

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County
Stephanie P. McDonald, Circuit Court Judge

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S.C. Supreme Court

DERRICK A. CRISWELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001236

APPENDIX

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PCR

STATE OF SOUTH CAROLINA)	
)	COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON)	
State of South Carolina,)	
)	
Plaintiff,)	
)	
vs.)	No. 078-GS-10-4064
)	
Derrick Criswell,)	
)	
Defendant.)	

TRANSCRIPT OF HEARING

The within Hearing was held on October 20, 2009, The Honorable R. Markley Dennis, Jr., in Courtroom 4D of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by counsel, as follows:

APPEARANCES:

Stephanie Lindler, Assistant Solicitor
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Appearing for State of South Carolina

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and
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Appearing for Defendant

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1 SOLICITOR: Derrick Criswell.

2 MICHAEL DUPREE: Your Honor, he is

3 signed up and ready to go but I would ask that

4 the court inquire of him what his wishes are

5 today, Your Honor.

6 THE COURT: You are Derrick Criswell?

7 DEFENDANT: Yes, sir.

8 THE COURT: Mr. Criswell, Indictment

9 08-4064 charges you with distribution of crack

10 cocaine. Do you understand that?

11 DEFENDANT: Yes, sir.

12 MICHAEL DUPREE: You are staying with

13 your lawyers. According to this sentencing

14 sheet you are desirous of entering a plea to

15 that indictment. Is that true?

16 DEFENDANT: Yes, sir.

17 THE COURT: You understand that you

18 can't be forced to plea, that it has to be your

19 decision; is that what you want to do?

20 DEFENDANT: No, sir.

21 THE COURT: You don't want to plea?

22 DEFENDANT: I mean, I do want to

23 plea, Your Honor.

24 THE COURT: Is there some -- is there

25 any recommendation in this case?

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1 SOLICITOR: There is no recommenda-
2 tion as to the sentencing on a distribution
3 second offense, however the State will be null
4 crossing, I believe either ten or eleven
5 charges, including a bunch of trafficking.

6 THE COURT: So if he doesn't plea
7 today those falls will be ---

8 SOLICITOR: Yes, Your Honor, will be
9 coming forward for trial.

10 THE COURT: You understand that's the
11 arrangements that the State has?

12 DEFENDANT: (No verbal response).

13 THE COURT: Do you understand that?

14 DEFENDANT: (No verbal response).

15 THE COURT: Your lawyers don't
16 control that. Do you realize that?

17 DEFENDANT: Yes, sir.

18 THE COURT: That's up to the State.
19 They've made you an offer to plea to this -- and
20 that's up to you -- and dismiss the other
21 charges, but -- and I don't know what would
22 happen in a trial. You may be acquitted on all
23 of them. I don't know anything about this case
24 other than what's been handed to me. All I have
25 is the indictment and they accused you of doing

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1 something and that doesn't mean anything to me
2 at this point. But it's up to you. You said
3 that you don't want to plead?

4 DEFENDANT: (Sidebar with counsel).

5 THE COURT: Mr. Dupree, excuse me for
6 interrupting you but -- let me just explain
7 something to you, Mr. Criswell. I bet -- you
8 know, if I were sitting out there and didn't
9 know any better, I'd listen to me or some other
10 judge go through what we go through and I'd
11 think, 'Good gracious, that thing is just so pat
12 that there is nothing to it. They're nothing
13 significant about that.'

14 It has that appearance and the reason
15 is because we're trying to move as many as we
16 can, because we have so many and it's their
17 right to have the matter resolved. But I don't
18 think that there is anything that I do that is
19 more important than those questions that I ask
20 before I consider what the sentence should be in
21 a case. It's the one thing that really and
22 truly, as far as I am concerned, separates this
23 country from the rest of the world. That is,
24 you can be guilty as sin, and you may know it,
25 but that doesn't matter in this great country

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1 because you have a right to draw twelve people
2 at random and the State has to prove you guilty.
3 You'd have a judge like me or some other judge
4 -- I tell the jury all the time when I make my
5 opening statement to them, if you were sitting
6 at that table, I'd say 'Mr. Criswell has every
7 right to be at this table. Don't you ever in
8 this entire proceeding look at him or expect him
9 to prove or disprove anything at all because he
10 doesn't have to prove one thing, none
11 whatsoever. In fact, he doesn't have to open his
12 mouth, he doesn't have to present evidence
13 because that is never the responsibility of
14 somebody that has been accused of something.
15 The State has the burden of proving each
16 element.

17 This case, the one that you are
18 pleading to, possession with intent to
19 distribute -- is it PWID or distribution?

20 SOLICITOR: Distribution.

21 THE COURT: So they are alleging that
22 you distributed. To convict you they would have
23 to prove that you were the person who made --
24 that you distributed or attempted to distribute
25 some drugs to somebody. If they prove that,

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1 then a jury could conclude that they've met
2 their burden. That's what they have to prove.

3 So, you know, you don't have to plea.

4 No way.

5 Is he out on bond, Mr. Dupree?

6 MICHAEL DUPREE: He is, Your Honor.

7 THE COURT: And would the bondsman
8 continued if he withdrew his plea? As far as
9 you know?

10 MICHAEL DUPREE: I would imagine so,
11 (affirmative nod), Your Honor.

12 THE COURT: Okay. So it's your
13 call. The only real loss that you get -- and I
14 don't know whether it's a loss or not because I
15 don't know anything about the case, but you lose
16 the right to have these other charges dismissed.
17 That's what you'd lose. There is a trafficking
18 charge that -- how many traffickings?

19 SOLICITOR: Your Honor, I could check
20 and count again but I think we're dismissing
21 eleven charges after he pleas to this one, four
22 of which are trafficking.

23 THE COURT: Trafficking is one of
24 those things that -- oddly enough, after I got
25 ready to charge a jury on a case, I finally

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1 realized why I hadn't tried any. It really is,
 2 unlike possession with intent to distribute
 3 where you've got all these presumptions and you
 4 tell the jury that they are going to have to be
 5 influenced by that, do you know what they have
 6 to prove to prove trafficking in this state?
 7 They have to prove that you had possession of
 8 drugs, either actual or constructive, and that
 9 the amount was greater than the limit. That's
 10 it. Done. They don't have to prove big dealer,
 11 they don't have to prove all kinds of profits
 12 that you make -- a lot of people think that, but
 13 not so.

14 So you have to make the call. What do
 15 you want to do?

16 DEFENDANT: (Looks to Counsel
 17 Dupree).

18 THE COURT: Don't look at Mr. Dupree.

19 MICHAEL DUPREE: I can't -- we have
 20 gone over all the evidence and gone over ---

21 DEFENDANT: Your Honor, ---

22 THE COURT: Yeah, let me ---

23 DEFENDANT: --- I ---

24 THE COURT: --- just say this, your
 25 lawyer has already been to me and talked about



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1 situations that have occurred in your life.
2 I'm sorry for that, I really am. As I told him,
3 that's not his -- that's mine. I can't in good
4 conscience sentence you and then let you go.
5 If you do the plea today, then the sentence --
6 as you know, I've got to sentence you to a
7 minimum of five years. So -- it's up to you.

8 DEFENDANT: I am going to take the
9 plea just to get this over with.

10 THE COURT: No, sir. Now, those are
11 bad words. What I just said to you, I don't do
12 it just to "get it over with".

13 You can -- if what you meant was, 'I
14 want to do so that I can lump everything into
15 one and take advantage of the offer', now -- I
16 was lawyer for twenty-one years. I understand
17 that. That means sense. I don't have any
18 problem with that. That's just smart.

19 But if you want to do it just because
20 you want to get it done because you're not
21 guilty of anything, that's not going to work.

22 You're going to have to answer some
23 questions. It's up to you.

24 DEFENDANT: I'll do it.

25 THE COURT: Do you want to go

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1 forward, sir?

2 DEFENDANT: Yes, sir.

3 THE COURT: Okay. Thank you, sir. I
4 appreciate your patience with the court, Mr.
5 Criswell.

6 This indictment charges you with the
7 offense of distribution of crack cocaine. Do
8 you understand that?

9 DEFENDANT: Yes, sir.

10 THE COURT: Your lawyers have
11 explained to you what that charge means?

12 DEFENDANT: Yes, sir.

13 THE COURT: Correct?

14 DEFENDANT: Yes, sir.

15 THE COURT: And you understand that
16 for a second drug offense, which this is
17 allegedly is, the sentence -- I could sentence
18 you up to thirty years, and the minimum sentence
19 is five years. Do you understand that?

20 DEFENDANT: Yes, sir.

21 THE COURT: Understanding that, how
22 do you plead, guilty or not guilty?

23 DEFENDANT: Guilty.

24 THE COURT: Are you satisfied with
25 your lawyers?

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1 DEFENDANT: Yes, sir.

2 THE COURT: Any complaints about the
3 way that they have handled your case?

4 DEFENDANT: No, sir.

5 THE COURT: Solicitor, you've told me
6 -- and let's put it fully on the record. As I
7 understand, he's pleading to this charge without
8 any recommendation. Is that correct?

9 SOLICITOR: Correct. The State is
10 not recommending anything as to sentencing in
11 this case.

12 THE COURT: But as part of this plea
13 you are dismissing eleven other charges?

14 SOLICITOR: Yes. Four trafficking,
15 four proximities and three other distributions.

16 THE COURT: Is that your understand-
17 ing, Mr. Criswell?

18 DEFENDANT: No, sir.

19 THE COURT: It is not your understand-
20 ing?

21 DEFENDANT: (Negative gesture).

22 THE COURT: What did you understand
23 was your agreement?

24 MICHAEL DUPREE: I don't think he
25 understands all the charges; Your Honor. He

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1 understands the fact that they are dismissing
2 all of those but I don't think he was
3 understanding all the charges.

4 THE COURT: What that says is that
5 after today that you will have no pending
6 charges against you. That is the agreement?

7 DEFENDANT: Okay.

8 THE COURT: They are not making any
9 recommendation as to sentence in this case but
10 they are going to dismiss all other pending
11 charges against you.

12 DEFENDANT: Okay.

13 THE COURT: Is that what you
14 understood, that you will answer to one charge
15 and one charge only?

16 DEFENDANT: Okay.

17 THE COURT: Do you agree, Mr. Dupree?

18 MICHAEL DUPREE: Yes, sir.

19 THE COURT: Have you fully
20 investigated this on your client's behalf?

21 MICHAEL DUPREE: We have, Your Honor.

22 THE COURT: Have you fully shared
23 your investigation with him?

24 MICHAEL DUPREE: We have, Your Honor.
25 We have gone over every bit of evidence that the

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1 State has provided, which appears to be numerous
2 audio recordings and several videotapes, as well
3 as still photos. So, yes, we've gone over it
4 numerous times with Derrick.

