

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Berkeley County

Kristi Lea Harrington, Circuit Court Judge

DUSTIN WILLIAMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213626

A P P E N D I X

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ATTORNEYS FOR RESPONDENT

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1 (June 14, 2011.)

2 THE COURT: All right. Mr. Williams, we were
3 getting ready to start your trial on your charges of
4 trafficking crack cocaine, trafficking powder cocaine,
5 and possession of marijuana second, and I am told that
6 you wish to accept the state's offer to allow you to
7 plead guilty to -- well, straight up on the marijuana.
8 You can only get a year on that, but the trafficking
9 cocaine, 10 to 28, second offense, and trafficking crack
10 cocaine, 10 to 28 grams second offense carries sentences
11 of seven to 25 years. You were facing a third offense,
12 which was 25 years minimum to 30 years.

13 Is it true that you wish to plead guilty to
14 the second offense on both of those charges, seven to 25
15 years?

16 MR. BISHOP: Your Honor, could I interject?
17 He was facing life without parole. He had been LWOPped.

18 THE COURT: I'm sorry. That is correct.
19 Those are minimum sentences, but because of your prior
20 convictions, you had prior convictions for strike
21 offenses, and the state had served you with notice of
22 life without possibility of parole. And so you wished to
23 accept this offer to plead guilty to second offense
24 trafficking crack cocaine and second offense trafficking
25 powder, seven to 25 years; is that correct?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. Well, let me go over
3 a few things with you. I'm not trying to change your
4 mind. I just have to make sure for the record you
5 understand what you're doing. You have the right to a
6 jury trial. We were getting ready to start this jury
7 trial this morning, and the state would then have to
8 present enough evidence to convince 12 jurors that you
9 were guilty beyond a reasonable doubt. All 12 jurors
10 would have to agree that you're guilty in order to
11 convict you, and, if convicted, you have the right to
12 appeal.

13 You can challenge the state's evidence, put
14 up evidence of your own, testify, if you want, and if you
15 don't want to testify, the judge will tell the jury not
16 to hold that against you while they're deliberating.

17 Do you understand those rights?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And you wish to give up those
20 rights and plead guilty to these charges?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Are you under the influence of
23 drugs or alcohol today?

24 THE DEFENDANT: No, sir.

25 THE COURT: Do you need to spend any more

1 time with your lawyer?

2 THE DEFENDANT: No, sir.

3 THE COURT: All right. Now, you've had a
4 chance to set down and talk with him about going to trial
5 versus entering these pleas; is that correct?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And he explained to you, you
8 know, the different things that you could try as a
9 defense. Yesterday you tried to suppress the evidence of
10 the drugs, and that failed. That was a ruling that I
11 made as a practical matter. It almost assuredly meant
12 you were going to be convicted of these charges and face
13 life without parole. The only chance you have would be
14 whether or not you would have a successful appeal of that
15 ruling that I made, and, frankly, I strongly suspect you
16 would have not been successful on that.

17 And I think your lawyer has explained to you
18 those different issues and how it applied and how you
19 were facing a very, very strong possibility of being
20 convicted on the third offense charges, and you would
21 have been facing life without parole. Did you agree with
22 that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And that is your basic reason for
25 wanting to accept this plea?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And he told you that it would be
3 very, very likely that I would give you a 20-year
4 sentence; is that correct?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you understand that is a no
7 parole, so you got to do at least 85 percent of that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You also understand, basically,
10 you're out of strike crimes now, and after -- if, while
11 you're in prison, or after you ever get out of prison or
12 when you get out of prison you are ever convicted of
13 another strike offense, most assuredly, you will go to
14 jail for the rest of your life without the possibility of
15 parole. The only way you get out is they carry you out
16 in a pine box.

17 Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. Now, other than the
20 reduction in the charges and the request that I give you
21 a 20-year sentence, has anybody promised you anything or
22 threatened you to get you to plead guilty today?

23 THE DEFENDANT: No, sir.

24 THE COURT: How old are you?

25 THE DEFENDANT: Twenty-seven.

1 THE COURT: How far did you get in school?

2 THE DEFENDANT: Tenth grade.

3 THE COURT: Did you have a job before you got
4 arrested?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: What did you do?

7 THE DEFENDANT: Construction.

8 THE COURT: Are you married?

9 THE DEFENDANT: No, sir.

10 THE COURT: Do you have children?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: How old are your children?

13 THE DEFENDANT: Two.

14 THE COURT: All right. Well, Mr. Bishop, in
15 your opinion, does he understand what he is doing waiving
16 his right to a jury trial and pleading guilty today?

17 MR. BISHOP: In my opinion he does, Your
18 Honor.

19 THE COURT: Do you agree with his decision?

20 MR. BISHOP: I do. I mean, it's two
21 difficult charges, but one is better than the other, and
22 I certainly agree that we're making the right choice
23 today.

24 THE COURT: All right. Well, I find that his
25 plea is freely, voluntarily, and intelligently made.

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What would state like to tell me about the case?

MS. CORNWELL: Thank you, Your Honor. May it please the Court: On August 26 of 2009, officers responded to the Kush Lounge, which is in the Ladson area of Berkeley County in reference to a disturbance. The officer met with security, who advised that they had made contact with the defendant after a female advised them the suspect pulled a gun on her. Security made contact with the defendant in his vehicle on the grass parking area that was leased by Kush Lounge, and during the course of their interaction, they searched the vehicle.

Upon searching the vehicle, they located white powder, a yellow rock-like substance, and green plant material. Through their experience they knew these were drugs. They detained the defendant and notified Berkeley County sheriff's office. Once Berkeley arrived on the scene, they took custody of the evidence and arrested the defendant.

The weights of the drugs, he had 23 grams of marijuana, 13.68 grams of cocaine, and 10.42 grams of cocaine base. He does have a significant prior record. He's got an '02 resisting arrest; '02 possession of marijuana; '02 giving false information; an '03 possession with intent to distribute cocaine base within proximity of a school; an '03 CDV; an '03 possession of

1 cocaine; an '04 trespassing; '04 resisting arrest; an '04
2 possession with intent to distribution cocaine within
3 proximity of a school; '05 DUS; an '05 possession of
4 marijuana, and an '05 possession of drug paraphernalia.

5 THE COURT: All right. Well, I find there's
6 a substantial factual basis for the plea. Mr. Bishop,
7 what would you like to tell me?

8 MR. BISHOP: Your Honor, if it please the
9 Court: Dustin, as he indicated, is 27 years of age, and
10 I find it refreshing, notwithstanding the fact that he's
11 got a prior history that's not something you want to brag
12 about, he's got family. He's got people here who love
13 him, and I find that aspect refreshing, and, frankly, it
14 was the ability, I think, to speak with his two
15 sisters and his -- and I don't want to marry them, but
16 I'm going to call his girlfriend, Ryan, who is here as
17 well.

18 We talked about the pros and cons that he
19 faces whether to proceed with trial or not, or accept the
20 reduction in plea that you have just taken here today.
21 Notwithstanding the fact that it will surely result in a
22 substantial sentence. There is a light -- there is an
23 end of that tunnel, Judge, and I think that Dustin
24 appreciates that. I think certainly his family does. He
25 has spent a good bit of time in jail already. I would

1 ask certainly that anything you sentence him to
2 incorporates credit for any time served.

3 I believe that Dustin will -- I believe that
4 he is certainly a smart enough individual that he will
5 take advantage of this time, albeit he has a lot of time
6 to take advantage of it and prove himself and take
7 advantage of whatever services that he might find
8 available in the prison industry to learn a trade.

9 He realizes he's going to be middle-aged by
10 the time he's able to be released, but the good news is
11 he'll be able to be released. He'll be able to rejoin
12 his family. His child is two. She will be a young --
13 probably, you know, a young lady when he's able to
14 reunite his life with her from somewhere other than
15 behind a prison glass visiting booth.

16 And I think that's important to him, and I
17 was refreshed to see that as well. I mean, he, in our
18 discussions, has indicated to me that, you know, he cares
19 about these people as much as they care about him. I
20 believe that he's making a wise decision here today in
21 taking advantage of this plea and getting this matter
22 behind him so that he can begin, he can use this as a
23 stepping point and make a beginning today, and I think
24 he's committed to do that. I think he desires to do
25 that.

1 I would ask that you certainly not exceed the
2 range of sentence we discussed off the record and/or in
3 court here today. I don't know that you're locked into
4 20. I don't know if it's negotiated, but we would just
5 ask for whatever leniency you feel appropriate, we'll be
6 glad to be able to resolve this matter today in the
7 fashion we have.

