

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Appeal from Cherokee County

J. Derham Cole, Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**

**JAN 22 2014**

**S.C. Supreme Court**

WILLIAM SHEROID CAMP,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001661

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

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State of South Carolina ) In the Court of General Sessions  
County of Cherokee ) Seventh Judicial Circuit

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V. ) 2009-GS-11-00578

William S. Camp, ) 2009-GS-11-00579

Defendant. )

January 26, 2011

Gaffney, South Carolina

B E F O R E:

The Honorable Roger L. Couch, Judge

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

Kimberly L. Leskanic, Assistant Solicitor

Attorney for the State

Ricky Harris, Esquire

Attorney for the Defendant

SHARON L. VIZER-HANKS

CIRCUIT COURT REPORTER

ATTORNEY GENERAL'S OFFICE

RECEIVED JAN 31 2012

ADMINISTRATIVE INSTRUCTIONS

FILE \_\_\_\_\_ OF \_\_\_\_\_

DATE \_\_\_\_\_

BY \_\_\_\_\_

FOR \_\_\_\_\_

OFFICE \_\_\_\_\_

INITIALS \_\_\_\_\_

REMARKS \_\_\_\_\_

*Noted - aw*

I N D E X

Wednesday, January 26, 2011

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\*\*NO EXHIBITS WERE INTRODUCED\*\*

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1                                    Wednesday, January 26, 2011

2                    THE COURT:    Yes, ma'am?

3                    MS. LESKANIC:    William Camp.

4                    THE COURT:    Come forward, sir.

5                                    WILLIAM S. CAMP, after having been duly  
6 sworn, testified as follows:

7                    THE COURT:    Yes, ma'am?

8                    MS. LESKANIC:    May it please the Court, Your Honor.  
9 Standing before you is William Sheroid Camp. He's  
10 pleading on indictment 2009-GS-11-578. That is a true  
11 bill indictment for distribution of crack cocaine. It is  
12 a third offense under the new law. There is a negotiated  
13 sentence of 12 years.

14                    He's also pleading on 2009-GS-11-579, which is a  
15 true billed indictment for distribution of crack cocaine  
16 within a half mile of a school or park. That is also  
17 under the new law. There is a negotiated sentence of 10  
18 years concurrent with indictment 2009-GS-11-578.

19                    THE COURT:    Pass it up, please.

20                    MS. LESKANIC:    He's represented by Mr. Harris.

21                    THE COURT:    Your name is William Sheroid Camp; is  
22 that correct?

23                    THE DEFENDANT:    Yes, sir.

24                    THE COURT:    Now, Mr. Camp, you are in front of me  
25 today on two charges. I'm going to go over the charges

1 with you. If you have any questions about what I go over  
2 with you you have every right to ask, and, of course, you  
3 can speak with your counsel at any time during this  
4 process.

5 The first charge I'll go over with you is -- yes,  
6 sir?

7 THE DEFENDANT: May I speak with my attorney?

8 THE COURT: Oh, absolutely.

9 (WHEREUPON, a private of-the-record conversation  
10 took place between the defendant and Mr. Harris.)

11 THE COURT: All right. Mr. Camp, have you had an  
12 opportunity to discuss whatever you needed to discuss  
13 with your lawyer?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Are you ready to go forward, sir?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. As I was getting ready to  
18 go over with you, the first case I'll discuss with you is  
19 case number 2009-GS-11-578. That is a distribution of

20 crack cocaine third offense. That carries a potential  
21 sentence of 10 years, up to 30 years, and/or a fine of up  
22 to \$50,000.

23 Now, sir, that case has gone to the grand jury.  
24 The grand jury has issued a true bill on the case. So  
25 it's properly before this Court.

1           Now, I will also advise you that that particular  
2 offense carries with it a designation as a serious  
3 offense. As such, it does constitute what is commonly  
4 called as one of your strikes. That means in the future  
5 if you are found guilty of or plead guilty to other  
6 crimes which are similarly classified, such as violent,  
7 serious or most serious offenses, your plea in this case  
8 could be used in conjunction with those cases to make the  
9 sentences more severe. It could ultimately result in a  
10 sentence of life imprisonment without the possibility of  
11 ever being paroled. Do you understand the charge and the  
12 potential sentence in this case?

13           THE DEFENDANT: Yes, sir.

14           THE COURT: And do you understand the enhancement  
15 feature that goes along with this particular charge? In  
16 other words, the fact it could enhance or make more  
17 severe future sentences.

18           THE DEFENDANT: Later on in the future, right?

19           THE COURT: Yes, sir, if you are found guilty of  
20 other crimes similarly classified.

21           THE DEFENDANT: Yes, sir.

22           THE COURT: Do you understand that?

23           THE DEFENDANT: Yes, sir.

24           THE COURT: Something you've talked about with your  
25 lawyer?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay, sir. Now, in this case, the  
3 State is presenting the case to me with a negotiated  
4 sentence. That is a 12-year no parole sentence. Now, as  
5 a negotiated sentence I will tell you that while I wasn't  
6 a party to the negotiations I have the authority  
7 therefore not to accept them.

8 If I decide not to accept the negotiations I will  
9 advise you of that during this process and give you an  
10 opportunity at that point in time to withdraw your plea  
11 if you choose to do that. Do you understand what it  
12 means to have a negotiated sentence presented to the  
13 Court?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And do you understand that I have the  
16 right or the authority to either accept or reject the  
17 negotiations?

18 THE DEFENDANT: Yes, sir.

19 ~~THE COURT: All right, sir. Now, the next charge~~  
20 I'm going to talk to you about is distribution of crack  
21 cocaine within a half mile proximity of a school, park,  
22 playground, thing of that nature. That's case number  
23 2009-GS-11-579.

24 I will tell you again that this charge has gone  
25 before the grand jury, a true bill has been issued and

1 it's properly before this Court.

2 This charge also carries a designation as a serious  
3 offense. I've already explained to you what that means,  
4 that it could result in future sentence enhancements. Do  
5 you understand that? I've talked to you about that in  
6 conjunction with the other charge. Do you understand  
7 that in conjunction with this charge as well?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right, sir. This case is presented  
10 to me with a negotiated sentence of a 10-year concurrent  
11 sentence. That means that it would run concurrently with  
12 the sentence I discussed with you previously.

13 Same situation here. If I reject the negotiation  
14 I'll tell you and give you an opportunity to withdraw  
15 your plea. Do you understand how this plea is being  
16 presented as well?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. Now, Mr. Camp, do you  
19 suffer from any mental, physical, nervous problems, any  
20 conditions that would in any way affect your ability to  
21 understand what you're doing today or to handle your  
22 plea?

23 THE DEFENDANT: No, sir.

24 THE COURT: Have you taken or used any drugs or any  
25 other substances that would in any way affect that

1 ability to make good decisions or handle your plea today?

2 THE DEFENDANT: No, sir.

3 THE COURT: So, Mr. Camp, do you know what you're  
4 doing?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And understanding what we're doing here  
7 as far as these pleas are concerned?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Now, Mr. Camp, you're here today with  
10 your attorney. Have you discussed all of these matters  
11 that I've gone over with you, and others, with your  
12 lawyer?

13 THE DEFENDANT: Yes, sir, all except for that last  
14 charge, school, park, playground thing.

15 THE COURT: Yes, sir.

16 THE DEFENDANT: We never really discussed that a  
17 whole lot because it never was an issue until maybe five  
18 minutes ago.

19 THE COURT: Well, sir, the charge was yesterday

20 presented to me to be tried and it was a charge that I  
21 presented to the jury that was selected in your case. So  
22 it's been a charge that's been on the --

23 THE DEFENDANT: The charge has been out there but,  
24 I mean, as far as actually, you know, pleading to it.

25 THE COURT: Yes, sir. Well, do you need any more

1 time to talk to your lawyer about that charge?

2 THE DEFENDANT: No, sir. It's pretty clear how  
3 it's going to be today.

4 THE COURT: Okay, sir. Well, do you agree to plead  
5 in that case?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. Now, again, I'll ask you  
8 about your attorney, if you've had a chance to talk these  
9 cases over with him. You tell me that you have; is that  
10 right?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And are you satisfied with your  
13 discussions with him?

14 THE DEFENDANT: I'm satisfied with our discussions  
15 but the all-around service maybe I'm not but --

16 THE COURT: All right. Well, tell me --

17 THE DEFENDANT: And some of that may not even be  
18 his fault, you know, but...

19 THE COURT: All right. Well, tell me exactly what  
20 you would like to do at this point in time as far as your  
21 representation.

22 THE DEFENDANT: As far as my representation, I  
23 mean, I'm going to keep him. But by the same token, I  
24 don't feel like there's any honor on either side of the  
25 courtroom, Your Honor.

1 THE COURT: All right. Does that in any way --

2 THE DEFENDANT: You know, and it's got my attorney  
3 in a situation.

4 THE COURT: I'm sorry?

5 THE DEFENDANT: It's got him and I as to, well,  
6 maybe I feel like he's at fault. But, you know, one is  
7 pointing the finger over here and one pointing is the  
8 finger over here, but I'm in the middle and I just got to  
9 stand here and say, Yes, sir.

10 THE COURT: Well, no, sir. You don't got to say  
11 yes, sir. I've got a jury selected in your case and I  
12 will give you a trial today.

13 THE DEFENDANT: Yes, sir, but it would be in my  
14 best interest to plead guilty today, sir.

15 THE COURT: Your choice?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And it's your decision as to whether or  
18 not to plead?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: As I said, we've selected a jury. I  
21 have a couple of more issues to do pretrial. I'll be  
22 more than happy to take care of those today and commence  
23 a jury trial in your case if you'd like for me to do  
24 that.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Are you wanting to go forward with the  
2 plea?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Now, let's get back to talking about  
5 your lawyer, and I realize that you're telling me that  
6 you weren't aware of a plea in the proximity case; is  
7 that right?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Until this morning?

10 THE DEFENDANT: I don't think he was aware of it  
11 neither.

12 THE COURT: I understand that, but you became aware  
13 of it before we started this process?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And you have signed the --

16 THE DEFENDANT: Yes, sir, I signed.

17 THE COURT: -- sheet indicating you wish to offer a  
18 plea?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Is that correct?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And do you want to go forward with  
23 that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. Now, is there anything else

1 that you feel that your attorney should do for you at  
2 this time?

3 THE DEFENDANT: No, sir.

4 THE COURT: Is there anything else that you feel  
5 that you need to discuss with him before we proceed with  
6 your plea?

7 THE DEFENDANT: No, sir, nothing we ain't already  
8 discussed.

9 THE COURT: All right. So you've had plenty of  
10 opportunity to talk with him?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And you understand that I think he's  
13 prepared to try your case if you'd like to do that. Do  
14 you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. Now, Mr. Camp, do I need to read  
17 these charges to you?

18 THE DEFENDANT: No, sir.

19 THE COURT: So you understand them?

20 THE DEFENDANT: Yes, sir..

21 THE COURT: And how are you pleading on the  
22 charges?

23 THE DEFENDANT: I plead guilty to both counts, sir.

24 THE COURT: Both charges?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Now, Counselor, have you had an  
2 opportunity to discuss the plea with your client?

3 MR. HARRIS: Well, we've had a limited opportunity  
4 to discuss a plea to the proximity charge.

5 THE COURT: All right. Well, do you wish more time  
6 to talk with him?

7 MR. HARRIS: From my perspective I don't think we  
8 need more time to discuss it. I think Mr. Camp  
9 understands the plea and the terms of the plea. But in  
10 direct answer to the Court's inquiry, because of the way  
11 the plea was presented this morning I've had limited  
12 opportunity to actually discuss the --

13 THE COURT: Well, Mr. Harris, I'll be happy to give  
14 you an opportunity to discuss it with your client at this  
15 time if you'd like that.

16 MR. HARRIS: Your Honor, I don't feel that I need  
17 to discuss it more. I'm just being honest when I say  
18 because of the manner in which the plea was presented  
19 this morning by the solicitor's office it has left me  
20 with limited opportunity.

21 THE COURT: Well, the point in my inquiry,  
22 Mr. Harris, is to find out if you've had ample  
23 opportunity to discuss this plea with your client, to  
24 explain the ramifications of the plea, to explain to him  
25 the crime, the elements thereof, any defenses that he may

1 have had to the charges, his rights under the  
2 constitution as they relate to this charge, and the other  
3 charge as well. I want to be sure you've had ample  
4 opportunity to fully discuss this plea with your client.  
5 Has that occurred, yes or no?

6 MR. HARRIS: We have had numerous and ample  
7 opportunity to discuss the proximity case, his rights  
8 with relation to it, any defenses that he would have to  
9 it, what the potential evidence might be, how we might  
10 attack that evidence. Yes, we've had numerous and ample  
11 opportunity to do that.

12 As to the actual plea, no, but I don't feel I need  
13 more time to discuss the plea with him.

14 THE COURT: Well, he has indicated to me that he's  
15 made the decision to plead guilty on that charge. Has he  
16 indicated that to you as well?

17 MR. HARRIS: Clearly he has. Yes, sir.

18 THE COURT: All right. And are you satisfied that  
19 he understood the advice and the consultations that  
20 you've had with him?

21 MR. HARRIS: Yes.

22 THE COURT: And has he had the ability to assist  
23 you in his own defense if he chose to do so?

24 MR. HARRIS: Very much so.

25 THE COURT: All right. So do you agree with the

1 decision that he has made?

2 MR. HARRIS: I agree with his decision to plead  
3 guilty and I agree that it's in his best interest.

4 THE COURT: All right. Thank you.

5 Now, Mr. Camp, you are 35 years of age; is that  
6 correct?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And how far did you go in school?

9 THE DEFENDANT: Tenth grade.

10 THE COURT: Did you ever get a GED?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Are you married?

13 THE DEFENDANT: No, sir.

14 THE COURT: Any children?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: How many children do you have?

17 THE DEFENDANT: I've got three kids, sir.

18 THE COURT: And what ages are they?

19 THE DEFENDANT: Fifteen, fourteen and five.

20 THE COURT: All right. Do those children live in  
21 your home if you're not incarcerated?

22 THE DEFENDANT: One of them does.

23 THE COURT: All right. The other two don't?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Where do they live?

1 THE DEFENDANT: With their mothers.

2 THE COURT: All right. And were you employed when  
3 you were arrested? Did you have a job somewhere?

4 THE DEFENDANT: No, sir.

5 THE COURT: And when did you last have a job  
6 somewhere?

7 THE DEFENDANT: In '94.

8 THE COURT: '94?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: So you haven't had a job outside of  
11 your -- or outside of whatever you've been doing for  
12 seven years?

13 THE DEFENDANT: Yeah.

14 THE COURT: Is that what I'm hearing?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Now, has anyone in any way  
17 threatened you, coerced you, put pressure on you, tried  
18 to intimidate you, done anything whatsoever to try to  
19 force you to offer a plea in this case?

