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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County

Honorable J. Cordell Maddox, Circuit Court Judge

ROBERT JOSEPH HELRIGEL, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002407

APPENDIX

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State of South Carolina	)	Court of General Sessions
	)	Eleventh Judicial Circuit
County of Lexington	)	Case No. 2022-GS-32-02541
	)	Case No. 2022-GS-32-02543
	)	Case No. 2022-GS-32-02544
	)	
	)	
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
	)	
Robert J. Helrigel, Jr.	)	
	)	
Defendant.	)	
	)	

September 29, 2022
Lexington, South Carolina

B E F O R E:

The Honorable Walton J. McLeod IV, Judge

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

Kelly Opponheimer, Esquire
Attorney for the Plaintiff/State

Robert T. Williams, Sr., Esquire
Attorney for the Defendant

Proceedings taken down electronically

Transcribed by:
Krystal J. Smith
Official Circuit Court Reporter III

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Presented)

COURT REPORTER LEGEND

dashes	--	intentional or purposeful interruption
		or change in thought
ellipses	. . .	trailing off
[ph]		phonetically written
[sic]		written as said
[inaudible]		unable to hear or understand due to
		audio volume or quality

1 SEPTEMBER 29, 2022

2 (WHEREUPON, the proceedings began at 12:14 p.m.)

3 GUILTY PLEA

4 MS. OPPENHEIMER: Your Honor, we have 2022-GS-32-02541,
5 the State versus Robert Joseph Helrigel, Jr., indicted for
6 trafficking methamphetamine, 400 grams or more, pleading to
7 trafficking methamphetamine between 28 and 100 grams. That
8 indictment has been true-billed.

9 2022-GS-32-02543, the State versus Robert Joseph
10 Helrigel, Jr., indicted for possession with intent to
11 distribute fentanyl, pleading as charged. That indictment has
12 been true-billed.

13 And 2022-GS-32-02544, the State versus Robert Joseph
14 Helrigel, Jr., indicted for possession of a weapon during the
15 commission of a violent crime, pleading as charged. That
16 indictment had been true-billed and being represented by Mr.
17 Williams.

18 THE CLERK: Please raise your right hand. Do you swear
19 or affirm the testimony you give the Court is the truth, the
20 whole truth, and nothing but the truth, so help you God?

21 THE DEFENDANT: Yes.

22 THE CLERK: Thank you.

23 THE DEFENDANT: I mean, usually I say Your Honor, but
24 yes, whatever title it is respectfully.

25 THE COURT: Thank you.

1 All right. Mr. Williams, have you discussed this with
2 your client?

3 MR. WILLIAMS: I have, Your Honor.

4 THE COURT: And he's aware of the nature of the charges
5 and the potential punishments?

6 MR. WILLIAMS: He is, Your Honor.

7 THE COURT: And he's indicated a desire to plead guilty
8 to these charges today?

9 MR. WILLIAMS: He has, Your Honor.

10 THE COURT: It's my understanding this is a negotiated
11 sentence in terms of range.

12 MR. WILLIAMS: It is, Your Honor.

13 THE COURT: Mr. Helrigel, did I pronounce that correctly?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: All right. The charge of trafficking
16 methamphetamine here carries a potential sentence of between 7
17 and 25 years. Do you understand that?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: It also has a fine?

20 MS. OPPENHEIMER: That's correct, Your Honor.

21 THE COURT: Okay. Of \$50,000. Do you understand that?

22 THE DEFENDANT: A possible fine or the fine is 50,000?

23 THE COURT: I mean, the fine is part of the gig.

24 MR. WILLIAMS: If it is, they don't necessarily get the
25 money once you do the time, but that is a possible fine.

1 THE DEFENDANT: I don't have it, Your Honor.

2 THE COURT: You don't -- I don't think you need to be
3 worrying about fines right now.

4 MR. WILLIAMS: No.

5 THE COURT: I'm just required to tell you that.

6 THE DEFENDANT: Yeah. Just --

7 THE COURT: Okay. The charge of possession with intent
8 to distribute fentanyl carries a potential sentence of up to
9 15 years. Do you understand that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And the charge of possession of a weapon
12 during a violent crime carries a potential sentence of up to 5
13 years. Do you understand that?

14 THE DEFENDANT: I understand that. The only thing I got
15 a question, like --

16 MR. WILLIAMS: Wait, wait.

17 THE COURT: I will -- I'm going to let you and your
18 lawyer speak. I just want to know if you understand --

19 THE DEFENDANT: Yes, I understand.

20 THE COURT: -- what you're being charged.

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Now, you understand you have a right to
23 remain silent, but you give up that right in order to plead
24 guilty?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: You understand you have a right to a jury
2 trial where your attorney can assert defenses on your behalf
3 and confront the State's witnesses, and the State would have
4 to prove their case against you beyond a reasonable doubt?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: But by pleading guilty today, you're giving
7 up those jury trial rights?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Now, have you discussed -- discussed these
10 cases with your attorney?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Has your attorney answered all of your
13 questions?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Are you satisfied with your attorney's
16 services?

17 THE DEFENDANT: Yes, Your Honor. I'm --

18 THE COURT: Okay.

19 THE DEFENDANT: -- very satisfied with his services.

20 THE COURT: Do you understand that the charge of
21 trafficking methamphetamine is a violent and serious offense
22 under South Carolina law?

23 THE DEFENDANT: Now. I didn't. Beforehand, I didn't
24 understand it was violent. I was only, you know, questioning
25 that.

1 THE COURT: Okay.

2 THE DEFENDANT: Me, honestly, I'm not a violent person,
3 and --

4 THE COURT: Right.

5 THE DEFENDANT: -- I'm being locked up with violent
6 people, people getting stabbed, and I'm, you know --

7 THE COURT: Let me just --

8 THE DEFENDANT: All right.

9 THE COURT: -- finish this part. I'm going to let you
10 speak --

11 THE DEFENDANT: Okay. Yes, sir.

12 THE COURT: -- at length.

13 THE DEFENDANT: Okay.

14 THE COURT: As long as you understand that the State of
15 South Carolina --

16 THE DEFENDANT: I understand that.

17 THE COURT: -- classifies it --

18 THE DEFENDANT: Yes, Your Honor, I know.

19 THE COURT: -- as a violent, serious offense. And it's
20 85?

21 MR. WILLIAMS: Yes, sir, 85 percent.

22 THE COURT: It's an 85 percent offense. Do you
23 understand that, Mr. Helrigel?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: All right. Now, on the charge of trafficking

1 methamphetamine, how do you plead?

2 THE DEFENDANT: Guilty.

3 THE COURT: And on the charge of possession with intent
4 to distribute fentanyl, how do you plead?

5 THE DEFENDANT: Guilty.

6 THE COURT: On the charge of possession of a weapon
7 during a statutory violent crime, how do you plead?

8 THE DEFENDANT: Possession of a weapon? Guilty.

9 THE COURT: Okay. Are you entering these pleas freely
10 and voluntarily?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Okay. Are you doing this knowingly and
13 intelligently?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: All right. Is anyone forcing you,
16 threatening you, or coercing you into pleading guilty?

17 THE DEFENDANT: If you consider, you know, threatening me
18 with 30 years of my life as a threat, then possibly, but no,
19 Your Honor. I guess I know what I'm accepting.

20 THE COURT: Okay. You're not being forced to do this?

21 THE DEFENDANT: No, I'm not being forced.

22 THE COURT: You're doing this voluntarily; correct?

23 THE DEFENDANT: Yes, I'm doing it voluntarily.

24 THE COURT: Okay. With the exception of the negotiated
25 range of sentence, has anyone offered or promised you anything

1 in exchange for pleading guilty today?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: Okay. You have ten days to appeal this plea,
4 but you must do so in writing to this Court. Do you
5 understand that?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: All right. Madam Solicitor?

8 MS. OPPENHEIMER: Thank you, Your Honor. May it please
9 the Court.

10 In exchange for the plea today, we have negotiated a
11 sentencing range of 15 to 20 years. We've also agreed to
12 lower the trafficking methamphetamine, 400 grams or more, to
13 the trafficking methamphetamine, 28 grams to 100 grams, first
14 offense.

15 We are also dismissing a possession with intent to
16 distribute marijuana, first -- first offense, possession of
17 other controlled substance, first offense, and an unlawful
18 carrying of a pistol.

19 FACTS

20 MS. OPPENHEIMER: As to the facts, Your Honor, on April
21 4th of this year, while in the 100 block of River Road, which
22 is in the Columbia area of Lexington County, the defendant was
23 pulled over by a deputy with the Lexington County Sheriff's
24 Department for suspected DUI and suspected for committing
25 numerous traffic violations, Your Honor, including crossing

1 over that fog line. This was in the middle of the night,
2 early morning, Your Honor.

3 Law enforcement did pull Mr. Helrigel's vehicle over. He
4 was driving. His pregnant girlfriend was in the passenger
5 seat. As law enforcement approached the vehicle and Mr.
6 Helrigel rolled his window down, there was a very strong odor
7 of marijuana coming from the vehicle. They ran Mr. Helrigel's
8 information and determined that his license was suspended for
9 DUI, Your Honor.

10 Because of that, Mr. Helrigel was removed from the
11 vehicle and detained, and law enforcement did a probable cause
12 search of the vehicle. At the defendant's feet on the
13 floorboard of the driver's side of the vehicle, there was a
14 red Nike shoe box and a black backpack. Inside of the shoe
15 box was 589.13 grams of methamphetamine, 92.3 grams of
16 fentanyl, marijuana, over 36 different pills, all of which
17 came back as either amphetamine, Klonopin, oxys, just various
18 different controlled substances, Your Honor.

19 There were -- there was quite a large amount of cash in
20 the vehicle, small plastic baggies indicating that the
21 defendant was distributing illegal narcotics, and there were
22 two weapons found in the vehicle as well, Your Honor. In that
23 black backpack, there was a Kal Tec Sub 2000 and a Glock .22
24 pistol. Your Honor, law enforcement ran both of those serial
25 numbers through NCIC, and both did come back as stolen.

1 Your Honor, as the defendant was being placed into the
2 deputy's patrol vehicle, he did make the spontaneous statement
3 that his girlfriend had absolutely nothing to do with anything
4 found in the vehicle, and that it was all his.

5 Your Honor, Senior Investigator Nick McMillan with the
6 Lexington County Sheriff's Department Narcotics Enforcement
7 Team is present and would like to be heard at the appropriate
8 time on sentencing. Obviously -- well, I'll be heard on
9 sentencing at the later time as well, Your Honor.

10 THE COURT: Okay. Now, Mr. Helrigel, did you hear the --
11 did you hear the State's allegations?

12 THE DEFENDANT: Yes, Your Honor, I heard them.

13 THE COURT: Did you understand everything she was saying
14 --

15 THE DEFENDANT: I understood.

16 THE COURT: -- about the allegations?

17 THE DEFENDANT: It wasn't all accurate, but I understand
18 it.

19 THE COURT: Okay. Well, as to the general nature of the
20 allegations regarding trafficking, possession of the fentanyl,
21 and possession of the weapon, do you agree with them?

22 THE DEFENDANT: Oh, yes, Your Honor.

23 THE COURT: All right.

24 THE DEFENDANT: I know what you're saying. Yes, Your
25 Honor.

FINDINGS/ACCEPTANCE OF PLEAS

THE COURT: Okay. I'll accept the pleas. I find there's a substantial factual basis for the pleas. The defendant's decision to enter the pleas has been freely, voluntarily, knowingly, and intelligently made. He's had the advice and counsel of a competent attorney with whom which he's satisfied.

All right. So some law enforcement?

MS. OPPENHEIMER: Yes, Your Honor, and I'd like to be heard on sentencing as well.

THE COURT: Okay.

MS. OPPENHEIMER: Would you like to hear from me first and then Investigator McMillan?

THE COURT: Sure. Yeah.

MS. OPPENHEIMER: Your Honor, obviously, we took into account the defendant's minimal prior record when making our offer. The State's concern is this very large quantity of methamphetamine, but also the fentanyl.

As Your Honor is aware, the fentanyl overdose death rate has just skyrocketed in Lexington County throughout really this past year and really since 2020. It's -- it is becoming a very big problem in this county. 1.3 nanograms is considered a lethal dose of fentanyl.

THE COURT: Uh-huh.

MS. OPPENHEIMER: Which is about a grain of salt, Your

1 Honor. The fact that this defendant had such a large quantity
2 of such a lethal substance in his possession that he did claim
3 ownership of is very concerning for the State. We believe
4 that somewhere on the upper range of that 15 to 20 years would
5 be more than appropriate in this case, given that he was
6 facing a mandatory 25-year sentence on the methamphetamine
7 charge alone.

8 And I will turn it over to Investigator McMillan, if Your
9 Honor is ready to hear from him.

10 THE COURT: That's fine. Investigator?

11 INV. MCMILLAN: Hello, Your Honor.

12 THE COURT: Hello.

13 INV. MCMILLAN: My name is Investigator McMillan with
14 Lexington County Sheriff's Department.

15 During the course of the investigation, we did give Mr.
16 Helrigel a chance to cooperate, which he failed to do so on
17 his own. When he made bond, he continued his line of behavior
18 and, as you can see, he is currently in jail in Richland
19 County for the same type of offenses, and the State would
20 request a high year amount, Your Honor.

21 THE COURT: Okay.

22 THE DEFENDANT: With all due respect, Your Honor --

23 THE COURT: Wait, wait, wait. He's going. No.

24 THE DEFENDANT: I apologize. I apologize.

25 THE COURT: Okay. All right. Solicitor, anything else

1 for now?

2 MS. OPPENHEIMER: That would be all from the State, Your
3 Honor.

4 THE COURT: All right. Mr. Williams?

5 MITIGATION

6 MR. WILLIAMS: Your Honor, he's 39 years of age. The way
7 this stop went down, it was -- it was your typical traffic
8 stop. Smell the marijuana. You hear them a million times.
9 And that gave him the probable cause. Didn't have -- didn't
10 have the driver's license with him. Driver's license. And
11 you heard all that. When he smelled the marijuana, Your
12 Honor, that probably gave him the probable cause to go through
13 the car, which is what I was trying to indicate.

14 THE COURT: Okay.

15 MR. WILLIAMS: But there was somebody else in the car
16 with him, and that was obviously his girlfriend, who was
17 pregnant at the time. He -- he has a five-month-old child
18 now.

19 THE COURT: Okay.

20 MR. WILLIAMS: And I don't know what influence other
21 parties have on you, but I will tell you this, that as soon as
22 he was arrested, he was -- and saw that he was -- that people
23 were going to jail, he immediately claimed ownership of all of
24 the drugs. Somebody else who could have been charged would
25 have been his fiancée, obviously, in this particular case, but

1 he claimed ownership of all of those drugs because he was.
2 Both of them could have been in possession of the drugs, Your
3 Honor, but he claimed ownership of all of the drugs.

4 Judge, he's -- you can probably tell -- maybe you can't
5 tell. Robert is -- is -- is an interesting guy. He's -- he
6 might have a few impulse control problems with him, but I will
7 tell you this, that he is -- he's -- he's very precise. He
8 tends to tell the truth a lot, and he -- if he ever says
9 anything -- if he ever says anything, he doesn't do it out of
10 disrespect. So you may -- you may have heard him talking to
11 you like that.

12 He had -- he had a terrible accident several years ago,
13 and he had some -- he had some brain issues, I guess, and he
14 suffered PTSD, but -- but he knows -- he knows exactly what
15 he's doing here. I spent some time talking to him back there.
16 I know Your Honor knew I spent some time talking to him, and
17 he's -- he's clearly entering this freely, and he is -- he's
18 -- he's owning up to what he's guilty of, and that is those
19 drugs in the car.

20 The thing which he doesn't -- which he doesn't have an
21 understanding of yet, but I'm sure he will, is he's only
22 spent, like, four months in jail throughout his entire life.
23 He is -- he's -- he's in Richland County now, which is not the
24 best place to be, and he's spent some time in jail now and
25 he's going to learn what that feels like. Hopefully, he'll go

1 to R&E. I think he will immediately after this.

2 But -- but I respect his honesty. I wish he didn't have
3 the drugs with him, and I'd ask the Court actually to listen
4 to his father a little bit because of -- he -- I think things
5 changed for him. I've talked to his father and he -- Robert
6 doesn't know I'm probably going to talk about this is he's
7 kind of changed since his mama died, but that has had an
8 influence on him, and I ask Your Honor to listen to his
9 father, who knows him way better than I do.

10 THE COURT: Yes, sir. If you can just come on up closer.

11 THE OFFICER: The first thing you're going to do is
12 you're going to tell him your name. Okay?

13 MR. ROBERT HELRIGEL SR.: Okay. My name is Robert
14 Helrigel. I love my son. He took -- my wife died in 2014. I
15 have four kids, and he's taken it the hardest and kind of -- I
16 guess, I didn't have everything I could to kind of keep him
17 square.

18 And he's not really -- he's not a violent person. He
19 does have a temper, but he's a good person and he'll do
20 anything for people. And people he hung around with,
21 unfortunately, he did a lot of good things for them, including
22 this girlfriend, and it hurt him.

23 And I just ask the Court for any kind of mercy that you
24 can give this man so that in a decent amount of time, maybe he
25 can see his child and my grandson. Thank you, Your Honor.

1 THE COURT: Thank you.

2 MR. WILLIAMS: Thank you, sir.

3 Judge, I don't think I have anything else other than
4 that. I think --

5 Yes, you can, and he's going to ask you if you would like
6 to speak in a second.

7 THE DEFENDANT: Okay.

8 MR. WILLIAMS: So I think -- I think the client, the
9 defendant, Robert, wants to speak.

10 THE COURT: All right. Yes, sir?

11 THE DEFENDANT: I'm not a violent person, Your Honor. I
12 just want to make it home to see my son in a reasonable time,
13 be able to contribute to his life. Since I caught the charge
14 in April, I actually got a job. I wasn't partaking in no
15 illegal activities.

16 The recent charge in Richland County, somebody actually
17 -- my son's mother stole my car. The drugs in the car was her
18 and her boyfriend's drugs, the same people that called the
19 police on me after they stole my two vehicles.

20 THE COURT: Okay.

21 THE DEFENDANT: Since -- since I've been out, I've been
22 working at Aqua Care trying to -- all I've been doing is going
23 to work and seeing my son afterwards. I haven't been
24 trafficking anything. The initial charge I'm pleading guilty
25 to, I accept that. That was my fault, but the new charge, I

1 wasn't out here doing that. That was their charge, honestly.

2 THE COURT: Okay.

3 THE DEFENDANT: I just want to make it home in a
4 reasonable time to see my son, if possible.

5 THE COURT: I believe you on that.

6 MS. OPPENHEIMER: Your Honor, I'm sorry. If I may, just
7 very briefly, just with regards to the Richland County charge,
8 obviously, we thought we were coming today for a motion to
9 revoke bond on those new charges. I'm not going to go into it
10 very in detail, but a nurse did witness the defendant place
11 the cocaine -- the 400 grams or more of cocaine and a gun in a
12 trashcan at the doctor's office. So we would obviously
13 dispute anything that he said that they were not his.
14 However, that is Richland County's issue, not ours.

15 THE COURT: Okay. Yeah.

16 MS. OPPENHEIMER: And with regards to his girlfriend,
17 she's never been charged with selling. She is a drug addict.
18 She's been charged with possession, very low quantities of
19 possession.

20 THE COURT: Okay.

21 MS. OPPENHEIMER: Obviously, all of the evidence we had
22 indicated that everything involved in the distribution of
23 illegal narcotics was the defendant's.

24 THE COURT: Okay. How much credit has he got for now?

25 MR. WILLIAMS: How long have you been in the jail?

1 MS. OPPENHEIMER: A day, I believe.

2 THE COURT: Oh, okay.

3 MS. OPPENHEIMER: I'll check the bonding paperwork.

4 MR. WILLIAMS: Two days. Two days in Lexington jail,
5 Your Honor.

6 THE COURT: And he should not go back to Richland County,
7 should he?

8 MR. WILLIAMS: No, he should not.

9 THE DEFENDANT: No, Your Honor.

10 MR. WILLIAMS: He'll go to R&E, Your Honor.

11 THE COURT: Not to keep talking, but I mean, he really
12 don't have much of a drug history either.

13 MR. WILLIAMS: No, sir.

14 THE DEFENDANT: No, Your Honor. Only some possessions of
15 marijuana.

16 THE COURT: Well, the reason I bring that up, Mr.
17 Williams, is just -- is there anything that he could -- he
18 would benefit from while in the Department of Corrections?

19 MR. WILLIAMS: Yeah. He's wanting --

20 THE DEFENDANT: A drug program.

21 THE COURT: Drug treatment, basically.

22 MS. OPPENHEIMER: Your Honor, he's not --

23 THE DEFENDANT: Marijuana, habitual marijuana.

24 THE COURT: Okay.

25 THE DEFENDANT: I'm not an addict, but I --

1 THE COURT: Okay.

2 THE DEFENDANT: I never questioned nothing.

3 MR. WILLIAMS: He's -- he said -- he's saying that he
4 does -- he does smoke marijuana. So if there's some sort of
5 --

6 THE DEFENDANT: Not just -- you know, I used that as a
7 crutch after my mother passed, and it --

8 THE COURT: Yeah.

9 THE DEFENDANT: -- just got worse.

10 THE COURT: It sounds to me like we don't have a severe
11 drug addiction here --

12 THE DEFENDANT: Yes, sir.

13 THE COURT: -- that we're dealing with.

14 Okay. I mean, let me commend you, your lawyer, and the
15 State here. I mean, the reality is y'all have done a lot of
16 the heavy lifting in this already. Y'all have negotiated this
17 down to a reasonable result, arguably, regardless of whichever
18 way it goes.

19 Now, you may not -- I'm telling you, it's a reasonable
20 result for you. Okay? The exposure you would have been
21 facing would have been enormous otherwise. So . . .

22 SENTENCE

23 THE COURT: Okay. Obviously, these are all concurrent
24 sentences.

25 For the weapons -- possession of a weapon during a

1 violent crime is 5 years.

2 Possession with intent to distribute fentanyl is 15
3 years.

4 On the charge of trafficking methamphetamine, 17 years in
5 the Department of Corrections.

6 MS. OPPENHEIMER: Thank you, Judge.

7 THE COURT: Good luck, sir.

8 MR. WILLIAMS: Thank you, Your Honor.

9 (WHEREUPON, the proceedings ended at 12:35 p.m.)

10

11 --- END REQUESTED TRANSCRIPT ---

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State of South Carolina)

) Certificate

County of Florence)

I, the undersigned, Krystal J. Smith, notary public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 22, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of General Sessions for Lexington County, South Carolina, on the 29th day of September, 2022, to the best of my ability based upon the audio and notes provided.

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

s/Krystal J. Smith

Court Reporter

Florence, South Carolina

November 8, 2023

ORIGINAL

TATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE GENERAL SESSIONS COURT

THE STATE OF SOUTH CAROLINA,

Plaintiff,

Indictment Nos: 2022-GS-32-
0541,43,44

vs.

Robert Joseph Helrigel Jr.

Defendant.

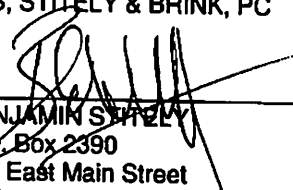
**NOTICE OF MOTION AND MOTION TO
WITHDRAW PLEA**

TO: KELLY OPPENHEIMER, ASST. SOLICITOR, ELEVENTH JUDICIAL
CIRCUIT:

YOU WILL PLEASE TAKE NOTICE that the Defendant, Robert Joseph Helrigel Jr.,
by and through his undersigned attorney, hereby moves to withdraw his plea in this matter.
In speaking with the Defendant it appears he was under extreme mental distress and did not
enter the plea knowingly, intelligently, and with the proper mental understanding of what was
transpiring. It is counsel's opinion that he may potentially require a mental evaluation.

WILLIAMS, STITELY & BRINK, PC

By:


BENJAMIN STITELY
P.O. Box 2390
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ATTORNEYS FOR DEFENDANT

Lexington, South Carolina

October 4, 2022

ORIGINAL

25

TATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE GENERAL SESSIONS COURT

THE STATE OF SOUTH CAROLINA,

**Indictment Nos: 2022-GS-32-
0541,43,44**

Plaintiff,

vs.

CERTIFICATE OF SERVICE

Robert Joseph Helrigel Jr.

Defendant.

I, GLENDA AMICK, a Paralegal with the Law Firm of Williams, Stitely & Brink, PC, do hereby certify that I have this date served a copy of the **NOTICE OF MOTION AND MOTION TO WITHDRAW PLEA** upon the individual(s) named below by placing a copy of same in the United States Mail, postage prepaid and return address clearly indicated to the address(es) below:

Kelly Oppenheimer, Asst. Solicitor
Eleventh Judicial Circuit
205 East Main Street
Lexington, SC 29072

Glenda M. Amick
GLENDA AMICK

Lexington, South Carolina

October 4, 2022

STATE OF SOUTH CAROLINA)
 COUNTY OF LEXINGTON)

IN THE COURT OF GENERAL SESSIONS
 FOR THE ELEVENTH JUDICIAL CIRCUIT

State of South Carolina,

Indictment Nos. 2022GS3202541; 02543; 02544

vs.

STATE'S RESPONSE TO DEFENDANT'S
 MOTION TO WITHDRAW PLEA

Robert J. Helrigel, Jr.,

COMES NOW, the State in response to Defendant's motion to withdraw his plea, filed on or about October 6, 2022. In said motion, Defendant moved to withdraw his plea on the basis of extreme mental distress during his plea and alleged Defendant did not enter the plea knowingly or intelligently. Defendant further alleged a mental evaluation was now necessary.

PROCEDURAL HISTORY

Defendant was arrested on or about April 4, 2022, for trafficking in methamphetamine four hundred (400) grams or more; possession with intent to distribute marijuana, first offense; possession of other controlled substance in schedule I-V, first offense; possession with intent to distribute fentanyl, first offense; possession of a weapon during the commission of a violent crime; and unlawful carrying of a pistol. *See* Warrant Nos. 2022A3210200911-916. On or about June 6, 2022, the State sent a plea offer to defense counsel via electronic mail. In that correspondence, the State offered the defendant to plead to the lesser-included offense of trafficking methamphetamine, more than twenty-eight (28) grams but less than one hundred (100) grams, first offense; possession with intent to distribute fentanyl, first offense; and possession of a weapon during the commission of a violent crime in exchange for a dismissal of the remaining three charges. Additionally, the State offered a negotiated sentencing range of fifteen (15) to twenty (20) years. This offer was valid through August 26, 2022.

On June 9, 2022, Defendant appeared with counsel for his initial appearance. He subsequently appeared with counsel on July 8, 2022, for a follow-up appearance, at which time a tentative plea date was set for August 26, 2022. On August 26, 2022, both the assigned solicitor and defense counsel were in trial in another matter, and the State agreed to extend the plea offer until September 15, 2022, at which time a tentative plea was scheduled.

On September 15, 2022, Defendant failed to appear for court due to new arrests in Richland County for possession of a schedule I or II narcotic, first offense; trafficking cocaine, more than ten (10) grams but less than twenty-eight (28) grams, first offense; unlawful carrying of a pistol; and possession of a weapon during the commission of a violent crime. *See* Warrant Nos. 2022A4021602543-2545; 02556. Based on this new arrest, the State moved to revoke Defendant's bond on or about September 16, 2022.

On September 29, 2022, the State had Defendant transported from the Alvin S. Glenn Detention Center in Richland County for either a hearing on the State's motion to revoke bond or to enter a plea.¹ On September 29, 2022, Defendant pled guilty before the Honorable Walton J. McLeod, IV to trafficking methamphetamine, more than twenty-eight (28) grams but less than one hundred (100) grams, first offense; possession with intent to distribute fentanyl, first offense; and possession of a weapon during the commission of a violent crime. During the plea, Judge McLeod found the plea was knowingly, voluntarily, and intelligently entered into and Defendant had the advice of counsel with whom which Defendant indicated he was satisfied. Judge McLeod, therefore, accepted the plea and sentenced Defendant to seventeen (17) years in the South Carolina Department of Corrections.

¹ The State indicated to defense counsel that the plea offer which was extended on June 6, 2022, would remain open until September 29, 2022. The State further indicated to defense counsel if the plea were not accepted and entered by Defendant on September 29, 2022, the State would revoke the offer and proceed with the motion to revoke bond until such time as the case could be called for trial.

LAW AND ANALYSIS

“A guilty plea may not be accepted unless it is voluntarily and understandingly made.” *State v. Barton*, 325 S.C. 522, 530 (Ct. App. 1997). Once a defendant enters a guilty plea, whether to allow withdrawal of the plea is left to the sound discretion of the circuit court. *State v. Thomason*, 355 S.C. 278, 283 (Ct. App. 2003). It is not an abuse of discretion for a trial court to refuse to allow a defendant to withdraw a guilty plea that is freely and voluntarily made. *Barton*, 325 S.C. at 530.

Here, Defendant entered a guilty plea on September 29, 2022 before Judge McLeod. During that plea, Judge McLeod reviewed all of Defendant’s constitutional rights on the record with Defendant. Defendant indicated he understood each constitutional right, including the right to present a defense and/or witnesses at a trial, and chose to waive those constitutional rights afforded to him. Furthermore, Defendant indicated he was entering the plea knowingly and voluntarily and had enough time to discuss his options with counsel. At no point during the plea did Defendant hesitate in answering Judge McLeod’s questions as to whether or not he understood his constitutional rights and understood what he was doing by entering a plea.

Defendant now wishes to claim he was under extreme mental distress and now requires a mental evaluation. The test in South Carolina for determining a defendant’s competency to stand trial is a two-part inquiry: 1) whether the defendant has the present ability to consult with his attorney with a reasonable degree of rational understanding and 2) whether the defendant has a rational as well as a factual understanding of the proceedings against him. *Sims v. State*, 313 S.C. 420, 422-23 (1993). This level of competency is the same required for pleading. *Id.*

Notably, counsel for Defendant has been practicing law for approximately forty-six (46) years and at no point during his representation of Defendant did counsel indicate he had concerns

as to Defendant's competency. Indeed, the State witnessed a conversation between Defendant and counsel at appearances where Defendant was demanding he had not received his discovery at that time.