8 Thank you.

9 THE COURT: Mr. Williams, would you like to
10 say anything?

11 THE DEFENDANT: No, sir.

12 THE COURT: All right. Mr. Williams I take
13 no pleasure at all in sentencing you to prison. That's
14 probably the worst part of my job, to be honest with you,
15 sentencing young people to prison. You're 27 years old.
16 I know that sounds old to you. Sounds young to me.

17 I recognize this is a difficult plea for you
18 to accept because it means you're going to spend a large
19 part of the next 15, 20 years of your life behind bars,
20 and you think maybe, well, I could take my chances with a
21 jury. Well, it's your lawyer's job to advocate your
22 position, and he has done that in yeoman's fashion. He
23 has done a really good job about doing the things that
24 lawyers can do to represent their clients, and he made a
25 good presentation yesterday on the efforts to get me to

1 suppress the search, and that was a matter of law. I
2 ruled against your position on that, and I believe it was
3 a correct legal position.

4 What that resulted in was an almost slam dunk
5 decision, I think, that a jury would face. If you went
6 to trial, you would almost certainly be convicted,
7 because, basically, there was no question about the drugs
8 being in possession -- or being in the car in which you
9 were in possession of, and you gave consent, and I
10 believe that the consent to search coupled -- even if you
11 went and got past the issue of whether or not there was
12 state action, which I found there was not, there was no
13 other evidence to not convict you, and there were
14 difficulties in putting you up on the stand because of
15 your prior record.

16 So it was almost -- in fact, I believe it
17 was, a certainty that you would be convicted, and within
18 a relatively short period of time, I'm talking about
19 probably by lunchtime you would be walking out these
20 doors with a sentence of life without the possibility of
21 parole.

22 It's hard. I'm 51 years old, and for me to
23 get my head around the idea that I would be walking out
24 and never ever getting out of jail for the of my life --
25 and I'm 51 years old. You're 27. You have no idea what

1 that would mean. That means the only way you get out of
2 there is when they carry you out in a pine box to bury
3 you. You might get out one time to file -- you know,
4 have a hearing on a post-conviction relief, because often
5 what happens after that, you appeal, you probably would
6 lose that appeal, then you make what they call a
7 post-conviction relief, saying, Oh, you know, my lawyer
8 did a bad job.

9 Well, I'm telling you that your lawyer didn't
10 do a bad job, your lawyer did a good job, and you would
11 have been unsuccessful in that, in my opinion, the net
12 result of which you very likely would spend the rest of
13 your life in prison, and you would be doing that starting
14 this afternoon, that one of these days you would sober up
15 to it.

16 You're going to sober up here in the next few
17 hours to few days and realize, I've got a long stretch
18 ahead of me, and it's not going to be easy. I don't mean
19 to in any way, shape, or form suggest that it would be,
20 but you only had two decisions to make, and both of them
21 are bad, and the likelihood of you walking out with a not
22 guilty verdict was almost zero. You never know what a
23 jury is going to do, but I'm telling you, it was
24 approaching zero that you would have gotten not convicted
25 of this, so your choice then becomes, well, do I take

1 this offer, which means a lot of prison time, or do I
2 risk life without parole?

3 Well, I can't fault you at all for making
4 this decision. I would have done the same thing. I
5 wouldn't have liked it, just like you don't like it, but,
6 you know, you live with the consequences of our actions,
7 and that is the position you find yourself in today, and
8 I hope that you reflect on that because the result is
9 you're going to get out of jail here probably, you know,
10 in your early 40's, and you're going to have the
11 possibility of putting back a life together, starting
12 over, that you can work on a relationship with family,
13 you can work on trying to find a job and a skill, and you
14 can become a member of society and community outside of
15 prison walls.

16 Because if you didn't take this plea, then
17 you wouldn't be doing that. You would just be trying to
18 figure out how to your survive the rest of your natural
19 life in prison. That, my friend -- I have no idea how to
20 get my head around that, so all I could say to you was
21 good luck on that. So I'm going to sentence you to 20
22 years on the two trafficking charges, but I'll give you a
23 year on the marijuana charge.

24 They'll all run concurrent. They'll give you
25 credit for the time that you've served, and I wish you

1 the best of luck. Good luck to you. Do you have any
2 idea what the day count is?

3 MR. BISHOP: I believe it's almost ten
4 months, approximately ten months.

5 THE COURT: If you'll give me an exact day,
6 I'll write it down.

7 MR. BISHOP: August of last year.

8 THE COURT: Okay. See if we can figure it
9 out. I'll put it down; otherwise, you might not get all
10 the credit you're entitled to. We'll get that.

11 MR. BISHOP: If you give me a minute, I'll do
12 that. Thank you very much.

13 - - -

14 (Whereupon, the proceedings were concluded.)

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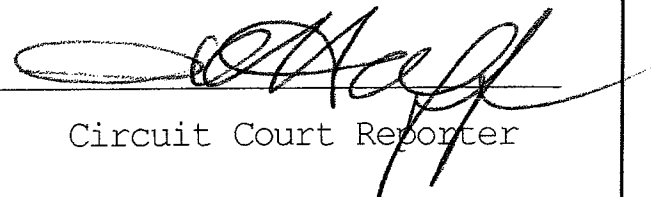
24

25

I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Berkeley County, South Carolina, on the 14th of June 2011.

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

May 3, 2012

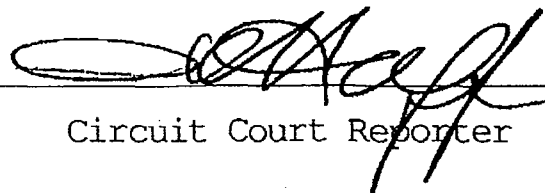


Circuit Court Reporter

I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Berkeley County, South Carolina, on the 14th of June 2011.

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

May 3, 2012



Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)
County of Berkeley)

IN THE COURT OF COMMON PLEAS

2012-CP-08-541

Dustin Williams #296021)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2012 FEB 20 PM 3:53
CLERK OF COURT
SOUTH CAROLINA

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Institution
2. Name and location of Court which imposed sentence General Sessions ; Berkeley County
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) 2011-GS-08-0483 ; Trafficking in cocaine

20

- (b) _____
- (c) _____

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

- (a) June 14, 2011 ; twenty (20) years
- (b) _____
- (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty Yes
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

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

No

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

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

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

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

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

(c) the date of each such result:

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

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

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

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

- (a) I expressly informed counsel to appeal, but he did not

- (b) _____
- (c) _____

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

- (a) Sixth Amendment Violation
- (b) Fourteenth Amendment Violation
- (c) _____

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

- (a) Ineffective Assistance of Counsel in failing to appeal
- (b) Guilty Plea was unknowingly & involuntary made
- (c) _____

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

- (a) any petition in a State Court under South Carolina Law? No
- (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. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. _____
 - iii. _____

- iv. _____
- (c) the disposition thereof:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (d) the date of each such disposition:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____

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

No

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

- (a) which grounds have been presented:
 - i. N/A
 - ii. _____
 - iii. _____
- (b) the proceedings in which each ground was raised:
 - i. N/A
 - ii. _____
 - iii. _____

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

(a) Counsel failed to file notice of appeal

(b) _____

(c) _____

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

(a) your arraignment and plea? Yes

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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. George B. Bishop, Jr. ; 223 E. Main St.
P.O. Box 848, Moncks Corner, SC 29461

ii. _____

iii. _____

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

i. Trial, Plea, Sentencing

ii. _____

iii. _____

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

New trial

Preserve my right to amend PCR application to vacate conviction and sentence

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Ridgeville)

VERIFICATION

FILED
2012 FEB 20 PM 3:55
CLERK OF COURT
SOUTH CAROLINA

I, Dustin Williams, 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.

Dustin Williams

SWORN to and subscribed before me this 26th day of January, 2012.

Sylvia Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2018

2012-CP-08541

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

I, Dustin Williams, 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.

Dustin Williams
Applicant

FILED
FEB 20 PM 3:53
CLERK OF COURT
DISTRICT OF COLUMBIA

SWORN or affirmed to and subscribed before me this 16th day of January, 2012

Sylva Jones
Notary Public

My Commission Expires: 1/24/2018

2012-CP-08-541

Certificate of Service

2012 FEB 20 PM 3:54
FILED
CLERK OF COURT
BERKELEY COUNTY, SC

The undersigned hereby certify that the cause of this P.C.R. application to be mailed to the Berkeley County Clerk's office this 26th Day of January 2012 by depositing the same in the U.S. mail at Leiber Correctional mailroom.

x: Dustin Williams

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Dustin Williams # 296021)

Plaintiff(s))

vs.)

