

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

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S.C. Supreme Court

ANTROWN A. IRBY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000954

A P P E N D I X

BENJAMIN JOHN TRIPP
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

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P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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WITNESSES

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(NO WITNESSES CALLED)

EXHIBITS

1	NO.	DESCRIPTION	ID.	EV.
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3		(NO EXHIBITS MARKED)		
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1 (PROCEEDINGS, FEBRUARY 24, 2011)

2 THE COURT: I have been told that each one of you
3 has one, or more, matters that are presently pending in the
4 Court of General Sessions and that each one of you has
5 expressed a desire or an intent to want to enter a plea to
6 those matters.

7 I need to let you know that as part of every plea
8 that's presented in front of me we make a recording. This
9 gentleman sitting over to my right is a court reporter.
10 He's taking down everything that's said. I tell you that
11 because if ever during this process now, or later today, if
12 you need to speak to me, I need you to speak up loud enough
13 so that both he and I can hear you. If we can't hear you,
14 we cannot accept your plea.

15 Likewise, if ever during this process now or later
16 today you can't hear me, immediately let me know and I'll
17 speak up as well.

18 Now, in just a moment I'm going to ask you some
19 questions, and I'm going to ask you these questions as a
20 group, but I do not want you to think, nor do I wish for you
21 to conclude, that simply because I'm asking you these
22 questions as a group that for some reason these questions
23 are not important, because these questions are very
24 important. The questions that I ask you and the answers
25 that you give me help me decide whether or not I can, in

1 fact, accept your plea, so I need you to listen to them.

2 If you need to respond to the questions, I'm going
3 to ask that you stand up. Just don't speak out, but stand
4 up and let me call on you individually.

5 Now, if ever during this process you need to speak
6 to your lawyer, you let me know and I'll allow you to speak
7 to your lawyer in private.

8 I'm now going to call all of your names again.
9 And this time when I call your name, I need for you to stand
10 up and remain standing. Once everybody's name has been
11 called and the court reporter has all your names, the lady
12 on this side of me is the Clerk of Court. She's going to
13 swear you in, so I need you to listen to her and respond out
14 loud when she asks you to do so.

15 Jacob McCarty.

16 Ryan Hammond.

17 Antrown Irby.

18 Eric Gassoway.

19 Tony Ashmore.

20 John Ward.

21 Mark Blackwell,.

22 Please raise your right hand for the Clerk of
23 Court.

24 ANTROWN IRBY, JACOB MCCARTY, RYAN HAMMOND, JOHN
25 WARD, TONY ASHMORE, ERIC GASSOWAY, MARK BLACKWELL, all

1 having been sworn, testified as follows:

2 THE COURT: Thank you. You may be seated.

3 During the last 24 hours have you consumed any
4 type of substance that is adversely or negatively affecting
5 your ability to understand what we are doing today? If you
6 have taken something, please stand at this time.

7 (No response)

8 THE COURT: If you have ever received any type of
9 treatment for drugs or alcohol, please stand at this time.

10 Your name again, sir?

11 DEFENDANT MCCARTY: Jacob McCarty.

12 THE COURT: And Mr. McCarty, did you receive
13 treatment for drugs, alcohol, or both?

14 DEFENDANT MCCARTY: Both.

15 THE COURT: Do you remember where?

16 DEFENDANT MCCARTY: I went to the place on
17 Asheville Highway that probation sends you to.

18 THE COURT: SADAC?

19 DEFENDANT MCCARTY: Yes.

20 THE COURT: And about how long ago was your last
21 treatment, approximately?

22 DEFENDANT MCCARTY: A year and a half, maybe.

23 THE COURT: Was it successful at the time?

24 DEFENDANT MCCARTY: Yes, sir.

25 THE COURT: Thank you. Thank you, sir. You may

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be seated.

Yes, sir, your name?

DEFENDANT IRBY: Antrown Irby.

THE COURT: And Mr. Irby, did you receive treatment for drugs, or alcohol, or both?

DEFENDANT IRBY: Both.

THE COURT: And where did you receive your last treatment?

DEFENDANT IRBY: ATU in the Department of Correction in 2002.

THE COURT: Was it successful at the time?

DEFENDANT IRBY: Yes, sir.

THE COURT: Thank you, sir. You may be seated.

Yes, sir, your name?

DEFENDANT GASSOWAY: Eric Gassoway.

THE COURT: And Mr. Gassoway, where did you receive your last treatment?

DEFENDANT GASSOWAY: SADAC right down the street.

THE COURT: And was that for drugs, alcohol, or both?

DEFENDANT GASSOWAY: Alcohol.

THE COURT: About how long ago was that?

DEFENDANT GASSOWAY: About two years.

THE COURT: Was it successful at the time?

DEFENDANT GASSOWAY: Yes, it was.

1 THE COURT: Thank you, sir.

2 DEFENDANT WARD: John Ward.

3 THE COURT: Mr. Ward, did you receive treatment
4 for drugs, alcohol, or both?

5 DEFENDANT WARD: Alcohol.

6 THE COURT: And where did you receive that
7 treatment?

8 DEFENDANT WARD: Right down here next to -- I
9 think it's the alcohol center right downtown.

10 THE COURT: About how long ago was that?

11 DEFENDANT WARD: About a year, I think.

12 THE COURT: Successful?

13 DEFENDANT WARD: Yes.

14 THE COURT: Thank you, sir. You may be seated.

15 If you were satisfied with the work that your
16 lawyer has done for you, I need for you to please stand at
17 this time, if you are satisfied with the work that your
18 lawyer has done.

19 Let the record reflect that everyone stood.

20 Thank you very much. You may be seated.

21 If you have been promised anything or threatened
22 in any way in order to get you to make the decision to enter
23 the plea, then I need for you to please stand at this time,
24 if you have been promised or threatened in any way.

25 (No response).

1 THE COURT: If the decision by you to enter the
2 plea has been made freely and voluntarily, I need for you to
3 please stand at this time.

4 (UNKNOWN DEFENDANT:) I didn't hear the question,
5 sir.

6 THE COURT: The question was if the decision to
7 enter the plea has been made freely and voluntarily by you,
8 I need for you to please stand at this time.

9 Let the record reflect everyone stood.

10 Thank you very much. You may be seated.

11 I need for you to understand that under the law
12 you are presumed innocent of any charge that's presently
13 against you, and you are entitled to have a jury trial on
14 any or all of the charges against you.

15 At any jury trial that would take place it would
16 be the State that has the burden of proof; and the State
17 would have to convince all twelve members of a jury that you
18 are, in fact, guilty beyond a reasonable doubt.

19 Now, in order to enter a plea, however, you have
20 to give up your right to that jury trial. But if you wish
21 to have a jury trial on any of the charges against you, that
22 is fine. We are going to simply schedule a jury trial for
23 you.

