

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

G. Edward Welmaker, Circuit Court Judge

Case No. 2010-CP-23-3358

William J. Simun,
S.C.D.C. No. 287699

Appellant,

v.

State of South Carolina,

Respondent.

APPENDIX

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S.C. SUPREME COURT

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ORIGINAL

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Plea

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF GREENVILLE	)	Case No(s) : 06-GS-47-09
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
William J. Simun,	)	
	)	
Defendant.	)	

October 12, 2009
Greenville, South Carolina

B E F O R E:

HONORABLE JOHN C. FEW, Judge.

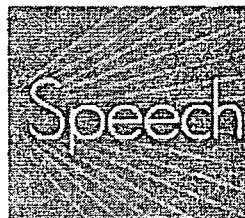
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I N D E X

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EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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STATE EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(WHEREUPON, the hearing began on the 12th day of October, 2009 at approximately 11:00 a.m.)

THE COURT: Mr. Farnsworth, you represent Mr. Simun?

MR. FARNSWORTH: Yes, Your Honor.

THE COURT: Have you had a chance to go over -- have you explained to him the crucial elements that the State would have to prove in order to convict him of these crimes, the maximum and minimum punishment that he faces and all of his constitutional rights?

MR. FARNSWORTH: Yes, Your Honor.

THE COURT: Does he understand all that?

MR. FARNSWORTH: Yes, Your Honor.

THE COURT: Mr. Simun, raise your right hand please.

(WHEREUPON, the Defendant complies.)

THE COURT: You swear the testimony you are about to give will be the truth so help you God?

MR. SIMUN: Yes, sir.

THE COURT: All right. You can put your hand down.

(WHEREUPON, the Defendant complies.)

THE COURT: Within the last 24 hours, have

1 you taken any medication, drugs or alcohol?

2 **MR. SIMUN:** Yes, sir.

3 **THE COURT:** Mr. Simun, you are charged under
4 several counts of this superceding indictment.
5 Under Count 1 of the indictment, you are charged
6 in trafficking in marijuana. That's between 10
7 pounds and 100 pounds. Right?

8 **MR. PAULING:** That's what he's pleading to,
9 yes, Your Honor.

10 **THE COURT:** That carries a minimum of one
11 year in prison and a maximum of 10 years in
12 prison. You understand that?

13 **MR. SIMUN:** Yes, sir.

14 **THE COURT:** It also carries up to a \$10,000
15 fine. You understand?

16 **MR. SIMUN:** Yes, sir.

17 **THE COURT:** You are also charged in Count 17
18 in the indictment for Trafficking in Cocaine
19 between 28 and 100 grams. That carries a minimum
20 of 7 years in prison and a maximum of 25 years in
21 prison and a fine of up to \$50,000. You
22 understand that?

23 **MR. SIMUN:** Yes, sir.

24 **THE COURT:** Both of these crimes, those
25 alleged in counts 1 and 17, are crimes that are

1 classified under South Carolina law as violent
2 crimes and as serious crimes. Do you know what
3 those two classifications mean?

4 **MR. SIMUN:** Yes, sir.

5 **THE COURT:** Because the crimes are
6 classified as serious, then you are subjected to
7 the State's Three Strikes law so that if you are
8 ever convicted of one more serious or most
9 serious crime, then regardless of what the
10 maximum penalty is for those crimes, you would
11 face life without parole. Do you understand
12 that?

13 **MR. SIMUN:** Yes, sir.

14 **THE COURT:** Because this crime for
15 Trafficking in Marijuana is classified as
16 violent, your eligibility for parole is affected.
17 You may not be eligible for parole on Count 1.
18 You understand?

19 **MR. SIMUN:** Yes, sir.

20 **THE COURT:** Because, uh, trafficking in
21 cocaine as alleged in Count 17 of the indictment
22 is classified as violent and also because it
23 carries a maximum penalty of up to 25 years, you
24 will not be eligible for parole on that count.
25 You will have to serve at least 85 percent of the

1 sentence before you will be eligible for release.
2 Do you understand that?

3 **MR. SIMUN:** Yes, sir.

4 **THE COURT:** If you are ever convicted of a
5 drug offense again, then the penalty you face
6 will be enhanced as a result of your plea on
7 these charges here today and you will lose your
8 driver's license today. Do you understand that?

9 **MR. SIMUN:** Yes, sir.

10 **THE COURT:** When you plead guilty, you give
11 up very important constitutional rights including
12 your right to a trial by jury. You also have the
13 right to remain silent, the right against self-
14 incrimination. You are entitled to the
15 presumption of innocence. That means, if you
16 were to stand trial on these charges, you would
17 be presumed innocent, and in order to convict
18 you, the State would have to prove you guilty
19 beyond a reasonable doubt.

20 At trial, you would have the right to
21 confront witnesses called by the State to testify
22 against you, which means that your attorney would
23 have the opportunity to cross-examination those
24 witnesses in your presence. Do you understand
25 all those rights?

1 **MR. SIMUN:** Yes, sir.

2 **THE COURT:** Do you wish to give up all those
3 rights and plead guilty?

4 **MR. SIMUN:** Yes, sir.

5 **THE COURT:** Are you guilty?

6 **MR. SIMUN:** Yes, sir.

7 **THE COURT:** Are you completely satisfied
8 with your attorney?

9 **MR. SIMUN:** Yes, sir.

10 **THE COURT:** Has he done everything in this
11 case that you feel he could have done or should
12 have done?

13 **MR. SIMUN:** Yes, sir.

14 **THE COURT:** Has he done anything in this
15 case that you feel he should not have done?

16 **MR. SIMUN:** No, sir.

17 **THE COURT:** Now, this case is on the trial
18 docket for next week. You understand that?

19 **MR. SIMUN:** Yes, sir.

20 **THE COURT:** So if you decide not to plead
21 guilty or if for some other reason this guilty
22 plea does not go forward today, then we will pick
23 a jury on Monday and we will try your case. You
24 understand?

25 **MR. SIMUN:** Yes, sir.

1 **THE COURT:** Are you satisfied that if you
2 had decided to exercise your right to a trial by
3 jury or if for some other reason we end up going
4 to trial that Mr. Farnsworth is prepared to
5 defend you at the trial of the case?

6 **MR. SIMUN:** Yes, sir.

7 **THE COURT:** Has he done everything that you
8 know of that he needed to do in order to get
9 ready for trial?

10 **MR. SIMUN:** Yes, sir.

11 **THE COURT:** Is there anything that you know
12 of that he has not done that he needs to do
13 before trial?

14 **MR. SIMUN:** No, sir.

15 **THE COURT:** Now, the Solicitor has informed
16 me -- I mean, the Attorney General has informed
17 that there is a recommendation of 7 years on the
18 -- for the sentence. You understand that?

19 **MR. SIMUN:** Yes, sir.

20 **THE COURT:** Is that what you understood to
21 be true?

22 **MR. SIMUN:** Yes, sir.

23 **THE COURT:** Now, you know that's the
24 recommendation, meaning, I can take it or I can
25 not take it.

1 **MR. SIMUN:** Yes, sir.

2 **THE COURT:** So I really still have the
3 discretion to sentence you to anything up to 35
4 years. You understand that?

5 **MR. SIMUN:** Yes, sir.

6 **THE COURT:** Uh, I'm also being asked to
7 defer sentencing in this case. In other words,
8 to not put you in jail today, but rather wait
9 until after the trial of whatever cases go
10 forward next week. You know that, don't you?

11 **MR. SIMUN:** Yes, sir.

12 **THE COURT:** You realize that if you don't
13 show up next week, that that's one of the factors
14 that I'm going to take into consideration in
15 deciding whether or not to follow the
16 recommendation.

17 **MR. SIMUN:** Yes, sir.

18 **THE COURT:** So if you don't show up, I'm
19 less likely to follow the recommendation and I
20 might just give you whatever sentence I think is
21 appropriate.

22 **MR. SIMUN:** Yes, sir.

23 **THE COURT:** Other than to promise you that
24 they would recommend that the sentence is 7
25 years, has anybody promised you anything else or

1 held out any hope of reward in order to get you
2 to plead guilty?

3 **MR. SIMUN:** No, sir.

4 **THE COURT:** Has anybody threatened you or
5 used force or pressure or intimidation in order
6 to get you to plead guilty?

7 **MR. SIMUN:** No, sir.

8 **THE COURT:** Are you the one that made the
9 decision that you would plead guilty here today?

10 **MR. SIMUN:** Yes, sir.

11 **THE COURT:** Did you make that decision
12 because you are guilty?

13 **MR. SIMUN:** Yes, sir.

14 **THE COURT:** All right. Tell me the facts
15 please.

16 **MR. PAULING:** Your Honor, this stems from
17 the same State Grand Jury investigation. Mr.
18 Simun, uh, was involved with Demario Johnson.
19 They were friends, Your Honor. Mr. Simun began
20 purchasing during this timeframe, Your Honor.
21 Began purchasing marijuana from Demario Johnson
22 approximately for about a period of, uh, six
23 months, Your Honor. Uh, all total, usually, he
24 would get about five to ten pounds of marijuana
25 from Mr. Johnson each time. Marijuana is

1 actually fronted to him about every two weeks.
2 Then he would pay Mr. Johnson later on for the
3 marijuana. During that time frame, he got
4 approximately 60 pounds of marijuana from Mr.
5 Johnson.

6 He also met, through Demario Johnson, Sergio
7 Rodriguez, another co-Defendant in this
8 conspiracy, Your Honor. He began purchasing
9 marijuana from Mr. Rodriguez between December of
10 '06 and February of '07. Actually, at that
11 point, he was getting fronted 5 to 15 pounds of
12 marijuana from Mr. Rodriguez. He received 30 to
13 40 pounds total from Mr. Rodriguez.

14 He also received marijuana from Poppy, who
15 was later identified as well, Your Honor. He was
16 fronted on one particular occasion 20 pounds of
17 marijuana from, uh, Poppy. That would have been
18 in November of 2006.

19 As to the cocaine conspiracy, Your Honor, he
20 actually received cocaine from Skinny, actually
21 ordered the cocaine. Skinny had another
22 individual actually deliver him cocaine. That
23 cocaine was fronted to him. He later did pay
24 Skinny, of course, identified as Nicanor
25 Rodriguez for the cocaine.

1 Mr. Simun has cooperated up to this point,
2 Your Honor.

3 **THE COURT:** Wait. How much -- I may have
4 just missed it. What was the specific quality of
5 cocaine if you can tell me?

6 **MR. PAULING:** That particular time, it was
7 two ounces of cocaine. It was fronted to Mr.
8 Simun that particular transaction, Your Honor.

9 **THE COURT:** He's charged under Count 17 with
10 trafficking more than one ounce, but less than
11 100 grams.

12 **MR. PAULING:** That's right.

13 **MR. FARNSWORTH:** Correct.

14 **MR. PAULING:** That's correct, Your Honor.

15 **THE COURT:** All right. Go ahead.

16 **MR. PAULING:** He has cooperated thus far,
17 Your Honor. Understands specifically to the plea
18 agreement that he is still to cooperate with law
19 enforcement regarding the rest of these matters,
20 Your Honor.

21 **THE COURT:** All right. Now, Mr. Simun, you
22 heard the Attorney General describe the facts
23 that are alleged as to counts 1 and 17 of the
24 indictment. Is there anything that he said about
25 what happened or about what you did that's not

1 true?

2 MR. SIMUN: No, sir.

3 THE COURT: It's all true?

4 MR. SIMUN: Yes, sir.

5 THE COURT: Now, you've been over counts 1
6 and count 17 of the superceding indictment with
7 Mr. Farnsworth, have you not?

8 MR. SIMUN: Yes, sir.

9 THE COURT: Is that true, Mr. Farnsworth?

10 MR. FARNSWORTH: Several times, Your Honor,
11 yes, sir.

12 THE COURT: I'm going to go over it with you
13 myself. I'm going to read it to you. After I've
14 done so, I'm going to ask you whether you
15 understand that's what the State would have to
16 prove in order to convict you and also ask you
17 whether or not what's alleged in the indictment
18 is true. So listen carefully. I'm going to
19 change the quantities that are alleged in the
20 count as we -- as they have done for purposes of
21 these guilty pleas.

22 In Count 1 of the indictment, it is alleged
23 that William J. Simun and other persons whose
24 names are both known and unknown to the State
25 Grand Jury did in Anderson, Greenville and

1 Pickens Counties of South Carolina from June 1st,
2 2001 until the present knowingly conspire with
3 each other to sell, manufacture, cultivate,
4 deliver, purchase or bring into this state or
5 provide financial assistance to manufacture,
6 cultivate, deliver, or purchase more than 10
7 pounds but less than 100 pounds of marijuana, a
8 controlled substance under provisions of section
9 44-53-110 of the South Carolina law, such conduct
10 not having been authorized by law. Do you
11 understand that's what the State would have to
12 prove in order to convict you of this crime?

13 **MR. SIMUN:** Yes, sir.

14 **THE COURT:** And is it true?

15 **MR. SIMUN:** Yes, sir.

16 **THE COURT:** Under Count 17 of the
17 indictment, the superceding indictment, it is
18 alleged that William J. Simun and other persons
19 whose names are both known and unknown to the
20 State Grand Jury did in Greenville and Pickens
21 Counties, South Carolina, from January 1st, 2006
22 until the present, knowingly sell, manufacture,
23 cultivate, deliver, purchase or provide financial
24 assistance or otherwise aid, abet, attempt or
25 conspire to sell, manufacture, cultivate, deliver

1 or purchase or possess, actually or
2 constructively, or bring into this state 28 grams
3 or more of cocaine, but less than 100 grams, uh,
4 a controlled substance under the South Carolina
5 Code of Laws, such conduct not having been
6 authorized by law. You understand what the State
7 would have to prove in order to convict you of
8 this crime?

9 MR. SIMUN: Yes, sir.

10 THE COURT: Is it true?

11 MR. SIMUN: Yes, sir.

12 THE COURT: Did he give a statement?

13 MR. PAULING: He did, Your Honor.

14 THE COURT: Were you intending to move to
15 suppress any of the evidence?

16 MR. FARNSWORTH: No, Your Honor.

17 THE COURT: Mr. Simun, you understand that
18 -- the statement that you gave, let me ask you
19 was the statement given voluntarily?

20 MR. SIMUN: Yes, sir.

21 THE COURT: Anybody make you give the
22 statement?

23 MR. SIMUN: No, sir.

24 THE COURT: Mr. Farnsworth, in your
25 discussions with Mr. Simun in preparation for his

1 entering a guilty plea to counts 1 and 17, did he
2 admit to you the truth of the facts that are
3 alleged in those two counts?

4 **MR. FARNSWORTH:** He did, Your Honor.

5 **THE COURT:** I think there is a sufficient
6 factual basis to support the plea. His decision
7 to plea guilty is knowingly, voluntarily and
8 intelligently made and I accept the plea. Is
9 there anything else from the State?

10 **MR. PAULING:** Nothing from the State.

11 **THE COURT:** Who is the bonds person?

12 **SPEAKER:** All Out Bail Bonding.

13 **THE COURT:** All Out Bail Bonding. Is that
14 incorporated?

15 **SPEAKER:** Incorporated.

16 **THE COURT:** And who are you, sir?

17 **SPEAKER:** Richard Thompson.

18 **THE COURT:** And what's your position with
19 All Out Bail Bonding?

20 **SPEAKER:** I am a bond agent.