20 THE DEFENDANT: No, sir.

21 THE COURT: Are you offering your plea freely and  
22 voluntarily?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Have you had sufficient time in which  
25 to consider this matter and prepare defenses, if you wish

1 to do that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Now, has anyone in any way made any  
4 promises, guarantees or assurances to you other than this  
5 negotiated sentence in this case concerning any matters  
6 whatsoever, including but not limited to such matters as  
7 pardon, parole, probation, early release or length of  
8 sentence?

9 THE DEFENDANT: No, sir.

10 THE COURT: So, in other words, you understand that  
11 you may be required to serve the entire sentence,  
12 whatever that might be in this case? You understand  
13 that's a possibility?

14 THE DEFENDANT: I was thinking it was going to be  
15 an 85 percent.

16 THE COURT: Well, that means you're eligible for  
17 parole but that doesn't mean you get parole. That means  
18 if they decide you don't get parole then you could stay  
19 for the whole time. You understand that, don't you?

20 THE DEFENDANT: No. You just confused me.

21 THE COURT: Well, talk to your lawyer about it,  
22 sir.

23 (WHEREUPON, a private of-the-record conversation  
24 took place between the defendant and Mr. Harris.)

25 MR. HARRIS: Your Honor, what Mr. Camp's question

1 is is that he's understanding that he's pleading to a no  
2 parole sentence, that he understands in our discussions  
3 of him that the maximum sentence required by law absent  
4 other circumstances would be 85 percent.

5 THE COURT: Uh-huh.

6 MR. HARRIS: Of the imposed sentence.

7 THE COURT: Right.

8 MR. HARRIS: So his length of stay in the  
9 department of corrections is not dependant upon parole  
10 because he would not be eligible for it.

11 THE COURT: I understand that.

12 Do you understand that, sir?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. So you could be required to  
15 serve the entire sentence.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You understand that? Do you understand  
18 that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. Now, I'm going to go over your  
21 rights under the constitution because when someone pleads  
22 guilty you give up your rights as they relate to these  
23 charges that are before the Court. I have to be sure  
24 that you do that knowingly and intelligently; in other  
25 words, you understand your rights, you know what you're

1 giving up and with that knowledge you still wish to go  
2 forward with the guilty plea. So I'm going to go over  
3 with you your rights under the constitution.

4 When I finish I'll give you an opportunity to ask  
5 any questions you'd like to ask about these rights. Do  
6 you understand what we're doing right now?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. First of all, you have a  
9 right to have your case presented to a grand jury under  
10 the constitution. That's already happened. You have a  
11 right to an attorney, and your attorney is present and  
12 able to assist you at any time during this plea.

13 You have a right to demand a trial by a jury. And,  
14 of course, we were prepared to go forward with the trial  
15 this morning. So I think you're familiar with that.

16 Now, at that trial you would be presumed to be  
17 innocent until and unless the State were to prove your  
18 guilt beyond a reasonable doubt. The State has the only  
19 burden of proof in criminal cases because you are  
20 presumed to be innocent. So they are the only party that  
21 has to prove anything in a criminal trial.

22 Now, at the trial you'd have the right to do  
23 several things. You could issue subpoenas to witnesses,  
24 make them come to court to testify. You would have the  
25 right to question or confront anyone who testified

1 against you.

2           You would have the right at a trial to present all  
3 the defenses that you have to the charges. And you'd be  
4 given the opportunity to try to suppress any and all  
5 evidence the State had against you, and that includes any  
6 statements that you might have made prior to the time of  
7 the trial.

8           At all stages of every criminal proceeding you have  
9 the right to remain silent, Mr. Camp. And at a trial if  
10 you chose to exercise your right to remain silent and  
11 didn't testify the State and the Judge is required to  
12 instruct the jury that your silence could not be used  
13 against you in any fashion whatsoever. Now, do you  
14 understand the rights I just explained to you?

15           THE DEFENDANT: Yes, sir.

16           THE COURT: Any questions about any of them?

17           THE DEFENDANT: No, sir.

18           THE COURT: Do you want me to explain any of them  
19 any further?

20           THE DEFENDANT: No, sir.

21           THE COURT: Now, you realize that when you plead  
22 guilty you give up those constitutional rights that I  
23 just went over with you as they relate to these two  
24 charges with the exception of the right of having your  
25 lawyer continue to represent you during your criminal

1 proceeding. Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Now, does that fact make you want to  
4 change your plea?

5 THE DEFENDANT: No, sir.

6 THE COURT: So you're still pleading guilty?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And is that because you are guilty to  
9 these charges?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Facts, Madam Solicitor.

12 MS. LESKANIC: Thank you, Your Honor. This  
13 occurred on January 22nd, 2009 here in Cherokee County.  
14 There was an undercover operative working with the  
15 Cherokee County Sheriff's Department. He was wired with  
16 audio and video capabilities. He went out to the area of  
17 Carlyle Street where he made a 20-dollar purchase of  
18 crack cocaine from this defendant. That is within one  
19 half mile of Ezell Robs (ph) Park, which is also located  
20 here in Cherokee County. That substance was sent to the  
21 State Law Enforcement Division. It came back positive  
22 for crack cocaine and weighed .10 grams.

23 THE COURT: All right. Mr. Camp, did you hear what  
24 the solicitor just told me?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Did you understand what she said?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Now, do you agree that what she told me  
4 is the truth?

5 THE DEFENDANT: No, sir.

6 THE COURT: Tell me how you disagree.

7 THE DEFENDANT: I never sold any drugs on Carlyle  
8 Street. The video clearly shows I'm not on Carlyle  
9 Street.

10 THE COURT: All right. Sir, I guess the issue then  
11 would become was that within one half mile proximity of a  
12 park?

13 THE DEFENDANT: Yes, sir. It was in the one half  
14 mile vicinity of a park.

15 THE COURT: So you disagree with the street or  
16 where they say you were?

17 THE DEFENDANT: The location of the said incident.

18 THE COURT: Would that disagreement in any way  
19 change the charges that you are pleading to?

20 THE DEFENDANT: Not really, other than the street.

21 THE COURT: So it's still within a half mile of the  
22 park?

23 THE DEFENDANT: Yes, sir. It's still within a half  
24 mile.

25 THE COURT: Okay. Now, any other disagreements you

1 have with the facts as stated to the Court?

2 THE DEFENDANT: No, sir.

3 THE COURT: All right. Now, Mr. Camp, have you  
4 told me the truth today?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Did anyone tell you how to answer my  
7 questions?

8 THE DEFENDANT: No, sir.

9 THE COURT: So the answers I've gotten from you  
10 today, those all came from you; is that right?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Is there any portion of what we've  
13 talked about today that you'd like to reconsider what  
14 you've told me or go back over anything that you've told  
15 me?

16 THE DEFENDANT: No, sir.

17 THE COURT: So you're still offering your plea with  
18 the negotiated sentence; is that correct?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. I'll accept the plea. It's  
21 freely and voluntarily given. The defendant is aware of  
22 the charges. He's aware of the penalties. He's had the  
23 advice of counsel, says he's satisfied with that advice.  
24 There's a factual basis for the plea.

25 One thing I neglected to mention to you, Mr. Camp,

1 I'm sure your lawyer may have talked over with you. A  
2 plea in a drug case results in revocation of driving  
3 privileges. I don't know if you have driving privileges  
4 or not, but you are aware of that; is that correct?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And does that in any way change your  
7 plea?

8 THE DEFENDANT: No, sir. I still want to plead.

9 THE COURT: Thank you very much.

10 I'll hear from you at this time, Counsel.

11 MR. HARRIS: May it please the Court, Your Honor.

12 I would just like to affirm that Mr. Camp is correct that  
13 the information that the assistant solicitor recited  
14 about the location of the alleged transaction was  
15 incorrect. It's always been incorrect. In other  
16 documentation they do accurately describe the location as  
17 a place known as Short Peeler Street. So he's well aware  
18 of the facts from this case. We've gone over that a lot.

19 THE COURT: And I understand that. I have to be  
20 sure though that it meets the elements of the crimes  
21 which he's pleading and he tells me that the location  
22 that it was sold was within a half mile of a park; is  
23 that correct?

24 MR. HARRIS: That's my investigation as well.

25 THE COURT: All right. Thank you.

1           MR. HARRIS: And, Your Honor, otherwise we'd simply  
2 ask that the Court accept the negotiation and sentence  
3 accordingly.

4           THE COURT: And, Mr. Camp, anything you'd like to  
5 say to the Court at this point in time?

6           THE DEFENDANT: Not at all, Your Honor.

7           THE COURT: I'd like to hear about a prior record.

8           MS. LESKANIC: In 1994, leaving the scene of an  
9 accident, giving false information, failure to stop;  
10 1996, possession of crack cocaine, possession of  
11 marijuana, driving under suspension, six counts of  
12 distribution of crack cocaine, possession of a contraband  
13 in a county jail; 2003, failure to stop, diving under  
14 suspension; 2005, simple assault and battery. Those are  
15 the convictions, Your Honor.

16          THE COURT: Thank you.

17          MS. LESKANIC: Thank you, Your Honor.

18          THE COURT: Is he claiming credit for time already  
19 served?

20          MR. HARRIS: Yes, sir.

21          THE COURT: Could you talk that over and see if we  
22 can reach an agreement on that, please?

23          MR. HARRIS: It's 657 days.

24          THE COURT: Any objection from the State?

25          MS. LESKANIC: No objection, Your Honor.

1 THE COURT: Mr. Camp, the sentence in the  
2 distribution of crack cocaine third is 12 years. I have  
3 given you credit for 657 days on that sentence. I have  
4 run it concurrent to the other sentence, which is the  
5 distribution of crack in proximity to a park or school.  
6 The sentence is 10 years run concurrently. Good luck to  
7 you, sir.

8 I have recommended the A. T. U. while he's  
9 incarcerated.

10 MS. LESKANIC: Thank you, Your Honor.

11 (WHEREUPON, the hearing was concluded.)

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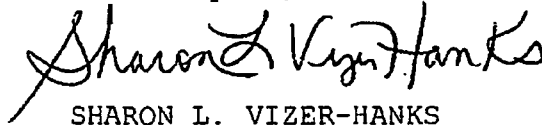
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C E R T I F I C A T E

I, Sharon L. Vizer-Hanks, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 26th day of January 2011.

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

January 28, 2012



SHARON L. VIZER-HANKS

CIRCUIT COURT REPORTER

7829

FORM 5

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHEROKEE )  
 )  
 Full name and prison number (if any) of Applicant. )  
WILLIAM SHEROID CAMP # 240141 )  
 v. )  
 )  
 State of South Carolina )  
 )

**011CP-110777**  
 IN THE COURT OF COMMON PLEAS  
 FILED IN OFFICE OF  
 CLERK OF COURT  
 CHEROKEE COUNTY, S.C.  
 2011 NOV 15 AM 11:34  
 BRANDY W. LACBEE  
 APPLICATION FOR  
 POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth 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. Kershaw Correctional Institution
2. Name and location of Court which imposed sentence Cherokee County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. ~~The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:~~
  - (a) Dist. of Crack Cocaine 3<sup>rd</sup> offense (2009-GS11-0578)
  - (b) Dist. of Crack Cocaine w/in 1/2 mile of School Zone (2009-GS11-0579)
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) January 26, 2011, 12 years
  - (b) January 26, 2011, 10 years concurrent with 2009-GS11-0578

- (c) \_\_\_\_\_
- 6. Check whether a finding of guilty was made:
  - (a) after a plea of guilty  X
  - (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?  
 yes
- 8. If you answered "yes" to (7), list:
  - (a) the name of each Court to which you appealed:
    - i.  South Carolina Court of Appeals
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (b) the result in each such Court to which you appealed:
    - i.  My appeal was dismissed
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (c) the date of each such result:
    - i.  May 11, 2011
    - 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) \_\_\_\_\_
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:  See Attachments

- (a) \_\_\_\_\_  
 (b) \_\_\_\_\_  
 (c) \_\_\_\_\_

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

- (a) \_\_\_\_\_  
 (b) \_\_\_\_\_  
 (c) \_\_\_\_\_

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? YES  
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO  
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO  
 (d) any other petitions, motions or applications in this or any other Court? NO

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

- (a) the specific nature thereof:  
 i. SC Court of Appeals  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_  
 iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:  
 i. Cherokee County Court of Common Pleas  
Floyd Baker Blvd. Gaffney, SC 29340  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_  
 iv. \_\_\_\_\_
- (c) the disposition thereof:  
 i. My appeal was dismissed  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. May 11, 2011

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

NO

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

(a) which grounds have been presented:

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. N/A

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: See Amended Attachments

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

- (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? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes
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. \_\_\_\_\_ Ricky Harris
  - ii. \_\_\_\_\_ 145 N. Church St Suite 501
  - iii. \_\_\_\_\_ Spartanburg, SC 29306
- (b) the proceedings at which each such attorney represented you:
- i. Trial
  - ii. Guilty Plea
  - iii. Appeal
19. State clearly the relief you seek in filing this application:  
\_\_\_\_\_ Vacate this Dist. 3<sup>rd</sup> conviction and resentence me to Dist. 2<sup>nd</sup>
20. Are you now under sentence from any other court that you have not challenged?  
No

011CP-110777

STATE OF SOUTH CAROLINA )

County of CHEROKEE )

VERIFICATION

I, William Campbell #240141, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

William Campbell #240141

SWORN to and subscribed before me this 10  
day of November, 2011.

Cathrine A. Amosa (L.S.)  
Notary Public.

My Commission Expires: December 23, 2018

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.  
2011 NOV 15 AM 10 34  
BRANDY W. MCBEE

# 011CP-110777

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

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

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

William Lamp #240141  
Applicant

SWORN or affirmed to and subscribed before me this  
11 day of November, 2011.

Catherine A. Amos  
Notary Public

My Commission Expires: December 23, 2018

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.  
2011 NOV 15 AM 10 34  
BRANDY W. MCBEE

**The applicant grounds on which I base my allegations are as follows:**

10. (A) Ineffective assistance of counsel in that my counsel Mr. Ricky Harris failed to investigate my 1997 plea bargain agreement and erroneously advised me that Distribution of Crack Cocaine (*Indictment #2009GS110578*) could legally be treated as a 3<sup>rd</sup> offense when, in fact, my January 13, 1997 plea bargain were all 1<sup>st</sup> offenses, in violation of my 6<sup>th</sup> and 14<sup>th</sup> amendment right under the US Constitution.
10. (B) The state has breached the 1997 plea bargain agreement where my January 13, 1997 plea agreement to indictment numbers 1996GS110938; 939; 940; 941; 942; 943 were all for 1<sup>st</sup> offenses and prior to the subject matter guilty on indictment 2009GS110578, I was informed by counsel that some of these charges in my January 13, 1997 plea were now treated as 2<sup>nd</sup> offenses in violation of my 5<sup>th</sup> and 14<sup>th</sup> amendment rights under the US Constitution.
10. (C) Involuntary guilty plea where my counsel and the trial court explained the maximum sentence for an erroneous 3<sup>rd</sup> offense when, in fact, my prior record of offenses were for 1<sup>st</sup> offenses, in violation of the 6<sup>th</sup> and 14<sup>th</sup> amendment right under the US Constitution.