24 If you wish to have a jury trial on any of the
25 charges against you, then I need for you to please stand at

1 this time, if you wish to have a jury trial.

2 (No response)

3 THE COURT: In addition to giving up your right to
4 a jury trial, there are other very important Constitutional
5 Rights that you were entitled to, but that you have to give
6 up in order to enter a plea.

7 You have to give up your right to confront and
8 cross-examine the State's witnesses; you also have to give
9 up your right to present evidence which you or your lawyer
10 may feel would establish some type of defense to the charge
11 or charges against you; and you have to give up your right
12 of subpoena; and you have to give up your right to remain
13 silent.

14 Now, if you wish to give up all those rights and
15 proceed with entering the plea, I need for you to please
16 stand at this time.

17 Let the record reflect that everyone stood.

18 Thank you very much. You may be seated.

19 Again, if ever during this process you want to
20 speak with your lawyer, you just let me know and I'll allow
21 you to talk to your lawyer in private.

22 * * * * *

23 (Off the record)

24 (Back on the record)

25 MR. MORIN: Before you is Antrown Irby. He's

1 pleading guilty to three indictments: 2009-GS-42-3514 is
2 assault and battery with intent to kill; 2009-GS-42-3515 is
3 armed robbery; and 2009-GS-42-4471 is possession of crack
4 cocaine, first offense.

5 There is a negotiated sentence in this case, Your
6 Honor, of fifteen years.

7 He's represented by Dick Whelchel.

8 THE COURT: You are Mr. Irby?

9 DEFENDANT IRBY: Yes, sir.

10 THE COURT: Sir, I need to remind you that you
11 remain under oath. Do you understand that?

12 DEFENDANT IRBY: Yes, sir.

13 THE COURT: And the manner in which the solicitor
14 announced the charges against you, is that consistent with
15 what you understand you are pleading to today?

16 DEFENDANT IRBY: Yes, sir.

17 THE COURT: How old are you?

18 DEFENDANT IRBY: I'm 35.

19 THE COURT: How far did you go in school?

20 DEFENDANT IRBY: Ten years.

21 THE COURT: How far did you go before you dropped
22 out?

23 DEFENDANT IRBY: 10th grade.

24 THE COURT: Are you married, single, divorced,
25 widowed?

1 DEFENDANT IRBY: Single with two kids and a fiance
2 with -- well, actually three children.

3 THE COURT: How old are your children?

4 DEFENDANT IRBY: I have two boys. One is 17 and
5 one is 16 and now hers is 10.

6 THE COURT: Do you have a job outside the home?

7 DEFENDANT IRBY: Yes, sir. I do part-time work
8 through Spartanburg Memorial.

9 THE COURT: Military?

10 DEFENDANT IRBY: No, sir.

11 THE COURT: When you got arrested on these
12 charges, how long a time, if any, did you spend in jail
13 before you made bond?

14 DEFENDANT IRBY: One month.

15 THE COURT: Sir, the gentleman standing over to
16 your right is a solicitor. I need for you to please listen
17 to him. He is going to provide us with the facts behind
18 these cases.

19 MR. MORIN: Thank you, Your Honor.

20 Your Honor, on February 8th, 2009, this occurred
21 at 578 North Church Street in Spartanburg. The victim was
22 Rod Wimbley reported that Mr. Irby had robbed him at his
23 motel room with a firearm and that he had actually fired at
24 him and it had grazed his head causing a slight wound that
25 the officers observed at that time. Mr. Wimbley then was

1 presented a lineup. He knew Mr. Irby by nickname, but he
2 picked him out of that, and he took \$350 from Mr. Wimbley.
3 That was the armed robbery and the ABWIK.

4 Then on March 26th, 2009, Officer Layton with the
5 Spartanburg Public Safety Department saw a vehicle run a
6 stop sign at Bridge Street and Magnolia here in Spartanburg
7 County. The defendant was a passenger in the back seat of
8 that vehicle. During the course of that stop it was found
9 that he had .02 grams of crack cocaine near where he was
10 seated.

11 His prior record, Your Honor, is he has an ABWIK
12 and a lynching from 1996.

13 THE COURT: Were you able to hear the solicitor
14 when he told me the facts?

15 DEFENDANT IRBY: Yes, sir.

16 THE COURT: Do you believe that as he stated the
17 facts to me that he is substantially correct?

18 DEFENDANT IRBY: Yes, sir.

19 THE COURT: Sir, you do understand that this is
20 being presented to me as a negotiated sentence? Therefore,
21 if I accept the plea, I will be bound by the negotiations
22 and will have to impose the fifteen year sentence?

23 DEFENDANT IRBY: Yes, sir.

24 THE COURT: And that's what you wish for me to do?

25 DEFENDANT IRBY: Yes, sir.

1 THE COURT: Sir, do you understand that the
2 assault and battery with intent to kill is classified as a
3 most-serious offense under the law and also is classified as
4 a violent offense under the law?

5 DEFENDANT IRBY: Yes, sir.

6 THE COURT: And do you understand that the armed
7 robbery is also classified as a violent and also a
8 most-serious offense under the law?

9 DEFENDANT IRBY: Yes, sir.

10 THE COURT: And have you been able to talk to your
11 lawyer as to the consequences and ramifications of those
12 offenses being classified as both a violent and most-serious
13 offense?

14 DEFENDANT IRBY: Yes, sir.

15 THE COURT: And do you still wish to enter the
16 plea?

17 DEFENDANT IRBY: Yes, sir.

18 THE COURT: Sir, are you, in fact, guilty of
19 possession of crack?

20 DEFENDANT IRBY: No, sir, but I'm pleading guilty
21 as charged. Not only, but I'm pleading guilty to the
22 charge. It wasn't mine, but that's the charge. I plead
23 guilty.

24 MR. WHELCHER: I beg the court's indulgence for a
25 moment, Your Honor.

1 THE COURT: Yes, sir.

2 (Off the record)

3 (Back on the record)

4 MR. WHELCHER: Your Honor, I don't know why, but
5 my client is confused with the lesser of these issues, but
6 after our brief discussion now he wants to go forward with
7 his plea and he is telling the court that he is guilty of
8 possession of cocaine.

9 THE COURT: All right. Mr. Irby, are you, in
10 fact, guilty of the possession of crack cocaine?

11 DEFENDANT IRBY: Yes, sir.

12 THE COURT: And are you also guilty of the armed
13 robbery charge?

14 DEFENDANT IRBY: Yes, sir.

15 THE COURT: And are you also guilty of the assault
16 and battery with intent to kill charge?

17 DEFENDANT IRBY: Yes, sir.

18 THE COURT: Have you been able to hear all of my
19 questions?

20 DEFENDANT IRBY: Yes, sir.

21 THE COURT: Have all of your answers been truthful
22 and honest?

23 DEFENDANT IRBY: Yes, sir.

24 THE COURT: Discovery has been shared with the
25 defense?

1 MR. MORIN: Yes, sir.

2 THE COURT: We have the prior record.

3 Anything from the victim in the armed robbery and
4 the assault charge?

5 MR. MORIN: No, sir.

6 THE COURT: Anything else from the State on Mr.
7 Irby?

8 MR. MORIN: No, sir.

9 THE COURT: Yes, sir, Mr. Whelchel.

10 MR. WHELCHER: Your Honor, as he's already told
11 you, he's here today, his fiance and other family members,
12 please stand up, are here to support him.