5 Based on your investigation into this
6 matter, do you concur with the decision to enter
7 this plea?

8 MICHAEL DUPREE: I do, Your Honor.

9 THE COURT: And he fully understands
10 the rights that he is relinquishing, in your
11 opinion?

12 MICHAEL DUPREE: He does, Your Honor.

13 THE COURT: As well as the conse-
14 quences of entering a plea?

15 MICHAEL DUPREE: He does, Your Honor.

16 THE COURT: Distribution second
17 offense is a Serious offense; is that correct?

18 MICHAEL DUPREE: Non--, ---

19 SOLICITOR: Nonviolent and Serious.

20 THE COURT: Do you understand that,
21 Mr. Criswell?

22 DEFENDANT: No, I heard some noise in
23 the back and I didn't hear you.

24 THE COURT: It is considered a
25 Serious offense. It is treated as a nonviolent

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1 offense but it is considered a serious offense.

2 Do you understand that?

3 DEFENDANT: Yes, sir.

4 THE COURT: And you understand the
5 significance of those two terms?

6 DEFENDANT: No, sir.

7 THE COURT: You don't?

8 MICHAEL DUPREE: (Sidebar with
9 defendant).

10 DEFENDANT: Oh, -- yes, sir.

11 THE COURT: Now you do?

12 DEFENDANT: (Affirmative nod).

13 THE COURT: Okay. Do you understand
14 that if I accept your plea that you won't have a
15 jury trial?

16 DEFENDANT: Yes, sir.

17 THE COURT: Do you understand that at
18 a trial that the State would have the burden, as
19 I have stated to you, of proving you guilty
20 beyond a reasonable doubt?

21 DEFENDANT: Yes, sir.

22 THE COURT: In order to do that, they
23 have to present witnesses. So if you had a
24 trial, you would have a chance to see them and
25 hear them and your lawyer could challenge their

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1 testimony through cross examination? Do you
2 understand that?

3 DEFENDANT: Um-hummm, (affirmative
4 nod).

5 THE COURT: That's not going to
6 happen now because you're not going to have a
7 trial. Do you realize that?

8 DEFENDANT: Yes, sir.

9 THE COURT: Do you understand also
10 that by entering this plea and admitting your
11 guilty here today that you're giving up your
12 Constitutional right to remain silent, as well;
13 do you realize that?

14 DEFENDANT: Yes, sir.

15 THE COURT: Has anyone threatened you
16 in any way or promised you anything at all to
17 get you to pled guilty, sir?

18 DEFENDANT: No, sir.

19 THE COURT: Any question of your
20 guilt in this case, sir?

21 DEFENDANT: No, sir.

22 THE COURT: Tell me the facts,
23 please.

24 SOLICITOR: Thank you, Your Honor,
25 may it please the court, on December 14th, 2006,

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1 in the area of 34 Athens Court here in
2 Charleston County, the Defendant distributed
3 twenty dollars worth of crack cocaine to a
4 confidential informant who was working under the
5 direction and control of the City narcotics. It
6 was on audio and video and utilized prerecorded
7 money.

8 As far as a prior record, the Defendant
9 has a:

- 10 1996 possession of crack;
- 11 1997, simple assault, resisting arrest,
- 12 malicious injury to personal property, false
- 13 information;
- 14 2000, ABHAN, unlawful carrying of a
- 15 pistol, voluntary manslaughter;
- 16 2004, failure to comply, criminal
- 17 conspiracy, assault while resisting arrest.

18 Your Honor, at the appropriate time, I
19 do have -- while the State takes no position as
20 to sentencing, I do have a memo from the
21 Charleston Police Department that I would like
22 to hand up to you.

23 THE COURT: Okay. Are those facts
24 correct, Mr. Criswell?

25 DEFENDANT: (No verbal response).

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1 THE COURT: Are the facts correct?

2 DEFENDANT: Yes, sir.

3 THE COURT: All right.

4 MICHAEL DUPREE: Your Honor, he tells
5 me that it was involuntary and not a voluntary.

6 DEFENDANT: It was an accidental
7 death.

8 THE COURT: Well, Solicitor, I am
9 going to receive any memo that you want but --
10 please, as I told a solicitor earlier this
11 morning, I didn't present this as a negotiated
12 sentence. You did. Part of the deal is, I
13 think, is that you have to convince me that it
14 is good from the State's perspective. I will be
15 happy to see any memo that you want -- I kind of
16 anticipate what the memo is probably going to
17 say. Your call. Given his record, I am already
18 somewhat suspect.

19 SOLICITOR: Well, Your Honor, he is
20 pleading as charged.

21 THE COURT: I am just telling you.
22 I will be happy to receive anything that you
23 want but I just -- you're trying to convince me
24 that this is a reasonable negotiated sentence
25 that you are asking me to accept. That's all

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1 that I am saying to you. I will be happy to
 2 read any memos that you want me to read.
 3 SOLICITOR: Your Honor, may I
 4 approach?
 5 THE COURT: You may.
 6 SOLICITOR: (Tenders).
 7 THE COURT: Have you seen this?
 8 MICHAEL DUPREE: I have, Your Honor,
 9 and have shown it to Mr. Criswell.
 10 THE COURT: And Mr. Criswell has seen
 11 this?
 12 MICHAEL DUPREE: He has, Your Honor.
 13 SOLICITOR: And, Your Honor, just to
 14 clarify, this is a true second drug offense.
 15 THE COURT: I understand that.
 16 COURT REPORTER: Solicitor, do you
 17 know the female counsel's name?
 18 SOLICITOR: Virginia Murray.
 19 THE COURT: (Upon review), -- I said
 20 that it was a negotiated sentence, I misspoke.
 21 You make no reference -- you make no
 22 recommendations but you're dropping some things
 23 that could result in his being incarcerated.
 24 SOLICITOR: (Affirmative nod).
 25 THE COURT: Thank you very much.

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1 All right. I will be -- let me ask you a
2 question, Mr. Criswell.

3 DEFENDANT: Yes, sir?

4 THE COURT: Mr. Criswell, have you
5 understood all of my questions?

6 DEFENDANT: Yes, sir.

7 THE COURT: Have you truthfully
8 responded to each of them?

9 DEFENDANT: Yes, sir.

10 THE COURT: You understand and
11 realize that I will be relying on your
12 responses?

13 DEFENDANT: Yes, sir.

14 THE COURT: And that is what you want
15 me to do; is that correct?

16 DEFENDANT: Yes, sir.

17 THE COURT: It is your desire to
18 enter this plea?

19 DEFENDANT: Yes, sir.

20 THE COURT: Are you understand the
21 influence of any alcohol or any medication here
22 today?

23 DEFENDANT: No, sir.

24 THE COURT: Have you taken any type
25 of pills or consumed any alcohol in the last

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19

1 twenty-four hours?

2 DEFENDANT: No, sir.

3 THE COURT: Do you know of anything
4 that is affecting your ability to make this type
5 of decision?

6 DEFENDANT: Well, I am just taking it
7 because, Your Honor, ---

8 THE COURT: I am not asking you why,
9 I'm just asking you have you had sufficient time
10 to think about it, have you had sufficient time
11 to talk with your lawyers, and have you thought
12 about it and are now making this decision
13 because this is what you want to do. Is that
14 correct?

15 DEFENDANT: Yes, sir.

16 THE COURT: Nobody is forcing you to
17 do this, ---

18 DEFENDANT: No, sir.

19 THE COURT: --- correct? Very well,
20 I find that there is a sufficient factual basis
21 to support his plea. I find that Mr. Criswell
22 has had the benefit of very competent lawyers
23 and it has indicated that he is totally
24 satisfied with their representation. I find his
25 plea to be freely, voluntarily, knowingly and

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1 intelligently made and entered and therefore I
2 will accept the plea. I will be happy to hear
3 from both of you now.

4 MICHAEL DUPREE: Thank you, Your
5 Honor, may it please the court. Your Honor,
6 Derrick is thirty-one years of age. He does
7 some music recording and he has also had a job
8 at Residence Inn. He is gainfully employed.

9 Your Honor, he is engaged. As I told
10 you at the bench earlier, they've had several
11 deaths in the family over the past six weeks --
12 one of them being his grandmother, who he was
13 very close to.

14 Your Honor, one thing that I think
15 you'll notice is that he had a record dating
16 from at least '96 up until 2003. This incident
17 occurred in 2006, so we're somewhere two and a
18 half to three years into this case, Your Honor.

19 We have set down with Derrick on
20 numerous occasions and we -- we told him from
21 the beginning that the State's strongest case
22 is this one that he is pleading guilty to. He
23 has always admitted his guilt on the case. He's
24 always denied any of the other charges that came
25 against him from Charleston County because this

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1 is a City of Charleston case. Those charges,
2 Your Honor, have been dismissed.

3 With regard to the letter that was sent
4 in by the Police Department, there are certain
5 things in there that I don't agree with. There
6 are some charges in there that he was never
7 found guilty of, there are some charges in there
8 that should not be put in because he has not
9 been found guilty of them or because the charges
10 were subsequently reduced. We haven't really --
11 and that's not what we are here for today, Your
12 Honor.

13 He is standing before you today
14 pleading to a twenty dollar sale that happened
15 in 2006. Your Honor, we would ask that you give
16 him the minimum. He has been a productive
17 member of the community for the past several
18 years, working at the hotel and recording with
19 the music scene around Charleston.

20 Your Honor, I think at this time that
21 Derrick wishes to address the court. I would
22 also mention, Your Honor, that he spent forty
23 days in jail.

24 THE COURT: Mr. Criswell, I will be
25 happy to hear from you.

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1 MICHAEL DUPREE: I'm sorry, Your
2 Honor -- four months. Four months.

3 THE COURT: I will be happy to hear
4 from you, Mr. Criswell.

5 DEFENDANT: Yes, sir. Your Honor,
6 I admit to you that I was younger -- that when I
7 was coming up, I had some problems by being with
8 the wrong crowd, making bad decisions, and
9 getting in trouble. But I haven't been in
10 trouble since like -- I turned my life to God
11 and I haven't been in trouble. These charges
12 here just came out of the blue. I knew nothing
13 about it. It happened in '06 and the warrant
14 came to me in '08. I just would ask for the
15 minimum sentence, sir, so that I can come back
16 to my family and do what's right.

17 THE COURT: Something that you just
18 said is inconsistent with everything that we've
19 been doing thus far. You just said, 'I didn't
20 know anything about these things, they came out
21 of the blue, I've turned my life over to God.'