Furthermore, upon listening to Defendant's conversations with family members and friends while housed at the Alvin S. Glenn Detention Center between September 29, 2022 and October 5, 2022, Defendant clearly had the ability to consult with his attorney as to his defense and had a rational understanding of the proceedings against him. *See* Exhibit 1. In these conversations, Defendant repeatedly tells his family and friends he had "a million grounds" which counsel could have raised at a plea or trial. Furthermore, Defendant seems well aware of the ten-day time period in which he has to file his appeal—stating he needs to discuss his options with counsel before the time to appeal has lapsed. Indeed, once Defendant does meet with counsel, he indicates to his family that everything was "his idea" and "every idea [as to potential options post-plea], were [Defendant's] idea," rather than counsel's. Still further, Defendant understands the difference between federal and State prosecution, as well as the varying programs each system offers and how it would affect the time in which he is incarcerated. In fact, Defendant discusses the difference between non-violent and violent crimes and the time in which SCDC holds a defendant for non-violent versus violent offense (i.e. 65% v. 85%). Clearly, Defendant understood the proceedings against him and further could have, and did, assist his counsel in his defense.

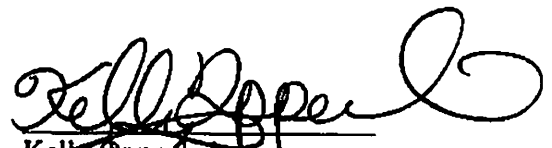
Moreover, pursuant to Section 44-23-410 of the South Carolina Code, a judge must order a mental health evaluation when the judge has "reason to believe" that the defendant "lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity." However, the decision of whether to order a mental health evaluation is

within the discretion of the judge, and that decision will not be overturned absent a clear showing of abuse of discretion. *State v. White*, 364 S.C. 143, 147 (Ct. App. 2005).

During the plea, neither counsel nor Judge McLeod had any concerns as to Defendant's capacity to understand the proceedings against him or to assist in his own defense. Given Defendant's own words, as laid out above and included in Exhibit 1, Defendant more than understood what he was facing at a plea versus a trial and was aware of various defense he could have raised at trial. Notably, in the jail calls with family members, for the first time Defendant alleges to have a brain injury² but, in the same breath, states: "I'm not retarded but if I can chop some time off, what's up." The mere fact Defendant understands he would be incarcerated for less time if house in a mental health facility indicates Defendant is fully aware of the proceedings against him. In fact, Defendant appears to merely be upset with the sentence imposed by the Court and will do anything to attempt to lessen his sentence.

CONCLUSION

For the reasons stated above, Defendant's motion to withdraw his plea should be DENIED. It is evident from both the plea hearing itself and conversations with Defendant pre- and post-plea that he understood the proceedings against him and could, and did, assist his counsel in his defense. There is nothing to indicate to this Court that Defendant entered the plea unknowingly, unintelligently, nor involuntarily.


Kelly Oppenheimer
Assistant Solicitor
Eleventh Judicial Circuit

² The State has never been presented with any information that would corroborate this claim.

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

The State of South Carolina,)

vs.)

Robert J. Helrigel, Jr.,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
 THE ELEVENTH JUDICIAL CIRCUIT

Indictment Numbers: 2022GS3202541, 543,
 & 544

ORDER DENYING MOTION
 TO WITHDRAW PLEA

This matter comes before the court upon Defendant's Motion to Withdraw Plea ("the Motion") filed October 6, 2022. Defendant entered a guilty plea to this Court on September 29, 2022, pursuant to negotiated range of fifteen (15) to twenty (20) years on the charges of Trafficking Methamphetamine, more than twenty-eight (28) grams but less than one hundred (100) grams, first offense; Possession with Intent to Distribute Fentanyl, first offense; and Possession of a Weapon during the Commission of a Violent Crime. At the plea hearing, Assistant Solicitor Kelly Oppenheimer appeared on behalf of the State, and attorney Theo Williams appeared on behalf of Defendant.

In the Motion, Defendant contends he was under extreme mental distress at the time of his guilty plea and that that he did not enter the plea knowingly, intelligently, and with the proper mental understanding of what was transpiring. The Motion also refers to Defendant possibly needing a mental evaluation.

In South Carolina, a defendant must understand the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights he or she is waiving, and that the record reflect a factual basis for the plea. *Rollison v. State*, 346 S.C. 506, 511, 552 S.E.2d 290, 292 (2001). A guilty plea may not be accepted unless it is knowingly, voluntarily and intelligently made. *State v. Lambert*, 266 S.C. 574, 577-78, 225 S.E.2d 340, 341-42 (1976). Once a defendant enters a

guilty plea, whether to allow withdrawal of the plea is left to the sound discretion of the circuit court. *State v. Riddle*, 278 S.C. 148, 150, 292 S.E.2d 795, 796 (1982).

When attempting to determine the voluntary and intelligent nature of a plea, the plea colloquy ordinarily serves as confirmation that a criminal defendant is waiving the right to raise certain constitutional claims by pleading guilty. *Rivers v. Strickland*, 264 S.C. 121, 213 S.E.2d 97, 98 (1975). Upon review of the record and arguments made by counsel at the hearing, this Court finds the plea colloquy was thorough, and Defendant was fully informed of his constitutional rights, understood the charges, and was cognizant of the of the maximum sentences he could receive.

Turning now to the issue of mental distress and the possibility of Defendant needing a mental evaluation, the test in South Carolina for determining a defendant's competency to stand trial or enter a guilty plea is a two-part inquiry: (1) whether the defendant has the present ability to consult with his attorney to a reasonable degree of rational understanding, and (2) whether the defendant has a rational as well as factual understanding of the proceedings against him. *Sims v. State*, 313 S.C. 420, 422-23 (1993). This level of competency is the same required for entering a guilty plea. *Id.*

At the time of Defendant's Plea on September 29, 2022, there were no apparent concerns as to Defendant's capacity to understand the proceedings against him or assist in his own defense, and Defense counsel did not bring any such issues to the attention of the Court until the Motion was filed.

Further, there were no apparent signs that Defendant was under mental distress at his plea hearing. Defendant indicated he was entering the plea knowingly and voluntarily and that he had sufficient time to discuss his options with counsel. At no point during the hearing did Defendant hesitate in answering the Court's questions. Defendant indicated he understood his constitutional rights and knew what he was doing by entering a plea.

Furthermore, as noted by the State, Defendant's calls with friends and family members from

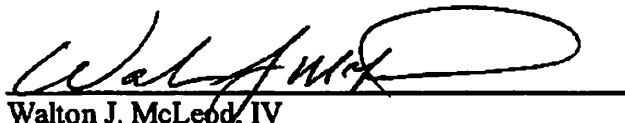
Alvin S. Glenn Detention Center between September 29, 2022 and October 5, 2022 show that Defendant had both the ability to consult with his attorney and a rational understanding of the proceedings against him. *See* State's Response, Exhibit 1. In fact, Defendant appears well aware of the ten-day time period in which he has to file a notice of appeal, and Defendant discusses the difference between non-violent and violent crimes and how that relates to the time he can expect to serve in prison. The Court, therefore, cannot conclude that Defendant lacked either (1) the ability to consult with his attorney to a reasonable degree of rational understanding or (2) a rational and factual understanding of the proceedings against him at the time of the plea. *See Sims*, at 422-23.

Moreover, pursuant to S.C. Code Ann., Section 44-23-410, a judge must order a mental health evaluation when the judge has "reason to believe" that the defendant "lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity." As discussed above, there is no reason to believe Defendant lacked such an understanding of the proceedings or was unable to assist in his own defense. Accordingly, the Court holds there is an insufficient basis for ordering a mental evaluation of Defendant.

In consideration of the court's thorough questioning of Defendant during the guilty plea and his acknowledgement of rights throughout, this Court does not find a withdrawal of the properly entered guilty plea appropriate. Defendant's Motion is hereby **DENIED**.

THEREFORE, the court **DENIES** Defendant's Motion to Withdraw Plea.

IT IS SO ORDERED.


Walton J. McLeod, IV
Presiding Judge
Eleventh Judicial Circuit

November 18, 2022
Lexington, South Carolina

FORM 5
FILED

STATE OF SOUTH CAROLINA

County of Lexington

2023 FEB 21 PM 12:51 IN THE COURT OF COMMON PLEAS

Robert Joseph Helrigel Jr.LISA M. COMER
CLERK OF COURT
LEXINGTON SC

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

2023CP3200670

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Alvin S. Glenn Detention Center
2. Name and location of Court which imposed sentence Court of General sessions
11th Judicial Circuit County of Lexington
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2022-GS-32-02541 \$ 44-53-0375(c)(2)(a)
 - (b) 2022-GS-32-02543 \$ 44-53-0370(b)(1)

(c) 2022-GS-32-02544 § 16-23-0490

5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 9-29-2022 17 years in South Carolina Department of Correction
- (b) 9-29-2022 15 years in South Carolina Department of Correction
- (c) 9-29-2022 5 years in South Carolina Department of Corrections, Ran Concurrently
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒ _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) put in motion to withdraw plea was denied
- (b) Believed Post Conviction Relief was next step

- (c) wish to appeal sentence not conviction
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) 17-25-60 Change of sentence when prior convictions not considered
- (b) Lawyer Did not Address Issue ~~was~~
- (c) Seperate sheet Attached
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Prior record innacurate that was used to determine sentence. Attached
~~(a)~~ innacuracies on seprate paper. No prior felony Drug
~~(a)~~ Convictions. Warrant in Motion says P.W.I.D second had none prior.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? Motion to Withdraw
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or plea Denied application:
- (a) the specific nature thereof:
- i. Motion to Withdraw plea denied
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. General Sessions Eleventh Judicial Circuit Lexington County
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

i. Denied

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. filed 10-6-2022 Denied 11-18-2022

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No, wrote letter to Lexington County Clerk of Court

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) mentioned to Attorney Did not address the Issue.
 (b) Wrote letter to Lexington County clerk at Court regarding issue.
 (c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
 i. Theo Williams 200 East Main Street P.O. Box 39
Lexington, SC 29071
 ii. Benjamin Stitely 200 East Main Street P.O. Box 39
Lexington, SC 29071
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. plea
 ii. Motion to withdraw plea
 iii. _____

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

Reduction of sentence, 7 years fine and community service.

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

No, pending

STATE OF SOUTH CAROLINA)

County of Lexington)

VERIFICATION

I, Robert Joseph Helrigel Jr., 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.

Robert Helrigel

SWORN to and subscribed before me this 31st
day of January, 2023.

_____(L.S.)
Notary Public

My Commission Expires: _____

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

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

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

Robert Helwig Jr.
Applicant

SWORN or affirmed to and subscribed before me this
31st day of January, 2023.

Notary Public

My Commission Expires: _____

10. (a) 17-25-60 Change of sentence when prior convictions were not considered at time of Imposition.

11. (a) prior record that was used by the solicitor when recommending sentence and Judge when deciding sentence was inaccurate.

I have no prior felony drug convictions. No prior drug charge other than marijuana. The following charges are inaccurate.

(1) Arrest Date: 2017-02-27 Arrest case number: 170006069

Agency: Columbia P.D.

Manf, possess other sub sch 1, II, III WITD 1st - Felony

Was conviction of simple possession marijuana 28g or less - misdemeanor

(2) Arrest Date: 2017-06-06 Arrest warrant: 2017A32102

Agency: Lexington County

Manf, possess other sub sch 1, II, III WITD 1st - Felony

Was conviction of simple possession marijuana - 28g or less - misdemeanor

(3) Arrest Date: 2000-09-22 Arrest warrant: G502561 Agency: Lexington

P.W.I.D. marijuana was conviction of simple possession 28g or less - misdemeanor

(4) on 10/17/2013 was convicted of unlawful possession of weapon Rifle/shotgun in N.J. probation was transferred to S.C. South Carolina had no statute for possession of Rifle it is legal in S.C. and to my understanding was also legal by federal guidelines on federal Highway. S.C. changed charge to possession of machine gun due to fact was no S.C. statute being legal. That is inaccurate and appears worse than actual charge is misleading. fulfilled all obligations to S.C. probation department that year.

I, Robert Joseph Helrigel Jr., would like to file for Post Conviction Relief.

On 9/29/22 in the County of Lexington, I was in the Court of General Sessions.

Judge Walton J. McLeod IV was the presiding Judge and Kelly Oppenheimer the Solicitor. I was represented by Theo Williams. I plead out to 44-53-0370(b)(1) which carries 0-15 years; I received 15 years. I also plead out to 44-53-0375(c)(2)(a) which carries 7-25 years, I received 17 years. I am still not sure why 44-53-0375 ~~exx~~ 3 considered a violent charge and if it is a "no parole offense" or not. The charges were concurrent. I was told it was my last day to accept plea and did not have sufficient time to review all paperwork and discuss options with my attorney prior to accepting plea. Upon review I realized there were numerous errors in my prior record. 17-25-60 - change of sentence when prior convictions were not considered at time of imposition. I believe these inaccuracies affected both the Solicitors recommendation and the Judges final decision when sentencing me. I was never convicted of any drug charge other than simple possession marijuana. In 2000 I was convicted of simple possession marijuana, not P.W.I.D. Prior record states that on 2/27/17 and 6/6/17 I had felony charges for Manf, possess other sub sch I, II, III WITD. Both are inaccurate and also were simple possession marijuana. Misdemeanors. I was addicted to marijuana, used it in ignorant attempt to cope with depression but never convicted of any distribution charge. Prior record also states in 2014 I was convicted of possession of a Machine gun/sawed off Shotgun, which is inaccurate. In New Jersey I was convicted of possession of Rifle/shotgun, that to my knowledge should of been legal on federal Highway. Also possession of Rifle/shotgun is legal in South Carolina, and when transferred my probation to South Carolina the state had no statute for possession of Rifle/shotgun. It was changed to possession of Machine gun/sawed off Shotgun which is inaccurate and looks worse. I believe these inaccuracies affected both the Solicitors initial recommendation and the Judges final decision regarding sentence.

I should not be judged based on these errors and I think a change of sentence should be considered. I would like to suggest 7 years with community service and a fine. I believe that will best serve the state of South Carolina, the County of Lexington, my family as well as myself. Nothing I regret more than the decisions I made that led to these current circumstances. I am sorry for all the people I have negatively affected. I believe I can help people through community service and have positive impact on the community. Rather than be a tax burden I can pay a fine and also donate time and money to a good cause. I had a son recently and would like to be a part of his life as soon as possible. Whatever conditions or programs that can make that possible will complete. I can guarantee that there is a 0% chance of recidivism. I will not walk again. I just want to have positive impact on community and be positive influence in my sons life. Thank you for your time and consideration.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
 Robert Joseph Helrigel, Jr., #390927,	)	Case No.: 2023-CP-32-00670
	)	
Applicant,	)	
v.	)	RETURN
	)	(Hearing Requested)
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	


 Applicant filed the above captioned application for post-conviction relief on February 21, 2023, and challenges his convictions for trafficking in methamphetamine, between 28 and 100 grams (2022-GS-32-2541), possession with intent to distribute fentanyl (2022-GS-32-2544), and possession of a weapon during the commission of a violent crime (2022-GS-32-44). On or about March 11, 2024, the Applicant, through appointed counsel Chelsey Marto, filed amendments to the application. He alleges allegations of ineffective assistance of counsel. Respondent submits that the allegations of ineffective assistance of counsel will likely require an evidentiary hearing to adequately resolve. See *Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (“Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.”). However, Respondent relies on the established record and controlling law to assert that Applicant is not likely to be able to carry his burden of proof.

In support of its position, Respondent would respectfully show the court:

Procedural History

Applicant, Robert J. Helrigel Jr. is presently confined in the South Carolina Department

of Corrections, pursuant to orders of commitment from the Lexington County Clerk of Court.

Applicant was arrested on or about April 4, 2022, for trafficking in methamphetamine four hundred (400) grams or more; possession with intent to distribute marijuana, first offense; possession of other controlled substance in schedule I-V, first offense; possession with intent to distribute fentanyl, first offense; possession of a weapon during the commission of a violent crime; and unlawful carrying of a pistol. *See* Warrant Nos. 2022A3210200911-916. On or about June 6, 2022, the State sent a plea offer to defense counsel via electronic mail. In that correspondence, the State offered the defendant to plead to the lesser-included offense of trafficking methamphetamine, more than twenty-eight (28) grams but less than one hundred (100) grams, first offense; possession with intent to distribute fentanyl, first offense; and possession of a weapon during the commission of a violent crime in exchange for a dismissal of the remaining three charges. Additionally, the State offered a negotiated sentencing range of fifteen (15) to twenty (20) years. This offer was valid through August 26, 2022.

On June 9, 2022, Defendant appeared with counsel for his initial appearance. He subsequently appeared with counsel on July 8, 2022, for a follow-up appearance, at which time a tentative plea date was set for August 26, 2022.

During an August 8, 2022 term, the Lexington County Grand Jury indicted Applicant for trafficking in methamphetamine, 400 grams or more, possession with intent to distribute fentanyl, and [possession of a weapon during the commission of a violent crime. He was represented on the charges by Robert Theo Williams of the Lexington County Bar.

On August 26, 2022, both the assigned solicitor and defense counsel were in trial in another matter, and the State agreed to extend the plea offer until September 15, 2022, at which time a tentative plea was scheduled.

On September 15, 2022, Defendant failed to appear for court due to new arrests in Richland County for possession of a schedule I or II narcotic, first offense; trafficking cocaine, more than ten (10) grams but less than twenty-eight (28) grams, first offense; unlawful carrying of a pistol; and possession of a weapon during the commission of a violent crime. *See* Warrant Nos. 2022A4021602543-2545; 02556. Based on this new arrest, the State moved to revoke Defendant's bond on or about September 16, 2022.

On September 29, 2022, the State had Defendant transported from the Alvin S. Glenn Detention Center in Richland County for either a hearing on the State's motion to revoke bond or to enter a plea.¹ On that date, Applicant appeared before the Honorable Walton J. McLeod, IV with counsel Williams to enter a guilty plea to the lesser of trafficking in methamphetamine 28 to 100 grams, possession with intent to distribute fentanyl and possession a weapon during the commission of a violent crime. The prosecution was represented by Assistant Solicitor Kelly Oppenheimer. The State also agreed to dismiss pending Lexington County charges of possession with intent to distribute marijuana – first offense, possession of other controlled substances, and unlawful carry of a pistol. During the plea, Judge McLeod found the plea was knowingly, voluntarily, and intelligently entered into and Defendant had the advice of counsel with whom Defendant indicated he was satisfied. The guilty plea was entered with the negotiated range of fifteen (15) to twenty (20) years of the charges.

After his father Robert Helrigel Sr., counsel and the Applicant made pleas in mitigation, Judge McLeod sentenced the Applicant to concurrent sentences of 17 years for trafficking in methamphetamine, 15 years for possession with intent to distribute fentanyl and 5 years on the

¹ The State indicated to defense counsel that the plea offer which was extended on June 6, 2022, would remain open until September 29, 2022. The State further indicated to defense counsel if the plea were not accepted and entered by Defendant on September 29, 2022, the State would revoke the offer and proceed with the motion to revoke bond until such time as the case could be called for trial.

possession of a weapon during the commission of a violent crime.

On October 6, 2022, the Applicant made a motion to withdraw his guilty plea. hereby moves to withdraw his plea in this matter. The Applicant, through counsel Benjamin Stitely, asserted that “in speaking with the Defendant it appears he was under extreme mental distress and did not enter the plea knowingly, intelligently, and with the proper mental understanding of what was transpiring, it is counsels’ opinion that he may potentially require a mental evaluation.”

The State responded to the motion on October 8, 2022. In its response, the State urged the motion be denied with the following assertion:

Here, Defendant entered a guilty plea on September 29, 2022 before Judge McLeod. During that plea, Judge McLeod reviewed all of Defendant’s constitutional rights on the record with Defendant. Defendant indicated he understood each constitutional right, including the right to present a defense and/or witnesses at a trial, and chose to waive those constitutional rights afforded to him. Furthermore, Defendant indicated he was entering the plea knowingly and voluntarily and had enough time to discuss his options with counsel. At no point during the plea did Defendant hesitate in answering Judge McLeod’s questions as to whether or not he understood his constitutional rights and understood what he was doing by entering a plea.

Defendant now wishes to claim he was under extreme mental distress and now requires a mental evaluation. The test in South Carolina for determining a defendant’s competency to stand trial is a two-part inquiry: 1) whether the defendant has the present ability to consult with his attorney with a reasonable degree of rational understanding and 2) whether the defendant has a rational as well as a factual understanding of the proceedings against him. *Sims v. State*, 313 S.C. 420, 422-23 (1993). This level of competency is the same required for pleading. *Id.*

Notably, counsel for Defendant has been practicing law for approximately forty-six (46) years and at no point during his representation of Defendant did counsel indicate he had concerns as to Defendant’s competency. Indeed, the State witnessed a conversation between Defendant and counsel at appearances where Defendant was demanding he had not received his discovery at that time.

Furthermore, upon listening to Defendant’s conversations with family members and friends while housed at the Alvin S. Glenn Detention Center between September 29, 2022 and October 5, 2022, Defendant clearly had the ability to consult with his attorney as to his defense and had a rational understanding of the proceedings against him. *See Exhibit 1.* In these conversations, Defendant repeatedly tells his family and friends he had “a million grounds” which counsel could have raised at a plea or trial. Furthermore,

Defendant seems well aware of the ten-day time period in which he has to file his appeal—stating he needs to discuss his options with counsel before the time to appeal has lapsed. Indeed, once Defendant does meet with counsel, he indicates to his family that everything was “his idea” and “every idea [as to potential options post-plea], were [Defendant’s] idea,” rather than counsel’s. Still further, Defendant understands the difference between federal and State prosecution, as well as the varying programs each system offers and how it would affect the time in which he is incarcerated. In fact, Defendant discusses the difference between non-violent and violent crimes and the time in which SCDC holds a defendant for non-violent versus violent offense (i.e. 65% v. 85%). Clearly, Defendant understood the proceedings against him and further could have, and did, assist his counsel in his defense.

Moreover, pursuant to Section 44–23–410 of the South Carolina Code, a judge must order a mental health evaluation when the judge has “reason to believe” that the defendant “lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity.” However, the decision of whether to order a mental health evaluation is within the discretion of the judge, and that decision will not be overturned absent a clear showing of abuse of discretion. *State v. White*, 364 S.C. 143, 147 (Ct. App. 2005).

During the plea, neither counsel nor Judge McLeod had any concerns as to Defendant’s capacity to understand the proceedings against him or to assist in his own defense. Given Defendant’s own words, as laid out above and included in Exhibit 1, Defendant more than understood what he was facing at a plea versus a trial and was aware of various defense he could have raised at trial. Notably, in the jail calls with family members, for the first time Defendant alleges to have a brain injury² but, in the same breath, states: “I’m not retarded but if I can chop some time off, what’s up.” The mere fact Defendant understands he would be incarcerated for less time if housed in a mental health facility indicates Defendant is fully aware of the proceedings against him. In fact, Defendant appears to merely be upset with the sentence imposed by the Court and will do anything to attempt to lessen his sentence.

State v Helrigel, State’s Response to Defendant’s Motion to Withdraw Plea, Oct. 8, 2022, p. 3-5.

On November 18, 2022, Judge McLeod entered his written order denying the motion to withdraw.

Attachments

Respondent attaches, and incorporates by reference, the following:

² The State has never been presented with any information that would corroborate this claim.

1. Records of the Lexington County Clerk of Court related to the underlying conviction, including the sentencing sheets, arrest warrants, indictments, motion to withdraw plea, response to motion to withdraw plea and order denying motion to withdraw plea.
2. Guilty Plea Transcript of September 29, 2022.
3. SCDC records related to conviction.

Allegations

In his original application, the Applicant contended that he was being held in custody unlawfully for the following reasons:

1. 17-25-60 change of sentence upon prior convictions not considered.
 - a. Prior record inaccurate that was used to determine sentence.
2. Lawyer did not address issue.
 - a. Inaccuracies on separate paper. No prior felony drug convictions . Warrant in motion says PWID record had none prior.

(PCR App. at 3).

Amended Application

In the amended application dated March 11, 2024. The Applicant, through counsel Chelsey Marto, raised the following issues:

1. Ineffective assistance of counsel:

- a. For failure to discuss trial strategy with Applicant.
- b. for failure to obtain a more favorable plea offer.
- c. For failure to assist Applicant in making an informed decision regarding the plea.
- d. For failure to give Applicant a complete copy of the discovery or provide him with the opportunity to review video discovery in his case.
- e. For failure to investigate.

- 
- i. Specifically, Applicant wanted Counsel to properly investigate his criminal history and adjust his record to reflect Applicant's prior history appropriately.
 - f. For failure to object to the State improperly addressing Applicant's prior history and pending charges at the plea hearing.
 - g. For failure to object to the State mentioning Applicant's history dealing drugs.
 - h. Counsel should have successfully argued for a fifteen-year sentence at the plea hearing.
 - i. For failure to successfully withdraw the plea.
 - j. For failure to meet with Applicant enough.
 - k. For failure to present Applicant's minimal criminal history to the Court in mitigation.
2. Invalid plea.
- a. Applicant was rushed into pleading last minute with threats of having bond revoked and being sent to Alvin Glenn if he did not plead.

Factual Basis of the Guilty Plea

During the guilty plea, the following factual basis was presented by Assistant Solicitor Kelly Oppenheimer:

MS. OPPENHEIMER: As to the facts, Your Honor, on April 20 4th of this year, while in the 100 block of River Road, which 21 is in the Columbia area of Lexington County, the defendant was pulled over by a deputy with the Lexington County Sheriff's Department for suspected DUI and suspected for committing numerous traffic violations, Your Honor, including crossing over that fog line. This was in the middle of the night, early morning, Your Honor.

Law enforcement did pull Mr. Helrigel's vehicle over. He was driving. His pregnant girlfriend was in the passenger seat. As law enforcement approached the vehicle and Mr. Helrigel rolled his window down, there was a very strong odor of

marijuana coming from the vehicle. They ran Mr. Helrigel's information and determined that his license was suspended for DUI, Your Honor.

Because of that, Mr. Helrigel was removed from the vehicle and detained, and law enforcement did a probable cause search of the vehicle. At the defendant's feet on the floorboard of the driver's side of the vehicle, there was a red Nike shoe box and a black backpack. Inside of the shoe box was 589.13 grams of methamphetamine, 92.3 grams of 15 fentanyl, marijuana, over 36 different pills, all of which 16 came back as either amphetamine, Klonopin, oxys, just various different controlled substances, Your Honor.

There were -- there was quite a large amount of cash in the vehicle, small plastic baggies indicating that the defendant was distributing illegal narcotics, and there were two weapons found in the vehicle as well, Your Honor. In that black backpack, there was a Kal Tec Sub 2000 and a Glock .22 pistol. Your Honor, law enforcement ran both of those serial numbers through NCIC, and both did come back as stolen.

Your Honor, as the defendant was being placed into the deputy's patrol vehicle, he did make the spontaneous statement that his girlfriend had absolutely nothing to do with anything found in the vehicle, and that it was all his. . .

Tr.p. 10-12.

DISCUSSION

Strickland v. Washington Standard

To establish that Sixth Amendment counsel was ineffective, a PCR applicant must show that counsel's representation fell below an objective standard of reasonableness, and but for counsel's error, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Simpson v. Moore*, 367 S.C. 587, 595-96, 627 S.E.2d 701, 706 (2006). "A reasonable probability is a probability sufficient to undermine confidence in the outcome" of the trial. *Strickland*, at 694. Relief will not be granted on a showing of mere error—prejudice must also be shown. *Id.* Moreover, it is presumed that counsel made all decisions in exercise of reasonable judgment. *Strickland*, at 689. It is an applicant's burden to prove, by a preponderance of the evidence, an entitlement to relief. Rule

71.1 (e), SCRCR. See also *Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) (“the burden of proof is on the applicant to prove the allegations in his application”).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel. See *Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). When reviewing a guilty plea, the analysis of counsel’s performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel’s representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58–59; accord *Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” *Hill*, 474 U.S. at 56. The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” *Id.* at 58–59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.* at 59.

This inquiry “focuses on a defendant’s decisionmaking” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 582 U.S. 357, 369, 137 S. Ct. 1958, 1966 (2017). However, the applicant must convince the court that a decision to reject the plea bargain

would have been rational under the circumstances. *Padilla*, 559 U.S. at 372. Courts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. *Lee v. United States*, 582 U.S. 357, 369, 137 S. Ct. 1958, 1967, 198 L. Ed. 2d 476 (2017)

Judges must “look to contemporaneous evidence to substantiate a defendant’s expressed preferences.” *Lee*, 582 U.S. at 369, 137 S. Ct. at 1967. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. *Harres v. Leeke*, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984). The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

In his application, as amended he makes a number of specifications related to the acts and alleged omissions of counsel Robert Theo Williams prior to the guilty plea. At the time of the plea, the Applicant declared, under oath, related to counsel Williams that he was “very satisfied with his services,” that he had discussed his cases with counsel, that he had answered all his questions, and that he had not been threatened to enter a plea other than the fact that he was otherwise facing a potential thirty year sentence. Tr.p. 7, l. 8-25, p.9, l. 15-23, p.10.

Among his amended grounds he contends that counsel failed to investigate his criminal history with him. He claims that he was only previously convicted of possession of marijuana in 2000, not possession with intent to distribute. He further claims that his record suggest that he had charges from February 17, 2017 and June 6, 2017 for manufacturing and possession of other controlled substances under Schedule I, II, III with intent to distribute, which he contends is also

inaccurate. He further contends that He contends he was convicted in New Jersey of possession of a machine gun or shotgun , which he now contends was in error because it was legal to possess on a federal highway and when his probation was transferred to S.C. it was legal in S.C.

