

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

---

RECEIVED

JUL - 2 2012

S.C. Supreme Court

MARCUS DEWAYNE ROBINSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

APPENDIX

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ROBERT M. PACHAK  
Appellate Defender

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

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ATTORNEYS FOR RESPONDENT

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I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

1  
2 THE CLERK: Your Honor, this is indictment  
3 2003-GS-23-6556, Marcus Dewayne Robinson indicted for  
4 trafficking crack cocaine and possession of a weapon  
5 during the commission of or the attempt to commit a  
6 violent crime, pleading to trafficking in crack cocaine  
7 more than 28 grams. It is a true bill.

8 MR. CHAMBERS: Your Honor, he's, actually, not  
9 pleading. He pled prior to this and was sentenced, but  
10 was erroneously sentenced for a second offense. And this  
11 went up on a PCR. And it's now back from the PCR for a  
12 resentencing because it is, in fact, a first offense.

13 THE COURT: I read the case. I remember that one.  
14 It just came through.

15 THE CLERK: Would you like me to swear him in?

16 THE COURT: Yes, please.

17 THE CLERK: Please raise your right hand.

18 WHEREUPON,

19 MARCUS DEWAYNE ROBINSON,  
20 after first having been duly sworn, testified as follows:

21 THE CLERK: Thank you.

22 THE COURT: Mr. Robinson, how old are you, please,  
23 sir?

24 DEFENDANT ROBINSON: 31.

25 THE COURT: Are you married?

1 DEFENDANT ROBINSON: Soon to be, sir.

2 THE COURT: Okay. How far did you go in school?

3 DEFENDANT ROBINSON: Eleventh grade.

4 THE COURT: Where did you attend?

5 DEFENDANT ROBINSON: Southside.

6 THE COURT: What kind of work have you done in your  
7 adult life while you -- since you were out of school?

8 DEFENDANT ROBINSON: Oh, I've done a lot of  
9 construction work, painting, driving heavy machinery, such  
10 as forklifts, snorkel lifts, carpentry, electrician work.  
11 I'm good at accounting.

12 THE COURT: Solicitor, can you give me the facts of  
13 the case, please, sir?

14 MR. GREGORY: May it please the Court.

15 On or about November 6th, 2007 -- or 2002, vice and  
16 narcotics investigators executed a search warrant at the  
17 Defendant's residence at 12 Fairmont Drive in Greenville  
18 County. The search warrant was based on prior drug sales  
19 from the Defendant at the Defendant's residence.

20 While investigators were at the residence, the  
21 Defendant pulled up and had keys on his person to unlock a  
22 safe that had been located in the residence. Inside the  
23 safe, investigators found an uzi, a 40-caliber handgun,  
24 digital scales, and five bags of crack cocaine weighing a  
25 total of 86.58 grams.

1 THE COURT: Mr. Chambers, I'll be glad to hear from  
2 you. And I'll, certainly, be glad to hear from  
3 Mr. Robinson as far as the sentence.

4 MR. CHAMBERS: Your Honor, Marcus is -- I think you  
5 can tell just a little bit from talking to him that he is  
6 a very bright young man. And he just found himself in a  
7 bad situation. He has a little bit of a prior record, but  
8 no prior involvement in drugs. This was just a situation  
9 where he found himself in a tight spot and made a wrong  
10 decision about a way to make some money.

11 And once he was caught, though, he cooperated fully  
12 with law enforcement and has done everything he can, you  
13 know, to -- he's spared them the trouble of going to trial  
14 on this case and pled guilty. He got a substantial  
15 sentence the first time. It was 20 years, which we  
16 believe was based in large part on the fact that -- the  
17 belief that there was a prior drug offense and, also, the  
18 fact that those guns were, supposedly, found present  
19 there.

20 I know that Marcus -- while he has freely  
21 acknowledged that the drugs were his and that he was  
22 engaged in trafficking in crack cocaine at that time,  
23 those weapons did not belong to him. There's no evidence  
24 that he was ever using those weapons or had anything to do  
25 with those weapons, other than they were found in that

1 residence. And I think those had a lot to do with it.

