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Sep 17 2025

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Daniel D. Hall, Circuit Court Judge

RICORIUS LEE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000576

APPENDIX

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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

GUILTY PLEA TRANSCRIPT DATED APRIL 11, 20191

INDICTMENT AND SENTENCING SHEET15

APPLICATION FOR POST-CONVICTION RELIEF18

RETURN, PARTIAL MOTION TO DISMISS, AND MOTION FOR A MORE DEFINITE
STATEMENT28

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED MARCH 10, 202338

ORDER OF DISMISSAL.....64

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,) TRANSCRIPT
5 PLAINTIFF,) OF
6 VS.) RECORD
7 RICORIUS SHUNDRE LEE,) 2018-GS-23-2036
8 DEFENDANT.)

9
10 April 11th, 2019
11 Greenville, South Carolina
12

13 B E F O R E:

14 THE HONORABLE LETITIA H. VERDIN, Judge.

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

16 WADE McMASTER and WALKER MILLER
17 ASSISTANT SOLICITOR
18 Attorney for the State

19 MATTHEW M. CANADY
20 ESQ.
21 Attorney for the Defendant

22
23 PAMELA E. GREEN
24 Circuit Court Reporter
25 Seventh Judicial Circuit

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I N D E X O F W I T N E S S E S

(WHEREUPON, there were no exhibits marked during this hearing.)

P R O C E E D I N G S

1
2
3 THE CLERK: Your Honor, this is The State versus
4 Ricorius Lee. 2018-GS-23-2036.

5 The State versus Alicia Porter. 2018-GS-23-9278.

6 The State versus Leon Garrett. 2018-GS-23-10250.

7 The State versus Kristin N. Mattba. 2019-GS-23-2640,
8 2641, 2018-GS-23-3430, 3431, and 3433.

9 The State versus Jonathan Cook. 2018-GS-23-3160 and
10 4395.

11 Please raise your right-hands. Please raise your
12 right-hand.

13 (WHEREUPON, all Defendants were placed under oath at
14 this time.)

15 THE COURT: Lee Garrett.

16 Are you Ms. Garrett?

17 THE DEFENDANT: No, I'm Porter.

18 THE COURT: Okay. Ms. Porter.

19 Mr. Garrett?

20 (WHEREUPON, The Defendant nods affirmatively.)

21 THE COURT: Ms. Mattba.

22 THE DEFENDANT: Cook.

23 THE COURT: Cook?

24 And then you're Ms. Mattba?

25 THE DEFENDANT: Yes.

1 THE COURT: would y'all trade places for me please?

2 (WHEREUPON, the Defendants comply.)

3 THE COURT: Thank you.

4 okay. That happened.

5 SOLICITOR MILLER: Okay. Mr. Porter here.

6 THE DEFENDANT: Okay.

7 SOLICITOR MILLER: Lee, Porter, Garrett.

8 THE COURT: Lee, Porter, Garrett?

9 SOLICITOR MILLER: Yes.

10 THE COURT: Mattba and Cook.

11 okay. All right. Good.

12 All right. Mr. Lee, you are here today to plead to
13 trafficking in methamphetamine 28 to 100 grams. That
14 carries seven to 25 years. That is classified as a violent
15 and serious offense, and this is a negotiated sentence.

16 Is that your understanding?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Okay. Ms. Porter, you are here today to
19 plead to petty larceny that carries up to 20 days.

20 Is that your understanding?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Okay. Mr. Garrett, you're here today to
23 plead to domestic violence first degree. That is a violent
24 and serious offense, and it carries up to 10 years.

25 Is that your understanding?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Okay. Ms. Mattba, you are here today to
3 plead to possession of a schedule II narcotic. That carries
4 up to two years, possession of methamphetamine that carries
5 up to three, breach of trust, a third property offense. So,
6 it carries up to 10. Accessory after the fact to murder
7 that carries up to -- no. Accessory after the fact to
8 strong armed robbery or kidnapping carries up to 15 years,
9 and possession of crack cocaine that carries up to three.

10 Is that your understanding?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Okay. And, Mr. Cook, you are here today to
13 plead to possession of methamphetamine, carries up to three
14 years, and shoplifting less than 2,000, carries up to 30
15 days.

16 Is that your understanding?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Have you discussed these charges with your
19 lawyer, Mr. Lee?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Ms. Porter?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Mr. Garrett?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Ms. Mattba?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Mr. Cook?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Are you happy with what your lawyer's done
5 for you, Mr. Lee?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Ms. Porter?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Mr. Garrett?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Ms. Mattba?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Mr. Cook?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Has anybody forced you to plead guilty or
16 promised you anything to get you to plead guilty, Mr. Lee?

17 THE DEFENDANT: No, ma'am.

18 THE COURT: Ms. Porter?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: Mr. Garrett?

21 THE DEFENDANT: No, ma'am.

22 THE COURT: Ms. Mattba?

23 THE DEFENDANT: No, ma'am.

24 THE COURT: Mr. Cook?

25 THE DEFENDANT: No, ma'am.

1 THE COURT: Are you under the influence of drugs or
2 alcohol here today, Mr. Lee?

3 THE DEFENDANT: No, ma'am.

4 THE COURT: Ms. Porter?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: Mr. Garrett.

7 THE DEFENDANT: No, ma'am.

8 THE COURT: Ms. Mattab?

9 THE DEFENDANT: No, ma'am.

10 THE COURT: Mr. Cook?

11 THE DEFENDANT: No, ma'am.

12 THE COURT: When you plead guilty you give up certain
13 constitutional rights. One is your right to remain silent
14 about these charges.

15 Do you know that, Mr. Lee?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Ms. Porter?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Mr. Garrett?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Ms. Mattba?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And Mr. Cook?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: You also give you your right to a jury

1 trial. At that trial, your attorney could call witnesses
2 for you, cross-examine witnesses against you, and the state
3 would have to prove your guilt beyond a reasonable doubt,
4 but, when you plead guilty, you give up your right to a jury
5 trial.

6 Do you know that, Mr. Lee?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Ms. Porter?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Mr. Garrett?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Ms. Mattba?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And Mr. Cook?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Everyone except Mr. Lee and Mr. Cook,
17 you're pleading to charges that have not been indicted by
18 the Grand Jury.

19 You want to give up that right and plead guilty today
20 anyway, Ms. Porter?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Mr. Garrett.

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: And Ms. Mattba?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: How do plead, guilty or not guilty,
2 Mr. Lee?

3 THE DEFENDANT: Guilty.

4 THE COURT: Ms. Porter?

5 THE DEFENDANT: Guilty.

6 THE COURT: Mr. Garrett?

7 THE DEFENDANT: Guilty.

8 THE COURT: Ms. Mattba?

9 THE DEFENDANT: Guilty.

10 THE COURT: And Mr. Cook?

11 THE DEFENDANT: I'm guilty.

12 THE COURT: Each of you has 10 days from today's date
13 to appeal this plea if you so choose. But you must do so in
14 writing to this court.

15 Yes, sir.

16 SOLICITOR McMASTER: May it please the Court, Your
17 Honor.

18 THE COURT: Yes, sir.

19 SOLICITOR McMASTER: Wade McMaster for the State.

20 On or about 10/17 of '17, in Greenville County, and
21 after a lawful traffic stop and search, the Defendant was
22 found to be in possession of 126.02 grams of
23 methamphetamine. Your Honor, he has 390 days total credit.
24 That includes his HIP, his days on a violation of HIP, and
25 after -- and his actual 52 days that he received when he

1 actual -- when he was originally arrested on this charge.

2 He has also agreed to testify and explain on the record
3 about his involvement with his codefendant here today, and
4 the state has worked out a negotiated 10 years active on
5 this case.

6 THE COURT: All right. And you heard the facts as
7 stated by the solicitor.

8 How do you plead, guilty or not guilty?

9 THE DEFENDANT: Guilty.

10 THE COURT: I certainly accept your plea.

11 All right. You---

12 SOLICITOR McMASTER: Yes.

13 Mr. Lee, can you tell the, the court a little bit about
14 Mr. Rodriguez Williams, your codefendant's involvement in
15 this case?

16 Will you tell them whether he had involvement or not,
17 what his role was, if you -- there was any role at all in
18 this case?

19 THE DEFENDANT: He didn't know.

20 SOLICITOR McMASTER: He didn't know what?

21 THE DEFENDANT: That there was drugs in the car.

22 SOLICITOR McMASTER: Were you the target of the
23 investigation?

24 THE DEFENDANT: Yes, sir.

25 SOLICITOR McMASTER: And the drugs were found --?

1 THE DEFENDANT: In the trunk.

2 SOLICITOR McMASTER: And -- but it was Mr. Williams
3 vehicle.

4 Is that correct?

5 THE DEFENDANT: No, sir.

6 SOLICITOR McMASTER: Whose vehicle was it?

7 THE DEFENDANT: Mine.

8 SOLICITOR McMASTER: And -- but he was your driver?

9 THE DEFENDANT: Yes, sir.

10 SOLICITOR McMASTER: Was he your driver because you
11 didn't have any -- you didn't have a valid driver's license
12 at the time?

