

ORIGINAL

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Edward W. Miller, Guilty Plea Judge
The Honorable Robin B. Stilwell, Post-Conviction Relief Judge

Appellate Case No. 2013-002297

Tobias Aaron Jones, Respondent,

v.

State of South Carolina, Petitioner.

APPENDIX

ALAN WILSON
Attorney General

KAREN C. RATIGAN
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ATTORNEY FOR RESPONDENT

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ATTORNEY FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 2 COUNTY OF GREENVILLE) 2009-GS-23-3198a
 State of South Carolina)
 3)
)
 4 -vs-) TRANSCRIPT RECORD
)
 5 Tobias Jones

6
 7 March 4, 2010
 Greenville, South Carolina

9 B E F O R E:

10 THE HONORABLE EDWARD MILLER, Judge.
 11

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

13 JON GREGORY, Esquire
 Assistant Solicitor
 14 Attorney for the State

15 RICHARD ROBERT, Esquire
 16 Attorney for Defendant

17
 18
 19 CAROLINE HISKELL
 20 Circuit Court Reporter

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 23
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I N D E X

(There were no exhibits or witnesses presented.)

1 THE CLERK: Your Honor, this is Indictment
2 2009-GS-23-3198, Tobias Arron Jones, indicted for
3 trafficking cocaine, pleading to the same. It is a True
4 Bill.

5 Indictment 2009-GS-23-9319, Rechea Williams,
6 indicted for possession of cocaine, pleading to the same.
7 It is a Waiver.

8 Indictment 2009-GS-23-4008, Dondi Demetrik
9 Jamison, indicted for possession of cocaine base with
10 intent to distribute, pleading to possession of cocaine,
11 first. It is a Waiver.

12 Indictment 2009-GS-23-3756, Talvous Gerard
13 Simpson, indicted for assault and battery of a high and
14 aggravated nature, pleading to the same. It is a Waiver,
15 and there is an Order of Restitution.

16 Indictment 2009-GS-23-6330, Karl Ramsey,
17 indicted for breaking and entering a motor vehicle,
18 pleading to auto breaking. It is a Waiver and there is an
19 Order of Restitution.

20 Please raise your right hand.

21 TOBIAS JONES, DONDI JAMISON, RECHEA WILLIAMS,
22 TALVOUS SIMPSON, KARL RAMSEY, having been duly sworn,
23 testified as follows:

24 THE COURT: Jail days.

25 MR. GREGORY: Mr. Jones did one day,

1 Mr. Williams 27 days, Mr. Jamison one day, Mr. Simpson two
2 days, and Mr. Ramsey 17 days.

3 THE COURT: In the last 24 hours, have you
4 had any drugs, alcohol or medication. Mr. Jones?

5 DEFENDANT JONES: No, sir.

6 THE COURT: Mr. Williams?

7 DEFENDANT WILLIAMS: No, sir.

8 THE COURT: Mr. Jamison?

9 DEFENDANT JAMISON: No, sir.

10 THE COURT: Mr. Simpson?

11 DEFENDANT SIMPSON: No, sir.

12 THE COURT: Mr. Ramsey?

13 DEFENDANT RAMSEY: No, sir.

14 THE COURT: Have you ever been treated for
15 the abuse of alcohol, drugs or for mental illness or
16 emotional problems. Mr. Jones?

17 DEFENDANT JONES: No, sir.

18 THE COURT: Mr. Williams?

19 DEFENDANT WILLIAMS: No, sir.

20 THE COURT: Mr. Jamison?

21 DEFENDANT JAMISON: No, sir.

22 THE COURT: Mr. Simpson?

23 DEFENDANT SIMPSON: No, sir.

24 THE COURT: Mr. Ramsey?

25 DEFENDANT RAMSEY: No, sir.

1 THE COURT: Everyone except Mr. Jones has one
2 or more indictments that have not been presented to the
3 grand jury. You have an absolute right to require the
4 State to present those cases to the grand jury where they
5 would have to prove more probably than not that a crime
6 was committed and you did it. Do you want to give that
7 right up which would allow you to go forward today?
8 Mr. Williams?