2 He's served almost five years at this point. I can  
3 tell you that he has learned a lot from this. He wants to  
4 get out. He wants to take care of his family. He wants  
5 to be a contributing member of society. And I -- unlike a  
6 lot of people I talk to, I know that he has the potential  
7 to do that. I would ask the Court to take all that into  
8 consideration. And I would ask the Court to consider the  
9 minimum sentence in this case, based on all his  
10 cooperation and everything in the case. I believe that --  
11 and this is what I counseled him that the minimum sentence  
12 in this case would be seven years. And I would ask the  
13 Court to strongly consider that.

14 Thank you, Your Honor.

15 THE COURT: Thank you.

16 Mr. Robinson, anything you want to tell me, sir?

17 DEFENDANT ROBINSON: Sir, that I just really would  
18 like to get out and take care of my family and get a job.  
19 I don't want to have nothing else to do with drugs or  
20 guns. And I just really want to get out and do a job,  
21 work, and take care of my family, and be a productive  
22 citizen. I don't want to have nothing else to do with  
23 nothing else with no drugs or nothing, and so forth.

24 I've learned my lesson. I've seen a lot of people  
25 hurt in the penitentiary. And I ain't trying to go back

1 to the penitentiary and end up getting hurt. That ain't  
2 no place for nobody. I've served a long time there. I  
3 feel like I have learned my lesson.

4 THE COURT: What day did you go to jail?

5 DEFENDANT ROBINSON: 2004, June the 15th.

6 THE COURT: Okay. I understand there was a prior  
7 drug offense in magistrate's court, I think, if I remember  
8 reading the case right.

9 What other prior offenses are there?

10 MR. GREGORY: He has: 1995, two counts of  
11 trespassing; 1998, possession of stolen goods, unlawful  
12 entry, disorderly conduct; and, 2002, failure to stop.

13 THE COURT: Is there any recommendation from the  
14 State?

15 MR. GREGORY: No, Your Honor.

16 THE COURT: This is case 2003-GS-23-6556, the  
17 sentence of the Court is the Defendant be committed to the  
18 State Department of Corrections for a period of 11 years.  
19 He has to be given credit for time served.

20 I wish you the best, Mr. Robinson.

21 \*\*\*\*\*END OF TRANSCRIPT OF RECORD\*\*\*\*\*  
22  
23  
24  
25

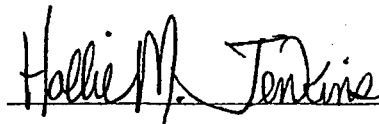
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA        )  
COUNTY OF GREENVILLE        )

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth 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 captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 10th day of March, 2009.

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

April 19, 2010



Hollie M. Jenkins, Court Reporter

My Commission Expires: 11-17-10

STATE OF SOUTH CAROLINA

County of Greenville S.C.

In the Court of Common Pleas

Marcus Robinson 302759  
Full name and prison number (if any) of Applicant,

vs.

State of South Carolina  
Name of Respondent.

2010-CP-23- 2153

APPLICATION FOR  
POST-CONVICTION RELIEF

2010 9 16 AM 11:02

**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. 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 applicant was convicted.

1. Place of detention South Carolina Department of Correction  
Kershaw Correction Inst.
2. Name and location of Court which imposed sentence Greenville County Court  
House of General Session
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
  - (a) 2003G52306556
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
4. The date upon which sentence was imposed and the terms of the sentence:
  - (a) March 10, 2009 / 11 years
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_

5. Check whether a finding of guilt 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?

\_\_\_\_\_ NO \_\_\_\_\_

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

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(c) the date of each such result:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- (a) Because of New Evidenct \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) Because there was no Evident \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) Ineffective Assistance of Counsel \_\_\_\_\_
- (b) Judical Misconduct \_\_\_\_\_
- (c) \_\_\_\_\_

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? yes
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? 1
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? \_\_\_\_\_
- (d) any other petitions, motions or applications in this or any other Court?  
\_\_\_\_\_

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. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. Greenville County Court House (PCR)
- ii. Greenville County Court House (Appeal)
- iii. Greenville County Court House
- iv. \_\_\_\_\_

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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?