State of South Carolina)

Defendant(s))

IN THE COURT OF COMMON PLEAS

2012-CP-08-54

CIVIL ACTION COVERSHEET

-CP-

(Please Print)

Submitted By: Dustin Williams

Address: Lieber Corr. Inst.
P.O. Box 205
Ridgeville, SC 29472

SC Bar #: N/A

Telephone #: N/A

Fax #:

Other:

E-mail:

FILED
2012 FEB 20 PM 3:53
CLERK OF COURT
BERKELEY COUNTY, SC

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> Employment (120) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Other (199) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case #
20-CP-_____ <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Assault/Slander/Libel (300) <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Other (399) | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Other (799) | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Driver's License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture-Consent Order (850) <input type="checkbox"/> Other (899) | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Administrative Law Judge (980) <input type="checkbox"/> Public Service Commission (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) |
| <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of-State Depositions (650) <input type="checkbox"/> Sexual Predator (510) | | | |

Submitting Party Signature: Dustin Williams

Date: 1-26-12

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C.A. No. 2012-CP-08-0541
COUNTY OF BERKELEY)	
)	
Dustin Williams,)	
S.C.D.C. No. 296021,)	
)	
Applicant,)	
)	RETURN
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

In response to the post-conviction relief application filed February 20, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Berkeley County Clerk of Court's orders of commitment. The Applicant was indicted at the April 2011 term of the Berkeley County Grand Jury for trafficking in cocaine base (2011-GS-08-0129), trafficking in cocaine 10-28 grams, second offense (2011-GS-08-0483), and possession of marijuana, less than one ounce (2010-GS-08-0128). George B. Bishop, Esquire represented the Applicant.

On June 13, 2011, the Applicant pled guilty and the Honorable Roger M. Young, Sr. sentenced the Applicant to twenty (20) years imprisonment for trafficking in cocaine, twenty (20) years imprisonment for trafficking in cocaine base, and one (1) year imprisonment for possession of marijuana, sentences to run concurrently. Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Berkeley County Clerk of Court regarding the subject convictions and the Applicant's records from the

South Carolina Department of Corrections. The guilty plea transcript will be forwarded upon receipt.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel.
 - a. Failure to appeal.
2. Involuntary guilty plea.
 - b. "Guilty plea was unknownly and involuntary made."

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386

S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Applicant's assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by

showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

When determining issues 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 Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248 (1983).

V.

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

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

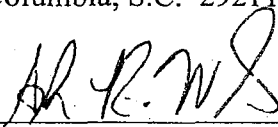
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

ASHLEIGH WILSON
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:



Attorneys for Respondent

June 4, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS

2012-CP-08-0541

DUSTIN WILLIAMS, #296021)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

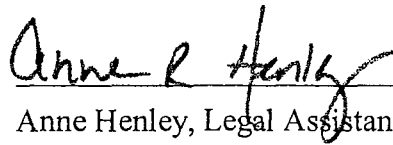
Respondent.)

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:

Joseph Todd Manley, Esquire

Manley Law Firm, LLC
PO Box 1105
Moncks Corner, SC 29461

DATED this 4th day of June, 2012



Anne Henley, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF BERKELEY) NINTH JUDICIAL CIRCUIT

DUSTIN LAVELLE WILLIAMS,)
)
)

Petitioner,)
)
)

vs.)

Case: 2012-CP-08-0541

STATE OF SOUTH CAROLINA,)
)
)

Respondent.)

ORIGINAL

TRANSCRIPT OF PROCEEDINGS
 POST-CONVICTION RELIEF HEARING
 HEARD BEFORE JUDGE KRISTI HARRINGTON
 ON OCTOBER 1, 2012

ROLAYNE M. VOLPE, CCR, RPR
 Court Reporter for the State of South Carolina at Large
 Post Office Box 342
 Summerville, South Carolina 29484

A P P E A R A N C E S

For the Respondent:

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South Carolina Comm. on Indigent Defense
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Columbia, South Carolina 29201
(803) 734-1330

For the Petitioner:

MATTHEW HALVERSTADT
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P.O. Box 1105
Moncks Corner, South Carolina 29461
(843) 761-7280

Reported by:
ROLAYNE M. VOLPE, CCR, RPR

Post-Conviction Relief Hearing
Dustin Williams versus State of South Carolina

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Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

Post-Conviction Relief Hearing
Dustin Williams versus State of South Carolina

1 for?

2 MR. HALVERSTADT: He feels he was somewhat
3 coerced into -- to entering his plea, as well as he
4 feels there was ineffective counsel and a failure to
5 appeal on his behalf, your Honor.

6 THE COURT: All right. And you are prepared to
7 go forward on those grounds, Ms. Wilson?

8 MS. WILSON: Yes, your Honor.

9 THE COURT: All right. And were there
10 additional grounds alleged in the application?

11 MS. WILSON: No, your Honor. Just failure to
12 file an appeal.

13 THE COURT: All right. Thank you.

14 And, Mr. Williams, you understand that you
15 received a 20-year concurrent sentence; is that correct?

16 THE PETITIONER: Yes, ma'am.

17 THE COURT: And you were charged with
18 trafficking in cocaine base, second offense, which
19 carried a maximum of 30 years; do you understand that?

20 THE PETITIONER: Yes, ma'am.

21 THE COURT: You were also sentenced -- or pled
22 guilty to trafficking in cocaine, second offense, which
23 also carried 30 years; you understand that?

24 THE PETITIONER: Yes, ma'am.

25 THE COURT: Both of those offenses carried a

Reported By:

Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

Post-Conviction Relief Hearing
Dustin Williams versus State of South Carolina

1 minimum of five years; you understand that?

2 THE PETITIONER: Yes, ma'am.

3 THE COURT: And you were also -- you also pled
4 on the possession of marijuana, and you were given a
5 sentence, which was the maximum, up to one year; do you
6 understand that?

7 THE PETITIONER: Yes, ma'am.

8 THE COURT: If you were given the maximum
9 sentence on the all of those offenses, you faced a
10 potential of 61 years; do you understand that, sir?

11 THE PETITIONER: Yes, ma'am.

12 THE COURT: And what I understand is there was
13 a life without parole notice that was filed; is that
14 correct?

15 MS. WILSON: Yes, your Honor, that's correct.

16 THE COURT: And so, Mr. Williams, it's
17 important that you understand, should I grant your
18 request for post-conviction relief, you go back to
19 square one. You go back and the life without parole
20 notice will be implemented; do you understand that, sir?

21 THE PETITIONER: Yes, ma'am.

22 THE COURT: So you are facing 20 years, which
23 is less than the maximum Judge Young could have imposed
24 upon you, but should I grant your post-conviction relief
25 request, you're still facing life without the

Reported By:

Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

Post-Conviction Relief Hearing
Dustin Williams versus State of South Carolina

1 possibility of parole; do you understand that, sir?

2 THE PETITIONER: Yes, ma'am.

3 THE COURT: Is it your desire to go forward
4 with this application at this time?

5 THE PETITIONER: Yes, ma'am.

6 THE COURT: All right. Mr. Halverstadt, did
7 you explain the potential consequences and the benefit
8 of going forward here today?

9 MR. HALVERSTADT: I did, your Honor.

10 THE COURT: All right. And he understood all
11 of that?

12 MR. HALVERSTADT: He indicated to me he did,
13 your Honor.

14 THE COURT: All right. Call your first
15 witness.

16 You may have a seat, Mr. Williams.

17 MR. HALVERSTADT: Call Dustin Williams to the
18 stand.

19 THE COURT: All right. Mr. Williams, come
20 forward and be sworn.

21 (The oath is administered by the Deputy Clerk
22 of Court, and the Defendant answers as follows:)

23 THE PETITIONER: Yes, ma'am.

24 THE DEPUTY CLERK OF COURT: Please be seated.

25 State your full name for the record, and please

Post-Conviction Relief Hearing
Dustin Williams versus State of South Carolina
Direct Examination of Mr. Williams by Mr. Halverstadt

1 spell your last name.

2 THE PETITIONER: Dustin Lavelle Williams.

3 THE DEPUTY CLERK OF COURT: Your full name and
4 spell your last name.

5 THE PETITIONER: Dustin Lavelle Williams,
6 W-i-l-l-i-a-m-s.

7 MR. HALVERSTADT: May it please the Court, your
8 Honor?

9 THE COURT: Yes, sir.

10 DUSTIN LAVELLE WILLIAMS,

11 having been first duly sworn by the Deputy Clerk of
12 Court to tell the truth, the whole truth, and nothing
13 but the truth, was examined and testified upon his oath
14 as follows:

15 DIRECT EXAMINATION

16 **BY MR. HALVERSTADT:**

17 Q Dustin, how long -- the Judge already asked,
18 but how many years are you sentenced to?

19 A Twenty years.

20 Q And you understand the purpose of today's
21 hearing?

22 A Yes, sir.

23 THE COURT: I'm going to have you -- you're
24 going to need to speak loudly, sir.

25 THE PETITIONER: Yes, sir [sic].

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Official Court Reporter for the State of South Carolina

Post-Conviction Relief Hearing
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1 THE COURT: Thank you.