21 **THE COURT:** Who owns it?

22 **SPEAKER:** Michael Curly.

23 **THE COURT:** What is -- other than being a
24 bond agent, do you have a position with All Out
25 Bail Bonding? Are you the president, vice

1 president?

2 **SPEAKER:** No, Your Honor.

3 **THE COURT:** Does Mr. Curly know you are
4 here?

5 **SPEAKER:** Yes, he does.

6 **THE COURT:** Does he know the purpose for
7 your being here?

8 **SPEAKER:** Yes.

9 **THE COURT:** That is to make sure the Court
10 understands that All Out Bail Bonding is willing
11 to stay obligated on the bond?

12 **SPEAKER:** Yes, Your Honor.

13 **THE COURT:** Until sentence is imposed.

14 **SPEAKER:** Yes, Your Honor.

15 **THE COURT:** You were here for that
16 discussion I had with the bondsman in the other
17 case, were you not?

18 **SPEAKER:** Yes, Your Honor.

19 **THE COURT:** Just a moment ago. And did you
20 hear everything I told him?

21 **SPEAKER:** Yes, sir.

22 **THE COURT:** And you realize that all that
23 applies to All Out Bail Bonding as well?

24 **SPEAKER:** I do.

25 **THE COURT:** And you are willing to accept

1 those obligations?

2 **SPEAKER:** Yes, Your Honor.

3 **THE COURT:** Anything else from the State?

4 **MR. PAULING:** Nothing further from the
5 State, Your Honor.

6 **THE COURT:** Mr. Farnsworth, anything further
7 at this time?

8 **MR. FARNSWORTH:** No, Your Honor.

9 **THE COURT:** All right, sir.

10 **MR. FARNSWORTH:** Thank you.

11 **MR. PAULING:** Thank you.

12 **(WHEREUPON, the hearing concludes at approximately**
13 **11:16 a.m.)**

14

15 **(END OF PROCEEDING)**

16

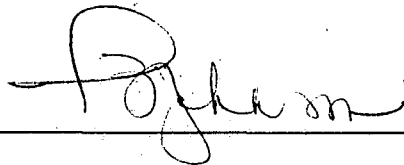
17

CERTIFICATE

20

1 I, the undersigned, Teresa B. Johnson, Official
2 Court Reporter for the Thirteenth Judicial Circuit of
3 the State of South Carolina, do hereby certify that
4 the foregoing is a true, accurate and complete
5 Transcript of Record of all the proceedings had and
6 evidence introduced in the trial of the captioned
7 case, relative to appeal, in the Court of General
8 Sessions for Greenville, South Carolina, on this 5th
9 day of August, 2010.

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

12
13
14 
15

16 Teresa B. Johnson

17 Official Court Reporter
18
19
20
21
22
23
24

Sentencing

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF GREENVILLE	)	Case No(s) : 06-GS-47-09
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
William Joey Simun,	)	
	)	
Defendant.	)	
	)	

October 21, 2009
Greenville, South Carolina

B E F O R E:

HONORABLE JOHN C. FEW, Judge.

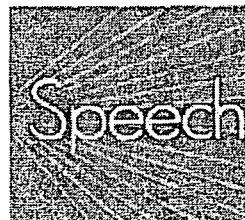
A P P E A R A N C E S:

CURTIS PAULING, Esquire
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DANIEL FARNSWORTH SR, Esquire
Attorney for the Defendant

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I N D E X

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EXHIBITS PAGE

NO.

DESCRIPTION

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STATE'S EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT'S EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(WHEREUPON, the proceeding begins on the 21st day of October, 2009 at approximately 12:38 p.m.)

THE COURT: All right. Mr. Farnsworth, are you ready for sentencing?

MR. FARNSWORTH: Uh, yes, Your Honor, if you see it fit not to give him a bond.

THE COURT: What was the agreement with him?

MR. FARNSWORTH: Your Honor, -- go ahead and respond?

THE COURT: And for the record, we're talking about, uh, Simun?

MR. PAULING: Yes, sir.

MR. FARNSWORTH: Yes, sir.

THE COURT: Okay.

MR. PAULING: Judge, it was simply to defer sentencing so that he could testify. If you recall after we did the first plea on Monday, we approached because I wanted to make sure that you understood that we were deferring sentencing, but that's all it was, Your Honor.

THE COURT: You agree with that?

MR. FARNSWORTH: That -- yes, sir. I agree with that.

THE COURT: All right. I'm ready to proceed

1 whenever it suits you, Mr. Farnsworth. We can do
2 it right now or we'll do it this afternoon.

3 **MR. FARNSWORTH:** Well, we can do it now,
4 Your Honor.

5 **THE COURT:** Do you need time to talk to him?

6 **MR. FARNSWORTH:** Well, I probably do.

7 **THE COURT:** Take your time then.

8 **MR. FARNSWORTH:** All right. I don't have my
9 file with me.

10 **THE COURT:** I don't want to inconvenience
11 you. If you want to go back and get your file,
12 we can do it later this afternoon.

13 **MR. FARNSWORTH:** Can I just confer with him?

14 **THE COURT:** Sure.

15 **(WHEREUPON, Mr. Farnsworth confers with Mr. Simun**
16 **at approximately 12:39 p.m.)**

17 **MR. FARNSWORTH:** Judge, can we approach?

18 **(WHEREUPON, a bench conference is held off the**
19 **record at approximately 12:40 p.m.)**

20 **(WHEREUPON, the bench conference concludes at**
21 **approximately 12:44 p.m.)**

22 **(WHEREUPON, a recess is taken at approximately**
23 **12:45 p.m.)**

24 **(WHEREUPON, the Court resumes at approximately**
25 **4:23 p.m.)**

1 **THE COURT:** Uh, so we got -- I don't recall
2 so this is more in the way of a question. I
3 don't recall exactly. We got all the way through
4 the plea and I accepted the plea. Is that
5 correct?

6 **MR. FARNSWORTH:** That's correct.

7 **THE COURT:** All we are left to do now is
8 impose sentence?

9 **MR. FARNSWORTH:** That's correct.

10 **THE COURT:** And there is a plea agreement or
11 at least a recommendation. Which is it?

12 **MR. PAULING:** It's a recommendation.

13 **THE COURT:** And he is charged with
14 Trafficking Marijuana which carries 1 to 10
15 years, Trafficking Cocaine which carries 7 to 25
16 years and that's it.

17 **MR. FARNSWORTH:** That's correct.

18 **THE COURT:** Mr. Simun, do you recall all
19 this?

20 **MR. SIMUN:** Yes, sir.

21 **THE COURT:** You have any questions?

22 **MR. SIMUN:** No, sir.

23 **THE COURT:** You've had all the time you need
24 to talk to Mr. Farnsworth today?

25 **MR. SIMUN:** Yes, sir.

1 **THE COURT:** Okay. You ready to proceed?

2 **MR. SIMUN:** Yes, sir.

3 **THE COURT:** Okay. Anything else from the
4 State?

5 **MR. PAULING:** Your Honor, just briefly. His
6 prior record dates back to 2001, an Auto Break-in
7 and a Petit Larceny. It looks like the charge
8 was from '01. But he got a YOA sentence from
9 that, Your Honor, I show, in '02. Also from
10 2001, Accessory after the Fact to a Felony. He
11 got probation 12 months. From 2004, I'm showing
12 Contributing to the Delinquency of a Minor and
13 Petit Larceny for which it appears he received
14 three years probation. That appears to be the
15 extent of his prior history, Your Honor.

16 **THE COURT:** Okay. And the recommendation
17 was seven years or what?

18 **MR. PAULING:** That's correct, Your Honor.

19 **THE COURT:** All right. Anything else from
20 the State?

21 **MR. PAULING:** Nothing else from the State,
22 Your Honor.

23 **THE COURT:** Mr. Farnsworth?

24 **MR. FARNSWORTH:** Thank you, Your Honor. May
25 it please the Court. Your Honor, Mr. Simun is 26

1 years old. He was probably about 22 when he got
2 involved in this case we are up here today on.
3 He is, uh, single, Your Honor, but he lived with
4 and had a child with a young lady who now has
5 been murdered. She left two other children.
6 He's been helping with those two children also.

7 As far as school, he went to Carolina High,
8 but he didn't finish. He has a tire shop over in
9 Cityview right across from the old Park High
10 School right there on the corner of Cityview.
11 Probably had that for what? Five or six years?

12 Your Honor, he, uh, -- as to his record, I
13 asked Mr. Simun when Mr. Pauling was telling the
14 court what it was, he said that was right. I
15 think he did complete -- successfully complete
16 that probation that he was on. He did a complete
17 YOA sentence too before that and then had
18 probation.

19 **MR. SIMUN:** Yeah.

20 **MR. FARNSWORTH:** Judge, uh, he, uh, has, uh,
21 cooperated in this case. I think we, uh, even
22 before I think anybody was indicted, I think the
23 police or law enforcement were looking for him
24 and maybe talked to him about this case. We met
25 in my office at least on one occasion if not two.

1 A couple of SLED agents from the Greenville
2 County office. He testified before the Grand
3 Jury. He did a couple of pretty substantial
4 things that helped them get somebody that's
5 pretty big, I think.

6 Also, Your Honor, uh, we, through chasing a
7 car that belonged to this Poppy guy that's either
8 the number 1 or number 2 person depending on who
9 you ask, I think -- well, I helped myself. We
10 chased a car that this Poppy had and figured that
11 he was living somewhere around Rocky Mountain,
12 North Carolina. At that time, law enforcement or
13 nobody even knew his name much less where he
14 lived. Mr. Simun went up there and was going to
15 take all the time until he found him and found
16 where he lived. He ended up being in jail on
17 some North Carolina drug charges. I think they
18 will tell you that he did find him for the State.

19 Judge, he is by no means one of the big
20 players in this thing. I've got a chart here I
21 think by the Attorney General's office. There
22 are about 14 people on here. As you see, he's
23 down here, number 11. He wasn't up here on the
24 top level by any means.

25 He has no drug convictions at all. We would

1 ask Your Honor to take that all in consideration
2 and go along with the recommendation.

3 **THE COURT:** Tell me the recommendation
4 exactly. Is there a fine associated with it?

5 **MR. PAULING:** Your Honor, the recommendation
6 was seven years each to run concurrent. Fine is
7 in the discretion of the court.

8 **THE COURT:** All right. On the marijuana
9 charge, the sentence is 7 years at a \$2500 fine.
10 On the, uh, cocaine charge, the sentence is 7
11 years concurrent with any credit for time you
12 might have already served.

13 **MR. SIMUN:** Thank you.

14 **MR. PAULING:** Thank you, Your Honor.

15 **MR. FARNSWORTH:** Thank you, Judge.

16 (WHEREUPON, the proceeding concludes at apparently
17 4:30 p.m.)

18

19 (END OF PROCEEDING)

20

21

CERTIFICATE

11

1 I, the undersigned, Teresa B. Johnson, Official
2 Court Reporter for the Thirteenth Judicial Circuit of
3 the State of South Carolina, do hereby certify that
4 the foregoing is a true, accurate and complete
5 Transcript of Record of all the proceedings had and
6 evidence introduced in the trial of the captioned
7 case, relative to appeal, in the Court of Common Pleas
8 for Greenville, South Carolina, on this 25th day of
9 July, 2010.

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

12
13 July 26, 2010

14
15 
16 _____
17 Teresa B. Johnson
18 Official Court Reporter
19
20
21
22
23
24
25

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FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Greenville

WILLIAM SIMON, #287699
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2010-CP-23- 3358

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Wateree River Correctional Institution, Rembert, S.C.
2. Name and location of Court which imposed sentence Greenville County Court of General Sessions, Greenville, S.C.
3. Name(s) of co-defendant(s) (if any) Marlo Johnson
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Indictment No.: 064700009; Conspiracy to Traffic Marijuana/Cocaine
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) October 17, 2009; 7 years (85%) in the South Carolina Department of Corrections.
 - (b) _____

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. None
- ii. None
- iii. None
- (b) the result in each such Court to which you appealed:
- i. None
- ii. None
- iii. None
- (c) the date of each such result:
- i. None
- ii. None
- iii. None
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. None
- ii. None
- iii. None
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Ground(s) for Appeal suitable to Post Conviction Relief
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) "Ineffective Assistance of Counsel; "
- (b) "Evidence Insufficient to
- (c) Establish Guilt Beyond a Reasonable Doubt; "
- (d) Denial of a
- (e) Preliminary Hearing; "
- (f) Confrontation Right Denied

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

- (a) See Attachment 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 "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. None
 - ii. None
 - iii. None
 - iv. None
- (b) the name and location of the Court in which each was filed:
 - i. None
 - ii. None
 - iii. None
 - iv. None
- (c) the disposition thereof:
 - i. None
 - ii. None
 - iii. None

- iv. None
- (d) the date of each such disposition:
 - i. None
 - ii. None
 - iii. None
 - iv. None
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. None
 - ii. None
 - iii. None
 - iv. None
- 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. None
 - ii. None
 - iii. None
 - (b) the proceedings in which each ground was raised:
 - i. None
 - ii. None
 - iii. None
- 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) Ground(s) to be presented in Post Conviction Relief.
 - (b) _____
 - (c) _____
- 17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? —
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? —
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? —
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Daniel J. Farnsworth, 315 W. Stone Ave., Greenville, S.C. 29617
- ii. —
- iii. —
- (b) the proceedings at which each such attorney represented you:
- i. Plea Hearing
- ii. Sentencing
- iii. —
19. State clearly the relief you seek in filing this application:
Modification of Sentence / Sentence Relief; and/or what relief
the Court deems Just and Proper
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)

County of Sumter)

VERIFICATION

I, _____, 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.

William Sumner

SWORN to and subscribed before me this 19th
day of April, 2010.

Pamela D Hatfield (L.S.)
Notary Public

My Commission Expires: 3/15/2011

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

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

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

William Lerner
Applicant

SWORN or affirmed to and subscribed before me this
14th day of April, 2010.

Pamela D. Hedberg
Notary Public

My Commission Expires: 3/15/2011

INEFFECTIVE ASSISTANCE OF COUNSEL

The Applicant alleges his Counsel, Farnsworth, was ineffective which is a violation of Amendment VI of the United States Constitution.

The Applicant alleges Counsel informed him to make a statement to police, implicating himself. The confession was improperly admitted.

See Jackson v. Denno, 378 U.S. (1964).

The Applicant alleges Counsel informed him that if he didn't take the plea offer, he would go to trial 3 days later. The Applicant alleges he was coerced into taking a plea. See Mabry v. Johnson, 467 U.S. 504 (1984).

The Applicant alleges that at the time he took the plea deal, he did not know who was going to testify against him if he were to go to trial. The Applicant alleges the material witness was purposely made unavailable by the Prosecution. See U.S. v. Valenzuela-Bernal, 458 U.S. 858 (1982).

The Applicant alleges Counsel's performance was

"unreasonable under professional norms." See Cherry, 300 S.C. at 117, 386 S.E. 2d at 625, citing Strickland. The Applicant alleges that Counsel's deficient performance prejudiced him such that "there is a reasonable probability that, but for Counsel's unprofessional errors, the result of the proceeding would have been different." See Cherry, 300 S.C. at 117-18, 386 S.E. 2d at 625.