**Affidavit of William Sheroid Camp #240141 with Memorandum of Law**

Personally appeared before me, one William Sheroid Camp #240141, who is being duly sworn, deposes and states: "I am the applicant in this case and I am competent to testify to the matter stated herein. The facts in support of the above grounds are as follows:"

11. (A1) A plea offer to indictment 2009GS110578 of 10 years, 2<sup>nd</sup> offense, was proposed pursuant to the revised June 2, 2010 Drug Law. Assistant Solicitor Michael Morin gave my counsel Ricky Harris the sentencing sheet for me to sign. Mr. Harris presented the sentencing sheet to me while instructing me to read it, and upon reading, indicate whether I understood it. I informed him I understood everything except the CDR code. Before signing, I asked him "Is the CDR code correct?" After almost 1 hour he returned to me and indicated that he and Mr. Morin were trying to get verification of the code but they were unsuccessful because a lady in Columbia, S.C. had left work early. This occurred on October 21, 2010 in the Cherokee County Courthouse.
11. (A2) From October 21, 2010 through January 26, 2011, Mr. Harris didn't make any effort to check and determine what offenses I was convicted for regarding my guilty plea on January 13, 1997, indictment numbers 1996GS110938; 939; 940; 941; 942; 943, had he done so, he would have discovered that all six of these charges were convictions of 1<sup>st</sup> offenses pursuant to plea bargain agreement (*see attachments A, B, C, D, E & F*) that cannot be breached. See Santebello VS New York, 92 S.Ct. 495, 404 U.S. 257, 30 Led 2d.427

(1971). "When plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of an inducement or consideration such a promise must be fulfilled." U.S. VS McQueen, 108 F3d. 64 (4th Cir.1997) "Interpretation of plea agreement is guided by contract law, and parties to agreement should receive the benefit of their bargain." Hammond VS U.S., 528 F2d. 15 (4th Cir. 1997) "Where a young defendant was induced to enter a plea bargain and pled guilty on erroneous advice that if he did not do so he could be subject to maximum 90 or 95 year sentence when, in fact, he could have received a maximum, 55 year sentence, defendant was denied effective assistance of counsel and his guilty plea was involuntary." Sprouse VS State, 585 SE 2d. 278, 355 S.C. 335 (SC 2003) "Assistant solicitors classification of defendants second-degree burglary offenses as violent constituted breach of oral plea agreement in prior burglary case that was handled by another assistant solicitor in the same judicial circuit, under which the assistant solicitor had stated the sentence in defendants second burglary case would be non-violent; both solicitors were bound to fulfill the plea agreement made by the other."

- 11.(A3) In fact, Assistant Solicitor Kimberly Leskanic led the trial court to believe I had six(6) prior distribution offenses after circling a number 6 written by her on page 4 of 4 of my NCIC and giving it to Mr. Harris who delivered it to me (see attachment G) prior to this plea Mr. Harris made no efforts at that point to review attachments A through F, the sentencing sheets reflecting 1st offenses, prior to advising this plea to a 3rd offense rather than to 2nd offense.
- 11.(A4) This prejudiced my case in the sense that under a 2nd offense, the sentence could have been suspended and probation granted, I would be eligible for supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits, but by me pleading under 3rd offense this is not so.
- 11.(A5) In Post Conviction proceedings, the focus usually is upon alleged errors made by trial or plea counsel; I am showing that my counsel erred in a manner that a reasonable proficient attorney would not and that the error prejudiced my case. See Sutton VS State, 606 SE2d. 779, 361 S.C. 644 (S.C. 2004). In thus, ineffective assistance of counsel and prejudice are present in my case. See also Hammond VS U.S., 528 F2d. 15 (4th C.R. 1997).
- 11.(A6) Mr. Harris continued to advise me, prior to and during the plea that a simple possession of marijuana disposition from May 10, 1996 (ticket or warrant #E244424) was being counted as an offense when a fine was paid for this violation. This marijuana violation

is not an offense for which I was convicted within the previous 5 years of a 1st violation for simple possession (See attachment **I**, see also Title 44-53-470 2nd and subsequent offense is defined; 2010 Act No.273, sec 41, effective June 2, 2010.) **State VS Scott**, 513 SE 2d. 100 (S.C. 1999) "Sentence vacated and remanded for resentencing where a disposition of a previous marijuana charge was a Bond Forfeiture, not a conviction for purposes of enhanced sentencing statute, and this defendant's attorney erred in failure to challenge trial court's decision to treat marijuana Bond Forfeiture as a 1st offense when sentencing defendant for conviction of trafficking in and transportation of cocaine."

11. (B1) The fact that all the attached sentencing sheets have 1<sup>st</sup> offense written on them (*see attachments A through F*) in comparison, the sentencing sheet for indictment #2009GS110578 is not for 2<sup>nd</sup> offense, but is for 3<sup>rd</sup> offense without me having ever been convicted for a 2<sup>nd</sup> offense (*see attachment H, sentencing sheet for subject matter guilty plea*)
11. (B2) This is clearly a breach of my January 13, 1997 plea bargain agreement that is supported by the attached sentencing sheets all for 1<sup>st</sup> offenses. Party that is claiming breach must prove the breach by a preponderance of evidence. (*See U.S. VS Snow*, 234 f3d. 187, 189). (4<sup>th</sup> Cir. 200) "Due process requires that any ambiguity be constructed against the government and in accordance with the defendant's reasonable understanding of the agreement. See U.S. VS Roitman, 245 F3d. 124, 126 (2d Cir.2001)" "Ambiguities in plea agreements are to be resolved against governments' conduct was inconsistent with what was reasonably understood by defendant when entering plea of guilty." I submit the sentencing sheets attached they speak for themselves and is evidence the state cannot refute.
11. (B3) Specific performance is generally ordered only if defendant shows prejudice. As discussed above in paragraph 11. (A4), pleas for a 3<sup>rd</sup> offense, rather than a 2<sup>nd</sup> offense, carries a **stiffer** penalty. Thus, this court should order sentencing under 2<sup>nd</sup> in light of the 1<sup>st</sup> offense January 13, 1997 plea agreement and sentencing sheets attached here to the greatest weight of any other evidence. See U.S. VS Nelson, 837 F2d. 1519, 1523, 1525 (11<sup>th</sup> Cir. 1988) "Defendant was granted specific performance when defendant was prejudiced by allegation in presentence report beyond those facts stipulated to agreement." See Santobello VS NY, 404 U.S. 257, 262-63 (1971) "Although a Federal Court may not decide on an initial remedy, it may enforce constitution<sup>A</sup> guarantees." Dunn VS Colleran, 247 F3d 450, 458 (3<sup>rd</sup> Cir. 2001). "Where state prosecutor breaches plea agreement, that breach may be remedied under Habeas review, although remedy should generally be referred to State Court." Hayes VS Maggio, 699 F.2d, 204 (5<sup>th</sup> Cir. 1983) "Writ of Habeas Corpus to be issued in 90 days unless state either assures eligibility of parole in compliance with agreement or vacates plea and initiates trial procedures when state breach agreement that defendant receive sentence with parole eligibility in 10 years." Gunn VS Ignacio, 263 F3d. 965, 970-71 (9<sup>th</sup> Cir. 2001) "habeas Corpus relief warranted by state breach of plea agreement when state concurred in presentence reports recommendation of 4 consecutive sentences despite states promise to recommend concurrent terms for defendants 2 weapon convictions."
11. (C) The fact that on January 26, 2011, the trial court explained the maximum sentence for an erroneous 3<sup>rd</sup> offense after I was induced to enter plea bargain and plead guilty on erroneous advice from Mr. Harris. If I had ~~known~~<sup>KNOWN</sup> and understood that all of my prior convictions were all to be counted as 1<sup>st</sup> offenses, I would have plead to 2<sup>nd</sup> offense, and not 3<sup>rd</sup> offense, in light of Hammond VS U.S., 528 F2d. 15 (4<sup>th</sup> Cir. 1995) Sprouse VS State, 585 SE 2d 278 (2003)

Further affiant, sayth not.

Sworn and subscribed before me this 10 day of NOVEMBER, 2011.

Catherine A. Amos  
Notary Republic for South Carolina

si William Camp #240141  
William Sheroid Camp #240141  
Applicant

My Commission Expires: December 23, 2018

7/20/41

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHEROKEE )  
 )  
 William Sheroid Camp )  
 (#00240141), )  
 )  
 Applicant, )  
 )  
 vs. )  
 )  
 The State of South Carolina, )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 SEVENTH JUDICIAL CIRCUIT

AMENDED APPLICATION FOR  
 POST-CONVICTION RELIEF

2011-CP-11-777

FILED IN OFFICE OF  
 CLERK OF COURT  
 CHEROKEE COUNTY, S.C.  
 2012 MAY 9 PM 3:27  
 BRANDY H. MCBE

Applicant, by and through his attorneys, Harrison, White, Smith, and Goggins, P.C., pursuant to SC Code 17-27-40 et seq., alleges the following:

Applicant William Sheroid Camp pled guilty to distribution of crack cocaine 3<sup>rd</sup> offense (09-GS-11-0578) and distribution of crack cocaine within 1/2 mile of school zone (09-GS-11-0579) on January 26, 2011 in Cherokee County and received a sentence of 12 years, no parole, pursuant to 24-13-100 for 09-GS-11-0578 and 10 years for 2009-GS-11-0579, both sentenced concurrent. Mr. Camp's appeal on the grounds of improper denial of enforcement of motion to enforce a prior plea agreement and denial of pretrial motion to impeach a state's witness with voluntary termination information; was dismissed on May 11, 2012 and remitted on January 19, 2012. Applicant is currently held in custody unlawfully as a result of:

10 A. Ineffective assistance of counsel in that his counsel Mr. Ricky Harris failed to investigate his 1997 plea bargain agreement and erroneously advised him that Distribution of Crack Cocaine (Indictment #2009GS110578) could legally be treated as

a 3rd offense when, in fact, his January 13, 1997 plea bargain were all 1st offense, in violation of his 6th and 14th amendment right under the US Constitution.

10 B. The state has breached the 1997 plea bargain agreement where his January 13, 1997 plea agreement in indictment numbers 96-GS-11-0938; 939, 940, 941, 942, and 943 were all 1<sup>st</sup> offense and prior to the subject matter guilty plea on indictment 2009-GS-11- 0578, he was informed by counsel that some of these charges in his January 13, 1997 plea were now treated as 2<sup>nd</sup> offense in violation of his 5<sup>th</sup> and 14<sup>th</sup> amendment rights under the US Constitution.

10 C. Involuntary guilty plea where his counsel and the trial court explained the maximum sentence for and erroneous 3rd offense when, in fact, Applicant's prior record of offenses were all for 1st offense, in violation of the 6th and 14th amendment right under the US Constitution.

11 (A1). A plea offer to indictment 2009-GS-11-0578 of 10 years, 2nd offense, was proposed pursuant to the revised June 2, 2010 Drug Law. Assistant Solicitor Michael Morin gave counsel, Ricky Harris the sentencing sheet for Camp to sign. Mr. Harris presented the sentencing sheet to Camp while instructing him to read it, and upon reading, indicate whether Camp understood it. Camp informed Ricky Harris he understood everything except the CDR code. Before signing, Camp asked counsel, Ricky Harris "Is the CDR code correct?" After almost 1 hour Harris returned to Camp and indicated that he and Mr. Morin were trying to get verification of the code but they were unsuccessful because a lady in Columbia, SC had left work early. This occurred on October 21, 2010 in the Cherokee County Courthouse.

11 (A2). From October 21, 2010 through January 26, 2011, Mr. Harris didn't make any effort to check and determine what offense Camp was convicted for regarding his guilty plea on January 13, 1997, to indictment 1996-GS-11-0938;939;940;941;942;943, had Harris done so, he would have discovered that all six of these charges were convictions of 1st offense pursuant to plea bargain agreement (see attachments A, B, C, D,E & F) that cannot be breached. See Santebello VS New York, 92 S. CT. 495, 404 U.S. 257, 30 Led 2d.427: (1971). "When plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of an inducement or consideration such a promise must be fulfilled." US VS McQueen, 108 F3d.64 (4<sup>th</sup> Cir. 1997) "interpretation of plea agreement is guided by contract law, and parties to agreement should receive the benefit of their bargain." Hammond VS U.S., 528 F2d.15 (4th Cir. 1997) "Where a young defendant was induced to enter a plea bargain and pled guilty on erroneous advise that if he did not do so he could be subjected to maximum 90 or 95 year sentence when, in fact; he could have received a maximum, 55 year sentence, defendant was denied effective assistance of counsel and his guilty [plea was involuntary." Sprouse VS State, 585 SE 2d.278, 355 S.C. 335 (SC2003) "Assistant solicitor classification of defendants second degree burglary offenses as violent constituted breach of oral plea agreement in prior burglary case. That was handled by another assistant solicitor in the same judicial circuit, under which the assistant solicitor had stated the sentence in defendants second burglary case would be non-violent; both solicitors were bound to fulfill the plea agreement made by the other."

11 (A3). In fact, Assistant Solicitor Kimberly Leskanic led the trial court to believe

that Applicant had six prior distribution offenses after circling a number 6 written by her on page 4 of 4 of the NCIC and giving it to Mr. Harris who delivered it to Camp (see attachment G) prior to this plea, Mr. Harris made no efforts at that point to review attachments A through F, the sentencing sheets reflecting 1st offense, prior to advising this plea to a 3<sup>rd</sup> offense rather than to 2<sup>nd</sup> offense.

11 (A4). This prejudiced Camp's case in the sense that under a 2<sup>nd</sup> offense, the sentence could have been suspended and probation granted, he would be eligible for supervised furlough, community supervision, work release, work credits, education credits and good conduct credits, but by Camp pleading under 3<sup>rd</sup> offense this is not so.

11 (A5). In Post Conviction proceedings, the focus usually is upon alleged errors made by trial or plea counsel. Applicant's counsel erred in a manner that a reasonable proficient attorney would not and that the error prejudiced his case. See Sutton VS State, 606SE2D. 779, 361 SC 644 (SC 2004). In this, ineffective assistance of counsel and prejudice are present in Mr. Camp's case. See also Hammond VS US., 528 F2d. 15 (4<sup>th</sup> C.R. 1997).