NO

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

(a) which grounds have been presented:

- i. PCR
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- 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) N/A
- (b) N/A
- (c) N/A

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

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

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. Dan Farnsworth (Attorney) General Session
- ii. Sue Ann Summery (PCR Attorney)
- iii. Wanda H. Carter (Division of Appellate Defense  
Post Office Box 11689 Columbia S.C. 29211)

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

N/A  
N/A

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

N/A

STATE OF SOUTH CAROLINA

VERIFICATION

County of Greenville

I, Marcus Robinson, 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.

Marcus Robinson

SWORN to and subscribed before me this 11

day of March, 192010.

Catherine A. Amador (L.S.)  
Notary Public

My Commission Expires My Commission Expires December 22, 2010

**APPLICATION TO PROCEED WITHOUT PREPAYMENT 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 therefor.

x Marcus Robinson  
Applicant

SWORN or affirmed to and subscribed before me this

11 day of March, 192010

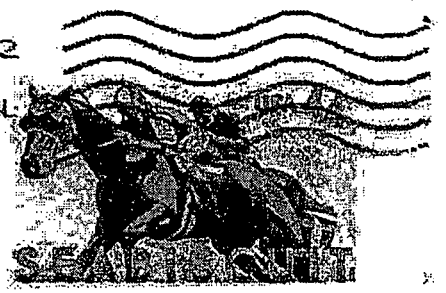
Catherine A. Amador  
Notary Public

My Commission Expires My Commission Expires December 22, 2010

Mercus Robinson  
302759

4848 Gold Mine Hwy.  
Kershaw 29067

COLUMBIA SC 292  
12 MAR 2010 PM 2 L



Clerk of Court  
305 East North Street  
Greenville South Carolina 29601

29601+2121



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2010-CP-23-2153
COUNTY OF GREENVILLE	)	
	)	
Marcus Dewayne Robinson,	)	
S.C.D.C. No. 302759,	)	
	)	
Applicant,	)	
	)	<b>RETURN</b>
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief (PCR) application filed March 16, 2010, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the September 2003 term of General Sessions for trafficking crack cocaine (2003-GS-23-6556, count 1) and possession of a weapon during the commission of a violent crime (2003-GS-23-6556, count 2). Daniel Farnsworth, Esquire represented the Applicant.

On June 15, 2004, the Applicant pled guilty to trafficking crack cocaine (28 or more grams), second offense. The Honorable John C. Few sentenced the Applicant to twenty (20) years imprisonment. The Applicant did not file an appeal.

The Applicant filed a PCR application on April 27, 2005 (2005-CP-23-2742). An evidentiary hearing was held at the Greenville County Courthouse on November 15, 2005. The Applicant was represented by Susannah C. Ross, Esquire. The Honorable D. Garrison Hill

denied relief in an order dated February 6, 2006. The Applicant filed a notice of appeal at the South Carolina Supreme Court ruling. After the Supreme Court granted the Applicant's petition for writ of certiorari, both parties submitted briefs. In an opinion filed November 24, 2008, the Supreme Court reversed Judge Hill's order and remanded for re-sentencing. Robinson v. State, 380 S.C. 201, 669 S.E.2d 588 (2008).

On March 10, 2009, the Applicant appeared in court for re-sentencing. The Honorable G. Edward Welmaker sentenced the Applicant to eleven (11) years imprisonment for trafficking crack cocaine (28 or more grams), first offense. The Applicant did not file an appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the re-sentencing transcript.

## 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.
2. Judicial misconduct.

## 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 and counsel appointed to represent the Applicant.

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

May 28, 2010



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RANDY CHAMBERS

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Cross By Ms. Horlbeck . . . . . 15

There were no exhibits.