22 DEFENDANT: Yes, sir. What I mean is
23 I ---

24 THE COURT: You just told me that you
25 were guilty of this. Now, which is it?

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1 DEFENDANT: I admit to my guilt. - It
2 happened in 2006 and by the time it caught up
3 with me in 2008, I'd already had made the
4 change.

5 THE COURT: Oh, I understand ---

6 DEFENDANT: I knew nothing about this
7 -- this ---

8 MICHAEL DUPREE: He was already ---
9 you know, he's saying that it came up in 2008
10 but this happened in 2006.

11 THE COURT: Did you think that they
12 would go away?

13 DEFENDANT: No, sir, I didn't think
14 that they would go away.

15 THE COURT: Okay. What was his last
16 -- the drug offense, when was that?

17 MICHAEL DUPREE: 1996, Your Honor.

18 SOLICITOR: It was a '96 possession.
19 That was the enhancing one. The '04 conspiracy
20 was from a drug charge but the enhancing one is
21 the '96.

22 THE COURT: What happened with the
23 charge -- was it 2003?

24 SOLICITOR: 2004?

25 THE COURT: What happened ---

State of South Carolina v. Derrick Criswell
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Hearing of October 20, 2009
Before The Honorable R. Markiey Dennis, Jr..

24

1 MICHAEL DUPREE: I think ---

2 SOLICITOR: The 2004 was failure to
3 comply, criminal conspiracy and assault while
4 resisting arrest. Those were the convictions
5 in ---

6 THE COURT: What happened to that
7 charge?

8 SOLICITOR: What was the sentence in
9 '04?

10 THE COURT: (Affirmative nod).

11 SOLICITOR: Your Honor, in '04 he
12 received two years suspended on the service of
13 six months, three years probation. That would
14 be the controller.

15 THE COURT: So he was on probation
16 then when he committed this offense?

17 DEFENDANT: No, sir, I was already
18 off probation. I wasn't on no probation. My
19 probation ended, I think, in '05.

20 THE COURT: How do you get three
21 years probation and get over it in a year?

22 DEFENDANT: It was terminated.

23 THE COURT: Was the probation
24 terminated?

25 PROBATION AGENT: It expired June 3th.

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09:45:55 a.m. 07-19-2012

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State of South Carolina v. Derrick Criswell
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Before The Honorable R. Markley Dennis, Jr.

25

1 '07.

2 DEFENDANT: Oh, -- all right. Excuse
3 me, Your Honor, I thought that it was '07 but I
4 guess that it was '07.

5 THE COURT: Was he violated for his
6 probation?

7 PROBATION AGENT: He did have another
8 case in 2000 that was supposed to end in '05 but
9 it was closed in '04 when he got that charge.

10 THE COURT: Okay. So you committed
11 the offense while you were on probation, the
12 second time. Right?

13 DEFENDANT: Yes, Your Honor.

14 THE COURT: The sentence of the court
15 on 08-4064 is ten years. I give you credit for
16 the time served. Good luck to you, sir.

17 (HEARING CONCLUDED)

18

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State of South Carolina v. Derrick Criswell
Case No. 08-GS-10-4064
Hearing of October 20, 2009
Before The Honorable R. Markley Dennis, Jr.

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CERTIFICATE OF REPORTER

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I, the undersigned, Deborah Garrison,
official court reporter for the 9th Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete transcript of the hearing
held before The Honorable R. Markley Dennis,
Jr., on October 20, 2009;

I further certify that I am neither kin nor
counsel to any of the parties and have no
interest in the outcome of this action.

Deborah Garrison
Circuit Court Reporter
9th Judicial Circuit

Charleston, South Carolina
June 27, 2010

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PCR

09:17:41 a.m. 07-19-2012

3/40

STATE OF SOUTH CAROLINA)	
)	
COUNTY OF CHARLESTON)	COURT OF GENERAL SESSIONS
State of South Carolina,)	
)	
Plaintiff,)	
)	
vs.)	No. 078-GS-10-4064
)	
Derrick Criswell,)	
)	
Defendant.)	

TRANSCRIPT OF HEARING

The within Motion for Reconsideration was held on March 23, 2010, before The Honorable R. Markley Dennis, Jr., in Courtroom 4D of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by counsel, as follows:

APPEARANCES:

Chad Simpson, Assistant Solicitor
9TH CIRCUIT SOLICITORS OFFICE
100 Broad Street, 4th Floor
Charleston, South Carolina 29401
Appearing for State of South Carolina

P. Michael Dupree, Esq.
757 State Andrews Blvd.
Charleston, South Carolina 29407
Appearing for Defendant

DEBORAH GARRISON
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 901
Johns Island, South Carolina 29437
dgarrison@sccourts.org

State of South Carolina v. Derrick Criswell
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Hearing of March 23, 2010
Before The Honorable R. Markley Dennis, Jr.

2

1 THE COURT: Was this crack or was
2 this cocaine?
3 SOLICITOR: It was crack.
4 THE COURT: Five to thirty?
5 SOLICITOR: Five to thirty.
6 THE COURT: All right, you're Mr.
7 Criswell?
8 DEFENDANT: Yes, sir.
9 THE COURT: Good morning, Mr.
10 Criswell.
11 DEFENDANT: Good morning.
12 THE COURT: We are here on your
13 letter that you sent to me concerning the
14 sentence that was imposed by me when I sentenced
15 you on October 21st, 2009.
16 Mr. Simpson, thank you for coming.
17 I understand that Ms. Lindler is not available
18 today but you're going to cover for her?
19 SOLICITOR: That's correct, Your
20 Honor.
21 THE COURT: All right, very well.
22 I will be happy to hear from you, Mr. Criswell,
23 and/or Mr. Dupree at this point.
24 MICHAEL DUPREE: Your Honor, I think
25 this is kind of a two-fold kind of thing. When

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State of South Carolina v. Derrick Criswell
Case No. 08-GS-10-4064
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3

1 Mr. Criswell came here originally none of his
2 family members were here. I don't know if they
3 want to address the court, go over that again,
4 or ---

5 THE COURT: I don't need to ---

6 MICHAEL DUPREE: I don't know if
7 that's an issue, Your Honor. He's -- but his
8 family members are here today, Your Honor.

9 THE COURT: I am delighted for them
10 to be present. The only purpose now is to
11 reconsider my sentence that was a ten-year
12 sentence for the distribution of cocaine base,
13 crack cocaine, second offense, which carried a
14 potential sentence, as I read the statute, of a
15 minimum of five years but not more than thirty
16 years. It's an eighty-five percent sentence.

17 MICHAEL DUPREE: Yes, sir, Your
18 Honor.

19 THE COURT: I think one of the things
20 that I wanted to bring to the court's attention
21 is under 44-53-470, which deals with enhancement
22 purposes, Your Honor. It goes back to say that
23 any drug offense related to narcotic drugs,
24 marijuana, depressants, stimulants or
25 hallucinogenic drugs, uh, "however the prior

State of South Carolina v. Derrick Criswell
Case No. 08-GS-10-4064
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4

1 convictions must have occurred within the
2 previous ten years." I think in this case,
3 Your Honor, we are looking at a prior simple
4 possession for cocaine from 1995. Mr. Criswell
5 believes that he should have been looking at a
6 first offense based on that statute, as opposed
7 to a second offense.

8 THE COURT: All right. So he
9 believes that the sentence was inappropriate
10 because it was enhanced improperly?

11 MICHAEL DUPREE: Exactly, Your Honor.

12 THE COURT: Very well. All right,
13 anything else, Mr. Criswell, on that issue?

14 DEFENDANT: Can I -- may I say
15 something?

16 THE COURT: Yes. Anything else
17 specifically as to the issue of enhancement?

18 DEFENDANT: No, I just wanted to
19 speak to the Court.

20 THE COURT: Yes, sir, about what?
21 What we're talking about is a legal basis.
22 If you want to add a legal basis for me to
23 consider, I'll be happy to hear from you.

24 DEFENDANT: Basically, uh, --
25 basically what my attorney is talking about,

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State of South Carolina v. Derrick Criswell
Case No. 08-GS-10-4064
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Before The Honorable R. Markley Dennis, Jr.,

5

1 quoting law that was -- that it was in 2005
2 and it provides that the previous offense had
3 to have happened within the previous ten years.
4 It happened in '05

5 THE COURT: Yes, sir, he's already
6 said that.

7 DEFENDANT: Yes, sir.

8 THE COURT: Okay. Well, what else do
9 you want to say? You don't have to say the same
10 thing that he's already said.

11 DEFENDANT: Okay. Thank you.

12 THE COURT: Thank you, sir. Mr.
13 Simpson?

14 SOLICITOR: Thank you, Your Honor.
15 Just looking at the plain language of 44-53-470,
16 I think clearly the operative offense is the
17 offense that the person is pleading to. If a
18 person is pleading to a simple possession
19 offense the statute is clear that you can go back
20 ten years to enhance for any other drug offense.
21 However, the statute says for any other drug
22 offense it's lifetime. My records indicate that
23 the enhancing offense is a 1996 possession of
24 crack. We believe that the offense that the
25 defendant pled to is proper, as well as your

State of South Carolina v. Derrick Criswell
Case No. 08-GS-10-4064
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Before The Honorable R. Markley Dennis, Jr.

6

1 sentence, Your Honor.

2 THE COURT: All right. Do you wish
3 to reply to that?

4 MICHAEL DUPREE: I would just state
5 that Section 470 specifically deals with
6 enhancement. That was amended -- in 1993 there
7 were some laws that dealt with marijuana not
8 being included in the enhancement statute, then
9 they went back and revised it with this statute,
10 Your Honor. I take the position that since his
11 prior offense was in 1995 that the simple
12 possession, that this has gone beyond the ten-
13 year mark, Your Honor.

14 THE COURT: All right. The section,
15 again?

16 MICHAEL DUPREE: 44-53-470.

17 THE COURT: One second, let me look
18 at it.

19 SOLICITOR: I have a copy, Your
20 Honor.

21 THE COURT: That's fine, I have it.
22 I can pull it up (on the computer) if there is
23 any question.

24 SOLICITOR: I do think that there is
25 some other language in the statute --

State of South Carolina v. Derrick Criswell
Case No. 09-GS-10-4064
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Before The Honorable R. Markley Dennis, Jr. 7

1 (tendering).

2 THE COURT: Thank you. I've got the
3 statute right here.

4 MICHAEL DUPREE: Your Honor, there
5 was a case, State v. Berry, and it goes on to
6 talk about the enhancement purposes and it goes
7 on to talk about Section 370 dealing with
8 cocaine enhancement and that if there is any
9 ambiguity that it needs to be held in favor of
10 the defendant.