9 DEFENDANT WILLIAMS: Yes, sir.

10 THE COURT: Mr. Jamison?

11 DEFENDANT JAMISON: Yes, sir.

12 THE COURT: Mr. Simpson?

13 DEFENDANT SIMPSON: Yes, sir.

14 THE COURT: Mr. Ramsey?

15 DEFENDANT RAMSEY: Yes, sir.

16 THE COURT: Mr. Jones, you're up here on
17 09-3918a. It alleges you did in Greenville County January
18 27, '09 knowingly sell, manufacture, deliver or bring into
19 South Carolina, or assisted in any of those things, or you
20 were in actual or constructive possession of more than 28
21 grams of cocaine. That carries 7 years to 25 years and a
22 \$50,000 fine, do you understand that?

23 DEFENDANT JONES: Yes, sir.

24 THE COURT: Mr. Williams, you're here on
25 09-9319, alleges you did in Greenville County, June 12,

1 '09 unlawfully possess a quantity of cocaine, three years,
2 \$5,000, do you understand that?

3 DEFENDANT WILLIAMS: Yes, sir.

4 THE COURT: Mr. Jamison, you're here on
5 09-4008, alleges you did in Greenville County, March 11,
6 '09 possess with intent to distribute a quantity of crack,
7 three years, \$5,000, do you understand that?

8 DEFENDANT JAMISON: Yes, sir.

9 THE COURT: Mr. Simpson, you're here on
10 09-3756, alleges you did in Greenville County on or about
11 March 9, '09 unlawfully commit an assault and battery on
12 LaKeshia Foster, accompanied by circumstances of
13 aggravation and that carries 10 years, do you understand
14 that?

15 DEFENDANT SIMPSON: Yes, sir.

16 THE COURT: Mr. Ramsey, you're here on
17 Indictment 09-6330, alleges you did in Greenville County,
18 April 9, '09 unlawfully break into a Ford Explorer
19 belonging to AB. That's five years, do you understand
20 that?

21 DEFENDANT RAMSEY: Yes, sir.

22 THE COURT: To each of you, understanding the
23 nature of the charges against you and the maximum possible
24 punishment, how do you want to plead? Mr. Jones.

25 DEFENDANT JONES: Guilty.

1 THE COURT: Mr. Williams?

2 DEFENDANT WILLIAMS: Guilty.

3 THE COURT: Mr. Jamison?

4 DEFENDANT JAMISON: Guilty.

5 THE COURT: Mr. Simpson?

6 DEFENDANT SIMPSON: Guilty.

7 THE COURT: Mr. Ramsey?

8 DEFENDANT RAMSEY: Guilty.

9 THE COURT: Has anybody forced you in any way
10 or coerced you, threatened you or promised you anything to
11 get you to enter that plea? Mr. Jones?

12 DEFENDANT JONES: No, sir.

13 THE COURT: Mr. Williams?

14 DEFENDANT WILLIAMS: No, sir.

15 THE COURT: Mr. Jamison?

16 DEFENDANT JAMISON: No, sir.

17 THE COURT: Mr. Simpson?

18 DEFENDANT SIMPSON: No, sir.

19 THE COURT: Mr. Ramsey?

20 DEFENDANT RAMSEY: No, sir.

21 THE COURT: And do you each understand you
22 have an absolute right to a trial by jury where you would
23 be presumed innocent unless and until the State could
24 prove you guilty beyond any reasonable doubt of each and
25 every element of each offense that you're charged with?

1 You would have a right to confront and cross-examine the
2 witnesses and the evidence put up against you by the
3 State. You would have a right to compel in court all
4 relevant and competent evidence in your own defense or you
5 could remain silent. Your silence could not be held
6 against you and you could never be compelled to
7 incriminate yourself.