» > o < «

Certificate of Reporter . . . . . 16

1 MS. RATIGAN: Your Honor, this is the case of  
2 Marcus Robinson vs. The State of South Carolina, docket  
3 number is 2010-CP-23-2153. It's a bit of lengthy  
4 procedural history. I will just note that it's also  
5 recited in the return if I somehow manage to confuse the  
6 Court.

7 THE COURT: All right.

8 MS. RATIGAN: Mr. Robinson was indicted back in  
9 2003 for trafficking crack cocaine and possession of a  
10 weapon during the commission of a violent crime. At that  
11 point he was represented by Mr. Farnsworth. On June 15th,  
12 2004 he pled guilty to trafficking crack cocaine, 28 or  
13 more grams and a second offense. Judge Few sentenced him  
14 to 20 years, he did not file an appeal. He did file a PCR  
15 application in April of 2005. We had a hearing up here in  
16 November of 2005 before Judge Hill. He was represented by  
17 Susannah Ross. While Judge Hill denied relief in February  
18 of that year, Mr. Robinson filed a notice to appeal, the  
19 issue was briefed and the Supreme Court reversed Judge  
20 Hill's Order and remanded for resentencing. I attached a  
21 copy of that opinion in the record, Your Honor. Basically  
22 the Court found that Mr. Robinson should not have been  
23 sentenced as a second offense. It is, in fact, a true  
24 first offense. That's why he was recommended for  
25 resentencing only.

1                   On March 10th of 2009 he appeared in court for  
2 the resentencing. He was represented at that point by  
3 Mr. Chambers. Judge Welmaker sentenced him to 11 years  
4 for trafficking 28 or more grams, first offense. He did  
5 not file an appeal, he then filed this PCR application.  
6 And it was timely and we're ready to proceed.

7                   THE COURT: Okay.

8                   MS. HORLBECK: And Judge, Mr. Robinson has a  
9 motion for a continuance as well. And I'm going to let  
10 him --

11                  THE COURT: All right.

12                  MS. HORLBECK: -- inform the Court of the  
13 grounds of that.

14                  MR. ROBINSON: I have not received my transcript  
15 at all due to complete studying for my case.

16                  THE COURT: Transcript from what?

17                  MR. ROBINSON: Transcript from sentencing.

18                  THE COURT: Your second sentence, your  
19 resentencing?

20                  MR. ROBINSON: Yes, sir.

21                  THE COURT: Well what led you to believe that  
22 there was -- what new evidence?

23                  MR. ROBINSON: Evidence for sentencing last time  
24 from '09 for me to be resentenced. The Solicitor told the  
25 Judge I had a oozie, which was false.

1 THE COURT: What evidence -- you -- you alleged  
2 that there is new evidence.

3 MR. ROBINSON: That's it. Well there's a little  
4 bit more to it.

5 THE COURT: Well he's also alleged ineffective  
6 assistance of counsel and judicial misconduct. What kind  
7 of judicial misconduct?

8 MR. ROBINSON: The point about the Solicitor  
9 saying that I had a oozie in court during sentencing.

10 THE COURT: That's judicial misconduct?

11 MR. ROBINSON: But when the Judge asked what I'm  
12 being charged with, the Solicitor said trafficking crack  
13 cocaine 28 grams or more.

14 THE COURT: Okay.

15 MR. ROBINSON: Then he said I had a oozie. I  
16 never had a oozie. I never had a oozie.

17 THE COURT: He said that to who?

18 MR. ROBINSON: To the Judge during sentencing.

19 THE COURT: Well let's take a look.

20 MS. HORLBECK: Judge, I'm assuming the Court's  
21 denying his motion for a continuance?

22 THE COURT: I hadn't seen a good reason to  
23 continue it.

24 MS. HORLBECK: Okay, should I put him on the  
25 stand? I just have a few questions.

1 THE COURT: Okay, put him on the stand.

2 MS. HORLBECK: Judge, we'd call Mr. Marcus  
3 Robinson.

4 THE COURT: All right.

5 THE CLERK: Mr. Robinson, walk over here to the  
6 Bible. Place your left hand on the Bible, raise your  
7 right hand.