EVIDENCE INSUFFICIENT TO ESTABLISH GUILT
BEYOND A REASONABLE DOUBT

The Applicant alleges the Prosecution solely based its case on the statement of Co-Defendant (Johnson). The Applicant alleges the Co-Defendant is a convicted felon, and his credibility is not trustworthy. See Jackson v. Virginia, 443 U.S. 307 (1979).

DENIAL OF A PRELIMINARY HEARING

The Applicant alleges he was denied his

right to a preliminary hearing. In State v. Brown, (S.C. 1902) 62 S.C. 374, 40 S.E. 776, it states in part: Magistrates are required to hold a preliminary investigation on the issue of a warrant charging a crime at the demand of the defendant.

CONFRONTATION RIGHT DENIED

The Applicant alleges his conviction was based on prejudicial hearsay made by the Co-Defendant. See Douglas v. Alabama, 380 U.S. 415 (1965); Dutton v. Evans, 400 U.S. 74 (1970). The admission of a statement made by a non-testifying Co-Defendant and implicating the Defendant violates the confrontation clause. See State v. Garrett, (S.C. App. 2002) 350 S.C. 613, 567 S.E.2d 523. A Defendant's rights under the confrontation clause are violated by the admission of a non-testifying Co-Defendant's statements that expressly inculcate a Defendant even if a cautionary instruction is made. See State v. Evans, (S.C. 1994) 316 S.C. 303, 450 S.E. 2d 47.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2010-CP-23-3358
COUNTY OF GREENVILLE	)	
	)	
William Joey Simun,	)	
S.C.D.C. No. 287699,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed April 26, 2010, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the State Grand Jury Clerk of Court's orders of commitment. The State Grand Jury indicted the Applicant at the August 2007 term of General Sessions for trafficking marijuana (conspiracy) (2007-GS-47-0009, count 1) and trafficking cocaine (conspiracy) (2007-GS-47-0009, count 17). Daniel J. Farnsworth, Esquire represented the Applicant.

On October 12, 2009, the Applicant pled guilty before the Honorable John C. Few. Sentencing was deferred until October 21, 2009. On that date, Judge Few levied concurrent sentences of seven (7) years for trafficking marijuana (conspiracy), 10-100 pounds and seven (7) years for trafficking cocaine (conspiracy), 28-100 grams. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the State Grand Jury Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea and sentencing transcripts.

II.

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

1. Ineffective assistance of counsel:
 - a. Told the Applicant to make a statement to police.
 - b. Coerced the Applicant into entering a guilty plea.
2. Evidence insufficient to establish guilt beyond a reasonable doubt.
3. Denial of a preliminary hearing.
4. Confrontation right denied.

III.

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

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

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

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held on the issues raised in the application.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

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

By:


Attorneys for Respondent

August 20, 2010

	wsimun.txt	
	Direct By Mr. McGuire	5
	Cross By Ms. Ratigan	36
	Redirect By Mr. McGuire	38
BEVERLY FINLEY		
	Direct By Mr. McGuire	39
	Cross By Ms. Ratigan	45
RAMA SIMUN		
	Direct By Mr. McGuire	46
	Cross By Ms. Ratigan	50
CURTIS BRISSEY		
	Direct By Mr. McGuire	50
DRA IRBY		
	Direct By Mr. Perkins	53
DAN FARNSWORTH		
	Direct By Ms. Ratigan	54
	Cross By Mr. McGuire	62
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3

1 THE COURT: Next case.

2 MS. RATIGAN: Yes, Your Honor, may it please the

3 Court, this is the case of William Simun vs. The State of

4 South Carolina. Docket number is 2010-CP-23-3358.

5 Mr. Simun was indicted by the State Grand Jury on the

6 charge of trafficking marijuana by conspiracy, trafficking

7 cocaine by conspiracy. Mr. Farnsworth represented him on

Page 2

8 these charges. On October 12th, 2009, Mr. Simun pled
9 guilty before Judge Few. Sentencing was deferred until
10 October 21st, 2009. On that date Judge Few levied
11 concurrent sentences of seven years for trafficking
12 marijuana by conspiracy, 10 to 100 pounds. Seven years
13 for trafficking cocaine by conspiracy 28 to 100-grams.
14 Mr. Simun did not file an appeal and the State is ready to
15 proceed.

16 THE COURT: Mr. McGuire.

17 MR. MCGUIRE: Thank you, Your Honor, the
18 Applicant calls William Simun.

19 THE COURT: Okay, come around to be sworn,
20 please, sir.

21 THE CLERK: Step up here, please, to the Bible,
22 raise your right hand.

23 WILLIAM SIMUN, after being duly sworn, testified
24 as follows:

25 THE CLERK: Thank you, you may be seated. State

4

1 our full name for the record, please.

2 THE WITNESS: William Simun, S-I-M-U-N.

3 MR. MCGUIRE: Your Honor, before I proceed, you
4 had heard a case yesterday regarding Mr. Nicanor
5 Rodriquez. My partner, James Ervin, actually tried that
6 case. He was one of our witness in a PCR Pretender case,
7 Statewide Grand Jury case. Mr. Simun was a part of that
8 so I don't want to belabor the facts of this case, you may
9 be familiar with what happened in that case.

10 THE COURT: He was one of the pleas earlier in
11 the week I bet.

wsimun.txt
12 MR. MCGUIRE: Well during the trial.
13 THE COURT: That's right.
14 MR. MCGUIRE: Yes, that's right, Your Honor.
15 THE COURT: Okay.

16 DIRECT EXAMINATION

17 BY MR. MCGUIRE:

18 Q Joey, state for the Court your full name.
19 A It's William Joseph Simun.
20 Q Okay. And you go by Joey, correct?
21 A Yes, sir.
22 Q Okay. Joey, what time are you serving, for what
23 sentences?
24 A Seven years conspiracy to trafficking marijuana and
25 cocaine.

WILLIAM SIMUN-DIRECT BY MR. MCGUIRE

5

1 Q What else?
2 A Just marijuana and cocaine.
3 Q Did you get seven years for --
4 A Yes, sir.
5 Q Okay. And this resulted out of the Pretender case,
6 which the Court is familiar with, a Statewide Grand
7 Jury case involving a number of probably a dozen if
8 not more conspirators allegedly who was trafficking
9 marijuana and cocaine, correct?
10 A Yes, sir.
11 Q Okay. How did you first become aware that you were
12 being implicated in this case?
13 A Sergio, one of my co-defendants, he -- they did a
14 search warrant on his house and they left a search
15 warrant with my name in it.
16 Q Okay, who is Sergio?

17 A One of my co-defendants.
18 Q Do you know his last name?
19 A Rodriquez.
20 Q Did Sergio come to you with this information?
21 A Yes, sir.
22 Q He actually brought you a copy of the warrant served?
23 A Yes, sir.
24 Q Where was that warrant served?
25 A At his house.

WILLIAM SIMUN-DIRECT BY MR. MCGUIRE

6

1 Q Okay. Now when he brought you the warrant, what did
2 you do?
3 A I called Dan and showed Dan the search warrant.
4 Q Dan being Mr. Farnsworth?
5 A Yes, sir.
6 Q How soon after you received a copy of that warrant
7 did you go see Mr. Farnsworth?
8 A Think the same day.
9 Q Okay. You met him at his office?
10 A Yes, sir.
11 Q Now, when you met him at his office, what did you
12 tell him and what did he tell you?
13 A I showed him the search warrant with my name in it.
14 And he said -- he said what it said in the paper
15 where this was a -- they had a warrant for me. Had a
16 warrant for me.
17 Q Okay. Well as a result of the conversations you had
18 with Mr. Farnsworth, what did he recommend you do?
19 A That I need to talk to him.
20 Q Talk to who?

21 A To the SLED.
22 Q Okay. Did Mr. Farnsworth arrange that for you?
23 A Yes, sir.
24 Q Okay. How soon after you met with him did you
25 arrange to meet with the SLED agents?

WILLIAM SIMUN-DIRECT BY MR. MCGUIRE

7

1 A Probably a couple of weeks.
2 Q Okay. Where did you meet the SLED agents?
3 A At his office.
4 Q At Mr. Farnsworth's office?
5 A Yes.
6 Q Who did you meet with?
7 A I know one of them was Reid Crestwell and Chris
8 Marchant.
9 Q Was there more than two agents?
10 A Yeah, one or two more.
11 Q Okay. Now during that meeting, what did y'all
12 discuss, what did Mr. Farnsworth recommend you do in
13 terms of talking to those agents?
14 A He just said that I need to tell them something so it
15 look like I'm cooperating.
16 Q So he asked you to cooperate?
17 A Yes, sir.
18 Q What did you tell the agents that day?
19 A That I told them I moved a little bit of marijuana.
20 Q Okay. After that meeting, when was the next time you
21 had any involvement with SLED or with the Statewide
22 Grand Jury or with Mr. Farnsworth?
23 A Well, I mean, I speak with Dan often, you know.
24 Q Was it a week later, a month later, six months later?
25 A I probably talked to Dan almost every week, maybe

1 every other week.

2 Q Okay. Let me back track. I should probably put this

3 in perspective. When you first found out about the

4 indictment, the warrant that was served on your

5 co-defendant, this was in 2006, is that correct?

6 A Yes, sir.

7 Q So you met with the SLED agents, you told them that

8 you had moved some marijuana, is that correct?

9 A Yes, sir.

10 Q Okay. Thereafter you met with Dan again and spoke to

11 him on the phone, is that correct?

12 A Yes, sir.

13 Q Mr. Farnsworth. What did he recommend you do in

14 terms of helping the case or what did he recommend in

15 terms of defending the case?

16 A He just said cooperate with them. Because that's

17 how, you know, help me out.

18 Q Okay. Now, so what was the next process or next

19 stage you went through in terms of trying to do what

20 Mr. Farnsworth recommend you do?

21 A Well he told me they wanted a dude named Chris so I

22 met up with him.

23 Q Mr. Farnsworth told you that SLED wanted a dude named

24 Chris?

25 A Yes.

1 Q Chris Willoughby?

2 A Chris Willoughby, uh-huh.

3 Q Was he one of the people who's name was listed on the
4 warrant that you signed--

5 A No, sir.

6 Q Okay. What did Mr. Farnsworth tell you that SLED
7 wanted regarding Mr. Willoughby?

8 A Just said he was looking at him and if could give any
9 help to them with him they would help me out.

10 Q Did you know Mr. Willoughby?

11 A I knew of him.

12 Q How did you know of him?

13 A Just I -- just met him through a guy I knew that he
14 had shot. He tinted my windows and stuff on my car.

15 Q Okay. You use to own a -- or still own, I guess,
16 even though you're incarcerated, a tire dealership?

17 A Yes, sir.

18 Q Two dealerships?

19 A Yes, sir.

20 Q And this Chris dude was someone who worked with you
21 tinting windows?

22 A Well no, I just went down there and got my windows
23 tinted down there.

24 Q So he did contract work for you?

25 A No, just took one of my personal cars down there, got

WILLIAM SIMUN-DIRECT BY MR. MCGUIRE

10

1 them done.

2 Q Now, in regards to Chris, what did you do that day at
3 SLED to try to help them out?

4 A Tried to set him up.

5 Q How did you set him up?

6 A They -- went bought some from him, bought some
7 cocaine from him.

8 Q So you did this to assist SLED. And I'm assuming in
9 anticipation of trying to aid your case?
10 A Yes, sir.
11 Q Okay. Thereafter, what did you do to try to help
12 SLED or what did Dan recommend you do to try to help
13 SLED?
14 A I don't know, he kept on telling me they wanted
15 certain people and all. He told me one time that if
16 I would help to get Poppy(ph) -- if I would help them
17 get Poppy, I probably wouldn't do a day in jail.
18 Q Who is Poppy and can you spell Poppy for me?
19 A Poppy, I don't know -- I don't know his real name
20 but...
21 Q How do you spell Poppy?
22 A P-A-P-A, I guess.
23 Q P-A--
24 A P-A-P-A.
25 Q Okay. Now Papa was one people named in the warrant,

WILLIAM SIMUN-DIRECT BY MR. MCGUIRE

11

1 the conspiracy warrant?
2 A Yes, sir.
3 Q What did you do to try to track down Papa?
4 A Dan got his wife to look up his VIN number, the VIN
5 number on the car I help him get.
6 Q What did you do thereafter to try to help SLED?
7 A I just found out what his name was and give it to
8 him.
9 Q To Dan or SLED?
10 A Well Dan told me to hold it and when we met up for
11 court to give it to him.

12 Q Okay. Did you do anything yourself affirmatively to
13 actually try to track down this Papa individual?

14 A I mean, I just road to the address that it was
15 registered to.

16 Q Who was that address registered to?

17 A In North Carolina.

18 Q Okay, so you drove to North Carolina, where in North
19 Carolina?

20 A Rocky Mountain.

21 Q Okay. Now I'm going to try to backtrack for a
22 second. You had spoken to SLED agents about Papa
23 yourself?

24 A No, Dan did.

25 Q Okay, did you speak to the SLED agents after finding

WILLIAM SIMUN-DIRECT BY MR. MCGUIRE

12

1 Papa?

2 A I did in court one time.

3 Q Okay. Before a Judge or --

4 A No, just a little conference room.

5 Q And what did those SLED agents tell you regarding
6 your trying to help find Papa?

7 A Well actually Dan talked to them more. Dan -- they
8 wanted to see if the information -- if it was really
9 him.

10 Q Okay. And thereafter what happened?

11 A They said they was willing to do something if they
12 knew it was him. Dan said we ain't losing nothing,
13 just give them the name. Papa was already locked up.

14 Q So you had located in North Carolina, found out he
15 was locked up in North Carolina?

16 A Yes, sir.

17 Q So what did they told [sic] you they would do? The
18 SLED agents, what did they told [sic] you they do for
19 you if you found Papa?
20 A They say they would help me with my time.
21 Q Okay. And you found Papa?
22 A Yes, sir.
23 Q Did they know Papa was locked up when you told them
24 where he was?
25 A No, sir.

WILLIAM SIMUN-DIRECT BY MR. MCGUIRE

13

1 Q Okay. Did anything ever come from that, finding
2 Papa?
3 A No, sir.
4 Q Okay. Let me skip ahead a little bit and again I
5 don't want to belabor all these points but after
6 finding him and not getting any sort of results from
7 finding Papa, what else did you do to help SLED
8 agents try to help this case?
9 A Nothing else.
10 Q Okay. Was not an individual Chris you tried to help
11 track down?
12 A No, that was the same one I just told you about.
13 Q Okay. Chris is -- let me backtrack. Your baby's
14 mother.
15 A That's the same Chris. Yes, she got murdered the
16 night I felt like -- she got murdered with his uncle
17 because he was selling them -- selling them dope so I
18 feel like she was kind of responsible.
19 Q Okay. So you did two things in the case to aid SLED.
20 You found Papa and helped them track down Chris,

21 correct? Set up Chris?

22 A Yes, sir.

23 Q Okay. Let me skip ahead to the actual crux of your
24 case then. The Court kind of knows the background
25 and what you were doing to try to help SLED. Was

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1 there a plea offer put on the table for you regarding
2 the charges that you eventually pled to?

3 A Well at first my first plea was 12 years and 10.

4 Q When was this, approximately?

5 A About a year after I got indicted.

6 Q So this is around 2008?

7 A Yes, sir.

8 Q Okay. So you had a offer of 12 and eight you said?

9 A Twelve and 10.

10 Q Twelve and 10, I'm sorry. And this plea offer was
11 conveyed to you by who?

12 A Dan told me.

13 Q Okay. And this came via Curtis Pauling who was the
14 prosecutor in the case?

15 A Yes, sir.

16 Q Okay. After getting that first plea offer, what did
17 you tell Dan you wanted to do? Mr. Farnsworth, I'm
18 sorry.

19 A Well I'm saying I didn't tell him nothing at first
20 until I got my motion discovery then I realized they
21 ain't really had nothing. I told him I didn't want
22 to take it.