11 THE COURT: Sure. I don't quarrel
12 with that at all, I would agree with that
13 conclusion. (Upon review), okay.

14 Yeah, I think you have to give meaning
15 to the entire statute as I understand it and as
16 I read it. Let me just give you what I believe
17 to be an example of what the law would be, I
18 believe, -- let me hear you, Solicitor. Suppose
19 that we were talking about reversing it, that in
20 '96 we're talking about him coming in and
21 instead of -- instead of distribution of crack
22 cocaine now, we're talking about the
23 distribution of crack cocaine in '96, and then a
24 possession for crack cocaine now. Do you
25 believe that it would be enhanced, a second

State of South Carolina v. Derrick Criswell
Case No. 08-CS-10-4064
Hearing of March 23, 2010
Before The Honorable R. Markley Dennis, Jr.

8

1 offense?

2 SOLICITOR: No, Your Honor.

3 THE COURT: I agree.

4 SOLICITOR: I think it's clear ---

5 THE COURT: I think the statute
6 precisely -- that that is precisely what the
7 statute deals with. That would not enhance the
8 possession. It would have to be a possession
9 for it to enhance a possession, as I read that.

10 But clearly we're not charging him
11 with possession. We're charging him with
12 distribution, which is a part of that Article.
13 They single out -- and, quite frankly, I think
14 that's what the legislature was trying to do.
15 You have a lot of people that have simple
16 possession, they get caught with simple
17 possession of marijuana and they've had crack
18 cocaine and they've had it before, a long time
19 ago when they were young, just as you've stated
20 in your situation. But they also kept into play
21 -- nor did they in any way, in my opinion, rule
22 out the enhancement aspect for a greater charge.
23 Certainly you weren't -- you were charged with
24 distribution, as I understand it. It wasn't
25 even possession with intent to distribute, was

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State of South Carolina v. Derrick Criswell 9
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 Hearing of March 23, 2010
 Before The Honorable R. Markley Deats, Jr.

1 it?

2 SOLICITOR: My understanding is that
3 it was an actual distribution.

4 THE COURT: So we are talking --
5 while the statute would be the same, it's still
6 an act -- it's not even a question of
7 possession. It's an act, it's distributing
8 crack cocaine. For that reason, for those
9 reasons I think the sentence was appropriately
10 handled as sentence for a second offense.

11 As a practical matter however, just for
12 the sake of discussion, and I -- if the Court
13 wants to remand the sentencing as a first
14 offense, the sentence could be imposed as a
15 proper sentence even under a first offense.
16 I could sentence you up to fifteen years for a
17 first offense for distribution.

18 There is one difference ---

19 MICHAEL DUPREE: And I think Derrick
20 ---

21 THE COURT: --- and that's the
22 eighty-five percent.

23 MICHAEL DUPREE: I think Derrick
24 would probably say, 'fine, sentence me under a
25 first offense, give me ten years' under that.

State of South Carolina v. Derrick Criswell
Case No. 08-GS-10-4064
Hearing of March 23, 2010
Before The Honorable R. Markley Deonis, Jr.

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1 THE COURT: Sure. So we end up --
2 and if we do, it will come -- I don't know what
3 the Court will do, it'll be up to them. You
4 could be given fifteen years and sixty percent
5 of that would be -- but we've framed it now, Mr.
6 Criswell and you have the right to appeal that
7 issue. That's precisely what you can do. I
8 think. I don't think that you're waiving --
9 although, you did plead to a second offense.
10 That's in the record.

11 SOLICITOR: And that is, Your Honor,
12 the ---

13 THE COURT: Certainly it forms a
14 basis if he wants to pursue another sentence
15 under post-conviction relief.

16 MICHAEL DUPREE: Going back and
17 looking over it, we figured that we might have
18 an argument under that 470.

19 THE COURT: Thank you so much, Mr.
20 Dupree. Thank you, Mr. Criswell.

21 MICHAEL DUPREE: Thank you, Your
22 Honor.

23 (HEARING CONCLUDED)

24

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State of South Carolina v. Derrick Criswell
Case No. 08-GS-10-4064
Hearing of March 23, 2010
Before The Honorable R. Markley Dennis, Jr.

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CERTIFICATE OF REPORTER

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I, the undersigned, Deborah Garrison,
official court reporter for the 9th Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete transcript of the hearing
held before The Honorable R. Markley Dennis,
Jr., on March 23, 2010;

I further certify that I am neither kin nor
counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison
Circuit Court Reporter
9th Judicial Circuit

Charleston, South Carolina
June 25, 2010

2012-CP-10-1024

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Charleston)
)
Derrick A. Criswell, #337479)
 Full name and prison number (if any) of Applicant.)

v.)
)
 State of South Carolina)

IN THE COURT OF COMMON PLEAS

FILED
 2012 FEB 10 PM 4:21
 CLERK OF COURT

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay 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 McDougall Corr. Inst.; 1516 Old Gillaird Road; Ridgeville, SC
2. Name and location of Court which imposed sentence General Sessions Court; Charleston, SC
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) 2008-GS-10-04064; Manufacturing/PWID Cocaine Base, 2nd
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) October 20, 2009; 10 years
 - (b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty I plead Guilty

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

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. Appeal was denied

ii. _____

iii. _____

(c) the date of each such result:

i. December 2, 2011.

ii. _____

iii. _____

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

i. Unknown

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) _____

(c) _____

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

- (a) Ineffective Assistance of Counsel
- (b) Violation of my Sixth and Fourteenth Amendment due process rights
- (c) Unknowning and involuntary guilty plea.

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

- (a) Counsel failed to adequately investigate my case. Counsel failed
- (b) to challenge the state's evidence. Counsel failed to present the
- (c) available mitigating evidence.

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. Petition For Reconsideration of Sentence.
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. Charleston County Court of General Sessions.
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. Motion denied by the Honorable R. Markley Dennis.
 - ii. _____
 - iii. _____

- iv. _____
- (d) the date of each such disposition:
 - i. March 23, 2010
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. Statutes relied upon: S.C. Code §44-53-470
 - 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. _____
 - ii. _____
 - iii. _____

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

- (a) Ineffective Asst. of Counsel. Unknowing and involuntary guilty
- (b) plea; Sixth & Fourteenth Amendment due process violations. These
- (c) grounds are limited to post-conviction relief review.

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? _____
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? 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. P. Michael Depree; Charleston, S.C.
- ii. P. Michael Depree; Charleston, S.C.
- iii. Robert Pachak; Columbia, S.C. (Office of Appellate Defense).
- (b) the proceedings at which each such attorney represented you:
- i. Guilty PLEA
- ii. Reconsideration Motion
- iii. Direct Appeal

19. State clearly the relief you seek in filing this application:
vacation of sentence, and a new trial.

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

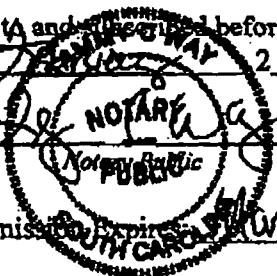
STATE OF SOUTH CAROLINA)
)
County of CHARLESTON)

VERIFICATION

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

Derrick Criswell
Derrick A. Criswell, #337479

SWORN to and subscribed before me this 6th
day of February 2012

[Signature] (L.S.)


My Commission Expires March 9, 2014

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

Derrick A. Criswell,

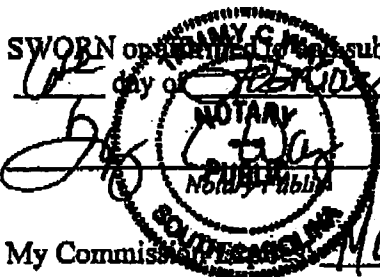
I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

Derrick Criswell

Derrick A. Criswell ^{Applicant} #337479

SWORN on March 9 day of March, 2012.



My Commission Expires March 9, 2014

Carolina Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel.
 - a. Failure to adequately investigate case
 - b. Failure to challenge the state's evidence
 - c. Failure to present the available mitigating evidence
2. Involuntary guilty plea.
3. Violation of 6th and 14th amendments due process rights.

III.

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.

The Applicant alleges that he did not plead guilty freely and voluntarily. The Respondent submits this allegation has no merit. 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. Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The Respondent submits the transcript reflects that the pleas were knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Boykin, supra; Dover, supra. Further, 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 (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. Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). The Respondent submits the Applicant should not be allowed to depart from the truth of the statements he made during his guilty plea hearing.

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). Given the Applicant's burden of proof and the analysis to be applied to this claim, the Respondent submits that the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it should therefore, be treated as such. Accordingly, this allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. 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).

V.

The Applicant alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that

the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VI.

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

VII.

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

ASHLEIGH R. WILSON
Assistant Attorney General

By: 
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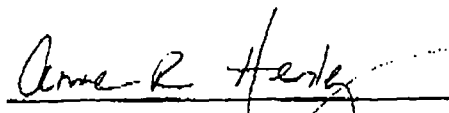
June 19, 2012.

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	
)	
)	2012-CP-10-1024
)	
DERRICK A. CRISWELL, #337479)	
)	
Applicant,)	
)	
vs)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	

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

Ellen Babb, Esquire
 Babb Law Firm
 148 ½ East Bay Street
 Charleston, SC 29401

DATED this 19th day of June, 2012


 Anne R. Henley, Legal Assistant
 For Respondent

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I N D E X

WITNESSES

All witnesses:

Page

DERRICK CRISWELL

Direct Examination by MS. MORROW

5:14

Cross-Examination by MS. WILSON

17:3

MICHAEL DuPREE

Direct Examination by MS. MORROW

22:14

Cross-Examination by MS. WILSON

28:25

Redirect Examination by MS. MORROW

30:23

1 THE COURT: Okay. This is the matter of
2 Derrick Criswell versus State of South Carolina. I
3 understand that counsel needs to put some things on
4 the record, so you all come on up.

5 (Whereupon, the following discussion was held
6 at the bench.)

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

8 MS. MORROW: Okay. We would like to --

9 THE COURT: You need to do it quieter because
10 that's why we came up here to do it at the bench.

11 MS. MORROW: I'm sorry. We would like -- we
12 want to -- Mr. DuPree represented this client and he
13 has now been dis -- well, he has been suspended.

14 Our client is aware, this goes to the
15 character, because our client claims that Mr. DuPree
16 lied to him about the amount of time that he would
17 get and said that he would get -- that he would be
18 pleading to 5 years.

19 He went back into chambers, talked to the
20 judge, came out and said it would be 5 years. And
21 then our client ended up getting sentenced to 10. He
22 would have never pled to 10.