8 MARCUS ROBINSON, after being duly sworn,  
9 testified as follows:

10 THE CLERK: Thank you, you may be seated. State  
11 your name for the record.

12 THE WITNESS: Robinson Marcus [sic].

13 DIRECT EXAMINATION

14 BY MS. HORLBECK:

15 Q Mr. Robinson, how much of your sentence did you serve  
16 before you were resentenced?

17 A Five years.

18 Q Okay. And who -- what was the name of the attorney  
19 that represented you at your resentencing?

20 A Randy Chambers.

21 Q Mr. Robinson, what was your understanding of what you  
22 were charged with originally?

23 A Well --

24 Q I don't mean originally but when you came back for  
25 resentencing, what was your understanding of the

- 1 charge?
- 2 A Zero to 28 grams, first offense.
- 3 Q Did you speak to Mr. Chambers about that charge?
- 4 A Yes.
- 5 Q Did you speak to him about what the sentence -- what  
6 the possible sentence was for that?
- 7 A He told me I would receive time served. Because I  
8 already served five years.
- 9 Q All right. But did he tell you what the minimum  
10 sentence on a trafficking crack, zero to 28 grams,  
11 first offense?
- 12 A Three years.
- 13 Q Okay. And he told you what about time served?
- 14 A He told me I would get time served for the charge.  
15 When I went to court on March the 10th he would get  
16 me time served.
- 17 Q Okay. And did he -- did you and he speak again about  
18 your charge?
- 19 A On the March 10th, time to go to court.
- 20 Q Okay. And what -- what did he tell you that day  
21 about your charge?
- 22 A He come back that day and told me I had more grams  
23 than what was said on the paper.
- 24 Q All right. Was it 28 to 100 grams, first offense?
- 25 A Yes.

1 Q All right. And did he discuss with you the minimum  
2 sentence of that?

3 A No, he just told me I done -- what time in the  
4 penitentiary, in the Department of Corrections, I  
5 would still be received time served.

6 Q All right. Did he tell you the minimum sentence was  
7 seven years on that?

8 A He never told me.

9 Q All right. And he told you you were still eligible  
10 for time served?

11 A Yes.

12 Q Okay. Based on that advice what -- or based on that,  
13 what Mr. Chambers said about time served, what did  
14 you do?

15 A I was ready to go, get time served.

16 Q All, right. Okay. When did you find out that the  
17 minimum sentence you could receive was seven?

18 A Afterwards. After court and everything was over  
19 with.

20 Q All right. And what -- what is it you feel that  
21 Mr. Chambers did wrong?

22 A He basically lied.

23 Q Okay. About what?

24 A About time. About me getting time served. You know,  
25 about telling me that come on, we can go on into

1 court right now and I got you time served. I was  
2 like, okay then, let's go.

3 Q And what did the Judge sentence you to?

4 A Judge sentenced me to 11 years.

5 Q All right. Tell the Court about the problem you had  
6 with the gun?

7 A Yes, the gun was, you know, I feel like -- and I know  
8 it's true because when the Solicitor -- when the  
9 Judge got through listening to the Solicitor he asked  
10 what's Mr. Robinson being charged for? The Solicitor  
11 said 28-grams to 100 grams. And he had a oozie.  
12 Everybody facial expression changed like...

13 Q Did the Solicitor read that as a part of their facts?

14 A No.

15 Q Okay. Did Mr. Chambers object?

16 A No, he didn't say nothing.

17 MS. HORLBECK: All right, please answer any  
18 questions that Ms. Ratigan may have for you.

19 CROSS-EXAMINATION

20 BY MS. RATIGAN:

21 Q But when you originally pled guilty back in 2004, it  
22 was for 28 or more grams, wasn't it?

23 A True.

24 Q So you thought in addition to being resentenced the  
25 State was also dropping it down to the lower level?

1 A I thought been reweighed or something.

2 Q And did--

3 THE COURT: Let me just say that the State only  
4 acted pursuant to the Order of the Supreme Court of the  
5 State of South Carolina. I don't think they have any  
6 authority to change the charge.