23 Q Okay. Well I'm taking things a little bit out of
24 order here and I apologize, let me backtrack for a
25 second. Dan had recommended you cooperate with the

- 1 Statewide Grand Jury, correct?
- 2 A Yes, sir.
- 3 Q Okay. Prior to getting that plea offer, had you gone
- 4 before the Statewide Grand Jury?
- 5 A Yes, sir.
- 6 Q Okay. And you testified, correct?
- 7 A Yes, sir.
- 8 Q And in that testimony, what did you tell them you had
- 9 done?
- 10 A That I sold marijuana and cocaine.
- 11 Q And why did you tell them that?
- 12 A Because Dan told me I needed to tell them something.
- 13 Q Okay. Now I'm going to jump ahead a little bit, this
- 14 is subsequent to the plea offer. After getting that
- 15 plea offer, were you able to review the discovery
- 16 that the Statewide Grand Jury transcripts in the
- 17 case?
- 18 A Yes, sir.
- 19 Q Okay. And as a result of reading those transcripts
- 20 what did you discover?
- 21 A I felt like I really hurt myself more than I helped
- 22 myself.
- 23 Q In what way?
- 24 A By telling on myself.
- 25 Q Well did anyone besides yourself implicate you as

- 1 having moved the marijuana and the cocaine?
- 2 A Yeah, I had -- in one of the -- one of my

3 co-defendants, he said I moved marijuana but no
4 cocaine.
5 Q Okay. So the only cocaine testimony came from your
6 testimony to the Statewide Grand Jury, correct?
7 A Yes, sir.
8 Q So after learning that you get a plea offer of 10 to
9 12, correct?
10 A I can't remember if it was before I got that plea or
11 after when I finally got my motion of discovery. I
12 think I got the plea first then I got my motion of
13 discovery after.
14 Q Well what did you tell Mr. Farnsworth regarding your
15 wanting to accept that plea offer?
16 A That I wouldn't take it.
17 Q You wouldn't take it?
18 A I wouldn't.
19 Q Okay. How long after that did you again to speak,
20 approximately, did you speak with Mr. Farnsworth
21 regarding another plea offer or what was going to
22 happen with your case?
23 A I think it was about another year later when they
24 finally come on down a little bit.
25 Q This is coming to 2009?

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1 A Yeah, probably the beginning of 2009.
2 Q Okay. Did you speak with Mr. Farnsworth or did
3 Mr. Pauling come to you or SLED, who came to you?
4 A Dan did
5 Q What was the plea offer at that point?
6 A Seven years.
7 Q Seven years for what?

8 A Say they give me seven years on the cocaine and seven
9 years on the marijuana but I had to agree to take it
10 the next day.
11 Q The next day?
12 A Yeah. Well, I think court was the next day.
13 Q When -- you said it was approximately early 2009?
14 A Yes, sir.
15 Q Okay. Now at point -- what did you tell
16 Mr. Farnsworth?
17 A I told him I ain't want to take it.
18 Q Okay. And what happened did they take you to court
19 at any point?
20 A We went to court like the next day and I guess he
21 told them I wasn't going to take it. And I went
22 home.
23 Q So you didn't go to trial, you told them you didn't
24 want to take it?
25 A Yeah.

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1 Q When was the next time, approximately, when you spoke
2 to Mr. Farnsworth regarding the plea offer and
3 negotiations or recommendations from the Statewide
4 Grand Jury regarding your case?
5 A About a week before I got sentenced they said we got
6 a -- Dan told me they had court coming, they wun't
7 [sic] going to come no lower than that.
8 Q Now, let me make sure I clarify this. Your first
9 part of your plea was October 12th, 2009 and then
10 your sentencing was October 21st, 2009. Did you
11 speak to him prior to that about accepting the plea

12 offer of seven years?

13 A Yeah, about a week before that. About a week before
14 we went to court, he told me that we had court coming
15 up. And that they wanted me to take the seven years.
16 I told him I didn't want to.

17 Q Well what did he tell you in regards to taking --
18 accepting that plea offer?

19 A He told me if -- he told me to take the seven years
20 and that he would file some paper work and get me
21 back into Court within -- sit in close to a year and
22 he'll file some paperwork and get me back into court
23 and get some time knocked off.

24 Q Okay, so he -- I don't want to put words in your
25 mouth but you're saying he told that if you sat a

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1 year in jail--

2 A Yeah, he just told me to go ahead and take the seven
3 years, that he felt that was the best thing and sit
4 close to a year and get as much time under my belt as
5 possible and he'll file some paperwork to get me back
6 into court and get some time knocked off.

7 Q Did he explain to you anything regarding what this
8 paper was that he would file to get your sentence
9 reduced?

10 A No, sir.

11 Q Now this is about a week or two, you said, before the
12 actual first part of your plea?

13 A Yes, sir.

14 Q Okay. Now, did you meet with -- was anyone present
15 with you during that first conversation regarding
16 that discussion with Mr. Farnsworth?

17 A I ain't going to say the first time he told me that
18 but my son's grandma was with me on occasion and
19 heard it.

20 Q Okay, so during the first conversation you had
21 regarding this, you think you were by yourself?

22 A Yes, sir.

23 Q Did you have a second conversation and when was it
24 regarding this possible plea offer?

25 A It was probably about a week before court.

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1 Q So a week before October 12th?

2 A Yes, sir.

3 Q Where did you meet with Mr. Farnsworth to discuss the
4 plea offer?

5 A In his office.

6 Q Okay. Physically in his office or in the parking lot
7 or?

8 A No, it was in his office.

9 Q Was anyone present with you?

10 A Yeah, my son's grandma.

11 Q Who's your son's grandma?

12 A Beverly Finley.

13 Q Beverly Finley?

14 A Yes, sir.

15 Q B-E-V-E-R-L-Y?

16 A Yes, sir.

17 Q Okay. And she is the mother of your -- she's the
18 grandmother of your murdered mother's child.

19 A (The witness nods.)

20 Q Okay. She was actually sitting in the office with

21 you?

22 A Yes, sir.

23 Q Okay. Now, during that discussion what did

24 Mr. Farnsworth tell you regarding accepting the plea

25 offer on the table?

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1 A He just told me, you know, if -- to take the seven
2 years, he get me back into court and try to get me
3 some time knocked off.

4 Q Again, did he tell you what he meant by getting time
5 knocked off or what paperwork he filed?

6 A No, sir.

7 Q Okay.

8 A I ain't never asked.

9 Q Okay.

10 A I just assumed he knew what he was talking about.

11 Q Okay. Was there anyone else present besides
12 Ms. Finley in the office with you at that time?

13 A My son.

14 Q How old is your son?

15 A He's five now.

16 Q Okay. Okay. Thereafter, this is about a week before
17 your October 12th bifurcated plea, the first part of
18 your plea.

19 A Yes, sir.

20 Q Did you meet with Mr. Farnsworth again to discuss the
21 plea offer?

22 A Yeah, I called him, I think that Saturday on his cell
23 phone and told him I ain't want to take the plea
24 because they ain't really have nothing on me.

25 Q So you say that Saturday, is this Saturday before the

1 October 12th Monday plea?

2 A Yes, sir.

3 Q Okay. You called Mr. Farnsworth on his cell phone?

4 A Yes, sir.

5 Q Okay. Did you arrange any sort of meeting?

6 A Yeah, he told me he would call me toward the end of

7 the weekend and I meet him at his office.

8 Q Okay. Did you meet with him?

9 A Yeah; he called me on a Sunday, Sunday right after we

10 got done eating and I met him down there at his

11 office.

12 Q Okay, you said this was October 11th, you pled -- the

13 first part of your was October 12th, so you met him

14 October 11th?

15 A Yes, sir.

16 Q Okay, on a Sunday. Who was with you and where did

17 you meet Mr. Farnsworth?

18 A I met him at his office in the parking lot on a

19 Sunday.

20 Q Okay. And who was with you?

21 A My son's grandma, Beverly Finley.

22 Q Beverly Finley?

23 A Yeah.

24 Q In that discussion what did Mr. Farnsworth recommend

25 you do?

1 A ... told me that the best thing to do is take it this

2 time because they might bring somebody I never even

3 seen before to testify on me.

4 Q Okay, what else did he tell you?

5 A To take the time, sit down there close to a year, get

6 as much time under my belt and he'll get me back in

7 court and try to get some time knocked off.

8 Q I apologize, you're probably not speaking as clearly

9 as the court reporter needs but you said he told you

10 to sit down there for a year, take the plea, sit down

11 there for a year --

12 A Get as much time under by belt --

13 Q Get some time under your belt --

14 A Yeah. And they when I get back to court it looks

15 better, I got some time under my belt and then he'll

16 try to get me some time knocked off.

17 Q Did he explain to you how he would get that time

18 knocked off.

19 A No, sir.

20 Q Okay. Let me skip ahead then to October 12th, which

21 would have been a Monday, the day you actually

22 entered the first part of your bifurcated plea in

23 front of Judge Few. Did you speak with

24 Mr. Farnsworth that day?

25 A On the day I pled?

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1 Q Yes, sir.

2 A Yes, sir.

3 Q Where did you speak with him?

4 A Probably out in the hallway.

5 Q Hallway of the courthouse, here at this courthouse?

6 A Yes, sir.

7 Q Okay. Was anyone present with you?

8 A My mom. My momma and my son's grandma.
9 Q Okay. So your momma is who?
10 A Rana Simun.
11 Q Rana, R-E-M-A?
12 A Yes, sir.
13 Q Simun, S-I-M-U-N?
14 A Yes, sir.
15 Q And your baby's grandma, Beverly Finley?
16 A Yes, sir.
17 Q They were present with you when you spoke with
18 Mr. Simun -- I mean, Mr. Farnsworth?
19 A Yes, sir.
20 Q And you spoke to him in the hallway of the
21 courthouse?
22 A It was either the hallway or it might have been in
23 the conference room.
24 Q What did y'all discuss?
25 A Just about taking the plea. And he again he told me

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1 to sit down there, he'd get me back into court, try
2 to get me some time knocked off.
3 Q Okay, let me clarify again, the plea offer at this
4 point was what?
5 A Seven years.
6 Q Seven years for what?
7 A Seven years on the cocaine, seven years on the
8 marijuana and run it concurrent.
9 Q Okay, at this point, I don't want to put words in
10 your mouth but seven years would have been the
11 minimum mandatory for trafficking cocaine?

12 A Yes, sir.
 13 Q And seven years would have been -- I think you were
 14 facing three to 10 on trafficking marijuana, is that
 15 correct?
 16 A I believe so.
 17 Q And you would have taken seven concurrent, that was
 18 the offer?
 19 A Yes, sir.
 20 Q And Mr. Farnsworth told you, again, to accept the
 21 plea and what?
 22 A Sit down close to a year and he would get me back
 23 into court. File the paperwork to get em back into
 24 court and try to get some time knocked off.
 25 Q Did he explain to you how he would get that time

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1 knocked off?
 2 A I never asked. I just assumed that he would do it.
 3 Q At this point your mother, Rama Simun and Beverly
 4 Finley were present with you when this conversation
 5 occurred?
 6 A Yes, sir.
 7 Q Okay. Okay. Let me, okay, go forward again. This
 8 is the day of the plea. I think your plea occurred
 9 around 11 a.m. that day, okay. Did you have any
 10 further conversations with Mr. Farnsworth regarding a
 11 plea before going into court?
 12 A No, sir.
 13 Q Okay. When you went into court, the Court asked
 14 you --
 15 I apologize, Your Honor.
 16 If I -- I'm going to show you on pages 10 and
 Page 22

17 ll, whether you were, on line 23, whether -- where
18 there any promises to you that they would -- that
19 they, meaning the Attorney General's Office,
20 recommend a sentence is seven years, has anybody
21 promised you anything else or held out any hope of
22 reward in order to get you to plead guilty.

23 And you said, No, sir.

24 And you've read that correct?

25 A Yes, sir.

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1 Q Why didn't you tell the Court that you discussed with
2 Mr. Farnsworth the possibility of coming back in a
3 year and getting your sentenced reduced?

4 A Because he said you can't tell the Court you got no
5 promises.

6 Q Okay.

7 A That's even on the plea, even on the seven year plea.

8 Q Okay. Now, I'm going to jump ahead for a second here
9 and I'll come back to your other plea information.

10 on the actual date of your sentencing, which was
11 October 21st, which I didn't highlight -- well let me
12 ask you. on October 21st sentence you received seven
13 years concurrent for your sentence, correct?

14 A Yes, sir.

15 Q Okay, why didn't you tell the Court at that time you
16 had been promised, well not promised, but
17 Mr. Farnsworth had told you that he would come back
18 and get your sentence reduced?

19 A Because he said you can't say you been made no
20 promises

21 Q Did he elaborate on that why?
22 A No, sir. He just said that you can't say you had it.
23 You just got to go in there and tell them no on all
24 of them.
25 Q Okay, let me ask you, why did you agree to plead

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1 guilty?
2 A Because, I mean, to be honest with you I assumed that
3 he was going to get me back into court. I didn't
4 feel like I was going to do all this time.
5 Q Had you been asking for a trial up to this point?
6 A Yeah, I was planning on it. Planning on going to
7 trial.
8 Q When -- up to what point were you asking for a trial?
9 A I wanted to on that Sunday. That last Sunday before
10 I plea.
11 Q October 11th?
12 A Yes, sir.
13 Q Okay. When you met with him at his office in the
14 parking lot, I think?
15 A Yeah, I told him after I agreed I was going to take
16 the plea, I told him I changed my mind, I ain't going
17 to take it.
18 Q When?
19 A I told him that Sunday.
20 Q Okay. Let me backtrack, make sure we're clear about
21 this. You met him on Sunday in his parking lot, you
22 talked about taking the plea, you pled on Monday.
23 When did you tell him you wanted to back out of that
24 plea?
25 A That's the whole reason I met him at his office that

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1 Sunday. Because it wanted to back out of it --

2 Q So this is after the first part of the plea? You met

3 him at his office after the October 12th plea before

4 the 21st sentencing?

5 A Yes, sir.

6 Q Okay. What did he tell you?

7 A He just thought I was doing the right thing because

8 they might bring somebody I never even see before to

9 testify on me. He said give me 25 years.

10 Q Okay. Well did he tell you anything at all regarding

11 accepting the plea, sticking with the plea you made?

12 A Yeah, he just told me the same thing about sit down

13 there close to a year, get a much time under your

14 belt and try to get you back into court and get some

15 time knocked off.

16 Q But he didn't explain to you how he would do that?

17 A No, sir.

18 Q Okay. You said on at least, I think two occasions,

19 Beverly Finley, your baby's grandmother, was with you

20 during these discussions with Mr. Farnsworth,

21 correct?

22 A Yes, sir.

23 Q Okay. And I think you said --

24 I apologize, Your Honor, my knee's killing me.

25 I think you said you met with them two weeks or

1 a month, maybe two weeks prior to the first part of

2 the plea with Ms. Finley with you?