However, the plea record reveals that no specific record of the Applicant was presented in Court to the trial judge. Assistant Solicitor Oppenheimer advised the Court only that :”obviously we took into account the defendant’s minimal record when making our offer.” Tr.p. 13, l. 15-16. Furthermore, his plea was entered with a negotiated range of 15 - 20 years.³

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Harris v. State*, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). The applicant must further present evidence demonstrating how the discoverable matters or defenses would have resulted in a different outcome. *Id.* Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.* at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)). To establish prejudice based on failure to investigate or prepare for trial when the applicant enters a guilty plea, he must ordinarily present some evidence “that would have affected counsel’s advice to [him] to accept the plea bargain

³ According to the Lexington Clerk of Court Pyublic Index, the Applicant pled guilty on November 8, 2017 on Indictment 2017GS3203872 to (Warrant No. 2017A3210200925) in Magistrate Generals Sessions Court to possession of 28g or less of marijuana - first offense arising from a charge of possession with intent to distribute marijuana on a June 6, 2017 arrest date. He was sentenced to 28 days time served. Similarly, the Richland County Public Index shows on December 15, 2017, he was sentenced by Judge Valerie Stroman on Indictment 2017GS4007501(Warrant2017A4021600528) to possession of marijuana 28g or less on an initial charge manufacture possession of other substances in Schedule I, II, III with intent to distribute - 1st offense arising from a Feb.28, 2017arrest. He was sentenced to 30 days or pay a fine of \$200.

offered or that would have caused [him] to decline to accept it.” *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009).

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel’s duty to investigate. *Ard*, 372 S.C. at 331, 642 S.E.2d at 597 (“this duty is limited to a reasonable investigation”). The United States Supreme Court also instructed reviewing courts to “keep in mind that counsel’s function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case.” *Strickland*, 466 U.S. at 690. Thus, in applying the *Strickland* standard to a claim of failure to investigate, counsel’s decision not to undertake a particular investigation must be evaluated with heavy deference to counsel’s judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633 (Ct. App. 2014).

However, the record likely does not refute or disprove Applicant’s allegations of ineffective assistance of plea counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. See *Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

B. Involuntary Guilty Plea

“[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced.” *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Pittman v.*

State, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. *Brady v. United States*, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. *Id.* at 755; *see also United States v. Smith*, 440 F.2d 521, 528–529 (7th Cir. 1971) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, the defendant "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman*, 337 S.C. at 599, 524 S.E.2d at 624. The defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); *see generally Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his guilty plea, the plea judge "usually questions the defendant about the facts surrounding the crime and punishment that could be imposed." *Dover v. State*, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991). However, the plea judge "does not

have to direct the defendant's attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea." *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). It is "well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment." *United States v. Cox*, 464 F.2d 937, 942 (6th Cir. 1972) (citing *Brady*, 397 U.S. 742). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, *Brady*, 397 U.S. at 750-53, or by increasing the risks of punishment on those who do not. *Alford*, 400 U.S. at 37.

An applicant who enters a plea on the advice of counsel may "only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the [applicant] would not have pled guilty, but would have insisted on going to trial." *Roscoe*, 345 S.C. at 20, 546 S.E.2d at 419. In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. *Wolfe*, 326 S.C. at 165, 458 S.E.2d at 370; cf. *Rayford v. State*, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant's claim his lawyer misadvised him). The voluntariness of a guilty plea "is not determined by an examination of the

specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” *Harres*, 282 S.C. at 133, 318 S.E.2d at 361.

Nonetheless, because “[a] guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed.” *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977)); see *McMann v. Richardson*, 397 U.S. 759, 774 (1970) (noting the compelling interests in maintaining the finality of guilty-plea convictions validly obtained). Indeed, admissions made during a guilty plea carry a presumption of verity and should be considered conclusive unless an applicant presents cogent and valid reasons why he should be allowed to depart from the truth of his statements. *Dalton*, 376 S.C. at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks omitted); cf. *Blackledge*, 431 U.S. 63. at 73–74 (1977) (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a “formidable barrier in any subsequent collateral proceedings”); *United States v. Broce*, 488 U.S. 563, 569 (1989) (“A plea of guilty and the ensuing conviction comprehend all of the factual and legal elements necessary to sustain a binding, final judgment of guilty and a lawful sentence. Accordingly, when the judgment of conviction upon a guilty plea has become final and the offender seeks to reopen the proceeding, the inquiry is ordinarily confined to whether the underlying plea was both counseled and voluntary. If the answer is in the affirmative then the conviction and the plea, as a general rule, foreclose the collateral attack.”).

Guilty pleas “must be treated as final in the vast majority of cases. Indeed, ‘[w]hat is at stake in this phase of the case is not the integrity of the state convictions obtained on guilty pleas,

but whether, years later, defendants must be permitted to withdraw their pleas, which were perfectly valid when made, and be given another choice between admitting their guilt and putting the State to its proof.’ ” *Jamison v. State*, 410 S.C. 456, 469, 765 S.E.2d 123, 129 (2014) (quoting *McMann*, 397 U.S. at 773. “Furthermore, there must be some consequence attached to the decision to plead guilty.” *People v. Schneider*, 25 P.3d 755, 761 (Colo. 2001) (*cited with approval in Jamison*, 410 S.C. at 469, 765 S.E.2d at 129).

Here, Applicant merely claims his plea was involuntary because there were threats to have his bond revoked. However, the plea transcript reflects Applicant understood the proceedings, the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty in accordance with the requirements of *Boykin* and *Pittman*. See *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975), *overruled on other grounds by United States v. Whitley*, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused’s statements at a guilty plea proceeding are “conclusively” established unless he makes some reasonable allegation why this should not be so). Thus, the State submits Applicant’s claim that his plea was not voluntarily entered is without merit.

Conclusion and Action Requested

For the above-reasons, Applicant cannot satisfy either requirement of *Hill*. However, the record likely does not refute or disprove Applicant’s allegations of ineffective assistance of plea counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. See *Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

WHEREFORE, the State respectfully requests an evidentiary hearing be held on the claims of ineffective assistance of counsel.

Respectfully submitted,

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March 12, 2024

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	2023-CP-32-00670
	)	
ROBERT J. HELRIGEL, # 390927	)	
	)	
Applicant,	)	
	)	
vs	)	CERTIFICATE OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent,	)	
_____	)	

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

Ms. Chelsey F. Marto, Esquire
The Law Office of Chelsey F. Marto
PO Box 8795
Columbia, SC 29201

DATED this the 12th day of March 2024



 William Corbett Jr.
 Legal Assistant For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	FOR THE SEVENTH JUDICIAL CIRCUIT
	)	
	)	
Robert J. Helrigel, #390927,	)	Case No.: 2023-CP-32-00670
Applicant,	)	
v.	)	APPLICANT’S AMENDED APPLICATION
State of South Carolina,	)	
Respondent.	)	
	)	

NOW COMES Applicant, Robert J. Helrigel, amending his application filed February 21, 2023. In addition to the allegations raised in his initial application, Mr. Helrigel, through PCR Counsel, submits the following:

Amended Application Issues

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel’s performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel’s actions fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRCP (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”).

Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690); *see Dunn v. Reeves*, 141 S. Ct. 2405, 2410 (2021) (noting counsel’s strategic decisions are to be afforded “‘strong presumption’ of reasonableness that the defendant must overcome); *Cullen v. Pinholster*, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation). Judicial scrutiny of counsel’s performance remains deferential towards defense counsel with a presumption that counsel acted competently. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696.

Mr. Helrigel submits that Counsel was constitutionally ineffective based upon the following grounds:

1. Ineffective assistance of counsel:

- a. For failure to discuss trial strategy with Applicant.
- b. For failure to challenge the validity of the stop.
- c. For failure to object to the State requesting a sentence in the upper end of the negotiated range when the negotiations were fifteen to twenty years' imprisonment.
- d. For failure to accurately tell Applicant what sentencing ranges he was facing by going to trial on the original charges.
- e. For failure to request a preliminary hearing.
- f. Failure to timely obtain and share the discovery with Applicant.
- g. For failure to obtain a more favorable plea offer.
- h. For failure to assist Applicant in making an informed decision regarding the plea.
- i. For failure to give Applicant a complete copy of the discovery or provide him with the opportunity to review video discovery in his case.
- j. For failure to investigate.
 - i. Specifically, Applicant wanted Counsel to properly investigate his criminal history and adjust his record to reflect Applicant's prior history appropriately.
- k. For failure to object to the State improperly addressing Applicant's prior history and pending charges at the plea hearing.
- l. For failure to object to the State mentioning Applicant's history dealing drugs.
- m. Counsel should have successfully argued for a fifteen-year sentence at the

plea hearing.

- n. For failure to successfully withdraw the plea.
- o. For failure to meet with Applicant enough.
- p. For failure to present Applicant's minimal criminal history to the Court in mitigation.

2. Invalid plea.

- a. Applicant was rushed into pleading last minute with threats of having bond revoked and being sent to Alvin Glenn if he did not plead.

Conclusion

Based upon the above, Mr. Helrigel requests that this Court grant relief, vacate the convictions, and remand the case to the court of general sessions for a new trial.

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For Applicant Robert J. Helrigel

_____, 2024

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

Robert Joseph Helrigel,)
Applicant,)
)
)
)
)
)
State of South Carolina,)
Respondent.)

)

2023-CP-32-000670

TRANSCRIPT OF RECORD

March 21, 2024
Lexington, South Carolina

B E F O R E:

The Honorable J. Cordell Maddox, Judge

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

ATTORNEY FOR APPLICANT:
Chelsey F. Marto, Esquire

ATTORNEY FOR RESPONDENT:
Donald J. Zelenka, Esquire

Tara T. Scott, CVR
Official Court Reporter

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E X H I B I T S

Applicant's Exhibit 1: SLED response (Page 15)

1 THE COURT: What have we got here?

2 MR. ZELENKA: Your Honor, this is *Robert Joseph*
3 *Helrigel, Jr. v State of South Carolina*, Civil Action 2023-
4 CP-32-670. Mr. Helrigel filed an application for post
5 conviction relief on February 21, 2023 and challenges his
6 conviction for trafficking in methamphetamine between 28 and
7 100 grams, possession with intent to distribute fentanyl,
8 and possession of a weapon during the commission of a
9 violent crime. He's represented by Chelsea Marto. This
10 arises out of an incident on April 4, 2022, where he was
11 charged with a series of drug offenses.

12 On June 6, 2022, the State sent a plea offer to defense
13 counsel. In that correspondence, the State offered to plea
14 to the lesser included offense of trafficking
15 methamphetamine more than 28 grams, but less than 100 grams,
16 first offense, possession with intent to distribute fentanyl
17 first offense, and possession of a weapon during the
18 commission of a violent crime, in exchange for dismissal of
19 the remaining three charges. Additionally, the State
20 offered a negotiated sentencing range of 15 to 20 years, and
21 the offer was valid through August 26, 2022.

22 On June 9, 2022, the Applicant appeared with counsel
23 for his initial appearance, and subsequently he appeared
24 with counsel on a follow up appearance on June 8, 2022, at
25 which time a tentative plea date is set for August 26, 2022.

1 He was indicted on August 8, 2022 for trafficking in meth,
2 400 grams or more, possession with intent to distribute
3 fentanyl, and possession of a weapon during the commission
4 of a violent crime. He was represented on the charges by
5 Robert Theo Williams initially and also Ben Stitely of the
6 law firm.

7 On August 26, 2022, the State agreed to extend the plea
8 offer until September 15. On September 15, the Applicant
9 failed to appear for court due to new arrests which occurred
10 in Richland County, and subsequently he entered a guilty
11 plea on September 29, 2022 after a hearing was set to revoke
12 bond before Walton McLeod. He entered a plea to the lesser
13 offense of methamphetamine 28 to 100 grams, possession with
14 intent to distribute fentanyl, and possession of a weapon
15 during the commission of a violent crime.

16 The prosecution was represented by Assistant Solicitor
17 Kelly Oppenheimer and, as asserted, the State agreed to
18 dismiss the charges of possession with intent to distribute
19 marijuana first offense, possession of other controlled
20 substances, and unlawful carry of a pistol. Judge McLeod
21 found the plea knowingly, voluntarily, and intelligently
22 entered, and the guilty plea was entered with a negotiated
23 offer range of 15 to 20 years.

24 At the plea, his father made representations at
25 mitigation. Judge McLeod sentenced the Applicant to

1 concurrent sentences of 17 years for trafficking
2 methamphetamine, 15 years for possession with intent to
3 distribute fentanyl, and five years on the drug charge.

4 In his application, he's also alleged ineffective
5 assistance of counsel, and we are proceeding on those
6 matters today. There was an amended application filed the
7 first part of March 2023, and we're prepared to go forward
8 on those matters.

9 THE COURT: Is the Defense prepared?

10 MS. MARTO: Yes, sir. We're ready to proceed, Judge.

11 THE COURT: I'm happy to hear from you.

12 MS. MARTO: We'd call Mr. Robert Helrigel to the stand,
13 please.

14 WHEREUPON, Robert Helrigel, having
15 first been duly sworn, testified as follows:

16 CLERK OF COURT: Please go have a seat and state your
17 full name, spelling your last name for the record.

18 THE DEFENDANT: My name is Robert Helrigel. Last name,
19 H-e-l-r-i-g-e-l.

20 DIRECT EXAMINATION

21 BY MS. MARTO:

22 Q Good afternoon, sir. How are you doing today?

23 A Doing all right. How are you doing?

24 Q What were the underlying charges you pled to?

25 A Trafficking methamphetamine 28 to 100 grams,

1 distribution of a schedule II, and unlawful carrying of a
2 firearm during a violent crime.

3 Q Who were you represented by?

4 A Theo Williams.

5 Q Were you represented by Mr. Ben Stitely as well?

6 A Not for that charge. Actually, Ben Stitely was a
7 Richland County charge that actually got dismissed, and they
8 used that charge to aggravate my sentence when I was
9 actually not guilty.

10 Q Now, you're challenging the Lexington County charge;
11 right?

12 A Yes. Yes.

13 Q So, how many times did you meet with Mr. Williams?

14 A I met with Mr. Williams once prior to my actual --
15 after the second -- second appearance. The first appearance
16 where they said their first plea offer, actually it was a
17 legal aid, but somebody else from his office. It wasn't
18 him. He was -- he wasn't at the first appearance. And they
19 told me initially carried 30 to life, or death, on that
20 paper when, come to find out later, it only carried 25 to 30
21 for the one.

22 Q So did you want to go to trial on this, or did you want
23 to plea?

24 A I wanted to go trial.

25 Q Okay, and what caused you to plea?

1 A I was scared. They told me it carried 30 to life, or
2 death. I didn't feel like I could get a fair trial due to
3 being locked up and held without bond for a charge I was
4 actually not guilty of in Richland County. I just didn't
5 feel like I had ample time to discuss strategy with Theo
6 prior to -- prior to my actually pleading out.

7 Q Did Mr. Williams tell you that you were facing 30 to
8 life?

9 A It was on the paper that I received by the prosecution,
10 and he never disputed it. He never told me otherwise.

11 Q Did you and Mr. Williams discuss trial strategy?

12 A No. After the second -- I didn't get the motion of
13 discovery until after the second appearance, and even then I
14 didn't get the complete motion of discovery. I asked for
15 the dash cam. I never received dash cam footage. At the
16 time of the second appearance, they didn't even have the
17 drug analysis back. I didn't get a complete motion of
18 discovery until after the fact.

19 Q And when did you receive -- you received a copy of the
20 paper discovery, right? Did you receive a copy of the paper
21 discovery?

22 A Incomplete, but yeah. I received a copy of most of the
23 discovery. It didn't completely have everything until,
24 actually, the third appearance after I was already locked up
25 in Richland County for another charge I was actually not

1 guilty of. But they used that to aggravate my sentence.

2 Q So did you want counsel to meet with you more?

3 A Yes. I would have liked to discuss strategy and
4 actually figure you know, just going in, supposed to be a
5 tentative plea agreement. Either I got to take the plea or
6 possibly face my time, what I was under the impression, was
7 30 to life, or death. I really would have wanted to discuss
8 strategy before I make that decision. I didn't feel like I
9 could receive a fair trial after being held without bond for
10 a charge I was actually not guilty of in Richland County.

11 Q Now ---

12 A And then -- oh, excuse me. Go ahead.

13 Q Did you have issues concerning the stop of the car?

14 A Yes. There was actually no reason to stop me.
15 Supposedly, they said suspected driving violations. What is
16 a suspected driving violation? Then they said something,
17 suspected DUI. They never gave me any kind of sobriety
18 test. I asked for the dash cam footage. Dash Cam is
19 supposed to be activated no later than the activation of the
20 blue lights if I'm supposedly suspected, the DUI. Probable
21 cause. I never received dash cam. Supposedly, they did not
22 have no dash cam footage. There was no reason to pull me
23 over. I didn't violate any traffic violation. They said my
24 license was suspended for DUI. Never had a DUI in my life.
25 Never been charged with DUI. Never been convicted of DUI.

1 Q Did you want counsel to challenge the stop?

2 A Yeah. Yeah.

3 Q Did counsel challenge the stop?

4 A I have not received any paperwork telling me he did
5 challenge the stop. It was actually supposed -- it was a one
6 lane road. Are you familiar with River Road? It's a one
7 lane road right there. There's no -- it opens up to a
8 turning lane briefly, one car length before you turn. Not
9 even a whole car length, honestly. Improper use of a
10 driving violation.

11 Q Did you want a preliminary hearing in this case?

12 A Yes. I never received a preliminary hearing either.

13 Q Now, when counsel told you about the plea, did he give
14 you any recommendations concerning it?

15 A No, I actually asked him, and he just kind of left it
16 like, oh, it's on you. What do you want to do? And I
17 didn't know at that at that point. I failed to discuss
18 strategy, and I just was, you know -- no disrespect to him.
19 He's a nice guy. I like him, but if it's on me, why did he
20 get paid? Why did I hire counsel if nobody was going to
21 give me an opinion.

22 Q Did you want counsel to give you an opinion?

23 A Yeah, at least a possibility or some kind of
24 recommendation, but what he thought was a good idea he had
25 -- he's supposed to be more familiar with the process than I

1 am.

2 Q Okay, so when you went to the plea hearing, when did
3 you know you were going to plead? How far before the
4 hearing?

5 A Like last minute. Last minute. I never got down to
6 the point where I figured possibly thirty to life, or death,
7 supposedly, or 15 to 20, and I didn't want to spend life or,
8 I mean, life or worse, you know. I didn't want to. I
9 didn't want to take that chance.

10 Q Did you feel rushed into pleading?

11 A Yeah, I felt rushed. I felt -- yeah. I felt
12 definitely felt rushed. I felt like I was almost forced to
13 take the plea. Then I was in Alvin S. Glenn. Conditions
14 were horrible. People in there getting stabbed, beat, no CO
15 in the dorm to even facilitate anything. I just -- I wanted
16 to get out of there, and then they still left me there
17 another eight months following.

18 Q Now, do you recall the plea hearing itself?

19 A Yes.

20 Q Were there things that you wish counsel had objected to
21 at the plea hearing?

22 A The comments by both the Solicitor, Ms. Oppenheimer,
23 and Investigator McMillan. They mentioned the charge in
24 Richland County as if I was already guilty. I was supposed
25 to be presumed innocent until proven guilty. The comments

1 were -- they created a prejudice. It violated my due
2 process. Violated the Fourteenth Amendment and just no --
3 failure to object to it. It shouldn't have been used to
4 aggravated my charge when I was not guilty. Then on top of
5 that, she said that they got me out the car for DUI. I
6 never had a DUI in my life. Never been charged with DUI.
7 It was in my record. I never had a DUI, so how was that
8 justification to supposedly suspend my license suspended,
9 and why they got me out the car?

10 Q Now, was there a mention about you being a supposed
11 drug dealer?

12 A Yeah, they mentioned that later on. I never had a
13 conviction for anything other than prior to simple
14 possession of marijuana was my only conviction prior.

15 Q Did you want counsel to look into that?

16 A Yeah, but he -- I believe he -- it's in the
17 transcripts. He actually mentioned that I have no prior
18 conviction for that, but it still went on the record, and
19 they still took that into consideration as far as
20 aggravating my sentence.

21 Q And you entered a plea of a negotiated range between 15
22 and 20 years, right?

23 A And their recommendation was supposed to be 15 to 20.
24 After I accepted the plea, they requested a high year
25 amount. They went the higher end of the 15 to 20 after the

1 negotiation. The negotiation was clear. Fifteen to 20, not
2 a high year. Not -- they -- I kind of felt like they kind
3 of railroaded me in the first place.

4 Q Did you want counsel to object to that?

5 A Yeah, I would've preferred he objected to that.

6 Q Now, did counsel argue for you to get the 15 years?

7 A No, and not even argue for me to get to the 15, to
8 possibly restructure it where it was a 15 non-violent on the
9 Schedule II rather than 15 -- 17 violent on the -- no kind
10 of negotiation. I actually requested that negotiation
11 earlier in the process. The first plea of 15 to 20 was made
12 to a legal aid, which I'm not even sure was supposed to be
13 handling the case. The first plea, he didn't show up.
14 Somebody from his office showed up, and that was the first
15 plea, 15 to 20, was made to legal aid. I wasn't even
16 allowed to go in the courtroom. They just had me waiting in
17 the hallway. Whoever works for him specifically said he's
18 not worried about it. Brushed it off nonchalantly. Of
19 course he's not worried. He's going home. He's getting
20 paid on Friday, Monday, the 15th, first, whatever it may be.
21 I'll be spending however many years of my life away from my
22 son. Of course he's not worried.

23 Q So, did you want counsel to get you a better plea deal?

24 A I would have preferred he actually negotiated. Tried
25 to negotiate a better plea deal. There's attempted

1 murderers getting eight, ten.

2 Q You said that counsel, I guess, stated at the plea
3 hearing that you had a minimal criminal history. Is that
4 correct?

5 A Yeah.

6 Q Do you feel like that was addressed efficiently at the
7 plea?

8 A Yeah, he addressed it efficiently, but the State
9 didn't. They was using charges in the motion of discovery
10 -- they got charges I was never even convicted of. I had to
11 go get a challenge to criminal history form at SLED to file
12 that to finally get it corrected. Supposedly they were
13 looking at inaccurate charges when they made the
14 recommendation in the first place, and then they were taking
15 into account initial charges, not the conviction. I've got
16 a prior simple possession of marijuana that was listed as
17 manufacturing slash possession with intent to distribute a
18 Schedule I, II., or III. That simple possession of
19 marijuana, that's not supposed to be used as a crime of
20 moral turpitude.

21 Q Sir, I'm going to approach. Can you identify this
22 document for me, please?

23 A Yeah, that's actually was in my motion of discovery.
24 It's in the motion of discovery I received after my second
25 appearance.

1 Q Do you know what it is?

2 A They're saying supposedly, we're looking at, I had a
3 possession of a machine gun, and then I got this paper here
4 from the challenge of criminal history form at SLED saying
5 they corrected it because I was never convicted of that.

6 Q And is that what you were talking about before?

7 A Yeah. I was never convicted of that. And then they
8 also have charges on here, those initial charges of
9 supposedly manufacturing, but that's simple possession of
10 marijuana convictions. That's not manufacturing charges.

11 Q So you got this in response to the letter you sent to
12 SLED, right?

13 A No, that was the initial one. I got this in response.
14 I got this page right here saying they corrected the -- they
15 corrected it.

16 MS. MARTO: Judge, we would have this entered as
17 Applicant's Exhibit 1.

18 THE COURT: Any objection?

19 MR. ZELENKA: No objection.

20 THE COURT: All right. Without objection.

21 (WHEREUPON, SLED response to criminal history
22 challenge, marked as Applicant's Exhibit Number 1 and
23 entered into evidence.)

24 Q Did you wish counsel investigated that?

25 A Yeah, I wish he did.

1 Q What do you think would have happened if he had?

2 A I felt like I had the opportunity definitely to get a
3 better plea offered without the State looking at that
4 information. I felt like an error aggravated my sentence.
5 A few errors actually, not just one specific error. Between
6 the pending charge, between getting inaccurate information
7 in there initially, and then supposedly, the DUI that
8 Solicitor Oppenheimer brought up that I don't know where she
9 got that from, because that's not even showing on my record.
10 Even the copy they gave me never mentioned the DUI, so she
11 just pulled that out of nowhere.

12 Q After the plea, did you have second thoughts about it?

13 A Yeah. Actually, Theo Williams filed a motion to
14 withdraw the plea. I was under the impression I had ten
15 days. I didn't know there were stipulations behind that,
16 but obviously there were stipulations, and they didn't
17 accept it.

18 Q Do you wish that counsel had been successful in that
19 motion?

20 A I wish it was successful. He put in a motion to do it.
21 I wish it was successful. Yes.

22 Q Is there anything else that you wish this Court knew
23 about the case?

24 A I wish, you know, it should have been thrown out in
25 the first place. They had no reason to stop me. Then just

1 the inaccuracies in my error -- I mean, in my criminal
2 history, and the pending charge I felt like aggravated my
3 sentence. That shouldn't have been -- that shouldn't have
4 been used as a means to aggravate my sentence.

5 Q Do you think that, at the very least, had counsel
6 investigated your criminal history you could've gotten 15
7 years at a plea hearing?

8 A Yeah, I think I could have 15. I actually think I
9 could have got a better plea initially without inaccurate
10 information in my prior record, and them looking at that
11 pending charge.

12 MS. MARTO: Please answer any questions opposing counsel
13 has for you.

14 CROSS-EXAMINATION

15 BY MR. ZELENKA:

16 Q Mr. Helrigel, at the time you entered your guilty plea
17 on September 29, 2022, what sentence did you expect to
18 receive?

19 A They told me they was going to recommend 15 to 20.

20 Q The recommended range was between 15 and 20?

21 A They recommended the higher end of that. They
22 recommended a high year amount, not 15 to 20.

23 Q Okay, but the range that they were agreed upon was to
24 ask the Judge ---

25 A --- for 15 to 20.

- 1 Q --- to consider the range ---
- 2 A --- of 15 to 20 --
- 3 Q --- of a low of 15, and a high of 20?
- 4 THE COURT: Hold on a minute.
- 5 THE WITNESS: I apologize. I apologize.
- 6 Q Of a low of 15, and a high of 20?
- 7 A They were supposed to recommend 15 to 20. That's what
- 8 I was told. Not a high year amount. Not the higher end of
- 9 15 to 20. Their recommendation was supposed to be 15 to 20.
- 10 That's what I was told. And even that, I felt kind of ---
- 11 Q And what sentence did you ---
- 12 A --- to take that.
- 13 Q I'm sorry. Finish, please.
- 14 A I felt pressured to take that in the first place. I
- 15 was scared.
- 16 Q And what sentence did you eventually receive?
- 17 A Seventeen.
- 18 Q Which is a range between 15 and 20? It's exactly
- 19 between 15 and 20, isn't it?
- 20 A The recommendation was supposed to be 15 to 20, not a
- 21 higher end of that. Not a high year amount. The
- 22 recommendation was supposed to be 15 to 20. And even that
- 23 was, I felt, due to errors in your investigation. Due to
- 24 the fact that y'all had a wrong criminal history. Y'all
- 25 were supposed to do your due diligence to make sure that

1 information you were looking at was correct, and I think you
2 broke the Brady disclosure rule by not giving me the dash
3 cam footage in the first place I requested.

4 Q Please repeat that again.

5 A I think it's against the Brady disclosure rule not
6 getting the dash cam footage I requested.

7 Q How often did you meet with ---

8 A I met with Theo Williams ---

9 Q Mr. Williams?

10 A --- one time after my second appearance and I didn't
11 meet with him again until I was in court.

12 Q Until you were in court the day of court?

13 A Yea, the day of court.

14 Q And you were housed at ---

15 A Alvin S. Glenn.

16 Q --- after your charge in Richland County?

17 A Yeah, after -- from the 14th. From the 14th.

18 Q How often did you meet with Ben Stitely?

19 A Once. He came once, and even then he had his hand on
20 his head just like he didn't even want to be there.

21 Q Okay, what did you talk to Mr. Stitely about?

22 A Richland County charge that got dismissed. I was not
23 guilty of. It shouldn't have been used to aggravate my
24 sentence.

25 Q Did he represent you on the Richland County charges?

1 A Yeah, the Richland County charges that had nothing to
2 do with the Lexington County charge and shouldn't have been
3 used to aggravate my sentence. Shouldn't have been
4 mentioned to aggravate my sentence. I was supposed to be
5 presumed innocent until proven guilty, and I was actually
6 not guilty.

7 Q And during the time of the plea, you were faced with a
8 fairly significant amount of methamphetamine that was found
9 in your car, correct?

10 A I was -- no.

11 Q 589 grams of methamphetamine is not a large amount?

12 A (NO VERBAL RESPONSE)

13 Q It is a large amount, isn't it?

14 A I don't know if it's a large amount or not.

15 Q Well, you were only charged between 28 and 100 grams,
16 but you could have been charged -- you could have been
17 punished for 589 grams, which you said was all your stuff.

18 A I never, at no point, said it was all my stuff. I
19 said ---

20 Q You indicated ---

21 A --- it wasn't my son's mother's.

22 Q --- it wasn't your girlfriend's stuff.

23 A I told her she had nothing to do with anything in the
24 vehicle. I didn't want her held responsible for anything.

25 Q Was there anyone else in the car?

- 1 A No. It was just me and her.
- 2 Q Okay, and then you were also charged with a very lethal
- 3 amount of fentanyl, 92 grams of fentanyl?
- 4 A I received the maximum I could possibly receive on that
- 5 one.
- 6 Q Pretty high amount of fentanyl, isn't it?
- 7 A (NO VERBAL RESPONSE)
- 8 Q You also had 736 pills. What were the pills?
- 9 A I actually do not know what the pills were.
- 10 Q You don't know what the pills are?
- 11 A No.
- 12 Q I take a lot of pills every day. That's a lot of pills
- 13 for personal use.
- 14 A I don't know what the pills were.
- 15 Q You know what the pills were for?
- 16 A No idea.
- 17 Q So, why were they in your car? Why are they in your
- 18 vehicle?
- 19 A I have numerous people that be in and out of my
- 20 vehicle, honestly.
- 21 Q Okay. What about the weapons? You had two weapons.
- 22 You had an automatic in the vehicle.
- 23 A No, sir.
- 24 Q KelTec?
- 25 A There were -- no automatic weapon was in the vehicle.