13 THE DEFENDANT: Yes, sir.

14 SOLICITOR McMASTER: And you never told him about
15 anything about those drugs in the trunk?

16 THE DEFENDANT: No, ma'am.

17 SOLICITOR McMASTER: And you -- he didn't know anything
18 about it?

19 THE DEFENDANT: No, sir.

20 SOLICITOR McMASTER: He wasn't gonna receive any money
21 from the, the sale of those drugs that day?

22 THE DEFENDANT: No, sir.

23 SOLICITOR McMASTER: You hadn't promised him any money
24 to help you get those drugs there?

25 THE DEFENDANT: No, sir.

1 SOLICITOR McMASTER: And is that the first time that
2 you've told law enforcement or the Court or anyone about his
3 involvement in this case?

4 THE DEFENDANT: Yes, sir.

5 SOLICITOR McMASTER: All right. Thank you.

6 THE COURT: All right. Very well then.

7 I certainly will accept the negotiations in this case.

8 MR. CANADY: Thank you, Your Honor.

9 I just, real briefly, he does have a substantial family
10 presence here today. I would just like all of them to stand
11 just so that he can see that they're here in support of him
12 today.

13 THE COURT: Wow. Wow. Thank y'all for being here.
14 That's wonderful that you've got all your family here.

15 As I said, I'm happy to, to go along with this.

16 MR. CANADY: Thank you, Your Honor.

17 THE COURT: All right.

18 MR. CANADY: That's all we can ask.

19 THE COURT: Ten years. Credit for the 390 days. Good
20 luck to you.

21 SOLICITOR McMASTER: Thank you, Your Honor.

22 THE COURT: Thank y'all for being here.

23 (WHEREUPON, the other guilty pleas were concluded at
24 this time.)

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* * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the state of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 11th day of April, 2019.

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

March 25th, 2020



PAMELA E. GREEN, Court Reporter

WITNESSES

Andrew M Herring

A.M.H.

Greenville County Sheriffs Office

10/17/2017

ARREST WARRANT NUMBER

2017A2330209525

**ACTION OF GRAND JURY
TRUE BILL**

Clay Tuttle

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2018-GS-23-
WCM 002006

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

August TERM 2018

THE STATE

vs.

RICORIUS SHUNDRE LEE

Caradey

0392 ✓
0368

Indictment for

TRAFFICKING METHAMPHETAMINE

VIOLATION § 44-53-0375

FILED

MAR 23 2018

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
TRAFFICKING METHAMPHETAMINE

AUG 28 2018

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That RICORIUS SHUNDRE LEE did in Greenville County, on or about the 17th day of October, 2017, 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 but less than 200 grams of Methamphetamine (Crank). 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

11605
BAR # 11605

STATE OF SOUTH CAROLINA

1708397
IN THE COURT OF GENERAL SESSIONS 7-25 yr

COUNTY OF Greenville
STATE VS.

INDICTMENT/CASE#: 2018GS2302036

Ricorius Shundre Lee

A/W#: 2017A2330209525

AKA:

Date of Offense: 10/17/2017

Race: BLACK Sex: M Age: 35

S.C. Code § : 44-53-0375(C)(3)

DOB: SS#: DL#: SID#:

CDR Code #: 0368

Address:

City, State, Zip: Piedmont, SC 29673

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was

CONVICTED OF or PLEADS

TO: Trafficking Meth 28-100 grams 1st

SENTENCE SHEET

in violation of § 44-53-0375(C)(2)(a) of the S.C. Code of Laws, bearing CDR Code # 0392

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

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: McMaster, William 11605 Ricorius Lee Defendant ROBINSON, SCOTT M. T. 100511-63351 SC Bar# Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 10 days/months/years of 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 SCDOC.

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

Set by SCDPPPS _____

Recipient: _____

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

TOTAL \$ 283.25

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

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

Clerk of Court/ Deputy Clerk Paul B. Wislenski
Court Reporter: Michelle Shoen

Presiding Judge _____
Judge Code: 2462
Sentence Date: APR 11 2019

FORM 5

STATE OF SOUTH CAROLINA)
County of Greenville)

IN THE COURT OF COMMON PLEAS

Rickins Shundre Lee #326438
Full name and prison number (if any) of Applicant)

2020-CP-23-00225 ,

v.)

APPLICATION FOR

State of South Carolina)
)
)
)
)

POST-CONVICTION RELIEF

FILED
CLERK OF COURT
PAID
2020 JAN 14 PM 2:45

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 Greenville County Detention Center.

2. Name and location of Court which imposed sentence Greenville County Court of General Sessions, 305 E. North street.

3. Name(s) of co-defendant(s) (if any) n/a

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2018 ES 2302036

- (b) _____
- (c) _____

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

- (a) Sentenced on April 11, 2019
- (b) Negotiated Sentence, For A lesser Included Offense.
- (c) 90 years

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. _____
 - ii. _____
 - iii. _____
- (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
- (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____

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

- (a) LACK of Knowledge to A direct Appeal.

- (b) Now that I have knowledge of such,
- (c) I feel as though I have better ground for PCR.

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

- (a) Ineffective Assistance of Counsel
- (b) Payiny / No Probable Cause
- (c) Reser included offense Statute

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

- (a) _____
- (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? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No _____

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

(a) which grounds have been presented:

i. _____

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) I'm at the beginning of my sentence.
- (b) I've chosen to do a P.C.R., Instead of Direct Appeal
- (c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. Scott Robinson for arraignment
 - ii. Matt Canady for Plea and Sentencing
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Scott Robinson - Arraignment
 - ii. Matt Canady - Plea and Sentencing
 - iii. _____

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

The relief I seek is overturn conviction,
Resentence to a Nonviolent Statute, New trial, or
immediate Release.

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

N/A

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of Greenville)

VERIFICATION

I, Ricorius Shundra Lee, 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.

Ricorius Lee

SWORN to and subscribed before me this 10th
day of Dec 2019.

Sandra C. Scarborough (S.S.)
Notary Public

My Commission Expires: March 31st 2027

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

I, Ricorius Kendrick Lee, 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.

Ricorius Lee
Applicant

SWORN or affirmed to and subscribed before me this
10th day of Dec, 2019.

Janita C. Scarborough
Notary Public

My Commission Expires: March 22nd 2027

State of South Carolina
County of Greenville

In the Court of Common Pleas

v.

Ricard Lee
326428
applicant.

"Application for Post-Conviction Relief"

"Briefs"

"Attachments"

Question # 10

- (a) Ineffective Assistance of Counsel -
- (b) Perjury / No Probable Cause -
- (c) Lesser Included offense Statute -

Question # 11

(A) Ineffective Assistance of Counsel -

ground 1 - I've been asking my attorney for my Rule 5, so I can see the evidence against me, and to make an independent choice whether I want to Plea or go to trial depending on what evidence the state has against me, In Violating South Carolina Criminal Rules & Procedures Rule # (5)(a)(1), (c), (d). I've never seen my Rule 5, as I consistently requested, therefore I was forced to Plea.

(B) Perjury / No Probable Cause -

ground 1 - I've added Perjury and No Probable Cause because on April 11, 2019, at Court the ~~prosecutor~~ ^{solicitor} testified that they pulled me over in a lawful traffic stop which led to discovery of the drugs and arrest. those statement for mentioned is complete "perjury", I've Requested the transcripts for that day of April 11, 2019, Months ago, but never received

them,

ground #2) No Probable Cause, for My Incident involved a C.I., that I was allegedly supposed to meet, my vehicle was fully off, I was parked, in a parking lot, when Police pulled behind my parked vehicle in a van, they then hopped out the van, surrounded my vehicle, then pulled me out the vehicle, cuffed me, then searched me and my vehicle, Police then retrieved my Car Key & opened the glove compartment and used the keys to open my trunk, where they found the Meth. Police never asked for consent to search me or my vehicle, the glove compartment, nor my trunk. Police warrantless search was "unwarranted" and without "Probable Cause", there was no crime committed in the officer's presence, and the drugs were not in plain view for all to see.

C. Lesser Included Offense Statute -

ground #1) My original offense § 44-53-375(C)(3) is a 7-25 yr offense, and trafficking Meth 28-100, § 44-53-375 (C)(2)(a), which I pleaded to for a lesser included offense is also a 7-25 yr, A lesser included offense is § 44-53-375, (10-289), which is a 1st offense and Eligibility Parole & Probation, work & good Conduct Credits, Work Release, etc.