3 A Yes, sir.
4 Q And then you met -- then she was present in the
5 courtroom and you discussed this, correct?
6 A I believe so. I know my momma was in there. I'm
7 pretty sure she was in there, my son was in there.
8 Q Now your mother is Rama, R-E-M-A, Simun?
9 A Yes, sir.
10 Q How many times was she present with you when you
11 discussed with Mr. Farnsworth the plea offer and what
12 he thought he could do for you?
13 A Just at the courthouse.
14 Q The day of which plea? The first part or the second
15 part?
16 A She was with me on both times but I think it was the
17 first part when she--
18 Q She was present in the room or physically with you --
19 A Yes, sir --
20 Q -- when you discussed with Mr. Farnsworth accepting
21 the plea?
22 A Yes, sir.
23 Q And what did Mr. Farnsworth tell you in the presence
24 of your mother?
25 A Just sit down there close to a year and get as much

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1 time under my belt and he filed the paperwork to get
2 me back into court, try to get some time knocked off.
3 Q Okay, and again, you received the mandatory minimum
4 based upon what you were pleading to, correct?
5 A Yes, sir.
6 Q Did he explain to you, again, I don't mean to beat a
7 dead horse, but did he explain to you what paperwork

8 he was filing?
9 A No, sir?
10 Q Okay. Now, after you accepted the plea, after you
11 were sentenced in October 21st, did you speak with
12 Mr. Farnsworth again?
13 A After I took my plea and went down the road?
14 Q Yes, sir, R&E.
15 A Yeah, when I finally got to where I was going, I got
16 to Wateree. And when I got down there I had I called
17 my shop and they put two phones together and I called
18 his office.
19 Q Okay. And you spoke to Mr. Farnsworth?
20 A Yes, sir.
21 Q What did you ask him and what did y'all discuss?
22 A Well he asked me how I was doing. I told him I was
23 all right. He asked how everything was going down
24 there. I told him everything was good. Then he
25 said -- I -- then I told him, I said, I don't want

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1 you to forget about me. About doing the paperwork,
2 filing the paperwork and getting me back. And he
3 told me just sit on down there close to a year and
4 then he would file the paperwork. That way it looks
5 good. I got as much time under my belt as I could
6 did.
7 Q Okay, again, did he explain to you what paperwork he
8 was talking about?
9 A No, sir.
10 Q Thereafter, when was the next time you spoke with
11 him, or did you speak with him?

12 A I tried calling him, I never could really get him on
13 the phone. My mom tried calling him, couldn't get
14 him on the phone.

15 Q Okay. Are you aware of whether Mr. Farnsworth ever
16 filed any paperwork to try to reduce your sentence?

17 A When I couldn't get him on the phone -- when I
18 couldn't get him on the phone, I was telling people
19 about what he was telling me and they said he must
20 have been talking about a PCR. So then I called
21 around trying to get me lawyers information so I
22 could discuss with different lawyers.

23 Q Okay.

24 A And then I filled out my PCR and sent it in.

25 Q Okay. So did you talk with Mr. Farnsworth at any

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1 point after that first conversation at R&E regarding
2 what paperwork he was going to file to reduce your
3 sentence?

4 A No, sir. I think it was about the last time I talked
5 to him about it.

6 Q Okay. Now let me make it clear, now prior to entering
7 this plea, what had you told Mr. Farnsworth you
8 wanted to do?

9 A I told him I wanted to go to trial.

10 Q Okay. Why did you accept the plea offer that was
11 that put before you?

12 A I mean, he told me that he was going to file some
13 paperwork to try to get some time knocked off. And
14 if I got found guilty I get 25 years.

15 Q Okay, so you accepted the seven years?

16 A Yes, sir.

17 Q With the expectation that?
18 A That I was -- that I was going to get back to court
19 and get some time knocked off.
20 Q Okay. Again, was any explanation as to how he would
21 do that?
22 A I never asked.
23 Q Okay.
24 A I just assumed that he was going to file the
25 paperwork and I was going to be back in court.

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1 Q Okay.
2 Beg the Court's indulgence.
3 Let me make sure I'm clear on this, too. I know
4 that at least two occasions Beverly Finley was
5 present with you with Mr. Farnsworth, correct?
6 A Yes, sir.
7 Q During the conversations regarding your plea. And
8 your mother was present you think on at least one
9 occasion?
10 A She was present at both times in court. But one
11 occasion I know she was there the first time.
12 Q What about Curtis Brissey, was he ever present prior
13 to you entering your plea or on the date of your plea
14 discussing this information with Mr. Farnsworth?
15 A I know he -- he was in court with me. But I don't
16 know what he heard or nothing. I know he was in
17 court with me.
18 Q How about Dre Irby?
19 A Yes, sir, he come to court with me.
20 Q Was he present during any of the conversations you

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21 had with Mr. Farnsworth regarding your plea and what
22 he would do for you?
23 A I mean, I don't know if he was there when I -- I know
24 he was there when I talked to Dan but I don't know
25 what he heard exactly.

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1 Q Okay.
2 A But I know after I got sentenced, my mom said Dan
3 come out there and talked to her then and they was
4 there.
5 Q Okay. But for your allegation that Mr. Farnsworth
6 told you he could get your sentenced reduced if you
7 sat for one year, would you have entered a plea of
8 guilty to these charges?
9 A No, sir.
10 Q And up to what point were you insisting upon a trial?
11 A The day before I pled.
12 Q Okay. Why did you accept that plea offer?
13 A Because I thought I was -- I thought I wun't [sic]
14 going to do all the time, I thought I was going to
15 get some time knocked off.

16 MR. MCGUIRE: Okay, nothing further, Your Honor.

17 THE COURT: You may cross-examine the witness.

18 MS. RATIGAN: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. RATIGAN:

21 Q Your testimony is that once Sergio called you and
22 told you about that search warrant then you went to
23 talk to Dan?
24 A No, he actually come and brought me the search
25 warrant.

- 1 Q Okay. And after you talked to Mr. Farnsworth he told
2 you it would be in your best interest to cooperate
3 with SLED?
4 A Yes, ma'am.
5 Q Okay. And that included giving them that voluntary
6 statement?
7 A Yes, sir -- yes, ma'am.
8 Q And that also included tracking down Papa and helping
9 them with Chris Willoughby?
10 A Yes, ma'am.
11 Q And did also agree to testify against some of your
12 co-defendants when it came to that?
13 A Yes, ma'am.
14 Q Did you testify again Kenry or Micanor Rodriquez?
15 A Yes, ma'am.
16 Q And all along you had several conversation and
17 meetings with Mr. Farnsworth?
18 A Yes, ma'am.
19 Q Did you explain to him your involvement in this whole
20 operation?
21 A Yes, ma'am.
22 Q Just to make sure that I'm clear, when did you,
23 because it seems like you kind of went back and forth
24 on that seven year offer, when did you finally decide
25 to take it? Was it the day before the plea hearing

- 1 or was it the day of?
2 A Well I mean, I didn't want to take it the day before

3 but we discussed it again, I just went ahead and said
4 I was going to take it.

5 Q Okay. So when you showed up at the courthouse that
6 day, you were there to plead guilty? To take that
7 seven year deal?

8 A Yes, ma'am.

9 Q Okay. Now, did Mr. Farnsworth tell you he was going
10 to try to get your sentence reduced or did he promise
11 he could get it reduced?

12 A No, he told me he would file the paperwork to get me
13 back into court to try to get my time reduced.

14 Q So he filed the paperwork to try to get your sentence
15 out.

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

17 THE COURT: Any redirect?

18 MR. MCGUIRE: Briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. MCGUIRE:

21 Q Did Mr. Farnsworth ever explain to you under what
22 legal theory to get your sentenced reduced?

23 A No, sir, I didn't ask him because me and Dan is
24 friends and I just assumed he knew what he was doing.
25 He been doing it a long time. So I just rolled with

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1 it.

2 Q Again, the Attorney General has asked you, that you
3 accepted that plea the day you went in. Why -- let
4 me make it clear so there's no misunderstanding, why
5 did you accept that plea?

6 MS. RATIGAN: Your Honor, that's been asked and
7 answered numerous times.

8 THE COURT: I've heard that.

9 MR. MCGUIRE: Nothing further, Your Honor.

10 THE COURT: All right, thank you.

11 I don't think there's any question that I don't
12 know what the issue is in this case.

13 MR. MCGUIRE: Yes, sir. The petitioner would
14 call Beverly Finley.

15 THE CLERK: If you'd step up here, please.
16 Place your left hand on the Bible, raise your right hand.

17 BEVERLY FINLEY, after being duly sworn,
18 testified as follows:

19 THE CLERK: Thank you, you may be seated. State
20 your full name for the record, please, and spell your last
21 name.

22 THE WITNESS: Beverly Gale Finley, F-I-N-L-E-Y.

23 DIRECT EXAMINATION

24 BY MR. MCGUIRE:

25 Q Mr. Finley, how are you related to Joey Simun?

BEVERLY FINLEY-DIRECT BY MR. MCGUIRE

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1 A My daughter and Mr. Simun has a son together.

2 Q And I hate to ask you this but what has happened to
3 your daughter since that child was born?

4 A She was murdered in 2007.

5 Q I'm sorry to hear that. I don't want to belabor the
6 Court here, you were aware that Mr. Simun was charged
7 with these -- this conspiracy with the Statewide
8 Grand Jury, correct?

9 A I sure was.

10 Q Were you ever present during any conversations
11 between Mr. Farnsworth and Joey discussing his

wsimon.txt
12 accepting his plea?
13 A Yes, sir. It was about a month actually before his
14 trial. Joey--
15 Q His plea?
16 A Pardon?
17 Q Before his plea, correct?
18 A Yeah. Joey and myself and his little son, True
19 [sic], had been to lunch and we just stopped in there
20 because Joey said he wanted to talk to him.
21 Q Stopped in where?
22 A Mr. Farnsworth's office.
23 Q Okay. Do you recall what day of the week this was
24 or?
25 A No, not really.

BEVERLY FINLEY-DIRECT BY MR. MCGUIRE

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1 Q It was a week day?
2 A Yes, it was, sure was.
3 Q You had been to lunch with Joey and his son, your
4 daughter's son, his son?
5 A Uh-huh.
6 Q You dropped by Mr. Farnsworth's office. Was
7 Mr. Farnsworth present?
8 A Yes, he was.
9 Q Did y'all go in the office, did you sit in the
10 parking lot or?
11 A No, we went into his office and sat there and talked
12 for a while. And they went over the -- some of the
13 case a little bit. And while he was in there he told
14 him that -- he advised him to go ahead with the seven
15 year plea. Because the whole time Joey, when he
16 would come to my house and talk to me about it he was

17 wanting to take the jury trial. But I was totally
18 against it because it was just too risky. And I
19 would try to get him not to do it but he didn't want
20 to listen. So anyway, while we were in Dan's office,
21 they were talking about the plea of seven years. And
22 he told Joey he advised him to do it because he said
23 he could sit in there for about a year and he said
24 then we'll go back to court and I'll get some of your
25 time reduced.

♀

BEVERLY FINLEY-DIRECT BY MR. MCGUIRE

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1 Q Okay. This conversation occurred while you're
2 sitting in the same office--
3 A Yes, sir.
4 Q -- with Mr. Farnsworth and Joey?
5 A Yeah, it was me and Joey and True.
6 Q You weren't in another room?
7 A No, sir.
8 Q Did Mr. Farnsworth explain to Joey or you how he
9 would get that sentence reduced? That mandatory
10 minimum of seven years for trafficking cocaine?
11 A No. And Joey didn't ask. We just didn't say
12 anything about it.
13 Q Okay. Were you ever present on any other occasion
14 during discussions with Mr. Farnsworth and Joey
15 regarding accepting the plea?
16 A Yes, sir, it was the Sunday before Joey went to--
17 Q October 11th?
18 A Yeah. We had been to lunch again and we went by --
19 he was supposed to meet him at his office and we had
20 sit there in the parking lot for about 10 to 15

21 minutes before Mr. Farnsworth got there. And he just
22 pulled up and got out his vehicle, then Joey got out
23 and they were standing beside the car. And again, he
24 was just talking about, you know, that he just
25 advised Joey to not take it to trial, that he had

BEVERLY FINLEY-DIRECT BY MR. MCGUIRE

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1 talked to his wife earlier that night and that they
2 just didn't feel like it was a good thing on Joey.
3 He was a young man. And, you know, and for him to
4 not to take that and take the seven year plea. And
5 then once he sit in there for a little bit of time,
6 about a year or longer, he would get him back into
7 court to try to get his time reduced.

8 So at that point Joey said, Okay. Said, I guess
9 that's what I'll do.

10 Q Now, again, did Mr. Farnsworth explain how he would
11 go about getting that sentenced reduced if he sat for
12 a year?

13 A No, he didn't.

14 Q Okay. Did you ever -- were you ever present during
15 any other conversations with Mr. Farnsworth regarding
16 what we just discussed?

17 A It was after the trial. And he came outside, it was
18 several of us standing outside and he said that--

19 Q Well let me stop you. Was this after the sentencing
20 or after the first part of the plea?

21 A It was the sentencing.

22 Q Okay.

23 A And he came out and he told several, I think Rama and
24 his step-dad and myself was standing out there. And
25 he said again that he had in about a year try to get

- 1 him back in to court to get his time reduced.
- 2 Q Did he explain to you at point--
- 3 A No, he sure didn't. And we didn't ask either.
- 4 Q Okay.
- 5 A We just said, Okay.
- 6 Q I don't want you to speculate but did you have direct
- 7 conversation with Joey as to whether he wanted to
- 8 accept that plea or go to trial but for what
- 9 Mr. Farnsworth told him?
- 10 A Several, several, several times. I mean, the whole
- 11 time. I mean, he discussed with me that he was
- 12 taking it to trial no matter what. He was not going
- 13 to take no plea bargain. And even to the point he
- 14 said that now if they'd drop it down to three years,
- 15 I'll do that. But said they would never offer him
- 16 that. So.
- 17 Q Well, again, I don't want to you to speculate but do
- 18 you have direct knowledge, via conversation, why Joey
- 19 accepted that plea?
- 20 A Oh, because he thought that if he accepted the seven
- 21 years that after about a year or longer, he would
- 22 come back to court and get some of his time reduced.
- 23 Q Okay. Have you been privy to any conversations
- 24 between Joey and Mr. Farnsworth subsequent to Joey
- 25 going to prison?

- 1 A No, I never heard that. I mean, I heard about it
- 2 from Joey.

3 Q I don't want hearsay.

4 A No, I wasn't present.

5 MR. MCGUIRE: Okay; nothing further, Your Honor.

6 MS. RATIGAN: Just one question.

7 CROSS-EXAMINATION

8 BY MS. RATIGAN:

9 Q So your testimony is that Mr. Farnsworth said that he
10 was going to try to get the sentence reduced at a
11 later date?

12 MR. MCGUIRE: Objection, leading. That's not
13 what she testified to.

14 THE COURT: Well she can -- on cross-examination
15 she's allowed to lead.

16 MR. MCGUIRE: I would object to
17 characterization. She's characterizing it in the way she
18 has now testified.

19 THE COURT: All right.

20 BY MS. RATIGAN:

21 Q I believe you testified that Mr. Farnsworth said he
22 would try and get the sentence reduced?

23 A No, he told Joey that he would get -- to sit in jail
24 for about a year or longer.

25 Q So when you testified that you said he would try to

BEVERLY FINLEY-CROSS BY MS. RATIGAN

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1 get it reduced, what you meant to say was that he
2 promised?