13 This is a negotiated plea, Your Honor. He knows
14 going in that he's going to prison today if Your Honor
15 accepts this negotiated plea of a fifteen year sentence. We
16 would ask you to do that at this time.

17 THE COURT: Do you agree with what your lawyer
18 just stated?

19 DEFENDANT IRBY: Yes, sir.

20 THE COURT: Sir, is there anything that you would
21 like to say or would want me to know or consider?

22 DEFENDANT IRBY: Yes, sir. Your Honor, I do have
23 a -- I was incarcerated before I got out and started
24 changing my life, but I ran into a few obstacles and
25 complications and ran down the wrong path. Unfortunately I

1 made some mistakes by it. I asked God for forgiveness and I
2 appreciate the mercy of the court, please.

3 THE COURT: All right. Thank you, sir.

4 I find that there is a substantial factual basis
5 for the pleas:

6 I'll find that the defendant's decision to enter
7 the pleas have been made freely, voluntarily, knowingly, and
8 intellectually by him.

9 I'll find that he has received the services from a
10 very competent and able legal counsel, services he's
11 indicated to the court he's satisfied with and has relied on
12 in reaching the decisions that he's made. Therefore, I will
13 accept the plea.

14 On the assault with intent to kill and the armed
15 robbery, those would be fifteen year sentences.

16 It would be a three year sentence on the
17 possession of drug charges.

18 They will run concurrent with each other.

19 I have indicated he would get credit for the
20 thirty days.

21 Good luck to you, sir.

22 MR. WHELCHER: Thank you, Your Honor.

23 (END OF REQUESTED TRANSCRIPT OF RECORD)

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25

CERTIFICATE

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I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for SPARTANBURG County, South Carolina, on the 24TH day of FEBRUARY, 2011.

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

APRIL 9, 2012

Michael R. Watts

Michael R. Watts
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
 County of SPARTANBURG)
ANTHONY A. IRBY)
 Full name and prison number, if any, of applicant.)
 v.)
STATE (ET AL))
 Name of Respondent)

In the Court of Common Pleas

2012-CP-42-0348

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 it clear to which question any such continued answer refers.

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

If the applicant 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 applicant was convicted.

1. Place of detention MCCORMICK CORRECTIONAL INSTITUTION

2. Name and location of Court which imposed sentence _____

SPARTANBURG CO. GENERAL SESSION

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) ARMED ROBBERY M-111315

(b) ABWIK M-111314

M-086818 (c) POSSESSION OF DRUGS / Less than 1 gram M.C. 16-29-10

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

(a) FEBRUARY 2010 29th ~~15~~ 15 YEARS

(b) " " " "

(c) " " " "

2012 JAN 25 2:39 PM
CLERK OF COURT
HUNTER

5. 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 _____

6. Did you appeal from the judgment of conviction or the imposition of sentence? _____

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. N/A _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) PIEA _____

(b) _____

(c) _____

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

(a) INEFFECTIVE ASSISTANCE OF COUNSEL _____

(b) PROSECUTORIAL MISCONDUCT _____

(c) VIOLATION OF THE PROCESS OF LAW _____

M. HUBBARD
2017 JAN 25 PM 2:39
SHERIFF

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

- (a) INTER ALIA, TRIAL COUNSEL FAILED TO OBJECT TO
- (D) PRIOR ATTORNEY ACTING AS SOLICITOR TO PROSECUTE
- (b) TO BE AMENDED BY COUNSEL
- (c) TO BE AMENDED BY COUNSEL.

11. 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 petitions in State or Federal Courts for habeas corpus or post-conviction relief?
NO
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) NO
- (d) any other petitions, motions or applications in this or any other Court?
NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

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

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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 2012 JAN 25 PM 2:39
 DISTRICT CLERK
 U.S. DISTRICT COURT
 DISTRICT OF COLUMBIA

(d) the date of each such disposition:

- i. NA
- ii. _____
- iii. _____
- iv. _____

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

- i. NA
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. 0
- ii. _____
- iii. _____

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

- i. 0
- ii. _____
- iii. _____

15. If any ground set forth in (9) 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) PLEA, PCL Appropriate Remedy.
- (b) _____
- (c) _____

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

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

CLERK OF COURT
 HONORABLE
 2012 JUN 25 PM 2:59
 H.H. HOPE JR.

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i.

PUBLIC DEFENDER OFFICE / Richard Wheeler

ii.

iii.

(b) the proceedings at which each such attorney represented you:

i.

PIEA

ii.

SENTENCE

iii.

18. State clearly the relief you seek in filing this application.

~~REDUCTION IN SENTENCE~~ / REDUCTION IN SENTENCE
VACATE SENTENCE altogether / 10yr PIEA by PRIOR 3/1/2012

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

no

CLERK OF COURT
SEATTLE, WASHINGTON
2012 JAN 25 PM 2:39
M. HOPE BLUMLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

VERIFICATION

I, ANTHONY A. TRACY, 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.

[Signature]

Sworn to and subscribed before me

This 19 day of JANUARY, 2012

J.C. Franklin L.S.
Notary Public for South Carolina
My Commission Expires 12-16-2019

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

I, ANTHONY A. TRACY, 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 proceeding or give security therefor:

[Signature]
Applicant

Sworn to and subscribed before me

This 19 day of JANUARY, 2012

J.C. Franklin L.S.
Notary Public for South Carolina
My Commission Expires: 12-16-2019

CLERK OF COURT
2012 JAN 25 PM 2:39
M. HOPPE, CLERK

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG) IN COURT OF COMMON PLEAS

ANTHONY A. IRBY)
v.) Applicant) [AMENDMENT TO P.C.)

STATE)
Respondent)

① APPLICANT ASSENTS THAT TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN HE FAILED TO OBJECT TO APPLICANTS PRIOR / FORMER ATTORNEY MIKE MORIN ACTING AS A SOLICITOR TO PROSECUTE APPLICANT, WHEN THE ATTORNEY-CLIENT RELATIONSHIP WAS FRAUGHT WITH ALLEGATIONS OF VIOLATION OF PROFESSIONAL ETHICS AND INEFFECTIVE ASSISTANCE OF COUNSEL.

