the Applicant and that they reviewed the discovery materials and the Applicant's version of events. Plea counsel testified there was a "mountain" of evidence against the Applicant and that the Applicant admitted to him that he was guilty on some of the charges. This Court finds plea counsel's testimony is credible. This Court notes the Applicant has failed to articulate what plea counsel should have done to better investigate his case. See Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (finding the failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing he would have had a defense with additional time to prepare for trial). This Court finds that, based upon the facts of the case, there is nothing more plea counsel could have done in order to secure a different outcome.

This Court finds the Applicant failed to meet his burden of proving plea counsel should have objected to alleged defects in the indictments and sentencing sheets. The Applicant testified he knew he was pleading guilty to second offenses on the day of the guilty plea. This is borne out by the signature on the sentencing sheets and references in the plea transcript. (Plea transcript, p.3; p.5; p.8). The Applicant further admitted both at the guilty plea hearing and the

<sup>5</sup>  


PCR hearing that he had prior drug convictions. (Plea transcript, p.10). That the CDR code on the indictment was for a first offense did not deprive the plea judge of subject matter jurisdiction. As plea counsel testified, it would have been prejudicial to have any notations on the indictments that the Applicant had prior convictions. Further, indictments are merely notice documents that do not confer subject matter jurisdiction upon the court. See State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005). Both plea counsel and the Applicant were aware the Applicant was pleading guilty to second offense.

Similarly, the Applicant failed to meet his burden of proving the plea judge did not have jurisdiction to accept his plea to possession of ephedrine (because there was no indictment for that charge). The Applicant was indicted for trafficking ephedrine and pled to the lesser offense of possession. This was noted on the sentencing sheet, which the Applicant signed. Plea counsel testified he told the Applicant he would be pleading guilty to the lesser-included charge. This Court finds plea counsel's testimony is credible. This Court reasserts this did not deprive the plea judge of subject matter jurisdiction in this case. See id.

This Court notes the Applicant raised the issue in his PCR application that plea counsel failed to advise him of the right to appeal. This Court notes, however, that plea counsel has a constitutionally imposed duty to consult with the defendant about an appeal only when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). Regardless, the plea judge advised the Applicant of the ten-day period in which to file a notice of appeal<sup>1</sup> and the Applicant failed to present any evidence that he requested plea counsel file an appeal on his behalf.

---

<sup>1</sup> Guilty plea transcript, p.7.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.


This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

#### All Other Allegations

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

#### CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Furthermore, the Applicant's guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application must be denied and dismissed with prejudice.

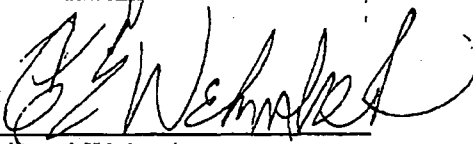
7 


This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**IT IS THEREFORE ORDERED:**

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

AND IT IS SO ORDERED this 30 day of April, 2013.

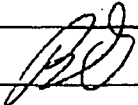
  
G. Edward Welmaker  
Presiding Judge  
Thirteenth Judicial Circuit

  
South Carolina.

WITNESSES

John Garrett

Greenville County Sheriffs Office



1/22/2010

ARREST WARRANT NUMBER

M178299

ACTION OF GRAND JURY



Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-23-<sup>HLS</sup> 000561

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

February

TERM 2011

THE STATE

vs.

BENJAMIN LOGAN MOORE

Indictment for

3029

TRAFFICKING EPHEDRINE

VIOLATION § 44-53-0375

DL SUSPENDS

Did Clerk receive driver's license?

YES  NO

If no, explain

Defendant

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
TRAFFICKING EPHEDRINE

At a Court of General Sessions, convened on FEB 15 2011 the Grand Jurors of Greenville  
County present upon their oath:

That BENJAMIN LOGAN MOORE did in Greenville County, on or about the 22nd day of January 2010,  
knowingly sell, manufacture, deliver or bring into the State of South Carolina or did knowingly provide  
financial assistance or otherwise aid, abet, attempt or conspire to sell, manufacture, deliver or bring into  
the State or was knowingly in actual or constructive possession of more than 100 grams of Ephedrine.