1 Q I'm sorry. Say that louder.

2 A No automatic weapon was in the vehicle.

3 Q Was the KelTec in your vehicle?

4 A I'm not -- I'm not a -- necessarily a manufacturer, but
5 I believe that's a semi-automatic weapon.

6 Q Okay. That was in your car. And what about the Glock?
7 You had a Glock 22 in your vehicle also.

8 A I believe they found that in the bag that -- the same
9 bag that they took \$7,000 out of. I believe so, but I don't
10 know.

11 Q And at the time, was it legal for you to have those
12 weapons ---

13 A No, sir.

14 Q --- in your vehicle?

15 A It wouldn't have been legal for me to possess them.

16 Q Pardon me?

17 A It wouldn't have been legal for me to possess them. I
18 don't believe so. No.

19 Q How much cash did you say was in your vehicle?

20 A I don't know what they got reported. Supposedly, they
21 only reported 600 something dollars, but it was significant
22 amount of more cash. The evidence end up just missing.

23 Q Okay.

24 A I'd be happy to pay for a polygraph for Conklin or
25 McMillan. I'd be happy to pay for it. I'd be ecstatic.

1 Come out of my pocket. Won't cost the State nothing.

2 Q Did you go over that information with Mr. Williams and
3 Mr. Stitely?

4 A Oh, yes. I told Mr. Williams about and actually I kind
5 of was adamant about him wanting to address the \$7,000 end
6 up missing.

7 Q And so, you went over that information with him prior
8 to the time you went to the plea?

9 A Yes.

10 Q And after you had a negotiated range between your
11 counsel and the government, kind of, narrowing what the
12 Judge could sentence, between 15 and 20, and he sentenced
13 right in the middle, 17. At the time you entered your plea,
14 you told the Judge, when he was asking you whether you were
15 satisfied with counsel and whether you had sufficient time
16 to talk with him, you told the Judge, yes?

17 A I felt like that was contingent on them accepting the
18 plea.

19 Q You didn't think the Judge -- so, are you saying you
20 lied to the Judge?

21 A Not lied. But I felt, at that point, it's either take
22 that or possibly risk thirty to life, or death. Which, come
23 to find out, is inaccurate.

24 Q Okay. What was ---

25 A I believe ---

1 Q --- inaccurate about that?

2 A It don't carry 30 life, or death.

3 Q What was inaccurate about a sentence of 30 years?

4 A On my paper on the plea agreement it said it carried 30
5 to life, or death. It don't carry 30 to life, or death. It
6 carries 25 to 30. Big difference than possibly dying or
7 spending my life in jail.

8 Q What paperwork was that?

9 A My first plea offer.

10 Q Who sent that plea offer to you?

11 A I received it from somebody that worked for Mr.
12 Williams. I'm not sure who he was. It wasn't Mr. Williams
13 or Mr. Stitely. I received it at the first plea agreement,
14 and the State gave it to him. I'm assuming Ms. Oppenheimer,
15 but I couldn't even walk in the courtroom. I was in the
16 hallway with 200 people that was in the assembly line as
17 well.

18 Q So you thought the State could seek the death penalty
19 against you?

20 A Yes. That's what they told me. Thirty to life, or
21 death, supposedly.

22 Q And you believed that?

23 A I was unfamiliar with law. I wasn't -- I assumed the
24 State wouldn't have lied to me, but I should have knew
25 otherwise.

1 Q Did your lawyers ever tell you you were facing a death
2 sentence?

3 A He never specifically told me that, but he never
4 disagreed with what was on the paper.

5 Q You didn't believe they were seeking a death sentence
6 for what you did, did you?

7 A I thought it was the possibility that the charge
8 carried that. Now, how possible it was? I thought it was a
9 small possibility, but I didn't think it was a huge
10 possibility. I thought the possibility was probably greater
11 that they might give me life.

12 Q You didn't know whether the State had some information
13 that a result of the fentanyl that you had in your
14 possession and possibly distributed to other individuals who
15 died from the use of fentanyl. You didn't think the State
16 had any information like that, did you? That they could
17 seek death against you under the law of South Carolina? You
18 didn't think that, did you?

19 A Actually, that law wasn't in effect until after the
20 fact. The point, at that time, distribution of fentanyl was
21 zero to 15. Fifteen maximum.

22 Q So, you knew you weren't facing the death penalty?

23 A Not at that time.

24 Q You just said it.

25 A After the fact ---

1 Q After the fact.

2 A --- I looked at the law. Don't -- you're trying to --
3 intentionally trying to get me to contradict myself, go back
4 on my words. I know what you're doing.

5 Q Well, you didn't tell the Court, when you complained
6 about the threat you had, you said it was 30 years of your
7 life. That was your complaint. It wasn't that "I was
8 fearing the death penalty."

9 A It was just more ---

10 Q --- because you weren't, were you?

11 A I was. I thought it was a low possibility for actually
12 the death penalty, but I thought it was a possibility. I
13 thought it was more likely to try to give me life. Which it
14 don't even carry life. It carries 25 to 30.

15 Q All right. So after you received your 17 year
16 sentence, after you said the materials in your car -- your
17 girlfriend who was in the car had nothing to do with.

18 A I said she wasn't liable for nothing. At no point did
19 I necessarily say everything was mine. I just didn't want
20 her to have -- I didn't want her to get in trouble.

21 Q After you agreed with the fact related to the
22 trafficking possession of fentanyl and possession of the
23 weapon, you told the Judge you agreed with that?

24 A I agreed with it at the point ---

25 Q On page 12.

1 A Yeah. In the hearing, I agreed with it because I wanted
2 to plea out due to the fact I was scared of the alternative.

3 Q After you heard the prosecutor, Assistant Solicitor
4 Kelly Oppenheimer, tell the Court that you had a minimal --
5 a minimal prior record, correct? You heard Ms. Oppenheimer
6 say that it was a minimal record, but they were concerned
7 about the large amount of fentanyl, and a large amount of
8 methamphetamine that you had in your possession on that day.
9 That was driving the recommendation?

10 A No, what was driving a recommendation on two accounts
11 were the supposed Richland County charge. One, I was
12 innocent, and two, she actually made an error in that,
13 saying over 400 grams. The charge was over 10 grams,
14 supposedly, and I was actually innocent.

15 Q But we're talking about Lexington now.

16 A We were supposed to be talking about the Lexington the
17 whole time. At no point were we supposed to be talking
18 about the Richland County charge that I got dismissed.

19 Q After Mr. Williams made the plea and mitigation for
20 you, you had your father come up?

21 A I didn't have my father, honestly. I was -- even Mr.
22 Williams says that on that same page, "Robert don't know I'm
23 going to talk about this." That proves that I was unaware
24 of strategy. I was not -- at no point was strategy
25 negotiated to discussed with me. That's why I felt pressure

1 to take the charge. I didn't know how he planned to go
2 about getting me out of possibly serving life for a
3 possibility, the small possibility, of death.

4 Q So your father was there?

5 A Yeah, he was there.

6 Q And your father made a plea on your behalf. Is that
7 correct?

8 A Yeah. Yeah, he had a statement.

9 Q Said you did a lot of good things, but you had a
10 temper.

11 A That was ---

12 Q A lot of people have tempers, don't they?

13 A He mentioned that due to the fact that I kept -- on
14 numerous occasions, I tried to speak when I didn't agree
15 with a part, and I was either cut off by my representation
16 or the Court.

17 Q And then you spoke to the Court? You said what you
18 wanted to say on that day?

19 A I had a brief time to speak, but on numerous occasions,
20 something I didn't understand, I attempted to speak and I
21 was either cut off by the Court, or at one point even my
22 representation. He asked -- I believe the Judge asked me if
23 I understood specifically, and I tried to elaborate on
24 something that I didn't understand, and I was told to pretty
25 much be quiet.

1 Q And then you got sentenced to 17 years aggregate on
2 those charges, the way they ran. Ran them all together at
3 that time. Did you ask your client -- did you ask your
4 lawyers, either Mr. Williams or Mr. Stitely, to move to
5 reconsider the sentence?

6 A I mentioned -- I did. Basically the next day I went to
7 revoke -- to revoke the plea.

8 Q And as a result, Mr. Stitely filed some paperwork ---

9 A Yes.

10 Q --- asking for your sentence to be reconsidered? Was
11 there another reason for that?

12 A Other than the reasons I already stated?

13 Q Did you ever read the State's response to the request?

14 A Yeah, I read it.

15 Q You did?

16 A Yeah, I read it.

17 Q Were you able to listen to the jail calls that you had
18 made?

19 A No.

20 Q You didn't listen to them?

21 A No, I was unable to listen.

22 Q But did you remember those calls you made during that
23 time frame?

24 A They might have said something about me. No, not
25 specifically the calls. I know the paperwork said something

1 about it sounded like I was aware of the time it possibly
2 carried.

3 Q Do you remember anything that you may have said
4 negatively about the prosecution in the case?

5 A Specifically? No, I don't remember anything
6 specifically what was made on them calls.

7 Q But the Judge, after that response was filed, then
8 denied the request for reconsideration?

9 A Yeah, it was denied.

10 Q So your lawyers, up to that moment, were fully engaged
11 in the representation that you said you were satisfied with?

12 A No. I felt like they didn't ---

13 Q Excuse me.

14 A Prior to that, I don't feel like -- either -- I don't
15 know if it was on him or the State, but I requested the dash
16 cam footage way ahead of time. I never received the dash
17 cam footage. Now, it might ---

18 Q Never received what?

19 A Dash cam footage I requested. It's either -- I don't
20 know which one. It's either a failure of my counsel to
21 investigate, or a violation of the Brady disclosure rule by
22 the prosecution. One of the two. I met with him one time
23 prior to. I didn't have ample time to discuss strategy. I
24 felt pressured into taking the plea. Under the impression
25 that the statements led me to thinking it carried thirty to

1 life, or death.

2 Q Okay. During the guilty plea, it was represented that
3 the purpose of the stop was a concern that you were driving
4 under the influence and you had committed other traffic
5 violations that day?

6 A What other traffic violations? It says "suspected
7 traffic violations", were Ms. Oppenheimer's words exactly.
8 Suspected. What's a suspected traffic violation? And then,
9 if I was suspected of DUI, they never at no point did any
10 kind of sobriety test, never charged me with DUI, and the
11 activation of the dash cam was supposed to come on no later
12 than the activation of the blue lights. Where's that?
13 Where's the dash cam footage I requested? They had no
14 reason to pull me over.

15 Q But they did, and the Court was advised of that at the
16 time of the plea.

17 A Advised of what? He had no reason to pull me over?

18 Q Yeah, advised the reason for the traffic stop was
19 suspicion. All they need is a reasonable suspicion to stop
20 ---

21 A Actually he changed ---

22 Q --- you.

23 A He changed his reason on numerous occasions. At one
24 point, it was improper use of turn signal I believe. Then
25 it was improper use of turning lane. Which improper use of

1 turning lane? River Road is a one-lane road, like one lane
2 on each side. It barely opens up to a -- improper use of
3 turning lane? Did I use the turning lane, or I didn't use
4 the turning lane? Ain't no driving violation. He was --
5 and at no point was my license suspended. I never had a
6 DUI, so how is my license suspended for DUI, as far as what
7 Ms. Oppenheimer stated?

8 Q Did the Court -- was the Court ever advised you had a
9 prior DUI?

10 A She brought that up on -- I'm not sure what page it is.
11 I have my information over there. But she, Ms. Oppenheimer,
12 brought that up on page -- same when she was making her
13 statement.

14 Q Were you there to correct it?

15 A No. I was not allowed to talk. I had to let her
16 finish speak -- saying her part.

17 MR. ZELENKA: Thank you very much. Answer any
18 questions for the other side.

19 MS. MARTO: Just briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MS. MARTO:

22 Q So, really the only counsel you're challenging is Mr.
23 Williams, right?

24 A Mr. Williams, the State, I mean, yeah. Ineffective
25 assistance of counsel. Yeah, Mr. Williams. I mean, the

1 State had -- didn't have -- Ms. Oppenheimer didn't have the
2 correct information. She was making her recommendation
3 based on inaccuracies.

4 Q Right, but you're not challenging Mr. Stitely's
5 representation?

6 A Mr. Stitely was not representing me for that charge.
7 Mr. Stitely was representing me for another charge.

8 Q So you're not -- as far as you're concerned, he's not
9 related to this case?

10 A Not for this particular one. No, he wasn't. I don't
11 know if behind the scenes he was helping Theo Williams out
12 at all, but no. He was not representing me for this
13 particular charge.

14 MS. MARTO: No further questions.

15 THE COURT: You may step down. Thank you.

16 MS. MARTO: We would call Theo Williams.

17 WHEREUPON, Robert Theodore Williams,
18 having first been duly sworn, testifies as follows:

19 THE WITNESS: Robert Theodore Williams, Sr. Last name
20 spelled W-i-l-l-i-a-m-s.

21 DIRECT EXAMINATION

22 BY MS. MARTO:

23 Q Good afternoon, sir.

24 A Good afternoon.

25 Q You represented Mr. Helrigel, right?

1 A I did.

2 Q When did you take over the case?

3 A 4/7/22 appears to be the date that first file was
4 opened up, and I actually represented him on both charges,
5 on the Lexington and the Richland charge.

6 Q Did you work the case with Mr. Stitely?

7 A Yes, he's my law partner. So, you know, we help each
8 other out in regards to various courts.

9 Q But you were the only attorney at the plea hearing,
10 right?

11 A I was the only attorney at the plea hearing, and I was
12 the only attorney at the motion to -- no, I don't know.
13 Maybe I wasn't there. I think Ben was at the motion to
14 withdraw the plea.

15 Q How many times do you recall meeting with Mr. Helrigel
16 before the plea?

17 A I don't know. I know that I've met with him, and there
18 was some -- and I'll go ahead and bring this up now. He had
19 first and second appearances. The first appearance, I want
20 to say, Mr. Stitely was at the first appearance. The second
21 appearance, I was with him at the second appearance, and
22 that is when the initial offer was given, and that was on
23 July 8, 2022. They wrote down on the bottom of the form
24 what his offer was, because you were asking about life and
25 all this other stuff. So as of that date, he knew what his

1 offer was.

2 Q What was the offer?

3 A The offer was trafficking methamphetamine 28 to 100
4 grams first, PWID fentanyl, and possession of a weapon
5 during a violent crime. Negotiated range, 15 to 20 years.
6 So, as of that date, he knew what the offer was.

7 Q There was no second plea?

8 A No, there was no second plea. There were -- "offer
9 expires after August 26, 2022" was actually written on that
10 too, and that would have been before he was arrested in
11 Richland County, which I got the charges dismissed on.

12 Q So did you discuss trial strategy with Mr. Helrigel?

13 A Yes, we talked about -- we talked about the stop. We
14 talked about -- and Mr. Stitely, when he went out to see him
15 at the jail, he -- you'll have to ask him, because obviously
16 it would be hearsay for me to say what he'd say. But he
17 told him about whether or not he should enter a plea or not
18 enter a plea. But essentially, what happened -- and I'll be
19 fair to him, because he knows I'm a fair man. The real
20 driving force in this was the fact that he was sitting in
21 Alvin S. Glenn Detention Center and could not get out. And
22 I wouldn't want to be sitting there either.

23 Q I don't know many people that would. So you would
24 agree that he, kind of, was rushed into pleading because of
25 the Alvin S. Glenn?

1 A He was the one that wanted to plead. I don't think he
2 will ever say that his attorney was rushing him to plead to
3 anything.

4 Q Not -- maybe not the attorney, but circumstances.

5 A His circumstances were bad, and nothing could be done
6 about his circumstances, because he went out and committed -
7 - was arrested for another crime. They were moving to
8 revoke his bond on the first charges. He had a tremendous
9 amount of exposure, and he made that decision to go with the
10 plea of 15 to 20.

11 Q So you discussed the stop with Mr. Helrigel?

12 A We did. Talked about the stop, talked about -- and we
13 even discussed about whether or not he had probable cause to
14 pull him over or not pull him over, whether or not there was
15 one lane or not one lane. We talked about whether or not --
16 and he knows I remember all this -- whether or not that he
17 could actually, we could challenge the stop, and then he
18 says she has nothing to do with all the drugs in the car.
19 So, you're right. He could have still won it, maybe, if we
20 had tried the case, and if somebody had believed that it was
21 an improper stop, but we didn't get to that point.

22 Q Before you got to challenge the stop, he pled? Is that
23 what you're saying?

24 Q Well, because we had to do that in a trial, and he
25 wouldn't have come up for trial until, I don't know, two

1 years, maybe.

2 Q Now, do you recall discussing with Mr. Helrigel
3 sentencing ranges on the original charges? Not the
4 negotiated plea, but the original plea.

5 A Well, yes. Because, you see, his second appearance
6 where they gave him the original offer was the 15 to 20, and
7 as I said, he was subsequently arrested on the Richland
8 County charges, and then they moved to revoke his bond. So,
9 yes.

10 Q So, the 15 to 20. But the 25 to 30 that he would have
11 gotten off the original charge, did you discuss that with
12 him?

13 A Sure. There was nothing about life. I don't know
14 where life comes into play. None of these charges carry
15 life. The only thing -- the only way he could have gotten
16 life would have been if he added up all of these charges,
17 plead guilty to all of these charges, and he was convicted
18 of all of them, and they ran them consecutive. In my mind,
19 that's life. It's not a life sentence, but it's life.

20 Q Did you all have a preliminary hearing on this matter?

21 A I requested one. I don't know that we had one. I
22 don't know if they had scheduled one or not, but we
23 requested one, and if they had scheduled it, I'm sure we
24 would have gone. I don't remember, is the honest -- but I
25 know we requested one.

1 Q Did you think you think you had any opportunity to ask
2 for a better deal?

3 A Oh, I hate being honest. You have to know your
4 opposition, and he was not getting a better deal. And yes,
5 we did ask for a better deal on many times, many occasions.
6 I asked for a better deal, but he was not getting one.

7 Q Do you recall ever making a specific recommendation to
8 Mr. Helrigel regarding pleading or going to trial?

9 A I did not think it was in his -- I would never suggest
10 to him that he take and plead to 15 to 20 years in my -- as
11 a general rule, I don't do that. But had he gone -- had he
12 gone to trial, he would have gotten a whole lot more than
13 that, particularly in Lexington County.

14 Q Do you recall if you shared the discovery with Mr.
15 Helrigel regarding this case?

16 A Yes. He had copies of all the discovery. The issue
17 about videos, no videos. I was checking with my law partner
18 back there. We had some videos. And I want to say that
19 there was an attempt by Ben to maybe show it to him in
20 Richland County, but because of Covid and all that, he was
21 not able to look at that. We would have been able to, if
22 we'd had time, I guess, to get a machine brought in there so
23 that he could see it. But we were not the driving force
24 again into his entering a plea. Mr. Helrigel wanted out of
25 Alvin S. Glenn Detention Center and wanted to plea.

1 Q Do you recall when you gave the discovery to him?

2 A No. Well, I mean, he's got copies of it, because I've
3 mailed it to him. That was before he went to -- I might
4 have sent it to him in Alvin S. Glenn. You'll have to check
5 and see where the address on the stuff where I sent it to.
6 Yeah. But we sent him all his discovery, and he did call
7 us. He's called us. He called us from jail when he was in
8 Alvin Glenn and called us when he wasn't in jail. I knew
9 his father well, and you know, he was concerned. He was
10 concerned about him. So this was not -- he wasn't just left
11 out there.

12 Q So he entered a plea to a negotiated range between 15
13 and 20 years?

14 A He did.

15 Q Do you recall the Solicitor, kind of, pushing for the
16 upper part of that range?

17 A In my mind, when she said he had a minimal amount of
18 drug activity, that sounded to me like he hadn't been a real
19 bad person before he was arrested. But at the same time,
20 because she had her detective there, I think he was, or some
21 officer there, she was talking about how he had an awful lot
22 of drugs in this particular time in the car. And I
23 understand that, because this is right about this time is
24 when everybody was figuring out that fentanyl would kill
25 you, and now people are dropping all over the place. And

1 she was upset about that, and I don't blame her.

2 Q Now, do you think if she were to push for a certain
3 sentence out of the range, that would have been
4 inappropriate?

5 A I don't think that the decision to give him 17 years
6 had anything to do with her pushing one way or me pushing
7 another way. I mean, it is, if you look at it, it's
8 actually on the low end of 15 to 20, because actually 17 and
9 a half is the middle of it. So he actually is on the low
10 end of the 15 to 20.

11 Q And you stated that the Solicitor mentioned his minimal
12 criminal history, right?

13 A He did -- or she did.

14 Q Did you make a push for that as well?

15 A A push for that?

16 Q Push -- or did you --

17 A How do you push? How do you push for 15 years, or 16
18 years, when you have a range of 15 to 20? That's a magic
19 term there. All you do is you try to paint your client in
20 the best light that you can paint him, and then by doing
21 that, you say things like, I know he doesn't know about
22 this, about his dad being here, and that's why you start
23 talking about his PTSD that he had and the problems that he
24 had when his mother died. So you try to paint a picture of
25 your client in the light most favorable, so that somebody

1 will look upon him as more than just some guy who goes out
2 and violates the law. That he's actually a human being who
3 has had losses in his life.

4 Q So going back to when you said the Solicitor mentioned
5 he had a minimal criminal history. Do you specifically
6 recall her also pushing for something in the higher range?

7 A I don't know what you're talking about. That -- in the
8 higher range, she's going to talk about the fentanyl, but
9 she can't -- I don't think there's anybody who can make a
10 Circuit Court Judge do anything other than what he did. And
11 that is to take something, actually in the low range.

12 Q Starting, I think, with line 15. There's a paragraph.

13 A Okay, he said he didn't cooperate. He could have
14 gotten a better deal if he'd only cooperated. He went out
15 and got arrested. I don't know if you call that pushing or
16 just kind of stating, I don't know, what happened. I mean,
17 I don't know -- she's saying what happened. And she says,
18 well, I would want a higher one. Well, they always say
19 that.

20 Q So you'd agree that they said that, quote, "The State
21 would request a higher year amount", right?

22 A I agree the words in that transcript are an accurate
23 representation about what she said in the hearing.

24 Q And the investigator mentioned that as well. Do you
25 recall that?

1 A Yes.

2 Q Going back to what we just heard, the investigator
3 mentioned a high amount as well, right?

4 A Okay. The officer who was talking about, you know, the
5 drugs and fentanyl, yeah. Well, of course. Yes. I think
6 in most pleas, when an officer is present, they're there to
7 represent the problem with drugs in society for all those
8 other people out there in the audience. I don't know that
9 it's meant for him as much as it is for a general comment to
10 whoever is out there in the audience.

11 Q Now, did you investigate his prior record and whether
12 or not that was, I guess, one hundred percent accurate in
13 terms of what was stated?

14 A You know, when I read the transcript, I didn't see them
15 talking about the machine gun that he's referring to, or the
16 fact that they called it something else. When I read the
17 transcript, I didn't see that mentioned in there.

18 Q You didn't think it was appropriate to investigate his
19 prior record further?

20 A I don't think -- I thought we were talking about the
21 things that happened during the trial of the case, or the
22 plea of the case.

23 Q Yes, sir, but you would agree that somebody's record
24 does come into play when talking about plea negotiations,
25 right?

1 A Yes.

2 Q So do you ---

3 A Like -- you mean like the Richland County charges that
4 were outstanding at the time?

5 Q Something like that, yeah. Now, do you recall the
6 State mentioning Mr. Helrigel's pending charges, charges
7 that were dismissed, and prior criminal history on the plea
8 hearing?

9 A Yes.

10 Q Did you think you could object to the State mentioning
11 those things at the plea hearing?

12 A I don't see how it could have helped him.

13 Q And do you recall any mention of the State mentioning
14 that Mr. Helrigel was dealing drugs?

15 A I heard that was the State's opinion of it. I heard
16 that was the State's opinion of it, but I didn't think I was
17 going to gain a whole lot of leeway with the judge by, I
18 don't know, berating the prosecutor because he had all those
19 drugs in his car, and he was one that said she had nothing
20 to do with it.

21 Q So you didn't think to object to that either?

22 A We had a range of 15 to 20, and I thought I did object
23 to some of the stuff that the Solicitor was saying.

24 Q And then, how long after the plea did Mr. Helrigel
25 indicate to y'all that he wanted to withdraw the plea?

1 A I don't have any idea.

2 Q Were you involved in the plea withdrawal motion at all?

3 A I believe Mr. Stitely did that.

4 MS. MARTO: One moment, Your Honor.

5 THE COURT: Sure.

6 MS. MARTO: No further questions.

7 THE COURT: Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. ZELENKA:

10 Q At the time you entered the plea, when was this case
11 likely to go to trial?

12 A Two years.

13 Q Two years, based upon the backlog that had occurred
14 pursuant to Covid? Was that based upon the preference to
15 move cases for violent crimes at that particular time, and
16 move those cases out of the jail? Is that what would cause
17 that delay at that time?

18 A There -- I've got cases now which are, like, that old.
19 So you -- we have -- and if it wasn't for -- right now, we
20 have Supreme Court who's making the judges move these --
21 well, I shouldn't say, make the judges move this. But there
22 is a current push to move cases and what is happening is
23 that I think it puts heat on the Solicitor and the
24 defendant, so the defendant is getting better deals from the
25 Solicitor, because they can't try everything, essentially.

1 But yes. Well, I mean, I don't -- he could've sat there for
2 two years, probably.

3 Q And you said in your direct examination that he was
4 facing tremendous exposure at that time. What did you mean
5 by that?

6 A You could run it all consecutive. He had the Richland
7 County charges. The Richland County charges didn't just
8 magically disappear. And he could have sat in Alvin Glenn
9 Detention Center and they never messed with the Richland.
10 Because Richland County is more backed up than Lexington
11 County. So he could have gone ahead and gotten convicted of
12 the Lexington charges, and then they could have found some
13 way to convict him of the Richland County charges if he
14 lasted that long in jail over there. Well, no, actually --
15 which is actually -- which is actually one of the bad things
16 that did actually happen to him, because once the Richland
17 County charges were dismissed, for some apparent reason, he
18 was kept in Alvin Glenn Detention Center beyond -- beyond
19 the time that the charges were dismissed. So he -- where he
20 could have -- should have gone -- should have, should have -
21 - gone to, I think, R & E. But that has happened on more
22 than one occasion.

23 Q With respect -- with respect to that exposure, was
24 there ever an indication to you that death was on the table?

25 A No.

1 Q Did you ever see any paperwork ---

2 A No.

3 Q -- that suggested death was on the table?

4 A Absolutely not.

5 Q And what paperwork did you see that life was on the
6 table?

7 A Never saw it.

8 Q Do you have any idea what he's talking about?

9 A No.

10 Q Was there ever an offer suggesting a term of years,
11 beyond the 20, that he eventually got?

12 A No, other than the offer would be off the table if he
13 didn't accept it, and then they could go up to the increased
14 amounts of drugs that were found in the car.

15 Q So there was a threat of more coming up?

16 A Correct.

17 Q And one of those charges, the methamphetamine charges
18 alone, had a minimum term of years of what?

19 A Twenty-five years.

20 Q Up to what? Do you recall?

21 A Thirty, I think.

22 Q Twenty-five to 30 that he was facing on that charge
23 alone, which certainly would not allow him to get the 17
24 year charge he ended up with -- the penalty that he ended up
25 with. Is that correct?

1 A He actually got, with all the stuff hanging out there,
2 he actually got an okay deal. I think he's not happy
3 because he didn't get the 15. He wanted 15.

4 Q In the -- did you have a discussion with him about the
5 circumstances of his stop?

6 A Yes.

7 Q And what was the indication he gave you as to what was
8 going on at that particular time during the stop, if you
9 recall?

10 A He said that he really wasn't driving improperly, but
11 the main thing he said was that once the police officer
12 pulled over, he owned up. I shouldn't use the word owned
13 up. He said that the girlfriend had nothing to do with it,
14 you know, that she had nothing to do with the drugs. And
15 once he's pulled over and someone has gone in and found the
16 -- found the drugs, then it's kind of hard to blame somebody
17 else who's not there.

18 Q And after he got pulled, by the records, for a
19 potential DUI and the window rolled down and there was smell
20 of marijuana, and then the extension of what law enforcement
21 could do at that time ---

22 A For sure.

23 Q === occurred?

24 A Sure. I mean, essentially, if, you know, if you're
25 stopped you're check for, you know, suspicious behavior, I

1 guess nowadays, and if you smell the marijuana, even though
2 there may be changes in smelling marijuana if we ever get to
3 the fact that maybe all marijuana, all hemp, is not illegal
4 if you smell it. But in this particular case, once you
5 smell it, you have probable cause to take them out and you
6 can be DUI'd on marijuana.

7 Q Yes.

8 A You don't have to drink alcohol to be DUI'd.

9 Q Were you aware of the other traffic violations? Was
10 that part of the discovery you received, if at all?

11 A I don't remember. I'm not exactly sure what you're
12 asking me, other than the stop.

13 Q The prosecutor noted other traffic violations were
14 being resolved. Were those violations, violations which
15 occurred -- and I refer you to page 10. Ms. Oppenheimer's
16 opening about the circumstances of the case. See if that
17 refreshes your recollection.

18 A Well, I can do better than that. She says suspected
19 violations, and on the Lexington charges he was actually
20 charged with trafficking meth, PWID marijuana, possession of
21 a controlled substance narcotics, possession of a weapon
22 during a violent crime, and unlawful carrying of a pistol.
23 But I don't show that we represented him, unless there's
24 another file that I'm not familiar with, on any magistrate
25 or municipal charges, which is what your question seems to

1 ask me about. I don't show that we represented him on
2 those.

3 Q Now, she referenced "including crossing over the line
4 in the middle of the night". Does that ring a bell to you
5 at all.

6 A Well, I'm sure those were statements made by the
7 officer for pulling him over, but he probably took care of
8 those municipal charges or those magistrate charges by
9 himself if there, indeed, were charges on that.

10 Q And did you discuss the nature of the stop and the
11 dash cam photos? The dash cam videos? Was there any
12 discussion about the presence, lack of, the quality of that
13 information?