11 (A6). Mr. Harris continued to advise Camp, prior to and during this plea, that a simple possession of marijuana disposition from 5/10/96 (ticket #E244424) was being counted as an offense when a fine was paid for this violation in May of 1996. See US VS Kenyon, 7 F3d 783 (1993) "When determining number of prior convictions for controlled substance offenses, sentencing court, in determining whether defendant is a career offender, may not use simple possession of a control substance to satisfy requirement." See US VS Neal, 27 F3d 90 (4<sup>th</sup> Cir 1994) "Simple possession of drugs is

excluded from category of controlled substance offense under sentencing guidelines as predicated for sentencing as a career offender." Title 44-53-470 2<sup>nd</sup> or subsequent offense states (A) "an offense is considered a 2<sup>nd</sup> or subsequent offense if, (1) for an offense involving marijuana pursuant to the provisions of this article, the offender has been convicted within the previous 5 years of a 1st violation of a marijuana possession provision of this article or of another state or federal statute relating to marijuana possession." Camp's marijuana violation is not an offense for which he was convicted within the previous 5 years of a 1st violation for simple possession. (See attachment 1, see also Title 44-53-470 2<sup>nd</sup> and subsequent offense is defined; 2010 Act No. 273, Sec 41, effective 6/2/10). See State VS Scott, 513 S.E. 2d100 (SC1999)" sentence vacated and remanded for resentencing where a disposition of a previous marijuana charge was a bond forfeiture, not a conviction for purposes of enhanced sentencing statute, and thus defendant's attorney erred in failure to challenge trial court's decision to treat marijuana bond forfeiture as a 1st offense when sentencing defendant for conviction of trafficking in and transportation of cocaine."

11 (B1). The fact that all the attached sentencing sheets have 1st offense written on them (See attachments A through F) in comparison, the sentencing sheet for indictment # 2009-GS-11-0578 is not for 2nd offense, but is for 3rd offense without Camp having been convicted for a 2nd offense ( see attachment H, sentencing sheet for subject matter guilty plea)."

11 (B2). This is clearly a breach of Camp's 1-13-1997 plea bargain agreement that is supported by the attached sentencing sheets all for 1st offense. Party that is

claiming breach must prove the breach by a preponderance of evidence. (See U.S. vs Snow, 234 F3d.187, 189) (4th Cir. 2000) "Due process requires that any ambiguity be construed against the government and in accordance with the defendant's reasonable understanding of the agreement. See U.S. VS Roitman, 245 F3d. 124, 126 (2d Cir. 2001) "Ambiguities in plea agreements are to be resolved against government." And see U.S. VS Baird, 218 F3d. 221,229 (3<sup>rd</sup> Cri2000) "Government may not rely upon a rigid and literal construction of terms of plea agreements; courts must determine whether government conduct was in consistent with what was reasonably understood by defendant when entering plea of guilty." I submit the sentencing sheets attached they speak for themselves and is evidence the state cannot refute.

11 (B3). Specific performance is generally ordered only if defendant shows prejudice. As discussed above in paragraph 11. (A4), pleas for a 3<sup>rd</sup> offense, rather than a 2<sup>nd</sup> offense, carry a stiffer penalty. Thus, the court should order sentencing under 2<sup>nd</sup> in light of the 1<sup>st</sup> offense January 13, 1997 plea agreement and sentencing sheets attached here to, the greatest weight of any other evidence. See U.S. VS Nelson, 837F2d.1519, 1523, 1525 (11<sup>th</sup> Cir. 1988) "Defendant was granted specific performance when defendant was prejudiced by allegation in presentence report beyond those facts stipulated to agreement." See Santobello VS NY, 404 US 257, 262-63 (1971) "Although a Federal Court may not decide on an initial remedy, it may enforce constitutional guarantees." Dunn VS Colleran, 247 F3d 450,458 (3<sup>rd</sup> Cir.2001). "Where state prosecutor breaches plea agreement, that breach may be remedied under Habeas review, although remedy should generally be referred to State Court; Hayes VS Maggio, 699 F2d, 204 (5<sup>th</sup> Cir. 1983) "Writ of Habeas Corpus to be issued in 90 days

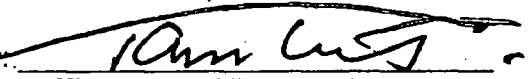
unless state either assures eligibility of parole in compliance with agreement or vacates plea and initiates trial procedures when state breach agreement that defendant receive sentence with parole eligibility in 10 years." Gunn VS Ignacio, 263 F3d. 965,970-71 (9<sup>th</sup> Cir.2001)" Habeas Corpus relief warranted by state breach of plea agreement when state concurred in presentence reports recommendation of 4 consecutive sentences despite states promise to recommend concurrent terms for defendants 2 weapon convictions.

11 (C). The fact that on January 26, 2011, the results would have been different but for counsel's errors the trial court explained the maximum sentence for an erroneous 3<sup>rd</sup> offense after Camp was induced to enter a plea bargain and plead guilty on erroneous advice from Mr. Harris to this Dist. 3<sup>rd</sup> offense. Deficient representation and prejudice in general are present in Camp's case. Camp should have been allowed to plead to 2<sup>nd</sup> offense. This offense was committed after conviction, for 1<sup>st</sup> offense, Camp's previous conviction, forms the basis of the charge of a 2<sup>nd</sup> offense. If Camp had known and understood that all of his prior multiple counts were all to be counted as 1<sup>st</sup> offense, he would have plead to 2<sup>nd</sup> offense, and not 3<sup>rd</sup> offense in light of Hammond VS U.S., 528f2d.15 (4<sup>th</sup> Cri. 1975) and Sprouse VS State, 585 S.E. 2<sup>nd</sup> 278 (2003).

The Applicant by and through his attorney, Thomas A. Killoren, Jr., swears and affirms that the above Amended Application for Post-Conviction Relief is true and correct.

**WHEREFORE** Applicant moves this Court to vacate his distribution 3<sup>rd</sup> conviction and resentence him to distribution 2<sup>nd</sup>.

Harrison, White, Smith, & Coggins

By: 

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Spartanburg, South Carolina  
May 9, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE SEVENTH CIRCUIT
COUNTY OF CHEROKEE	)	
	)	2011-CP-11-0777
William Sheriod Camp #240141,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____)		

The Respondent, making its Return to the application for post conviction relief (PCR) filed November 15, 2011, and amendment filed May 9, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. The Applicant was indicted at the May 2009 term of the Cherokee County Grand Jury for distribution of crack cocaine, third offense (09-GS-11-0578), and distribution of crack cocaine within one-half mile of a school/park (09-GS-11-0579). He was represented by Ricky Harris, Esquire. On January 26, 2011 the Applicant pled guilty as indicted. He was sentenced by the Honorable Roger L. Couch to confinement for a period of twelve (12) years for distribution of crack cocaine; and ten (10) years for distribution of crack cocaine within one-half mile of a school/park, to run concurrent.

A timely Notice of Appeal was filed on behalf of the Applicant. Pursuant to the provisions of Rule 203(d)(1)(B)(iv) SCACR, an Explanation of Grounds, dated February 8, 2011, was filed on behalf of the Applicant. The South Carolina Court of Appeals dismissed the appeal by written Order dated April 19, 2011. Upon information and belief the Remittitur was issued on January 19, 2012.

Attached herewith and incorporated herein are the records of the Cherokee County Clerk of Court regarding the subject conviction(s), a copy of the guilty plea transcript, the Applicant's records from the South Carolina Department of Corrections, and Applicant's appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials

## II.

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

1. Ineffective Assistance of Counsel, in that;
  - a. Counsel "failed to investigate my 1997 plea bargain agreement and erroneously advised me that Distribution of Crack Cocaine could legally be treated as a 3<sup>rd</sup> offense when, in fact, my January 13, 1997, plea bargain were all 1<sup>st</sup> offenses, in violation of my 6<sup>th</sup> and 14<sup>th</sup> Amendment rights under the U.S. Constitution;"
2. "The State breached the 1997 plea bargain agreement where my January 13, 1997, plea agreement to indictment number (1996-GS-11-0938, -0939, -0940, -0941, -0942, -0943) were all for 1<sup>st</sup> offenses and prior to the subject matter guilty on indictment (209-GS-11-0578), I was informed by counsel that some of these charges in my January 13, 1997, plea were now treated as 2<sup>nd</sup> offenses in violation of my 5<sup>th</sup> and 14<sup>th</sup> Amendment rights under the U.S. Constitution;"
3. Involuntary guilty plea; in that,
  - a. "Counsel and trial court explained the maximum sentence for an erroneous 3<sup>rd</sup> offense when, in fact, my prior record of offenses were all for 1<sup>st</sup> offenses, in violation of the 6<sup>th</sup> and 14<sup>th</sup> Amendment rights under the U.S. Constitution."

## III.

The Respondent interprets both the first and second allegations as allegations of ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the

application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests

an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4<sup>th</sup> Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4<sup>th</sup> Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

VI.

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

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

SUZANNE WHITE  
Assistant Attorney General

By:



**Attorneys for the Respondents**

---

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

*August 22, 2012*

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHEROKEE )  
 )  
 William Sheroid Camp )  
 (#00240141), )  
 )  
 Applicant, )  
 )  
 vs. )  
 )  
 The State of South Carolina, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 SEVENTH JUDICIAL CIRCUIT

SECOND AMENDED APPLICATION FOR  
 POST-CONVICTION RELIEF

2011-CP-11-777

FILED IN OFFICE OF  
 CLERK OF COURT  
 CHEROKEE COUNTY, S.C.  
 2011 NOV 6 PM 4 51  
 RANDY W. MOBEE

Applicant, by and through his attorneys, Harrison, White, Smith, and Coggins, P.C., pursuant to SC Code 17-27-40 et seq., alleges the following:

Applicant William Sheroid Camp pled guilty to distribution of crack cocaine 3<sup>rd</sup> offense (09-GS-11-0578) and distribution of crack cocaine within 1/2 mile of school zone (09-GS-11-0579) on January 26, 2011 in Cherokee County and received a sentence of 12 years, no parole, pursuant to 24-13-100 for 09-GS-11-0578 and 10 years for 2009-GS-11-0579, both sentenced concurrent. Applicant was represented by Ricky Harris, Esquire. Applicant's appeal on the grounds of improper denial of enforcement of motion to enforce a prior plea agreement and denial of pretrial motion to impeach a state's witness with voluntary termination information; was dismissed on May 11, 2012 and remitted on January 19, 2012. Applicant is currently held in custody unlawfully as a result of:

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

10A. Ineffective assistance of counsel in that Applicant's counsel Mr. Ricky Harris failed to challenge the use of a May 10, 1996 simple possession of marijuana disposition that was used to enhance his distribution of crack cocaine (indictment #2009-GS-11-0578) to 3<sup>rd</sup> offense in violation of the 6<sup>th</sup> and 14<sup>th</sup> amendment right under the U.S. Constitution.

10B. Involuntary guilty plea where his counsel and the trial court explained the maximum sentence for an erroneous 3<sup>rd</sup> offense when, in fact, applicant's prior record of offenses were all for 1<sup>st</sup> offense, in violation of the 6<sup>th</sup> and 14<sup>th</sup> amendment right under the U.S. Constitution.

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

11A. Counsel's representation to Applicant that a possession of marijuana disposition dated 5/10/96 could be used to enhance his 1/26/11 distribution of crack cocaine 3<sup>rd</sup> offense plea, was erroneous advice during the plea negotiation process and it constitutes ineffective assistance of counsel. All of Applicant's prior sentencing sheets are filed along with the P.C.R. application and they indicate all of Applicant's prior convictions constitute 1<sup>st</sup> offenses. It is not the legislature's intent for a person in South Carolina to go from 1<sup>st</sup> offense to 3<sup>rd</sup> offense without having been convicted of a 2<sup>nd</sup> offense. 44-53-375 S.C. Code of Laws "A defendant should not have been sentenced as a 2<sup>nd</sup> offender under the crack cocaine statute which provides an enhanced sentence for a 2<sup>nd</sup> offender or one whose 1<sup>st</sup> conviction was related to narcotic drugs as defined by §44-53-110; §44-53-470, which provides that an offense is

a 2<sup>nd</sup> offense if the defendant had previously been convicted under a statute relating to marijuana, is inapplicable since §44-53-375 is both more recent and more specific.” Rainey v. State (S.C. 1993) 307 S.C. 150, 414 SE 2d 131. When the legislature enacted 44-53-375 it was their intent that marijuana not be used to enhance a 44-53-375 conviction. State v. Burton, 301 S.C. 305; 391 S.E. 2d 583 held “when construing a statute, the court must attempt to ascertain and effectuate the intent of the legislature. Penal statutes are construed strictly against the state and in favor of the defendant. In determining the meaning of a statute, it must be inferred that statutes specifically excluding certain things evidence the intent of the legislature to include all other things not mentioned.” In State v. Scott, 513 S.E. 2d 100 (S.C. 1999) the court found “In the interpretation of statutes, court’s sole function is to determine and, within constitutional limits, give effect to the legislature, with reference to the meaning of the language used and the subject matter and purpose of the statute.” Williams v. State, 306 S.C. 89; 410 S.E. 2d 563 states “The rule that penal laws are to be construed strictly, is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals; and of the plain principle that the power of punishment is vested in the legislative, not in the judicial department. It is the legislature, not the court, which is to define a crime, and ordain its punishment.”

Applicant was indicted in May of 2009, the Magistrate Court marijuana disposition was 13 years old then, he plead 1/26/11 to distribution of crack cocaine 3<sup>rd</sup> offense. The marijuana charge was almost 15 years old at that time. Applicant’s marijuana conviction should not have been allowed to enhance his distribution of crack

cocaine conviction. This resulted in Applicant receiving ineffective assistance of counsel.

11B. On January 26, 2011, the result in court would have been different but for counsel's errors, the trial court explained the maximum sentence for an erroneous 3<sup>rd</sup> offense after Camp was induced to enter a plea bargain and plead guilty on erroneous advice from Mr. Harris to this distribution 3<sup>rd</sup> offense. Deficient representation and prejudice in general are present in Applicant's case. Applicant should have been allowed to plead to 2<sup>nd</sup> offense. This offense was committed after conviction for 1<sup>st</sup> offense. Applicant's previous conviction forms the basis of the charge of a 2<sup>nd</sup> offense. If Applicant had known and understood that all of his prior multiple counts were all to be counted as 1<sup>st</sup> offense, he would have plead to 2<sup>nd</sup> offense and not 3<sup>rd</sup> offense in light of Hammond v. U.S., 528 F2d. 15 (4<sup>th</sup> CRI. 1975) and Sprouse v. State, 585 S.E. 2<sup>nd</sup> 278 (2003).

**WHEREFORE** Applicant moves this Court to vacate his distribution 3<sup>rd</sup> conviction and resentence him to distribution 2<sup>nd</sup>.

**Harrison, White, Smith, & Coggins**

By: 

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 (864)585-5100

Spartanburg, South Carolina  
 November 6, 2012

1 STATE OF SOUTH CAROLINA )  
 2 COUNTY OF CHEROKEE ) IN THE COMMON PLEAS COURT  
 3  
 4 William Sheroid Camp, )  
 5 Applicant, ) TRANSCRIPT OF RECORD  
 6 -vs- ) 2011-CP-11-0777  
 7 The State. ) January 9, 2013  
 ) Spartanburg, South Carolina

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B E F O R E :

HONORABLE J. DERHAM COLE, JUDGE

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

THOMAS A. KILLOREN, JR., ESQUIRE  
Attorney for the Applicant

SUZANNE H. WHITE, ESQUIRE  
Attorney for the State

Linda D. Moffitt  
Circuit Court Reporter

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No exhibits entered into evidence.