2 Q (By Mr. Halverstadt) If this Court grants your
3 PCR relief today, what is it you're hoping to gain from
4 that?

5 A To vacate my sentence and my trial.

6 THE COURT: Okay. You're going to have to
7 speak loudly. Do you understand what that means, sir?
8 I can't hear you.

9 THE PETITIONER: I said to vacate my sentence
10 and to retry me.

11 THE COURT: She's going to move that microphone
12 closer to you.

13 Thank you.

14 THE PETITIONER: Vacate my sentence and retry
15 me.

16 Q (By Mr. Halverstadt) All right. So that you
17 would have a new trial set for -- instead of -- instead
18 of what you currently pled to and the time you're
19 currently sentenced to?

20 A Yes, sir.

21 Q All right. At the time of your trial or the
22 time that your criminal matter went forward, what all
23 took place?

24 A Excuse me? Can you say that again?

25 Q At the time that your criminal matter went

Post-Conviction Relief Hearing
Dustin Williams versus State of South Carolina
Direct Examination of Mr. Williams by Mr. Halverstadt

1 forward, what all took place?

2 A At my trial?

3 Q Yes, sir.

4 A Well, I -- I -- I pleaded -- I pleaded before
5 my trial.

6 Q Okay. Did you select a jury?

7 A Yes, sir.

8 Q After the selection of jury, what took place?

9 A We had a suppression hearing.

10 Q That suppression hearing was about what?

11 A The -- the evidence being -- being suppressed.

12 Q Okay. And what evidence would that have been?

13 A Drugs.

14 Q And you were charged, obviously, with -- with
15 three different drug offenses?

16 A Yes, sir.

17 THE COURT: Sir, if you want -- wish to have a
18 record of this hearing, I'm going to need you to speak
19 loudly and clearly. If you wish for me not to hear
20 anything that you say, you can continue speaking the way
21 that you are. Do you understand?

22 THE PETITIONER: Yes, ma'am.

23 THE COURT: Thank you.

24 Q (By Mr. Halverstadt) And you -- you were
25 seeking in that suppression hearing to have all evidence

Post-Conviction Relief Hearing
Dustin Williams versus State of South Carolina
Direct Examination of Mr. Williams by Mr. Halverstadt

1 regarding those drugs suppressed?

2 A Yes, sir.

3 Q As a result of that suppression hearing,
4 what -- what took place?

5 A It was -- it was denied. The suppression
6 hearing was denied.

7 Q Therefore, the Judge ruled in favor of the
8 State?

9 A Yes, sir.

10 Q After that suppression hearing, that was the --
11 if I'm not mistaken, that was after you selected the
12 jury and suppression hearing, that was held on the first
13 day of your trial?

14 A Yes, sir.

15 Q That concluded late one afternoon?

16 A Yes, sir.

17 Q And you came back the following day to start
18 your trial?

19 A Yes, sir.

20 Q Prior to that trial or the actual testimony
21 of witnesses before the jury taking place, what -- what
22 took place?

23 A Let's see -- I don't understand. I don't
24 understand.

25 Q Prior to the State calling their first witness

Post-Conviction Relief Hearing
Dustin Williams versus State of South Carolina
Direct Examination of Mr. Williams by Mr. Halverstadt

1 against you, did you plead guilty?

2 A No, sir.

3 Q You never pled guilty in your initial criminal
4 matter?

5 A Yeah, yeah, I did plead guilty.

6 Q Okay. And did that take place before or after
7 you had your suppression hearing?

8 A After.

9 Q Okay. So after the suppression hearing was
10 held but prior to your actual trial commencing, *i.e.*,
11 when -- when you would have had a jury in the -- in the
12 jury box over here hearing all the testimony, before
13 that actually took place, did you decide to plead
14 guilty?

15 A No, sir.

16 Q Sir?

17 A I didn't -- I didn't understand what you said,
18 to tell you the truth.

19 Q On the first day of your criminal trial, you
20 selected a jury; correct?

21 A Yes, sir.

22 Q That was the first -- was that the first thing
23 that took place?

24 A Yes, sir.

25 Q And after the selection of that jury, what was

Post-Conviction Relief Hearing
Dustin Williams versus State of South Carolina
Direct Examination of Mr. Williams by Mr. Halverstadt

1 the second thing that took place?

2 A We had a suppression hearing.

3 Q And as a result of that suppression hearing,
4 you testified to the fact that the Judge ruled in favor
5 of the State and you were denied that -- that
6 suppression hearing; correct?

7 A Yes, sir. Yes, sir.

8 Q After that, you were set to have a full trial
9 where the jury was going to make a decision for you;
10 correct?

11 A Yes, sir.

12 Q Prior to the State calling their first witness,
13 did you decide to plead guilty?

14 A Yes, sir.

15 Q At the time that you made that decision, why
16 did you make that decision to plead guilty?

17 A I made the decision because my lawyer said it
18 was best to me -- I lost my suppression hearing so he
19 didn't think I would be -- beat this at trial.

20 Q Okay. And did you feel forced into that?

21 A Yes, sir.

22 Q How did you feel forced into that?

23 A Because I didn't really have no time to really
24 think of what, really. I was going to go to trial until
25 he advised me that I should take the plea. And he

Post-Conviction Relief Hearing
Dustin Williams versus State of South Carolina
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1 called my family in the back to talk about it, and I
2 just -- I took the plea.

3 Q Okay. When you pled, were you under the
4 impression that anything else would take place?

5 A For a -- an appeal for my hearing, the
6 suppression hearing.

7 Q Okay. So you're telling me today that you
8 believe you were going to have an appeal of your
9 suppression hearing?

10 A Yes, sir.

11 Q Even though you had already pled guilty in the
12 matter?

13 A Yes, sir.

14 Q Why did you feel that an appeal was going to
15 take place?

16 A I asked Mr. Bishop -- I don't know if -- I
17 can't really say that he said he was going to put -- do
18 an appeal, or we had -- I could have put in for appeal,
19 but I didn't know that. I was supposed to put in for
20 appeal myself. I thought -- I left that to my lawyer to
21 put in an appeal.

22 Q Okay. So you and Mr. Bishop did discuss the
23 possibility of an appeal?

24 A Yeah. But he didn't -- yeah.

25 Q And at the conclusion of that discussion, what

Post-Conviction Relief Hearing
Dustin Williams versus State of South Carolina
Direct Examination of Mr. Williams by Mr. Halverstadt

1 did you believe would have taken place?

2 A He was going to put in for an appeal.

3 Q And to your knowledge, he did not make an
4 appeal on your behalf?

5 A No, sir.

6 Q Because no appeal was taken -- or because no
7 appeal was made, have you lost your right now to -- to
8 make an appeal?

9 A Yes, sir.

10 Q Okay. Is it that failure to make an appeal on
11 your behalf that you believe Mr. Bishop was ineffective?

12 A Yes, sir.

13 Q Is there anything in addition to him failing
14 to -- to make an appeal on your behalf that -- in -- in
15 which you feel he was ineffective in doing?

16 A No, sir.

17 Q Was Mr. Bishop a court-appointed attorney for
18 you, or did you pay him?

19 A I paid him.

20 Q All right. If your suppression hearing had
21 been successful, do you think you would have pled
22 guilty?

23 A No, sir.

24 Q All right. So is that what you would have been
25 appealing or believe that you would have had a right to

Post-Conviction Relief Hearing
Dustin Williams versus State of South Carolina
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1 appeal?

2 A Yes, sir.

3 Q And it's your testimony here today that you
4 believed Mr. Bishop was going to do that on your behalf?

5 A Yes, sir.

6 Q And that failure, once again, was the reason as
7 to why he was ineffective as to your attorney?

8 A Yes, sir.

9 Q Once again, if there is any other additional
10 information as to why he's ineffective, could you inform
11 the Court of that?

12 A No, sir.

13 Q Earlier though, you did say that you did plead
14 guilty at -- you know, just prior to -- to your actual
15 trial taking place; correct?

16 A Yes, sir.

17 Q Is there any reason -- can you explain to the
18 Court why you pled guilty at that point when, in
19 actuality, you did not want to plead guilty?

20 A No, sir. I just -- I felt pressured into
21 taking the plea.

22 Q Okay. Why were you pressured into taking that
23 plea, or why did you feel pressured in taking that plea?

24 A Because my family. Mr. Bishop, he advised me
25 it'd probably be the best thing for me to do.

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1 Q How much time did you have to -- to make this
2 decision?