8 Do you understand all of those rights,
9 Mr. Jones?

10 DEFENDANT JONES: Yes, sir.

11 THE COURT: Mr. Williams?

12 DEFENDANT WILLIAMS: Yes, sir.

13 THE COURT: Mr. Jamison?

14 DEFENDANT JAMISON: Yes, sir.

15 THE COURT: Mr. Simpson?

16 DEFENDANT SIMPSON: Yes, sir.

17 THE COURT: Mr. Ramsey?

18 DEFENDANT RAMSEY: Yes, sir.

19 THE COURT: Do you want to give up all those
20 rights to enter this plea? Mr. Jones?

21 DEFENDANT JONES: Yes, sir.

22 THE COURT: Mr. Williams?

23 DEFENDANT WILLIAMS: Yes, sir.

24 THE COURT: Mr. Jamison?

25 DEFENDANT JAMISON: Yes, sir.

1 THE COURT: Mr. Simpson?
2 DEFENDANT SIMPSON: Yes, sir.
3 THE COURT: Mr. Ramsey?
4 DEFENDANT RAMSEY: Yes, sir.
5 THE COURT: Are you guilty?
6 Mr. Jones?
7 DEFENDANT JONES: Yes, sir.
8 THE COURT: Mr. Williams?
9 DEFENDANT WILLIAMS: Yes, sir.
10 THE COURT: Mr. Jamison?
11 DEFENDANT JAMISON: Yes, sir.
12 THE COURT: Mr. Simpson?
13 DEFENDANT SIMPSON: Yes, sir.
14 THE COURT: Mr. Ramsey?
15 DEFENDANT RAMSEY: Yes, sir.
16 THE COURT: Are you totally satisfied with
17 your lawyer? Mr. Jones?
18 DEFENDANT JONES: Yes, sir.
19 THE COURT: Mr. Williams?
20 DEFENDANT WILLIAMS: Yes, sir.
21 THE COURT: Mr. Jamison?
22 DEFENDANT JAMISON: Yes, sir.
23 THE COURT: Mr. Simpson?
24 DEFENDANT SIMPSON: Yes, sir.
25 THE COURT: Mr. Ramsey?

1 DEFENDANT RAMSEY: Yes, sir.

2 THE COURT: And have you had enough time to
3 review the evidence the State has against you?
4 Mr. Jones?

5 DEFENDANT JONES: Yes, sir.

6 THE COURT: Mr. Williams?

7 DEFENDANT WILLIAMS: Yes, sir.

8 THE COURT: Mr. Jamison?

9 DEFENDANT JAMISON: Yes, sir.

10 THE COURT: Mr. Simpson?

11 DEFENDANT SIMPSON: Yes, sir.

12 THE COURT: Mr. Ramsey?

13 DEFENDANT RAMSEY: Yes, sir.

14 THE COURT: Okay.

15 MR. GREGORY: As to Mr. Jones, on January 27,
16 2009, the defendant was stopped by South Carolina Highway
17 Patrol for speeding on I85 in Greenville County. The
18 officer noticed numerous indicators of criminal activity
19 and ran a drug dog which alerted on the car.

20 In the truck the officer found 490.84 grams
21 of cocaine. The defendant was the only person in the car.
22 He does have a prior record and there is a
23 recommendation.

24 THE COURT: What's the prior record?

25 MR. GREGORY: 2003 disorderly conduct in

1 Maryland and the recommendation is for 10 years.

2 THE COURT: Is all that true?

3 DEFENDANT JONES: Yes, sir.

4 THE COURT: All right. What y'all want to
5 tell me.

6 MR. ROBERT: Your Honor, I'm Richard Robert.
7 I've done this for 30 years and to be very candid with you
8 this is one of the more difficult cases I've had.

9 Except for the disorderly conduct, he has no
10 prior record. He has a mom and dad in the court room. He
11 has a wife. He has led an exemplary life.

12 This case was dismissed at the Magistrate's
13 level at preliminary hearing. He was straight indicted.
14 The whole case turned around the search and seizure
15 question. We looked into it. The Legislature made the
16 law. I met with Mr. Jones on the telephone and in person
17 over 14, 15 times. We have full and complete discovery
18 and it's 25 without parole if you didn't see it that what,
19 and when I say "you," whoever the judge maybe or he walks
20 out and it's one of these days that I wish I had followed
21 Judge Harriss' advice and become a plumber 20 years
22 ago.