1 MS. WHITE: Your Honor, this is the case of William  
2 Camp vs. the State. It's case No. 2011-CP-11-0777.

3 Mr. Camp was indicted May of 2009, Cherokee County,  
4 for distribution of crack cocaine third offense and a  
5 proximity charge.

6 Ricky Harris represented him. He pled guilty as  
7 indicted and was sentenced to 12 years for the distribution  
8 of crack charge, ten years for the proximity charge to run  
9 concurrent.

10 He filed this application and has alleged ineffective  
11 assistance of counsel in that counsel failed to investigate  
12 some prior charges including a '97 plea bargain agreement  
13 and erroneously advised him that he could be sentenced to a  
14 third offense.

15 Then he's alleged some various -- involuntary guilty  
16 plea and a breach of a plea agreement. So I will turn it  
17 over to Mr. Killoren at this time.

18 THE COURT: All right. Mr. Killoren.

19 MR. KILLOREN: Thank you, Your Honor. At this time we  
20 would call first witness.

21 THE COURT: Okay.

22 MR. KILLOREN: William Camp.

23 THE COURT: While he's coming to the stand, tell me  
24 for clarification exactly what grounds you're proceeding  
25 on.

William Sheroid Camp  
Direct examination by Mr. Killoren

1 MR. KILLOREN: We're proceeding on the involuntary  
2 guilty plea based on ineffective assistance of counsel.

3 THE COURT: And the ineffectiveness was what?

4 MR. KILLOREN: In that the -- Mr. Camp believes he was  
5 misled or not informed properly of the enhanceability of  
6 prior convictions.

7 THE COURT: Okay. And that's the sole ground?

8 MR. KILLOREN: And that the plea -- that the terms of  
9 the plea were involuntary based on the plea that was taken  
10 by the trial judge.

11 THE COURT: Explain that to me.

12 MR. KILLOREN: Well, the argument will be that the --  
13 that Mr. Camp's plea was involuntary because he didn't  
14 understand and it was not a knowing and voluntary plea  
15 based on some of the questions and the circumstances of the  
16 plea.

17 THE COURT: Okay.

18 WILLIAM SHEROID CAMP, having  
19 been first duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. KILLOREN

21 Q State your name, please.

22 A My name is William Camp.

23 Q And, Mr. Camp, you're currently incarcerated based on  
24 a plea agreement that was entered in 2011, is that correct?

25 A Yes, sir.

William Sheroid Camp  
Direct examination by Mr. Killoren

1 Q And you filed your post conviction relief petition, is  
2 that correct?

3 A Yes, sir.

4 Q And we're here today to discuss the grounds for the  
5 post conviction relief, is that correct?

6 A Yes, sir.

7 Q Let me ask you some questions about the circumstances  
8 that led up to the plea in 2011.

9 There was a -- the case that is the subject of the  
10 P.C.R. occurred in Cherokee County, is that correct?

11 A Yes, sir.

12 Q And did you appear in the Cherokee County Courthouse  
13 for a trial on those cases?

14 A Yes, sir.

15 Q And after the trial began did you ultimately enter  
16 into a plea negotiation?

17 A Yes, sir.

18 Q Okay. And your attorney -- who was your attorney  
19 during the course of the trial?

20 A Mr. Ricky Harris.

21 Q And during the course of the plea negotiations, tell  
22 the court. What -- what happened after the trial started  
23 between you and Mr. Harris and the prosecutor?

24 A Like I said, during the -- the plea-negotiation  
25 process it was explained to me that I had a marijuana

William Sheroid Camp  
Direct examination by Mr. Killoren

1 charge from 1996 and that was being counted as an offense  
2 against me. And I was told specifically.

3 He said, "Mr. Camp, the marijuana is an offense.  
4 Everything you did time for is an offense. Now, Mr. Camp,  
5 this is going to be your third offense."

6 And, I mean, me and him, you know, we had a -- a lot  
7 of words about that because I told him everything I did my  
8 time on when I done time. I served time for first offense  
9 on everything. I simultaneously pled in 1997 to first  
10 offense.

11 Well, he would say, "Mr. Camp, I understand that.  
12 They're counting the marijuana as a violation. And,  
13 Mr. Camp, you are guilty of the marijuana charge, so the  
14 marijuana is an offense."

15 So that's what -- therefore when I -- I done a little  
16 research while I was incarcerated, and I seen that the  
17 marijuana could not be used. And that's what's done led me  
18 to believe that my plea was involuntary, along with him  
19 being ineffective, because I was misled into thinking that  
20 something was going to be counted and could be counted that  
21 can't be counted.

22 Q Okay. why did you think that the marijuana charge  
23 was -- well, why did you think that the -- why do you think  
24 now in your P.C.R. petition that Mr. Harris' representation  
25 about the marijuana charge makes your plea involuntary?

William Sheroid Camp  
Direct examination by Mr. Killoren

1 A All right. Because based on what I just said, upon  
2 further research by me under 44-53-470 if the marijuana was  
3 going to be used to enhance me because of that it would've  
4 been a 5-year period that the state would have had to do  
5 that. And when I pled it was like 15 years later. So that  
6 time would have elapsed.

7 Q So your -- your position is that the marijuana charge  
8 was too old to be used as an enhancer on the --

9 A Yes, sir, and that's -- and that's what I was told  
10 from my attorney was being used to enhance me.

11 Q Okay. Is there anything else that he told you, that  
12 Mr. Harris told you, that you believe that he misled you  
13 about the terms of the plea negotiation?

14 A Other than us not discussing the playground issue.

15 Q Okay.

16 A I mean, that was sorta like shoved down on us like --

17 Q Well, tell the Court -- tell the Court a little bit  
18 about that. You had two charges, is that correct?

19 A Yes, sir.

20 Q One was a distribution charge, correct?

21 A Yes, sir.

22 Q And one was a charge in proximity to a park or school  
23 or playground, correct?

24 A Yes, sir.

25 Q Okay. And so during the course of the plea did you

William Sheroid Camp  
Direct examination by Mr. Killoren

1 feel like you had adequate time to discuss the -- the  
2 playground-park charge?

3 A No, sir. Because it was never an issue. But being  
4 that we had the little short time span, like it was  
5 anywhere from two to two and a half minutes to discuss it  
6 right then before we proceed, it was more or less shoved  
7 down my throat because she -- it was added right there at  
8 the end.

9 I'm saying I realize that I was indicted for it the  
10 whole time, but it was never an issue when the plea  
11 negotiation was accepted. It was never an issue right  
12 then.

13 Q Okay.

14 A In fact, when I signed the plea agreement I signed one  
15 paper. I signed -- I signed a plea negotiation in one  
16 room, and then I had to go in the actual courtroom, and the  
17 playground was on the table in there. It wasn't even  
18 brought to me and presented to me together for the fashion  
19 that they was brought out.

20 Q Okay.

21 A For the fashion that they was, you know, deciding,  
22 well, okay, well, we're going to charge him with this too.

23 Q All right. So you --

24 A So placed me in --

25 Q I'm sorry.

William Sheroid Camp  
Direct examination by Mr. Killoren

1 A Go ahead.

2 Q Are you finished?

3 A Yes, sir.

4 Q You pled to two charges. And is it your testimony  
5 that one of the -- one of the plea sheets was signed in a  
6 private room at the courthouse with Mr. Harris? Is that  
7 correct?

8 A Yes, sir.

9 Q And then is it your testimony that the second plea to  
10 the playground-park-proximity charge, that was not  
11 presented to you until you got into the courtroom before  
12 the judge, is that correct?

13 A Yes, sir.

14 Q Okay. And why is -- what is it about that  
15 playground-park plea that you believe was involuntary or  
16 that you believe you didn't understand?

17 A I just didn't -- I didn't understand how that became  
18 an issue in the course of two to three minutes.

19 Q Okay. Did you have --

20 A Not unless it was -- go ahead.

21 Q Did you feel like you had an adequate time -- adequate  
22 time to talk to Mr. Harris about the playground-park  
23 proximity charge before you entered into that plea?

24 A No, sir. But on record I said I did.

25 Q Okay.

William Sheroid Camp  
Direct examination by Mr. Killoren

1 A Because I only had, what? When you sitting there and  
2 got a plea and if you're pleaing and going -- went to  
3 trial, going to stop the trial, and you can sign the plea  
4 for the 12 years, if I'm going to do the 12, then I got to  
5 take the ten too.

6 Q Right.

7 A So, yes.

8 Q So is it your testimony that you said -- you told the  
9 judge at the plea that you understood the terms of the  
10 plea, but actually you felt like you didn't have enough  
11 time?

12 A Yes, sir.

13 Q Okay. And you didn't have enough time to discuss the  
14 matter with Mr. Harris. Is that what your testimony is?

15 A Yes, sir.

16 Q Okay. Or is there anything else that I am missing?

17 A No, sir, other than some stuff you've got wrote down  
18 over there.

19 Q All right. Tell me about the -- did you feel like  
20 that Mr. Harris explained the effect of the no-parole  
21 aspect of your charge when you were pleading to the  
22 charges? Did you understand the 85 percent rule?

23 A Not completely, but, I mean, I do know that when you  
24 do 85 percent, you're going to do 85 percent, so.

25 Q Okay. Did you feel like you had adequate time to talk

William Sheroid Camp  
Direct examination by Mr. Killoren

1 to Mr. Harris about the 85 percent rule or the no-parole  
2 rule prior to the plea to where you could understand it?

3 A Well, we -- we discussed the 85 percent. That's what  
4 the trial was about. I was trying to go with a second  
5 offense.

6 Q Okay.

7 A In fact, I was offered a plea for second offense, but  
8 the C.D.R. code was wrong.

9 Q Okay.

10 A And the plea was rescinded because the sentencing  
11 sheet had the wrong C.D.R. code on it.

12 Q And so is it your testimony that because that that  
13 plea was revoked that the -- you believe that the state  
14 revoked a plea negotiation with you prior to the trial? Is  
15 that correct?

16 A Yes, sir, it was. Yes, sir, it did.

17 I actually had a sentencing sheet in my hand for  
18 second offense distribution, but I was told by Mr. Harris  
19 make sure you understand everything that's on this sheet of  
20 paper before you sign it. And so I read everything. And I  
21 questioned the C.D.R. code because I didn't understand it.

22 Okay. And so they stopped, and they went to check the  
23 C.D.R. code. And they never come back with the correct  
24 one. And court was adjourned and the plea was rescinded.

25 Q And how much was the plea offer for before?

William Sheroid Camp  
Direct examination by Mr. Killoren

1 A Distribution second offense for ten years.

2 Q Okay. And did you -- and was that a plea that you and  
3 Mr. Harris had talked about prior to entering that plea?

4 A Yes, sir.

5 Q And was that plea revoked by the prosecutor?

6 A And the plea was revoked because I never signed the  
7 paper, but I never signed the paper because I was told to  
8 make sure I understand everything on the paper before I  
9 sign it.

10 Q Okay. And you -- is it your testimony that you asked  
11 the question about the C.D.R. code on the paper?

12 A Yes, sir.

13 Q And because you asked that question the plea was  
14 revoked.

15 A Because they couldn't produce, yes, sir, yes, sir.

16 Q All right. And so you felt like that that was a  
17 breach of that plea agreement, is that correct?

18 A I do, but it was -- it was -- I was told that that was  
19 like an oral agreement so it was -- it helped no way, you  
20 know --

21 Q Okay.

22 A -- as far as making them enforce it. In other words,  
23 they didn't -- I hadn't give up no type of testimony on  
24 nobody. I hadn't entered no type of deal with them for  
25 them to offer me that plea so they could take it back of

William Sheroid Camp  
Cross-examination by Ms. White

1 their own free will. That's what I was told, you know,  
2 like a month or two later.

3 Q Okay. Anything else that we haven't talked about that  
4 you think is relevant to your involuntary plea on this  
5 case?

6 A No, sir.

7 Q Okay.

8 MR. KILLOREN: That's all the questions I have, Your  
9 Honor.

10 CROSS-EXAMINATION

11 BY MS. WHITE

12 Q Mr. Camp, just a couple of questions.

13 You talked about the fact that the '96 marijuana charge  
14 was used to enhance this to a third offense?

15 A Yes, ma'am. That's what I was told by my attorney.

16 Q But you had also pled guilty to several other  
17 distribution charges prior, had you not?

18 A Yes, sir, I mean, excuse me, yes, ma'am.

19 Q That's fine.

20 A And I was told that that was a -- an offense.

21 Q Okay. So you were under the impression that even  
22 though the arrest dates were separate for those offenses  
23 that because you pled to them on the same day they would  
24 about be all counted as one offense?

25 A That's -- that's how it was explained to me by my

William Sheroid Camp  
Cross-examination by Ms. White

1 attorney, ma'am.

2 Q Okay. And in regards to the proximity charge, you  
3 said you acknowledged that you were indicted May of 2009  
4 for both of the charges.

5 A Yes, ma'am.

6 Q Okay. And this was January of 2011 when you went or  
7 when you ultimately pled?

8 A Yes, ma'am.

9 Q So you had known you were indicted for at least a year  
10 and a half on the charges, is that right?

11 A Yes, ma'am. But as far as me and him discussing or  
12 actually me getting sentenced for it or pleading to it, we  
13 never did up until like maybe -- like I say, two or three  
14 minutes before. It wasn't even three minutes. Two or two  
15 and a half minutes.

16 Q Okay. And you -- this was a negotiated plea, wasn't  
17 it?

18 A Yes, ma'am.

19 Q Okay. And you got 12 years for the distribution and  
20 ten for the proximity charge?

21 A Yes, ma'am.

22 Q And at this time when you did talk with him other than  
23 the question in your mind about whether or not it's a third  
24 or second, you were pleading freely and voluntarily at that  
25 time, were you not?

William Sheroid Camp  
Cross-examination by Ms. White

1 A Yes, ma'am. I am guilty of the charge. I'm just  
2 saying it's second offense and not third. I am guilty of  
3 the distribution charge, ma'am.

4 Q And so other than that that question, that's your  
5 concern with making sure that you are sentenced correctly.

6 A Yes, ma'am. I even went as far as starting a jury  
7 trial to try make them charge me with a second instead of  
8 third, because I knew I was guilty the whole time. I -- me  
9 being guilty is -- was never a question. It's still never  
10 a question with me. I'm guilty of the charge, ma'am.

11 Q Okay.

12 MR. KILLOREN: I'm going to lodge an objection and  
13 move to strike his response, Your Honor. That's irrelevant  
14 to the proceeding.

15 THE COURT: Well, it's relevant, but I don't think it  
16 makes any difference under the application as it's been  
17 presented.

18 The issue it appears to me is simply whether or not it  
19 was a second offense or a third offense.

20 MR. KILLOREN: Yes, sir.

21 THE COURT: Legally. He says he's under the  
22 impression it should have been second. He was told it was  
23 a third, and so he pled guilty at the advice of his lawyer.