3 A Well, yes, ma'am.

4 MS. RATIGAN: Okay, that's all I have, Your
5 Honor.

6 MR. MCGUIRE: Nothing further.

7 THE COURT: Thank you ma'am, you may step down.
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8 THE WITNESS: Thank you.

9 MR. MCGUIRE: The petitioner would call Rama
10 Simun.

11 THE CLERK: Ms. Simun, if you'd step up here,
12 please, place your left hand on the bible, raise your
13 right hand

14 RAMA SIMUN, after being duly sworn, testified as
15 follows:

16 THE CLERK: Thank you, you may be seated. State
17 your full name for the record, please.

18 THE WITNESS: Rama Milfed Simun.

19 DIRECT EXAMINATION

20 BY MR. MCGUIRE:

21 Q IT'S R-A-M-A S-I-M-U-N?

22 A Uh-huh?

23 Q Ms. Simun, how are you related to Joey Simun?

24 A I'm his mother.

25 Q Okay. Ms. Simun, just like with Ms. Finley, I want

RAMA SIMUN-DIRECT BY MR. MCGUIRE

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1 to kind of cut to the chase, I don't want to belabor
2 the Court's time here but were you ever present
3 during any conversations between Joey and
4 Mr. Farnsworth regarding Joey accepting a plea offer
5 on the table from the Statewide Grand Jury?

6 A Yes, I was.

7 Q Do you recall how many times?

8 A Twice.

9 Q Do you recall approximately when that first time was?

10 A The date of the court, the last time before it
11 happened.

12 Q Backtrack, there was two dates. He pled on Monday,
13 October 12th and was sentenced October 21st?
14 A Yes.
15 Q Which date are you referring to?
16 A October 12th.
17 Q Okay. So you were present on day, a Monday?
18 A Uh-huh.
19 Q Okay. Where were you when the discussions occurred
20 between Mr. Farnsworth and Joey?
21 A In the conference room outside.
22 Q In this courthouse?
23 A Uh-huh?
24 Q Okay. And what did Mr. Farnsworth tell Joey
25 regarding accepting the plea offer?

RAMA SIMUN-DIRECT BY MR. MCGUIRE

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1 A He just told him to go ahead and take the plea and
2 sit in prison about a year or so. And that he would
3 bring him back into court and get it knocked down.
4 Q Did he explain at any point how he would get it
5 knocked down?
6 A No, sir.
7 Q Okay. Did you ever have any other conversations --
8 were you ever present, I'm sorry, during any other
9 conversations with Mr. Farnsworth and Joey regarding
10 what we just talked about?
11 A Yes, the second time was after we had the last
12 hearing. He had me and Curtis and Dre --
13 Q Okay, let me stop you. Who is Curtis and who's Dre?
14 A Brissey --
15 Q Curtis Brissey is your --
16 A Honey bunny.

17 Q -- your boyfriend or. Okay, that's B-R-E-S-S-E-Y.
18 A B-R-T-S-S-E-Y.
19 Q I'm sorry. And Dre is Dre Irby?
20 A Uh-huh. Yes, sir.
21 Q So you had another conversation with the two -- with
22 Mr. Farnsworth with those two present and where was
23 this and when was this?
24 A It was just outside the courtroom. After the last
25 court hearing.

RAMA SIMUN-DIRECT BY MR. MCGUIRE

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1 Q After the sentencing?
2 A Yes, sir.
3 Q Okay. And what did Mr. Farnsworth tell you?
4 A He said the same thing, just let him go out there and
5 get time under his belt and that belt and that he
6 would bring him back into court and get it reduced.
7 Q Did he explain to you what he meant by getting it
8 reduced?
9 A No, sir, he didn't.
10 Q Okay. Now, I don't want you to speculate but did you
11 ever have any direct conversations with your son as
12 to why he accepted the plea of seven years?
13 A He didn't want the 25 years --
14 Q Okay.
15 A But Dan told him to take the seven and he would get
16 him back into court.
17 Q And what?
18 A Get it reduced.
19 Q Did you specifically discuss with him that aspect of
20 why he was accepting the plea?

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21 A To get the time reduced.
22 Q Okay. Okay.
23 MR. MCGUIRE: Nothing further, Your Honor.
24 CROSS-EXAMINATION
25 BY MS. RATIGAN:

RAMA SIMUN-CROSS BY MS. RATIGAN

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1 Q So Mr. Farnsworth told you that he would get the time
2 reduced?
3 A Yes, ma'am.
4 Q He made it sound like there was no question at all?
5 A Yes, ma'am.
6 MS. RATIGAN: Okay, that's all I have, Your
7 Honor.
8 THE COURT: Do you have follow up?
9 MR. MCGUIRE: No, Your Honor.
10 THE COURT: Thank you, ma'am you may step down.
11 MR. MCGUIRE: Petitioner calls Curtis Brissey.
12 THE CLERK: Step up here, please. Place your
13 left hand on the Bible, raise your right hand.
14 CURTIS BRISSEY, after being duly sworn,
15 testified as follows:
16 THE CLERK: Thank you, you may be seated. State
17 your full name for the record, please.
18 THE WITNESS: Andrew Curtis Brissey.
19 DIRECT EXAMINATION
20 BY MR. MCGUIRE:
21 Q And it's B-R-I-S-S-E-Y?
22 A Yes, sir.
23 Q I've misspelled your name five times now so I
24 apologize.
25 A That's all right.

- 1 Q Mr. Brissey, how do you know or how are you related
2 to Joey Simon?
- 3 A His mother's my girlfriend and I'm probably his
4 step-dad. It's not legal.
- 5 Q Are -- are you married to Rama?
- 6 A No, sir.
- 7 Q So technically you're common law, I guess, his
8 step-father. Okay, were you ever present during any
9 conversations with Mr. Farnsworth regarding Joey's
10 sentencing in this case?
- 11 A It was at one. That was at the day of sentencing
12 after everything was sentenced and we was out in the
13 hallway
- 14 Q This is after Joey had been sentenced to seven years,
15 correct?
- 16 A Yes.
- 17 Q This is the hallway to the courthouse?
- 18 A Yes, sir.
- 19 Q In this courthouse here?
- 20 A Yes, sir.
- 21 Q Who was present with you during that conversation?
- 22 A Rama Simon and Beverly Finley and I can't think of
23 the guy's name.
- 24 Q One?
- 25 A You're right, yes.

- 1 Q Mr. Bray?
- 2 A Yes.

3 Q What did Mr. Farnsworth tell y'all regarding Joey's
4 sentence?
5 A When it was over and we all went out in the hallway,
6 he came out and said he was sorry, you know, that
7 Joey got his sentence. But, you know, that if Joey
8 would just hang around about a year down there then
9 he would, and he said he would, bring him back to
10 court and get a lesser charge.
11 Q Did he explain to you how he would do this?
12 A No, sir.
13 MR. MCGUIRE: I have nothing further.
14 MS. PATIGAN: I have no questions for this
15 witness.
16 THE COURT: Thank you, sir, you may step down.
17 MR. MCGUIRE: The petitioner would call Dre
18 Irby.
19 THE CLERK: Place your left hand on the Bible,
20 please, raise your right hand.
21 DRE IRBY, after being duly sworn, testified as
22 follows:
23 THE CLERK: Thank you, you may be seated. State
24 your full name for the record, please.
25 THE WITNESS: Lee Andre Irby.

DRE IRBY-DIRECT BY MR. MCGUIRE

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1 DIRECT EXAMINATION
2 BY MR. MCGUIRE:
3 Q Dre spelled D-R-E?
4 A Yes, sir.
5 Q Irby, I-R-B-Y?
6 A That's correct.
7 Q Mr. Irby, how do you know Mr. Simun?

8 A We have been friends for about 15 years.
9 Q Did you work for him?
10 A No, just friends.
11 Q Okay. Were you ever present during any conversations
12 with Mr. Farnsworth regarding Joey's sentence?
13 A Yes, sir. Right after he got sentenced to seven
14 years he was outside.
15 Q In this courthouse?
16 A Yes, sir.
17 Q After he received the two seven concurrent sentences?
18 A Yes, sir.
19 Q What did Mr. Farnsworth tell you in your presence?
20 A He just said if he sit down there for about a year he
21 would bring him back to court. That's the vaguely
22 [sic] part I heard.
23 Q Okay, that's fine.

24 MR. MCGUIRE: Nothing further, Your Honor.

25 MS. RATIGAN: I have no questions for this

DRE IRBY-DIRECT BY MR. MCGUIRE

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1 witness, Your Honor.

2 THE COURT: Thank you, sir, you may step down.

3 MR. MCGUIRE: That would be the petitioner's
4 case, Your Honor.

5 MS. RATIGAN: Your Honor, the State would call
6 Mr. Farnsworth.

7 THE CLERK: Place your left hand on the Bible,
8 please, and your right hand.

9 DAN FARNSWORTH, after being duly sworn,
10 testified as follows:

11 THE CLERK: Thank you, you may be seated. State

12 your full name for the record, please.

13 THE WITNESS: Dan J. Farnsworth.

14 THE CLERK: Thank you.

15 DIRECT EXAMINATION

16 BY MS. RATIGAN:

17 Q Mr. Farnsworth, how did you become associated with
18 this case?

19 A Well, of course, Mr. Simun retained me but I think I
20 represented him on some other things prior to this.

21 Q Mr. Simun testified that he contacted you when a
22 co-defendant told him about a search warrant, do you
23 recall that?

24 A Yeah, I know what he's talking about.

25 Q At that point did you make any recommendations about

DAN FARNSWORTH-DIRECT BY MS. RATIGAN

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1 how to proceed?

2 A Yeah. I told him that -- that if his involvement was
3 much that we needed to probably sit down and get in
4 touch with one of those officers and maybe talk to
5 him. Because I know it was a State Grand Jury case.

6 Q Had -- so at that point Mr. Simun kind of told you
7 about his involvement in the whole --

8 A Well I don't know that right away but eventually we
9 talked in detail.

10 Q And did you file the appropriate Brady Rule 5 motion
11 for discovery?

12 A Oh yeah, we did that. We received the discovery and
13 I think we made copies from Joey or he made copies.

14 Q Did you review with Mr. Simun what the State had
15 against him, the State's evidence?

16 A Yes, ma'am.

17 Q Had other co-defendants specifically indicated him?
18 A Yeah, a few one or two maybe not so many. But, and
19 this is not directed to your question, but just what
20 we were afraid of all along at the end was what some
21 of them that hadn't given a statement or hadn't been
22 debriefed, what their testimony would have been so.
23 Q Were you present with Mr. Simun when he gave that
24 statement to SLED agents?
25 A Yes.

DAN FARNSWORTH-DIRECT BY MS. RATIGAN

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1 Q And did he eventually testify that to the Grand Jury?
2 A Yeah, he did.
3 Q Mr. Simun testified that there was an initial plea
4 offer of 12 years and 10 years, do you recall that?
5 A Yes, I do.
6 Q And you conveyed that to your client?
7 A I did.
8 Q And what did he decide to do with that offer?
9 A Well we talked about it. He rejected it and I
10 advised him to. Let me just say that there were
11 probably about maybe 25 people, 20 to 25 people
12 involved in this. And the offers to everybody
13 were -- all the defendants lawyers, were we were just
14 shocked that these recommendations were so high. And
15 in this case they didn't get the plea for a long time
16 on this case, it went on for almost three years. So
17 that's what we talked about. And I told him that was
18 way too much too and we rejected that.
19 Q And when did they come to you with a second plea
20 offer, do you recall?

21 A You know I can't remember. It was later than after
22 the first one. And it might have been, I'm going to
23 try to say maybe a year, year and a half later.
24 Probably not until about maybe three months or a
25 month or two before we pled.

DAN FARNSWORTH-DIRECT BY MS. RATIGAN

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1 Q And what was that second offer?
2 A It was seven years.
3 Q And you reviewed that with Mr. Simun.
4 A On many occasions, yeah.
5 Q And did that have an expiration date on it, do you
6 remember?
7 A Everything that they sent us had an expiration date
8 but nobody paid much attention to it because it just
9 kept going on and going on. And we, you know,
10 everybody -- we just weren't, as group of attorneys,
11 were not pleased with the way this thing was being
12 handled, it was just being dragged on. So with
13 that -- I know one time with the seven and I think he
14 just testified to that earlier. He turned it down
15 one time, I think. Because we were supposed to be up
16 here on a Monday and I called him and told him we
17 weren't going to take it, I think.
18 Q So he turned it down the first time?
19 A I think so, yes.
20 Q Now there's been some testimony about a meeting you
21 had the Sunday before the plea, October 11th, do you
22 recall that?
23 A Yeah, I remember that. I remember that's when I was
24 on Pettigru Street. And it was -- seems like it
25 might have been late one Sunday afternoon or, you

1 now, not at night but late in the afternoon. And
2 apparently I hadn't been able to work him in there on
3 Friday or early that week. And so I agreed to meet
4 with him then. In fact, I remember now when I walked
5 out with him and we end up talking at the front door
6 on the steps there on the sidewalk for probably 30
7 more minutes seems like.

8 Q Now at that point, the next day, October 12th, was
9 the case on the trial docket or plea docket?

10 A No, no, it was just what they called last day plea.
11 But they had done that several times and tried to,
12 you know, didn't revoke the offer if he didn't I
13 don't think.

14 Q So that October 11th meeting you discussed with
15 Mr. Simun again that seven year offer?

16 A Again, the seven year offer. And this was the second
17 time that they set -- what they would do is about
18 every two or three or four months they'd set a plea
19 date. And that was just for the people that were
20 going to plea. So I think when it got down toward
21 the end is that you either take it on this day or,
22 you know, that's the end of it. Or you're going to
23 be going to trial. Because they had already
24 designated the terms of court for those trials that
25 they were going to need.

1 Q So on that -- during that October 11th meeting, did
2 he accept -- did he decide to go ahead and accept the

3 offer?

4 A You know, I can't remember exactly, he was back and
5 forth on it. So I assume he did because the next
6 day, you know, he pled so.

7 Q Now, do you recall ever telling Mr. Simun that he
8 should plead guilty, sit in SCDC for a year and then
9 you would file some paperwork and bring him back to
10 court?

11 A I don't think that's the way I ever stated that, that
12 would be the first time I'd ever done it, if I done
13 it. I talked to him. We talked and Joey, I probably
14 saw Joey maybe once a week, every two or three weeks.
15 I mean, I've never seen anybody as much on a case.
16 And, of course, I'm not complaining about it, I'm
17 just saying, we were in contact a lot of times about
18 his case. And what I -- during probably the last two
19 or three months of the thing, because I know it was
20 getting towards the end, I told him what his
21 alternatives were if he pled guilty, went to trial,
22 what may happen both ways. That if he pled he'd
23 probably get more than likely get seven years.