Ricorius Lee 326428
D.R.C.T. w/6 SA
[REDACTED]
Zembert, SC 29128

COLUMBIA SC 29200
DUPLICATE
NO POSTAGE
NECESSARY
IF MAILED
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UNITED STATES

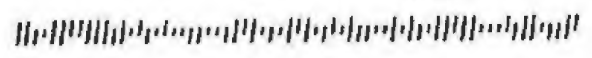


Greenville County General Sessions Court
305 East North Street
Greenville, SC 29601

2020-CP-23-00225

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	IN THE THIRTEENTH JUDICIAL CIRCUIT
)	
)	
Ricorus Shundre Lee, #326428,)	Case No.: 2020-CP-23-225
Applicant,)	
)	
v.)	RETURN, PARTIAL MOTION
)	TO DISMISS, AND MOTION FOR
State of South Carolina,)	A MORE DEFINITE STATEMENT
Respondent.)	
_____)	

The State (Respondent), making its return to the application for post-conviction relief filed by Ricorus Shundre Lee (Applicant) on January 14, 2020, would respectfully show this Court:

I. Procedural History

Applicant is presently incarcerated in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. During its August of 2018 term, the Greenville County Grand Jury indicted Applicant for trafficking in methamphetamine, 100 to 200 grams (2018-GS-23-2036). Applicant was represented by Matthew Michael Canaday, Esquire, and Assistant Solicitors Wade McMaster and Edward Walker Miller of the Thirteenth Circuit Solicitor’s Office prosecuted the case. On April 11, 2019, Applicant appeared before the Honorable Letitia H. Verdin and pleaded guilty to the lesser-included offense of trafficking in methamphetamine, 28 to 100 grams. In accordance with the negotiated sentence, Judge Verdin sentenced Applicant to imprisonment for ten years, with credit for time served. Applicant did not appeal his conviction or sentence.

II. Current Application

In his application for post-conviction relief, Applicant alleges he is entitled to post-conviction relief based on the following grounds:¹

- (1) Applicant received the ineffective assistance of counsel:
 - a. “I’ve been asking my attorney for my Rule 5, so I can see the evidence against me, and to make an independent choice whether I want to plea or go to trial depending on what evidence the State has against me, In violating South Carolina Criminal Rules and Procedures Rul #(5)(a)(1),(c),(d). I’ve never seen my Rule 5, as I consistently requested, therefore I was forced to plea.”
- (2) The solicitor committed perjury during Applicant’s plea hearing by “testif[ying] that they pulled [Applicant] over in a lawful traffic stop which led to discover of the drugs and arrest. Those statement forementioned is complete ‘perjury’”; and
- (3) The police lacked probable cause to search Applicant’s car for drugs.

Applicant prays that the Court grant him post-conviction relief by vacating his sentence, resentencing him for a non-violent offense, granting him a new trial, or granting him immediate release from prison. Attached to this return and incorporated by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, Applicant’s records from the South Carolina Department of Corrections, the transcript from Applicant’s plea hearing, and the post-conviction relief application. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III. Ineffective Assistance of Counsel

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that trial

¹ Applicant includes as a claim in his application a statement about various drug offenses and sentences. The undersigned does not understand what claim is meant to be advanced by this statement and moves later in this return for a more definite statement so that Respondent can provide an effective response.

counsel was constitutionally ineffective, he must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result.” Strickland, 466 U.S. at 686

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. Id. at 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing: (1) counsel was deficient and (2) there is a reasonable probability that but for counsel’s errors, the defendant would not have pleaded guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). The “prejudice prong ordinarily requires more than simply a

defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial." Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney. Id. at 690. "A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). "Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea." Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see Jamison v. State, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea").

Applicant claims his guilty pleas was not knowingly and voluntarily entered because he

did not review his discovery. Applicant affirmed to Judge Verdin at his plea hearing that he was happy with what plea counsel had done for him. Tran. 6. Respondent submits Applicant cannot meet his burden in showing he is entitled to post conviction relief. However, Respondent requests an evidentiary hearing in order to address the questions of fact raised that the record may not conclusively refute. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (holding that an evidentiary hearing is required when an application for post-conviction relief alleges specific instances of ineffectiveness that are not conclusively refuted by the record) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV. Motion for Summary Dismissal

Applicant alleges that he is entitled to post-conviction relief because the solicitor falsely claimed drugs were found in Applicant's car after police conducted a lawful search thereof and because the police did not have probable cause to search Applicant's car. These are not proper grounds for post-conviction relief. Respondent hereby moves for summary dismissal.

Pursuant to S.C. Code Ann. § 17-27-70(c), the Court may summarily dispose of an application if there is no genuine issue of material fact in the "pleadings, depositions and admissions and agreements of fact" and the movant is entitled to judgment as a matter of law. The summary dismissal of an application for post-conviction relief without a hearing is appropriate only when it is apparent on the fact of the application that a hearing is not needed for the development of a factual record and the applicant is not entitled to relief. Mose v. State, 420 S.C. 500, 505, 803 S.E.2d 718, 720 (2017) (citing Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005)). The Court, in considering the motion for summary dismissal without the holding of an evidentiary hearing, must assume the facts presented by Applicant as true and view them in the light most favorable to Applicant. Robertson v. State, 418 S.C. 505, 519, 795 S.E.2d 29, 36 (2016)

(citing McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013)).

With regard to these allegations, Respondent is entitled to judgment as a matter of law and there is no genuine issue of material fact.

An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A).

Post-conviction relief is not a substitute for remedies incident to the proceedings in the trial court or on direct appeal. S.C. Code Ann. § 17-27-20(B). The allegations aforementioned do not constitute a cognizable claim for post-conviction relief under any of the statutory grounds.

“A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed.” Dalton, at 137, 654 S.E.2d at 874. When a defendant pleads guilty, his plea acts generally as a waiver of all defenses and non-jurisdictional defects. State v. Thomason, 341 S.C. 524, 526, 534 S.E.2d 708, 710 (S.C. Ct. App. 2000) (citing State v. Munsch, 287 S.C. 313, 338 S.E.2d 329 (1985)). The defendant’s guilty plea admits all elements of the offense and “leaves open for review only the sufficiency of the indictment and waives all other defenses.” Id. (quotation omitted) (citations omitted).

By pleading guilty, Applicant waived his right to challenge the State’s evidence and seek

the suppression of the evidence from the search of his car. Even if the facts alleged by Applicant are true, Respondent is entitled to judgment as a matter of law. Therefore, this Court should summarily dismiss this claim pursuant to S.C. Code Ann. § 17-27-70(c) (2003).

V. Motion for a More Definite Statement

Respondent moves for a more definite statement as to Applicant's allegation about a lesser-included offense. The undersigned is unable to understand the nature of this allegation or if there are any supporting facts. Applicant fails to set forth with specificity any facts and circumstances upon which the claim is based.

The Uniform Post-Conviction Procedure Act requires that Applicant must "specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Furthermore, Rule 8(a), SCRC, requires all civil pleadings include "a short and plain statement of the facts showing that the pleader is entitled to relief."

Respondent moves pursuant to Rule 12(e), SCRC, to require Applicant to provide a more definite statement of this claim. Respondent moves to require Applicant to file an amended application well in advance of any evidentiary hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the allegations.

VI. Denial of All Other Allegations

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

VII. Future Amendments and the Discovery Process

Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant is represented by counsel, that attorney and not the Applicant is the only individual authorized to file amendments to this application for post-conviction relief. See Rule 11, SCRCF. Pro se filings will not be considered at the evidentiary hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent pursuant to Love v. State, Op. No. 27921 (S.C. Sup. Ct. filed October 2, 2019) (Shearouse Adv. Sh. No. 39 at 14), or, alternatively, Respondent will move for a continuance in the matter. See Love, at 24 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

VIII. Conclusion

WHEREFORE, Respondent requests that the Court summarily dismiss the claims about the solicitor and the traffic stop, require Applicant to file an amended application as requested herein, and then convene an evidentiary hearing on Applicant’s remaining claims.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

TAYLOR ZANE SMITH
Assistant Attorney General

By: s/Taylor Zane Smith
S.C. Bar No.: 103282
ATTORNEYS FOR RESPONDENT

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

April 11, 2020

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
)	
Ricorus Shundre Lee, #326428,)	
)	Case No.: 2020-CP-23-225
Applicant,)	
)	
v.)	Certificate of Service
)	
State of South Carolina)	
)	
Respondent,)	
_____)	

1. Undersigned is counsel of record for the Respondent in the above-captioned action.

2. Pursuant to the South Carolina Supreme Court’s Order “RE: Operation of the Trial Courts During the Coronavirus Emergency” (Appellate Case No. 2020-000447), dated April 3, 2020), “a lawyer admitted to practice law in this state may serve a document on another lawyer admitted to practice law in this state using the lawyer’s primary email address listed in the Attorney Information System (AIS).”

3. Undersigned has served a copy of the **Return, Partial Motion to Dismiss, and Motion for a More Definite Statement** in the above-captioned matter on opposing counsel by emailing a copy to the email address as listed in the AIS:

Susannah Conyers Ross, Esquire
susannah@rossenderlin.com

DATED this 11th day of April, 2020.

s/Taylor Zane Smith
ATTORNEY NAME
Assistant Attorney General
S.C. Bar No.: 103282

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

(803) 734-3737
TSmith@scag.gov

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COMMON PLEAS
13th JUDICIAL CIRCUIT

RICORIUS LEE,
Applicant,

vs.