3 A Probably 30 minutes --

4 Q Okay.

5 A -- at the most. I don't know exactly how long
6 it was, but --

7 Q So the conversation that you had with
8 Mr. Bishop and your family was on the morning that you
9 pled guilty?

10 A Yes, sir.

11 Q And all of that took place within a 30-minute
12 to an hour-long window prior to you pleading guilty?

13 A Yes, sir.

14 Q And due to that lack of amount of time,
15 you felt like you were somewhat pressured into and,
16 therefore, involuntarily made that plea?

17 A Yes, sir.

18 MR. HALVERSTADT: No further questions, your
19 Honor.

20 THE COURT: Ms. Wilson?

21 MS. WILSON: May it please the Court?

22 **CROSS-EXAMINATION**

23 **BY MS. WILSON:**

24 Q Mr. Williams, how many times did you meet with
25 your attorney before you proceeded to trial and then

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1 later pled guilty?

2 A Maybe four or five times.

3 Q And do you recall him reviewing the discovery
4 that he received from the State on your case; did he
5 review that with you?

6 A Yes, ma'am.

7 Q And did he discuss any possible defenses or
8 trial strategies that he could present at your trial?

9 A Yes, ma'am.

10 Q Did you give him any leads or witnesses or
11 anybody to investigate?

12 A I did have a witness, but at the time, I had
13 a pending charge against her. He said it probably
14 wouldn't be in the best interest to use her in the
15 trial.

16 Q And did you discuss with Mr. Bishop the plea
17 offer that was extended to you after your trial began?

18 A I'm not sure.

19 Q Okay. I'll ask you again.

20 Did you talk to Mr. Bishop about the plea offer
21 before you pled guilty?

22 A Yes, ma'am.

23 Q And do you recall telling the Judge during your
24 plea proceeding that you wished to plead guilty?

25 A Yes, ma'am.

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1 Q And do you recall telling the Judge that you
2 were guilty?

3 A Yes, ma'am.

4 Q And do you recall waiving your constitutional
5 rights to proceed to trial and to cross-examine your
6 witnesses and things of that nature when you pled
7 guilty?

8 A Yes, ma'am.

9 Q And so you've testified today that trial
10 counsel advised you of the substance of the plea, that
11 you could plead guilty, and he thought it was in your
12 best interest; is that correct?

13 A Yes, ma'am.

14 Q And so based off that information, it was your
15 decision to plead guilty?

16 A Uh-huh.

17 Q And you also testified that you were influenced
18 by your family members to plead guilty?

19 A Yeah.

20 THE COURT: Was that a yes?

21 THE PETITIONER: Yes, ma'am.

22 Q (By Ms. Wilson) And you also testified that
23 you discussed an appeal with your attorney, Mr. Bishop?

24 A Yes, ma'am.

25 Q And did you ever tell him to file an appeal on

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1 your behalf?

2 A Well, from my understanding, I thought it
3 was -- my lawyer was supposed to put in a -- file an
4 appeal.

5 Q But you never asked him to file an appeal?

6 A I thought I did. I think I did. Yeah. I know
7 we talked about an appeal after I got sentenced. That I
8 plead guilty.

9 Q So he advised you of your right to appeal,
10 but -- and you never asked him to specifically file an
11 appeal for you?

12 A I thought he was supposed to do it because he
13 was my lawyer.

14 Q So is that a yes or no?

15 A Yes.

16 Q And you're saying today that he would -- you
17 would not have pled guilty and you would have proceeded
18 to trial?

19 A Yes, ma'am.

20 Q And you would have proceeded to trial despite
21 the fact that you were facing life without the
22 possibility of parole?

23 A Yes, ma'am.

24 MS. WILSON: No further questions, your Honor.

25 THE COURT: Mr. Halverstadt?

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Redirect Examination of Mr. Williams by Mr. Halverstadt

1 MR. HALVERSTADT: Please the Court?

2 **REDIRECT EXAMINATION**

3 **BY MR. HALVERSTADT:**

4 Q Dustin, real quick, a moment ago you said
5 that you believed or you thought that you had asked
6 Mr. Bishop to make an appeal on your behalf. And you
7 also said, Yes, I don't recall having asked him to make
8 an appeal on my behalf.

9 So for clarification purposes, do you believe
10 you did ask him to make an appeal on your behalf?

11 A I asked him. But I just didn't know if that
12 was in my interest -- that I had to put it in for the
13 appeal myself. He's my lawyer. I figured that he would
14 have to do that.

15 Q So your testimony here today, though, is that
16 you believe you did ask him to make that appeal on your
17 behalf?

18 A Yes, sir. Yes, sir.

19 MR. HALVERSTADT: No further questions, your
20 Honor.

21 MS. WILSON: Nothing from the State, your
22 Honor.

23 THE COURT: You may step down. Thank you.
24 Call your next witness.

25 MR. HALVERSTADT: We rest, your Honor.

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Direct Examination of Mr. Bishop by Ms. Wilson

1 THE COURT: State have any witnesses?

2 MS. WILSON: Yes, your Honor. The State will
3 call Mr. Bishop, George Bishop.

4 THE COURT: I'm assuming you didn't have any
5 motions at the close. Do you have any?

6 MS. WILSON: No, your Honor.

7 THE COURT: Oh, thank you.

8 (The oath is administered by the Deputy Clerk
9 of Clerk, and the witness answers as follows:)

10 THE WITNESS: I do.

11 THE DEPUTY CLERK OF COURT: State your full
12 name for the record, and please spell your last name.

13 THE WITNESS: My name is George Bishop, Jr.,
14 B-i-s-h-o-p.

15 **GEORGE BISHOP, JR.,**

16 having been first duly sworn by the Deputy Clerk of
17 Court to tell the truth, the whole truth, and nothing
18 but the truth, was examined and testified upon his oath
19 as follows:

20 **DIRECT EXAMINATION**

21 **BY MS. WILSON:**

22 Q Mr. Bishop, how long have you been practicing
23 law?

24 A Since 1984.

25 Q And has the majority of that time in your

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1 practice been in criminal law?

2 A I think all of it has been -- on one side or
3 the other has been involved in criminal law.

4 Q And you testified that you were retained in
5 this case?

6 A I was.

7 Q And how many times did you meet with the
8 Applicant prior to a trial?

9 A When you asked him that question, I was
10 thinking about it. I -- I don't really know the right
11 answer. He was incarcerated, and I know I went to the
12 jail fairly frequently. But to put a number on it,
13 I'm -- I'm afraid to do that. At least five; probably
14 less than ten.

15 Q And did you file a Brady or Rule 5 motion on
16 the Applicant's behalf?

17 A I did.

18 Q And --

19 A Both.

20 Q Both? Okay.

21 And did you review the discovery material that
22 you received with the Applicant?

23 A I did.

24 Q And can you kind of tell the Court the
25 substance of some of the items that you received in the

Post-Conviction Relief Hearing
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1 discovery packet?

2 A Well, we got all of the police reports that
3 were applicable to the case, the drug -- the chain of
4 evidence reports, the lab results, so forth and so on.
5 It -- there were several statements from various
6 witnesses who were in the locale that had some input on
7 ultimately this charge being made. I -- I -- whatever I
8 got from the Solicitor, I copied and I reviewed with
9 Dustin at length several -- more than several times --
10 with Mr. Williams at length.

11 Q And prior to trial, did you discuss with the
12 Applicant the elements of the charges -- the drug
13 charges against him and what the State was required to
14 prove?

15 A I did. And what was particularly of concern
16 in this case, he had been formerly noticed with life
17 without parole by the Solicitor handling the case.
18 Obviously, that required some explanation. I wanted to
19 make sure that he understood the ramifications and what
20 that meant and what it -- that it wasn't just a threat.
21 I mean, it was done. And he was a legitimate candidate
22 based on his record to -- if he were convicted as
23 charged, he was going to go to prison for life without a
24 chance of getting out. And I thoroughly made -- I made
25 sure that he understood that.

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1 Q And did you discuss with the Applicant his
2 versions of fact -- of the facts or how they were
3 different from the State's version of the facts?

4 A I did. And, you know, based on the -- based on
5 my read of the witness statements and what I anticipated
6 various witnesses would testify, there weren't -- there
7 wasn't a real big difference, frankly, between what
8 the -- what the State would allege, that I anticipated
9 through witnesses, and what Dustin -- and what
10 Mr. Williams was telling me.