7 But I'm sorry to interrupt you, Ms. Ratigan.  
8 Okay.

9 BY MS. RATIGAN:

10 Q So Mr. Chambers told you you're going to get time  
11 served?

12 A Yes, ma'am.

13 Q Did he actually tell you that was the recommendation?  
14 Did he tell you that's what the State would say?

15 A Yes, that's what he said. That you're going to get  
16 time served today.

17 Q So when the State during the plea said there was no  
18 recommendation, that was a surprise?

19 A Yes.

20 Q Well why didn't you say something at the time that  
21 you thought that there was a recommendation of time  
22 served?

23 A No, I ain't know nothing -- I don't know nothing  
24 about the courts like that. But he still told me  
25 that there was a good chance that we would get time

1 served. That's all he was talking about. He was  
2 talking to the Judge -- he was talking to the Judge,  
3 I think, before that and after that.

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

5 MS. HORLBECK: Nothing further.

6 EXAMINATION

7 BY THE COURT:

8 Q Do you understand, Mr. Robinson, that you were  
9 successful in your first PCR. And The Supreme Court  
10 found that your plea to this charge was voluntary the  
11 first time around. But that they improperly enhanced  
12 your sentence with an uncounseled prior drug  
13 conviction.

14 A Yes, sir.

15 Q The Supreme Court found we're not vacating the plea  
16 but send him back and get him sentenced as a first  
17 offense?

18 A Yes.

19 Q Okay.

20 A Yes.

21 Q It's not like the State could change the charge or do  
22 anything. Do you understand that?

23 A I understand what you just said, yes.

24 Q Okay. All right. You can step down.

25 THE COURT: Anything else?

1 MS. HORLBECK: No, sir.

2 MS. RATIGAN: We call Mr. Chambers, Your Honor,  
3 briefly.

4 THE COURT: Very briefly.

5 RANDY CHAMBERS, after being duly sworn,  
6 testified as follows:

7 THE CLERK: State your name for the record.

8 THE WITNESS: My name is Randall Lee Chambers.

9 DIRECT EXAMINATION

10 BY MS. RATIGAN:

11 Q Mr. Chambers, were you appointed in this case or were  
12 you retained?

13 A Appointed.

14 Q And what was the purpose of your appointment in this  
15 case?

16 A To stand up with Mr. Robinson during sentencing.

17 Q Did you ever tell Mr. Robinson that he would receive  
18 time served?

19 A No. He couldn't get time served. He had served  
20 approximately five years. The least he could get on  
21 the charge was seven years. I indicated -- I was  
22 just looking through the record and I indicated in  
23 the record that the -- let's see on page six, I  
24 indicated, I said, I believe that this is what I have  
25 counseled him, that the minimum sentence in this case

1 would be seven years. And I would ask the Court to  
2 strongly consider that.

3 Now perhaps what I did tell Mr. Robinson was  
4 given the fact that he had already served five years,  
5 that even with this being a violent felony and him  
6 having to serve 85 percent of that, that if we could  
7 get the minimum sentence of seven years, he would  
8 have come pretty close to satisfying that sentence.  
9 So he wouldn't have to serve much more.

10 Q Would you have told Mr. Robinson that he would  
11 receive a credit for the time he had already served?

12 A I would have told him that.

13 Q Did you advise him whether or not there was a  
14 recommendation?

15 A I don't believe I did. There was no recommendation  
16 so I wouldn't have had any reason to tell him that.  
17 And, you know, the bottom line was we didn't have any  
18 choice of what was going to take place. He had  
19 already entered a plea of guilty and the Court was  
20 going to sentence. I mean, he had no decision to  
21 make. He was just going to walk out and he was going  
22 to get sentenced.