14 A No. I don't -- this was a stop. I mean, this was not
15 -- I was not gearing up to try him on a DUI case.

16 Q With respect to whatever information you would utilize
17 had this case gone to trial two years later, what would be
18 the difference between plea preparation and preparation for
19 trial, in your practice, and what you did in this case?

20 A Well, if we had tried the case, obviously we would
21 have wanted any type of video showing the driving so that we
22 could make that argument. There was videos that we had, and
23 we still have, which were just -- but I think those videos
24 was the officer's. They weren't the dash cam, because back
25 then, a lot of times you would have a stop and it was the

1 officer you'd see, and we had those.

2 Q Just so the record reflects, you're pointing at your
3 chest, right?

4 A Because they always have the camera on them, if they
5 have a camera.

6 Q Body worn camera?

7 A Correct. And we had those. And still do.

8 Q Did you review those with your client, if you recall?

9 A I don't know. I know that that maybe Ben reviewed it
10 with him. I don't remember, actually.

11 Q You provided him the paperwork, the discovery
12 paperwork?

13 A Sent him copies of everything that we had, with the
14 exception of the videos, which we could not send him copies
15 of. But before we tried the case, we would obviously have
16 him look at the videos.

17 Q When the Solicitor informed the Court that she was
18 requesting the upper range, do you recall that was in
19 context with also stating that the negotiated range was 15
20 to 20?

21 A Yes.

22 Q She wasn't asking at that time for the Court to go all
23 the way up to the highest amount that he was facing under
24 that particular charge, was she?

25 A No, she wasn't. And actually the reason why lawyers

1 get that range of 15 to 20 is they trying to knock out all
2 the exposure from way beyond that. Because obviously, if we
3 hadn't done that, then they could have maxed him out on
4 everything and they could have run everything consecutive.
5 So the lawyer work was done when you got him in the range,
6 at least most of it. There's always a little bit. You're
7 always trying to make him -- maybe, if we'd gotten the
8 Judge's heart strings on the 15, he might have done it. But
9 I think the Judge thought we'd gotten enough over on that.

10 MR. ZELENKA: I don't think I have any further
11 questions.

12 THE COURT: Anything on redirect?

13 MS. MARTO: No redirect.

14 THE COURT: You can step down. Thank you.

15 MR. WILLIAMS: Thank you, Judge.

16 MS. MARTO: We'd call Mr. Ben Stitely.

17 WHEREUPON, Ben Stitely, having
18 first been duly sworn, testifies as follows:

19 THE WITNESS: It's Ben Stitely, S-t-i-t-e-l-y.

20 DIRECT EXAMINATION

21 BY MS. MARTO:

22 Q What was the scope of your involvement in this case?

23 A So, as referenced, Theo and I are law partners. I
24 guess in this case, specifically, I appear to have gone to
25 the first appearance. Theo would have went to the second.

1 At the time when he was in Alvin S. Glenn, I was the one who
2 went and talked to him. I know at least twice. Can't tell
3 you more than that, and part of the reason would have been
4 two-fold. Alvin S. Glenn was having lots of problems then,
5 lots of Covid. So even when I got to see him, I never got
6 to go see him more than on a video at Alvin S. Glenn. Like,
7 we were on a screen through a phone, and I was doing the
8 Alvin S. Glenn visits, because at the time Theo was dealing
9 with around Covid stuff, and we were trying to avoid
10 situations. So he would -- and I talked to him on the
11 phone. Theo talked to him on the phone. I never talked to
12 his dad. I know that Theo spoke with his father, and then I
13 filed the motion to reopen, or to withdraw the plea after
14 the plea was done. I don't think we actually had a hearing.
15 I think the Judge just ruled on it by order.

16 Q That was denied, right?

17 A Correct.

18 Q Can you think of anything that would have changed or
19 made the motion successful in retrospect?

20 A No. I mean, we put in there that he was under
21 incredible emotional duress. And I think that's completely
22 accurate, as kind of was flushed out. He was out. He had
23 the offer. And just for clarification's sake, between the
24 two of us, I'm more likely, usually, to tell people they
25 should plead guilty than Theo is, but I know that he got the

1 offer. He was locked up in Richland. I went and saw him,
2 because they were trying to decide whether or not to take
3 it. And then after it was taken, once again, I wasn't there
4 for that part. When I went and saw him, we talked about it,
5 and one of the problems was he felt like he was pushed into
6 pleading because he's sitting in Alvin S. Glenn. They filed
7 a motion to revoke his bond. I know he was having problems
8 there. He had some horrible cell mates, and he literally
9 was in a situation, like Mr. Williams said, where he was
10 probably going to be stuck in Alvin S. Glenn for the next
11 couple years waiting on a trial date. We filed the motion.
12 The Judge didn't grant it.

13 Q Do you think that those circumstances could have
14 affected his decision to plea?

15 A I can't tell you at the end of the day, but I'm sure
16 that he felt some urgency to move his case. I would have.
17 I mean, Alvin S. Glenn is not a place for anyone to be
18 sitting, and that's a fair statement.

19 Q Do you think it may have rendered as plea less, I
20 guess, voluntary?

21 A I can't answer that one. I could tell you that it
22 definitely would have put an incentive to get out of there.
23 But whether or not that makes it voluntary or not. I wasn't
24 there for the plea, so I can't speak to that.

25 Q Do you have any specific recollection of the first

1 appearance? Do you have any specific recollection of being
2 at the first appearance?

3 A No, but the reason I say I think I was there is I
4 looked at my calendar and says I did first appearances that
5 day.

6 Q Now, did you discuss trial strategy with Mr. Helrigel?

7 A So when I went and saw him at the jail, I guess that
8 was, kind of, when it was to the point whether or not he had
9 to decide what he wanted to do. My recollection on this is
10 a little different than even Mr. Williams'. I think when I
11 went and saw him, I told him, "Theo thinks you should wait
12 it out and try the case." But that's a standard -- Mr.
13 Williams likes to try cases, and that would usually be his
14 position. I know we talked about it. I spent more time
15 talking to him about the new arrest than I did the original
16 case. I don't recall ever watching the body cam footage
17 short of like two days ago when I pulled it up on the
18 computer to see if I remembered it. So I don't recall
19 talking to him at all about the first case. I know I talked
20 to him about the second case, which involved some drugs in a
21 trash can. But I don't remember the first case specifically
22 at all.

23 Q Do you recall specifically discussing, like, actual
24 trial strategy?

25 A No.

1 Q Do you recall specifically discussing with him
2 challenging the stop, or the basis of the stop?

3 Q I don't think I spoke to him at all about what his
4 trial strategy would have been on the first case. I know
5 that when I went over there to talk to him, honestly I think
6 our biggest concern is either she filed or emailed us and
7 said she was filing a motion to revoke his bond, and I had
8 went over there to talk to him about what was going on. I
9 know, looking at my calendar, it looks like I went nine days
10 before he entered his plea. I'm just assuming that's right,
11 because it's what my calendar says. So my guess is we were
12 getting the screws put on us by the Solicitor's Office that
13 they were going to transport him. I know he had had a phone
14 call, Mr. Williams, so I went out and talked to him. I
15 don't think I talked to him about the case. I know I asked
16 him about what happened in Richland, because the moving
17 force for revoking his bond would have been the conduct in
18 Richland. So we talked about that. We talked about some of
19 the problems with that case. But I don't recall ever
20 talking about the merits of the Lexington case.

21 Q Do you recall discussing with him sentencing ranges
22 when it came to the Lexington charges specifically?

23 A I remember I told him that the plea was -- I remember
24 the 15 to 20 was relayed, and I went and talked to him about
25 it, and that's what he had said he wanted to do. I think I

1 actually was, like I said, I think my words to him was this.
2 "Theo would have told you not to take this and to wait it
3 out, but this is what they're offering." And then obviously
4 he signed the plea when he was brought over, but I didn't
5 bring plea paperwork or anything like that for him to sign.

6 Q Do you recall telling him what he would be facing if
7 he went to trial?

8 A I know that we talked, because I think his charges in
9 Richland were, again, a trafficking 400 or more. So we
10 talked about 25. I don't remember. I can't tell you what
11 we talked about as far as sentencing ranges. I know he had
12 another trafficking charge. That's all I remember. I don't
13 remember -- if I'm wrong on the weights on that, I
14 apologize, but I know we talked about the Richland case in
15 depth.

16 Q And do you recall what the Richland charge was? Was
17 it 400 grams or more?

18 A He had several. There was, like, four or five charges
19 in Richland. The Richland case, for what it's worth, he had
20 went somewhere with someone else and someone had put some
21 drugs in a trash can, and they claimed that it was his drugs
22 in the trash can. Something about videos. It was all kinds
23 of murky. I just -- once again, he had been arrested, like,
24 a week or two earlier. We didn't have discovery. We didn't
25 have any of that yet. We'd filed for it, but I listened to

1 his side of the story, came back, and relayed it to Theo so
2 we could decide whether or not we thought Ms. Oppenheimer
3 would have a leg to stand on if she moved to revoke his
4 bond. And then he pushed to have it pled.

5 Q Now, since you were the one doing the jail visits, were
6 you the one also discussing discovery with him?

7 A We sent the discovery to him back in June. Looking at
8 our file, it looks like was like June 8th, 9th, something
9 like that. So we sent him the discovery in June. When he
10 had brought up the body cam, asking about the camera
11 footage, if he'd asked about it, I would have had absolutely
12 no way to show it to him in Alvin S. Glenn. We weren't
13 allowed in the pods. We weren't allowed to bring in
14 computers. We weren't allowed to do anything like that. So
15 if he would have asked, I would have had no way to show him.
16 But that wasn't something that we even talked about. Mainly
17 when I was there right before the plea was to talk to him
18 about if they would be successful in revoking his bond, one,
19 and then when I went and saw him after the plea, because
20 obviously he called, spoke to Mr. Williams, or his dad
21 called, I don't know. I went out and saw him again, talked
22 to him about what we should do to file the motion. And then
23 I filed the motion. It was timely, but it was denied.

24 Q So again, you had no way of showing a video in
25 discovery?

1 A No. I would not have had a way at that time to show
2 him, but I don't think that was even something -- like I
3 said, we weren't talking about the merits of the Lexington
4 case when I was there at all.

5 Q Now, did you make any attempts at getting him a more
6 favorable plea offer?

7 A No. I had nothing to do with the plea negotiations.

8 Q Did you get a copy of his prior record as part of the
9 discovery in this case?

10 A Yeah. I mean, are you talking about the Lexington
11 discovery? I mean, it was sent to our office, so I guess
12 technically we both would have gotten it. We have a
13 computer system that we upload everything into. So it was
14 in our computer system. I never specifically looked at his
15 prior record, if that's what you're asking.

16 MS. MARTO: One moment, Your Honor.

17 THE COURT: Sure. Take your time.

18 Q Sir, I'm just going to show you this. Does this look
19 like a standard prior record?

20 A Yes.

21 Q Okay, and you would agree that the charge coming from
22 Richland, as listed, is 10 grams or more, right?

23 A Yeah, that's what it says. And I just found our cover
24 letter. We didn't indicate what kind of trafficking it was.
25 We just said it was trafficking cocaine. UCaP, possession

1 of a controlled substance, and possession of a weapon during
2 the commission of a violent crime. So whatever level
3 trafficking it was, it had a violent designation. I don't
4 know what the weight was. So if I said the wrong way, I
5 apologize, but we definitely had it as a trafficking.

6 MS. MARTO: Thank you, sir. No further questions.

7 THE COURT: Any questions?

8 MR. ZELENKA: I just have a couple.

9 CROSS-EXAMINATION

10 BY MR. ZELENKA:

11 Q After the guilty plea was entered and he was sentenced
12 to 17 years, you had a meeting with the Applicant?

13 A Yes. I would have went down to the Richland jail and
14 talked to him. I remember being asked to go down there. My
15 guess is how that went down is either he or his father
16 called Theo and said, "Hey, we're not happy about the
17 sentence. Will you come see us?" I went down there, told
18 him what his options were, and I said, "I can file a motion
19 to withdraw if you'd like." That does exactly what it says.
20 And he asked me to file it. We talked about why, and he
21 said, I think exactly what I wrote in there. He was very
22 stressed out, and that's why he took the plea. And I put
23 that in the motion and filed it.

24 Q Then you got -- and that was done on -- Court's
25 indulgence.

1 A I think on October 6th.

2 Q October 6, 2022? And then the government responded on
3 October 8, 2022, a fairly adversarial response was given ---

4 A Yes.

5 Q --- by them? And attached to that response were jail
6 calls that have been made by the Applicant. And the
7 assertion was the calls reflected basically a state that
8 suggested that he was competent to enter the guilty plea,
9 was able clearly to articulate, fully understood the
10 consequences of what he was facing, and the various roles,
11 including the role of a prosecutor?

12 A Yeah, and I did not allege that he was incompetent. I
13 just put in there that he was under mental duress. I think
14 is exactly the way I worded it, and the Judge denied it on
15 the basis. The Judge says, well, I spoke to him. I made
16 the decision he was knowing, willing and voluntarily making
17 his plea. That's what the Judge wrote in his denial motion.

18 Q Right. But he looked at the merits?

19 A Yes, sir. As far as I know. We didn't have a hearing,
20 but the Judge made his decision on the written submissions.

21 Q And again, why did you do that rather than Theo, as
22 Mr. Helrigel's counsel?

23 A I was the one who saw him, so I heard the words out of
24 his mouth, and I thought it would be appropriate to write up
25 the motion, because I had spoke to him. I said, "Well, why

1 didn't you think your plea was done right?" He said, "I
2 felt like I was stressed out." And rather than it become
3 third party hearsay, I put it exactly as it was expressed to
4 me. We work together, so if you look through here I'm sure
5 I've signed letters in this case too. If one of us -- for
6 all I know, he could have been to trial that week. I just
7 don't remember. But I saw Robert in the jail, so I filed the
8 motion.

9 Q Was it your impression that Mr. Helrigel understood
10 you were also involved in the Lexington prosecution?

11 A I mean, I don't know if -- what his implication. I
12 mean it's -- both of our names are pretty much on
13 everything, so I would assume so, but I'm not going to put
14 words in his mouth. I would introduce myself, "I'm Theo's
15 law partner." I don't know that I met him before Richland
16 jail with all, except for maybe at the first appearance.
17 But those are -- literally, I'll see someone for 10 seconds.

18 Q Just so the record is clear, we never know where it
19 may go. It may go to federal court. What occurs at a first
20 appearance in South Carolina?

21 A Not anymore. New law. No, no. But the old ones,
22 what they do is, literally, in Lexington in particular, they
23 will drag five, six hundred people up here on a typical
24 first appearance. They literally will have a line of people
25 all the way through the fourth floor out the building. I

1 get here a little early. We have the clients go by our
2 office. They check in. When I say check in, we actually
3 have them sign a sheet updating their phone number and
4 address. If they're there at 8:30 when I walk over here,
5 I'll walk them over, or Theo will. If not, I come into the
6 courtroom. I collect what are called appearance sheets.
7 Usually, I will get them. I will walk out into the hallway,
8 because they don't even let the clients in the courtroom. I
9 will call the name. The person will come up and I will say,
10 "Hey, this is your second appearance. It's going to be on
11 this date. Sign right here. Be in touch with our office."
12 I walk into the courtroom, make a photo copy, walk out, and
13 hand it to them.

14 Q What occurs at the second appearance?

15 A So typically, in theory, at the second appearance
16 we're supposed to receive an offer, and we're supposed to
17 decide whether or not we are accepting it. With all
18 honesty, typically they just show up and the Solicitor says
19 "Well, you're going to come back again in two months." But
20 in this case, it looks like on his second appearance sheet
21 Ms. Oppenheimer wrote an offer, and it has an expiration
22 date, so whether or not they hold to those -- sometimes they
23 do, sometimes they don't. And it looks like on his second
24 appearance she gave him another court date, which would have
25 been, in theory, served as another appearance date.

1 MR. ZELENKA: That's all the questions I have. Thank
2 you.

3 THE COURT: Anything else?

4 MS. MARTO: No, Your Honor.

5 THE COURT: You can step down.

6 THE WITNESS: Thanks, Judge.

7 THE COURT: Anything else from the State?

8 MR. ZELENKA: No further questions.

9 THE COURT: Well, what I'll do is and what I'm telling
10 everybody is, I've got to review the whole file, including
11 your transcripts. I'll take it under advisement and let you
12 know in a couple of weeks. Be safe.

13 ***END OF REQUESTED TRANSCRIPT OF RECORD)***

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Certificate of Reporter

I, the undersigned, Tara T. Scott, CVR, Official Court Reporter for the Eleventh 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/hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Lexington County, South Carolina, on the 21st day of March, 2024.

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

A handwritten signature in black ink, reading "Tara T. Scott", is written over a horizontal line.

Tara T. Scott, CVR

Official Court Reporter

March 6, 2026



South Carolina Law Enforcement Division

P.O. Box 21398
Columbia, South Carolina
29221-1398

Henry D. McMaster, Governor

Mark A. Keel, Chief

Tel: (803) 737-9000

January 10, 2024

RE: Challenge of Criminal Record

Robert "Bobby" Joseph Helrigel Jr. 390-927
Trenton Correctional Institute
84 Greenhouse Road
Trenton, South Carolina 29847
Date of Birth: [REDACTED] 1983
Social Security Number: [REDACTED]

Dear Mr. Helrigel:

Our office has received your request for a challenge of a South Carolina criminal record.

Your fingerprints, which were submitted to our agency for this challenge, were compared to arrest fingerprint cards from the South Carolina State Database, for State ID Number [REDACTED]

This comparison determined that your fingerprints were identical to the fingerprints associated with this South Carolina Criminal record.

SLED has reviewed your criminal history regarding the January 6, 2014, charge on your record. Since this was an out of state charge, SLED has corrected the charge to show Transfer of Supervision. SLED has reviewed the 2017 charges in question and our records reflect the charges were pled down to misdemeanors. Please note the original arrest charge will stay on your record. ** Admitted to error and correct*

I have included a copy of your corrected South Carolina criminal record, if you feel that the offenses are not correct or need further information related to the charges, then you would need to contact the arresting agency for clarification.

If you should have further concerns or questions, please do not hesitate to contact my office at 803-896-7005.


Seraphim Haftoglou, Supervisor
AFIS/Fingerprint Department
SLED CJIS



State v. Robert Helrigel

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*** CR Response for 0000374195 Requested by OR: SC032015A, Generated at 2022-05-12T11:14:52 ***

HDR/2L0134440217732QR

ATN/HUBBARD, RICK

THIS RECORD IS BASED ON THE SID NUMBER IN YOUR REQUEST-SID: [REDACTED]

NEW JERSEY CRIMINAL HISTORY DETAILED RECORD

USE OF THIS RECORD IS GOVERNED BY FEDERAL AND STATE REGULATIONS. UNLESS FINGERPRINTS ACCOMPANIED YOUR INQUIRY, THE STATE BUREAU OF IDENTIFICATION CANNOT GUARANTEE THIS RECORD RELATES TO THE PERSON WHO IS THE SUBJECT OF YOUR REQUEST. USE OF THIS RECORD SHALL BE LIMITED SOLELY TO THE AUTHORIZED PURPOSE FOR WHICH IT WAS GIVEN AND IT SHALL NOT BE DISSEMINATED TO ANY UNAUTHORIZED PERSONS. TO ELIMINATE A POSSIBLE DISSEMINATION VIOLATION, AND TO COMPLY WITH FUTURE EXPUNGEMENT ORDERS, THIS RECORD SHALL BE DESTROYED *IMMEDIATELY* AFTER IT HAS SERVED ITS INTENDED AND AUTHORIZED PURPOSES. ANY PERSON VIOLATING FEDERAL OR STATE REGULATIONS GOVERNING ACCESS TO CRIMINAL HISTORY RECORD INFORMATION MAY BE SUBJECT TO CRIMINAL AND/OR CIVIL PENALTIES. THIS RECORD IS CERTIFIED AS A TRUE COPY OF THE CRIMINAL HISTORY RECORD INFORMATION ON FILE FOR THE ASSIGNED STATE IDENTIFICATION NUMBER.

STATE ID NO. [REDACTED] FBI NO. [REDACTED] DATE REQUESTED. 05/12/2022
NAME: HELRIGEL, ROBERT J.

SEX	RACE	BIRTH DATE	HEIGHT	WEIGHT	EYES	HAIR	BIRTH PLACE
M	W	[REDACTED]	603	160	GRN	BRO	SC

RECEIVING AGENCY: SC032015A U.S. CITIZEN: YES

FIC: WLRRWLLLLL

AFIS NO:

III: MULTI STATE
DNA SAMPLE STATUS:
PROFILE IN CODIS

SOCIAL SECURITY NUMBERS

[REDACTED]

SCARS/MARKS/TATTOOS/MISC NUMBERS

TATTOO LEFT ARM

TATTOO LEFT ARM

LAST REPORTED ADDRESS/DATE : 05/01/2013

[REDACTED] SC 292103752

***** ARREST 001 *****

ARRESTED 05/01/2013 AGENCY CASE NO: 13-07544

AGENCY: NJ0024800

RAMSEY PD

BERGEN

NAME USED: HELRIGEL, ROBERT J.

DOB USED: [REDACTED] 1983

OFFENSE DATE: 04/30/2013

001 CNT 2C:39-3D

003 CNT 2C:39-5C(1)

001 CNT 2C:39-9D

PROHIBITED WEAPONS/DEVICES - DE

UNLAWFUL POSS WEAP - RIFLES/SHO

WEAPONS-MANU/TRANS/DISP/DEF-WEA

INDICTMENT/ACCUSATION

NO: BER130600903I

AGENCY: NJ002043J

AOC NUMBER: BER13000768-002

DISPOSITION DATE: 10/07/2013

BERGEN CO SUPERIOR CRT

DISPOSITION: GUILTY

001 CNT: 2C:39-5C(1)

DEG: 3

FELONY CONVICTION

UNLAWFUL POSS WEAP - RIFLES/SH

DISPOSITION: DISMISSED

State v. Robert Helrigel

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*** QR Response for 0000374195 Requested by ORI SC032015A, Generated at 2022-05-12T11:14:51 ***

THIS INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR
RECORD REQUEST FOR FBI/[REDACTED] INDIVIDUAL'S RECORD WILL BE
COMPLETE WHEN ALL RESPONSES ARE RECEIVED FROM THE FOLLOWING SOURCES:
NEW JERSEY - STATE ID/[REDACTED]

AN ADDITIONAL RECORD MAY BE OBTAINED FROM FILES WITHIN YOUR STATE.
END

State v. Robert Helrigel

June 9, 2022 Page 36 of 41

Photo Available
 Palm Print Available
 Booking Agency

SC0400000 RICHLAND CNTY SO

 Court Disposition (Cycle 6)
 Court Case Number 08GS4002433
 Court Date 2008-09-26
 AFIS Tracking Number [REDACTED]
 Warrant Number 47745DM
 Charge 01
 Charge Number 05399
 Warrant Number 47745DM
 Charge Literal BREACH OF PEACE
 Statute (22-5-150,03-560; SC)
 Severity Misdemeanor
 Disposition (2008-09-26; CONVICTED ;)
 Court Comment Court Provision: 30 days or \$100

===== Cycle 7 =====
 Tracking Number 0007 Earliest Event Date 2011-12-17

Incident Offense Date 2011-12-17
 Charge Count: 01; Charge Literal: UNLAWFUL CARRYING OF WEAPON

Incident Offense Date 2011-12-17
 Charge Count: 02; Charge Literal: POSS 28G OR LESS MARIJ/10G OR LESS HASH 1ST

Incident Offense Date 2011-12-17
 Charge Count: 03; Charge Literal: TRAFFIC/HEADLIGHTS IMPROPER LIGHTS ALTERED

 Arrest Date 2011-12-17
 Arrest Warrant AFFIDAVIT @*
 Arrest Case Number 1100369896
 Arresting Agency SC0400100 COLUMBIA PD
 Subject's Name HELRIGEL, ROBERT JOSEPH JR
 AFIS Tracking Number [REDACTED]
 Comment(s) Palmprints Available
 Comment(s) Photograph Available

Charge 01
 Warrant Number AFFIDAVIT @*
 Charge Literal UNLAWFUL CARRYING OF WEAPON
 Statute (16-23-20; SC)
 Severity Misdemeanor

Charge 02
 Warrant Number 81976FX
 Charge Literal POSS 28G OR LESS MARIJ/10G OR LESS HASH 1ST
 Statute (44-53-370 (D) (4); SC)
 Severity Misdemeanor

Charge 03
 Warrant Number 81977FX
 Charge Literal TRAFFIC/HEADLIGHTS IMPROPER LIGHTS ALTERED
 Statute (56-5-4840; SC)
 Severity Misdemeanor

 Booking Subject HELRIGEL, ROBERT JOSEPH JR
 AFIS Tracking Number [REDACTED]
 Photo Available
 Palm Print Available

 Booking Subject HELRIGEL, ROBERT JOSEPH JR
 AFIS Tracking Number [REDACTED]
 Photo Available
 Palm Print Available
 Booking Agency SC0400100 COLUMBIA PD

Court Disposition (Cycle 9)
 Court Case Number 40
 Court Date 2017-03-14
 AFIS Tracking Number [REDACTED]
 Warrant Number 5102P0831411
 Charge 01
 Charge Number 05499
 Warrant Number 5102P0831411
 Charge Literal OPERATING VEHICLE WHICH IS NOT REGISTERED/LIC
 Severity Misdemeanor
 Disposition (2017-03-14; CONVICTED ;)
 Court Comment Court Provision: Fine or Jail Time

Court Disposition (Cycle 9)
 Court Case Number 17GS4007498
 Court Date 2017-12-15
 Warrant Number 2017A4021600527
 Charge 02
 Charge Number 05299
 Warrant Number 2017A4021600527
 Charge Literal UNLAWFUL CARRYING OF WEAPON
 Statute (16-23-20; SC)
 Severity Misdemeanor
 Disposition (2017-12-15; CONVICTED ;)
 Court Comment Court Provision: 60 days or pay a fine of 300;
 provided that upon t

Court Disposition (Cycle 9)
 Court Case Number 17GS4007501
 Court Date 2017-12-15
 Warrant Number 2017A4021600528
 Charge 03
 Charge Number 03599
 Warrant Number 2017A4021600528
 Charge Literal POSS 28G OR LESS MARIJ/10G OR LESS HASH 1ST
 Statute (44-53-370(D)(4); SC)
 Severity Misdemeanor
 Disposition (2017-12-15; CONVICTED ;)
 Court Comment Court Provision: 30 days or pay a fine of 200;
 provided that upon t

===== Cycle 10 =====
 Tracking Number 0010 Earliest Event Date 2017-06-06

Incident Offense Date 2017-06-06
 Charge Count: 01; Charge Literal: MANUFT, POSSESS OTHER SUB SCH I, II, III WITD-1ST

 Arrest Date 2017-06-06
 Arrest Warrant 2017A32102 @
 Arrest Case Number 6102P0334856
 Arresting Agency SC0320000 LEXINGTON CNTY SO
 Subject's Name HELRIGEL, ROBERT JOSEPH
 AFIS Tracking Number [REDACTED]
 Comment(s) Palmprints Available

State v. Robert Helrigel

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Incident Offense Date 2022-04-04

Charge Count: 02; Charge Literal: TRAFFICK ICE, CRANK, CRACK COCAINE 400G OR MORE

Incident Offense Date 2022-04-04

Charge Count: 03; Charge Literal: MANUFT, POSSESS OTHER SUB SCH I, II, III WITD-2ND

Incident Offense Date 2022-04-04

Charge Count: 04; Charge Literal: POSS OTHER CONTROLLED SUB IN SCHED I TO V-1ST

Incident Offense Date 2022-04-04

Charge Count: 05; Charge Literal: MDP, NARCOTIC DRUGS SCH I (B) & (C) / LSD / SCH II-1ST

Incident Offense Date 2022-04-04

Charge Count: 06; Charge Literal: POSS OF A WEAPON DURING VIOLENT CRIME

Arrest Date	2022-04-06
Arrest Warrant	2022A3210200916
Arrest Case Number	22006746
Arresting Agency	SC0320000 LEXINGTON CNTY SO
Subject's Name	HELRIGEL, ROBERT JOSEPH
AFIS Tracking Number	
Comment(s)	Palmprints Available
Comment(s)	Photograph Available

Charge	01
Warrant Number	2022A3210200916
Charge Literal	UNLAWFUL CARRYING OF WEAPON
Statute	(16-23-20; SC)
Severity	Misdemeanor

Charge	02
Warrant Number	2022A3210200911
Charge Literal	TRAFFICK ICE, CRANK, CRACK COCAINE 400G OR MORE
Statute	(44-53-375 (C) (5); SC)
Severity	Felony

Charge	03
Warrant Number	2022A3210200912
Charge Literal	MANUFT, POSSESS OTHER SUB SCH I, II, III WITD-2ND
Statute	(44-53-370 (B) (2); SC)
Severity	Felony

Charge	04
Warrant Number	2022A3210200913
Charge Literal	POSS OTHER CONTROLLED SUB IN SCHED I TO V-1ST
Statute	(44-53-370 (D) (2); SC)
Severity	Misdemeanor

Charge	05
Warrant Number	2022A3210200914
Charge Literal	MDP, NARCOTIC DRUGS SCH I (B) & (C) / LSD / SCH II-1ST
Statute	(44-53-370 (B) (1); SC)
Severity	Felony

Charge	06
Warrant Number	2022A3210200915
Charge Literal	POSS OF A WEAPON DURING VIOLENT CRIME
Statute	(16-23-490; SC)
Severity	Felony

State v. Robert Helrigel
 Booking Agency SC0400100 COLUMBIA PD

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===== Cycle 8 =====
 Tracking Number 0008 Earliest Event Date 2014-01-06

 Court Disposition (Cycle 8)
 AFIS Tracking Number [REDACTED]
 Charge 01
 Charge Number 05299
 Charge Literal UNLAW STORE/POSS MACHINE GUN/SAWED-OFF SHOTGUN
 Statute (16-23-230; SC)
 Severity Felony
 Disposition (; CONVICTED ;)
 Court Comment Court Provision: 3 TO 5YRS SS 1 YR PROBATION

⊗ error prior to
 correction.
 creates proj. due
 "Machine Gun"

 Corrections (Cycle 8)
 Action PROBATION
 Corrections Agency SC040035G RICHLAND PPP
 Supervision Case Number SC0400

===== Cycle 9 =====
 Tracking Number 0009 Earliest Event Date 2017-02-27

Incident Offense Date 2017-02-27
 Charge Count: 01; Charge Literal: UNLAWFUL CARRYING OF WEAPON

Incident Offense Date 2017-02-27
 Charge Count: 02; Charge Literal: MANUFT, POSSESS OTHER SUB SCH I, II, III WITD-1ST

Incident Offense Date 2017-02-27
 Charge Count: 03; Charge Literal: TRAFFIC/EXPIRED VEHICLE LICENSE

 Arrest Date 2017-02-27
 Arrest Warrant AFFIDAVIT @*
 Arrest Case Number 170006069
 Arresting Agency SC0400100 COLUMBIA PD
 Subject's Name HELRIGEL, ROBERT JOSEPH JR
 AFIS Tracking Number [REDACTED]
 Comment(s) Palmprints Available
 Comment(s) Photograph Available

Charge 01
 Warrant Number AFFIDAVIT @*
 Charge Literal UNLAWFUL CARRYING OF WEAPON
 Statute (16-23-20; SC)
 Severity Misdemeanor

Charge 02
 Warrant Number AFFIDAVIT @*
 Charge Literal MANUFT, POSSESS OTHER SUB SCH I, II, III WITD-1ST
 Statute (44-53-370(B)(2); SC)
 Severity Felony

* Simple
 Assessment

Charge 03
 Warrant Number 5102P0831411
 Charge Literal TRAFFIC/EXPIRED VEHICLE LICENSE
 Statute (56-3-2520; SC)
 Severity Misdemeanor

HASH 187

OFFENSE DATE-02/17/2011

WASH-11-0775

WASH-11-0775 MICHIGAN

WASH-11-0775 MICHIGAN

WASH-11-0775 MICHIGAN

ED

OFFENSE DATE-12/17/2011

20040/204 FIDELITY FOR

WASH-11-0775

WASH-11-0775 MICHIGAN

WASH-11-0775

WASH-11-0775 MICHIGAN

WASH-11-0775 MICHIGAN

SUPERVISION

WASH-11-0775 MICHIGAN

WASH-11-0775 MICHIGAN

WASH-11-0775 MICHIGAN

ⓧ Correction in Challenge
of criminal History

WASH-11-0775 MICHIGAN

WASH-11-0775 MICHIGAN

WASH-11-0775 MICHIGAN

WASH-11-0775 MICHIGAN

WASH-11-0775 MICHIGAN

WASH-11-0775 MICHIGAN

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WASH-11-0775 MICHIGAN

WASH-11-0775 MICHIGAN

WASH-11-0775 MICHIGAN

WASH-11-0775 MICHIGAN

USE OF THIS RECORD IS ALLOWED.