11 There was some question as to the -- he
12 asserted some questions in discussions with me about the
13 possession of or ownership or use of the vehicle in
14 which drugs were ultimately found. But, you know, the
15 evidence was going to be pretty clear he had possession
16 of the car, and that would -- that would certainly lend
17 itself, if not having direct knowledge -- if his
18 position was, I had the car, but I didn't know what was
19 in it, I mean, there was certainly an argument of
20 constructive possession, and all these tangents -- you
21 know, these tangents that the State -- that the State
22 can go down. And I just -- you know, when you are
23 sitting on the seat looking at life without parole, I
24 mean, I've got to advise him of all that and pay
25 attention to all of that and look at it, perhaps, in the

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1 worst light scenario, which I did.

2 Q And did you also discuss with him possible
3 defenses?

4 A I did.

5 Q Can you briefly characterize the facts against
6 the -- the State's evidence against the Applicant?

7 A And this -- this is -- this is off the top of
8 my head. I have my file here. And I -- and I can't
9 recite dates when things happened.

10 But, generally, the case came about as a
11 result of -- this was at a night -- this was -- he was
12 ultimately charged and arrested in the parking lot that
13 was under the leasehold or direct control of a night
14 club in the lower end of Berkeley County. And
15 one of the patrons had reported to a security guard
16 that -- that someone fitting Dustin's -- Mr. Williams'
17 description had brandished around a firearm.

18 By the time the security guards got to the
19 patron who had made that allegation, he was not there.
20 But there were some other, I think, witnesses who said
21 he just left in such-and-such a car. And the security
22 guard stopped him while on the premises in a parking lot
23 over which they had direct authority and control. It
24 was part of the -- part of the night club's property by
25 way of a lease. And they -- and the security guards

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1 involved had direct involvement with that parking lot.

2 They stopped him, or confronted him. He was in
3 near proximity to the car. They asked him, as I
4 recall -- again, I'm going from memory -- but I believe
5 there -- they asked him about the automobile and a gun.

6 And he said, I don't -- you know, I don't have
7 a gun. Look in the car.

8 So he gave them at that point consent to
9 search. They looked in the vehicle. As I recall the
10 testimony in the suppression hearing, one of the -- one
11 of the officers, I believe, found some marijuana -- said
12 she found some marijuana under the floor mat, or in the
13 floorboard, and ended up finding a container. It was
14 either in the center console or the glove box. I'm not
15 sure. I think it was the center console. And in the
16 container were trafficking quantities of mari- -- of
17 cocaine, cocaine base, crack, and maybe some other types
18 of controlled substances.

19 That led to highway patrol being summoned, and
20 he was arrested on the premises, and, ultimately,
21 charged with trafficking cocaine base, trafficking
22 powder cocaine, and PWID, I think, marijuana, all of
23 which were third or higher offenses, which made him
24 eligible for the life without parole.

25 Q And how did -- were you prepared to proceed at

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1 trial on the Applicant's behalf?

2 A We were in trial. I mean, we picked the jury
3 on the 13th of June, 2011. And we dealt with the
4 suppression hearing -- I think we might have picked the
5 jury after lunch and dealt the suppression hearing the
6 remainder of that afternoon. It was -- I mean, it was a
7 four- or five-witness hearing, couple of hours probably,
8 maybe. Maybe that long.

9 And Judge Young ultimately ruled against us.
10 I'm still not sure that he called it right. But he --
11 but I think he -- he ruled against us on the -- the
12 issues were this: I alleged that the security guards
13 were law enforcement officers subject to the Fourth
14 Amendment, and they should have gotten a warrant, the --
15 the scope of the authorized search was exceeded by
16 looking in the medicine bottle or whatever it was.

17 Ultimately, the -- Judge Young ruled one of two
18 things. The second thing, I think, is what really got
19 me. But he ruled that the security guards were private
20 individuals, as the State had taken the position that
21 they were, and were not subject to the Fourth Amendment;
22 and in any event, Dustin had given consent to search and
23 had not limited it. So it was not good news after that
24 hearing.

25 Q Okay. After your -- after the Applicant's

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1 suppression hearing ended, did you enter plea
2 negotiations with the State on the Applicant's behalf?

3 A Well, all of that took place on the 13th. And,
4 you know, it was late in the day. We just broke and --
5 and left.

6 We came back the next morning. I mean, we
7 were seating the jury, and they were in the jury room.
8 We were going to start the case.

9 Judge Young -- you know, we -- we pretrialed a
10 couple of things with Judge Young in chambers. And to
11 make a long story short, I was able to at, in that
12 process, basically beg the Solicitor to get off of this
13 life without parole. There had been an offer prior to
14 the trial to let him plead guilty to trafficking, second
15 offense, and she had an offer of 18 years on the table.
16 I mean, Dustin -- we were all aware of that going into
17 the trial. And I -- I begged her to try to get back to
18 that point. The Judge -- you know, I mean, he -- he
19 didn't -- he didn't get in the way of it. So I don't
20 want to say he helped me, but, I mean, he certainly --
21 he didn't -- he didn't tell me to just get out and try
22 the case. And so I think that that was a good
23 discussion in chambers.

24 Ultimately, the Solicitor agreed. She voiced
25 some concern about the -- the -- you know, what -- she

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1 had already offered 18, that if she did it, it would be
2 without any recommendation. And so that's the way we
3 had it on the table, that she would agree to take a plea
4 as a second offense, and that she would not make a
5 recommendation or negotiate the 18 years.

6 I'm getting ahead of myself, but anyway.

7 Q And once you left chambers, you discussed that
8 offer that you were able to secure the Applicant with
9 the Applicant?

10 A What happened after that -- well, I mean, when
11 I was armed with that information, I asked the Court for
12 leave to take Dustin -- and there were two -- there were
13 two or three young ladies -- family members. I think
14 -- I'm not -- I don't remember who they were, sisters or
15 someone, and -- and he's got a fiancée out at Rion. I'm
16 not sure whether she was present or not. I don't
17 remember. But I know his family members were there.
18 And asked the Court for leave to go in this jury -- the
19 old jury room, this room right behind that wall.

20 And we were in there. I mean, I'm -- we're
21 sitting here. A jury's waiting in a jury room, the
22 trial's ready to proceed, and he gave me 30 minutes or
23 more to thoroughly go over things with Dustin, which I
24 did, with his family. After that process, he decided
25 that he would plead guilty.

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1 I had indicated to him that I thought that his
2 sentence would be somewhere around where it was. I
3 think I even told him, I think you're going to probably
4 get somewhere around 20, maybe 22 years. I think I put
5 it 18 to 22 years is probably what he's looking at. I
6 didn't -- I didn't really know. And, you know, he pled.

7 Q And when he pled guilty, it's your
8 understanding that it was his decision to plead guilty?

9 A I mean, I didn't plead guilty; he pled guilty.
10 And he did that certainly with my advice. I advised him
11 then, I would advise him today if -- if I had to do it
12 again, to do just what we did. I mean, he was -- he was
13 about three hours away from spending the rest of his
14 life in prison because it wouldn't have taken long to
15 finish this trial.

16 Q And did you ever threaten or coerce the
17 Applicant to plead guilty?

18 A Never did.

19 Q And after he indicated that he wanted to plead
20 guilty, did he ever go back and say that he wanted to go
21 to trial?

22 A No. I mean, we -- like I said, we were back
23 there 30 minutes. He came out. I think the record's
24 pretty clear. I mean, he -- you know, he pled guilty.

25 And it -- either back -- and I'm pretty sure I

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1 did it both places. But in the jury room, I -- I try to
2 tell clients about their appellant rights, this, that,
3 and the other. Of course, it made no sense to discuss a
4 whole lot about an appeal if he -- you know, if he
5 wasn't going to plead, then we would have tried the
6 case.

7 I did make him clear that by going -- by
8 pleading guilty, that he's waiving any challenge to the
9 search at that time. That -- that he's waiving any of
10 that by pleading guilty. All that's water under the
11 bridge and would not be an issue that we could deal with
12 after the plea and after the sentence.

13 I walked back to the bullpen, and again
14 reiterated to Mr. Williams that he could even appeal
15 this process of the plea, but that, in my opinion, would
16 serve no purpose. And I explained to him, more likely
17 than not, when he gets wherever he's going, he will file
18 a PCR; and just let me know what he needs when he gets
19 wherever he is, and I'll send him whatever records I
20 have.

21 And that -- months later, I got a letter from
22 him along that line, so. . .

23 Q Okay. So you didn't -- after you advised him
24 the second time, he never indicated that he wanted --
25 wanted to appeal?

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1 A There was no -- there was no desire to plea --
2 to appeal as there was -- in my view, then and now,
3 there was really nothing to appeal at that point in time
4 because he had pled and waived his -- whatever rights
5 that may have been preserved otherwise.

6 And we would have finished -- you know, if he
7 wasn't going to plead, we would have finished the trial.

8 MS. WILSON: Nothing further.

9 THE COURT: Mr. Halverstadt?

10 MR. HALVERSTADT: If I could have a minute,
11 your Honor, to talk to my client?

12 THE COURT: Take your time.

13 (Mr. Halverstadt speaks with his client off the
14 record.)