23 THE COURT: And that has to do with this issue
24 because?

25 MS. MORROW: Because it goes to moral

1 character of the attorney.

2 THE COURT: Okay. That's respectfully denied.
3 We are not going to go into that.

4 I know the details of the situation and they
5 are not relevant.

6 Thank you.

7 (In open court.)

8 THE COURT: All right. I'm happy to hear from
9 you all.

10 Yes, ma'am.

11 MS. MORROW: May it please the Court, Your
12 Honor. I'm Attorney Kelly Morrow, and I'm here on
13 behalf of the Babb Law Firm. My client, Mr. Derrick
14 Criswell, has applied for PCR based on ineffective
15 assistance of counsel in that counsel failed to
16 adequately investigate his case, and failed to
17 challenge the state's evidence, and failed to present
18 the available mitigating evidence.

19 And my client is also applying for PCR based
20 on his involuntary guilty plea.

21 THE COURT: Let me stop you real quick. I
22 HAVE been looking for the transcript of the plea.
23 Let me see if the AG had it. It was not in my file.

24 MS. WILSON: If it's not in your packet, Your
25 Honor, I have got an extra copy.

Derrick Criswell

1 THE COURT: I have got an extra copy. Okay.
2 I'm happy to hear from you. We did not have
3 it in our file.

4 MS. MORROW: Thank you, Your Honor.
5 I would like to now call Mr. Criswell to the
6 stand.

7 THE COURT: Yes, sir. If you would come
8 forward and be sworn, please.

9 DERRICK CRISWELL,
10 after having first been sworn to tell the truth, the
11 whole truth and nothing but the truth testified on
12 his oath as follows:

13 DIRECT EXAMINATION

14 BY MS. MORROW:

15 Q Good afternoon, Mr. Criswell. How are you
16 today?

17 A Fine.

18 Q Okay. Please begin with your first
19 interaction with Mr. DuPree and tell us about your
20 claim.

21 A My first interaction with Mr. DuPree I went to
22 his law firm to hire him for representation in a case
23 that I had. And the day that I went to him and we
24 spoke, I paid him a retainer fee.

25 And he had someone contact my prior lawyer.

Derrick Criswell

1 And they went down to get the files and he told me
2 that he would be on the case and he would get in
3 contact with me.

4 Q And then what happened next?

5 A The next thing, when I was going to pay
6 payments he was like, we are going to have you a
7 preliminary hearing. It's going to be coming up in
8 the next week.

9 And the next thing he tell me when I go again
10 he said -- I sit down with Ms. Virginia Murray.

11 Q Is that at his office?

12 A Yeah. We sat in Ms. Virginia Murray's office.
13 And me and her went over the videos involved in my
14 county cases and everything.

15 And she called Mr. DuPree into the office. He
16 wasn't in there while we watched the videos. He came
17 into the office, sit down, he asked her, what do we
18 have?

19 And she said that, I want to file a motion for
20 dismissal because this is a bunch of dead evidence,
21 this is dead air on these footages, nothing that we
22 -- we are going to file a dismissal on it. And they
23 be like, fine, we will do. And that was that.

24 I waited on that and that never took place.

25 Q Did -- is -- did Ms. Murray, was she an

Derrick Criswell

1 attorney?

2 A Yes, she was an attorney.

3 Q Did she work for Mr. DuPree?

4 A Yes, she worked for Mr. DuPree.

5 Q Was the motion to dismiss ever filed to your
6 knowledge?

7 A It never was filed.

8 Q Okay. Continue. Tell me about what happened
9 next, please.

10 A All right. After that it was, you know, I
11 went back and forth, you know, making payments on my
12 case. And if he is not there I will speak to his
13 assistant or something.

14 And one day I went there, me and him spoke and
15 he said he was -- he went in the next room to call
16 Ms. Linder, my prosecutor, and spoke to her about my
17 plea.

18 And he came back in the room and he was like,
19 she said that you have another drug charge on your
20 record, a general conspiracy charge and that she
21 could use that to enhance you off.

22 And I was explaining to him that that's not a
23 drug charge to be enhancing you all. And he was
24 like, well, I'm not calling her back.

25 Q Did you tell him what kind of charge it was?

Derrick Criswell

1 A Yes. I told him that it was a general
2 conspiracy on the fire. But Ms. Linder was under the
3 impression it must be that it was a general
4 conspiracy of a drug charge and it was not.

5 Q And what his response to you telling him that?

6 A He said, I'm not going to call her back.

7 Q Okay. Then what happened next?

8 A Then it was the day of the court. On the day
9 of court I came. He was in the lobby.

10 well, see, at the beginning we wanted
11 consecutive sentence the first time I hired him, and
12 after he spoke with Ms. Linder, he said, I need you
13 to plea for 5 years.

14 Q A plea for 5 years?

15 A Yeah. He said, I need you to plea for 5
16 years. He said that it will be 5 years, nonviolent.
17 And I told him that, you know, that I was fine, that
18 I would take the 5 years.

19 And the day of court we went in and he was in
20 the hallway and I said, Mr. DuPree, can you please go
21 to Ms. Linder and get that plea negotiated, get it
22 written where you said it was 5 years?

23 And he went and spoke with Ms. Linder. And he
24 came back out and he said, she is not willing to sign
25 to 5 years, but she is not recommending anything.

Derrick Criswell

1 And that's when he walked out with a 3-page
2 memo that Ms. Linder has just had gave him. And we
3 reviewed it, me, him and Ms. Murray reviewed in the
4 hallway briefly right for a second.

5 And Ms. Murray be like, ain't no way that we
6 are going to let him go in there and plead to no open
7 plea with no recommendation with this memo.

8 Q What did the memo say? Did you read it
9 yourself?

10 A Yes. I read it. It was a memo from the
11 captain of the police department with a lot of false
12 allegations and charges that I was arrested for but
13 never convicted of.

14 And it had with the captain of the police
15 department saying I'm a predator and things like
16 that. I prey on the city streets and things like
17 that of that nature.

18 Q Okay.

19 A Then so I said -- I said, well, I wanted a
20 continuance because, you know, my grandma just had
21 passed away like two days prior. And I said -- and
22 he said, well, I'll go speak to the judge. And he
23 said, I will speak to him and make sure I get
24 everything concrete with the 5 years and your
25 continuance.

Derrick Criswell

1 So he went back in there and spoke with the
2 judge. Me and Ms. Murray waited in the hallway. And
3 he came back out and he said, I have some good news
4 and I have some bad news.

5 I said, what it is? And he said, the judge
6 agreed to the 5 years minimum, but he didn't agree of
7 letting you go today on no continuance.

8 Q Okay.

9 A And I was like, whatever, let's just go in
10 here and let's get it over with.

11 Q Okay. So you decided to plea to the 5 years
12 minimum?

13 A Yes, ma'am.

14 Q You understood that you weren't going to get a
15 continuance at that time?

16 A Yes. I understood I wasn't getting a
17 continuance.

18 Q Okay. And then what happened next?

19 A We went inside the courtroom. And, you know,
20 we went through the process. And, you know, the
21 judge, you know, he was asking me questions and
22 everything.

23 I was, you know, under the impression that I
24 was still getting this 5 years all the time. And at
25 the end I ended up with 10 years.

Derrick Criswell

1 Q Okay. When the memo -- was the memo presented
2 to the judge?

3 A Yes. Ms. Linder did present the memo to the
4 judge.

5 Q And what was the Judge's response?

6 A The Judge's response was like, to my
7 understanding this was what he said, if I'm not
8 mistaken, it is my understanding that this wasn't a
9 negotiated plea and that he felt that he was willing
10 to see whatever she had to show him.

11 But being that it wasn't a negotiated plea, he
12 wasn't really interested in it. But she took it up
13 there. And he took the time to read over the memo.

14 Q Okay. Was your record read -- your police
15 record read on to the court record at the time?

16 A Yes, my record was read.

17 Q Okay. And was there an issue with that being
18 read?

19 A Yes.

20 Q By Ms. Linder?

21 A There was an issue. She stated a charge on
22 there that I didn't have. She stated that I was
23 convicted with voluntary manslaughter. And I was
24 never convicted on voluntary manslaughter.

25 Q What were convicted of?

Derrick Criswell

1 A I was convicted of involuntary manslaughter.

2 Q Did Mr. DuPree object to that?

3 A No, he didn't object.

4 Q Did she read in about some trafficking
5 charges?

6 A Yes, she did.

7 Q The current -- the charges that you -- were
8 being dropped when you pled?

9 A Yes.

10 Q Can you tell me about those?

11 A Yes. The charges were being dropped. Ever
12 since me hiring Mr. DuPree and I worked with him and
13 I told him that I knew nothing about the charges, I
14 told him those charges don't belong to me, I'm not
15 guilty of those charges.

16 And then he was like, so what, they're getting
17 dismissed. You are not pleading guilty to them.
18 They're getting dismissed. And at court when she was
19 speaking up the charges that she was dropping, she
20 spoke that I had three distributions and I didn't.

21 Q How many distributions charges did you have?

22 A The charges that she was dropping was four
23 trafficking and four proximities and one
24 distribution, but she stated three different
25 distributions and Mr. DuPree didn't object to that

Derrick Criswell

1 either.

2 Q He didn't object?

3 A No.

4 Q Can you tell me about the 1996 charge of
5 possession of crack that she mentions when she read
6 off your record?

7 A Yeah. She mentioned about a '96 simple
8 possession of crack charge that she was using to
9 enhance me. And that charge was a YOA sentence. I
10 received a YOA sentence.

11 Q Can you explain what that is?

12 A Yes, youthful offenders act. And the South
13 Carolina code of laws it's an expungeable charge.

14 Q Okay. Had that been expunged?

15 A No. Mr. DuPree didn't review my record to do
16 it.

17 Q So he didn't work to expunge that for you?

18 A No. He never looked into my record.

19 Q Okay. Is there anything else you'd like to
20 just share that happened during your experience at
21 the plea?

22 A Yes. It was more basically like I was saying
23 about the county charges, I always told him. And
24 even in the transcript he admitted that he said, Mr.
25 Criswell always denied anything, any guilt dealing

Derrick Criswell

1 with these county charges, but still he expected me
2 to take a plea involving these charges being used for
3 leverage as far as a plea bargain.

4 And I told him I wanted to go to trial for
5 those charges from the beginning. They are not my
6 charges.

7 Q Okay. Before walking into the courtroom, did
8 Mr. DuPree make any promise to you or tell you what
9 to say once you are in there, in the courtroom and
10 pleading?