This is in violation of §44-53-375 of the South Carolina Code of Laws (1976) as amended.

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

  
SOLICITOR

WITNESSES

John Garrett

Greenville County Sheriffs Office

1/22/2010

ARREST WARRANT NUMBER

M178288

ACTION OF GRAND JURY

*Bobby Damm*

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-23-

000562

HLS

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

February

TERM 2011

THE STATE

vs.

BENJAMIN LOGAN MOORE

Indictment for

3198

MANUFACTURING METHAMPHETAMINE

VIOLATION § 44-53-0375

DL SUSPENDS

Did Clerk receive driver's license?

YES  NO

If no, explain

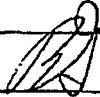
Defendant



WITNESSES

John Garrett

Greenville County Sheriffs Office

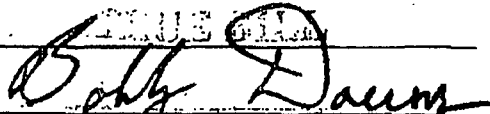


1/22/2010

ARREST WARRANT NUMBER

M178296

ACTION OF GRAND JURY



Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-23-

HLS

000563

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

February

TERM 2011

THE STATE

vs.

BENJAMIN LOGAN MOORE

Indictment for

0549

POSSESSION OF A WEAPON DURING THE  
COMMISSION OF A VIOLENT CRIME

VIOLATION § 16-23-0490

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
POSSESSION OF A WEAPON DURING THE COMMISSION OF A  
VIOLENT CRIME

At a Court of General Sessions, convened on

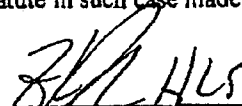
FEB 15 2011

the Grand Jurors of Greenville

County present upon their oath:

That BENJAMIN LOGAN MOORE did in Greenville County, on or about the 22nd day of January 2010, possess or visibly display a Colt .380 caliber handgun during the commission or attempted commission of a violent crime, to wit: MANUFACTURING METHAMPHETAMINE. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

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

  
SOLICITOR

JUN-23-2011 12:22 FROM:

JAIL

P.1/9

STATE OF SOUTH CAROLINA )  
 COUNTY OF Greenville )  
 STATE VS. )  
 Benjamin Logan Moore )  
 AKA: )  
 Race: WHITE Sex: M Age: 42 )  
 DOB: SS#: )  
 Address: )  
 City, State, Zip: Greenville, SC 29605 )  
 DL#: SID#: )

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2300561  
 A/W#: M178299  
 Date of Offense: 1/22/2010  
 S.C. Code §: 44-53-0375  
 CDR Code #: 3029

SENTENCE SHEET

CONVICTED OF or  PLEADS

\*CDI. Yes  No  CMV Yes  No  Hazmat Yes  No   
 In disposition of the said indictment comes now the Defendant who was  
 TO: Possession of opihedrine 100 grams < 100 grams, 2nd offense

in violation of § 44-53-0375 of the S.C. Code of Laws, bearing CDR Code # 3029  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC  §17-25-45  
 w/minor 1st or Lewd Act)

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury, (defendant's initials)  
 The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: Howards 14082 Benjamin Moore SSS  
 Steinberg, Howard SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
 for a determinate term of 8 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
 and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
 of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

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

CONCURRENT or  CONSECUTIVE to sentence on:  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
 by the State Department of Corrections. 23 days  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-63 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered  
 Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
 Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_

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

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

|  |         |       |
|--|---------|-------|
| *Fine:                                 |         | \$    |
| § 14-1-206 (Assessments 107.3 %)       |         | \$    |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100   | \$100 |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$    |
| § 56-5-2995 (DUI Assessment)           | \$12    | \$    |
| § 56-1-286 (DUI Breath Test)           | \$25    | \$    |
| Proviso 47.9 (Public Def/Prob)         | \$500   | \$    |
| § 14-1-212 (Law Enforce. Funding)      | \$25    | \$25  |
| § 14-1-213 (Drug Court Surcharge)      | \$150   | \$    |
| § 50-21-114(BUI Breath Test Fee)       | \$50    | \$    |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ea | \$    |
| Proviso 90.3 (SCCA Surcharge)          | \$5     | \$5   |
| 3% to County (if paid in installments) |         | \$    |
| TOTAL                                  |         | \$    |

Appointed PD or appointed other counsel,  
 § 47.12 requires \$500 be paid to Clerk  
 during probation.