MIKE MORIN RELIED UPON INFORMATION GAINED FROM ATTORNEY-CLIENT PRIVILEGE IN ORDER TO MAKE THE DECISION AS TO HOW TO PROSECUTE APPLICANT, KNOWING HE WOULD BE SUSCEPTIBLE TO A PLEA IF LWOP WAS DENIED. MIKE MORIN WOULD HAVE NOT BEEN ALLOWED TO PROSECUTE HAD COUNSEL ENTERED PROPER OBJECTIONS.

FILED
2012 JUN 25 PM 2:39
CLERK OF COURT

1-3-11

Anthony A. Irby

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Antrown A. Irby, #233398,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 IN THE SEVENTH CIRCUIT

2012-CP-42-0348

RETURN

In response to the post-conviction relief application filed on January 25, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Spartanburg County Clerk of Court's orders of commitment. The Spartanburg County Grand Jury indicted the Applicant at the July and August 2009 terms of General Sessions for armed robbery (09-GS-42-3515), assault and battery with intent to kill (ABWIK) (09-GS-42-3514), and possession of methamphetamine or crack cocaine (09-GS-42-4471). The Applicant was represented by Richard H. Welchel, Esquire. On February 24, 2011, the Applicant pled guilty as indicted. The Honorable J. Mark Hayes II sentenced the Applicant, pursuant to a negotiated sentence, to confinement for a period of fifteen (15) years each for ABWIK and armed robbery, and three (3) years for possession of methamphetamine or crack cocaine, sentences to run concurrent. The Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the Spartanburg County Clerk of Court records, the South Carolina Department of Corrections' records, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

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 SPARTANBURG COUNTY
 2012 SEP 29 AM 10:08
 M. HOPE BLAKEY

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

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

IV.

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

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

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M. HOPE BLAKEY

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By:

Suzanne White
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Sept. 25, 2012

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M. HOPE BLACKBERRY



ALAN WILSON
ATTORNEY GENERAL

September 25, 2012

The Honorable M. Hope Blackley
Spartanburg County Clerk of Court
Post Office 3483
Spartanburg, SC 29304

Re: Antrown A. Irby, #233398 v. State of South Carolina
2012-CP-42-0348

Dear Ms. Blackley:

Enclosed please find the original Return of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,

Suzanne H. White
Assistant Attorney General

SHW/tb

Enclosure

Spartanburg County Clerk's Records
SCDC Records
Guilty Plea Transcript

cc: D. Alan Lazenby, Esquire

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF SPARTANBURG) IN THE COMMON PLEAS COURT
 3
 4 Antrown A. Irby,)
 Applicant,) TRANSCRIPT OF RECORD
 5) 2013-CP-42-954
 -vs-)
 6) January 9, 2013
 The State.) Spartanburg, South Carolina
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11 B E F O R E :

12 HONORABLE J. DERHAM COLE, JUDGE
 13
 14
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16 A P P E A R A N C E S :

17 R. PATRICK MARTIN, ESQUIRE
 Attorney for the Applicant
 18

SUZANNE H. WHITE, ESQUIRE
 Attorney for the State
 19
 20
 21
 22

23 Linda D. Moffitt
 Circuit Court Reporter
 24
 25

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WITNESSES

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RICHARD H. WHELCHER (SW)

Direct examination by Ms. White 13

Cross-examination by Mr. Martin 17

No exhibits entered into evidence.

1 MS. WHITE: This is Antrown Irby vs. the State, case
2 No. 2012-CP-42-0348. He's represented today by Patrick
3 Martin.

4 Mr. Irby pled guilty February 24th of 2011 to charges
5 of armed robbery, assault and battery with intent to kill
6 and possession of crack.

7 It was a negotiated sentence. He received two
8 concurrent 15-year sentences on armed robbery and ABWIK and
9 a 3-year sentence on possession of crack.

10 He's alleged ineffective assistance of counsel,
11 prosecutorial misconduct and due process violations.

12 I'll turn it over to Mr. Martin.

13 THE COURT: Mr. Martin.

14 MR. MARTIN: Your Honor, Mr. Irby is asking for post
15 conviction relief on grounds of ineffective assistance of
16 counsel, prosecutorial misconduct and violation of due
17 process of law. But we are going to be focusing primarily
18 on the ineffective assistance of counsel, specifically in
19 regards to plea offers that were made and not accepted.

20 THE COURT: All right. Are you ready to proceed?

21 MR. MARTIN: Yes, Your Honor. We would call
22 Mr. Antrown Irby.

23

24

25

Antrown Irby
Direct examination by Mr. Martin

- 1 A I'm not quite sure if it was the first meeting but --
2 but during the meeting that -- specifically at hand Ms. Win
3 -- I don't remember her name either, but she was the
4 solicitor that presided over the case at the time. She had
5 informed Mr. Whelchel of a 10-year plea agreement, and I was
6 in agreement with the 10-year plea agreement upon going to
7 court.
- 8 Q Now, this wasn't your first trouble with the law.
9 You'd already had two strikes, correct?
- 10 A Yes, sir.
- 11 Q So you were very excited to get this 10-year plea.
12 A Yes, sir, very excited.
- 13 Q And that's what you wanted, and you told your attorney
14 that, right?
- 15 A Yes, sir.
- 16 Q Now, when you told your attorney that what did he do?
17 A He was in agreement with it also. You know, we just
18 was waiting for, I guess, me to be put on, placed on, the
19 docket or whatever.
- 20 Q But you told him you were accepting that plea.
21 A Yes, sir.
- 22 Q Now, what happened from there?
23 A I guess approximately anywhere from 18 to 20 days
24 before I went to court Mr. Whelchel called and told me I
25 needed to come in and speak with him.

Antrown Irby
Direct examination by Mr. Martin

1 I came in. He showed me the paper from another
2 solicitor filed to give me a life sentence without parole
3 upon being found -- if I was -- if I was found guilty.

4 I asked him. I said, "Mr. whelchel, what happened to
5 the 10-year plea agreement?" He said, "well, you no longer
6 have the solicitor presiding over your case. You have a new
7 solicitor."

8 And as I continued to read the paper I informed him
9 that this solicitor that they had placed over my case now,
10 Mr. Morin, had previously represented me as a lawyer, as an
11 attorney.