23 All I can say is it is a recommended plea and
24 Mr. Jones is sorry. He has not wined about it and he
25 knows he's got to take it -- not take it. He's been

1 competently advised, I hope and we've gone over
2 everything.

3 THE COURT: What you want to tell me?
4 Anything?

5 DEFENDANT JONES: No.

6 THE COURT: Where you from?

7 DEFENDANT JONES: Virginia.

8 THE COURT: Where were you headed? Were you
9 headed home?

10 DEFENDANT JONES: Yes, I was headed
11 home.

12 THE COURT: What did you do, go to Atlanta
13 and get it?

14 DEFENDANT JONES: Yes, something like
15 that.

16 THE COURT: Well, I'll go along with it. I
17 wish you the best of luck.

18 DEFENDANT JONES: Thank you.

19 DEFENDANT ROBERT: Thank you, sir.

20 THE COURT: Okay.

21 MR. GREGORY: As to Mr. Williams, on June 12,
22 2009, officers with the Greenville Police Department were
23 called out to a disturbance at the Spinx Gas Station
24 located at 1103 Pendleton Street here in Greenville
25 County. They made contact with the defendant who appeared

1 to be grossly intoxicated. He was placed under arrest for
2 public intoxication.

3 A search incident to arrest revealed a small
4 piece of tin foil located in this defendant's pocket. A
5 white substance was located inside the tin foil. The
6 substance lab tested positive as .12 grams of cocaine. He
7 does have a prior record and there is a
8 recommendation.

9 THE COURT: What's his prior record?

10 MR. GREGORY: 1985, operating a business
11 without a license; 1987, DUS; 1989, distribution of crack;
12 2009, public intoxication and that's from the same
13 incident.

14 THE COURT: Is all that true?

15 DEFENDANT WILLIAMS: Yes, sir.

16 THE COURT: What's the recommendation?

17 MR. GREGORY: The recommendation is
18 probation.

19 THE COURT: What kind of business were you
20 operating?

21 DEFENDANT WILLIAMS: It wasn't no business.
22 I was just down at my sister's house and I just a Tylenol
23 and put it in aluminum foil and put it in my
24 pocket.

25 THE COURT: I'm talking about your '85

1 operating a business without a license. You just threw
2 your sister under a bus. Why shouldn't I just give you
3 the 3 and 1.

4 MS. MANIGAULT: Your Honor, because he
5 doesn't have a bad record.

6 THE COURT: Okay.

7 MS. MANIGAULT: He's 48 years old. He's
8 working in general labor with Temporary Staffing. He's
9 going to the Unemployment Office now for job assistance.
10 He is a resident of Greenville County so we ask you to
11 follow the recommendation of a probationary
12 sentence.

13 THE COURT: Okay. Two years, provided upon
14 the time he did, probation for two years, five days public
15 service, substance abuse counseling, random drug and
16 alcohol testing and \$500 Public Defender Fund. I won't
17 tell your sister what you said.

18 MS. MANIGAULT: Thank you, Your Honor.

19 MR. GREGORY: If it please the Court as to
20 Mr. Jamison, on March 11, 2009, a Greenville Police
21 Department officer conducted a traffic stop on the
22 defendant at Parkinsmill Road and Laurens Road in
23 Greenville County for no seat belt.

24 The defendant appeared very nervous and was
25 mixing his words when the officer asked him questions.

1 The officer conducted a Terry frisk and the defendant
2 grabbed his own left leg.

3 The officer then found a plastic bag with a
4 beige rock-like substance in the defendant's front left
5 shorts pocket which lab tested positive as 2.34 grams of
6 crack cocaine.

7 He does have a prior record and there is a
8 recommendation.

9 THE COURT: Record.

10 MR. GREGORY: 2001, possession of controlled
11 substance, and that's it. The recommendation is
12 probation.

13 THE COURT: Is all that true?

14 DEFENDANT JAMISON: Yes, sir.

15 THE COURT: Ms. Manigault.

16 MS. MANIGAULT: We would ask you to accept
17 the recommendation of probation. Mr. Jamison is 31 years
18 old. He is a graduate of Mauldin High School. He's
19 working in reconditioning cars for approximately one year.
20 His job before that was at Bi Lo warehouse for six years.
21 He has one child, age three, and Greenville County is his
22 home.