CASE NO. 2020-CP-23-00225

STATE OF SOUTH CAROLINA,
Respondent.

HEARING BEFORE: HONORABLE DANIEL D. HALL
DATE: March 10, 2023
TIME: 9:47 AM
LOCATION: Greenville County Courthouse
305 E. North
Greenville, SC 29601
REPORTED BY: LORA L. McDANIEL,
Registered Professional Reporter

APPEARANCES:
ATTORNEYS FOR THE APPLICANT
SUSANNAH ROSS, ESQ.
ATTORNEYS FOR THE RESPONDENT
TAYLOR SMITH, ESQ.

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I N D E X

DIRECT CROSS REDIRECT RECROSS

WITNESS/EXAMINATION

RICORIUS LEE

BY MS. ROSS 4 -- -- --

BY MR. SMITH -- 8 -- --

JESSICA M. DAVIES

BY MS. ROSS 10 -- -- --

BY MR. SMITH -- 12 -- --

MATTHEW M. CANADY

BY MR. SMITH 13 -- 22 --

BY MS. ROSS -- 20 -- --

WILLIAM McMASTER

BY MR. SMITH 24 -- -- --

BY MS. ROSS -- -- -- --

CERTIFICATE OF REPORTER Page 26

E X H I B I T S

(No Exhibits Proffered)

RICORIUS LEE vs. THE STATE OF SOUTH CAROLINA

1 THE COURT: Next matter is Ricorius Lee.

2 Mr. Smith, are you ready to proceed?

3 MR. SMITH: Yes, Your Honor.

4 THE COURT: Ms. Ross, are you ready to proceed?

5 MS. ROSS: Yes, Your Honor.

6 THE COURT: I'll call it while you're getting
7 ready. 2020-CP-23-0225. This is Ricorius S. Lee versus State
8 of South Carolina. This is a post-conviction relief hearing.
9 Mr. Lee is represented by Susannah Ross. Representing the
10 State is Mr. Taylor Smith. Mr. Smith, are you ready to
11 proceed?

12 MR. SMITH: Yes, Your Honor.

13 THE COURT: Again, Ms. Ross, are you ready to
14 proceed?

15 MS. ROSS: Yes, Your Honor.

16 MR. SMITH: May I approach?

17 THE COURT: Yes, if you'll hand up the document.

18 Where we are procedurally is we are ready for the
19 evidentiary hearing; is that correct?

20 MR. SMITH: That's right, Your Honor.

21 THE COURT: Mr. Smith, if you'll -- I'm sorry.
22 Ms. Ross, call your witness.

23 MS. ROSS: Thank you, Your Honor. Just to briefly
24 go over the procedural history, I put up the allegations of
25 ineffective assistance of counsel, failure to investigate,

RICORIUS LEE vs. THE STATE OF SOUTH CAROLINA

1 mis-advising that the charges carried 65 percent rather than 85
2 percent, I believe they do; failing to provide discovery prior
3 to the guilty plea, allowing the plea to proceed when the
4 statement of facts made by the Solicitor was incorrect, and
5 failure to argue or lack of probable cause to search the car.

6 At this point, I call Mr. Ricorius Lee to the
7 stand.

8 THE CLERK: Mr. Lee, please place your left hand on
9 the Bible. Raise your right hand.

10 RICORIUS LEE
11 being first duly sworn, testified as follows:

12 THE CLERK: You may be seated. Please state your
13 full name for the record.

14 MR. LEE: Ricorius Shundre Lee.

15 DIRECT EXAMINATION

16 BY MS. ROSS:

17 Q. Good morning, Mr. Lee. Do you understand why
18 you're here?

19 A. Yes, ma'am.

20 Q. Do you understand, in post-conviction proceedings,
21 the relief is for you to be returned to the position you were
22 in before the plea.

23 A. Yes, ma'am.

24 Q. You understand with the original charge you had,
25 you would be facing mandatory 25 to 30 years?

RICORIUS LEE vs. THE STATE OF SOUTH CAROLINA

1 A. Yes, ma'am.

2 Q. Do you wish to proceed today?

3 A. Yes, ma'am.

4 Q. You've alleged ineffective assistance of counsel.

5 What is the basis of those allegations?

6 A. What you mean?

7 Q. Let's start first, right when I was appointed to
8 your case, did you get credit for all the time you served --

9 A. No, ma'am.

10 Q. -- on this charge?

11 A. Talking about before?

12 Q. Before.

13 A. No, ma'am.

14 Q. Then we did an order to amend the sentence. You
15 got credit for more time?

16 A. Yes, ma'am.

17 Q. That was only after I was appointed to review the
18 case. That didn't happen -- your lawyer didn't do that for you
19 initially?

20 A. No, ma'am.

21 Q. How about you've also alleged failure to
22 investigate. That your lawyer failed to investigate your case
23 before the plea. What should he have done? What do you think
24 he did not do?

25 A. I ain't get my motion of discovery.

1 Q. Did you get -- so did you ever review your motion
2 of discovery?

3 A. No, ma'am.

4 Q. So you've never got a copy of the actual motion?

5 A. No, ma'am.

6 Q. Did you ever see any videos?

7 A. No, ma'am.

8 Q. When you were doing the guilty plea, did the judge
9 ever ask you: Have you reviewed the charges against you with
10 your lawyer?

11 A. I really can't remember.

12 Q. If you did and you said yes, why would you have
13 done that? In other words, a lot of the questions the judge
14 asked you during a guilty plea, he'll say things like: Are you
15 satisfied with your lawyer? And you said yes during this
16 guilty plea. Why did you say that at the time and now you're
17 saying ineffective --

18 A. Because he had told me it would be ten years, 65
19 percent.

20 Q. As far as the 65 percent, did he specifically tell
21 you -- what did he specifically tell you about that?

22 A. That I would be eligible for parole.

23 Q. Are you eligible for parole?

24 A. No, ma'am.

25 Q. When you plead, did you expect to be eligible for

RICORIUS LEE vs. THE STATE OF SOUTH CAROLINA

1 parole?

2 A. Yes, ma'am.

3 Q. Why did you expect that?

4 You said it before?

5 A. That's what the attorney had told me.

6 Q. You've also alleged that the plea proceeded when
7 the statement of facts made by the Solicitor was incorrect.
8 What are you referring to there?

9 A. It's been so long.

10 Q. Looking at the transcript of your case, do you
11 still have a copy of the plea transcript I sent you?

12 A. Yes, ma'am.

13 Q. Do you remember that, during that you had said -- I
14 thought one of your allegations was the statement of the facts
15 made by the Solicitor about what happened was incorrect?

16 A. Yes, ma'am, they said it was a traffic stop.

17 Q. Explain that a little bit more. They said it was a
18 traffic stop?

19 A. Yes, ma'am.

20 Q. And what was it?

21 A. I mean, we was sitting in a parking lot.

22 Q. Can you give the judge a little bit more
23 information. You were sitting in a parking lot, and the police
24 approached and that led to a search of your car?

25 A. Yes, ma'am.

RICORIUS LEE vs. THE STATE OF SOUTH CAROLINA

1 Q. What did they say during the statement of facts
2 during your plea that was different from that? Do you recall?

3 A. No.

4 Q. Did you think -- did you ever see a video of the
5 search of your car or the police approaching you?

6 A. No, ma'am.

7 Q. What do you think a video would've shown, or what
8 do you think happened that they're not recognizing?

9 A. I mean, I never was blue lighted.

10 Q. Did you think the police officers had a reason to
11 search your car?

12 A. No, ma'am.

13 Q. Okay. Why don't you think they had a reason to
14 search your car?

15 A. I mean, 'cause it wasn't a traffic stop.

16 Q. Is there anything else you would like the judge to
17 hear about your lawyer being ineffective or your plea being
18 invalid?

19 A. No, ma'am.

20 MS. ROSS: Okay. Please answer any questions from
21 the Attorney General.

22 THE COURT: Mr. Smith.

23 CROSS-EXAMINATION

24 BY MR. SMITH:

25 Q. Mr. Lee, are you saying that you plead guilty to a

RICORIUS LEE vs. THE STATE OF SOUTH CAROLINA

1 negotiated ten-year sentence without knowing anything about the
2 evidence against you?

3 A. Yes, sir.

4 Q. Why would you agree to go to prison for ten years,
5 and you're saying you don't understand why you were doing that?

6 A. I mean, the drugs was in the car.

7 Q. Okay. So you did know the drugs were in the trunk;
8 right?

9 A. Yes, sir.

10 Q. You were in the car; right?

11 A. Yes, sir.

12 Q. And you admitted the drugs were yours at your plea
13 hearing; right?

14 A. Yes, sir.

15 Q. Even if your lawyer didn't review stuff with you,
16 you did know there were drugs in your car; right?

17 A. Yes, sir.

18 Q. So that's why you were pleading guilty; right?

19 A. Yes, sir.

20 MR. SMITH: Thank you.

21 MS. ROSS: I have no further questions.

22 THE COURT: Thank you. Mr. Lee, you can step down.

23 (The witness exited the stand.)