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*** CR Response for 0000374195 Requested by OR: SC032015A, Generated at 2022-05-12T11:14:52 ***

HDR/2L0134440217732QR

ATN/HUBBARD, RICK

THIS RECORD IS BASED ON THE SID NUMBER IN YOUR REQUEST-SID/[REDACTED]

NEW JERSEY CRIMINAL HISTORY DETAILED RECORD

USE OF THIS RECORD IS GOVERNED BY FEDERAL AND STATE REGULATIONS. UNLESS FINGERPRINTS ACCOMPANIED YOUR INQUIRY, THE STATE BUREAU OF IDENTIFICATION CANNOT GUARANTEE THIS RECORD RELATES TO THE PERSON WHO IS THE SUBJECT OF YOUR REQUEST. USE OF THIS RECORD SHALL BE LIMITED SOLELY TO THE AUTHORIZED PURPOSE FOR WHICH IT WAS GIVEN AND IT SHALL NOT BE DISSEMINATED TO ANY UNAUTHORIZED PERSONS. TO ELIMINATE A POSSIBLE DISSEMINATION VIOLATION, AND TO COMPLY WITH FUTURE EXPUNGEMENT ORDERS, THIS RECORD SHALL BE DESTROYED *IMMEDIATELY* AFTER IT HAS SERVED ITS INTENDED AND AUTHORIZED PURPOSES. ANY PERSON VIOLATING FEDERAL OR STATE REGULATIONS GOVERNING ACCESS TO CRIMINAL HISTORY RECORD INFORMATION MAY BE SUBJECT TO CRIMINAL AND/OR CIVIL PENALTIES. THIS RECORD IS CERTIFIED AS A TRUE COPY OF THE CRIMINAL HISTORY RECORD INFORMATION ON FILE FOR THE ASSIGNED STATE IDENTIFICATION NUMBER.

STATE ID NO. [REDACTED] FBI NO. [REDACTED] DATE REQUESTED: 05/12/2022
NAME: HELRIGEL, ROBERT J.

SEX	RACE	BIRTH DATE	HEIGHT	WEIGHT	EYES	HAIR	BIRTH PLACE
M	W	[REDACTED]	603	160	GRN	BRO	SC

RECEIVING AGENCY: SC032015A U.S. CITIZEN: YES

FPC: WLRRWILLLL

AFIS NO:

III: MULTI STATE
DNA SAMPLE STATUS:
PROFILE IN CODIS

SOCIAL SECURITY NUMBERS

[REDACTED]

SCARS/MARKS/TATTOOS/MISC NUMBERS

TATTOO LEFT ARM

TATTOO LEFT ARM

LAST REPORTED ADDRESS/DATE : 05/01/2013

[REDACTED]

[REDACTED]

[REDACTED]

SC 292103752

***** ARREST 001 *****

ARRESTED 05/01/2013 AGENCY CASE NO: 13-07544

AGENCY: NJ0024800 RAMSEY PD

BERGEN

NAME USED: HELRIGEL, ROBERT J.

DOB USED: [REDACTED] 1983

OFFENSE DATE: 04/30/2013

001 CNT 2C:39-3D

PROHIBITED WEAPONS/DEVICES - DE

003 CNT 2C:39-5C(1)

UNLAWFUL POSS WEAP - RIFLES/SHO

001 CNT 2C:39-9D

WEAPONS-MANU/TRANS/DISP/DEF-WEA

INDICTMENT/ACCUSATION

NO: BER1306009031

AGENCY: NJ002043J

AOC NUMBER: BER13000768-002

DISPOSITION DATE: 10/07/2013

BERGEN CO SUPERIOR CRT

DISPOSITION: GUILTY

001 CNT: 2C:39-5C(1)

DEG: 3

FELONY CONVICTION

UNLAWFUL POSS WEAP RIFLES/SHO

DISPOSITION: DISMISSED

* conviction

(This statute in SC, is legal in SC)

State v. Robert Helrigel
TAT L ARM

June 9, 2022 Page 32 of 41

Place of Birth
SC

FINGERPRINT IMAGES

Fingerprint Image Available

No Fingerprint Image Transmitted

Comment - Fingerprint Images On This Subject Are Stored on SCAFIS

AFIS Tracking Number -

AFIS Tracking Number -

AFIS Tracking Number -

AFIS Tracking Number -

AFIS Tracking Number -

AFIS Tracking Number -

AFIS Tracking Number -

AFIS Tracking Number -

PALMPRINT IMAGES

Palmprint Image Available

PHOTO IMAGES

Photo Image Available

No Photo Image Transmitted

Capturing Organization - Unknown

Available Image Category - Unknown

Comment - Photograph Available

Caution Information:

Notice @ - WARRANT OCCURS WITH MORE THAN ONE SID NUMBER

Notice * - WARRANT OCCURS IN MORE THAN ONE ARREST
CYCLE UNDER THIS SID NUMBER

Notice BASED ON SEARCH OF SCLED CJIS CCH FILE USING
FBI/

Notice SCLED CJIS RECORD INDICATES SUBJECT HAS OUT OF
STATE ARREST INFORMATION

Notice INQUIRY WILL BE FORWARDED TO: N C I C W A N T
E D P E R S O N S

Notice INDIVIDUAL PROHIBITED FROM POSSESSING OR
ACQUIRING FIREARM OR AMMUNITION PURSUANT TO
FEDERAL GUN CONTROL ACT OF 1968. INFORMATION
SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL
HAS BEEN CONVICTED OF A FELONY ACCORDING TO THE
SOUTH CAROLINA CODE OF LAWS.

Notice THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP,
TRANSPORT, OR RECEIVE ANY FIREARM OR AMMUNITION
AFFECTED BY INTERSTATE OR FOREIGN COMMERCE, AS
DEFINED BY THE GUN CONTROL ACT OF 1968 (18.U.S.C
922(G)).

***** CRIMINAL HISTORY *****

===== Cycle 1 =====
Tracking Number 0001 Earliest Event Date 2000-06-20

Court Disposition (Cycle 3)
Warrant Number G502562
Charge 01
Charge Number 04899
Warrant Number G502562
Charge Literal RESISTING ARREST
Statute (16-9-320(A); SC)
Severity Misdemeanor
Disposition (; CONVICTED ;)
Court Comment Court Provision: 1Y SUSPENDED, \$200, 1Y
PROBATION

Court Disposition (Cycle 3)
Warrant Number G502562
Charge 02
Charge Number 03599
Warrant Number G502562
Charge Literal POSS 28G OR LESS MARIJ OR 10G OR LESS HASH 1ST
Statute (44-53-370(D)(3); SC)
Severity Misdemeanor
Disposition (; CONVICTED ;)
Court Comment Court Provision: 3D

Corrections (Cycle 3)
Action PROBATION
Date 2002-06-11
Corrections Agency SC040015G CENTRAL PPP
Supervision Case Number 320000

===== Cycle 4 =====
Tracking Number 0004 Earliest Event Date 2004-08-28

Incident Offense Date 2004-08-28
Charge Count: 01; Charge Literal: POSS 28G OR LESS MARIJ OR 10G OR LESS HASH 1ST

Incident Offense Date 2004-08-28
Charge Count: 02; Charge Literal: VIOLATION TOWN ORDINANCE

Arrest Date 2004-08-28
Arrest Warrant B671718 @
Arresting Agency SCSHP0100 SC HIWAY DEPT DIST 1
Subject's Name HELRIGEL, ROBERT JOSEPH
AFIS Tracking Number [REDACTED]

Charge 01
Warrant Number B671718 @
Charge Literal POSS 28G OR LESS MARIJ OR 10G OR LESS HASH 1ST
Statute (44-53-370(D)(3); SC)
Severity Misdemeanor

Charge 02
Warrant Number B671719
Charge Literal VIOLATION TOWN ORDINANCE
Statute (N/A; SC)

Booking Subject HELRIGEL, ROBERT JOSEPH
AFIS Tracking Number [REDACTED]

FILED

STATE OF SOUTH CAROLINA
 COUNTY OF LEXINGTON

2024 SEP 16 AM 9:32
 LISA M. COMER
 CLERK OF COURT
 LEXINGTON SC

IN THE COURT OF COMMON PLEAS
 ELEVENTH JUDICIAL CIRCUIT

Robert Joseph Helrigel, Jr., #390927,

Case No.: 2023-CP-32-00670

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

This matter came before the Court by a pro se application for post-conviction relief by Robert J. Helrigel, Jr., filed on February 21, 2023. In the application, he challenges his convictions for trafficking in methamphetamine, between 28 and 100 grams (2022-GS-32-2541), possession with intent to distribute fentanyl (2022-GS-32-2544), and possession of a weapon during the commission of a violent crime (2022-GS-32-44). On March 18, 2024, the Respondent filed a Return to the application. On March 20, 2024, the Applicant, through appointed counsel Chelsey Marto, filed amendments to the application. He alleged allegations of ineffective assistance of counsel.

On March 21, 2024, this matter came before this Court. The Applicant was present and represented by his court appointed counsel Chelsey Marto. The Respondent was represented by Deputy Attorney General Donald J. Zelenka. Testimony was received from the Applicant, his plea counsel Robert "Theo" Williams and his counsel Benjamin Stitely. At the close of the hearing, this Court took the matter under advisement. This Order of Dismissal follows:

Procedural History

Applicant, Robert J. Helrigel Jr. is presently confined in the South Carolina Department of Corrections, pursuant to orders of commitment from the Lexington County Clerk of Court.

Applicant was arrested on or about April 4, 2022, for trafficking in methamphetamine four hundred (400) grams or more; possession with intent to distribute marijuana, first offense; possession of other controlled substance in schedule I-V, first offense; possession with intent to distribute fentanyl, first offense; possession of a weapon during the commission of a violent crime; and unlawful carrying of a pistol. *See* Warrant Nos. 2022A3210200911-916. On or about June 6, 2022, the State sent a plea offer to defense counsel via electronic mail. In that correspondence, the State offered the defendant to plead to the lesser-included offense of trafficking methamphetamine, more than twenty-eight (28) grams but less than one hundred (100) grams, first offense; possession with intent to distribute fentanyl, first offense; and possession of a weapon during the commission of a violent crime in exchange for a dismissal of the remaining three charges. Additionally, the State offered a negotiated sentencing range of fifteen (15) to twenty (20) years. This offer was valid through August 26, 2022.

On June 9, 2022, Defendant appeared with counsel for his initial appearance. He subsequently appeared with counsel on July 8, 2022, for a follow-up appearance, at which time a tentative plea date was set for August 26, 2022.

During an August 8, 2022 term, the Lexington County Grand Jury indicted Applicant for trafficking in methamphetamine, 400 grams or more, possession with intent to distribute fentanyl, and [possession of a weapon during the commission of a violent crime. He was represented on the charges by Robert Theo Williams of the Lexington County Bar.

On August 26, 2022, both the assigned solicitor and defense counsel were in trial in another matter, and the State agreed to extend the plea offer until September 15, 2022, at which time a tentative plea was scheduled.

On September 15, 2022, Defendant failed to appear for court due to new arrests in Richland

County for possession of a schedule I or II narcotic, first offense; trafficking cocaine, more than ten (10) grams but less than twenty-eight (28) grams, first offense; unlawful carrying of a pistol; and possession of a weapon during the commission of a violent crime. *See* Warrant Nos. 2022A4021602543-2545; 02556. Based on this new arrest, the State moved to revoke Defendant's bond on or about September 16, 2022.

On September 29, 2022, the State had Defendant transported from the Alvin S. Glenn Detention Center in Richland County for either a hearing on the State's motion to revoke bond or to enter a plea.¹ On that date, Applicant appeared before the Honorable Walton J. McLeod, IV with counsel Williams to enter a guilty plea to the lesser of trafficking in methamphetamine 28 to 100 grams, possession with intent to distribute fentanyl and possession a weapon during the commission of a violent crime. The prosecution was represented by Assistant Solicitor Kelly Oppenheimer. The State also agreed to dismiss pending Lexington County charges of possession with intent to distribute marijuana – first offense, possession of other controlled substances, and unlawful carry of a pistol. During the plea, Judge McLeod found the plea was knowingly, voluntarily, and intelligently entered into and Defendant had the advice of counsel with whom Defendant indicated he was satisfied. The guilty plea was entered with the negotiated range of fifteen (15) to twenty (20) years of the charges.

After his father Robert Helrigel Sr., counsel and the Applicant made pleas in mitigation, Judge McLeod sentenced the Applicant to concurrent sentences of 17 years for trafficking in methamphetamine, 15 years for possession with intent to distribute fentanyl and 5 years on the

¹ The State indicated to defense counsel that the plea offer which was extended on June 6, 2022, would remain open until September 29, 2022. The State further indicated to defense counsel if the plea were not accepted and entered by Defendant on September 29, 2022, the State would revoke the offer and proceed with the motion to revoke bond until such time as the case could be called for trial.

possession of a weapon during the commission of a violent crime.

On October 6, 2022, the Applicant made a motion to withdraw his guilty plea. The Applicant, through counsel Benjamin Stitely, asserted that “in speaking with the Defendant it appears he was under extreme mental distress and did not enter the plea knowingly, intelligently, and with the proper mental understanding of what was transpiring, it is counsels’ opinion that he may potentially require a mental evaluation.”

The State responded to the motion on October 8, 2022. In its response, the State urged the motion be denied with the following assertion:

Here, Defendant entered a guilty plea on September 29, 2022 before Judge McLeod. During that plea, Judge McLeod reviewed all of Defendant’s constitutional rights on the record with Defendant. Defendant indicated he understood each constitutional right, including the right to present a defense and/or witnesses at a trial, and chose to waive those constitutional rights afforded to him. Furthermore, Defendant indicated he was entering the plea knowingly and voluntarily and had enough time to discuss his options with counsel. At no point during the plea did Defendant hesitate in answering Judge McLeod’s questions as to whether or not he understood his constitutional rights and understood what he was doing by entering a plea.

Defendant now wishes to claim he was under extreme mental distress and now requires a mental evaluation. The test in South Carolina for determining a defendant’s competency to stand trial is a two-part inquiry: 1) whether the defendant has the present ability to consult with his attorney with a reasonable degree of rational understanding and 2) whether the defendant has a rational as well as a factual understanding of the proceedings against him. *Sims v. State*, 313 S.C. 420, 422-23 (1993). This level of competency is the same required for pleading. *Id.*

Notably, counsel for Defendant has been practicing law for approximately forty-six (46) years and at no point during his representation of Defendant did counsel indicate he had concerns as to Defendant’s competency. Indeed, the State witnessed a conversation between Defendant and counsel at appearances where Defendant was demanding he had not received his discovery at that time.

Furthermore, upon listening to Defendant’s conversations with family members and friends while housed at the Alvin S. Glenn Detention Center between September 29, 2022 and October 5, 2022, Defendant clearly had the ability to consult with his attorney as to his defense and had a rational understanding of the proceedings against him. *See Exhibit 1.* In these conversations, Defendant repeatedly tells his family and friends he had “a million grounds” which counsel could have raised at a plea or trial. Furthermore, Defendant seems well aware of the ten-day time period in which he has to file his appeal—stating he needs to

discuss his options with counsel before the time to appeal has lapsed. Indeed, once Defendant does meet with counsel, he indicates to his family that everything was “his idea” and “every idea [as to potential options post-plea], were [Defendant’s] idea,” rather than counsel’s. Still further, Defendant understands the difference between federal and State prosecution, as well as the varying programs each system offers and how it would affect the time in which he is incarcerated. In fact, Defendant discusses the difference between non-violent and violent crimes and the time in which SCDC holds a defendant for non-violent versus violent offense (i.e. 65% v. 85%). Clearly, Defendant understood the proceedings against him and further could have, and did, assist his counsel in his defense.

Moreover, pursuant to Section 44–23–410 of the South Carolina Code, a judge must order a mental health evaluation when the judge has “reason to believe” that the defendant “lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity.” However, the decision of whether to order a mental health evaluation is within the discretion of the judge, and that decision will not be overturned absent a clear showing of abuse of discretion. *State v. White*, 364 S.C. 143, 147 (Ct. App. 2005).

During the plea, neither counsel nor Judge McLeod had any concerns as to Defendant’s capacity to understand the proceedings against him or to assist in his own defense. Given Defendant’s own words, as laid out above and included in Exhibit 1, Defendant more than understood what he was facing at a plea versus a trial and was aware of various defense he could have raised at trial. Notably, in the jail calls with family members, for the first time Defendant alleges to have a brain injury² but, in the same breath, states: “I’m not retarded but if I can chop some time off, what’s up.” The mere fact Defendant understands he would be incarcerated for less time if house in a mental health facility indicates Defendant is fully aware of the proceedings against him. In fact, Defendant appears to merely be upset with the sentence imposed by the Court and will do anything to attempt to lessen his sentence.

State v Helrigel, State’s Response to Defendant’s Motion to Withdraw Plea, Oct. 8, 2022, p. 3-5.

On November 18, 2022, Judge McLeod entered his written order denying the motion to withdraw.

This Court has before it the following attachments and Court records, including the exhibit from the hearing, Applicant’s PCR Hearing Exhibit 1 concerning a corrected criminal record and SLED January 10, 2024 letter:

² The State has never been presented with any information that would corroborate this claim.

1. Records of the Lexington County Clerk of Court related to the underlying conviction, including the sentencing sheets, arrest warrants, indictments, motion to withdraw plea, response to motion to withdraw plea and order denying motion to withdraw plea.
2. Guilty Plea Transcript of September 29, 2022.
3. SCDC records related to conviction.

ALLEGATIONS

In his original application, the Applicant contended that he was being held in custody unlawfully for the following reasons:

1. 17-25-60 change of sentence upon prior convictions not considered.
 - a. Prior record inaccurate that was used to determine sentence.
2. Lawyer did not address issue.
 - a. Inaccuracies on separate paper. No prior felony drug convictions . Warrant in motion says PWID record had none prior.

(PCR App. at 3).

Amended Application

In the amended application dated March 11, 2024. The Applicant, through counsel Chelsey Marto, raised the following issues:

1. Ineffective assistance of counsel:

- a. For failure to discuss trial strategy with Applicant.
- b. for failure to obtain a more favorable plea offer.
- c. For failure to assist Applicant in making an informed decision regarding the plea.
- d. For failure to give Applicant a complete copy of the discovery or provide him with the opportunity to review video discovery in his case.
- e. For failure to investigate.
 - i. Specifically, Applicant wanted Counsel to properly investigate his criminal history and adjust his record to reflect Applicant's prior history appropriately.

- f. For failure to object to the State improperly addressing Applicant's prior history and pending charges at the plea hearing.
 - g. For failure to object to the State mentioning Applicant's history dealing drugs.
 - h. Counsel should have successfully argued for a fifteen-year sentence at the plea hearing.
 - i. For failure to successfully withdraw the plea.
 - j. For failure to meet with Applicant enough.
 - k. For failure to present Applicant's minimal criminal history to the Court in mitigation.
2. Invalid plea.
- a. Applicant was rushed into pleading last minute with threats of having bond revoked and being sent to Alvin Glenn if he did not plead.

Factual Basis of the Guilty Plea

During the guilty plea, the following factual basis was presented by Assistant Solicitor Kelly Oppenheimer:

MS. OPPENHEIMER: As to the facts, Your Honor, on April 20 4th of this year, while in the 100 block of River Road, which 21 is in the Columbia area of Lexington County, the defendant was pulled over by a deputy with the Lexington County Sheriff's Department for suspected DUI and suspected for committing numerous traffic violations, Your Honor, including crossing over that fog line. This was in the middle of the night, early morning, Your Honor.

Law enforcement did pull Mr. Helrigel's vehicle over. He was driving. His pregnant girlfriend was in the passenger seat. As law enforcement approached the vehicle and Mr. Helrigel rolled his window down, there was a very strong odor of marijuana coming from the vehicle. They ran Mr. Helrigel's information and determined that his license was suspended for DUI, Your Honor.

Because of that, Mr. Helrigel was removed from the vehicle and detained, and law enforcement did a probable cause search of the vehicle. At the defendant's feet on the floorboard of the driver's side of the vehicle, there was a red Nike shoe

box and a black backpack. Inside of the shoe box was 589.13 grams of methamphetamine, 92.3 grams of 15 fentanyl, marijuana, over 36 different pills, all of which 16 came back as either amphetamine, Klonopin, oxys, just various different controlled substances, Your Honor.

There were -- there was quite a large amount of cash in the vehicle, small plastic baggies indicating that the defendant was distributing illegal narcotics, and there were two weapons found in the vehicle as well, Your Honor. In that black backpack, there was a Kal Tec Sub 2000 and a Glock .22 pistol. Your Honor, law enforcement ran both of those serial numbers through NCIC, and both did come back as stolen.

Your Honor, as the defendant was being placed into the deputy's patrol vehicle, he did make the spontaneous statement that his girlfriend had absolutely nothing to do with anything found in the vehicle, and that it was all his. . .

Tr.p. 10-12.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon its review of the records provided, the testimony from each of the witnesses and credibility determination, this Court is constrained to deny post-conviction relief in its entirety. The Court makes the following findings of fact and conclusions of law pursuant to S.C. Code Ann. §17-27-80.(2023) (a PCR court must “make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented”). *Fishburne v. State*, 427 S.C. 505, 512, 832 S.E.2d 584, 587 (2019) (“The PCR court's general denial of all claims not specifically addressed in the PCR court's order ‘does not constitute a sufficient ruling on any issues since it does not set forth specific findings of fact and conclusions of law.’ ” (quoting *Simmons v. State*, 416 S.C. 584, 592, 788 S.E.2d 220, 225 (2016))); *id.* at 517, 832 S.E.2d at 590 (remanding the matter “to the PCR court for the issuance of a supplemental order setting forth findings of fact and conclusions of law on the PCR ground that was not addressed in the original order”); *id.* at 516, 832 S.E.2d at 589 (explaining that “because the United States Constitution's Sixth Amendment guarantee to a defendant's right to effective assistance of counsel is engrained in PCR cases, we cannot continue

to permit a party's procedural shortcoming ... to prevent this Court from remanding claims of ineffective assistance of counsel when the PCR court's order does not comply with section 17-27-80"). In light of the above, the Court sets forth the following:

CRITICAL LEGAL STANDARDS

Strickland v. Washington Standard

To establish that Sixth Amendment counsel was ineffective, a PCR applicant must show that counsel's representation fell below an objective standard of reasonableness, and but for counsel's error, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Simpson v. Moore*, 367 S.C. 587, 595–96, 627 S.E.2d 701, 706 (2006). "A reasonable probability is a probability sufficient to undermine confidence in the outcome" of the trial. *Strickland*, at 694. Relief will not be granted on a showing of mere error—prejudice must also be shown. *Id.* Moreover, it is presumed that counsel made all decisions in exercise of reasonable judgment. *Strickland*, at 689. It is an applicant's burden to prove, by a preponderance of the evidence, an entitlement to relief. Rule 71.1 (e), SCRCF. See also *Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) ("the burden of proof is on the applicant to prove the allegations in his application").

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel. See *Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). When reviewing a guilty plea, the analysis of counsel's performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel's representation fell below an objective standard of

reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58–59; *accord Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” *Hill*, 474 U.S. at 56. The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” *Id.* at 58–59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.* at 59.

This inquiry “focuses on a defendant’s decisionmaking” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 582 U.S. 357, 369, 137 S. Ct. 1958, 1966 (2017). However, the applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372. Courts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney’s deficiencies. *Lee v. United States*, 582 U.S. 357, 369, 137 S. Ct. 1958, 1967, 198 L. Ed. 2d 476 (2017)

Judges must “look to contemporaneous evidence to substantiate a defendant’s expressed preferences.” *Lee*, 582 U.S. at 369, 137 S. Ct. at 1967. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. *Harres v. Leeke*, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984). The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have

pleaded guilty—*not* whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

In his application, as amended, he makes a number of specifications related to the acts and alleged omissions of counsel Robert Theo Williams prior to the guilty plea. At the time of the plea, the Applicant declared, under oath, related to counsel Williams that he was “very satisfied with his services,” that he had discussed his cases with counsel, that he had answered all his questions, and that he had not been threatened to enter a plea other than the fact that he was otherwise facing a potential thirty year sentence. Tr.p. 7, l. 8-25, p.9, l. 15-23,p.10.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Harris v. State*, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). The applicant must further present evidence demonstrating how the discoverable matters or defenses would have resulted in a different outcome. *Id.* Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.* at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)). To establish prejudice based on failure to investigate or prepare for trial when the applicant enters a guilty plea, he must ordinarily present some evidence “that would have affected counsel’s advice to [him] to accept the plea bargain offered or that would have caused [him] to decline to accept it.” *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009).

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel's duty to investigate. *Ard*, 372 S.C. at 331, 642 S.E.2d at 597 ("this duty is limited to a reasonable investigation"). The United States Supreme Court also instructed reviewing courts to "keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." *Strickland*, 466 U.S. at 690. Thus, in applying the *Strickland* standard to a claim of failure to investigate, counsel's decision not to undertake a particular investigation must be evaluated with heavy deference to counsel's judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633 (Ct. App. 2014).

Strategy

His first allegation is that there was a failure to discuss trial strategy with Applicant. As stated above, at the plea, the Applicant stated that he had discussed the case with counsel and that he had no further questions and was satisfied with his services. At the PCR hearing, the Applicant testified that his counsel did not discuss strategy with him prior to the plea. The Applicant stated he wanted to discuss strategy with counsel before he pleaded guilty to something so serious, particularly related to the traffic stop. He had a concern that he did not receive all of his discovery for review. As to discovery, he stated he got his discovery after his second appearance, but that his counsel did not give him the complete discovery by not receiving the drug analysis and incomplete paper discovery. In particular, Applicant stated that he felt that there was no reason to stop his car, that there was no sobriety test, and no dash cam footage was supplied. Further, he complained that since there was no reason to pull him over, and no DUI charged that there was no proof of a traffic violation. He stated that counsel should have challenged the traffic stop, but there was no paperwork filed suggesting a challenge to the stop. He also claimed that he wanted a preliminary hearing, did not get one.

This Court rejects the claim that counsel did not discuss strategy. Counsel Williams stated credibly that he did discuss strategy with him. In particular, he stated that he discussed the stop and whether they could challenge the stop. However, they never did challenge the stop because the matter became a guilty plea. Williams noted that it was unlikely that the case would have been tried for two years due to the backlog. Counsel confirmed that they did request a preliminary hearing. However, the indictments were true billed before a preliminary hearing was held. This Court finds that counsel was not deficient in discussing a strategy with the Applicant. This case evolved from a potential trial into a guilty plea. As to this assertion, the Applicant failed to show any deficiency on counsel's part. Counsel had received the discovery, reviewed it with the Applicant was able to discuss the strategy in accepting the negotiated sentence with an understanding of the state's version. As to this specification, he has failed to show deficiencies or prejudice under *Hill v. Lockhart*.