23 THE COURT: Two years provided upon the time
24 you've done, probation for two years, five days public
25 service, substance abuse counseling, random drug and

1 alcohol testing, \$500 Public Defender fund. It would be
2 better not to mess with crack.

3 DEFENDANT JAMISON: Thank you, sir.

4 MR. GREGORY: May it please the Court as to
5 Mr. Simpson, on March 9, 2009, this defendant and the
6 victim got into a verbal altercation at the Waffle House
7 in Greenville County. The victim and her friend left the
8 Waffle House in the victim's car. The defendant got into
9 his car and followed them. Eventually, the defendant
10 rammed his car into the front of the victim's car.

11

12 The defendant approximately \$1800 worth of
13 damage to the victim's car.

14 He does have a prior record and there's a
15 recommendation.

16 THE COURT: What's his recommendation?

17 MR. GREGORY: 2009 simple assault and battery
18 and the recommendation is for probation.

19 THE COURT: Is all that true?

20 MR. GREGORY: Yes, sir.

21 THE COURT: What is it about Waffle House
22 that makes everybody so mad? The food not good?

23 DEFENDANT SIMPSON: Bad decision.

24 THE COURT: Try IHOP.

25 MS. MANIGAULT: Your Honor, we'd ask the

1 Court to seriously consider accepting the recommendation
2 of probation. My client is 21 years old. He's a graduate
3 of Crimson Avenue Prep School in Pickens County. He's
4 worked for Greenville Hospital Systems. He is single and
5 has no children. He lives in Greenville County, life
6 long, and we would ask you to accept the
7 recommendation.

8 THE COURT: Appointed?

9 MS. MANIGAULT: Yes, sir.

10 THE COURT: Anything you want to tell
11 me?

12 DEFENDANT SIMPSON: No, sir.

13 THE COURT: Stay out of trouble and stay away
14 from Waffle House. Three years provided on the time he's
15 done, probation for two, restitution pursuant to the
16 Order, random drug and alcohol testing, anger management,
17 \$500 Public Defender Fund. Good luck to you.

18 MS. MANIGAULT: Thank you, Your Honor.

19 MR. GREGORY: May it please the Court as to
20 Mr. Ramsey, on April 10, 2009, the defendant took the
21 victim's keys while she was at her place of work and
22 entered her car without permission and took over \$500 cash
23 from the car. This happened in Greenville County.

24 He has a prior record and there is a
25 recommendation.

1 THE COURT: What's his prior?

2 MR. GREGORY: Prior record is 1990 possession
3 of a stolen vehicle; 1991 resisting arrest, assaulting an
4 officer; 1993 grand larceny; 1994 trespassing, 1995 false
5 information, shoplifting, possession of DP, drug
6 paraphernalia; 1996 strong armed robbery; 1998 possession
7 of crack; 2003 CDV.

8 THE COURT: Is all that true?

9 DEFENDANT RAMSEY: Yes, sir.

10 THE COURT: What's the recommendation?

11 MR. GREGORY: The recommendation is 90 days
12 HIP, credit for time served and probation to include
13 restitution.

14 THE COURT: What y'all want to tell
15 me?

16 MS. MANIGAULT: Your Honor, we'd ask the
17 Court to seriously consider accepting the recommendation.
18 My client is 38 years old. He went to the 11th grade.
19 Your Honor, he was employed at John Pauls Restaurant. He
20 was unemployed at the time of the arrest for about two
21 months. He has three children ages 18, 15, and 8, and
22 wife whose name is Rebecca.

23 We're asking the Court to accept the
24 recommendation. He says that his wife depends on his
25 income to support the children.