11 A Yes. He told me just to let him do all the
12 talking. And he said that if they ask me if anybody
13 promised me or anything just say no because if I do
14 the judge won't accept my plea.

15 Q He said if they promise you --

16 A Anything say no. If I say yes, they promised
17 me something, the Judge might don't accept my plea.

18 Q Okay. So as for ineffective assistance of
19 counsel, do you think your attorney's action
20 prejudiced you?

21 A Yes. I think that they definitely -- his
22 actions prejudiced me because he didn't do no
23 investigation into my criminal conspiracy case. He
24 never object to that. He never investigated my
25 county charges. He never objected to that.

1 The memo calling me a predator, he never
2 objected to that. But they had no, you know, no
3 actual basis to make that statement towards me. And
4 he never reviewed my record to find out these charges
5 and the facts that of the expungement and the charge
6 of the general conspiracy. He just never really did
7 no investigation of my case.

8 Q Okay. As for involuntary guilty plea, if your
9 attorney had properly informed you that there was no
10 guarantee that you would get 5 years, that you could
11 have gotten more than 5 years, would you have
12 insisted on going to trial and not have taken the
13 guilty plea?

14 A Yes. I would have insisted on that. And I
15 told him in the hallway that -- when he came back
16 out, I told him that I wanted to go to trial for the
17 county charges if I have to.

18 And he was like, we are not going to trial.
19 You still owe me \$1,500. If we go to trial give me
20 another \$1,500 today. You have my money now?

21 Q Was that before you went into the plea?

22 A Yeah. That was before I went into the plea.

23 Q Okay.

24 MS. MORROW: Court's indulgence.

25 THE COURT: Certainly.

Derrick Criswell

1 MS. MORROW: Thank you Your Honor.

2 Q (By Ms. Morrow) Were you intimidated by Mr.
3 DuPree and his comments that you just mentioned?

4 A I was intimidated to the fact that I wasn't in
5 a no-win situation. You know, I didn't have his
6 money and he keep assuring me that it just was going
7 to be 5 years. And he says, 5 years is not a lot.
8 And this is your first time in prison, you can get
9 parole in a year. This is 5 years nonviolent. This
10 is the best deal you're going to get.

11 Q Okay. And did those comments make you feel
12 uncomfortable?

13 A Yes. You can tell if you read the transcript
14 it felt uncomfortable because it was a long, drawn
15 out plea. And in many times you'll see there was no
16 response from me to the judge. And many times it's a
17 sidebar with counsel because I'm looking to him as
18 this is supposed to go down with you say I'm
19 receiving 5 years, but I'm being asked a lot of
20 questions and you are not speaking up.

21 And it just was a long, drawn out plea.

22 MS. MORROW: Okay. No further questions, Your
23 Honor.

24 THE COURT: Thank you, ma'am.

25 Cross-examination.

1 MS. WILSON: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. WILSON:

4 Q Mr. Criswell, you said that the day -- or, you
5 know, the time before your -- the time before it was
6 time for you to get ready before the judge and plead
7 guilty that Mr. DuPree said that he would get you a
8 plea to 5 years.

9 Did he say he would try to get you a plea for
10 5 years?

11 A No. He told me ever since I went to hire --
12 when I went to hire him after we watched the videos
13 he said, I can get you 5 years.

14 Q Do you recall telling the Judge during your
15 plea proceeding that you were satisfied with Mr.
16 DuPree's services?

17 A Yes. I told the Judge I was satisfied because
18 I was still under the impression that I'm receiving 5
19 years. I'm just doing exactly what he tell me to do.

20 Q Okay. And you talked about how there was some
21 discrepancy in your criminal record about a -- was it
22 a manslaughter charge -- whether it was voluntary or
23 involuntary?

24 A Yes.

25 Q And you said that that was incorrect, the way

Derrick Criswell

1 it was stated by the solicitor, correct?

2 A Yes, ma'am. I have --

3 Q Okay. And do you recall you telling Mr.
4 DuPree that that was an error and Mr. DuPree bringing
5 it to the Court's attention?

6 A Yes.

7 Q So you also mentioned that the solicitor
8 brought to the Court's attention a crack -- 1996
9 possession of crack --

10 A Yes.

11 Q -- charge. And you said that Mr. DuPree
12 didn't object to that being put in, that being
13 announced to the Court as part of your prior record?

14 A No, I didn't say that. I said that it was a
15 charge that could have been expunged that during the
16 course of him being my attorney, he never brought
17 that to the light, brought that to my attention that
18 this charge could be expunged due to enhancement
19 purposes.

20 Q Okay. Do you recall the solicitor mentioning
21 that charge when she read off your prior record?

22 A Yes, she did mention that charge.

23 Q Okay. And you are saying today that then you
24 knew it was an error?

25 A No, I didn't know it was an error right then.

1 I didn't know at that time that this charge could
2 have been expunged.

3 Q You didn't know at that point?

4 A No.

5 Q So you didn't bring it to Mr. DuPree's
6 attention?

7 A No. But he's an attorney. He knew that it --
8 I keep telling him this is a YOA sentence change.
9 And I say, can this charge be used to expunge -- I
10 mean not expunge -- I asked him, can this charge be
11 used for enhancement.

12 Q Okay. So you had objected to a prior mistake
13 that was mentioned, but you didn't bring it to Mr.
14 DuPree's attention at that time that you had a
15 problem with the solicitor reading that charge; is
16 that correct?

17 A No. I had no problem with it.

18 Q Okay. Do you also recall Mr. DuPree filing
19 for a motion for reconsideration?

20 A Yes.

21 Q And the substance of that was regarding the
22 enhancement of your charges; is that correct?

23 A No. The purposes of the reconsideration
24 motion was because, I have a copy of it, it says that
25 the sentence was too severe for the circumstances.

Derrick Criswell

1 If I was someone who had knew that I was
2 walking in this courtroom I could receive more than 5
3 years, I wouldn't have took the plea. And if I had
4 knew that I would -- it was a chance that I would
5 receive more than 5 years, it would have been no
6 reason to file no reconsideration.

7 He filed reconsideration because he knew he
8 told me I would receive 5 years.

9 Q Okay. But you didn't mention that to the
10 Judge during your motion for reconsideration hearing?

11 A No. Because the reason why --

12 Q Thank you. Do you recall during your plea
13 proceeding the Judge asking were you threatened or
14 promised to plead guilty?

15 A Yes, I remember that.

16 Q And you told the Judge that you were not
17 threatened or promised or coerced to plead guilty; is
18 that correct?

19 A No, he didn't say nothing about coerced.

20 Q And do you also recall the solicitor going
21 through the facts of the charges, the charges you
22 were pleading guilty to?

23 A Can you repeat that?

24 Q Do you recall when you were at your plea
25 proceeding?

1 A Yes.

2 Q The solicitor reading -- or I think in this
3 case the Judge reading off the indictment the things
4 that you were charged with?

5 A Yes.

6 Q And do you also recall the Judge asking you,
7 did you agree with the facts that were read into the
8 record?

9 A I don't recall that.

10 Q And you never told the Judge that you were
11 intimidated by Mr. DuPree on the day of your plea
12 proceeding; is that correct?

13 A No. I never did.

14 Q And you said the only reason that you pled
15 guilty was because you thought you were receiving a
16 5-year deal?

17 A Yeah. That's what I was told.

18 Q Right. And do you realize that had you gone
19 to trial, you would also be facing all of the charges
20 that were also against you?

21 A I wanted to go to trial on the county charges.
22 I don't know nothing about no charges. I don't know
23 nothing about no charges at all.

24 MS. WILSON: All right.

25 Thank you, Your Honor.

Michael DuPree

1 THE COURT: Thank you.

2 MS. MORROW: Nothing further.

3 THE COURT: Thank you, ma'am.

4 Sir, you may step down.

5 MS. MORROW: I'd like to call Mr. DuPree to
6 the stand now, please.

7 THE COURT: Mr. DuPree, come forward be sworn,
8 please.

9 MICHAEL DUPREE,
10 after having first been sworn to tell the truth, the
11 whole truth and nothing but the truth testified on
12 her oath as follows:

13 DIRECT EXAMINATION

14 BY MS. MORROW:

15 Q Good afternoon, Mr. DuPree.

16 A Hello.

17 Q Did you get Mr. Criswell's file from his first
18 attorney?

19 A I did.

20 Q You did. Did you obtain the discovery file
21 from the solicitor's office?

22 A I did. There was a problem at some point with
23 some of the discovery that -- his prior attorney was
24 Alex Apostolou, and there was a problem with the tape
25 regarding this case.

Michael DuPree

1 And so we went back to the solicitor's office
2 and got the tape.

3 Q Okay. Did you go over the evidence with Mr.
4 Criswell?

5 A I did.

6 Q Did you go over the videos?

7 A We did. And there were still photos also.

8 Q Okay. Did you file a motion to dismiss after
9 watching the video?

10 A No.

11 Q Why not?

12 A He was in it. What was I going to dismiss?

13 Q My client mentioned that Ms. Murray felt that
14 there should be a motion to dismiss. What was her
15 basis?

16 A I have no idea.

17 Q Did you look into Mr. Criswell's record?

18 A I did.

19 Q Did you see on the record a '96 charge of
20 simple possession of crack that was a youthful
21 offender sentence?

22 A I don't recall it being a youthful offender
23 sentence, but I do recall it being a 1996 conviction.

24 Q Did you look into his conspiracy charge?

25 A I reviewed his record with him in its

Michael DuPree

1 entirety, and it was an entire lengthy record.

2 Q Okay.

3 A I don't know what else you want to know about
4 that.

5 Q Okay. Do you remember what the conspiracy
6 charge was for?

7 A It may have been a gun charge. It didn't have
8 -- whatever it was, it wasn't drugs because the
9 enhancement on the drugs was from 1996.

10 Q Did you read over the memo from the police
11 captain that was presented to you by Ms. Linder?

12 A I did.

13 Q And what did that entail?

14 A It entailed from the police department that
15 Derrick was a menace to the City of Charleston. That
16 he had committed, or was known to have committed
17 numerous crimes in and about Charleston. That he was
18 well known among the police department.

19 I brought that up to the Court at the time,
20 it's in the transcript, where we objected to some of
21 the things that were brought out in there. We didn't
22 feel that some of those items were relevant to the
23 case at hand.

24 Q Did the memo refer to Mr. Criswell as a
25 predator?

1 A I don't recall the exact language. But I know
2 the gist of it was that he was well known to the
3 police department, and that he was in and out of
4 trouble with them.