Clerk of Court/ Deputy Clerk: Paul B. Wickham  
 Court Reporter: Henson  
 SCCA/217 (03/2011)

Presiding Judge: \_\_\_\_\_  
 Judge Code: 2158  
 Sentence Date: 6-27-2011

ARREST WARRANT

M-178299 5609

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of 1-25-10

Greenville

THE STATE 01-10-14762 against

Benjamin Logan Moore

Address:

Greenville, SC 29605-

Phone: SSN: Sex: M Race: W Height: 6 2 Weight: 230 DL State: SC DL #:

DOB: Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriff's Office

Prosecuting Officer: John Garrett - 0700

Offense: Drugs / Possession of ephedrine 100 grams < 200 grams, 1st offense

Offense Code: 3029

Code/Ordinance Sec: 44-53-0375(C)

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant BENJAMIN L. MOORE on 1-22-10

Signature of Constable/Law Enforcement Officer \*1202/P16

RETURN WARRANT TO:

Greenville General Sessions 305 E. North Street Greenville County Courthouse Greenville, SC 29601-2120

Taylor (South Greenville)

Signature of Issuing Judge Ernest Michael Obrien Judge Code: 7185 (L.S.)

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA [X] County/ [ ] Municipality of Greenville

AFFIDAVIT

ORIGINAL

FORM APPROVED BY S.C. Attorney General April 21, 2003 BCCA 618

Personally appeared before me the affiant John Garrett who being duly sworn deposes and says that defendant Benjamin Logan Moore did within this county and state on or about 01/22/2010 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Greenville) in the following particulars:

DESCRIPTION OF OFFENSE Drugs / Possession of ephedrine 100 grams < 200 grams, 1st offense

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

On January 22, 2010, the Greenville County Sheriff's Office executed a search warrant at the residence of Benjamin Moore at 10 e Greenville, SC. Upon searching the residence, Benjamin Moore was found to be in possession of 542 cold medication pills containing 122 grams of ephedrine. This offense occurred in Greenville County, SC.

Signature of Affiant

John J. Law H 0700

STATE OF SOUTH CAROLINA [X] County/ [ ] Municipality of Greenville

Affiant's address 4 Mcgee Street Greenville, SC 29601- Affiant's Telephone (864)422-2020

ARREST WARRANT

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

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

on or about 1/22/2010 defendant Benjamin Logan Moore did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Greenville) as set forth below.

DESCRIPTION OF OFFENSE: Drugs / Possession of ephedrine 100 grams < 200 grams, 1st offense

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

on 01/22/2010 Judge's Address

Signature of Issuing Judge Ernest Michael Obrien (L.S.) Judge's Telephone

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA )  
 COUNTY OF Greenville )  
 STATE VS. )  
Benjamin Logan Moore )  
 AKA: \_\_\_\_\_ )  
 Race: WHITE Sex: M Age: 42 )  
 DOB: \_\_\_\_\_ SS#: \_\_\_\_\_ )  
 Address: Dr )  
 City, State, Zip: Greenville, SC 29605 )  
 DL#: 5 SID#: \_\_\_\_\_ )

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2300562  
 A/W#: M178288  
 Date of Offense: 1/22/2010  
 S.C. Code § : 44-53-0375(b)(1)  
 CDR Code #: 3198

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No   
 In disposition of the said indictment comes now the Defendant who was  
 TO: Drugs/ manufacture, distribution, etc. of methamphetamine, 2nd

CONVICTED OF or  PLEADS

in violation of § 44-53-0375(b)(2) of the S.C. Code of Laws, bearing CDR Code # 3199  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC  §17-25-45  
 w/minor 1st or Lewd Act)