Plea Offer

The Applicant contends that counsel was ineffective in failing to obtain a more favorable plea offer. This Court finds that he has failed in his burden of proof in showing either deficiency or prejudice. The record shows that the plea offer was initially extended on June 6, 2022 and was to terminate the day of the revocation hearing on September 29, 2022. The records shows that the actual plea offer and agreement was presented at the plea. The State offered the defendant to plead to the lesser-included offense of trafficking methamphetamine, more than twenty-eight (28) grams but less than one hundred (100) grams, first offense; possession with intent to distribute fentanyl, first offense; and possession of a weapon during the commission of a violent crime in exchange for a dismissal of the remaining three charges. Additionally, the State offered a negotiated sentencing range of fifteen (15) to twenty (20) years. The State also agreed to dismiss pending

Lexington County charges of possession with intent to distribute marijuana – first offense, possession of other controlled substances, and unlawful carry of a pistol.

The Applicant complained at the plea that he had been threatened with 30 years of his life when asked whether he had been threatened to coerce his plea.³ Tr.p. 9. However, on the charges in Lexington, he was facing the possibility between 7 to 25 years on trafficking in methamphetamine charge, 15 years on possession with intent to distribute fentanyl and an additional 5 years on the weapons charges.

This Court finds not credible the Applicant's testimony that he was told that he was facing the death penalty. Further, on the original charge this Court finds that he could have faced thirty years for trafficking in meth 400 grams or more. Counsel testified the original offer was 15-20 years before the Richland charges came into play. Counsel was successful in keeping the offer available. Counsel was not aware of any threat or suggestion of a life sentence in the matter from the State. Counsel Williams credibly testified that he understood the opposition and asked many times for a better deal than the range of 15 to 20 years. Counsel was firm in his credible testimony that he was not going to get a better deal. Counsel also credibly stated that the Applicant wanted out of the Richland County Detention Center.

This Court finds that the Applicant has failed to show deficiency or prejudice concerning the plea negotiations under *Hill*.

Assist in an Informed Decision about the Plea

The Applicant claims that counsel was ineffective in failing to assist him in making an informed decision about the plea. As noted above, the Applicant claimed he was threatened with life or death if he went to trial. He claimed that he made a last minute decision to plead to the

³ The original charge carried a minimum of 25 years to 30 years.

negotiated 15-20 years because the other options of 30 to life or death were his options. Counsel credibly testified that a life sentence was not on the table with respect to the Lexington charges. The offer was made in advance of the plea. Counsel credibly stated that if he had gone to trial, he would have received a lot more than 17 years. The original charges also carried more time as stated above and counsel stated would be between 25 mandatory minimum to 30 years. See Tr.p. 14, l. 1-3. Importantly the Applicant wanted out of the detention center in Richland County. Williams had a credible opinion that at the time the court was putting heat on the prosecutors and defense counsel to move cases due to the COVID backlog so the defendants were getting better plea deals. Counsel was aware of that then offer was going to be off the table if he did not accept. Although the Applicant claimed he was not driving improperly, the issue was mooted when the officer smelled marijuana which gave them probable cause. Tr.p. 11. Counsel had received and reviewed the discovery and his co-counsel Stitely met with Applicant him also. Counsel also indicated that the discovery was sent to the Applicant.

The Applicant failed to show that he was not adequately advised about his decision to plead guilty. It is apparent from the credible testimony of both counsel Williams and Stitely that the Applicant had an immediate desire to get out of Richland County. Counsel was also aware that the favorable plea offer was going to expire. Counsel was also aware that the State had agreed to lower the trafficking charge to a lesser offense and recommend a range of 15 to 20 years for the offenses. Although he mentioned at the PCR hearing that he felt pressured by the plea bargain, Applicant confirmed that when he pled guilty that he expected a recommended sentence between 15 to 20 years. The Applicant's complaint seemed to focus on the fact that he did not personally review the alleged dash cam video at the time of the stop. Counsel confirmed that he had received videos in his discovery, but that the defense was unable due to COVID restrictions to play the videos for

the Applicant. It is apparent that these were related to Applicant's assertion that the initial stop of the vehicle was improper and the fact that he was not separately charged with DUI.

Further, the proceeding that the Applicant pled guilty was initially scheduled to be a motion by the State to revoke bond due to the intervening Richland County charges. Tr.p. 19. It was driven by the pending plea offer and the Applicant's desire to get out of the Richland County detention center. Counsel further credibly acknowledged that Applicant could have been tried and convicted of the Lexington charges and then convicted of the Richland charges. Counsel Williams was firm in stating he did not recommend the Applicant to take the plea offer and that it was the Applicant's choice. Williams confirmed at the time of the arrest, the Applicant indicated all the drugs in the vehicle were his, not his girlfriend's. Tr.p. 12, l. 1-4. Further the Applicant admitted based upon his criminal history that it was not legal for him to possess the weapons found in the vehicle.

This Court finds that counsel had sufficient information about the facts of the State's case to be able to inform the Applicant about the risks concerning the plea offer. The Applicant failed to show any advice given by counsel to the Applicant was inaccurate concerning the charges, the potential punishment for the original charges or the circumstances of the plea offer. This Court must conclude that counsel was acting competently within the range of competence demanded of lawyers practicing criminal law under Strickland and Hill. Importantly, the Applicant failed to show that there is a reasonable probability that but for counsel's alleged omission, that he would not have pleaded guilty and would have insisted on going to trial. This specification must be denied and dismissed.

Provide a Copy of Discovery Including Videos

In the next specification, the Applicant complains that he did not receive a complete copy of discovery from his counsel. The Applicant testified that he had a concern that he did not receive

all of his discovery for review. He claimed that he received his discovery from his lawyers after the motion for discovery made after his second appearance. However, he claimed that his counsel did not give him the complete discovery and alleged he did not receive the drug analysis and that paper discovery was incomplete. At the time of the plea, the prosecutor indicated the results of the drug analysis. Tr.p. 11, l. 10-18. It is clear that the videos were not shown to the Applicant that the defense team received from the State in discovery. Counsel Stitely credibly testified when he met with Applicant at the Alvin S. Glenn detention center there was no way to show the video due to the COVID restrictions. However, counsel Williams and Stitely stated that they received the full discovery from the State. As indicated during the PCR hearing, the Applicant was provided by counsel with paper copies.

The Applicant failed to show during the proceeding any particular item of discovery that undermines confidence in the guilty plea. There is no showing that the drug analysis was different than what was represented by the State at the plea. Further, there has been no showing that the videos reflected matters that showed the traffic stop was other than what was presented in the factual basis. However, counsel Williams stated that if the plea had not been presented he would have sought to challenge the stop at trial.

Further, it is undisputed that the defense counsel received the discovery evidence, including the videos. The Applicant's assertions that any discovery obligations were violated is without merit. See *Hines v. State*, 435 S.C. 476, 492, 868 S.E.2d 387, 395 (Ct. App. 2021), *aff'd*, 443 S.C. 32, 902 S.E.2d 377 (2024) (State's refusal to allow drug defendant to view video that allegedly depicted him involved in controlled drug purchase did not violate discovery obligation; video was not exculpatory, and defense counsel was allowed to view video). Accord, *Hyman v. State*, 397 S.C. 35, 42, 723 S.E.2d 375, 378 (2012) ([I]t is undisputed that the solicitor disclosed the videotape

to defense counsel. Therefore, in order to find that this action amounts to impermissible suppression under *Brady*, we must first assume that the Constitution requires disclosure of Brady evidence to a criminal defendant personally. We are unwilling to make that sweeping assumption, and find that disclosure to defense counsel was satisfactory under the present circumstances.”).

Here, the circumstances within the detention center precluded the defense counsel from providing a viewing of the contents with the Applicant due to COVID. However, the Applicant has failed to show this Court, other than his unstated speculation that there is any information on the video that counsel failed or was unable to show as “but for the deficient performance is there a reasonable probability that the defendant would not have pleaded guilty but would have insisted on going to trial,” *Hill* makes clear that this prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial. See *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 594–95 (2009). Stated another way, at the time the Applicant pled guilty, he was aware that he had not personally viewed any video and his counsel had received videos surrounding the incident. The Applicant presented no evidence to support that there was anything in any video to undermine confidence in the guilty plea.

To the contrary, at the time of the plea, the Applicant stated under oath, that he was “very satisfied with [counsel’s] services” and he had answered all his questions. Tr.p. 7, ll. 9-19. At that time he was aware the videos had not been shown to him and still wanted to plead guilty. He has failed in his burden of proof.

In addition, it has been held that that Supreme Court “has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness’

failure to testify at trial.” *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998); see, e.g., *Pauling v. State*, 331 S.C. 606, 503 S.E.2d 468 (1998); *Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Jackson v. State*, 329 S.C. 345, 495 S.E.2d 768 (1998). Mere speculation of what a witness' testimony may be is insufficient to satisfy the burden of showing prejudice in a petition for PCR. *Porter v. State*, 368 S.C. 378, 386–87, 629 S.E.2d 353, 358 (2006) (holding no evidence showed counsel's failure to interview a potential witness would have yielded a result different from that which defendant's counsel believed at the time of the plea; defendant pled guilty in light of the complete information that was available at that time).

Here, the failure to present evidence beyond mere speculation about the video has the same analysis. He has failed in his burden of proof.

Failure to Investigate Criminal Record

This Court must find that the Applicant has failed in his burden of proof to show that counsel acted deficiently under Strickland and Hill concerning a claimed failure to investigate. In particular, this claim is limited to Applicant wanted Counsel to properly investigate his criminal history and adjust his record to reflect Applicant's prior history appropriately.

He claims that he was only previously convicted of possession of marijuana in 2000, not possession with intent to distribute. He further claims that his record suggest that he had charges from February 17, 2017 and June 6, 2017 for manufacturing and possession of other controlled substances under Schedule I, II, III with intent to distribute, which he contends is also inaccurate. He further contends that he was convicted in New Jersey of possession of a machine gun or shotgun, which he now contends was in error because it was legal to possess on a federal highway and when his probation was transferred to S.C. it was legal in S.C.

However, the plea record reveals that no specific record of the Applicant was presented in Court to the trial judge. Assistant Solicitor Oppenheimer advised the Court only that “obviously we took into account the defendant’s minimal record when making our offer.” Tr.p. 13, l. 15-16. Furthermore, his plea was entered with a negotiated range of 15 - 20 years.⁴

The Applicant presented this Court with an exhibit, Applicant’s Exhibit 1 which reflected a correction in the Applicant’s criminal history made on January 10, 2024 (after the guilty plea) a correction in his record reflecting January 6, 2014 out of state charge and that 2017 charges were pled down to misdemeanors, although the original arrest charge would remain on his record. At the time of the plea, the State presented to the Court only about his pending charges in Richland County. At the PCR, he felt that there was an error in his criminal record that counsel should have investigated and had corrected.

The Applicant speculates that this would have impacted upon the negotiations and sentencing. However, this is pure speculations. First, the charges the Applicant pleaded guilty to in 2022 were not recidivist charges. Second, the prior history was not specifically presented to the Court. He has failed to show counsel was deficient in seeking to correct an out of state charge as reflected in a criminal record or correcting a series of 2017 charges in the criminal record to be corrected as misdemeanors. Nevertheless, even if deficient, he has failed to show that there is any

⁴ According to the Lexington Clerk of Court Public Index, the Applicant pled guilty on November 8, 2017 on Indictment 2017GS3203872 to (Warrant No. 2017A3210200925) in Magistrate Generals Sessions Court to possession of 28g or less of marijuana - first offense arising from a charge of possession with intent to distribute marijuana on a June 6, 2017 arrest date. He was sentenced to 28 days time served. Similarly, the Richland County Public Index shows on December 15, 2017, he was sentenced by Judge Valerie Stroman on Indictment 2017GS4007501 (Warrant 2017A4021600528) to possession of marijuana 28g or less on an initial charge manufacture possession of other substances in Schedule I, II, III with intent to distribute - 1st offense arising from a Feb.28, 2017 arrest. He was sentenced to 30 days or pay a fine of \$200.

impact on the decision to plead guilty. The Applicant failed to show a reasonable probability that had counsel had these changes corrected, the Applicant would not have pleaded guilty and would have insisted on a jury trial. Alternately, there has been a failure to show a reasonable probability that the sentence would have been different. The sentence of 17 years was in the low end of the agreed sentencing range of 15 to 20 years. These limited corrections in a criminal record that was not stated on the record at the plea as his criminal history where the only reference made by the State was that the Applicant had a “minimal prior record” that they took into account in the offer is insufficient to undermine the sentence. His criminal record remained “minimal.” This allegation must be dismissed for failing to show either deficient performance or prejudice.

Failure to object to the State improperly addressing Applicant’s prior history and pending charges at the plea hearing.

This Court also find that the Applicant failed to prove deficient performance or prejudice in failing to object to the State addressing the Applicant’s criminal history and pending charges at the plea hearing. As stated above, the State made reference to the Applicant’s history as a “minimal prior record” and references were made to the Applicant being in jail presently on Richland County charges for similar offenses. Tr.p. 14. The Applicant’s complaint is that his prior conviction record was only for possession of marijuana, not a manufacturing charge.

At sentencing, a judge has an obligation to consider information material to punishment. *State v. Sullivan*, 267 S.C. 610, 230 S.E.2d 621 (1976). A sentencing judge “may appropriately conduct an inquiry broad in scope, largely unlimited as to either the kind of information he may consider, or the source from which it may come.” *United States v. Tucker*, 404 U.S. 443, 92 S.Ct. 589, 30 L.Ed.2d 592 (1972); *Hayden v. State*, 283 S.C. 121, 123, 322 S.E.2d 14, 15 (1984) (same). see also *State v. Cantrell*, 250 S.C. 376, 379, 158 S.E.2d 189, 191 (1967) (stating that the circuit court exercises “a wide discretion in the sources and types of evidence” it considers in sentencing).

This Court finds that the brief references to minimal record and the pending charges in Richland County were not objectionable based upon the broad review sentencing courts are granted. This was not a situation where the judge was punishing an individual concerning the application of a constitutional right such as a right to a jury trial. Instead it was a brief reference to an existence of a criminal record which was presented in a reasonable and summary fashion. Counsel was not deficient in failing to object to the comments on either. Prejudice has not been shown because the Applicant has failed to show that there is a reasonable probability that had an objection been made the result would have been a lesser sentence of 15 years as the Applicant implicitly suggests.

Failure to object to the State mentioning Applicant's history dealing drugs.

Similar to the above allegation, the Applicant contends that counsel should have objected to a comment about the Applicant's history of drug dealing. In the factual basis of the plea, the State commented on the fact that in the vehicle there was a large amount of cash, small plastic baggies indicated that the defendant was distributing illegal narcotics, as well as two weapons in the vehicle. This was in addition to the significant amount of drugs seized in the vehicle, including "589.13 grams of methamphetamine, 92.3 grams of 15 fentanyl, marijuana, over 36 different pills, all of which 16 came back as either amphetamine, Klonopin, oxys, and just various 17 different controlled substances." Tr.p. 11, As the prosecutor stated, fentanyl had become a big problem in Lexington County since 2020 and 1.3 nanograms can be considered a lethal dose. Tr.p. 13. Investigator McMillan with the Lexington County Sheriff's Department indicated that they gave the Applicant a chance to cooperate and that he failed to do so and when he made bond, he continued his line of behavior and was currently in jail in Richland and requested a high year amount. Tr.p. 14. No objections were made to any of these comments.

Counsel Williams indicated that he did not see how objecting at the plea hearing to these types of comments would have helped the Applicant. Counsel felt that the Applicant was sentenced at the lower end of the range with the 17 year sentence. Independent of the comments of the investigator, the court had before it related to this case significant evidence that reflected an individual involved in the distribution of drugs because of the circumstances and his charge of trafficking. Although counsel could have objected to the comments related to not cooperating with law enforcement after he was charged and in committing further crimes that he had not yet been convicted, this Court finds that the sentence of 17 years and rejection of the investors request to sentence at the high end reflects that they have failed in their burden of proof to show that there is a reasonable probability that the sentence would have been different. His allegation must be dismissed. Cf., *State v. Rich*, 269 S.C. 701, 239 S.E.2d 731 (1977)(where the trial judge improperly considered charges on the defendant's "rap sheet" not yet disposed of when sentencing the defendant during a guilty plea, the appellate court remanded the case for sentencing).

Counsel Should Have Argued for a 15 Year Sentence.

In this allegation, the Applicant contends that counsel was deficient in failing to specifically argue for a 15 year sentence, the lowest end of the range. The record of the plea in mitigation by the dense reveals that counsel Williams argued about the Applicant's assuming full responsibility for the drugs at the arrest and not his passenger, that he suffered from PTSD due to a terrible accident. Tr.p. 15-17. He also presented the Applicant's father in mitigation who described the family difficulties that the Applicant had in growing up, his non-violent behavior and sought mercy for his son. Then Applicant claimed he was non-violent and wanted to spend time with his son. He further indicated that the Richland County charges were not based upon anything he did but was related to criminal activity by his son's mother and boyfriend. Tr.p. 18-

19. However, the solicitor responded that there understanding was that the Richland case was based upon an incident with drugs and the Applicant being identified putting the drugs and a gun in a trash can. Tr.p. 19. At the conclusion, the Court determined that he did not have much of a drug history after hearing the request. Tr.p. 20. The sentencing court recognized that there had been tremendous exposure before the offer. The 17 year sentence followed.

This Court finds that counsel was not deficient in failing to specifically ask for the 15 year minimum sentence under the range. This Court finds that it was implicit in the negotiations that counsel was asking for the minimum of the range for the sentence and using the mitigation to justify it. The allegation must be dismissed and denied.

Failure To Meet A Sufficient Number Of Times.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to meet with him a sufficient number of times to properly review the evidence and discuss the case. This Court finds this allegation is without merit. Counsel Williams testified that he met with him initially after the arrest, Ben Stitely, his co-counsel met with him at the first appearance and Williams was also with him on the second appearance, as well as at the guilty plea. Counsel Stitely also met with the Applicant at the Richland County detention center twice. There were also discussions over the telephone.

Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy competency. *Campbell v. Polk*, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); *United States v. Olson*, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte). "Brevity of time spent in

consultation, without more, does not establish that counsel was ineffective." *Easter v. Estelle*, 609 F.2d 756, 759 (5th Cir. 1980) (holding it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to insure an adequate defense and to become thoroughly familiar with the facts of the case and the law applicable to the case, and holding the record revealed that counsel was so prepared.).

South Carolina case law has established that even if Trial Counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See *Harris v. State*, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing *Easter*) ("First, there is no question that counsel met with [Applicant] on several occasions prior to the first trial. Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation.") Mere speculation and conjecture is insufficient to substantiate allegation that counsel's deficient performance was prejudicial. See *Harris v. State*, 377 S.C. 66, 659 S.E.2d 140 (2008), *abrogated by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018).

As noted in addressing the earlier allegations, the Applicant has failed to show any deficiency of counsel related to the failure to meet. For the reasons set forth above in the allegation, he has failed to meet his burden of proof. The allegation must be denied.

Failure to Successfully Withdraw the Plea.

This allegation must be dismissed. The record shows that that the Applicant, through counsel Stitely sought to move to withdraw the guilty plea by motion made on October 4, 2022. The State responded to the request in opposition. Judge McLeod, reviewing the motion and response, denied the request to withdraw the plea on in his November 18, 2022 Order.

Further, the record shows that the guilty plea was entered freely and voluntarily. The sentence that Applicant received was within the range consistent with the plea offer. The Applicant

has failed to show how counsel was deficient during the plea or subsequent concerning any action to withdraw the guilty plea.

Counsel's Failure to Present the Applicant's Minimal Record in Mitigation.

This Court must find that the Applicant has failed in his burden of proof. During the state's presentation, it indicated as noted above that the Applicant had a minimal prior record as noted previously. Tr.p. 13. At the sentencing, the Applicant declared that he had an issue with marijuana and was seeking a drug program for assistance when he was sentenced. At the PCR proceeding, he suggested that he wanted his record being presented as only related to possession of marijuana. However, this issue was generally presented to the plea court. This Court must find that the Applicant failed to prove deficient performance and Sixth Amendment prejudice has not been shown.

B. Invalid Plea

This Court must deny that this is an invalid plea. In his remaining allegation, the Applicant contends that was rushed into pleading last minute with threats of having bond revoked and being sent to Alvin Glenn if he did not plead. This information was presented to the plea court at the time of the plea. The record is undisputed that the proceeding was initially going to be a bond revocation proceeding on the Lexington charges based upon his intervening arrest on the Richland County charges. It was not supposed to be a guilty plea proceeding. Tr.p. 19, l. 6-9. However, the Applicant indicated to his counsel that he wanted to get out of the Richland County detention center and was willing to plead to get to prison. Counsel Williams indicated to the Applicant that it was up to him and did not make a recommendation on whether to plead or not because it was up to Helrigel. Counsel Williams noted that the driving force behind the plea was the Applicant's desire to get out of the Alvin S. Glenn Detention Center in Richland County and he could not get

out otherwise. Willimas declared credibly that Helrigel was the one that wanted to plead guilty. The parties were aware that the June 2022 plea offer was going to terminate on September 29, 2022, the day of the scheduled revocation proceeding. The record of the plea reflects support that the plea was freely and voluntarily entered.

“[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced.” *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. *Brady v. United States*, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant’s choice. *Id.* at 755; *see also United States v. Smith*, 440 F.2d 521, 528–529 (7th Cir. 1971) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one’s accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, the defendant “must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” *Pittman*, 337 S.C. at 599, 524 S.E.2d at 624. The defendant’s knowing and voluntary waiver of statutory or

constitutional rights must be established by a complete record, and “may be accomplished by colloquy between court and defendant, between court and defendant’s counsel, or both.” *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); see generally *Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his guilty plea, the plea judge “usually questions the defendant about the facts surrounding the crime and punishment that could be imposed.” *Dover v. State*, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991). However, the plea judge “does not have to direct the defendant’s attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea.” *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

The test for determining the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). It is “well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment.” *United States v. Cox*, 464 F.2d 937, 942 (6th Cir. 1972) (citing *Brady*, 397 U.S. 742). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, *Brady*, 397 U.S. at 750–53, or by increasing the risks of punishment on those who do not. *Alford*, 400 U.S. at 37.

An applicant who enters a plea on the advice of counsel may “only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but

for counsel's errors, the [applicant] would not have pled guilty, but would have insisted on going to trial." *Roscoe*, 345 S.C. at 20, 546 S.E.2d at 419. In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. *Wolfe*, 326 S.C. at 165, 458 S.E.2d at 370; *cf. Rayford v. State*, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant's claim his lawyer misadvised him). The voluntariness of a guilty plea "is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." *Harres*, 282 S.C. at 133, 318 S.E.2d at 361.

Nonetheless, because "[a] guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977)); *see McMann v. Richardson*, 397 U.S. 759, 774 (1970) (noting the compelling interests in maintaining the finality of guilty-plea convictions validly obtained). Indeed, admissions made during a guilty plea carry a presumption of verity and should be considered conclusive unless an applicant presents cogent and valid reasons why he should be allowed to depart from the truth of his statements. *Dalton*, 376 S.C. at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks omitted); *cf. Blackledge*, 431 U.S. 63. at 73–74 (1977) (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a "formidable barrier in any subsequent collateral proceedings"); *United States*

v. Broce, 488 U.S. 563, 569 (1989) (“A plea of guilty and the ensuing conviction comprehend all of the factual and legal elements necessary to sustain a binding, final judgment of guilty and a lawful sentence. Accordingly, when the judgment of conviction upon a guilty plea has become final and the offender seeks to reopen the proceeding, the inquiry is ordinarily confined to whether the underlying plea was both counseled and voluntary. If the answer is in the affirmative then the conviction and the plea, as a general rule, foreclose the collateral attack.”).

Guilty pleas “must be treated as final in the vast majority of cases. Indeed, ‘[w]hat is at stake in this phase of the case is not the integrity of the state convictions obtained on guilty pleas, but whether, years later, defendants must be permitted to withdraw their pleas, which were perfectly valid when made, and be given another choice between admitting their guilt and putting the State to its proof.’ ” *Jamison v. State*, 410 S.C. 456, 469, 765 S.E.2d 123, 129 (2014) (quoting *McMann*, 397 U.S. at 773. “Furthermore, there must be some consequence attached to the decision to plead guilty.” *People v. Schneider*, 25 P.3d 755, 761 (Colo. 2001) (*cited with approval in Jamison*, 410 S.C. at 469, 765 S.E.2d at 129).

Here, Applicant now claims his plea was involuntary because he felt there were threats to have his bond revoked and being returned to Alvin S. Glenn, when there was an option that he could plead guilty and be sentenced to the Department of Corrections. Stated another way, rather than being revoked and returned to the Richland County detention to await trial, the Applicant was aware that there was an option that he could get sentenced on a crime that he admitted he was guilty and sent to the Department of Corrections to begin service of a sentence rather than being in Richland County for an unknown period of time awaiting trial on those charges, that he was claiming he was not guilty. The plea transcript reflects Applicant understood the proceedings, the nature of the charges against him, the terms of the plea agreement, and the consequences of

pleading guilty in accordance with the requirements of *Boykin* and *Pittman*. See *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975), *overruled on other grounds by United States v. Whitley*, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so). Tr.p. 4-10. Thus, the Court must conclude Applicant's claim that his plea was not voluntarily entered and is invalid is without merit.

CONCLUSION

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

This Court notifies the 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, 409 S.E.2d 395 (1991), Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and

AND IT IS SO ORDERED this 6 day of September, 2024.


J. CORDELL MADDOX
Presiding Judge
Eleventh Judicial Circuit

Anderson, South Carolina

FILEDSTATE OF SOUTH CAROLINA
COUNTY OF LEXINGTONIN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Robert Helrigel, #390927,

LISA M. COMER
CLERK OF COURT
LEXINGTON SC

Case No: 2023-CP-32-00670

Applicant,

v.

**APPLICANT'S MOTION PURSUANT
TO RULE 59(A) AND (E), SCRCF**

State of South Carolina,

Respondent.

In response, Applicant offers the following in support of his motion for reconsideration pursuant to Rule 59(e), SCRCF,

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. During its August 2022 term, the Lexington County Grand Jury indicted Applicant for trafficking in methamphetamine, 400 grams or more, possession with intent to distribute fentanyl, and possession of a weapon during the commission of a violent crime. Applicant was represented by Robert "Theo" Williams and Benjamin Stitely, Esquires. Assistant Solicitor Kelly Oppenheimer of the Eleventh Circuit Solicitor's Office prosecuted the case. On September 29, 2022, Applicant appeared before the Honorable Walton J. McLeod, IV, circuit court judge, and pled guilty to the lesser-included offense of 28-100 grams, and as indicted to PWID fentanyl and the weapons' possession charge. The plea was to a negotiated range of fifteen- to twenty years' imprisonment. Judge McLeod sentenced Applicant to seventeen years' imprisonment on the trafficking in methamphetamine charge, fifteen years' imprisonment for PWID fentanyl, and five years' imprisonment on the weapons possession charge, sentences running concurrently. Applicant filed a motion to

withdraw the guilty plea on October 6, 2022, which was denied through written order on November 18, 2022. Applicant did not pursue a direct appeal.

Applicant filed a post-conviction relief application filed February 21, 2023. Respondent made its return on March 18, 2024, requesting an evidentiary hearing be convened. An amended application was submitted on March 20, 2024. An evidentiary hearing was held on March 21, 2024, at the Lexington County Courthouse. Chelsey Marto, Esquire, represented Applicant. Assistant Attorney General Donald Zelenka, Esquire, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsels Robert “Theo” Williams and Benjamin Stitely, Esquires, also testified. The Court dismissed the application with prejudice filed on September 16, 2024. Counsel received notice of the order on September 19, 2024.

II.

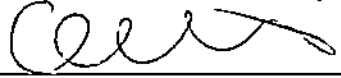
Applicant requests this Court reconsider its decision and grant relief in Applicant’s case, based upon the arguments presented the documentation provided. (See Attachment A).

III.

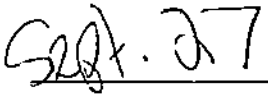
WHEREFORE, Applicant requests this Honorable Court reconsider its decision and grant Applicant PCR relief accordingly.

Respectfully submitted,

CHELSEY F. MARTO, ESQUIRE

By: 
ATTORNEY FOR APPLICANT

The Law Office of Chelsey F. Marto
Post Office Box 8795
Columbia, South Carolina 29201
Telephone: (864) 404-5583

 2024

Attachment A

Clerk of Court,

I, Robert J. Helrigel Jr., appeared in
Lexington County Court for a Post Conviction Relief
hearing on March 21, 2024. I would like to file
Rule 59(E) - a motion to alter or amend a judgement.

I would respectfully like to ask the court to reconsider
its judgement. The following errors by the prosecution
were egregious, prejudicial and aggravated the sentence.
Ineffective assistance of Counsel was a denial of
to due process and violation of Constitutional Amendment
6 and Constitutional Amendment 14.