24 MR. KILLOREN: Correct.

25 THE COURT: But he contends it's a -- should have been

1 actually a second. And he's found subsequent to the plea  
2 that it was a second.

3 So I don't think -- I don't think his admission to the  
4 offense has anything to do with the relief he's seeking or  
5 the allegations that he's made.

6 Do you? It's an inappropriate question, but I don't  
7 think -- I don't think it prejudices him in any way in his  
8 application.

9 BY MS. WHITE

10 Q And in regards to the plea for ten years, you had met  
11 with your attorney and talked about that.

12 A No, ma'am.

13 Q Okay. But you were presented with a sentencing sheet  
14 you said that offered the ten years.

15 A Yeah. He didn't even present me with that sentencing  
16 sheet, ma'am. That was --

17 Q Okay. So who -- it was the solicitor?

18 A It was on the table when I came in, when I came in the  
19 courtroom. The sentencing sheet for the 12 years was  
20 presented to me by my attorney.

21 The sentencing sheet for the ten years was on the  
22 table when I came in the courtroom. Who put it there, I  
23 have no idea. I don't think me or my attorney did though.

24 Q Okay. And I'm sorry if I asked a confusing question.  
25 I was trying to go back to the one that you said that the

William Sheroid Camp  
Cross-examination by Ms. White

1 plea sheet had the wrong C.D.R. code.

2 A Oh, yes, ma'am.

3 Q That's the one that you said was an offer to plead to  
4 a second offense for ten years?

5 A Oh, yes, ma'am. That was September 10th of --  
6 September -- no. Excuse me, ma'am. September 16th of  
7 2010.

8 I was took to the Cherokee County courtroom, but the  
9 guy that offered the plea -- Kim Leskanic wasn't my  
10 attorney. It was -- wasn't my solicitor. It's a solicitor  
11 that he's moved over here.

12 Q Mr. Morin?

13 A Yes, yes, ma'am. Michael Morin presented that  
14 sentencing sheet, right. And the C.D.R. code was wrong on  
15 it. I questioned the C.D.R. code, and the plea was  
16 rescinded --

17 Q Okay.

18 A -- like 45 minutes to hour later because they didn't  
19 fix it.

20 Q And you said someone told you that because there was  
21 no reliance or nothing that you did in exchange for that  
22 plea --

23 A Yeah.

24 Q -- you couldn't --

25 A It was called detrimental reliance. That's what they

Ricky Keith Harris  
Direct examination by Mr. Killoren

1 called it, yes, ma'am.

2 Q And you had not signed anything as of yet for that.

3 A No, ma'am. But I intended to sign it, but I was told  
4 to understand everything first.

5 Q Okay. All right. Thank you. That's all I have for  
6 this witness, Your Honor.

7 THE COURT: Wait just a minute.

8 MR. KILLOREN: No further questions, Your Honor.

9 THE COURT: Okay. You can step down.

10 MR. KILLOREN: Yes, sir, Your Honor. The  
11 applicant-petitioner would like to call attorney Ricky  
12 Harris.

13 THE COURT: Okay.

14 RICKY KEITH HARRIS, having  
15 been first duly sworn, testified as follows:

16 DIRECT EXAMINATION BY MR. KILLOREN

17 Q Mr. Harris, state your name, please.

18 A Ricky Harris.

19 Q Mr. Harris, were you the attorney for William Camp in  
20 his 2011 guilty plea in Cherokee County before Judge Couch?

21 A Yes, sir.

22 Q And how long had you been retained to represent  
23 Mr. Camp prior to the trial and ultimate plea?

24 A Several months.

25 Q Okay. And how many times had you visited with

Ricky Keith Harris  
Direct examination by Mr. Killoren

1 Mr. Camp prior to the trial and plea negotiations?

2 A Prior to the trial at least three or four times.

3 Q Okay. And during the course of those meetings did  
4 Mr. Camp ever express any dissatisfaction with your  
5 services or request any further work by you as his  
6 attorney?

7 A Well, Mr. Camp from time to time said he didn't think  
8 I was doing everything that I should be doing for him, said  
9 that he thought that I was in with the prosecutor, thought  
10 I was being run over by the prosecutor.

11 I mean, not every time we met and not all of the time  
12 we had communication, but on several occasions he said such  
13 things as that.

14 He constantly made requests of me to explain things to  
15 him, to check into different aspects of the case, which I  
16 did.

17 Q Okay. Did you feel like because of his criticism of  
18 your work that the two of you had a breakdown in  
19 communication?

20 A I wouldn't -- no. I don't agree that there was a  
21 breakdown of communication. I think there was an  
22 obfuscation of communication and understanding.

23 Q Okay. And what do you mean by that?

24 A It became pretty clear to me the most -- the best way  
25 I can describe it is it became very clear to me very soon

Ricky Keith Harris  
Direct examination by Mr. Killoren

1 after I started representing Mr. Camp that Mr. Camp was  
2 embarking on a strategy of attempting to create grounds for  
3 post conviction relief should he not get the result in the  
4 case that he wanted.

5 Q Okay. And when you discovered that or when you felt  
6 that Mr. Camp was embarking on that strategy, did you feel  
7 like you could adequately represent him in the trial and  
8 guilty plea on the 2011 Cherokee County charges?

9 A Yes, I felt -- I mean, I understood what he was doing.  
10 It didn't affect the way I represented him other than it  
11 made it difficult for me to explain and have him accept  
12 what I was explaining to him about the law and the facts of  
13 the case.

14 Q Did you think that based on Mr. Camp's strategy or  
15 legal strategy in the case that it might be best for some  
16 other attorney to take over representation of his case?

17 A I didn't know if -- I didn't think it would  
18 necessarily be better for him because I felt unable to  
19 represent him. I never felt like I was unable to represent  
20 him. If I had felt that way I would have requested that a  
21 court relieve me as his attorney.

22 But I believe I did say to Mr. Camp on probably at one  
23 or two occasions that if he didn't feel like I was doing  
24 the job for him that he was free to get another lawyer.

25 And I was only saying that because if he had such

Ricky Keith Harris  
Direct examination by Mr. Killoren

1 disagreement with how I was conducting myself or what I was  
2 doing or what results I was achieving that it would be a  
3 very simple matter, that it wouldn't be no hard feelings on  
4 my part. I'd gladly step out of the case if that's what he  
5 thought was in his best interest.

6 Q Okay. And so you --

7 A But he never -- he -- he always would respond that he  
8 thought I was the best lawyer for him and that he wanted me  
9 to represent him.

10 Q But did that give you pause when he would make those  
11 criticisms of you that maybe that in light of the strategy  
12 that he was trying to embark on that you shouldn't be his  
13 lawyer in this plea or this trial?

14 A Do you mean did it give me pause as to whether I  
15 should be representing him?

16 Q Correct, yes, sir.

17 A No.

18 Q Did you ever report to the Court that you thought  
19 Mr. Camp was embarking on a strategy of trying to set up a  
20 P.C.R.?

21 A No.

22 Q Okay. Do you think that Mr. Camp by embarking on this  
23 strategy of setting up a P.C.R. was voluntarily entering  
24 into the plea negotiations?

25 A I'm -- I didn't quite understand the question.

Ricky Keith Harris  
Direct examination by Mr. Killoren

1 Q well, do you think that Mr. Camp really knew what he  
2 was doing when he entered the plea negotiations?

3 A I think he knew exactly what he was doing.

4 Q Okay. And do you think that he knew that he was  
5 trying to set up a P.C.R. or that he knew that he was  
6 pleading guilty to the underlying charges?

7 A When Mr. Camp entered the plea after pretrial motions  
8 concluded but before the commencement of the trial -- that  
9 was the chronology of events -- is we had pretrial motions.  
10 We raised every issue that he had a concern about. We  
11 were not successful in pretrial motions and it was -- he  
12 then decided to accept a plea offer from the state.

13 He -- in my opinion he knew exactly what he was  
14 pleading to; he knew exactly what the minimum and maximum  
15 sentences were; he knew exactly what the state had to  
16 prove, and by what standard; what the evidence was that  
17 they could present; and he understood what he was agreeing  
18 to do in a negotiated plea. This was a negotiated plea.

19 Q Do you think that Mr. Camp -- that you should have  
20 advised Mr. Camp not to enter into this plea based on his  
21 strategy or what he was -- what he was trying to do in this  
22 circumstance?

23 A I think the plea was very much in his best interest.

24 Q I -- but my question is do you think that you should  
25 have advised him that to try to establish a P.C.R. was an

Ricky Keith Harris  
Direct examination by Mr. Killoren

1 inadvisable strategy?

2 A Should I have told Mr. Camp that trying to create a  
3 P.C.R. circumstance or create P.C.R. grounds was  
4 inadvisable?

5 Q Yes, sir.

6 A I don't -- I mean, I don't -- I didn't, but I don't  
7 know if I should have or not. I mean, you know, the  
8 situation -- I think in a way the man was facing dire  
9 circumstances legally, what he was -- what he was charged  
10 with -- and he knew exactly what he was charged with. He's  
11 an experienced criminal litigant.

12 We discussed his experience in criminal court many  
13 times. Part of his experience in the criminal process was  
14 to overturn a previous negotiated plea on P.C.R. and get a  
15 new trial. And so he continually brought that up, that,  
16 you know, he -- he had done that before and he could do it  
17 again.

18 And so what I think was in his mind was -- what came  
19 through to me anyway -- it could be wrong. What came  
20 through to me anyway was if I thought I could try the case  
21 and win it, great. That's what we would do. If -- if we  
22 wound up trying the case and losing it, he figured he would  
23 just get it overturned on P.C.R. like he had done his other  
24 case.

25 He, I think, had a change of heart about the

Ricky Keith Harris  
Direct examination by Mr. Killoren

1 consequences of a trial when he saw the result of pretrial  
2 motions.

3 He knew it was a good deal that they were offering him  
4 even then, and I think he took the deal figuring to do  
5 precisely what he's doing today.

6 Q Do you -- what specifically do you think Mr. Camp did  
7 to set up a P.C.R.?

8 A All -- never -- never seeming to be satisfied with any  
9 answer I gave him, any answer that we got from the  
10 solicitor. There was no amount of explaining, you know,  
11 seemed to satisfy him. Complaining about the -- even the  
12 C.D.R. code, that episode where he could have had ten years  
13 on a second offense under the new law and be parole  
14 eligible. I mean, he turned that down because he wasn't  
15 sure what the C.D.R. code was on the sentencing sheet.

16 Q Okay. During the course of the plea negotiation there  
17 were some questions of Mr. Camp and of you with regard to  
18 the -- what we're calling the playground-park charge. Do  
19 you remember that discussion?

20 A You're talking about during -- during the plea  
21 colloquy?

22 Q Yes, sir.

23 A I don't specifically remember it. I know that we were  
24 pleading to those two charges.

25 Q And during the course of the plea on page eight,

Ricky Keith Harris  
Direct examination by Mr. Killoren

1 sentence nine, the Court asked Mr. Camp.

2 THE COURT: "Now, Mr. Camp, you're  
3 here today with your attorney. Have you  
4 discussed all of these matters that I've  
5 gone over with you and others with your  
6 lawyer?

7 THE DEFENDANT: Yes, sir, all except  
8 for the last charge, the  
9 school-park-playground thing.

10 THE COURT: Yes, sir.

11 THE DEFENDANT: We never really  
12 discussed that a whole lot because it  
13 never was an issue until five minutes ago.

14 Q Did you think at that point when Mr. Camp made that  
15 statement that you should take a recess and talk to him  
16 about that charge and make sure he understood that?

17 A No, because we -- we had discussed the proximity  
18 charge, what the potential punishment was, what it meant.

19 We had -- we had done a lot of research into whether  
20 we could exploit what was -- what turned out to be a  
21 clerical error on some of the -- in some of the discovery  
22 as to the distribution location.

23 We had gotten Google maps and done a flyover search  
24 and all kinds of things to determine if it was within the  
25 proximity that fell within the statute. And we had

Ricky Keith Harris  
Direct examination by Mr. Killoren

1 discussed all of that.

2 I think in the portion of the transcript you're  
3 referring to during the plea -- I do not think that  
4 Mr. Camp was referring to had we gone over the proximity  
5 case, had we discussed it, prepared for it, knew what it  
6 was.

7 I think what Mr. Camp was referring to was something  
8 that the assistant solicitor insisted on as part of the  
9 plea at the very last minute.

10 Q Okay. The Court went on to say on the bottom of page  
11 eight, line 25.

12 THE COURT: Yes, sir. Well, do you  
13 need any more time to talk to your lawyer  
14 about that charge?

15 THE DEFENDANT: No, sir. It's pretty  
16 clear how it's going to be today.

17 Q During the plea -- or during the plea did you feel  
18 like that when Mr. Camp made that statement that he felt  
19 like he was boxed into this plea and had nowhere to go?

20 A If you're asking me how I felt about it or what I  
21 thought about it, the only thing that I took from it was  
22 that he didn't -- he didn't like having to plead and be  
23 sentenced but he knew that's what he had to do to avoid a  
24 mandatory minimum sentence for distribution third under the  
25 old law.

Ricky Keith Harris  
Direct examination by Mr. Killoren

1           If we went ahead with the trial -- and I think, there  
2 again, he's expressing probably some frustration as I was  
3 frustrated at the -- the insistence at the very last minute  
4 by the assistant solicitor of tacking on the proximity  
5 charge to the plea.

6 Q       Later on on page nine of the plea that's the subject  
7 of this case, on line 11, the Court asked Mr. Camp.

8           THE COURT: Are you satisfied with  
9 your discussions with him?

10 Q       Referring to you. And line 14 the defendant says:

11           THE DEFENDANT: I'm satisfied with  
12 our discussions, but the all-around  
13 service, maybe I'm not.

14 Q       Did -- does -- when Mr. Camp made that statement to  
15 the Court did that make you think to yourself that you  
16 should take a recess to make sure that Mr. Camp was  
17 completely satisfied with the plea?

18 A       No.

19 Q       On page ten, on line five, of the plea the defendant  
20 states:

21           THE DEFENDANT: It's got -- it's got  
22 him and I as to -- well, maybe I feel like  
23 he's at fault, but, you know, one is  
24 pointing the finger over here and one is  
25 pointing the finger over here, but I'm in

Ricky Keith Harris  
Direct examination by Mr. Killoren

1           the middle and I've just got to stand here  
2           and say yes, sir.

3   Q     Did that statement by Mr. Camp make you think that  
4   Mr. Camp didn't understand what was going on in the plea or  
5   shouldn't go forward with the plea at that time?

6   A     Did that -- did those statements make me think  
7   Mr. Camp didn't understand the plea?

8   Q     Yes, sir.

9   A     Absolutely not.

10   Q     Did that statement make you think that maybe you  
11   should take a recess to talk to Mr. Camp to discuss the  
12   plea or the terms of the plea?