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)  
 The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: Howard Steinberg 14082 Benjamin Moore  
 Steinberg, Howard SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
 for a determinate term of 8 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
 and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
 of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

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

CONCURRENT or  CONSECUTIVE to sentence on:  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
 by the State Department of Corrections. 23 days  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

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

|  |         |                  |
|--|---------|------------------|
| *Fine:                                 |         | \$               |
| § 14-1-206 (Assessments 107.5 %)       |         | \$               |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100   | \$ <u>100.00</u> |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$               |
| § 56-5-2995 (DUI Assessment)           | \$12    | \$               |
| § 56-1-286 (DUI Breath Test)           | \$25    | \$               |
| Proviso 47.9 (Public Def/Prob)         | \$500   | \$               |
| § 14-1-212 (Law Enforc. Funding)       | \$25    | \$ <u>25</u>     |
| § 14-1-213 (Drug Court Surcharge)      | \$150   | \$               |
| § 50-21-114(BUI Breath Test Fee)       | \$50    | \$               |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ea | \$               |
| Proviso 90.5 (SCCJA Surcharge)         | \$5     | \$ <u>5</u>      |
| 3% to County (if paid in installments) |         | \$               |
| TOTAL                                  |         | \$               |

Appointed PD or appointed other counsel,  
 § 47.12 requires \$500 be paid to Clerk  
 during probation.

Clerk of Court/ Deputy Clerk Paul B. Wickens  
 Court Reporter: Herman  
 SCCA/217 (03/2011)

Presiding Judge \_\_\_\_\_  
 Judge Code: 2158  
 Sentence Date: 6-23-2011

ARREST WARRANT

5609  
2-16-10

M-178288

STATE OF SOUTH CAROLINA

County/  Municipality of

Greenville

THE STATE 1-10-017462  
against

Benjamin Logan Moore

Address: Greenville, SC 29605-

Phone: SSSN:  
Sex: M Race: W Height: 6 2 Weight: 230

DL State: SC DL #: DOB: Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: John Garrett - 0700

Offense: Drugs / manufacture of methamphetamine, 1st

Offense Code: 3198  
Code/Ordinance Sec: 3198

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

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Benjamin L. Moore on 1/22/2010

*[Signature]*  
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

South Greenville Summary Court Taylor  
8150 Augusta Road.  
Piedmont, SC 29673-8610 *[Signature]*

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/  Municipality of

Greenville

Personally appeared before me the affiant John Garrett who

being duly sworn deposes and says that defendant Benjamin Logan Moore did within this county and state on or about 01/22/2010 violate the criminal laws of the

State of South Carolina (or ordinance of  County/  Municipality of Greenville)

in the following particulars:

DESCRIPTION OF OFFENSE Drugs / manufacture of methamphetamine, 1st

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

On January 22, 2010, the Greenville County Sheriff's Office executed a search warrant at the residence of Benjamin MOORE at Greenville, SC. Upon searching the residence and property, chemicals and equipment used to manufacture methamphetamine were found in the possession of the defendant, Benjamin MOORE along with a white powder substance that field-tested positive as methamphetamine. This incident occurred in Greenville County, SC and is in violation of the SC Code of Laws, section 44-53-375.

Signature of Affiant

*[Signature]* (4700)

STATE OF SOUTH CAROLINA

County/  Municipality of

Greenville

Affiant's Address 4 Mcgee Street  
Greenville, SC 29601-  
Affiant's Telephone (864)422-2020

ARREST WARRANT

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

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

on or about 1/22/2010 defendant Benjamin Logan Moore did violate the criminal laws of the State of South Carolina (or ordinance of  County/  Municipality of Greenville) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / manufacture of methamphetamine, 1st

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

on 01/22/2010 (L.S.)

*[Signature]*  
Signature of Issuing Judge  
Leila Foster

Judge Code: 5762

Judge's Address 4 Mc Gee Street Room 116-A  
Greenville, SC 29601-2256  
Judge's Telephone (864)467-5315

Issuing Court:  Magistrate  Municipal  Circuit

ORIGINAL

ORIGINAL

ORIGINAL