15 **CROSS-EXAMINATION**

16 **BY MR. HALVERSTADT:**

17 Q May it please the Court.

18 Mr. Bishop, you indicated that the suppression
19 hearing took several hours, is that -- the afternoon the
20 jury was selected?

21 A I'm thinking it took a couple of hours.

22 Q And I believe you also indicated that you felt
23 it was a close call, at least?

24 A I did.

25 Q And then maybe --

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1 A Still feel that way. But I think -- in
2 hindsight, I think the Judge hit it, but I didn't at the
3 time.

4 Q In hindsight, you think the Judge hit it, but
5 you didn't at the time. Why did you not think he did at
6 the time?

7 A Well, because I really believed that -- I
8 really believed that a private security guard on the
9 locale on which he is hired to do his job statutorily
10 is -- does have the status of a police officer. And I
11 think there's case law to support that. I had submitted
12 what little case law I could find on that. And
13 to -- to -- and I just think I was right on that issue,
14 you know.

15 But I think the Judge was right. It was
16 a -- it was a consent to search. I mean, Mr. Williams
17 had indicated to me that he told them, I don't have a
18 gun. Look.

19 Gave them consent to search. So, I mean, I
20 think it was all for naught. Even if I was right on
21 the -- even if I was right about the status as a private
22 security guard having law enforcement status, they were
23 given consent to search, which they did, and there
24 was -- you know, the -- the Judge's call was that there
25 was no limitation made on the search.

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1 And I didn't think it was in Dustin's best
2 interest to be figuring that out looking at life -- you
3 know, serving life without parole.

4 Q Okay. So --

5 A So I don't know the answer to that, ultimately.

6 Q All right. But there was an evening in between
7 the conclusion of the suppression hearing and your
8 meeting the next day in chambers; correct?

9 A That's right.

10 Q Did you discuss the possibility of still going
11 through the trial after -- after the conclusion of the
12 suppression hearing with Dustin?

13 So I guess what I'm asking --

14 A I -- I --

15 Q -- is prior -- prior to the next morning, I
16 believe you said that you and Madam Solicitor were in
17 Judge Young's chambers the next morning --

18 A Right.

19 Q -- first thing?

20 A We were getting some housekeeping things
21 together. Judge Young didn't know this was an LWOP case
22 until that morning, the morning after. Not that that
23 would have made any difference, but he just didn't know.
24 And -- because he was -- he was very surprised. I mean,
25 he was genuinely surprised about that.

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1 And -- and when I saw that surprise, I went --
2 I got on my knees practically and begged the -- not
3 really, but you know what I mean. I kind of laid on
4 Ashley to get back to where we were because she had an
5 offer that would not be life without parole. And she
6 ultimately relented, against probably her better
7 judgment.

8 She -- she agreed to take a plea, as we took,
9 to trafficking coke and powder -- powder cocaine and
10 crack as a second offense, which would take the LWOP out
11 of the equation. But she was specific that she was not
12 negotiating or agreeing as to what the sentence should
13 be.

14 Q But at the conclusion of the suppression
15 hearing, you don't recall whether or not you -- you
16 discussed still moving forward with the trial in this
17 case that evening versus the next morning?

18 A I'm sure I did. But I don't -- I
19 can't remember -- I don't remember the specific. I
20 mean, I really don't remember.

21 Q Okay. So you don't have any recollection as to
22 whether or not y'all discussed moving forward into
23 trial, A, and --

24 A Other than at the table, you know, we'll finish
25 this tomorrow, or we'll start the trial tomorrow. I

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1 don't know whether I went back to the jail that night
2 and talked to him or not. I don't -- I don't remember.

3 Q Did you ever have a conversation with him along
4 the lines of, you know, if we proceed with the trial and
5 you're found guilty, we can make that appeal and make
6 the appeal, at that point, based upon the suppression
7 hearing?

8 A I mean, I did all of that before we got into a
9 trial. I didn't -- I didn't specifically talk to him
10 after the suppression hearing and say, Look, we've
11 lost -- we've lost the hearing. I think the Judge may
12 be wrong, or I don't know if he's right or wrong. We
13 can still try this case and appeal that issue.

14 I don't -- I didn't have, that I recall, that
15 specific of a conversation with him. I talked to him
16 about those kinds of things prior to ever getting over
17 here and drawing a jury: How a trial works, what his --
18 what his rights are, what his appellate rights are. He
19 knew we would have a suppression hearing. I didn't know
20 what the result was going to be until we got here and
21 had it. So, I mean, we've had, in general, those
22 discussions, clearly, before we ever got over here and
23 picked the jury.

24 But if you're asking me, did I go back to him
25 and say, Well, we've lost round one. We can finish this

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1 trial and then appeal that issue, I don't think I had
2 that kind of discussion with him prior to the plea.

3 MR. HALVERSTADT: Okay. No further questions,
4 your Honor.

5 MS. WILSON: None from the State, your Honor.

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

7 THE WITNESS: Thank you. Thank you, ma'am.

8 THE COURT: Call your next witness.

9 MS. WILSON: Nothing further from the State,
10 your Honor.

11 THE COURT: All right. I'll be happy to
12 hear --

13 Do you have any rebuttal?

14 MR. HALVERSTADT: Nothing, your Honor.

15 THE COURT: All right. I'll be happy to hear
16 arguments from you.

17 MR. HALVERSTADT: Thank you, your Honor.

18 If it pleases the Court? As Mr. Williams'
19 application indicates, he strongly believes that there
20 was ineffective counsel in -- in failing to, I guess,
21 properly inform him of his right to appeal. And in
22 having done so -- or in having not been properly advised
23 him of such, your Honor, he believes he was forced
24 into -- to making this plea agreement, you know, being
25 that he had a 30-minute, 45-minute window to make a

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1 decision. And, your Honor, a decision, obviously, that
2 would have affected -- or is affecting the rest -- or a
3 large portion of his life at this point, your Honor.

4 Therefore, once again, we're asking for
5 post-conviction relief, in essence, to vacate that plea
6 and have him -- give him the opportunity to go back to
7 have a new trial, your Honor.

8 THE COURT: With life without parole, which
9 would be the rest of his life? Correct?

10 MR. HALVERSTADT: Correct, your Honor.

11 THE COURT: Okay. All right.

12 MS. WILSON: Briefly, your Honor, the State
13 would request that you deny the Applicant's application
14 for post-conviction relief.

15 Regarding the trial counsel's failure to file
16 or advise the Applicant of its -- of an appeal or, you
17 know, his appellate rights, counsel gave credit --
18 credible testimony that he advised the Applicant two
19 times about his appellate rights. And trial counsel
20 also gave credible testimony today that the Defendant
21 never requested an appeal after he advised him of his
22 appellate rights.

23 With regard to the Applicant's guilty plea
24 being involuntary because he felt coerced, the Applicant
25 testified today that it was his decision to plead guilty

Post-Conviction Relief Hearing
Dustin Williams versus State of South Carolina

1 and that -- that he felt influenced by his family and
2 that he took trial counsel's advice to plead guilty.
3 And he never indicated on the record during his plea
4 proceeding that he felt coerced or threatened. And
5 trial counsel also gave credible testimony that he never
6 threatened or coerced Applicant.

7 And the State requests you deny the
8 application.

9 THE COURT: Anything further?

10 MR. HALVERSTADT: Nothing, your Honor.

11 THE COURT: I'll take the matter under
12 advisement. Counsel, I'll need proposed orders by
13 October 30th at 5:00 p.m.

14 Good luck to you, sir.

15 MR. BISHOP: Thank you.

16 MS. WILSON: Thank you, your Honor.

17 THE COURT: You are excused. Thank you.

18 WHICH WAS ALL THE EVIDENCE ADDUCED AT THIS
19 CAUSE.

20 (The hearing of this cause concluded at
21 2:28 p.m., on October 1, 2012.)