12 Q How had he previously represented you?

13 A For the previous charges that I was incarcerated for.

14 Q For your other two charges?

15 A Yes, sir.

16 Q How did Mr. Morin handle the case differently than what
17 your old solicitor had done?

18 A Could you explain that to me, please?

19 Q What did Mr. Morin do differently than the last
20 solicitor? what did he change?

21 A He changed the plea.

22 Q What did he do with that plea?

23 A He just threw it out the window and filed to give me a
24 life sentence without parole, but Mr. whelchel still somehow
25 worked the deal and got me the 15-year plea so I wouldn't

Antrown Irby
Direct examination by Mr. Martin

- 1 have to do a life sentence if found guilty.
- 2 Q Mr. whelchel worked a deal with a 15-year plea. what
3 happened to the 10-year plea you had accepted?
- 4 A I don't know.
- 5 Q Okay. But you told Mr. whelchel you were accepting
6 that 10-year plea.
- 7 A Yes, sir.
- 8 Q And to your knowledge did Mr. whelchel confirm that
9 with the solicitor's office that that plea had been
10 accepted?
- 11 A I thought that he had, yes, sir.
- 12 Q Did you ever receive any confirmation of that?
- 13 A No, sir. Just like right before I -- right before I
14 went to court he called me in and showed me the papers with
15 the new solicitor, you know, and just told me that the other
16 solicitor wasn't presiding over my case any more. Just as
17 simple as that, no 10-year plea agreement.
- 18 Q Why do you believe that Mr. whelchel was ineffective in
19 his representation of you today?
- 20 A I think that -- I think that Mr. whelchel should have
21 secured the 10-year plea for me.
- 22 We already have a 10-year plea agreement on the -- on
23 the line, and, you know, they switched solicitors on me in
24 the middle. I don't -- I really didn't even know what was
25 going on.

Antrown Irby
Cross-examination by Ms. White

1 Q And you would have been happy to take that 10-year
2 plea.

3 A Yes, sir, more than happy.

4 Q What are you asking the Court for today?

5 A I'm asking if the Court would please grant me the
6 original plea that was offered to me in the beginning.

7 Q Is there anything else you want to tell the court?

8 A No, sir.

9 Q All right.

10 MR. MARTIN: No further questions, Your Honor.

11 MS. WHITE: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. WHITE

14 Q Mr. Irby, you said that you had been offered a 10-year
15 plea. Did you ever have anything in writing about that?

16 A Actually I do, but I don't have it with me. Yes. I
17 had a letter that was sent to Mr. Welchel that he also sent
18 to me with my motion of discovery and little other
19 legalities, yes.

20 Q All right. I'm going to approach. I'm going to show
21 you these letters and see. This is dated August 31st of
22 2009.

23 A Yes.

24 Q Is that what you recall?

25 A Yes, ma'am.

Antrown Irby
Cross-examination by Ms. White

1 Q Okay. And then this is another letter dated
2 April 1st of 2010.

3 Do you recall a conversation with Mr. Welchel about
4 that?

5 A Yes, ma'am.

6 Q Okay. And the plea offer, the first one that I showed
7 you referenced from Jacquelyn Moss, is that the assistant
8 solicitor you mentioned?

9 A Yes, ma'am. I confused her name with Gwendlyn, but
10 it's Jacquelyn, yes, ma'am.

11 Q Okay. And there was a recommendation of concurrent
12 sentencing with your pending ABWIK and armed robbery with
13 either a plea straight up or a recommendation of a 10-year
14 cap. Is that what you recall?

15 A Yes, a 10-year plea. She said he told me ten years,
16 but, see, he didn't use those words that you used. He said
17 a 10-year, you know, a plea agreement for ten years, what do
18 you want to do.

19 Q Okay. And that was in August of 2009.

20 Now, the second one was April of 2010 that was
21 referencing your receiving-stolen-goods charge, your armed
22 robbery, and that there was a pending drug case. And there
23 was a recommendation of concurrent sentencing for those. Do
24 you recall that?

25 A Yes, ma'am.

Antrown Irby
Cross-examination by Ms. White

1 Q Okay. But in that one there was no mention of a
2 10-year plea, is there?

3 A I mean, he -- from -- from what I understood the
4 10-year plea was still on the grill -- on the deal with the
5 concurrent running.

6 Q Okay. Now, when you got to court though you knew that
7 the 10-year was no longer there, that it was a negotiated
8 sentence of 15, didn't you?

9 A I knew before I went to court that the 10-year plea was
10 no longer there because he informed me. As I said, he
11 called me into his office and showed me the papers where the
12 solicitors had been changed.

13 Q Okay. But at that point you still made -- chose the
14 option to proceed to go plead guilty to that 15-year
15 negotiated sentence?

16 A At that point I was really secured for my life thinking
17 that I would never be able to see my family or my friends
18 again, you know, somebody telling you from ten to life.
19 That's a very drastic jump, you know.

20 I mean, not saying that the crimes I committed were,
21 you know, not violent crimes or whatever, but at the same
22 time not to be able to ever see your family or loved ones
23 again, that's a -- that's a big deal.

24 Q So with your options of either proceeding to trial with
25 a potential -- of a life sentence or a 15-year, you chose to

Antrown Irby
Redirect examination by Mr. Martin

1 accept the 15-year deal.

2 A Of course.

3 Q Okay. And in regards to talking with you about Mr.

4 Morin previously representing you, did you talk with

5 Mr. Wheelchel about that and any concerns?

6 A Yes, I did.

7 Q And what did he say to you?

8 A He -- he basically was like, well, let him check into

9 it or whatever. You know, and that's when he came back and,

10 you know, worked the 15-year plea agreement out or whatever,

11 what have you. Excuse me.

12 Q All right.

13 MS. WHITE: Your Honor, that's all the questions I

14 have of this witness.

15 MR. MARTIN: Brief redirect, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. MARTIN

18 Q Mr. Irby, how far did you go in school?

19 A Tenth grade, sir.

20 Q Tenth grade. So when you had an attorney you were
21 relying on that attorney to tell you about the law and about
22 all of the correspondence he received?

23 A Exactly. The same thing I told you before I came in.

24 I was like you my legal counsel, I really don't know

25 anything about the law. So whatever you recommend or

Antrown Irby
Recross-examination by Ms. White

1 whatever you talk to me about, I'm pretty much going to be
2 with you because I don't know anything about the law.

3 Q But you have no other legal education.

4 A No, sir.

5 Q You were entirely relying on Mr. whelchel to take
6 advantage of that 10-year plea offer.

7 A Yes, sir; yes, sir.

8 Q And Mr. whelchel didn't.

9 A No, sir.

10 Q And today all you're asking the Court for is to have
11 that plea offer.

12 A Yes, sir.

13 MR. MARTIN: No further questions, Your Honor.

14 MS. WHITE: Just brief recross.

15 RECROSS-EXAMINATION

16 BY MS. WHITE

17 Q In regards to you said you didn't have any knowledge of
18 the court system or legal, you actually had a 20-year
19 sentence for lynching and assault and battery with intent to
20 kill from '96, did you not?

21 A Yes, I did, but that's -- I committed the crime, and I
22 was sentenced to prison. I mean, I don't know anything
23 about the actual intricate parts of the law, what's going on
24 with the back-and-forth law of jargon or whatever. I don't
25 know anything about that part of the law, no.