23 Q Was there, in your opinion, any reason to object to  
24 the State mentioning the oozie?

25 A Well, I mean, I don't have any legal basis to object

1 to anything that somebody says in a sentencing. I  
2 did comment on it. I said, I know that Marcus, while  
3 he has freely acknowledged that the drugs were --  
4 that the drugs were his and he was engaged in  
5 trafficking cocaine at that time, those weapons did  
6 not belong to him. There's no evidence that he was  
7 ever using those weapon or had anything to do with  
8 those weapons. Other than they were found in that  
9 residence. And I think those had a lot to do with  
10 it.

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

12 THE COURT: Cross.

13 CROSS-EXAMINATION

14 BY MS. HORLBECK:

15 Q Mr. Chambers, Mr. Robinson was brought before Judge  
16 Welmaker for the resentencing hearing, is that  
17 correct?

18 A That appears to be true, yes.

19 Q Did you attempt to move that sentencing hearing so  
20 that it would be in front of another Judge?

21 A No.

22 Q All right. Was that the first that Mr. Robinson had  
23 been brought up for his hearing or was that the  
24 second or third time?

25 A You know, I don't recollect but I assume it was the

1 first time.

2 Q Okay. All right. And he wasn't pleading to -- or  
3 well he wasn't pleading to the gun charge nor was he  
4 being resentenced on the gun charge, is that true?

5 A That is absolutely true.

6 MS. HORLBECK: That's all I have, thank you.

7 THE COURT: Anything further?

8 MS. RATIGAN: Nothing further and the State  
9 would rest, Your Honor.

10 THE COURT: Thanks.

11 Okay, I'm going to deny the petition. I find  
12 that there is no evidence to show that Mr. Chambers'  
13 conduct fell below an objective standard of reasonableness  
14 in this case. And therefore, no prejudice.

15 MS. RATIGAN: I'll draft the Order, Your Honor.

16 THE COURT: Thank you, very much.

17 (WHEREUPON, the proceedings were concluded.)

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Marcus Dewayne Robinson, )  
 S.C.D.C. No. 302759, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 C.A. No. 2010-CP-23-2153

FILED  
 GREENVILLE COUNTY  
 COURT  
 2011 NOV 29 PM 12:22

**ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 16, 2010. The Respondent made its return on May 28, 2010. An evidentiary hearing into the matter was convened on November 9, 2011 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's counsel at his re-sentencing hearing, Randall L. Chambers, Esquire. The Court had before it the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the Respondent's return, the prior PCR records, and the transcript of the re-sentencing hearing.

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Greenville County Grand Jury indicted the Applicant at the September 2003 term of General Sessions for

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trafficking crack cocaine (2003-GS-23-6556, count 1) and possession of a weapon during the commission of a violent crime (2003-GS-23-6556, count 2). Daniel Farnsworth, Esquire represented the Applicant.

On June 15, 2004, the Applicant pled guilty to trafficking crack cocaine (28 or more grams), second offense. The Honorable John C. Few sentenced the Applicant to twenty (20) years imprisonment. The Applicant did not file an appeal.

The Applicant filed a PCR application on April 27, 2005 (2005-CP-23-2742). A hearing was held at the Greenville County Courthouse on November 15, 2005. The Honorable D. Garrison Hill denied relief in an order dated February 6, 2006. The Applicant filed a notice of appeal at the South Carolina Supreme Court. In an opinion filed November 24, 2008, the Supreme Court reversed Judge Hill's order and remanded for re-sentencing on the trafficking charge. Robinson v. State, 380 S.C. 201, 669 S.E.2d 588 (2008).

On March 10, 2009, the Applicant appeared in court for re-sentencing. He was represented at that hearing by Randall L. Chambers, Esquire. The Honorable G. Edward Welmaker sentenced the Applicant to eleven (11) years imprisonment for trafficking crack cocaine (28 or more grams), first offense. The Applicant did not file an appeal.

#### ALLEGATIONS

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

1. Ineffective assistance of counsel.
2. Judicial misconduct.

#### 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 evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006).

The Applicant stated he believed that he was going to be re-sentenced to trafficking crack cocaine (0-28 grams), first offense even though he acknowledged his original guilty plea was for the weight of 28-100 grams. The Applicant stated counsel told him that, as he had already served five (5) years, he would receive time-served. The Applicant stated he spoke to counsel again on the day of the re-sentencing hearing and counsel told him that, while he would be pleading guilty to trafficking crack cocaine (28-100 grams), he would still be sentenced to time-served. The Applicant stated he was surprised when the State informed the judge there was no recommendation.