24 THE COURT: Ms. Ross, any other witnesses?

25 MS. ROSS: I believe so. I just want to ask

RICORIUS LEE vs. THE STATE OF SOUTH CAROLINA

1 Mr. Lee briefly.

2 (A pause transpired.)

3 MS. ROSS: We call Jessica Davies.

4 THE CLERK: Ms. Davies, please step around. Raise
5 your right hand, put your left hand on the Bible.

6 JESSICA MONIQUE DAVIES

7 being first duly sworn, testified as follows:

8 THE CLERK: You may be seated. Please state your
9 full name for the record.

10 MS. DAVIES: Jessica Monique Davies.

11 DIRECT EXAMINATION

12 BY MS. ROSS:

13 Q. Ms. Davies, can you explain what your familiarity
14 is with Mr. Lee's case.

15 A. Yes. I was the one that was speaking with Guy
16 Robinson a lot. Basically -- do y'all want me to tell you what
17 happened?

18 Q. Yeah. Just to clarify, it ended up with a plea.
19 Scott Robinson wasn't the plea attorney. But he had been the
20 attorney for most of the bulk of this case; is that right?

21 A. Yes, ma'am.

22 Q. What did you witness between -- what was your
23 experience with Scott Robinson? Do you know if he showed
24 discovery to Mr. Lee?

25 A. No. So, on multiple occasions I did text him with

RICORIUS LEE vs. THE STATE OF SOUTH CAROLINA

1 no response back. I still have those text messages to this
2 day. It's connected to his telephone number.

3 I requested on multiple occasions for him to send
4 the motion of discovery to Greenville County Detention Center.
5 And no response to that.

6 Matter of fact, the first couple of times he told
7 me he was going to send it over there multiple times. And he
8 never sent it.

9 MR. SMITH: Objection, Your Honor. It's my
10 understanding that the claims are raised against Mr. Canady who
11 represented Mr. Lee at the guilty plea hearing. I'm not sure
12 what the relevance would be to discussions with Mr. Robinson.

13 MS. ROSS: I guess it just goes to whether, in
14 fact, a copy of discovery was sent.

15 THE COURT: I'll overrule the objection. I'll let
16 her go into that.

17 THE WITNESS: Yeah. So basically he never sent the
18 motion to the detention center. I asked him on multiple
19 occasions to go see Ricorius at the detention center.

20 MR. SMITH: Objection. Lack of personal knowledge
21 to what Mr. Robinson did.

22 THE COURT: I'll sustain that objection.

23 BY MS. ROSS:

24 Q. To your knowledge, did Mr. Lee ever get a copy of
25 his discovery?

RICORIUS LEE vs. THE STATE OF SOUTH CAROLINA

1 A. No, ma'am.

2 MS. ROSS: I have no further questions.

3 THE COURT: Any cross, Mr. Smith?

4 CROSS-EXAMINATION

5 BY MR. SMITH:

6 Q. Ms. Davies, were you in the jail cell with Mr. Lee?

7 A. No, but I do have record of Mr. Robinson not
8 responding back. I also have record of him saying that he sent
9 and he did not. And I told him --

10 MR. SMITH: Objection; hearsay.

11 THE COURT: You asked the question. Let her
12 answer.

13 THE WITNESS: When I told him that he didn't send
14 the statement back, he responded back basically acknowledging
15 that he did not send the information to the detention center.

16 MR. SMITH: Your Honor, move to strike that as
17 hearsay. I didn't ask her that question.

18 THE COURT: We'll strike it as being unresponsive
19 to the question asked.

20 MR. SMITH: Your Honor, may I confer with opposing
21 Counsel for a moment?

22 THE COURT: Yes.

23 (A pause transpired).

24 MR. SMITH: May we approach, Your Honor?

25 THE COURT: Yes.

RICORIUS LEE vs. THE STATE OF SOUTH CAROLINA

1 (Off-the-record discussion.)

2 MR. SMITH: No more questions. Thank you.

3 THE COURT: Anything further, Ms. Ross?

4 MS. ROSS: No, Your Honor.

5 THE COURT: Ms. Davies, you can step down.

6 (The witness exited the stand.)

7 THE COURT: Any other witnesses?

8 MS. ROSS: No, Your Honor.

9 THE COURT: Mr. Smith.

10 MR. SMITH: Yes, Your Honor. I call Mr. Matt
11 Canady.

12 THE CLERK: Place your left hand on the Bible,
13 raise your right hand.

14 MATTHEW MICHAEL Canady

15 being first duly sworn, testified as follows:

16 THE CLERK: Thank you. You may be seated.

17 Please state your full name for the record.

18 THE WITNESS: My name is Matthew Michael Canady.

19 DIRECT EXAMINATION

20 BY MR. SMITH:

21 Q. Mr. Canady, when were you admitted to practice in
22 South Carolina?

23 A. I was admitted to practice in South Carolina in the
24 Year 2012.

25 Q. Can you give me a summary of your legal experience.

1 A. So summary of my entire legal career?

2 Q. Yes.

3 A. After I was admitted, I started working for another
4 attorney, Robert Ianuario. I worked for him for,
5 approximately, five or six years before I struck out on my own
6 and worked for myself for, approximately, four or five years
7 after that.

8 Q. How did you come to be involved in Mr. Lee's case?

9 A. I was contacted by, I believe, a family member of
10 Mr. Lee's. I went, I think, down to the jail to visit him,
11 talk to him. And then they decided to retain me to substitute
12 in for Scott Robinson who they told me they were dissatisfied
13 with.

14 Q. How long after Mr. Lee was arrested was it that you
15 began working for him?

16 A. My motion for discovery and letter representation
17 was filed on April 5, 2019. So that was when I started working
18 for Mr. Lee.

19 Q. How many times did you meet with Mr. Lee?

20 A. I'm not sure. I think I only met with him a couple
21 of times. It wasn't a super lengthy period of representation,
22 if I remember correctly.

23 Q. Okay. What are the facts of the case as best you
24 remember them?

25 A. As best I remember, there was an arrest in, I

RICORIUS LEE vs. THE STATE OF SOUTH CAROLINA

1 think, a Church's Chicken parking lot. There had been some
2 kind of tip that had indicated that Mr. Lee was selling drugs.
3 There was a K-9 sniff around of the car. Mr. Lee was not the
4 driver but a passenger. And there was a substantial amount of
5 drugs found in the car as a result of the K-9 search. That's
6 as best I remember.

7 Q. Did you review the discovery with Mr. Lee?

8 A. I remember talking to him about the -- all that
9 stuff, specifically, on the morning of the actual plea.

10 Q. Okay. Do you think you did it before that date or
11 is that the only time you did that?

12 A. I know we talked about the case more than once. I
13 don't know how extensively we reviewed it prior to the day of
14 the plea. I know that, when we went in on the day of the plea,
15 I spent a substantial amount of time down in the holding cells
16 in the bottom floor of this building, sitting there, talking to
17 him, make sure he understood what was going on. Because there
18 was a little bit of time pressure because it was a take-it or
19 leave-it offer that day, what I managed to secure for him on
20 stuff. We had to make a decision right then and there,
21 basically.

22 Q. It was a reduced -- it was a lesser included;
23 right?

24 A. That's right. Initially we were trying to see if
25 we could get a straight-up plea to try and reduce the amount of

1 time. We ended up with a negotiated plea. He was initially
2 looking at a 25-year mandatory minimum. We managed to get down
3 to a lesser included offense that was just a ten-year
4 negotiated sentence on that.

5 Q. Even if you don't remember reviewing the discovery
6 with Mr. Lee before the day on which he plead, would you have
7 discussed the facts of the case with him prior to that day?

8 A. Yes, sir, absolutely I would have. We would have
9 been discussing the facts of the case from the very first time
10 we met 'cause I want to know what he thought was the pertinent
11 issues so I know what to look at whenever I got the information
12 about the case.

13 Q. What was your belief about the level of the
14 complexity of the case?

15 A. I thought this was a pretty simple one, for the
16 most part, especially once we got down to, kind of, brass tacks
17 on it. We were not looking at something that was, you know,
18 that we had a lot of moving parts on. His allegation was, with
19 everything, was that we shouldn't have ever had a traffic stop
20 on things here, from the discussions that I remember having on
21 stuff.

22 And I remember talking to him and explaining to
23 him: Hey, we had, you know, we have a tip, we have a dog
24 search. In order to validate the traffic stop, we're going to
25 have to get around all of those things. It's going to be

RICORIUS LEE vs. THE STATE OF SOUTH CAROLINA

1 fairly difficult potentially to get around those, especially
2 considering they did find a substantial amount of drugs in the
3 car after the search.