Richard H. Whelchel
Direct examination by Ms. White

1 Q Okay. But you served a decent amount of time on those
2 two charges.

3 A A lot of time.

4 Q Okay. All right. Thank you.

5 MS. WHITE: That's all I have, Your Honor.

6 THE COURT: You may step down.

7 MR. MARTIN: The plaintiff rests, Your Honor.

8 MS. WHITE: Your Honor, we would call Richard Whelchel
9 to the stand.

10 RICHARD H. WHELCHER, having
11 been first duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MS. WHITE

13 Q If you could, just state your name for the record.

14 A Richard Whelchel.

15 Q And, Mr. Whelchel, how did you come to be involved in
16 Mr. Irby's case?

17 A The public defender was appointed to represent
18 Mr. Irby, and the case was assigned to me.

19 Q Okay. And we had some letters here. The plea was
20 actually February 4th -- 24th -- excuse me -- of 2011, but
21 we have letters or offers from the solicitor as far back as
22 2009. Were you representing him that whole time?

23 A I believe so, yes, ma'am.

24 Q Okay. And you heard us talk about the letter of 2009
25 where they offered a recommendation of concurrent sentencing

Richard H. Welchel
Direct examination by Ms. White

1 with potentially a 10-year cap. Did you discuss that with
2 the applicant?

3 A Yes, ma'am. I sent that letter that you're reflecting,
4 that you're asking about, was sent to Mr. Irby.

5 Whenever I receive an offer either through the mail or
6 by e-mail I make a copy of that and send it to my client.
7 That offer was for that charge only as I understand it.

8 There were still other pending charges that were made,
9 and I think Ms. Moss made reference to them in that letter.

10 Q Okay. And so your understanding was it was the
11 use-of-the-vehicle-without-the-owner's-permission charge.

12 A Yes, ma'am.

13 Q The 10-year cap. And then concurrent was for
14 everything else?

15 A Yes, ma'am.

16 Q When you talked with Mr. Irby about the offers do you
17 explain -- did you explain what the difference is between a
18 negotiated sentence or a negotiated offer and a
19 recommendation?

20 A Yes, ma'am.

21 Q And in your conversations with him did you feel like he
22 understood?

23 A Yes, ma'am.

24 Q At this point you then got a 2010 offer that again
25 stated concurrent sentencing to all cases.

Richard H. whelchel
Direct examination by Ms. white

1 A Uh-huh.

2 Q Did you convey that as well to Mr. Irby?

3 A Yes, ma'am.

4 Q And what was his response, do you recall?

5 A I'm assuming he said he wanted to take it.

6 Q Okay. And ultimately you negotiated a plea.

7 A Yes, ma'am.

8 Q Can you tell us how that came about?

9 A Mr. Morin took over representation -- or excuse me --
10 took over prosecution of the assault and battery and the
11 armed robbery cases.

12 He filed notice of his intent to seek if it went to
13 trial a life-without-parole sentence and files that and sent
14 a copy to me in February for -- a couple of weeks before the
15 plea.

16 And I talked to Mr. Irby about that, and I explained to
17 him that with his -- with the solicitor filing this notice
18 of life-without-parole if he went to trial and were
19 convicted he would receive a life sentence on these charges.

20 Q And did he indicate -- what did he indicate to you at
21 that time?

22 A He indicated he understood that and he would like to
23 get out from under a life-without-parole.

24 Essentially what happens is I told him that the ten
25 years is off the table and that is no longer an option. And

Richard H. Whelchel
Direct examination by Ms. White

1 he wanted something concrete. And that's when I explained
2 to him the difference between a straight-up plea, a plea
3 with a recommendation and a plea with -- that's negotiated,
4 that the negotiated plea means that he, the prosecutor and I
5 all agree before the case is presented to the Court that
6 it's going to be like in this case a 15-year sentence and if
7 the judge accepts his plea he agrees that it's a 15-year
8 negotiated sentence, that the negotiated sentence can go no
9 lower and can go no higher.

10 Q And once the notice of the LWOP was received and you
11 discussed that with him you were able to work with Mr. Morin
12 for a negotiated plea?

13 A Yes, ma'am.

14 Q Okay. At that time did you feel that Mr. Irby from
15 your understanding or conversations was offering to plead
16 freely and voluntarily?

17 A Yes, ma'am.

18 Q Had he mentioned anything to you about concern over
19 whether or not there was anything you could do, the fact
20 that Mr. Morin took over the case?

21 A He said that he didn't think it was fair that Mr. Morin
22 took over the case, he had represented him before, and I
23 said that might be the facts, and, you know, I believe it is
24 the facts, but that doesn't prevent Mr. Morin from
25 prosecuting this particular case.

Richard H. Welchel
Cross-examination by Mr. Martin

1 I specifically went and talked to the senior public --
2 or the chief public defender, Clay Allen, to make sure. And
3 we saw no conflict at that point.

4 Q Okay. Thank you.

5 MS. WHITE: That's all I have, Your Honor.

6 MR. MARTIN: May it please the Court, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. MARTIN

9 Q How are you today, Mr. Welchel?

10 A Good.

11 Q Now, did I hear you right when you testified earlier
12 that the 10-year plea was no longer an option? Is that what
13 you told us?

14 A It was taken off the table.

15 Q Taken off the table. So you didn't accept it before it
16 was taken off the table. Is that a no?

17 A No, I didn't accept it before it was taken off the
18 table.

19 They changed solicitors. The offer that was given did
20 not include all of the charges. That offer was only on the
21 charge that she -- she was prosecuting.

22 There was another drug charge that was involved, and,
23 in fact, he pled guilty to armed robbery, assault and
24 battery with intent to kill and a drug charge. I think it
25 was possession, simple possession, of cocaine.

Richard H. Welchel
Cross-examination by Mr. Martin

- 1 Q Okay. How much -- what sentence comes with the cocaine
2 charge?
- 3 A Cocaine is just a zero-to-three sentence.
- 4 Q Zero-to-three sentence. So the longer a sentence is --
5 the assault and battery with intent to kill, that was a
6 10-year sentence, or that was included in the ten years,
7 right. A 10-year cap?
- 8 A No. The assault and battery with intent to kill
9 carries up to 20 years.
- 10 Q But it was included in the plea offer, the ten cap.
- 11 A I don't know if it was included in the plea offer.
12 She represented she was prosecuting a receiving stolen
13 goods or a possession of stolen vehicle at the time.
- 14 Q You say you don't know if it was included in the plea,
15 but you were advising Mr. Irby that was included in the
16 plea.
- 17 A No. I told him this is the offer we have on this
18 particular case. The offer was to be concurrent with the
19 other cases that he had.
- 20 Q And you still didn't accept that plea?
- 21 A Excuse me?
- 22 Q Did you accept that plea?
- 23 A No, sir.
- 24 MR. MARTIN: No further questions of this witness,
25 Your Honor.

1 MS. WHITE: That's all I have, Your Honor.

2 THE COURT: Step down.

3 Anything else?

4 MS. WHITE: Nothing further from the state, Your
5 Honor.

6 THE COURT: All right. I'll review the record and
7 issue an order.

8 END OF REQUESTED TRANSCRIPT OF RECORD

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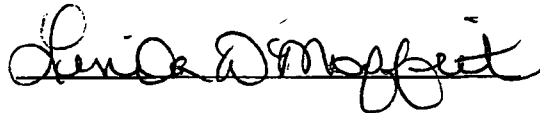
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 9th day of January 2013.