13   A     No, nor did he ask to talk to me about it. And I  
14   don't suppose the trial judge felt there was a need for it.

15         But for me, no. I -- I have to say I don't want to  
16   belabor the point, but since you're asking the question, I  
17   think those statements are -- were a product of Mr. Camp's  
18   state of mind about later asking for post conviction  
19   relief.

20   Q     On page 13 of the plea the Court asks:

21                   THE COURT: Now, counselor, have you  
22                   had an opportunity to discuss the plea  
23                   with your client?

24   Q     And line three -- Mr. Harris -- it states:

25                   MR. HARRIS: well, we've had a

Ricky Keith Harris  
Direct examination by Mr. Killoren

1           limited opportunity to discuss a plea to  
2           the proximity charge.

3 Q    Do you recall that statement and that circumstance at  
4 the plea?

5 A    Not specifically, but I don't -- I don't -- I mean, if  
6 it's in there, it's in there.

7 Q    Okay.

8 A    I can tell you what -- what I meant by that was not  
9 that we had had -- not had a chance to discuss the  
10 proximity case but that we had not had a chance to discuss  
11 him pleading to that as part of the plea offer because of  
12 the way it was presented by the assistant solicitor to us  
13 at the last minute.

14 Q    Okay. And just for the purposes of the record, the  
15 lines and passages I'm reading, you don't dispute that  
16 those are passages from the plea agreement, is that  
17 correct? Or do you need to see a copy of the plea for your  
18 review?

19 A    You mean the transcript?

20 Q    The transcript.

21 A    Oh, the transcript speaks for itself.

22 Q    Okay. So the passages that I'm reading, you don't  
23 dispute that those are passages from the actual transcript  
24 of the plea.

25 A    I don't dispute what the transcript says.

Ricky Keith Harris  
Direct examination by Mr. Killoren

1 Q Okay. On page 17 on line ten the Court states:

2 THE COURT: So, in other words, you  
3 understand that you may be required to  
4 serve the entire sentence, whatever that  
5 might be, in this case. Do you understand  
6 that's a possibility?

7 Q The defendant says on line 14:

8 THE DEFENDANT: I was thinking it was  
9 going to be an 85 percent.

10 Q And then down on line 20 the defendant says:

11 THE DEFENDANT: No. You just  
12 confused me.

13 Q So is that another circumstance that -- and later on  
14 it says: "whereupon, a private of" -- off -- it says of,  
15 but it probably meant to say off -- "the record  
16 conversation took place between the defendant and Mr.  
17 Harris."

18 Do you recall that conversation during the plea?

19 A Not really.

20 Q If it's in the -- in the plea transcript, you don't  
21 dispute that that occurred.

22 A I don't dispute anything that's in the transcript.

23 Q Okay. Did that statement that -- where the defendant  
24 said -- "No. You just confused me" -- did that lead you to  
25 believe that maybe Mr. Camp's plea was involuntary or that

Ricky Keith Harris  
Direct examination by Mr. Killoren

1 he was not knowingly and intelligently pleaing, entering  
2 into a plea on that day?

3 A Absolutely not.

4 Q Okay. On page 22 of the plea agreement on line three  
5 the Court says:

6 THE COURT: Now, do you agree that  
7 what she told me is the truth?

8 THE DEFENDANT: No, sir.

9 THE COURT: Tell me how you disagree.

10 Q The defendant on line seven states:

11 THE DEFENDANT: I never sold any  
12 drugs on Carlisle Street. The video  
13 clearly shows I'm not on Carlisle Street.

14 Q The Court says on line ten:

15 THE COURT: All right, sir. I guess  
16 the issue then would become was that  
17 within one half-mile proximity of the  
18 park.

19 Q The defendant says:

20 THE DEFENDANT: Yes, sir. It was in  
21 that one-half-mile vicinity of a park.

22 Q Did you -- when you heard Mr. Camp respond to the  
23 Court's questions about the proximity of the park on that  
24 charge did that lead you to believe that maybe Mr. Camp's  
25 plea was not voluntary, knowing and intelligently made at

Ricky Keith Harris  
Direct examination by Mr. Killoren

1 that time?

2 A No. I think what he was referring to there was what I  
3 was referring to earlier in my testimony about the -- us  
4 investigating the discrepancy in the discovery concerning  
5 the exact location of the alleged distribution.

6 There was what turned out to be a clerical error in  
7 the investigating officer's incident report about where the  
8 distribution took place.

9 All of the other -- I'll say most of the other just  
10 because I haven't gone back and reviewed it -- of the  
11 documents, form B and C, chain of custody documents and  
12 other documents, referred to a different location.

13 A review of the video tape in the case, which I  
14 excerpted still photos of and showed them to Mr. Camp in  
15 the jail, made it very clear where the incident location  
16 was to watch. And my investigation revealed that location  
17 was within a half mile of a playground.

18 But I think that's what he -- I think the assistant  
19 solicitor was reading unknowingly because I hadn't  
20 really -- you know, we hadn't tried the case.

21 I think the assistant solicitor was just reading from  
22 the incident report that had the erroneous location, and  
23 Mr. Camp being very attentive to it was pointing out that's  
24 not the location.

25 Q Given the fact that Mr. Camp's dispute of the location

Ricky Keith Harris  
Direct examination by Mr. Killoren

1 of the occurrence in proximity to the park or playground  
2 and the other statements that were made in the plea  
3 statements -- don't you think that Mr. Camp's plea was  
4 not -- was involuntary and that he did not knowingly plead  
5 guilty to the 2011 charges before Judge Couch?

6 A I do not believe that Mr. Camp's plea was in any way  
7 not knowingly and intelligently entered, and it was  
8 voluntary.

9 We had discussed the issues surrounding the  
10 discrepancy in the discovery about the alleged distribution  
11 location. We had talked about it on numerous occasions.

12 I had shared with him the results of my investigation  
13 about it. I had shared with him still photos of the  
14 location, which was a well known place to him. It was very  
15 clear on the video tape that he was distributing drugs.

16 So I -- I -- I don't -- I think Mr. Camp had a very  
17 clear understanding of what the evidence was against him as  
18 far as the distribution and the location of the  
19 distribution and proximity to a playground.

20 Q Do you think that --

21 A So I don't think there was any confusion about that at  
22 all.

23 Q Do you think that the prosecutor in this case breached  
24 her plea agreement with Mr. Camp when she revoked the  
25 10-year offer?

Ricky Keith Harris  
Direct examination by Mr. Killoren

1 A Yes, I do believe she breached the plea agreement.

2 Q And do you think that that breach of the plea  
3 agreement is -- affected Mr. Camp's ability to plead guilty  
4 on the subsequent charge, the subsequent 12-year deal?

5 A I don't quite understand the question.

6 Q Let me reask the question.

7 what I mean by that is do you think the breach of the  
8 state's plea agreement for the ten years made Mr. Camp feel  
9 like he had to plead guilty to the 12-year charge because  
10 the 10-year deal was revoked and he was left with no other  
11 options?

12 A well, I still don't quite understand the question.

13 Maybe the best way I can answer it is this. At one  
14 point in time Mr. Camp -- Mr. Camp and I were negotiating  
15 very hard for a plea that would involve a plea to  
16 distribution as a second offense under the newer version of  
17 the statute, although that did not by its -- by the offense  
18 date apply to this case. But as a point of negotiation  
19 Mr. Camp very much wanted -- and I very much wanted to get  
20 for him a -- an offer to plead to distribution as a second  
21 offense under the new law -- what we refer to as the new  
22 law -- for a negotiated ten years.

23 That was turned down repeatedly by the assistant  
24 solicitor until finally on the brink of a particular court  
25 term where the case was supposedly imminently to be tried

Ricky Keith Harris  
Direct examination by Mr. Killoren

1 at the last minute -- and I would say much to my  
2 surprise -- the assistant solicitor agreed that we would do  
3 that.

4 And so we scheduled a plea date, and it was on the  
5 Friday of the court term of that next week for us to do  
6 that very thing.

7 I appeared there in the afternoon. Mike Morin was  
8 taking over for Kim Leskanic, the assistant solicitor,  
9 because of a family emergency she had.

10 We had the plea -- the sentencing sheet there. I had  
11 already prepped Mr. Camp for the plea.

12 When I presented the sentencing sheet to Mr. Camp for  
13 his signature he questioned whether or not the C.D.R. code  
14 on the sentencing sheet was the C.D.R. code that would be  
15 recognized by the Department of Corrections' computer as  
16 the C.D.R. code for the newer version of the statute.

17 I told him I didn't know what the C.D.R. code was for  
18 that but that I would -- if that was a concern for him, I  
19 would check on it.

20 I presented that issue to Mr. Morin. Mr. Morin and I  
21 went back to see Judge Couch and explained to him we were  
22 there for the plea, we were all set to go, but the  
23 defendant was requesting that we verify the C.D.R. code.

24 Mr. Camp was distrustful of the fact that it would be  
25 considered parole eligible under the new statute. And I

Ricky Keith Harris  
Direct examination by Mr. Killoren

1 saw his point but I -- you know, the C.D.R. codes are not  
2 something that I'm much familiar with.

3 So we went back into the solicitor's office. We got  
4 on the phone with the folks in Columbia and we -- Mike  
5 Morin did this. I was just listening -- and tried our best  
6 to get somebody in court administration in Columbia to give  
7 us or to verify for us what the C.D.R. code was for the new  
8 version of the statute, the section he was pleading under.

9 Nobody could tell us that the code was any different.  
10 They said they didn't know if there was a new code. So we  
11 were left there. That's it. That's the only code we have.

12 So I went back in. I explained to Mr. Camp that's the  
13 only code they can give us, the person that knows more  
14 about it than anybody in the state apparently is not there,  
15 this is the best information we have, do you want to do the  
16 plea.

17 He said, no, I'm not signing anything unless I know  
18 it's the right C.D.R. code. I said, well, are you sure  
19 that's the way you feel. He said, yes, that's the way I  
20 feel. I said okay then, that's fine, that's fine. I mean,  
21 you know, I mean, I can't -- I understood his concern.

22 You know, there was no way I could sit there and tell  
23 him that it would make a difference or not make a  
24 difference. I understood his concern. And so we stood  
25 down the plea.

Ricky Keith Harris  
Direct examination by Mr. Killoren

1           So what happened after that -- and I'm sorry it's a  
2 long explanation, but there seems to be a lot of confusion  
3 about it. So I'm thinking that we'll just go back another  
4 day when we can get that issue resolved and do the plea,  
5 but it didn't happen that way.

6           The assistant solicitor, Kim Leskanic, who had made  
7 the offer in the first place -- who had made the agreement  
8 if you want to put it that way -- sent an e-mail to me when  
9 she found out what happened, what the situation was in  
10 court that day -- and said that's all a big mistake, it was  
11 never my intention to offer a parole-eligible plea. That  
12 was her communication to me.

13           That was -- she finally admitted that it was a mistake  
14 on her part not to realize that significant change had  
15 occurred between the old version of the statute, and the  
16 new. But realizing that, she took the offer off the table  
17 to plead to a second offense because it was, quote, never  
18 her intention to offer a parole-eligible plea.

19           We had serious disagreement and discussion about  
20 that -- myself and Ms. Leskanic. Very serious  
21 disagreement.

22           But under the law as I understood, it and as I told  
23 Mr. Camp and as he has said in his testimony, I had to go  
24 to the jail and I had to explain to him that the offer was  
25 off the table to plead to a second, that I didn't agree

Ricky Keith Harris  
Direct examination by Mr. Killoren

1 with it but I didn't think there was anything we could do  
2 about it because there had not been detrimental reliance.

3 He blew up at me, didn't like it, told me off.

4 Questioned just about everything about me. But I told him

5 it didn't matter how mad he got me or how mad I got at

6 Ms. Leskanic that that was the law and she wasn't going to

7 back down. And it was clear to me she wasn't going to back

8 down.

9 So from that point forward we were on a fast track to

10 trial. And there was never any thought in my mind other

11 than to prepare for trial. And that's what we did.

12 We presented pretrial motions to Judge Couch. One of

13 those motions was a motion to enforce the plea agreement,

14 the one that I described. That was denied by the Court

15 based on the lack of detrimental reliance.

16 After that Mr. Camp decided to plead guilty. We went

17 back and tried to get the ten years again. Ms. Leskanic

18 wouldn't give us the ten years, said that it had gone on

19 too long and that we had stretched it out too much and she

20 wanted 12 years.

21 So we agreed to do 12 years on distribution third. It

22 was a third offense. It was actually more than a third

23 offense. A distribution third.

24 We signed up back in there in the prisoner holding

25 room. We went in to do the plea. When we walked in the

Ricky Keith Harris  
Direct examination by Mr. Killoren

1 courtroom the sentencing sheet for the proximity charge was  
2 laying on the defense table.

3 And I got up and questioned Ms. Leskanic about that,  
4 and she said, yeah, he's, you know, he's pleading  
5 essentially as charged but under a negotiated 12 and this  
6 is ten concurrent.

7 I told Mr. Camp. I said they want you -- they want  
8 you to plead to the other charge that's on trial, the  
9 proximity charge. We have talked about that. I said you  
10 can sign it if you want to. If you don't want to sign it,  
11 you don't tonight have to, we'll -- we've got a jury  
12 waiting on us.

13 He said, no, I'll sign it, I want to go on with it. I  
14 said you understand you're going to get ten years -- 12  
15 years and ten years concurrent. He said yeah, and that's  
16 what we did. That's the whole thing.

17 Q Do you think that Kim Leskanic's or the prosecutor's  
18 conduct was a punishment to Mr. Camp for going forward with  
19 the trial?

20 MS. WHITE: Your Honor, I'd object to speculation.

21 THE COURT: Sustained.

22 Q Did -- did Kim Leskanic ever tell you that she was  
23 increasing the offer to 12 years to punish Mr. Camp for  
24 going forward with the trial?

25 A She didn't say she was trying to punish Mr. Camp. She

Ricky Keith Harris  
Direct examination by Mr. Killoren

1 said that we had waited too long to accept the ten years.

2 Q And what did you interpret that to mean?

3 A Same old heavy-handed prosecutorial tactic that I've  
4 dealt with for nearly 30 years.

5 MR. KILLOREN: May I have one moment, Your Honor?

6 THE COURT: Yes, sir.

7 (Pause.)

8 Q Mr. Harris, did you explain to Mr. Camp what charges  
9 were -- strike the question. Specifically, did you explain  
10 that to Mr. Camp that the previous marijuana charge could  
11 be used as an enhancer to make him eligible for a third  
12 conviction under the controlled substance statute?

13 A What I told Mr. Camp was in review of his criminal  
14 record that he had -- that the things on his record that I  
15 saw as possible enhancers to his present charges was an old  
16 marijuana charge that probably could not be used against  
17 him but that I had no way to know if the state would try to  
18 use it against him, and the way that the state was  
19 approaching the case seemed like they would use anything  
20 they could, but that I had my doubts that that could be  
21 used against him to enhance to subsequent offenses.