24 And at that time I advised him of a motion to
25 reconsider sentence. I advised him of a

DAN FARNSWORTH-DIRECT BY MS. RATIGAN

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1 post-conviction relief, that had to be done with a
2 year. The motion to reconsider would have had to be
3 done within 10 days. And, of course, after the PCR
4 was turned down, he would be entitled to appeal his
5 case. Those were the only -- those possibilities are
6 what I mentioned to him. And the -- he even -- I
7 think we even went as far as he said, let me decided

8 which or whatever I want to do, this type thing. And
9 then we'll set a fee or whatever. I was never hired
10 to do any of that though. But I did tell him that I
11 would try to get on the motion to reconsider
12 sentence. And if they didn't work he could file a
13 PCR for ineffective assistance of counsel.
14 Q So did you ever file the motion to reconsider?
15 A No.
16 Q Because you weren't hired.
17 A Weren't hired and he never said anymore about it that
18 day of the plea or before the plea or sentencing or
19 either one.
20 Q Did you ever promise him that you would file any kind
21 of paperwork to get his time reduced?
22 A Not without being hired on it, no.
23 Q Are you aware of any mechanism you could use such
24 that you could come back to court a year later and
25 get a sentence reduction?

DAN FARNSWORTH-DIRECT BY MS. RATIGAN

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1 A No. The only thing that I told him about the one
2 year would have been he would have one year to file a
3 PCR application.
4 Q Do you recall if Mr. Simun called you once he was in
5 the Department of Corrections?
6 A I think he's called there several times. But I think
7 I may have talked to him one time. But, you know --
8 and he called, like I say, many times after that.
9 But, you know, I'm a pretty busy guy. I'm around and
10 not always in my office to where I can take phone
11 calls. I don't know that -- I think one time I was

12 going to try to call him back but he talked to my
 13 secretary. And she would say, you know, whatever he
 14 would tell her to tell me.
 15 Q Do you recall the one conversation you had with him,
 16 do you recall the substance of that conversation?
 17 A No, I don't.
 18 Q Do you recall telling him at that point you were
 19 going to file something to get the sentence reduced?
 20 A No, I don't recall that.
 21 Q And you were present for the testimony of Ms. Finley,
 22 the grandmother of Mr. Simun's son?
 23 A Yeah, I was here then.
 24 Q Do you recall meeting with her prior to the plea
 25 about the case?

DAN FARNSWORTH-DIRECT BY MS. RATIGAN

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1 A Meeting with her?
 2 Q With Mr. Simun in preparation for the case. Was she
 3 at any meetings, I guess I should say?
 4 A It may have but I don't remember specifically meeting
 5 with her, no.
 6 Q Do you specifically remember having a meeting with
 7 his mother, Rama Simun?
 8 A I remember talking to his mother, I think, up here at
 9 the courthouse either the day of the plea or the day
 10 of the sentencing or maybe both.
 11 Q Do you recall telling any member of Mr. Simun's
 12 family or his friends that you would file a motion in
 13 a year to get his sentence reduced?
 14 A If I did it would be referring to these things that
 15 I've just told you. The only three things he had
 16 left after his plea.

17 MS. RATTIGAN: That's all I have, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. MCGUIRE:

20 Q Mr. Farnsworth, I think you testified that you
21 discussed with Mr. Simon the possibility of filing a
22 motion to reconsider sentence but that would have to
23 be done within 10 days?

24 A Right.

25 Q And he didn't pay you for that?

DAN FARNSWORTH-CROSS BY MR. MCGUIRE

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1 A Right.

2 Q Now, Mr. Simon received, correct, the mandatory
3 minimum seven on the trafficking cocaine?

4 A Exactly.

5 Q Under what--

6 A I wouldn't have been able to get a reduction on that.

7 Q Okay. But you do admit you discussed it with him?

8 A Oh yeah, I discussed it the motion for
9 reconsideration sentence

10 Q but there's no mechanism by which to do that?

11 A On the--

12 Q On the seven years for cocaine?

13 A Not on the seven years, no, there wouldn't be. But
14 there would be on the marijuana charge.

15 Q Okay. But that wouldn't have cut his time in anyway?

16 A One of them would but on the other one, no. Because
17 one was violent, the other was non-violent.

18 Q And obviously you can't bring a PCR against yourself?

19 A That's correct. I guess that's why he hired you, you
20 know.

21 MR. MCGUIRE: That's all I have, Your Honor.

22 And also, Mr. Farnsworth, as I told him before,

23 I have the upmost respect for him, I have known him since

24 94 so

25 MR. FARNSWORTH: Same here with you. Good to

63

1 see you.

2 MR. MCGUIRE: I have nothing on redirect and the
3 State would rest at this, time, Your Honor.

4 THE COURT: All right, thank you, you may step
5 down, Mr. Farnsworth.

6 All right, I've heard a lot of testimony, I'll
7 review the transcript and other papers, I'll try to issue
8 an order certainly within the next month.

9 MS. RATIGAN: Thank you, Your Honor.

10 (WHEREUPON, the proceedings were concluded.)

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1 CERTIFICATE OF REPORTER

2
3
4 STATE OF SOUTH CAROLINA)
5 COUNTY OF GREENVILLE)
6
7

8 I, APRIL P. HERRON, Official Court Reporter for the
9 Thirteenth Judicial Circuit of the State of South
10 Carolina, do hereby certify that the foregoing is a true,
11 accurate and complete Transcript of Record of the
12 proceedings had and evidence introduced in the trial of
13 the captioned case, relative to appeal, in the Court of
14 Common Pleas for Greenville County, South Carolina, on the
15 12th day of May, 2011.

16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
18

19
20 December 5, 2011
21

22 _____
23 APRIL P. HERRON, Court Reporter
24
25

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
William J. Simun,)
S.C.D.C. No. 287699,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
C.A. No. 2010-CP-23-3358

ORDER OF DISMISSAL

FILED
CLERK OF COURT
PAUL B. WILSON
2011-05-12 2:31

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 26, 2010. The Respondent made its return on August 20, 2010. An evidentiary hearing into the matter was convened on May 12, 2011 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Matthew McGuire, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were Beverly Finley, Rama Simun, Curtis Brissey, Dre Irby, and the Applicant's plea counsel, Daniel J. Farnsworth, Esquire. The Court had before it the transcript of the guilty plea hearing, the records of the State Grand Jury Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and the Respondent's return.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections. The Applicant was indicted at the August 2007 term of the State Grand Jury for trafficking marijuana (conspiracy) (2007-GS-47-0009, count 1) and trafficking cocaine (conspiracy) (2007-

GS-47-0009, count 17). He was represented by Daniel J. Farnsworth, Esquire.

On October 12, 2009, the Applicant pled guilty before the Honorable John C. Few. Sentencing was deferred until October 21, 2009. On that date, Judge Few levied concurrent sentences of seven (7) years for trafficking marijuana (conspiracy), 10-100 pounds and seven (7) years for trafficking cocaine (conspiracy), 28-100 grams. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. Told the Applicant to make a statement to police.
 - b. Coerced the Applicant into entering a guilty plea.
2. Evidence insufficient to establish guilt beyond a reasonable doubt.
3. Denial of a preliminary hearing.
4. Confrontation right denied.

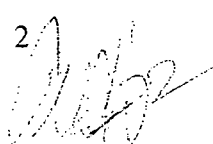
FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel/Involuntary Guilty Plea

The Applicant alleges his guilty plea was involuntary and that he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d

103 2


172, 174 (2002).

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

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

The Applicant stated one of his co-defendants, Sergio Palmer, told him the police had executed a search warrant on his home and that they might have a warrant for the Applicant. The Applicant stated he discussed this with plea counsel, who recommended he speak to the State Law Enforcement Division (SLED). The Applicant stated plea counsel told him to cooperate with the SLED investigation and that he did so. To assist SLED, the Applicant explained he set up Chris Willoughby and identified an individual named "Poppy." The

Applicant stated that – based on plea counsel’s advice – he gave a statement, testified before the State Grand Jury, and testified at the trial of co-defendant Nicanor Rodriguez. The Applicant stated he rejected the first plea offer for a twelve (12) year sentence. The Applicant stated that, approximately one (1) year later, he rejected the State’s plea offer for a seven (7) year sentence. The Applicant stated plea counsel told him the State would not make a better recommendation and that he should take it. The Applicant stated plea counsel told him that, after he was in jail for a year, he would file paperwork to get the sentence reduced. The Applicant clarified that plea counsel stated he would try to get a sentence reduction but that he did not promise he could do so. The Applicant he told the plea judge that no promises had been made to him because that is what plea counsel told him to say.

Beverly Finley – the grandmother of the Applicant’s son – stated that both one month before the guilty plea hearing and the day before the plea hearing, plea counsel told the Applicant to accept the seven (7) year plea offer and then he would get that sentence reduced. Rama Simun – the Applicant’s mother – stated plea counsel told the Applicant at both the plea hearing and the sentencing hearing that he would get the sentence reduced after one year. Curtis Brissey – Rama Simun’s boyfriend – stated plea counsel told them at the sentencing hearing that he would bring the Applicant back to court after one year in order to get his sentence reduced. Dre Irby – the Applicant’s friend – stated plea counsel told them at the sentencing hearing that the Applicant would sit in prison for a year before counsel brought him back to court.

Plea counsel testified he was retained to represent the Applicant, and that he had represented him in the past. Plea counsel confirmed the Applicant met with him after SLED executed a search warrant on Sergio Palmer’s home and that he recommended they contact SLED. Plea counsel testified he filed discovery motions and reviewed those materials with the

Applicant and that they spoke in great detail about the case. Plea counsel testified a couple of co-defendants implicated the Applicant and that he was afraid other witnesses would do the same. Plea counsel stated he was present both when the Applicant gave his statement and when he testified at the State Grand Jury. Plea counsel stated he conveyed the twelve (12) year plea offer to the Applicant and advised him to reject it (which the Applicant did). Plea counsel agreed the second plea offer was approximately one (1) year later. Plea counsel stated this second offer was for a seven (7) year sentence and had an expiration date. Plea counsel stated he and the Applicant reviewed this offer several times. Plea counsel testified the Applicant initially turned down the offer but that they reviewed it again the day before it was set to expire, and the Applicant pled guilty the next day. Plea counsel testified he had a lot of contact with the Applicant during the course of this case, but that he never said that he would get the Applicant's sentence reduced after he spent a year in prison. Plea counsel testified there is not even a mechanism for a sentence reduction after such a period of time. Plea counsel testified he told the Applicant and his family about a potential motion to reconsider the sentence (or a PCR application) but that, as they never hired him to file a motion to reconsider, he did not do so.

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

This Court finds the Applicant failed to meet his burden of proving he would not have pled guilty but for plea counsel's statement that he would receive a later sentence reduction. The Applicant claimed he accepted the State's seven (7) year plea offer and pled guilty because plea

counsel told him that he would file paperwork to get his sentence reduced after serving a year in prison. The Applicant's witnesses offered testimony consistent with the Applicant on this point. Plea counsel, however, testified he never made any such promise and that, regardless, no such method existed in which to reduce a sentence after a year. This Court finds plea counsel's testimony is more credible. This Court notes plea counsel testified that he informed the Applicant that he could file a motion to reconsider the sentence or that the Applicant could file a PCR application. This Court finds it is most likely that the Applicant and his family merely misstated this information – especially considering the Applicant's long-standing relationship with plea counsel and their numerous meetings in preparing this case.

This Court finds the Applicant was properly advised of the seven (7) year plea recommendation and acknowledged this recommendation at the plea hearing. (Plea transcript, p.9). The Applicant admitted to the plea judge both that he was guilty and that the facts recited by the solicitor were true. (Plea transcript, p.8; p.11; pp.14-16). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.7-9; pp.10-11). At the sentencing hearing, the Applicant stated he had spent enough time with plea counsel that day and was ready to go forward. (Sentencing transcript, pp.6-7). This Court finds that, while the Applicant may have hoped for a lesser sentence, plea counsel never made such a promise to him and he was properly informed of the sentence he was facing. See Roddy v. State, 339 S.C. 29, 36, 528 S.E.2d 418, 422 (2000) (“Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made.”).

This Court further finds the Applicant failed to meet his burden of proving his plea was

coerced in any way. As noted supra, the Applicant told the plea judge he was not influenced by force, coercion, or pressure. (Plea transcript, p.11). This Court notes the Applicant's case was part of a State Grand Jury investigation and the court date was scheduled during a pre-set State Grand Jury term of court. If the Applicant chose not to plead guilty, he would have proceeded to trial that week. The Applicant cannot make any showing of prejudice, irrespective of whether he could meet his burden of proving plea counsel's performance was deficient. Aside from merely stating his claim, the Applicant did not prove that – but for plea counsel's advice – he would have gone to trial. See Stalk v. State, 383 S.C. 559, 681 S.E.2d 592 (2009).

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

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

All Other Allegations

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

are hereby denied and dismissed.

CONCLUSION

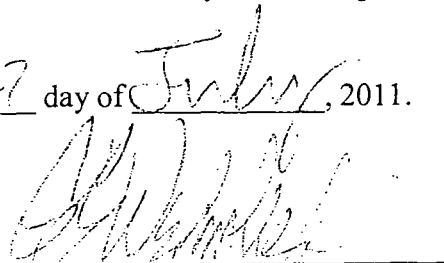
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation.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

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 27 day of July, 2011.



G. Edward Welmaker
Resident Judge
Thirteenth Judicial Circuit

 109

Greenville, South Carolina.

STATE GRAND JURY OF SOUTH CAROLINA

ORIGINAL FILED

AUG 08 2007

JAMES R. PARKS
CLERK, STATE GRAND JURY

STATE OF SOUTH CAROLINA

VS.

FARAJI TAAJWAR GLENN,
DEMARIO ALEE HARRY JOHNSON,
BERNELL HENDERSON,
KENDRICK ADRIAN MOTON,
NICOLAS LOPEZ,
MICHAEL TODD CROWE,
NICANOR PEREZ RODRIGUEZ AKA
"SKINNY",
FNU LNU AKA "POPPY",
SERGIO RODRIGUEZ,
ROBERTO SANTIAGO,
ARTURO LOSANO SALOME,
WILLIAM J. SIMUN,
NESTOR CASTRO PARTIDA,
REINA GARRIDO

DEFENDANTS.

CASE NO.: 2006-GS-47-09

**SUPERSEDING
INDICTMENT FOR
UNLAWFUL DRUGS**

Trafficking in Marijuana (Conspiracy)
S.C. Code Ann. § 44-53-370(e)(1)(b)
(2 counts)

Distribution of Marijuana
S.C. Code Ann. § 44-53-370(b)(2)
(2 counts)

Trafficking in Marijuana
S.C. Code Ann. § 44-53-370(e)(1)(a)(1)
(5 counts)

Possession With Intent to Distribute
Marijuana
S.C. Code Ann. § 44-53-370(b)(2)
(4 counts)

Trafficking Cocaine
S.C. Code Ann. § 44-53-370(e)(2)(e)

Possession of a Firearm By A Person
Under 21 Years of Age
S.C. Code Ann. § 16-23-30

Possession of a Firearm During the Commission
of a Violent Crime
S.C. Code Ann. § 16-23-490

Trafficking Cocaine (Conspiracy)
S.C. Code Ann. § 44-53-370(e)(2)(e)

At a session of the State Grand Jury of South Carolina, convened in Columbia, South Carolina, on August 7, 2007, the State Grand Jurors present upon their oath:

COUNT ONE
TRAFFICKING MARIJUANA (CONSPIRACY)
S.C. Code Ann. § 44-53-370(e)(1)(b)

That FARAJI TAAJWAR GLENN, DEMARIO ALEE HARRY JOHNSON, BERNELL HENDERSON, NICANOR PEREZ RODRIGUEZ AKA "SKINNY," FNU LNU AKA "POPPY," SERGIO RODRIGUEZ, ROBERTO SANTIAGO, ARTURO LOSANO SALOME AND WILLIAM J. SIMUN ^{Nestor Castro PARTIDA} and other persons whose names are both known and unknown to the State Grand Jury, did in Anderson, Greenville, and Pickens counties of South Carolina, from June 1, 2001, until the present, knowingly conspire with each other to sell, manufacture, cultivate, deliver, purchase, or bring into this State or provide financial assistance to manufacture, cultivate, deliver or purchase more than one hundred (100) but less than two thousand (2000) pounds of marijuana, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT TWO
DISTRIBUTION OF MARIJUANA
S.C. Code Ann. § 44-53-370(b)(2)

That FARAJI TAAJWAR GLENN, did in Pickens County, South Carolina, on or about July 6, 2006, knowingly, manufacture, distribute, dispense, deliver, purchase, or aid, abet, or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture,

distribute, dispense, deliver a quantity of marijuana, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT THREE
TRAFFICKING MARIJUANA
S.C. Code Ann. § 44-53-370(e)(1)(a)(1)

That FARAJI TAAJWAR GLENN and DEMARIO ALEE HARRY JOHNSON, did in Pickens County, South Carolina, on or about July 24, 2006, knowingly sell, manufacture, cultivate, deliver, purchase, or provide financial assistance or otherwise aid, abet, attempt or conspire to sell, manufacture, cultivate, deliver or purchase or possess (actually or constructively), or bring into this State more than ten (10) pounds but less than one hundred (100) pounds of marijuana, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county in this State.