5 Q On the day of the plea, did you speak to the
6 Judge?

7 A Probably, yes.

8 Q What did the two of you discuss?

9 A You know, I really don't recall. I'm certain
10 Ms. Linder was there at the time. We may have
11 discussed what was going on with Derrick in his life,
12 his grandmother had passed away, he had several
13 deaths in the family.

14 And we may have just been talking about those
15 issues, but I can't really recall.

16 Q Did you explain the plea process to Mr.
17 Criswell?

18 A Yes.

19 Q What did you tell him?

20 A I told him that he had a right to plead not
21 guilty. That by -- I will start over. Like I always
22 tell clients, you have a right to plead not guilty,
23 but if you plead guilty you give up your right to a
24 trial by jury. I asked him what a trial by jury is.
25 I tell him 12 people will be picked by the defense

Michael DuPree

1 and by the State.

2 We don't have to do anything. It's up to the
3 State to prove him guilty beyond a reasonable doubt
4 and that we don't have to do anything. We can sit on
5 our hands. We can keep our mouth shut. It's up to
6 the State to prove him guilty.

7 Q And that's what you told Mr. Criswell?

8 A Yes.

9 Q Did you tell him before he went into plea that
10 he was pleading to 5 years?

11 A No.

12 Q What did you tell him he was pleading?

13 A I told him the range of the sentence was 5 to
14 30. We are going to beg for 5, but, you know, it's
15 strictly up to the Judge. There is no recommendation
16 by the State.

17 Q Okay. Ms. Linder read off a 2000 charge of
18 ABHAN, unlawful carrying of a pistol, and voluntary
19 manslaughter?

20 A Right.

21 Q Mr. Criswell says his record reflects an
22 involuntary manslaughter. Did you object to this?

23 A I did. And the record, the actual rap sheet
24 from what I can remember shows voluntary
25 manslaughter.

1 We actually -- Derrick told me it was
2 involuntary. I had told Ms. Linder that numerous
3 times, and I told the Judge that it was involuntary.

4 Q And you said that on the record?

5 A I did.

6 Q To the Judge?

7 A To the Judge. And that is on page 16, lines 4
8 and 5.

9 Q Okay. Mr. Criswell says that the other
10 charges that day included the four trafficking, four
11 proximity and only one distribution. Ms. Linder said
12 three distribution charges. Why did you not object?

13 A I believe there were a total of 12 charges
14 possibly.

15 Q Okay.

16 A She was dismissing all of them. That had
17 nothing to do with what he was pleading to.

18 He was pleading to one distribution that they
19 actually had a still photo of him and a videotape.
20 And, you know, those are a lot of charges that were
21 being dismissed, so I don't --

22 Q Did you have a list of the charges at the time
23 that you were at the plea?

24 A Oh, yeah. I had all of the indictments and
25 everything.

Michael DuPree

1 MS. MORROW: Court's indulgence.

2 THE COURT: Certainly.

3 Q (By Ms. Morrow) Mr. DuPree, how much time did
4 you spend on this case?

5 A A lot. There was a lot of evidence.

6 Q Roughly hours?

7 A You know, it was a lot. He -- Derrick would
8 come to the office and we would meet. We had a lot
9 of conversations. There was a lot of evidence
10 involved.

11 Q Do you remember how many times he came to your
12 office?

13 A I sure don't.

14 Q How long would he stay per visit?

15 A 20 minutes, half hour.

16 Q Okay. And what was the span of time whenever
17 you were hired to when he pled, do you recall?

18 A I don't recall.

19 Q Okay.

20 MS. MORROW: No further questions, Your Honor.

21 Thank you, Mr. DuPree.

22 THE COURT: Cross-examination.

23 MS. WILSON: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MS. WILSON:

Michael DuPree

1 Q Mr. DuPree, when you were at the plea
2 proceeding with the applicant, did you feel like he
3 was pleaing voluntarily and of his own free will?

4 A Yes.

5 Q And did you get any indication from him that
6 he didn't understand what the potential sentence
7 would be?

8 A No. Judge Dennis is very thorough. And I'm
9 looking at the transcript and Judge Dennis went over
10 the transcript -- I mean went over the possible
11 penalties.

12 Q And after reviewing the applicant's prior
13 record, did you think that the solicitor's office
14 enhancement was proper?

15 A Yes. I actually filed a motion to reconsider
16 that was heard in front of Judge Dennis some time
17 after. And we actually -- that was part of our
18 argument was the sentence enhancement.

19 And I think I also filed a notice of intent to
20 appeal with the court of Appeals. I think appellate
21 defense has taken that up and I don't know what the
22 outcome of that is.

23 Q Okay. You said that you explained to the
24 applicant the plea process and also about his rights
25 to having a trial by jury.

Michael DuPree

1 And during that explanation, did you ever
2 threatened or intimidate the applicant?

3 A No.

4 Q You also said that -- we also discussed your
5 testimony earlier, the significance of these two
6 missing distribution -- these two additional
7 distribution charges that were to be non-prossed by
8 the solicitor's office.

9 And you didn't object to the discrepancy in
10 what the applicant thought the number of charges were
11 and what they actually were because they weren't
12 insignificant [sic]; is that your testimony?

13 A Well, I just felt like it was -- it was really
14 a great plea offer. I mean we were getting 12
15 dismissed and moving on one. And, you know, I just
16 know there were a lot of trafficking charges involved
17 and a lot of proximities.

18 I don't recall the amount of distributions
19 right offhand. But I know he plead to this one, so.

20 MS. WILSON: Thank you.

21 THE COURT: Anything further?

22 REDIRECT EXAMINATION

23 BY MS. MORROW:

24 Q Mr. DuPree, could you look at page 19 of the
25 transcript?

1 A Okay.

2 Q Could you read starting at number 3, line 3
3 what is said there? Could you read that aloud?

4 A Line number 3 from the Court?

5 Q Yes, sir.

6 A The Court. Do you know of anything that is
7 affecting your ability --

8 MS. WILSON: Objection, Your Honor. Outside
9 the scope of my cross-examination.

10 THE COURT: objection is overruled.

11 A Do you know of anything that is affecting your
12 ability to make this type of decision?

13 Defendant. Well, I'm just taking it because,
14 Your Honor --

15 Q You can stop there. Did you stop to talk to
16 your client, Mr. Criswell, about what he was thinking
17 there or why he had paused?

18 A No. Because the Court went in and asked him
19 right afterwards. I'm not asking you why. I'm just
20 asking you if you had sufficient time to think about
21 it.

22 Q Okay, thank you.

23 MS. MORROW: No further questions.

24 THE COURT: Okay, thank you.

25 MS. MORROW: In summary, Your Honor, it's my

1 client's position that he received ineffective
2 assistance of counsel in that counsel failed to
3 adequately investigate his case; failed to challenge
4 the state's evidence; and failed to present the
5 available mitigating evidence which prejudiced him.

6 It is also his position that his attorney --
7 that had his attorney properly informed him that
8 there was no guarantee that he would be sentenced to
9 5 years, that he could have gotten more than 5 years,
10 he would have insisted on going to trial and he would
11 not have taken the plea.

12 Thank you.

13 THE COURT: Okay. Thank you.

14 Anything from the State?

15 MS. WILSON: Yes, Your Honor, may it please
16 the Court.

17 The applicant has failed to carry his burden
18 of proof to get the granting of his post-conviction
19 relief hearing. As to the issue of involuntariness
20 of his guilty plea, the record clearly reflects that
21 Judge Dennis thoroughly went over all of the
22 applicant's rights before he pled guilty.

23 The applicant not only admitted his guilt on
24 the record, but he never indicated that he was
25 threatened or coerced or intimidated by Mr. DuPree.

1 Mr. DuPree gave pretty credible evidence about his
2 discussions with the applicant about taking the plea,
3 about possibly proceeding to trial.

4 Also, Your Honor, as to the failure to
5 investigate allegation. He didn't indicate to the
6 Judge that he needed any additional time or that he
7 wanted Mr. DuPree to investigate anything further.
8 He said he was satisfied with Mr. DuPree's services.

9 In addition, he didn't -- today in here
10 he didn't -- the applicant didn't put up any evidence
11 about what he requested specifically Mr. DuPree to
12 investigate, or exactly what would have resulted from
13 that investigation.

14 So the state would request that you deny this
15 application for post-conviction relief.

16 THE COURT: Okay. Thank you.

17 All right. Mr. Criswell, you have been
18 represented by excellent attorneys and they have done
19 a great job for you today. Also, I hope you
20 appreciate the hard work that Ms. Morrow and Ms. Babb
21 have done for you.

22 In listening to the testimony presented today,
23 and reviewing the transcripts, both of them, both of
24 the plea and of the reconsideration hearing, I just
25 have to say this is one of the more thorough pleas

1 that I have seen.

2 Judge Dennis repeatedly asked Mr. Criswell if
3 this plea was what he wanted to do, is anybody
4 forcing you to do this. And what counsel brought up
5 in her redirect on page 19 of, do you know of
6 anything affecting your ability or -- your ability to
7 make this type of decision. The Court, right beyond
8 that colloquy asked, nobody is forcing you to do
9 this? The defendant's answer, no, sir.

10 Three pages later on page 22, Mr. DuPree
11 presents some mitigating information in the preceding
12 pages, and Judge Dennis expressed concern at line 17
13 that Mr. Criswell may have said something
14 inconsistent and indicate that he is not guilty of it
15 or doesn't want to plea.

16 And the defendant clears that up. he says,
17 yes, sir, what I mean is -- and the Court says, you
18 just told me that you were guilty of this. Now,
19 which is it?

20 Defendant. I admit my guilt. It happened in
21 2006. By the time it caught up with me in 2008 I had
22 already made the change. He goes through some more
23 questions with him then.

24 Earlier on the Court clearly explains to Mr.
25 Criswell that 5 years is the mandatory minimum that

1 he has to give him, and he can give him up to 30
2 years. There is no recommendation by the solicitor.

3 I find Mr. DuPree's testimony very credible on
4 the fact that he shared this with him. And, quite
5 frankly, I'm stunned that he was able to get the deal
6 that he got for you, Mr. Criswell, to get 11 charges
7 -- I think it was four trafficking, four proximity,
8 and three distribution -- I may have the combination
9 wrong -- but it was 11 big charges.

10 There is no evidence that the plea here was
11 anything but knowing, intelligent and voluntary. I
12 find no ineffective assistance of counsel, that's the
13 first prong of the Strickland test. Not only do I
14 find no -- well, there is not even a reasonable
15 probability that but for counsel's errors the
16 defendant would not have pled.

17 Anytime he seemed to waiver at all, Judge
18 Dennis stopped the plea and said, now, wait a minute,
19 do you really want to plea here? And Mr. Criswell
20 kept answering.