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

June 14, 2013



Linda D. Moffitt
Circuit Court Reporter

BM

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
Antrown A. Irby, #233398,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2012-CP-42-0348

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 25, 2012. The Respondent made its Return on or about September 25, 2012. An evidentiary hearing into the matter was convened on January 9, 2013, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by R. Patrick Martin, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Richard H. Whelchel, Esquire, also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

CLERK OF COURT
 SPARTANBURG COUNTY
 2013 APR 2 PM 4:48
 HANDED TO DEPARTMENT

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Spartanburg County Clerk of Court's orders of commitment. The Spartanburg County Grand Jury indicted the Applicant at the July and August 2009 terms of General Sessions for armed robbery (09-GS-42-3515), assault and battery with intent to kill (ABWIK) (09-GS-42-3514), and possession of methamphetamine or crack cocaine (09-GS-42-4471). The Applicant

SCANNED

COMPUTER

was represented by Richard H. Whelchel, Esquire. On February 24, 2011, the Applicant pled guilty as indicted. The Honorable J. Mark Hayes II sentenced the Applicant, pursuant to a negotiated sentence, to confinement for a period of fifteen (15) years each for ABWIK and armed robbery, and three (3) years for possession of methamphetamine or crack cocaine, sentences to run concurrent. The Applicant did not appeal his guilty plea or sentence.

ALLEGATIONS

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

1. Ineffective assistance of counsel; in that,
 - a. "Counsel failed to object to the Applicant's former attorney, Mike Morin, acting as solicitor to prosecute the Applicant, when the attorney-client relationship was fraught with allegations of violations of professional ethics and ineffective assistance of counsel. Mike Morin relied upon information gained through attorney client privilege in order to make the decision as to how to prosecute Applicant, knowing he would be susceptible to a plea if LWOP was threatened. Mike Morin would have not been allowed to prosecute had counsel entered proper objections."
2. Prosecutorial Misconduct; and
3. Violation of Due Process of Law.

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

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the

2013 APR 12 PM 4:48
 CLERK OF COURT
 HARTMAN

evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing Strickland*. 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, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Applicant testified that the Solicitor's office originally offered a ten year sentence and the Applicant had agreed to that deal, but the Solicitor handling the case was changed to Michael Morin. Applicant testified that Morin had previously represented Applicant in his prior position as a public defender. Applicant testified that he shared that information with Counsel and was

relying on Counsel to assist him with the negotiations. Applicant testified that approximately twenty days prior to court, the Solicitor's office pulled the ten year offer and suddenly informed Applicant that they might seek a sentence of life without parole because Applicant already had two strikes on his record. However, Applicant acknowledged that he was aware that he was pleading guilty to a negotiated sentence of fifteen years on the day of the plea and was aware that the ten year deal had been taken off the table.

Counsel testified that his understanding of the original ten year offer was that the offer did not include either the armed robbery or the ABWIK charge. Counsel testified that he explained the difference between negotiated and recommended sentences to Applicant prior to the plea. Counsel testified that the Notice of intent to seek life without parole was filed and served in February 2011. Counsel testified that he informed the Applicant that the ten year offer had been revoked, but the Applicant was insistent on a concrete sentence. Counsel testified that he was informed of Morin's previous representation of Applicant and discussed the matter with the Chief Public Defender, but neither of them saw any conflict of interest.

This Court finds that the Applicant has failed to meet his burden of proof as to his claim. This Court, after a review of the record and testimony presented, is confident that the Applicant was aware that the ten year offer had been revoked and he faced a potential sentence of life without parole if he was found guilty at trial. The Applicant failed to demonstrate any deficient behavior on behalf of Counsel and failed to point to any specific matters Counsel failed to discover, or any defenses that could have been pursued had Counsel prepared more. Furthermore, the Applicant failed to show any prejudice that may have resulted from Counsel's alleged inadequate preparation or representation. Accordingly, this allegation is dismissed.

CLERK OF COURT
2013 APR 1
M. HOPPE
Plea: 4

Prosecutorial Misconduct

This Court finds that the Applicant has failed to meet his burden of proof as to this claim. The Applicant claimed that his prior plea offer was revoked based upon prosecutorial misconduct or vindictiveness; however, this Court finds that the Applicant failed to present any evidence or testimony to support this claim. Where there is no presumption of prosecutorial vindictiveness the burden is on the defendant to prove actual vindictiveness. State v. Fletcher, 322 S.C. 256, 471 S.E.2d 702 (Ct. App. 1996). Furthermore, although the Applicant believed that he had accepted a plea offer of ten years, it is established that "a defendant may only enforce an oral plea agreement upon a showing of detrimental reliance." Reed v. Becka, 333 S.C. 676, 688, 511 S.E.2d 396, 402 (Ct. App. 1999). The Applicant failed to demonstrate that he had suffered from any detrimental reliance on the State's prior offer. Therefore, this claim is denied and dismissed.

Due Process Violations

This Court finds that the Applicant has failed to meet his burden of proof as to this claim. The Applicant failed to present any evidence or testimony in support of the claim. Therefore, this claim is denied and dismissed.

Summary

This Court finds in regards to the allegation of ineffective assistance of counsel the Applicant's testimony is not credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the

H. HOPE BURNETT
 2013 APR 12 PM 4:19
 CLERK OF COURT
 HAMBURG COURT

Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that 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 Counsel’s performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

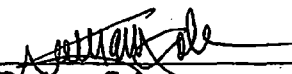
This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel’s assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant’s behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

CLERK OF COURT
SOUTH CAROLINA
2011 APR 22 PM 4:48
MURKIN COUNTY

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

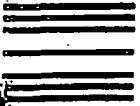
AND IT IS SO ORDERED this 2nd day of April, 2013.



J. Derham Cole
Presiding Judge

CLERK OF COURT
SPRINGFIELD CO. ILL.
2013 APR 12 PM 4:48
M. HOPE SHERMAN

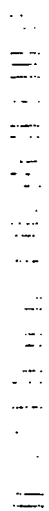
LAZENBY LAW FIRM
PO BOX 6099
SPARTANBURG SC 29304-6099



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THE HONORABLE DANIEL E. SHEARHOUSE
SUPREME COURT CLERK FOR SC
PO BOX 11330
COLUMBIA SC 29211-1330



USA
The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JUL 20 2009

TERM

THE STATE
VS.