COUNT FOUR
TRAFFICKING MARIJUANA
S.C. Code Ann. § 44-53-370(e)(1)(b)

That FARAJI TAAJWAR GLENN and DEMARIO ALEE HARRY JOHNSON did in Greenville County, South Carolina, on or about August 9, 2006 and August 10, 2006, knowingly sell, manufacture, cultivate, deliver, purchase, provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or possess (actually or

constructively), or bring into this State more than one hundred (100) but less than two thousand (2000) pounds of marijuana, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT FIVE
TRAFFICKING MARIJUANA
S.C. Code Ann. § 44-53-370(e)(1)(a)(1)

That BERNELL HENDERSON and KENDRICK ADRIAN MOTON, did in Greenville County, South Carolina, on or about August 10, 2006, knowingly sell, manufacture, cultivate, deliver, purchase, or provide financial assistance or otherwise aid, abet, attempt or conspire to sell, manufacture, cultivate, deliver or purchase or possess (actually or constructively), or bring into this State more than ten (10) pounds but less than one hundred (100) pounds of marijuana, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county in this State.

COUNT SIX
POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA
S.C. Code Ann. § 44-53-370 (b)(2)

That BERNELL HENDERSON and KENDRICK ADRIAN MOTON did in Greenville County, South Carolina, on or about August 10, 2006, knowingly, manufacture, distribute, dispense, deliver, purchase or aid, abet, or conspire to manufacture, distribute, dispense, deliver or purchase,

or possess with intent to manufacture, distribute, dispense, deliver a quantity of marijuana, a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county in this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT SEVEN
TRAFFICKING COCAINE
S.C. Code Ann. § 44-53-370(e)(2)(e)

That NICOLAS LOPEZ, did in Greenville County, South Carolina, on or about August 10, 2006, knowingly sell, manufacture, cultivate, deliver, purchase, or provide financial assistance or otherwise aid, abet, attempt or conspire to sell, manufacture, cultivate, deliver or purchase or possess (actually or constructively), or bring into this State four hundred (400) grams or more of cocaine, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county in this State.

COUNT EIGHT
POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA
S.C. Code Ann. § 44-53-370(b)(2)

That NICOLAS LOPEZ did in Greenville County, South Carolina, on or about August 10, 2006, knowingly, manufacture, distribute, dispense, deliver, purchase or aid, abet, or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver a quantity of marijuana, a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having

been authorized by law and such activity occurring and/or having significance in more than one county in this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT NINE
POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA
S.C. Code Ann. § 44-53-370(b)(2)

That MICHAEL TODD CROWE did in Pickens County, South Carolina, on or about August 10, 2006, knowingly, manufacture, distribute, dispense, deliver, purchase or aid, abet, or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver a quantity of marijuana, a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county in this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT TEN
POSSESSION OF FIREARM BY PERSON UNDER 21 YEARS OF AGE
S.C. Code Ann. § 16-23-30

That MICHAEL TODD CROWE, did in ^{Pickens. *AKA*} Greenville County, South Carolina, on or about August 10, 2006 willfully and unlawfully possess a firearm, described as a Glock handgun, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT ELEVEN
DISTRIBUTION OF MARIJUANA
S.C. Code Ann. § 44-53-370(b)(2)

That FARAJI TAAJWAR GLENN, did in Greenville County, South Carolina, on or about August 1, 2006, knowingly, manufacture, distribute, dispense, deliver, purchase, or aid, abet, or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver a quantity of marijuana, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT TWELVE
POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME
S.C. Code Ann. § 16-23-490

That FARAJI TAAJWAR GLENN did in Greenville County, South Carolina on or about August 10, 2006 possess or visibly display a firearm, described as a Browning shotgun, during the commission of a violent crime, to wit, Trafficking Marijuana, such conduct not having been authorized by law.

COUNT THIRTEEN
TRAFFICKING MARIJUANA
S.C. Code § 44-53-370(e)(1)(a)(1)

That NICANOR PEREZ RODRIGUEZ AKA "SKINNY," did in Greenville County, South Carolina, on or about May 4, 2007, knowingly sell, manufacture, cultivate, deliver, purchase, or provide financial assistance or otherwise aid, abet, attempt or conspire to sell,

manufacture, cultivate, deliver or purchase or possess (actually or constructively), or bring into this State more than ten (10) pounds but less than one hundred (100) pounds of marijuana, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county in this State.

**COUNT FOURTEEN
TRAFFICKING MARIJUANA
S.C. Code § 44-53-370(e)(1)(a)(1)**

That NICANOR PEREZ RODRIGUEZ AKA "SKINNY," did in Greenville County, South Carolina, on or about May 4, 2007, knowingly sell, manufacture, cultivate, deliver, purchase, or provide financial assistance or otherwise aid, abet, attempt or conspire to sell, manufacture, cultivate, deliver or purchase or possess (actually or constructively), or bring into this State more than ten (10) pounds but less than one hundred (100) pounds of marijuana, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county in this State.

**COUNT FIFTEEN
TRAFFICKING MARIJUANA
S.C. Code § 44-53-370(e)(1)(a)(1)**

That NESTOR CASTRO PARTIDA, did in Greenville County, South Carolina, on or about February 16, 2007, knowingly sell, manufacture, cultivate, deliver, purchase, or provide

financial assistance or otherwise aid, abet, attempt or conspire to sell, manufacture, cultivate, deliver or purchase or possess (actually or constructively), or bring into this State more than ten (10) pounds but less than one hundred (100) pounds of marijuana, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county in this State.

COUNT SIXTEEN
POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA
S.C. Code Ann. § 44-53-370 (b)(2)

That SERGIO RODRIGUEZ, did in Greenville County, South Carolina, on or about February 22, 2007, knowingly, manufacture, distribute, dispense, deliver, purchase or aid, abet, or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver a quantity of marijuana, a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county in this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT SEVENTEEN
TRAFFICKING COCAINE (CONSPIRACY)
S.C. Code Ann. §44-53-370(e)(2)(e)

That NICANOR PEREZ RODRIGUEZ AKA "SKINNY", FNU LNU AKA "POPPY", SERGIO RODRIGUEZ, ARTURO LOSANO SALOME, ROBERTO SANTIAGO, WILLIAM J. SIMUN, DEMARIO ALEE HARRY JOHNSON, REINA GARRIDO and other persons whose

names are both known and unknown to the State Grand Jury did in Greenville and Pickens Counties, South Carolina, from January 1, 2006, until the present, knowingly sell, manufacture, cultivate, deliver, purchase, or provide financial assistance or otherwise aid, abet, attempt or conspire to sell, manufacture, cultivate, deliver or purchase or possess (actually or constructively), or bring into this State four hundred (400) grams or more of cocaine, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county in this State.

COUNT EIGHTEEN
POSSESSION WITH INTENT TO DISTRIBUTE COCAINE
S.C. Code Ann. § 44-53-370(b)(1)

That REINA GARRIDO, did in Anderson County, South Carolina, on or about April 20, 2007, knowingly, manufacture, distribute, dispense, deliver, purchase or aid, abet, or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver a quantity of cocaine, a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county in this State or arising out of or in connection with a crime having significance in more than one county of this State.

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

 119

A True Bill

Amanda R. Haley
FOREMAN

Henry McMaster
HENRY McMASTER (cap)
ATTORNEY GENERAL

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CMTI330D	SCDC OFFENDER MANAGEMENT SYSTEM	05/14/10
OMCOMITA	RELEASE DATE SCREEN	C040481
SCDC# > 287699		LOC: WATEREE RIVE
SIMUN, WILLIAM -	SCDC CLASSIFICATION...: VIOLENT	
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE	SEXUAL REGISTRY...: N	
	SEXUAL PREDATOR...: NOT APP	
	DNA STATUS.....: COMPLETED	
	GPS REQUIREMENT...: N	
	PREA DECISION.....	
CURRENT SENTENCE: 007-00-000	CONSECUTIVE SENTENCE ...: N	
007-00-000	CURRENT SENT START DATE: 10/21/2009	
PROJECTED COMPLETION DATES		
MAXOUT DATE: 10/01/2015	CURRENT EWC ..: 2 F 5	
YOA SIX YEAR DATE: / /	CURRENT EEC ..: NOT CURRENTLY EARNING EEC	
INITIAL PAROLE DATE: 00/00/0000	NEXT PAROLE HEARING DATE: 00/00/0000	
TOTAL GT DAYS EARNED: 000000	LABOR CREW/WORK PROG DATE: 99/99/9999	
TOTAL EARNED WORK CREDITS ...: 000072	LABOR CREW DISQ REASON:	
TOTAL EDUCATION CREDITS: 000000	CATEGORY 4 OR 5 OFFENSE	
TOTAL EXTRA EARNED CREDITS ..: 000		
TOTAL SERVICE TIME EARNED ...: 000203		
PFKEYS:	5:HISTORY OF DATE CHANGES	
4-®	1 Sess-1 167.7.50.33	SCDC1568 3/11

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 05/17/10

C0404

SIMUN, WILLIAM - FBI # 274071RR6 SID# SC01351434 SCDC # 287699

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION .: GREENVILLE CO

DORM..... 0000

SECURITY/CUST.: 1B MINIMUM OUT RESTRICTED

RACE....W SEX...M

CURR INCARC SENT...: 7 YRS 0 MOS 0 DYS

PROJ MAXOUT DATE: 10/01/2015

CENTRAL MONITORING.: NO

PROJ PAROLE DATE: 00/00/0000

SOCIAL SECURITY #...:248752917

EUC JOB.: WARDKEEPER ASSISTANT

EUC PGM.: NO CURR EDUC PROGRAM

CURRENT PROGRAM.: NO CURRENT PROGRAM

EUC LEVEL: 2F5 FED LEVEL:

AGE...: 36 DATE OF BIRTH...: 4/ 5/83

ASSIGNMENT.: WARD HELPER WARD #3

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE YRS MOS DYS COUNTY	SENTENCE START U/NU CATEGORY
TRAF MARIJ(10-100LBS,1ST	7 0 0 GREENVILLE	10/21/20 9 U 4
TRAFFICKING IN COCAINE	7 0 0 GREENVILLE	10/21/20 9 U 4
ACCESSORY TO FELONY-A,B,C	0 0 136 GREENVILLE	9/22/20 2 N 4

PRIOR COMMITMENTS OVER 90 DAYS:

NO PRIOR COMMITMENTS OVER 90 DAYS

DETAINERS (HOLD,WANTED,NOTIFY):

NO DETAINERS

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES WHILE IN CUSTODY

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

1/28/10 REFUSING OR FAILING OBEY

OTHER

HISTORY OF MOVEMENTS:

DATE	LOCATION	REASON	OTHER
5/17/10	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
5/11/10	WATEREE RIVER	INCARCERATED	RETURN FROM COURT
5/11/10	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
3/ 1/10	WATEREE RIVER	INCARCERATED	RETURN FROM COURT
3/ 1/10	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
12/15/ 9	WATEREE RIVER	INCARCERATED	ADMINISTRATIVE
10/26/ 9	KIRKLAND	INCARCERATED	R&E PROCESSING
10/26/ 9	PERRY	INCARCERATED	NEW SENT W/O PR/CS/SF REV
12/10/ 2	GREENVILLE CO	PROBATION	RELEASED TO PROBATION
10/23/ 2	KERSHAW	INCARCERATED	ADMINISTRATIVE
10/ 3/ 2	KIRKLAND	INCARCERATED	R&E PROCESSING
10/ 3/ 2	PERRY	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
WARDKEEPER ASSISTANT	12/16/09	0/ 0/ 0		2F5

HISTORY OF EARNED EDUCATION CREDITS:

SEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
LVL 2 - FULL TIME(NO EUC)	10/25/02	12/10/ 2	RELEASED/PAROLED

***** END OF REPORT *****

FILEDCOUNTY OF
STATE

VS.

OCT 21 2009

INDICTMENT/CASE#: 2006 -GS- 47 - 09

WILLIAM J. SIMUN

AKA:

Race: W

Sex: M

DOB: 6/15/82

SS#: 111-11-1111

Address:

City, State, Zip: 29516

DL#

SID#

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

☐ CONVICTED OF or ☒ PLEADS

TO: TRAFFICKING MARIJUANA 10-100 LBS. (CONSPIRACY)

In violation of § 44-53-375(e)(1)(a)(1) of the S.C. Code of Laws, bearing CDR Code # 2360

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Clifford C. Pendergast
Solicitor AAG

SC Bar # 68671

Defendant

Attorney for Defendant

SC Bar # 1957

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 7 years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$ 2500; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

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

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

SPECIAL CONDITIONS:

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

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

Payment Terms:

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, §47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)	\$	\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§47.12 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$100	\$ 100.00
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
§90.7 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 6.90
TOTAL		\$ 236.90

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (06/2009)

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STATE OF SOUTH CAROLINA

FILED

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

OCT 21 2009

INDICTMENT/CASE#: 2006 -GS- 47 - (09)

VS.

WILLIAM J. SIMUN

JAMES R. PARKS
CLERK, STATE GRAND JURY

A/W#:

Date of Offense: 1/1/06-8/7/07
S.C. Code §: 44-53-370(c)(2)(c)
CDR Code #: 0281

AKA:

Race: W

Sex: M

DOB: 6/8/03

Address:

City, State, Zip: Greenville 29611

DL#

SID#

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

☐ CONVICTED OF or ☒ PLEADS

TO: TRAFFICKING COCAINE 28-100 GRAMS (CONSPIRACY)

In violation of § 44-53-375(e)(2)(b)(1) of the S.C. Code of Laws, bearing CDR Code # 2359

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST

Chris C. Vandenberg
Solicitor AAG

SC Bar # 68621

William Simun
Defendant*D*
Attorney for Defendant1957
SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 7 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

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

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$ 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	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§47.12 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$100	\$ 100.00
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
§90.7 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 6.90
TOTAL		\$ 226.90

Clerk of Court/Deputy Clerk

Court Reporter: *Tara Johnson*

SCCA/217 (06/2009)

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, \$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date

2/23
10/21/9

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