21 Even when he said, I just want to get this
22 over with, the Judge said, no, sir, we don't do it
23 that way. The plea has got to be in your own choice,
24 you've got to say you're guilty. He agreed to the
25 facts as presented by the solicitor were correct.

1 This is one of the better pleas I have seen.
2 The application is denied.

3 MS. WILSON: Thank you, Your Honor.

4 THE COURT: Thank you.

5 (Whereupon, the proceedings in this matter
6 before the Court were adjourned.)

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

2012-CP-10-1024

Derrick A. Criswell, #337479

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

FILED
2013 APR 30 AM 10:00
JULIE J. HARRINGTON
CLERK OF COURT
BY _____

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed February 10, 2012. The Respondent made its Return on June 19, 2012. An evidentiary hearing into the matter was convened on July 26, 2012, at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Kelly Morrow, Esquire and Ellen Babb, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Applicant's plea counsel, P. Michael Dupree, Esquire, also testified at the hearing. This Court was presented with the guilty plea transcript, the motion for reconsideration transcript, the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the Applicant's Record on Appeal, the PCR application, and Respondent's Return thereto.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the

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- 1 -

May 2008 term of the Charleston County Grand Jury for Distribution of Cocaine Base (2008-GS-10-4064). Applicant was represented by P. Michael Dupree, Esquire.

On October 20, 2009, the Applicant pled guilty as indicted. Applicant was sentenced by the Honorable R. Markley Dennis to confinement for a period of 10 years. The Applicant filed a motion for reconsideration that was denied by Judge Dennis. The Applicant appealed his conviction and sentence. The Court of Appeals affirmed the Applicant's conviction and sentence (Op. No. 11-UP-533). The Remittitur was sent December 12, 2011.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Failure to adequately investigate case
 - b. Failure to challenge the state's evidence
 - c. Failure to present the available mitigating evidence
2. Involuntary guilty plea.
3. Violation of 6th and 14th amendments due process rights.

At the hearing, Applicant waived all grounds for relief except ineffective assistance of counsel.

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 his or her 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).

At the evidentiary hearing, the Applicant testified that plea counsel was ineffective for telling him that he was pleading guilty to a five year sentence for distribution of cocaine base. The Applicant testified that he hired counsel and that prior to his preliminary hearing, someone in plea counsel's office

told the Applicant that they would move to dismiss the charges against him. He also testified that plea counsel never tried to get the charges against him dismissed. The Applicant testified that counsel told him he could get him a plea for five years, and that he told plea counsel that he would accept a plea offer of five years. The Applicant further testified that counsel later told him that he would not be able to plea to five years, but that the State would not make a sentence recommendation during the plea. He stated that he then told counsel that he would agree to plea to five years and that counsel should request a continuance.

The Applicant also testified that plea counsel did not look into his prior record. He testified further that when the solicitor read his prior record for the judge, she mentioned a 1996 possession of crack charge. Applicant contends that for he was sentenced under the Youthful Offender Act (YOA) on this charge, and that it should have been expunged. He further testified that plea counsel should have looked into his prior record to have the charge expunged. The Applicant also testified that the solicitor incorrectly misstated that one of his prior charges was for voluntary manslaughter when it was actually an involuntary manslaughter. Lastly, the Applicant testified that he felt threatened and intimidated by counsel to plead guilty, and that he would have gone to trial had he known he was not getting a five year sentence. Still, Applicant admits that he told the judge that he was satisfied with counsel's representation.

At the evidentiary hearing, plea counsel testified that he was hired to represent the Applicant. He testified that he met with the Applicant frequently and spent lots of time on the case. He testified that once he received the Applicant's Rule 5 discovery he reviewed the evidence, which included several videos and still photos of drug buys. He testified that he did not make a motion to dismiss the Applicant's charges because the Applicant was present in the videos of drug buys from the State. Plea counsel also testified that he looked into the Applicant's lengthy prior record, and that nothing on his

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record indicated that he was sentenced under YOA for the 1996 crack conviction. Plea counsel testified that he advised the Applicant of all of his constitutional rights, explained the trial process, and explained the State's burden of proof.

Plea counsel testified that he also explained the plea process to the Applicant, and that he never told the Applicant that he could plead and receive a five year sentence. He also stated that he told the Applicant that potential sentences ranged from five years to thirty years for distribution of cocaine base, 2nd offense. Counsel stated that the only offer from the State was to plea to one distribution of cocaine base (2nd offense) and have the remaining charges dismissed. Counsel testified that he felt the plea offer was a great deal for the Applicant *because the State was willing to dismiss eleven or twelve other drug charges, if he pled guilty to one distribution of cocaine base 2nd offense.* At the plea hearing, counsel testified that he recalled objecting to the solicitor's misreading of the Applicant's prior manslaughter charge as voluntary instead of involuntary. Counsel further testified that enhancement of the drug charge to a 2nd offense was proper in light of the Applicant's prior record. Counsel testified that he never threatened or intimidated the Applicant to plead guilty. Lastly, counsel testified that he felt the Applicant's plea was entered freely and voluntarily and that he had no indication that the Applicant did not understand the plea proceeding or his sentence.

INEFFECTIVE ASSISTANCE OF COUNSEL

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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 (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, 386 S.E.2d 624.

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. at 625 (citing Strickland, 466 U.S. 668). 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." Id. at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).¹

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues

¹ PCR counsel attempted to introduce evidence of plea counsel's disciplinary status in support of Applicant's ineffective assistance claim. Plea counsel received a nine-month suspension as a result of an event which occurred on March 22, 2012, over two years after his representation of this defendant. As this suspension was not relevant to the ineffective assistance claim and in no way prejudiced the defendant, the Court declined to admit evidence of the disciplinary status or any circumstances related thereto.

relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

This Court finds that plea counsel is a criminal practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof. The record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. Applicant acknowledged that he was guilty of these offenses. Applicant told the plea court that he was satisfied with his attorney and that no one had threatened him or promised him anything to plead guilty. This Court finds that Applicant understood the terms of the plea offer.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that plea counsel's testimony was credible and that the Applicant's testimony was not credible. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation. This Court finds that counsel's representation did not fall

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below an objective standard of reasonableness.

This Court finds that counsel did not misadvise the Applicant about the substance of his plea offer. Plea counsel provided credible testimony that he advised the Applicant's of all his constitutional rights prior to the Applicant's plea. Plea counsel also provided credible testimony that he never advised the Applicant that he would receive a five years sentence for his plea.

This Court finds that the Applicant was also advised of all his constitutional rights prior to his plea by the plea judge. The plea judge advised the Applicant multiple times of his right to remain silent (T. 5, 14), right to confront witnesses (T. 13), right to remain silent (T. 5, 14), and his right to a jury trial (T.5, 13). The Applicant was also advised of the State's burden of proof and what the State would have to show to convict him at trial. (T. 7, 13). Anytime the Applicant waived in his response to the plea judge's questions, the plea judge would stop and re-question the Applicant as to his desire to plead guilty. (T. 1-7).

This Court finds that the Applicant was well aware of the potential sentence for his charge and that the State was not recommending any specific sentence for the Applicant's agreement to plead guilty. This Court finds that the Applicant was advised several times during the plea proceeding that the State was not recommending any sentence, but in exchange for the Applicant's plea the State was dismissing several other charges. (T. 3, 10, 11, 17). Plea counsel also provided credible testimony that he never told the Applicant that he was pleading to a five year sentence. The Applicant's own testimony also reflects that he was told by trial counsel that he would not be pleading to a sentence of five years.

This Court finds that counsel adequately reviewed the Applicant's prior record. The record reflects that trial counsel objected to the State's reading of the Applicant's record as including a voluntary manslaughter charge. Counsel's review of the Applicant's prior record is further evidenced by counsel's filing of a motion for reconsideration of the Applicant's sentence based on the Applicant's

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prior record and the enhancement of the Applicant's drug charge.

This Court finds that counsel did not threaten or intimidate the Applicant to plead guilty. This Court finds that the Applicant's plea was entered voluntarily, knowingly, and intelligently with full awareness of his constitutional rights and potential sentence. Plea counsel provided credible testimony that he never threatened or intimidated the Applicant to plead guilty. The Applicant was advised by the plea judge that he could not be forced to plead guilty. (T. 2). When questioned, the Applicant told the court that he was not forced to plead guilty (T.19) and that he was not threatened or promised anything to plead guilty (T. 14). The Applicant also told the plea judge that he had answered all of the judge's questions truthfully. (T. 18). This Court finds that the Applicant's allegations are without merit and the Applicant has failed to carry his burden of proving that but for counsel's alleged errors, he would not have plead guilty.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically 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 her representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. Therefore, this Court need not address prejudice. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

ALL OTHER ALLEGATIONS

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

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CONCLUSION


Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violation or deprivation before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Indeed, Applicant received quite a boon; despite the photographic evidence (video and still photos), Applicant was sentenced to ten years, out of a possible thirty, on a single distribution charge. Several other drug charges were dismissed as part of the plea package. Therefore, this application for PCR must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 29th day of April, 2013.


The Honorable Stephanie P. McDonald
Presiding Judge, 9th Judicial Circuit

Charleston, South Carolina.

4-29-2013

SLB20080301520

WITNESSES

DAMIEN SEABROOK
Charleston City Police Department

AGENCY CASE NUMBER

0625327

ARREST WARRANT NUMBER

K153134

DATE OF ARREST

2008-03-05

ACTION OF GRAND JURY

TRUE BILL

Adrian Cochran

Forfeiture of Grand Jury

DATE: MAY 5 2008

VERDICT

Forfeiture of Petit Jury

DATE:

INDICT

DOCKET NO. 2008GS1004064

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

May Term 2008

THE STATE

VS.

DERRICK A. CRISWELL

D & - 1360 (01)

Indictment for

Distribution of Cocaine Base

2008 MAY 12 PM 3: 28
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

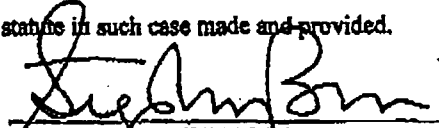
INDICTMENT

At a Court of General Sessions, convened on May 5, 2008 the Grand Jurors of Charleston County present upon their oath:

Distribution of Cocaine Base

That in Charleston County, South Carolina, on or about December 14, 2006, the Defendant, DERRICK A. CRISWELL, did manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possess with the intent to distribute, dispense or deliver a controlled substance or a controlled substance analogue, to wit: Cocaine Base; in violation of 44-53-375 of the South Carolina Code of Laws (1976) as amended.

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


STEPHANIE BIANCO
ASSISTANT SOLICITOR