Respectfully submitted

Robert Helrigel Jr.

mailing Address

Robert Helrigel 390 521

Trenton Correctional Inst. c 338

84 Greenhouse rd.

Trenton SC 29847

1. Ineffective Assistance of Counsel

a. Counsel not discuss strategy with me -

- Did not have meeting with Theo Williams until after second appearance. Theo or Ben Stitely did not show up at first appearance. Ben contradicted himself on stand at P.C.R. hearing. Did not have complete Motion of Discovery or Dash cam footage requested. Only time met with Theo prior to plea. In court at sentencing (pg. 17 of transcripts) Theo stated "Robert doesn't know I'm probably going to talk about this" Strickland v Washington (1984) duties to consult with defendant important decisions and keep defendant informed of important developments. U.S. Const. Amend. 6

b. Failure to challenge validity of stop - violation of 4, 5 Amendment right,

(pg 9) Mrs. Oppenheimer mentions "suspected driving violations" "suspected DUI" "Drivers license suspended for DUI" Never was charged with DUI, never have been charged with DUI, what traffic violation? Never issued sobriety test § 56-5-2953 A. a person who violates must have conduct at the conduct site video recorded (1)(a) The video recording at the incident site must:

- (i) not begin later than the activation of the officers Blue Lights
- (ii) include arrest of person or probable cause determination in that the person violated and show person being advised of Miranda rights.

c. For failure to object to the State requesting a sentence "on the upper range" (pg 14)

"a high year amount" despite plea agreement for Recommendation. Counsel was ineffective for not objecting and failure to put terms of plea agreement on record

d. For failure to accurately tell applicant what sentencing ranges he was facing by going to trial on original charges - was not properly informed of amount of time charges carried or nature of charges. Was first told it carried more time than it actually does, also mentioned (pg 7) that did not know was considered violent prior to court date *

D. I agreed to accept plea to 44-53-375(c)(b)(a). 44-53-375(F) states that "A person convicted of and sentenced under subsection (C) or (E) to a mandatory term of imprisonment of twenty five years, a mandatory minimum term of imprisonment of twenty five years, or a mandatory minimum term of imprisonment of not less than twenty five years nor more than thirty years is not eligible for parole." *Hodges V Rainey*, 341 S.C. 79, 86, 533 S.E. 2d 578, 582 (2000) - The Canon of Construction "expressio unius est exclusio alterius" or "inclusio unius est exclusio alterius holds that "to express or include one thing implies the exclusion of another or the Alternative." Subsection (F) implies a 17 year sentence for 44-53-375(c)(b)(a) is parole eligible. *State V Taub* 336, S.C. 310, 312, 519 S.E. 2d 797, 801 (Ct. App 1999) "The general rule of statutory construction is that a specific statute prevails over a more general one." 44-53-375(c)(b)(a) is specific statute was sentenced to. 44-53-375 has been amended in 2005, 2010, 2016. It is more recent statute than 24-13-100, more specific statute, legislative intent is affirmed by the inclusion of 44-53-375 subsection (F). *Stone V State*, 313 S.C. 533, 535, 443 S.E. 2d 544, 545 (1994) held that when two statutes "are in conflict, the more recent and specific statute should prevail so as to repeal the earlier general statute" *Hair V State* 305, S.C. 77, 79, 406 S.E. 2d 332, 334 (1991) "the law clearly provides that if two statutes are in conflict, the latest statute should prevail so as to repeal the earlier statute to the extent of repugnancy." *Kerr V State* (2001) - any ambiguity in a penal statute must be construed against the state and in favor of the defendant, *State V Blackmon* 304, S.C. 270, 273, 403 S.E. 2d 660, 662 (1991) When a statute is penal in nature it ...

strictly construed against the state and in favor of the defendant.

It is now my understanding and was at the time of sentencing that 17 year sentence under 44-53-375(c)(2)(a) is not paroleable. Was not told differently by the court or assistance of counsel. It was ineffective assistance of counsel by not informing me of the conditions of the sentence.

E. For failure to request a preliminary hearing § 17-23-160 counsel was ineffective for not requesting hearing and obtaining evidence. Did not receive Dash cam footage that I requested Theo Williams to get. Did not inquire about missing money or improper procedure.

F. Failure to timely obtain and share the discovery with applicant. Discovery was delayed. Did not receive Dash cam footage requested. Strickland v Washington (1982) duties to consult with defendant important decisions. "Brady Disclosure Rule" requires prosecution to provide the defendant any evidence in the prosecutors possession that may be favorable to the accused and material to guilt or punishment. Ineffective assistance of counsel for not receiving discovery and video. Violation of the "Brady Disclosure Rule" by the prosecution for not providing it.

- g. failure to obtain more favorable plea offer:- plea was made at first appearance to legal aid representing Williams & Stitely, not Williams or Stitely. Pleas are supposed to be discussed with attorney not legal aid. At no point was another plea offered or discussed, despite recommendation to counsel. Ineffective assistance of counsel for not attempting to negotiate length or terms of plea offer and getting it in writing. Never asked for Non violent 15 years for § 44-53-370(b)(1) and 17 for § 44-53-375(e)(2)(a) which is considered violent and a no parole offense, § 44-53-375(d)(3) carries 7-25 years, and § 44-53-370(b)(1) carries 0-15 years. A sentence of 7 years for § 44-53-375(e)(2)(a) and 15 years for § 44-53-370(b)(1) would of been in range of charges plead out to and recommendation by the state, Counsel should have attempted to request at sentencing. Ineffective assistance of counsel.
- h. For failure to assist applicant in making informed decision regarding the plea. did not offer advice or professional opinion. Did not inform me was considered violent-no parole offense, did not inform me of how much time charge carried or Discuss prior to
- i. For failure to give applicant a complete copy of the discovery or provide him with the opportunity to review video discovery in his case, "Brady Disclosure Rule" requires prosecution to provide to the defendant any evidence in the prosecutors possession that may be favorable to the accused. Never received Dashcam footage requested. Council v state (2009) Trial counsel's failure to adequately investigate and present mitigating evidence was deficient performance, thus supporting claim of ineffective assistance of counsel. § 56-5-2953 A(1)(a) The video recording of the incident site must not begin later than the activation of the officers blue lights.
- j. For failure to investigate(i) specifically, Applicant wanted counsel to properly investigate his criminal history and adjust record to reflect applicants prior history completely. Council v state (2009). Never was charged with DUI as prosecution stated, and numerous errors in record used including possession of Machine Gun that was inaccurate created prejudice and aggravated sentence.

- J. I have since filed a challenge of Criminal 402/1 with SC 2011-11-11. Error regarding inaccurate "Machine Gun" included was returned and SC 11-11-11 admitted error. Also numerous other errors have been returned and found that created prejudice and aggravated my sentence. Violating my right to due process. SC Rule of Evidence 404 in a criminal case evidence must be clear and convincing if the acts are not the same subject of a conviction further when the prejudicial effect of evidence substantially outweighs its probative value, the evidence may be excluded under rule 403, consistent with prior case law. SC Rule of Evidence 609 for prior similar convictions involving violations of narcotics laws, the prejudicial value is further increased as such violations are generally not probative of truthfulness and this relative lack of probative value should figure prominently in the weighing of prejudice against probative value of prior convictions used to impeach defendant and trial courts should engage in an on the record analysis when admitting such convictions because of the presumption against their admission. State v. Hunter (2000) Court ruled "while information concerning prior convictions is admissible as additional evidence of sentencing phase information regarding the mal charge that was ultimately dismissed by prosecutor is irrelevant. Criminal offenses in S.C. § 15:5 Prior offenses - A bond forfeiture is not the equivalent of a conviction for determining what offense is included under a statute specifically making it equivalent of a conviction. stated in Scott v. State (1999), Samuel v. Mouzon (Ct App 1984), Doe v. Doe (2001). Also despite request counsel never asked about "Quite large amount of cash" etc.
- K. For failure to object to the state improperly addressing App's prior history and pending charges at the plea hearing. - State v. Black (Ct App 1993) when counsel makes a motion for a new trial and the state does not object to the motion.

- m. Counsel should have successfully argued for a fifteen year sentence at the plea hearing. Counsel did not request 15 years in response to solicitors and inv. mcmillans request. Counsel was ineffective for not making effort to request 15 year non violent sentence. It was in the parameters of the charges that plead out to and the recommended sentence. Council v state (2009) failure to adequately investigate and present mitigating evidence was deficient performance supporting claim of ineffective assistance.
- n. for failure to successfully withdraw the plea. Counsel did not appeal decision of motion or present mitigating evidence to withdraw plea.
- o. for failure to meet with applicant enough, counsel has obligation to discuss strategy; did not show up to first appearance, Consult with me or keep me informed of important developments. ineffective assistance is denial of due process right and Constitutional Amendment 6 and 14.
- p. for failure to present applicants minimal criminal history to the Court for mitigation, Counsel allowed prosecution to make egregious and prejudicial comments regarding criminal history that were inaccurate and did not present the fact I actually have no history of dealing drugs despite claims of prosecution, only drug conviction is misdemeanor simple possession of Marijuana, Simple Possession Marijuana is not a crime of Moral turpitude.
- 2 Invalid plea - violated Constitutional Amendment 8 and 14.
- a. Applicant was rushed into pleading last minute with threats of having bond revoked and being sent to Alvin S. Glenn if he did not plea, I did not believe I would receive fair trial due to being denied bond in Alvin S. Glenn on charge which later dismissed. People were being stabbed and assaulted in the dorm with no officer in dorm despite being required by SC Statute's and policy. I was interrupted by my own counsel when attempted to clarify misunderstandings

2. a. Violation of eighth Amendment prohibition against excessive bail, excessive fines and cruel or unusual punishment. (pg. 8) mentioned assaults and stabbings in Alvin S. Glenn. Black mold Kitchen failed DHEC inspection, officer not in dorm and numerous other violations that Alvin S. Glenn was cited by the state for. Denied bail. Despite the Court and my Attorney agreeing I should not go back to Richland County Alvin S. Glenn (pg. 20) on 9-29-22 I was sent there another 8 months until May 2023. I would not of accepted plea if weren't under duress due to circumstances and conditions at Alvin S. Glenn.

S. v. State (1993) Fruit of Poisonous tree doctrine.

State v. Collins (2012) improper admission of unduly prejudicial evidence was not harmless error, the court failed to independently exercise its discretion. Errors created prejudice and aggravated the sentence. Violating my right to due process and Const. Amend 6 and Const. Amend 14.

Murray v. Carrier (1986) the court noted that a defendant's right to effective assistance of counsel may be violated by an isolated error if the error is sufficiently egregious or prejudicial. Numerous errors occurred that were both egregious and prejudicial. Pending charge referred to by prosecutor and *Inu McMillan* were later dismissed but were not supposed to be brought up considering the presumption of innocence until proven guilty. Again at P.C.R. hearing prosecution brought up "Plutonium" that did not exist in attempt to aggravate circumstances. Again following SC Rules of Evidence Rule 404 and 604. Since the defendant is on formal charge that was ultimately dropped by prosecutor is irrelevant. State failed to independently exercise its discretion and assist in defense. Counsel was ineffective for failing to object to *Inu McMillan* and State for Oppenheimers comments that were inaccurate, egregious and prejudicial.

1. For failure to object to the state mentioning applicants history dealing drugs. I have no prior convictions for dealing drugs only prior drug conviction is misdemeanor possession of marijuana. SC Rule of Evidence 609. Criminal offenses in SC § 15-5 prior offenses. A bond forfeiture is not equivalent of a conviction. *State v. Artlaur* (1986) information on formal charge that was ultimately dismissed is irrelevant. Since possession of marijuana is not a crime of moral turpitude stated in *State v. Ingram* and *State v. Garner* (1991) Counsel was ineffective for failing to object to egregious and prejudicial comments these errors aggravated sentence.

Due to ineffective assistance of counsel, inaccurate egregious information used by the court and aggravating circumstances § 17-25-60 change of sentence when prior convictions were not considered at time of imposition.

A sentence of 7 years for 44-53-375(c)(2)(a) and 10 to 15 years for 44-53-370(b)(1) would be more appropriate.

The sentence is within the parameters of the charges plead out to and the recommendation by prosecution. Furthermore

US v McCullers sentence reduction was denied; a demand was required for not weighing evidence of substantial post sentence rehabilitation including earning GED, engaging in extensive prison programming, maintaining employment, and exhibiting good behavior.

I have been working as a Teachers Assistant helping inmates prepare for GED and obtain work Ready certificates. I also have been actively participating in Proverbs 22:6 program that is christian based program that helps inmates relationship with their children, Turnstart program that is a christian based program that helps with rehabilitation and recovery. Participants that complete program have 96% non recidivism rate. Have also been participating in Toastmasters that helps with communication skills and public speaking skills. Also Salute 1st Leadership development program that helps leadership development, character training, perspective realignment and emotional management. I have also completed AA/NA course, Anger management, Communication courses, Business accounting and Budgeting courses, Job search and networking courses. I have received work Ready certificates for Academic skills, digital skills and essential soft skills. Signed up for College courses.

Since my arrest my circumstances have changed. I have a son Westley that was born on April 26, 2022. He is now 2 years old. I was sentenced when he was four months old. I want nothing more than an opportunity to help raise and support my son. I know I can be a positive contribution to my family and the community rather than be a tax burden. It currently cost on average 37,000 to house 1 inmate per year in South Carolina. The state pays 34,000 of that. A reduced sentence, community service, and fines would be more beneficial to the state of South Carolina. Not only in the best interest of myself and my family but also the community. I have no other felony drug conviction. Despite inaccurate information that was egregious and created prejudice. Due to aggravating circumstances I believe a sentence of 7 years for § 44-53-375(c)(2)(a) and 10 years for § 44-53-370(B)(1) is more appropriate. The sentence would be in range of charges that were plead out to. I believe plea offer of 15-20 was due to egregious errors. Also believe it effected decision of the court. 7 years for § 44-53-375(c)(2)(c) and 15 years for § 44-53-375(c)(2)(f), would be in range of negotiated recommendation.

Respectfully Submitted

Robert Helrigel Jr.

FILED

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

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IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

LIDA H. LOMER
CLERK OF COURT
LEXINGTON, SC

Robert Joseph Helrigel, Jr., #390927,

Case No.: 2023-CP-32-00670

Applicant,

v.

**ORDER DENYING RULE 59
MOTION**

State of South Carolina,

Respondent.

This matter came before the Court by a *pro se* application for post-conviction relief by Robert J. Helrigel, Jr., filed on February 21, 2023. On March 21, 2024, this matter came before this Court. The Applicant was present and represented by his court appointed counsel Chelsey Marto. The Respondent was represented by Deputy Attorney General Donald J. Zelenka. On September 16, 2024, an Order of Dismissal signed by this Court on September 6, 2024 was filed on September 16, 2024.

On September 30, 2024, the Applicant, through appointed counsel Marto filed a Rule 59 motion. In the Motion, counsel Marto requested this Court to reconsider its order. In the motion, counsel attached as Attachment A, a *pro se* document consisting of 11 handwritten pages.¹

¹ On November 12, 2024, the Applicant pro se filed a document with similar allegations as Attachment A. This does not appear to be adopted by appointed counsel. The document consists of a cover page by Helrigel to the Clerk, 14 hand-written pages, a July 18, 2024 letter purported to be from the Department of Motor Vehicles to Helrigel, and a July 10, 2024 letter from SLED to Helrigel. To the extent the assertions in the documents are materially different than the document attached to the Rule 59 motion as Attachment A filed by appointed counsel, this Court will not consider it. South Carolina has a recognized prohibition against hybrid representation. Dennison v. State, 639 S.E.2d 35 (S.C. 2006); State v. Cabrera Pena, 567 S.E.2d 472 (S.C. Ct. App. 2002). PCR counsel cannot merely serve as a conduit for the petitioner's pro se motions. Jones v. State, 558 S.E.2d 517 (S.C. 2002)(counsel must review motions submitted by his client and determine if they are valid).

In his first assertion (a), the Applicant contends in Attachment A that his counsel did not discuss strategy with him and claimed his counsel contradicted themselves at the PCR proceeding. This issue was adequately addressed in the Order of Dismissal at pages 12-13. This Court has reviewed the Order and denies a request to alter or amend, concluding the Court's earlier assessment was correct.

In his second assertion (b) in Attachment A, the Applicant contends his counsel were deficient in failing to attack the validity of the stop. He asserts that the basis for this is that prosecutor Oppenheimer stated during the guilty plea that Applicant was suspected of DUI, yet he was never charged with DUI. See Plea Tr.p. 9. The Applicant also raised this in his PCR testimony. This issue was presented in the Court's Order at p. 12-13. The Applicant's contention that since he was not charged with DUI at the incident, the stop was invalid. This is incorrect. The prosecutors statement that Helrigel was pulled over by a deputy with the Lexington County Sheriff's Department for suspected DUI and suspected for committing numerous traffic violations, your Honor, including crossing over the fog line . . ." revealed reasonable suspicion. Contrary to the Applicant's assertion, the officers were not required to arrest the Applicant for DUI after the stop. The stopping of a vehicle and the detention of its occupants constitutes a seizure and implicates the Fourth Amendment's prohibition against unreasonable searches and seizures. *Delaware v. Prouse*, 440 U.S. 648, 653-54, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979). "Therefore, an automobile stop implicates the Fourth Amendment prohibition against unreasonable searches and seizures, imposing a standard of 'reasonableness' upon the exercise of discretion by state law enforcement officials." *State v. Banda*, 371 S.C. 245, 639 S.E.2d 36, 252. 371 S.C. 245, 639 S.E.2d 36, 40 (2006).

"A police officer may stop and briefly detain and question a person for investigative

purposes, without treading upon his Fourth Amendment rights, when the officer has a reasonable suspicion supported by articulable facts, short of probable cause for arrest, that the person is involved in criminal activity.” *State v. Woodruff*, 344 S.C. 537, 546, 544 S.E.2d 290, 295 (Ct.App.2001). “The term ‘reasonable suspicion’ requires a particularized and objective basis that would lead one to suspect another of criminal activity.” *Id.* In determining whether reasonable suspicion exists, the circumstances must be considered as a whole. *Id.* If the officer's suspicions are confirmed or further aroused, the stop then may be prolonged and the scope enlarged. *Id.* Generally, the decision to stop an automobile is reasonable when the police have probable cause to believe a traffic violation has occurred. *State v. Banda*, 371 S.C. at 252, 639 S.E.2d at 40. *State v. Corley*, 383 S.C. 232, 240, 679 S.E.2d 187, 191 (Ct. App. 2009), *aff’d* as modified, 392 S.C. 125, 708 S.E.2d 217 (2011) (Police officer had reasonable suspicion of criminal activity to justify further detention following traffic stop for failure to use turn signal). The Applicant has not met his burden of showing counsel was deficient because he was not arrested for DUI. Here, there were other traffic violations presented by the prosecutor to additionally support reasonable suspicion. This Court will not alter or amend the judgment.

In his third specification (c) in Attachment A, he claims that counsel was deficient in failing to object to the State requesting a sentence in the upper range. This issue was adequately addressed in the Order at pages 22-24. Upon review of the Order, emphasizing the credible testimony of counsel Williams on this point, the Court denies the motion to alter or amend.

In his fourth specification (d), he claims that counsel did not adequately advise him of the sentencing ranges he was facing if he went to trial on the charges and whether it was a violent crime, citing Tr.p. 7. Contrary to the claim, the Applicant was aware at the time of his plea that the crime was a violent crime and indicated he was aware before the plea began. Further he was aware

at the outset of the plea that he was facing a sentencing range of 15 to 20 years. Tr.p. 9-10. The plea judge went over the potential sentence on each charge during the plea. Counsel Williams further testified at the PCR hearing that he went over the charges with the Applicant and the potential sentences and rejected the Applicant's claim that he was facing death. These issues were adequately addressed within the Order and more particularly in the Order at pages 13-14. The Court denies the motion to alter on this assertion.

In his fifth assertion (e), Helrigel contends counsel erred in filing to request a preliminary hearing. He claims that had a hearing been held he would have obtained the dash cam video. During the PCR proceeding counsel testified that he did request a preliminary hearing. Counsel also had received videos but was unable to play them for the Applicant due to COVID. These issues were adequately addressed in the Order at pages 12-13. The request to alter must be denied.

In his sixth assertion (f), Applicant claims counsel failed to timely obtain and share discovery with the Applicant, particularly not having the dash cam videos being shared with him. This was adequately addressed in the Order at pages 16-19. The request to alter or amend is denied.

In his seventh specification (g), he asserts counsel was ineffective in failing to obtain a more favorable plea offer. He complains that the offer was made with a legal aide rather than directly with his counsel. This issue was adequately addressed specifically in the Order at pages 13-14. The request to alter or amend should be denied.

In his eighth assertion (h), he complains that his counsel were deficient in failing to adequately assist Helrigel in making an informed decision about the plea, again asserting that he was not informed it was a violent offense. This issue was adequately addressed in the Order, pages 14-16. Upon review, this Court denied the request to alter or amend.

In his ninth assertion (i), Helrigel contends his counsel failed to give him a complete copy

of his discovery, or provide him with an opportunity to review the video. As stated above, this issue was adequately addressed in the Order at pages 16-19. The Court denied the request to alter or amend.

In his tenth specification (j), the Applicant contend counsel was deficient in failing to investigate his criminal history and adjust his criminal record to reflect his prior history and that he was never charged with DUI and that possession of a machine gun was inaccurate. This issue was adequately addressed in the Order at pages 19-21. The request to alter or amend is denied.

In his eleventh assertion (k), he contends counsel was deficient in failing to object to the State improperly addressing the Applicant's prior history and pending charges at the plea hearing. This claim was adequately addressed within the Order at pages 21-22. Upon review, this Court denies the request to alter or amend.

In his *pro se* pleading, he also contended that counsel was ineffective in failing to object to the State mentioning his history in dealing drugs. The Court adequately addressed that issue in its Order at pages 22-23. Upon review, the request to alter or amend is denied. *See also, infra.* footnote 1.

In his next allegation (m), he claims counsel should have successfully argued for a fifteen year sentence, the minimum of the negotiated sentencing range. This issue was adequately addressed in the Order pages 23-24.

In the next allegation (n), he asserts that counsel was deficient in failing to successfully withdraw the plea. In this assertion, he asserts that his counsel did not appeal the decision of motion or present mitigating evidence to withdraw the plea. This issue was addressed in the Order at pages 25-26 regarding the performance of counsel in failing to be successful in withdrawing the plea. The Court notes that the plea was entered subject to a negotiated sentencing range

between 15 and 20 years and the Applicant was sentenced within the range. The Applicant's counsel, Ben Stitely made the motion set forth in the Order at page 4 though 5, which was denied by Judge McLeod on November 18, 2022. This Court concludes the conclusion in the order was adequate to cover whether counsel was deficient in failing to be successful on the motion to withdraw the plea. *Cf. Rolan v. State*, 384 S.C. 409, 414, 683 S.E.2d 471, 474 (2009) (stating that petitioner forfeited his ability to withdraw guilty plea once the plea court found the plea was freely and voluntarily entered and supported by a factual basis and formally accepted the plea).

The failure to appeal the motion to withdraw the guilty plea denial was not specifically raised in his application or his amended application. In his application, he asserted at the reason he did not appeal, "put in motion to withdraw plea was denied, believed Post Conviction Relief was next step." Application, p. 2, § 9. The issue concerning the appeal of the denial of the motion to withdraw appears to be raised in this *pro se* Rule 59 motion for the first time. Since new matter cannot be raised for the first time in a Rule 59 motion to amend, it must be denied. A party cannot use a motion to alter or amend a judgment to present to the court an issue the party could have raised prior to judgment but did not. *See Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995) ("A party cannot for the first time raise an issue by way of a Rule 59(e) motion which could have been raised at trial."); *Miller Constr. Co., LLC v. PC Constr. of Greenwood, Inc.*, 418 S.C. 186, 206, 791 S.E.2d 321, 332 (Ct. App. 2016). Therefore consideration of the issue must be denied.

Alternately, assuming *arguendo* that the assertion in the application and testimony was sufficient to raise this claim, this ground must be denied because plea counsel should be found deficient for the failure to advise related to an appeal from the guilty plea or denial of the motion to withdraw. "[C]ounsel has a constitutionally imposed duty to consult with the defendant about

an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.” *Roe v. Flores-Ortega*, 528 U.S. 470, 480, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000). “Even in cases when the defendant pleads guilty, the court must consider such factors as whether the defendant received the sentence bargained for as part of the plea and whether the plea expressly reserved or waived some or all appeal rights.” *Id.* Absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. *Turner v. State*, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). “One extraordinary circumstance which would require counsel to advise a defendant of the right to appeal from a guilty plea would arise when the defendant inquires about an appeal.” *Weathers v. State*, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995). However, “[t]he bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief.” *Id.* “Instead, there must be proof that extraordinary circumstances exist such that the defendant should have been advised of the right to appeal.” *Id.*; *Jones v. State*, 382 S.C. 589, 596, 677 S.E.2d 20, 23–24 (2009). Here, as stated above, the Applicant entered his plea with an understanding of the sentencing consequences when he pled and he was sentenced within the negotiated range. The request by counsel in his motion to withdraw did not create a Sixth Amendment duty in these discrete circumstances based upon the record before this Court, including the plea and PCR hearing record which did not support the existence which did not show the existence of any “extreme mental distress” or any “lack of a proper mental understanding” of what he was doing as during the plea when it occurred. This issue must be denied. The request to alter or amend the judgment is denied.

In assertion (o) in his motion, the Applicant asserts his counsel failed to meet with him

enough and to discuss strategy and important developments. The Court adequately addressed this issue in its Order at pages 24-25, as well as within the other portions of the order addressing these claims related to strategy, advice about the plea, and review and disclosure of discovery. The motion to alter related to this specification is denied.

In assertion (p) of his motion, Applicant asserts that counsel was deficient in allegedly failing to present his minimal criminal record to the plea court in mitigation and in allowing the prosecutor to make inaccurate comments concerning his prior record. He asserts that he had no history of dealing drugs and only had minor drug possession convictions and he asserted no crime of moral turpitude. This issue was addressed adequately within the order at pages 19-22 related to the claims that counsel failed to investigate his criminal record, failed to object to the state's addressing his prior history and pending charges, and failed to object to the State mentioning his history dealing drugs. The motion to alter related to this assertion must be denied.

The assertion (2), the Applicant claims his guilty plea was invalid. Applicant bases this ground upon an assertion that he was rushed into the guilty plea with "threats" of having his bond revoked and being sent to the Richland County Alvin S. Glenn Detention Center. He contends that the facility was dangerous and violent and he feared he would not receive a fair trial on his on a charge that was later dismissed. He asserts that he was still sent to Richland County on the charges from Richland for 8 months after the plea, despite the plea judge and counsel agreeing that he should not at Tr.p. 20. The voluntariness and validity of the plea was addressed in the Order at pages 26 through 32. The Court finds that the claim that he was subsequently transferred to Richland County does not undermine the validity of his negotiated plea where the Richland charges were not a part of the negotiation with the Eleventh Circuit Solicitor's Office. His hope, as well as his counsel and the plea court's statement on Tr.p. 20, did not control the disposition of

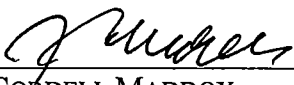
the known pending Richland County charges that were later dismissed. The Applicant has failed to show a basis to alter or amend this Court's earlier judgment.

CONCLUSION

Having carefully reviewed the motion, I find no reason to alter or amend the judgment of the previous order, other than the additional findings and conclusions stated herein.

IT IS THEREFORE ORDERED that the Motion to Alter or amend the judgment be denied.

AND IT IS SO ORDERED this 19 day of November, 2025.



J. CORDELL MADDOX
Presiding Judge
Eleventh Judicial Circuit


_____, South Carolina

WITNESSES

Lexington County Sheriffs Department

Nicholas B Mcmillin

Law Enforcement Case #: 22006746

KO

ARREST WARRANT NUMBER

2022A3210200911

ACTION OF GRAND JURY**TRUE BILL**

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2022GS3202541**The State of South Carolina****County of Lexington****COURT OF GENERAL SESSIONS****AUGUST TERM 2022****THE STATE**

vs.

Robert Joseph Helrigel Jr**CDR #: 0370****Indictment for****Trafficking Methamphetamine****§ 44-53-0375(C)(5)****S.R. Hubbard III, SOLICITOR**

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

INDICTMENT FOR
 Trafficking Methamphetamine
 § 44-53-0375(C)(5)

At a Court of General Sessions, convened in August of 2022, the Grand Jurors of Lexington County present upon their oath:

That **Robert Joseph Helrigel Jr** did in Lexington County, South Carolina on or about April 4, 2022, knowingly and intentionally, willfully and unlawfully sell, cultivate, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise, aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or was knowingly and intentionally in actual or constructive possession of or did knowingly and intentionally attempt to become in actual or constructive possession of methamphetamine, a controlled substance under provisions of § 44-53-110, et. Seq. Code of Laws of South Carolina 1976, as amended, in a quantity of four hundred (400) grams or more, in violation of § 44-53-375 (c)(5), 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

WITNESSES

Lexington County Sheriffs Department

Nicholas B Mcmillin

Law Enforcement Case #: 22006746

KO

ARREST WARRANT NUMBER

2022A3210200914

ACTION OF GRAND JURY**TRUE BILL**Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:**DOCKET NO. 2022GS3202543****The State of South Carolina****County of Lexington****COURT OF GENERAL SESSIONS****AUGUST TERM 2022****THE STATE****vs.****Robert Joseph Helrigel Jr****CDR #: 0183****Indictment for****Possession with Intent to Distribute
Fentanyl****§ 44-53-0370(b)(1)****S.R. Hubbard III, SOLICITOR**

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	Possession with Intent to Distribute Fentanyl
COUNTY OF LEXINGTON	)	
	)	§ 44-53-0370(b)(1)

At a Court of General Sessions, convened in August of 2022, the Grand Jurors of Lexington County present upon their oath:

That **Robert Joseph Helrigel Jr** did in Lexington County, South Carolina on or about April 4, 2022, knowingly and intentionally, willfully and unlawfully sell, distribute, cultivate, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise, aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, possess with intent to distribute or was knowingly and intentionally in actual or constructive possession of or did knowingly and intentionally attempt to become in actual or constructive possession of a control substance classified in Schedule II, to wit : fentanyl, a controlled substance under provisions of § 44-53-110, et. Seq. Code of Laws of South Carolina 1976, as amended, in violation of § 44-53-370(b)(1), 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

Thw Williams

WITNESSES

Lexington County Sheriffs Department

Nicholas B Mcmillin

Law Enforcement Case #: 22006746

DOCKET NO. 2022GS3202544

The State of South Carolina

County of Lexington

ARREST WARRANT NUMBER

2022A3210200915

COURT OF GENERAL SESSIONS

AUGUST TERM 2022

THE STATE

vs.

Robert Joseph Helrigel Jr

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

CDR #: 0549

Indictment for

Possession of a Weapon during the
Commission of a Violent Crime

§ 16-23-0490

as charged

Foreperson of Petit Jury

Date:

S.R. Hubbard III, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Possession of a Weapon during the Commission
of a Violent Crime

§ 16-23-0490

At a Court of General Sessions, convened in August of 2022, the Grand Jurors of Lexington County present upon their oath:

That **Robert Joseph Helrigel Jr** did in Lexington County, South Carolina on or about April 4, 2022 knowingly and willfully, possess a firearm, during the commission of a violent crime or attempt to commit a violent crime, to wit: trafficking methamphetamine such weapon described as a Kel-Tec Sub 2000 and/or Glock 22 pistol in violation of § 16-23-490 of 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

SCANNED 08062022