Counsel testified he never told the Applicant he would receive a sentence of time-served.

Counsel testified the Applicant could not have received a time-served sentence because the minimum sentence was seven (7) years. Regardless, counsel testified he would have advised the Applicant that he would receive credit for the time he had served. Counsel testified he advised the Applicant there was no sentence recommendation from the State.

Regarding the Applicant's claim 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 counsel's testimony is credible. This Court finds counsel would not have advised the Applicant that he would receive a sentence of time-served because, while the Applicant had served five (5) years on this charge, the mandatory minimum sentence he could receive was seven (7) years. Rather, this Court finds counsel advised the Applicant that he would receive credit for the five (5) years he had already served. This Court notes there was no sentence recommendation from the State<sup>1</sup> and that counsel had explained to the Applicant that he was pleading guilty without a recommendation.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. 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 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

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<sup>1</sup> Transcript, p.4.

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 sentencing proceeding. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. 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 20 day of December, 2011.



Edward W. Miller  
Presiding Judge  
Thirteenth Judicial Circuit

                    , South Carolina.

WITNESSES

FURRH

*Perronis*

GCSO

06/05/03

ARREST WARRANT NUMBER

G803156

G 803157

ACTION OF GRAND JURY  
TRUE BILL

*Russell Perronis*

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2003-GS-23- 006556  
AOF

The State of South Carolina

*6000*  
County of Greenville

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2003

THE STATE

vs.

MARCUS DEWAYNE ROBINSON

*(Handwritten mark)*

JUN - 1 2004

ENDED

PLEAD GUILTY

*Chonka*  
0392  
0548

Indictment for

TRAFFICKING CRACK COCAINE AND  
POSSESSION OF A WEAPON DURING THE  
COMMISSION OF OR THE ATTEMPT TO  
COMMIT A VIOLENT CRIME  
VIOLATION § 44-53-375  
§ 16-23-490

ENTERED  
ACCT. 10

*225*

STATE OF SOUTH CAROLINA     )  
                                           )  
 COUNTY OF GREENVILLE        )                   INDICTMENT FOR  
                                           )                   TRAFFICKING CRACK COCAINE AND POSSESSION  
                                           )                   OF A WEAPON DURING THE COMMISSION OF OR  
                                           )                   THE ATTEMPT TO COMMIT A VIOLENT CRIME

At a Court of General Sessions, convened on           SEPTEMBER 16, 2003           the  
 Grand Jurors of Greenville County present upon their oath:

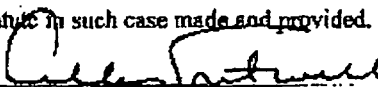
**COUNT ONE- TRAFFICKING CRACK COCAINE**

That MARCUS DEWAYNE ROBINSON did in Greenville County, on or about the 6th day of  
 November, 2002, knowingly sell, manufacture, deliver or bring into the State of South Carolina or did  
 knowingly provide financial assistance or otherwise aid, abet or conspire to sell, manufacture, deliver or  
 bring into the State or was knowingly in actual or constructive possession of more than 28 grams of crack  
 cocaine. This is in violation of §44-53-375 of the South Carolina Code of Laws (1976) as amended.

**COUNT TWO- POSSESSION OF A WEAPON DURING THE COMMISSION OF OR THE  
 ATTEMPT TO COMMIT A VIOLENT CRIME**

That MARCUS DEWAYNE ROBINSON did in Greenville County, on or about the 6th day of  
 November, 2002, possess or visibly display a Handgun during the commission or attempted commission  
 of a violent crime, to wit: Trafficking Crack Cocaine. This is in violation of §16-23-490 of the South  
 Carolina Code of Laws (1976) as amended.

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

  
 SOLICITOR