4 Q. Did he give you any reason to believe he didn't
5 understand -- that he thought that a suppression motion would
6 not be successful?

7 A. No. After we talked -- it took a little while for
8 me to feel like he did understand. I remember spending a
9 substantial amount of time down in the holding cell with him
10 that morning. There was some difficulty getting him to
11 understand at first. Once I felt like he grasped after we had
12 talked, I did feel like he understood.

13 Q. When you discussed the facts of the case with him,
14 did he give you any reason to believe he didn't understand
15 those?

16 A. Again, it took a little bit of time in explaining
17 for us to go through things 'cause he kept coming back to why
18 are they saying it's a traffic stop. I'm like: That's not
19 necessarily the important piece of information here. The
20 important piece of information here is: How did we get to the
21 drugs that they're alleging that you had, you know. That's
22 more important than: Is it a traffic stop? Is it an
23 undercover operation? What is -- what are they labeling it as?
24 That's not the important thing.

25 So he had a little bit of trouble understanding

1 that. Once we talked about it, I felt like there was an
2 understanding that was reached.

3 Q. Did you explain to him that, if he pled guilty, he
4 would be waiving his right to make that challenge in court?

5 A. Yes, sir, I did. I explained to him that what we
6 were looking at, that our options were, we can roll the dice
7 and, kind of, gamble on a suppression hearing and going to
8 trial where there's a pretty good chance if we didn't win at
9 that suppression hearing, we'd go to trial, he would be
10 convicted, and he would be hit with that mandatory minimum of
11 25 years versus our options were, he could plea guilty, don't
12 get a chance to exercise that challenge to the validity of the
13 search, get a much lesser sentence.

14 Q. Did he appear to understand that explanation?

15 A. I thought so. I thought that he did.

16 Q. Did you tell him that he would be parole eligible
17 if he pled guilty and took this plea deal?

18 A. I did not. The underlying charge was severe, even
19 the version that we got it reduced down to was a serious
20 charge. So that's automatic 85 percent.

21 Q. Did the parole discussion come up at all?

22 A. Not that I recall. I don't recall talking about
23 parole. I recall that we talked about that he would do ten
24 years and there was a period of probation to follow. I
25 didn't -- I knew that there wasn't any chance of parole. We

RICORIUS LEE vs. THE STATE OF SOUTH CAROLINA

1 talked about that there would be some probation actually after
2 the jail sentence.

3 Q. Okay. So in this particular case, the car was in a
4 parking lot. Is that what you said?

5 A. That's what I remember, yes, sir.

6 Q. Okay. Did the law enforcement officer -- how did
7 it go about that the officers arrived at the scene?

8 A. My understanding is they were given some kind of
9 information from a confidential source, and they came up on the
10 scene looking for Mr. Lee and that car specifically.

11 Q. Did you see any reason to take issue with the fact
12 that Mr. McMaster said at the plea hearing that it was a lawful
13 traffic stop?

14 A. Typically I advise my clients with a statement of
15 facts, unless the statement of facts is in direct contravention
16 of what's going on. If it's a statement of facts that doesn't
17 apply to what the situation is, that's the time to say: Hey,
18 we're going to dispute these facts. If it's something like
19 this, where he was in a car, there is, I guess, an argument you
20 could clarify, call it a traffic stop, that it wasn't worth
21 fighting about the facts in that particular instance because
22 it's not the pertinent piece of information.

23 Q. It sounds like you didn't think it was --

24 A. I didn't think that was a huge issue for the case.

25 Q. And there was a driver, someone sitting in the

1 driver's seat of the car; right?

2 A. Yes, sir.

3 MR. SMITH: Just one moment.

4 (A pause transpired.)

5 MR. SMITH: No more questions. Thank you.

6 THE COURT: Thank you.

7 Ms. Ross.

8 MS. ROSS: Thank you.

9 CROSS-EXAMINATION

10 BY MS. ROSS:

11 Q. How long were you on the case before it pled?

12 A. It was just a few months, if I remember correctly.
13 It wasn't extremely long. I had just signed on to the case in
14 April 2019.

15 Q. Did you provide a copy of discovery to Mr. Lee?

16 A. I believe that I did. I don't have a copy in my
17 files which indicates to me either I gave him the copy that I
18 had or that I had a copy electronically that went over.

19 Q. You don't have any notes or independent --

20 A. I don't have any notes or anything like that.

21 Q. As far as going over the case beforehand, was there
22 any video or any kind of video evidence that you reviewed with
23 Mr. Lee?

24 A. Not that I remember.

25 Q. Do you recall -- you're saying you did not tell

RICORIUS LEE vs. THE STATE OF SOUTH CAROLINA

1 Mr. Lee anything about 65 percent or parole eligibility?

2 A. Absolutely not. I would not -- in this particular
3 case, I know I did not talk about that. I know we're looking
4 at a ten-year bid, and it was on a charge that would qualify
5 him for 85 percent time and disqualify him from parole. He may
6 have misunderstood -- like I said, I knew that we had some
7 difficulty with him grasping what was going on as far as the
8 case. I thought he understood when we talked about the fact
9 that he would be doing ten years and there would be some
10 probation to follow. He may have misunderstood that. That's
11 not my recollection of the discussion that we had.

12 Q. Do you recall discussing any of this with his
13 mother, Arlen Wells, present?

14 A. I don't recall. I know that I did talk to his
15 family some about what was going on, to let them know. There
16 was a little bit of stuff up in the air as to what was going to
17 be going on that day whenever we went into court. I knew he
18 wasn't able to communicate directly with them. I know I did
19 talk to his family. I don't remember specifically what I said
20 to them.

21 Q. You're aware the sentence was amended to give him
22 credit for some home incarceration time?

23 A. Yes, ma'am.

24 MS. ROSS: Beg The Court's indulgence.

25 (A pause transpired.)

RICORIUS LEE vs. THE STATE OF SOUTH CAROLINA

1 MS. ROSS: No further questions.

2 THE COURT: Thank you. Mr. Canady, you may step
3 down.

4 MR. SMITH: May I ask a few more questions.

5 THE COURT: I'm sorry. I apologize. Redirect.

6 REDIRECT EXAMINATION

7 BY MR. SMITH:

8 Q. Mr. Canady, was it your routine to either provide a
9 copy of your discovery to your criminal defense clients or
10 review your copy with them?

11 A. Yes, sir, absolutely it was. I would either give
12 them a copy or I would review a copy with them. A lot of
13 people did not want to keep a copy of their discovery with them
14 in their jail cell either for privacy reasons or for concern
15 they would lose it. A lot of times I would be the sole
16 custodian of whatever evidentiary materials were turned over.

17 Q. Do you have any reason to believe you departed from
18 that routine with respect to Mr. Lee?

19 A. No, sir, I don't.

20 Q. Mr. Lee was arrested at the scene; right?

21 A. From my recollection, yes, sir.

22 Q. He would've been -- would he have been in a
23 position to personally observe the officer's actions?

24 A. Probably not if he was arrested at the scene.
25 Usually they will place them in the back of the patrol car

RICORIUS LEE vs. THE STATE OF SOUTH CAROLINA

1 after the arrest where they can't see everything that happens.

2 Q. Maybe at least up until the moment until he was put
3 in the car?

4 A. Absolutely. Anything he's personally involved in
5 he's going to be aware of.

6 Q. He did know the drugs were in the trunk as he said
7 in the plea hearing?

8 A. Yes, sir.

9 Q. Would you have told Mr. Lee's family members that
10 he would be parole eligible?

11 A. I would not have. He would not have been parole
12 eligible from those charges.

13 MR. SMITH: Thank you. No more questions.

14 THE COURT: Any recross?

15 MS. ROSS: No, Your Honor.

16 THE COURT: Mr. Canady, you may step down.

17 THE WITNESS: Thank you, sir.

18 (The witness exited the stand.)

19 THE COURT: Mr. Smith, call your next witness.

20 MR. SMITH: I call Mr. William McMaster.

21 THE CLERK: Raise your right hand.

22 WILLIAM McMASTER

23 being first duly sworn, testified as follows:

24 THE CLERK: You may be seated. Please state your
25 full name for the record.

1 THE WITNESS: William McMaster.

2 DIRECT EXAMINATION

3 BY MR. SMITH:

4 Q. Mr. McMaster, can you tell me about your
5 involvement in this case.

6 A. Yes. I was assigned to prosecute the case against
7 Mr. Lee.

8 Q. Can you give me a summary of the facts, as best you
9 can remember them.

10 A. There was a confidential source that had set up a
11 buy to, I believe, purchase 4.5 ounces of methamphetamine from
12 Mr. Lee. Mr. Lee arrived at the location that they had set up
13 with the confidential source. Vice narcotics was on scene
14 along with SWAT for the takedown of the vehicle.