22 But I told him that I had researched the other charges  
23 that he had on his record, his criminal history, and what I  
24 found was -- is that he had pled guilty I think in '96, the  
25 late 1990's, to several counts of distribution of crack,

Ricky Keith Harris  
Direct examination by Mr. Killoren

1 that that -- those convictions had been the subject of a  
2 post conviction relief action that had resulted in a new  
3 trial, that the result of the new trial was that apparently  
4 according to what I could find on March 27th of 2000  
5 Mr. Camp represented by Public Defender Don Thompson  
6 entered into a negotiated plea on several counts of  
7 distribution of crack -- either three or four counts --  
8 three or four counts at least.

9       So what I told Mr. Camp was that in my opinion  
10 certainly those distribution of crack charges constituted  
11 prior offenses for purposes of these current charges and  
12 depending on how many there were, how you looked at it, and  
13 if you added on or didn't add on the marijuana charge just  
14 for the sake of argument, this was easily either his third,  
15 fourth, fifth or sixth offense under the drug law. That's  
16 what I told him.

17 Q     Okay. So just so we're clear, did you tell him that  
18 the previous marijuana conviction that he had would be  
19 eligible to enhance his conviction to a third offense under  
20 the Controlled Substance Act?

21 A     I told him I didn't think it could be but I -- it  
22 wouldn't surprise me if the state tried to make it that  
23 way.

24       MR. KILLOREN: May I have one moment, Your Honor?

25       THE COURT: Yes.

Ricky Keith Harris  
Cross-examination by Ms. White

1 (Pause.)

2 MR. KILLOREN: No further questions, Your Honor.

3 MS. WHITE: Just one or two brief on cross.

4 CROSS-EXAMINATION

5 BY MS. WHITE

6 Q Mr. Harris, when you talked with Mr. Camp, obviously a  
7 lot of these discussions, and you talked about his prior  
8 record, did you talk with him about the fact that just  
9 because he pled to multiple charges on one day as first  
10 offenses those were not counted only as one offense?

11 A I don't think that was ever his question.

12 what it seemed to me was the sticking point for him  
13 about his multiple-count plea was the fact that -- and I  
14 could go back and look at the sentencing sheets -- but on  
15 the sheets he pled to distribution first offense.

16 You know, it was written on there, distribution first  
17 offense. And it seemed to me like that -- that was his --  
18 his -- the point he was trying to make about it was. But  
19 I've never been convicted of second, third, fourth.

20 And so I explained to him that that's not the way  
21 you -- that's not the way you determine prior offenses.  
22 You determine how many convictions you have had for  
23 separate criminal offenses, is the way I explained it, the  
24 way I remember explaining it to him.

25 He never really accepted that, but that's not

Ricky Keith Harris  
Cross-examination by Ms. White

1 uncommon. I hear that all of the time from many  
2 defendants. That's very misunderstood.

3 Q And in regards to several of the statements that were  
4 made during the plea, the Court -- do you recall the Court  
5 even asking if he wanted to continue with the plea and  
6 continue with you as his attorney and him stating he did?

7 A I really don't --

8 Q Okay.

9 A -- remember everything that was said at the plea. I  
10 mean, portions have been pointed out. I'm sorry. I just  
11 don't remember.

12 Q That's fine. Thank you.

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

14 THE COURT: Anything else?

15 MR. KILLOREN: I don't have any other questions, Your  
16 Honor. I would like to admit as Exhibit A a copy of the  
17 transcript of the proceeding.

18 THE COURT: It's part of the record.

19 You can step down.

20 Anything further? I'll review the record and issue an  
21 order.

22 MR. KILLOREN: Nothing further, Your Honor. Thank  
23 you.

24 MS. WHITE: Thank you, Your Honor.

25 END OF REQUESTED TRANSCRIPT OF RECORD

Certificate

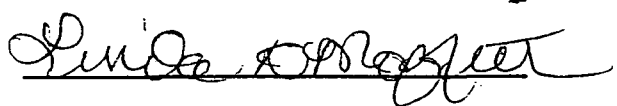
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CERTIFICATE

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

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

August 16, 2013



Linda D. Moffitt  
Circuit Court Reporter

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHEROKEE )  
 )  
 ) 240141  
 William Sheriod Camp #~~345172~~, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 SEVENTH JUDICIAL CIRCUIT

2011-CP-11-0777

FILED IN OFFICE OF  
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 CHEROKEE COUNTY, S.C.  
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 BRANDY MCBEE

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 15, 2011. The Respondent made its Return on or about August 22, 2012. An evidentiary hearing into the matter was convened on January 9, 2013, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Thomas A. Killoren, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

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

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. The Applicant was indicted at the May 2009 term of the Cherokee County Grand Jury for distribution of crack cocaine, third offense (09-GS-11-0578), and distribution of crack cocaine within one-half mile of

a school/park (09-GS-11-0579). He was represented by Ricky Harris, Esquire. On January 26, 2011 the Applicant pled guilty as indicted. He was sentenced by the Honorable Roger L. Couch to confinement for a period of twelve (12) years for distribution of crack cocaine, and ten (10) years for distribution of crack cocaine within one-half mile of a school/park, to run concurrent.

A timely Notice of Appeal was filed on behalf of the Applicant. Pursuant to the provisions of Rule 203(d)(1)(B)(iv) SCACR, an Explanation of Grounds, dated February 8, 2011, was filed on behalf of the Applicant. The South Carolina Court of Appeals dismissed the appeal by written Order dated April 19, 2011. Upon information and belief the Remittitur was issued on January 19, 2012.

#### ALLEGATIONS

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

1. Ineffective Assistance of Counsel, in that;
  - a. Counsel "failed to investigate my 1997 plea bargain agreement and erroneously advised me that Distribution of Crack Cocaine could legally be treated as a 3<sup>rd</sup> offense when, in fact, my January 13, 1997, plea bargain were all 1<sup>st</sup> offenses, in violation of my 6<sup>th</sup> and 14<sup>th</sup> Amendment rights under the U.S. Constitution;"
2. "The State breached the 1997 plea bargain agreement where my January 13, 1997, plea agreement to indictment number (1996-GS-11-0938, -0939, -0940, -0941, -0942, -0943) were all for 1<sup>st</sup> offenses and prior to the subject matter guilty on indictment (209-GS-11-0578), I was informed by counsel that some of these charges in my January 13, 1997, plea were now treated as 2<sup>nd</sup> offenses in violation of my 5<sup>th</sup> and 14<sup>th</sup> Amendment rights under the U.S. Constitution;"
3. Involuntary guilty plea; in that,
  - a. "Counsel and trial court explained the maximum sentence for an erroneous 3<sup>rd</sup> offense when, in fact, my prior record of offenses were all for 1<sup>st</sup>

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offenses, in violation of the 6<sup>th</sup> and 14<sup>th</sup> Amendment rights under the U.S. Constitution."

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

This Court notes that the Applicant informed this Court that he would be proceeding on the allegations of ineffective assistance of counsel and involuntary guilty plea based upon the premise that Counsel provided incorrect advice to Applicant regarding his the enhancement of his charges.

**Ineffective Assistance of Counsel**

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive

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relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland). With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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Applicant testified that he originally proceeded to trial on these charges before pleading guilty pursuant to a plea agreement in 2011. Applicant testified that he was told that a 1996 possession of marijuana charge was being counted against him for enhancement purposes. However, Applicant believes that the marijuana charge was too old to be used against him. Applicant testified that all of his other prior drug charges were first offenses and the sentences were run concurrently.

Applicant testified that he also pled guilty to a proximity charge, but only had two to three minutes to discuss that particular charge with Counsel at the guilty plea. Applicant acknowledged that he was aware of the indictment for proximity the entire time, but did not know that he would have to plead guilty to that charge as well until the actual plea. Applicant testified that he did discuss serving eighty-five percent of his time before parole with Counsel.

Applicant also testified that he was offered a plea to distribution second offense for ten years, but the plea sheet had the wrong CDR code on it and Applicant testified that because he questioned the CDR code, the plea was revoked.

Counsel testified that he was retained to represent the Applicant several months prior to the scheduled trial. Counsel testified that he met with the Applicant at least three to four times prior to trial. Counsel testified that the Applicant did raise the issue of all previous charges being first offenses several times, but Counsel testified that he explained to Applicant that it was the separate offenses that mattered, not whether or not the charges were listed as first offense. Furthermore, Counsel testified that he reviewed the Applicant's record and the Applicant had pled to numerous distribution charges in the 1990s and then pled to several distribution charges on March 27, 2000. Counsel testified that all of those charges could count as priors for enhancement purposes. Counsel also testified that he discussed whether or not the marijuana charge could be used, but because of the number of other charges, it made no difference.

Counsel testified that the plea was entered prior to trial began, but after the pre-trial motions had been made. Counsel testified that included in the pre-trial motions was a motion to enforce the prior plea agreement for ten years. Counsel testified that the State did originally offer a second offense ten year plea, but the Applicant refused to sign the sentencing sheet with an incorrect CDR code and when the Assistant Solicitor reviewed the sheet, she indicated that she was revoking the offer because she did not want to offer a parole eligible plea. However, Counsel testified that he explained the concept of detrimental reliance to the Applicant and the fact that the Applicant had not offered any benefit to the State for the plea offer.

Counsel testified that he reviewed with the Applicant the elements of each charge, possible sentence, and evidence that the State had against him prior to the trial. Counsel testified

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that the Applicant agreed to plead to distribution third offense for twelve years and when they went in to sign the sentencing sheet, the sheet for the proximity charge was there as well. Counsel acknowledged that the Assistant Solicitor was insistent that the Applicant plead to the proximity charge at the plea, but Counsel testified that he had discussed the charge fully with the Applicant.

This Court finds the testimony of Counsel to be more credible than the testimony of the Applicant. The Applicant's allegations that Counsel failed to fully investigate his prior record and properly advise him regarding the possibility of the charge being enhanced are without merit. Following testimony and review of the record, it is clear that Counsel had advised the Applicant about the charges he was facing and the fact that his prior convictions qualified to enhance his charge to a third offense. Additionally, this Court finds that Counsel fully reviewed the proximity charge with the Applicant prior to his guilty plea. This Court finds no deficiency on Counsel's behalf and finds that the Applicant failed to show any prejudice that may have resulted from Counsel's alleged deficiencies. Accordingly, this allegation is dismissed.

**Involuntary Guilty Plea**

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

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. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136

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(1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

Counsel testified that the Applicant was an experienced criminal litigant, who had even previously had a conviction overturned on post-conviction relief. Counsel felt confident that the Applicant knew exactly what he was doing when he pled guilty. Counsel also testified that the Applicant was never satisfied with any answer he received to any question and indicated at times that he believed Counsel was in cahoots with the State. Counsel testified that he advised the Applicant to retain another attorney if he was not satisfied with Counsel, but Applicant chose to proceed with Counsel.

Counsel testified that he was never concerned with the voluntariness of Applicant's plea, even during the plea when Applicant asked some questions. Counsel testified that he does not believe in any way that the plea was involuntary or unknowing, especially in light of the fact that Counsel reviewed all discovery materials with Applicant, including pictures and video evidence.

With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have

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insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985). This Court finds that the Applicant has failed to meet his burden of proof as to this claim. Following a review of the transcript and testimony presented at the hearing, this Court finds that the Applicant pled guilty freely and voluntarily, with full knowledge of the charges he was pleading guilty to, as well as the potential sentence he faced on each. This Court finds that the Applicant was advised by Counsel as to his potential to win at trial and that Counsel reviewed all discovery materials with the Applicant. Therefore, this claim is denied and dismissed.

*Summary*

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

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

**CONCLUSION**

Based on all the foregoing, this Court finds and concludes that the Applicant has not

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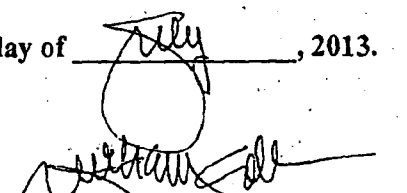
established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

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

**IT IS THEREFORE ORDERED:**

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

AND IT IS SO ORDERED this 1<sup>st</sup> day of July, 2013.



J. Derham Cole  
Presiding Judge

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DOCK# **09-GS-11-0579**

*[Signature]*  
WITNESSES

Cherokee County Sheriff's Office

The State of South Carolina

County of Cherokee

*Trey Gowdy, Solicitor*

COURT OF GENERAL SESSIONS

MAY 14 2009

TERM

ARREST WARRANT NUMBER  
M131047

THE STATE  
vs.

William Sherold Camp

ACTION OF GRAND JURY  
**TRUE BILL**

*[Signature]*

Foreperson of Grand Jury  
Date: 5-14-09

VERDICT

Indictment for

DISTRIBUTION OF CRACK COCAINE  
WITHIN ONE-HALF MILE OF  
SCHOOL/PARK

SC Code: 44-53-445

Foreperson of Petit Jury  
Date:

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHEROKEE )

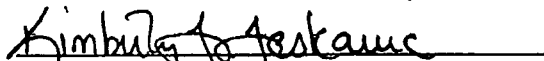
INDICTMENT

At a Court of General Sessions, convened on           MAY 14 2009           the  
 Grand Jurors of Cherokee County present upon their oath:

**DISTRIBUTION OF CRACK COCAINE**  
**WITHIN ONE-HALF MILE OF PARK**

That William Sheroid Camp, did in Cherokee County on or about January 22, 2009, distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute, a controlled substance, to wit: A quantity of Crack Cocaine, a schedule II controlled substance, in violation of § 44-53-445, *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, within one-half mile of Azell Robbs Park, Gaffney, South Carolina, such distribution not have been authorized by law.

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

  
 ASSISTANT SHERIFF

WITNESSES



Cherokee County Sheriff's Office

DO# **09-GS-11-0578**

The State of South Carolina

County of Cherokee

*Trey Gowdy, Solicitor*

COURT OF GENERAL SESSIONS

MAY 14 2009

TERM

ARREST WARRANT NUMBER

M131046

THE STATE  
vs.

ACTION OF GRAND JURY  
**TRUE BILL**

William Sheroid Camp

Foreperson of Grand Jury

Date: 5-14-09

VERDICT

Indictment for

DISTRIBUTION OF CRACK COCAINE

SC Code: 44-53-375

Foreperson of Petit Jury  
Date:

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHEROKEE )

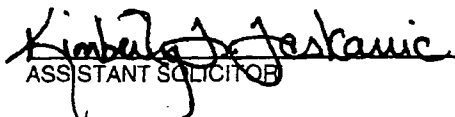
INDICTMENT

At a Court of General Sessions, convened on MAY 14 2009, the  
 Grand Jurors of Cherokee County present upon their oath:

**DISTRIBUTION OF CRACK COCAINE**

That William Sheroid Camp did in Cherokee County on or about January 22, 2009, manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Crack Cocaine, a schedule II controlled substance under provisions Code §44-53-375, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, such distribution not having been authorized by law.

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

  
 ASSISTANT SOLICITOR