Antrown Ithby

RECEIVED
CLERK OF COURT
JUL 27 AM 10:04
MARC MITCHELL

CITY PD

1. SENTENCE WAIVER

2. REPORT ENDED

3. GARD FILED

4. INDEXED

ARREST WARRANT NUMBER

6. CHECKED SIGNATURE

M111314

7. ASSESSMENT FINE CARD NUMBER

8. TRAFFIC VIOLATION COPY

ACTION OF GRAND JURY

True Bill

For person of Grand Jury

Date: 17 Jul 09

VERDICT

Indictment for

ASSAULT AND BATTERY
WITH INTENT TO KILL

SC Code: 16-3-520

CDR Code: 014

Class FEL-CIV

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA

Computer

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG VS. STATE

Antrown A Irby

INDICTMENT/CASE#: 2009GS4203514

A/W#: M111314

Date of Offense: 2/8/2009

S.C. Code §: 16-03-0620

CDR Code #: 0014

AKA: Race: B Sex: M Age: 35

DOB: (75 SS#

Address:

City, State, Zip: Spartanburg, SC 29301

DL#: SID#:

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Assault / Assault and battery with intent to kill (ABWIK)(0-20 years)

CONVICTED OF or PLEADS

in violation of § 16-03-0620 of the S.C. Code of Laws, bearing CDR Code # 0014

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTORNEY: MOVIN, MICHAEL D SC Bar# 65099 Defendant Attorney for Defendant SC Bar# 657

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 15 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. 30

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP

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

Payment Terms: Obtain GED Attend Voc. Rehab. or Job Corp.

Set by SCDPPPS May serve W/E beginning

Recipient: Substance Abuse Counseling

*Fine: Random Drug/Alcohol testing

§ 14-1-206 (Assessments 107.5%) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 36-5-2995 (DLI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$2500

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114(BLUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/en \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$500

§ 44-53-450(C) (Conditional Discharge) \$350 \$

3% to County (if paid in installments) \$590

TOTAL \$185.90

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition

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

Clerk of Court/ Deputy Clerk A. Seaver

Court Reporter: M. Watts

Presiding Judge

Judge Code:

Sentence Date: 2/12/09

CITY PD

[Handwritten Signature]

1. SENTENCE

2. REPORT ENDED

3. CARD FILLED

4. INDEXED

ARREST NUMBER

M11315

6. CHECKED SIGNATURE

7. ASSESSMENT AND FINE CARD MADE

8. TRAFFIC VIOLATION COPY

ACTION OF GRAND JURY

[Handwritten Signature]

Foreperson of Grand Jury

[Handwritten Signature]

VERDICT

Foreperson of Petit Jury
Date:

09-03-42

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JUL 26 2009

TERM

THE STATE

VS.

Antrown lrbj

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)

CDR Code: 139

Class: FEL/A

JUL 27 AM 10:54
MARC KITCHENS

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on Mar. 17 2009 the Grand Jurors of Spartanburg County present upon their oath:

ARMED ROBBERY

That the Defendant, Antrown Irby, did in Spartanburg County, on or about February 8, 2009, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon feloniously take from the person or presence of Larod Windley, by means of force or intimidation goods or monies of Larod Windley, described as follows: cash, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 (A), Code of Laws of South Carolina (1976, as amended).

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

Jacqueline M. [Signature]
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA **Computer**

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
STATE VS.
Antrown A Irby
AKA:
Race: B Sex: M Age: 35
DOB: SS# 2
Address:
City, State, Zip: Spartanburg, SC 29301
DL#: SID#:

INDICTMENT/CASE#: 2009GS4203515
A/W#: M111315
Date of Offense: 2/8/2009
S.C. Code § : 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon (10-30 years)

In violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lowd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury. (defendant's initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
ATTORNEYS: MORIN, MICHAEL D 15094 SC Bar# Defendant A.H. Willis Attorney for Defendant 6257 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 15 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. 30
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

Recipient:
*Fines:
§ 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 \$
Proviso 47.9 (Public Def/Prob) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$25.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 56-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCCA Surcharge) \$5 \$5.00
§ 44-53-450(C) (Conditional Discharge) \$350 \$
3% to County (if paid in installments) \$390
TOTAL \$13390

Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition
 Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk A. Search
Court Reporter: M. Watts
SCCA/217 (06/2010)

Presiding Judge
Judge Code:
Sentence Date: 2/24/11

SPTG PUBLIC SAFETY DEPT

[Signature]

1. SENTENCE MADE

2. REPORTED

3. CARD PULLED

4. INDEXED

ARREST WARRANT NUMBER

6. CHECKED SIGNATURE

M086818

7. ASSESSOR FINE CAR

8. TRAFFIC VIOLATION COPY

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: 8-20-09

VERDICT

Foreperson of Petit Jury

Date:

U.S. BAR
The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

AUG 21 2009

TERM

THE STATE
vs.

ANTROWN A IRBY

Indictment for
POSSESSION OF METHAMPHETAMINE OR
COCAINE BASE

SC Code: 44-53-375

CLERK OF COURT
SPARTANBURG COUNTY

2009 AUG 28 AM 10:56

MARC KITCHENS

STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)


INDICTMENT

At a Court of General Sessions, convened on Aug 21 2009 the
 Grand Jurors of Spartanburg County present upon their oath:

POSSESSION OF METHAMPHETAMINE OR COCAINE BASE

That Antrown A Irby did in Spartanburg County on or about March 26, 2009, possess or attempt to possess a quantity of Methamphetamine or Cocaine Base, a schedule II controlled substance, in violation of § 44-53-375, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.*

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


 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

Computer

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG VS. STATE

INDICTMENT/CASE#: 2009GS4204471

AKA: Antrown A Irby

A/W#: M086818

Race: B Sex: M Age: 35

Date of Offense: 3/26/2009

DOB: L S

S.C. Code §: 44-53-0375 (

CDR Code #: 3009

Address: A

City, State, Zip: Spartanburg, SC 29306

DL#: SID#:

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Drugs / Possession of less than one gram of meth. or cocaine base, 1st (0-3 years)

CONVICTED OF or PLEADS

in violation of § 44-53-0375 (of the S.C. Code of Laws, bearing CDR Code # 3009

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTORNEYS: MCCARTHY, RYAN SC Bar# 6599 Defendant; [Signature] Attorney for Defendant SC Bar# 6257

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 3 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, 30 day. The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-23-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP Total: \$ plus 20% fee: \$

Payment Terms: Set by SCDPPS Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing

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 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$25.00 § 14-1-213 (Drug Court Surcharge) \$150 \$150.00 § 50-21-114 (BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/cn \$ Proviso 90.5 (SCCJA Surcharge) \$5 \$500 § 44-53-450(C) (Conditional Discharge) \$350 \$ 3% to County (if paid in installments) \$8.40 TOTAL \$288.40

Fine may be pd. In equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund

Other: Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge Judge Code: Sentence Date: 2/24/10

Clerk of Court/ Deputy Clerk: M. Watts

Court Reporter: M. Watts

SCCA 117 (6/7/01)