15 The vehicle pulled into, I think it was, a Church's
16 Chicken. They were given the signal, identifying the parties.
17 At that point they did a takedown of the vehicle which
18 prevented it from leaving the scene. Stopped it from leaving.

19 And after that they, I believe, had an open air
20 sniff with the dog. The vehicle was searched and 126 grams of
21 methamphetamine was found in the vehicle.

22 Q. Is there any significance to the fact that, at a
23 guilty plea hearing, you referred to it as a traffic stop.

24 A. Other than the vehicle was stopped, could not --
25 was not free to leave. When they do a takedown, they are

RICORIUS LEE vs. THE STATE OF SOUTH CAROLINA

1 blocking the vehicle in, it is unable to leave the scene. It
2 is stopped. He was not free to leave at that point based on
3 the facts.

4 Q. Was it your understanding that the officers
5 observed Mr. Lee arrive at the scene in the car?

6 A. Correct.

7 Q. Okay. Do you have any reason to believe it was not
8 an operational vehicle at the time of the stop?

9 A. No. It was an operational vehicle. It was being
10 driven by the co-Defendant at this time, Mr. Williams.

11 MR. SMITH: No more questions. Thank you.

12 THE COURT: Ms. Ross. Cross-examination.

13 MS. ROSS: I have no questions for this witness.

14 THE COURT: Thank you, Mr. McMaster. You can step
15 down.

16 (The witness exited the stand.)

17 MR. SMITH: State rests, Your Honor.

18 THE COURT: Anything further from the Applicant,
19 Ms. Ross?

20 MS. ROSS: No, Your Honor.

21 THE COURT: I'll take it under advisement. I'll
22 issue my ruling within 10 days.

23 (The hearing was concluded at 10:19 a.m.)

24

25

RICORIUS LEE vs. THE STATE OF SOUTH CAROLINA

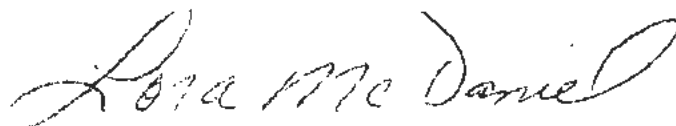
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CERTIFICATE OF REPORTER

I, Lora McDaniel, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to, nor counsel for, any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 19th day of April, 2023 at Spartanburg, Spartanburg County, South Carolina.



Lora L. McDaniel,
Registered Professional Reporter
My Commission expires:
August 9, 2026

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Ricorius Shundre Lee, #326428

Applicant,

v.

State of South Carolina,

Respondent.

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

) Case No. 2020-CP-23-0225

) **ORDER OF DISMISSAL**
) *(with prejudice)*

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JAY O'NEILL
JDC GVL SC

This matter comes before the Court by way of an application for post-conviction relief filed January 14, 2020, by Applicant Ricorius Shundre Lee. Respondent made its return, moved for partial dismissal and for a more definite statement on April 13, 2020.¹ Applicant filed an amended application on May 5, 2022.

An evidentiary hearing was held on March 10, 2023, at the Greenville County Courthouse with the Honorable Daniel D. Hall presiding. Applicant and his appointed counsel, Susannah C. Ross, Esq., were present. Assistant Attorney General Taylor Z. Smith of the South Carolina Attorney General's Office represented the State.

Ms. Ross informed the Court that Applicant's allegations of ineffective assistance of counsel before the Court are as follows: failure to investigate; misadvising that the charges carried 65% rather than 85%; failing to provide discovery prior to the guilty plea; allowing the plea to proceed when the statement of facts recited by the Solicitor was incorrect; and failure to argue lack of probable cause to search the car. (PCR Tr. at 3-4). This Court received testimony from Applicant, Jessica Davies, plea counsel Matthew M. Kennedy, and former Deputy Solicitor - now

¹ The Return and motions were again filed with the Greenville County Clerk of Court on March 3, 2021, after the Attorney General's Office did not receive confirmation of the April 13, 2020, filing. However, both are reflected on the Public Index.

the Honorable William C. McMaster, III. At the conclusion of the hearing, this Court took the matter under advisement.

After consideration of the issues raised in Applicant's application and the arguments of counsel, this Court advised the parties by email on March 21, 2023, that Applicant's application for post-conviction relief is denied and instructed that the State prepare a proposed order.² This Court now **DENIES** relief for the specific reasons set out in this order.

PROCEDURAL HISTORY

Applicant is currently confined in the Allendale Correctional Institution of the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. During its August of 2018 term, the Greenville County Grand Jury indicted Applicant for trafficking in methamphetamine, 100 to 200 grams (2018-GS-23-2036). Applicant was represented by Matthew M. Canaday, Esq., and Deputy Solicitor William C. McMaster, III of the 13th Circuit Solicitor's Office prosecuted the case.

On April 11, 2019, Applicant appeared before the Honorable Letitia H. Verdin and pleaded guilty to the lesser-included offense of trafficking in methamphetamine, 28 to 100 grams. In accordance with the negotiated sentence, Judge Verdin sentenced Applicant to imprisonment for ten (10) years, with credit for time served.

Applicant did not appeal his conviction or sentence.

² The proposed order was provided to counsel for Applicant prior to this Court's acceptance. Applicant's counsel was also allowed sufficient time to review the proposed order while this Court made its own detailed review. See *Fishburne v. State*, 427 S.C. 505, 516, 832 S.E.2d 584, 589 (2019) (providing a "proposed order should be transmitted to opposing counsel" for review and that counsel "should ... alert preparing counsel and the PCR court as to any deficiencies in the proposed order.").

30A

CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is entitled to post-conviction relief based on the following grounds:

- (1) Applicant received the ineffective assistance of counsel:
 - a. "I've been asking my attorney for my Rule 5, so I can see the evidence against me, and to make an independent choice whether I want to plea or go to trial depending on what evidence the State has against me, In violating South Carolina Criminal Rules and Procedures Rul #5(a)(1),(c),(d). I've never seen my Rule 5, as I consistently requested, therefore I was forced to plea."
- (2) The solicitor committed perjury during Applicant's plea hearing by "testif[ying] that they pulled [Applicant] over in a lawful traffic stop which led to discover of the drugs and arrest. Those statement forementioned is complete 'perjury'"; and
- (3) The police lacked probable cause to search Applicant's car for drugs.

On May 5, 2022, Applicant, through counsel, amended his allegations to include that counsel was ineffective for telling him he would only have to serve sixty-five percent (65%) of his negotiated ten year (10) sentence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In addition to carefully considering the record and the arguments presented by counsel, this Court has also had the opportunity to consider Applicant's testimony presented at the PCR hearing and has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

INEFFECTIVE ASSISTANCE AND INVOLUNTARY PLEA CLAIMS

For claims that trial counsel provided ineffective assistance, this Court is guided by the familiar test: To show a violation of the Sixth Amendment, an applicant must show that counsel's representation fell below an objective standard of reasonableness, and but for counsel's error, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v.*

Washington, 466 U.S. 668,694 (1984); *Simpson v. Moore*, 367 S.C. 587, 595-96, 627 S.E.2d 701, 706 (2006). “A reasonable probability is a probability sufficient to undermine confidence in the outcome” of the trial. *Strickland*, at 694. It is presumed that counsel made all decisions in exercise of reasonable judgment. *Strickland*, at 689. It is an applicant’s burden to prove, by a preponderance of the evidence, an entitlement to relief. Rule 71.1 (e), SCRPC. *See also Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) (“the burden of proof is on the applicant to prove the allegations in his application”). For a guilty plea, the analysis varies slightly as the issue is, at bottom, the voluntariness of the plea.

“Where, as here, a defendant is represented by counsel during the plea process and enters [the] plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel’s advice ‘was within the range of competence demanded of attorneys in criminal cases.’” *Hill v. Lockhart*, 474 U.S. 52, 56 (1985) (quoting *McMann v. Richardson*, 397 U.S. 759, 771 (1970)). Indeed, “[a] defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the defendant would not have pled guilty, but would have insisted on going to trial.” *Kolle v. State*, 386 S.C. 578,588,690 S.E.2d 73, 78 (2010) (quoting *Rolen v. State*, 384 S.C. 409,413, 683 S.E.2d 471,474 (2009)); *Burket v. Angelone*, 208 F.3d 172, 189 (4th Cir. 2000) (same). This is the *Strickland* test as applied in the guilty plea context. *See also Taylor v. State*, 404 S.C. 350, 360, 745 S.E.2d 97, 102 (2013) (“In the context of a guilty plea, the deficiency prong inquiry turns on whether the plea was voluntarily, knowingly, and intelligently entered.”).

Notably, the “prejudice prong ordinarily requires more than simply a defendant’s assertion that but for counsel’s deficient performance he would not have pled but would have gone to trial.”

Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009). The Supreme Court has instructed: “Courts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney’s deficiencies. Judges should instead look to contemporaneous evidence to substantiate a defendant’s expressed preferences.” *Lee v. United States*, 582 U.S. 357, 369 (2017). *See also Stalk*, at 563, 681 S.E.2d at 595; *Taylor v. State*, 404 S.C. 350,362, 745 S.E.2d 97, 103 (2013) (“Despite Petitioner’s assertions to the contrary, there is probative evidence in the Record before us that he would not have chosen to proceed to trial”); *Goins v. State*, 397 S.C. 568, 575, 726 S.E.2d 1, 4 (2012) (“Although Goins testified at the PCR hearing that he accepted the plea because of the erroneous advice on the suppression of the evidence, his testimony specifically was found not to be credible. We therefore find evidence to support the PCR court’s finding that Goins failed to prove he was prejudiced by counsel’s ineffective assistance because he has not demonstrated he would have gone to trial absent the erroneous advice.”).

“To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.” *Dalton v. State*, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007). “A defendant’s knowing and voluntary waiver of the constitutional rights which accompany a guilty plea may be accomplished by colloquy between the Court and the defendant, between the Court and defendant’s counsel, or both.” *Id.*, (quoting *Pittman v. State*, 337 S.C. 597, 600, 524 S.E.2d 623, 625 (1999)). “In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing.” *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007).



Further, statements made during a guilty plea should be considered true: "... accuracy and truth of an accused's statements at ... his guilty plea . . . are 'conclusively' established by that proceeding unless and until he makes some reasonable allegation why this should not be so." *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975), *overruled on other grounds by United States v. Whitley*, 759 F.2d 327 (4th Cir. 1985); *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (same).

APPLICANT'S ALLEGATIONS LACK MERIT

Considering the record of the plea proceeding in conjunction with the testimony received at the PCR hearing, this Court finds that Applicant's PCR testimony that counsel gave him incorrect advice as to his parole eligibility is not credible. Further, this Court finds that Applicant was well aware of the evidence against him, and made a knowing, voluntary, and intelligent choice to plead guilty after consulting with plea counsel.

This Court credits plea counsel's testimony which is consistent with the settled plea record and record of charges. This Court finds that plea counsel was an experienced attorney at the time of the plea and well equipped to handle and advise Applicant on his charge.³ Applicant has raised an allegation that counsel was ineffective for not investigating and reviewing the discovery materials, however, the record is void of any indication that Applicant was not fully aware of the evidence against him prior to entering his plea. Plea counsel testified that he filed the discovery motion on April 5, 2019, and met with Applicant regarding the discovery more than once but specifically recalls extensive discussion on the morning of the plea. (PCR Tr., at 14-15). Plea counsel testified that even if he could not remember specifics, he would have discussed the facts of Applicant's case with him from their first meeting to appraise himself of what Applicant

³ Plea counsel began representation of Applicant on April 5, 2019, and replaced Scott Robinson, Esq., as counsel of record. (PCR Tr., at 14).

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believed to be the pertinent issues of his case. (PCR Tr., at 16). Plea counsel testified that Applicant's case was not complex, and that Applicant's main complaint prior to the plea was that the drugs were not recovered pursuant to a traffic stop as was indicated by the State and that the police had no reason to search his car. (PCR Tr. at 8, 16-17). Plea counsel testified he explained to Applicant that it was not important whether the discovery of the drugs was pursuant to a traffic stop or an undercover operation, but "how did we get to the drugs that they're alleging you had." (PCR Tr., at 17). Former solicitor McMaster testified that a confidential source had set up a buy to purchase methamphetamine from Applicant and upon their arrival at the predetermined meet up spot, Vice Narcotics and SWAT were on scene to "takedown" and search the vehicle. (PCR Tr., at 24). He further testified that the vehicle was stopped and blocked in, and not free to leave the scene. (PCR Tr., at 25).

At the PCR hearing, Applicant merely stated he did not believe the police had a right to search his vehicle "cause it wasn't a traffic stop." (PCR Tr., at 8). Plea counsel testified that he explained to Applicant that it would be difficult to get around the validity of the traffic stop considering a tip was received as to the transaction and drug sniffing dogs identified drugs in the vehicle. Plea counsel testified that he explained that they could gamble on a suppression hearing and proceed to trial, however if the suppression motion was denied, Applicant would likely be convicted and would have to serve the mandatory minimum of twenty-five (25) years. He explained the other option was to plead guilty, waive the right to challenge the search, and receive a much lesser sentence. (Plea Tr., at 18). Plea counsel confirmed that after explaining his options, Applicant seemed to understand the information he had relayed. (PCR Tr., at 18).

Further, Applicant confirmed that he knew the drugs were in the vehicle and that the drugs belonged to him. (PCR Tr., at 9). Applicant confirmed that he knew what the evidence against him

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was even without his attorney reviewing the discovery with him. (PCR Tr., at 9). This Court finds the Applicant has failed to present any credible evidence that counsel did not review and discuss the discovery materials with him before he pled guilty. Notably, Applicant also failed to articulate what materials he did not view and how not viewing those materials affected the outcome of his case. *See Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (holding that, in a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application).

As to Applicant's assertion that plea counsel misadvised him by indicating that he would only serve sixty-five percent (65%) of the ten year (10) negotiated sentence, this Court gives credence to plea counsel's testimony that he did not advise Applicant as to parole eligibility. *See Frasier v. State*, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (finding that "[a] guilty plea is not rendered involuntary if the defendant is not informed of the collateral consequences of his sentence," however, "if trial counsel actively misinforms the defendant about parole eligibility, the defendant must prove he relied on the misinformation to receive PCR."). Plea counsel testified that the underlying charge itself was severe and even after the charge was reduced it was still a serious charge requiring an automatic service of eighty-five percent (85%). (PCR Tr., at 18). Plea counsel further testified that he did not recall discussing parole eligibility with Applicant and knew that "there wasn't any chance of parole." (PCR Tr., 19). He testified that he did discuss with Applicant that he would likely have to serve probation after his sentence. (PCR Tr., at 19). This Court does not discount Applicant's *expectation* that he would be parole eligible after serving sixty-five percent (65%) of his sentence, however, Applicant has failed to show plea counsel misadvised him considering no advice concerning parole eligibility was given. Applicant fails to show that plea counsel acted deficiently. Even so, Applicant has failed to show that the alleged erroneous advice

A handwritten signature in blue ink, appearing to read "Daniel D. Alb". The signature is written in a cursive, flowing style with a large initial "D" and "A".

concerning parole eligibility induced his guilty plea, and that he otherwise would have rejected the negotiated plea – which was a substantial reduction from the mandatory minimum sentence of the original charge - or proceeded to trial. *See Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (holding that in addition to a deficiency finding, the applicant must further convince the court that a decision to reject the plea bargain would have been rational under the circumstances).

This Court rejects Applicant's assertion that he was unable to make an informed decision as to whether or not to plead guilty. It is apparent that Applicant made an informed choice to plead considering he received a substantial reduction in sentencing pursuant to plea negotiations, was well aware of the evidence against him and was adequately informed of his options as presented to him by plea counsel. This Court finds that plea counsel performed within the competency required based on the circumstances and Applicant has failed to satisfy his burden of establishing deficiency of counsel.

Additionally, this Court finds that Applicant has failed to establish any resulting prejudice from plea counsel's alleged deficiency. Applicant failed to present any evidence that but for plea counsel's alleged failure to review all of the discovery materials, and plea counsel's alleged erroneous advice concerning parole eligibility, he would not have pled guilty. "It is beyond dispute that a guilty plea must be both knowing and voluntary." *Parke v. Raley*, 506 U.S. 20, 29 (1992). It is also clear the record should reflect that voluntary choice. *Raley*, 395 U.S. 238 (1969) ("a guilty plea should only be accepted where the record evidences 'an affirmative showing that it was intelligent and voluntary.'"). The record supports a voluntary plea. Applicant confirmed that he understood the charge and possible sentence; was properly advised of his trial rights; and had the assistance of counsel throughout. Applicant is not entitled to any relief.

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CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations during his plea hearing. Therefore, this PCR application must be **DENIED** and **DISMISSED** with prejudice.

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. Applicant's application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant is remanded to the custody of Respondent for completion of his sentence.

AND IT IS SO ORDERED this 10th day of March, 2025.

Daniel D. Hall

DANIEL D. HALL
Presiding Judge

York, South Carolina



ALAN WILSON
ATTORNEY GENERAL

March 13, 2025

The Honorable Jay Gresham
Greenville County Clerk of Court
305 E. North Street
Greenville, South Carolina 29601

Re: Ricorius Shundre Lee, #326428 v. State of South Carolina
Case No. 2020-CP-23-0225

Dear Mr. Gresham:

Enclosed please find the original Order of Dismissal signed by the Honorable Daniel D. Hall in reference to the above-mentioned case for filing in your office.

Thank you for your assistance in this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Kaylee C. Kemp
Assistant Attorney General

KCK/abb
Enclosure

cc: Susannah C. Ross, Esquire (with copy of enclosure)

Copy mailed to
Attorney <u>general MB/Susannah Ross</u>
on <u>3 / 19 / 2025</u>