22
23
24
25

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)
)
)
 Dustin Williams, #296021)
)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 2012-CP-08-0541

ORDER OF DISMISSAL

FILED
 2012 NOV -9 PM 2:13
 HARRY P. BROWN
 CLERK OF COURT
 BERKELEY COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed February 20, 2012. The Respondent made its Return on June 4, 2012. An evidentiary hearing into the matter was convened on October 1, 2012 at the Berkeley County Courthouse. The Applicant was present at the hearing and represented by Matthew Halverstadt, 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, George Bishop, Esquire, also testified at the hearing. This Court had before it the guilty plea transcript, the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, 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 Clerk of Court for Charleston County. The Applicant was indicted at the April 2011 term of the Charleston County Grand Jury for trafficking in

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cocaine base (2011-GS-08-0129), trafficking in cocaine 10-28 grams, second offense (2011-CP-08-0483), and possession of marijuana, less than one ounce (2010-CP-08-0128). George Bishop, Esquire, represented the Applicant. The Applicant pled guilty as indicted. On June 11, 2011, the Honorable Roger M. Young, Sr. sentenced the Applicant to confinement for twenty (20) years on each trafficking charge and one (1) year for the possession of marijuana. The sentences were to run concurrently. Applicant did not appeal the plea or sentences.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. Failure to appeal.
2. Involuntary guilty plea.
 - a. Guilty plea was unknowingly and involuntarily made.

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).

The Applicant testified at the evidentiary hearing that he met with counsel four or five times prior to pleading guilty. He testified that he recalls reviewing discovery with counsel and discussing possible defenses. The Applicant testified that he gave his attorney the names of leads

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and potential witnesses to investigate. The Applicant testified that he pled guilty after his motion to suppress was denied prior to trial. The Applicant testified further that he discussed the plea offer with counsel. He testified that he decided to plead guilty after speaking with his family and after speaking with counsel who told him that he would likely be unsuccessful at trial. The Applicant also testified that he felt forced and pressured to plead guilty and that did not have enough time to think about accepting the plea. He testified that he did recall during his plea proceeding telling the Court that he wished to plead guilty and that he was indeed guilty. He also recalls waiving his constitutional rights once he pled guilty.

The Applicant also testified that he discussed the possibility of an appeal with counsel and he believed trial counsel would file an appeal for him. The Applicant testified that he thinks he told trial counsel to appeal his case, but he did not know that he had to request an appeal himself. Lastly, the Applicant testified that if his suppression motion had been granted he would not have pled guilty and would have proceeded to trial despite the fact that he was facing life without the possibility of parole.

Plea counsel testified at the evidentiary hearing that he has been practicing criminal law since 1984. He testified that he was retained to represent the Applicant and that he went to the jail frequently to speak to the Applicant about his case. Counsel testified that he filed Brady and Rule 5 motions on the Applicant's behalf and he reviewed all discovery with the Applicant several times. Counsel testified that prior to trial, he discussed with the Applicant the elements of the charges against him and what the State was required to prove. He testified that the Applicant had been served with notice that the State would seek life without the possibility of parole and that he made sure the Applicant understood what that meant. Counsel also testified that he discussed with the Applicant his version of the facts and that the Applicant's version of the facts

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did not differ greatly from the State's version of the facts. Counsel testified that he also discussed with the Applicant his possible defenses.

Counsel testified that he was prepared to proceed to trial. He testified that prior to trial, the Court denied the Applicant's motion to suppress the drugs found in the Applicant's car. He testified that the morning of trial he was able to get the Solicitor to take the life without the possibility of parole off the table and to allow the Applicant to plead without recommendation to the trafficking charges as a second offense. Counsel testified that the State had previously offered the Applicant the opportunity to plead to the trafficking charges as a second offense with an eighteen (18) year sentence. Counsel testified that when he received the new plea offer, he discussed it with the Applicant and his family. He testified that he told the Applicant the judge would likely sentence him to between eighteen (18) and twenty-two (22) years. Counsel testified that it was the Applicant's decision to plead guilty and that he never threatened or coerced the Applicant to plead guilty.

Counsel testified also testified that he advised the Applicant of his right to appeal and told him that by pleading guilty he was waiving any challenge to the search of his vehicle. Counsel testified that he reiterated to the Applicant the appeal process after the Applicant pled guilty. Counsel testified that the Applicant never indicated he wished to appeal and that he felt that there were no appealable issues.

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), SCRCP; 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

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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).

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

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determining issues 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 Harres 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 prior to his trial. 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 no one had threatened him or promised him anything to plead guilty. This Court finds that Applicant understood the terms of his plea.

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 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 her representation. This Court finds that counsel's representation did not fall below an objective standard of

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reasonableness.

This Court finds that trial counsel was not ineffective for failing to file an appeal. The United States Supreme Court has rejected a "bright-line rule that counsel must always consult with the defendant regarding an appeal." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036, 145 L. Ed. 2d 985 (2000). They instead held that "counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Id. "[A]lthough not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings." Id.

This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving trial counsel failed to file an appeal on his behalf. This Court finds that trial counsel gave credible testimony that he conferred with the Applicant about his right to appeal both before and after the Applicant's plea. This Court also finds that trial counsel gave credible testimony that after consulting with the Applicant about his right to appeal, the Applicant never indicated he wanted to pursue an appeal. The record also reflects that the Applicant was advised of his right to appeal by the plea judge. (T. 4). This Court finds that there is no evidence that a rational defendant would want to appeal or that the Applicant indicated he wanted to appeal.

This Court finds that the Applicant's guilty plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the

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defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing 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. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving that his guilty plea was entered involuntarily. This Court finds that the Applicant's testimony was entered freely and voluntarily. The Applicant testified at the evidentiary hearing that it was his decision to plead guilty. This Court finds further that the record reflects the Applicant was thoroughly advised of the waiver of his constitutional rights by both trial counsel and the plea judge. The record reflects the Applicant at his plea proceeding told the Court that he wished to plead guilty to avoid facing life without the possibility of parole. (T. 4). The record also reflects that the Applicant told the Court that he had not been promised or threatened by anyone to get him to plead guilty. (T. 5). This Court finds that the Applicant had a full understanding of the consequences of his plea and the charges against him. This Court finds

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that the plea judge correctly found that the Applicant's plea was freely, voluntarily, and intelligently made. (T. 6).

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.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. 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

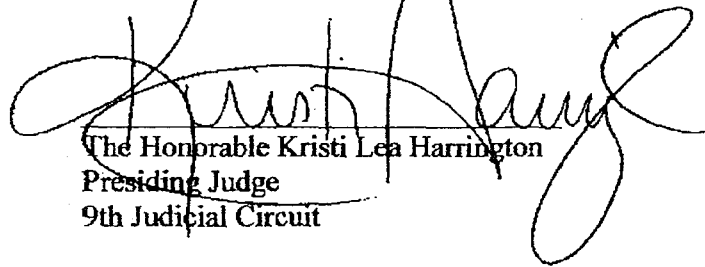
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review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

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 5th day of Nov, 2012


The Honorable Kristi Lea Harrington
Presiding Judge
9th Judicial Circuit

March Creek, South Carolina.

WITNESSES

Michael Crumley
Berkeley County Sheriff's Office



AGENCY CASE NUMBER

200908035529

ARREST WARRANT NUMBER

Direct Indictment

DATE OF ARREST

August 26, 2009

ACTION OF GRAND JURY

THE B/M

Person of Grand Jury
Date: 5/11/11

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2011-GS-08-0483

The State of South Carolina
County of Berkeley

COURT OF GENERAL SESSIONS

April Term 2011

THE STATE

vs.

DUSTIN LAVELLE WILLIAMS

DOB:

B/M

Indictment for

Trafficking in Cocaine Base

2011 APR -6 PM 12:08
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED



STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)


INDICTMENT

At a Court of General Sessions, convened on April 6, 2011 the Grand Jurors of Berkeley County present upon their oath:

Trafficking in Cocaine Base

That Dustin Lavelle Williams did in Berkeley County on or about the 26th day of August, 2009, knowingly traffic, sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise aid, abet, attempt, or conspire to traffic, sell, manufacture, cultivate, deliver, purchase, or bring into this State; or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of a controlled substance analogue, to wit: Cocaine Base less than 28 grams. This is 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.



 ASHLEY B CORNWELL
 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Berkeley
STATE VS.
Dustin Lavelle Williams

AKA:
Race: BLACK Sex: M Age: 27
DOB: SS#
Address:
City, State, Zip:
DL#: SID#

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Trafficking in cocaine, 10-28 grams, 2nd offense

IN THE COURT OF GENERAL SESSIONS 2012 CP - 08 85

INDICTMENT/CASE#: 2011GS080483
A/W#: 2011GS080483
Date of Offense: 8/26/2009
S.C. Code § : 44-53-0370(e)(2)(a)3
CDR Code #: 0147

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 44-53-0370(e)(2)(a)2 of the S.C. Code of Laws, bearing CDR Code # 0387
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Cornwell, Ashley B SC Bar# 70577 Defendant Dustin Williams SC Bar# 702 Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 20 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 293 Days
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

Recipient:

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5 %), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$ 236.90

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

Clerk of Court/ Deputy Clerk Linda J. Hill
Court Reporter: Amanda Hollenden

Presiding Judge
Judge Code: 2134
Sentence Date: 6/18/11