1 THE COURT: Why are you in jail now?

2 DEFENDANT RAMSEY: Tickets, driving without
3 of license.

4 THE COURT: What did you get for that?

5 DEFENDANT RAMSEY: Sixty days.

6 MS. MANIGAULT: He is scheduled to be
7 released Sunday.

8 THE COURT: Five years provided upon 90 days,
9 home incarceration, two years probation, restitution
10 pursuant to the Order, get your GED, random drug and
11 alcohol testing, \$500 Public Defender Fund.

12 ---END OF TRANSCRIPT RECORD---

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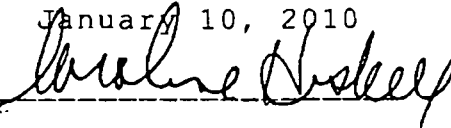
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25

1 I, the undersigned Caroline Hiskell, Official
2 Court Reporter for the Thirteenth Judicial Circuit of the
3 State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate, and complete transcript of
5 record of all the proceedings had and evidence introduced
6 in the trial of the captioned case, relative to appeal, in
7 the Circuit Court of Greenville County, South Carolina on
8 the 4th day of March, 2010.

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

11
12 January 10, 2010

13 
14 _____

15 Caroline Hiskell
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FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2010 DEC - 3) P 12: 43 2010-CP-23- 9887

Tobias Aaron Jones 339627)
Full name and prison number (if any) of Applicant.)

v.)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
DALLA WICKENS

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF)

INSTRUCTIONS - READ CAREFULLY

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

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

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay 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 Tyger River Correctional Institute
2. Name and location of Court which imposed sentence Court of General Sessions, County of Greenville, State of South Carolina
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-GS-23-3198A
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) On March 4, 2010 a sentence of 10 years was imposed

- (
- (
- (a) Ineffective assistance of counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failure to file a suppression motion; failure to aid in the defendant's cooperation with the government; failure to advise the defendant of 10-day right to appeal; failure to adequately explore plea negotiations; failure to communicate with client; and other such issues that may be determined through the discovery process.
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? 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. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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. _____

ii. _____

iii. _____

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

i. _____

ii. _____


iii. _____

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

(a) Ineffective Assistance of Counsel - this is defendant's first motion for post-conviction relief

(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? N/A
 - (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? Yes, for this Application
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. Richard J. Breibart, 201 West Main Street, Suite B, Lexington, SC 29072
 - ii. M. David Scott for Richard J. Breibart
 - iii. Beattie B. Ashmore, 650 East Washington Street, Greenville, SC 29601
 - (b) the proceedings at which each such attorney represented you:
 - i. Richard J. Breibart, Plea/Sentencing Hearing, March 4, 2010
 - ii. M. David Scott for Richard J. Breibart, Probable Cause Hearing, March 12, 2009
 - iii. Beattie B. Ashmore for this Application
19. State clearly the relief you seek in filing this application:
New trial
20. Are you now under sentence from any other court that you have not challenged?
No



This 3rd day of December, 2010

Beattie Ashmore, SC Bar # 10419

650 East Washington Street

Greenville, SC 29601

(864) 467-1001 Office

(864) 672-1406 Fax

Beattie@BeattieAshmore.com

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C.A. No. 2010-CP-23-9887
COUNTY OF GREENVILLE)	
)	
Tobias Aaron Jones,)	
S.C.D.C. No. 339627,)	
)	
Applicant,)	
)	RETURN
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

In response to the post-conviction relief application filed December 3, 2010, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the April 2009 term of General Sessions for trafficking cocaine (400 or more grams) (2009-GS-23-3198A). Richard Brietbart, Esquire represented the Applicant.

On March 4, 2010, the Applicant pled guilty. The Honorable Edward W. Miller sentenced the Applicant to ten (10) years imprisonment. The Applicant did not appeal.

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

II.

In his application for post-conviction relief the Applicant alleges he is being held in

custody unlawfully for the following reason:

- I. Ineffective assistance of counsel:
 - a. Failure to file a suppression motion.
 - b. Failure to aid in the Applicant's cooperation with the government.
 - c. Failure to advise of the 10-day right to appeal.
 - d. Failure to adequately explore plea negotiations.
 - e. Failure to communicate with the Applicant.

III.

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

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney

performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

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

IV.

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

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held on the issues raised in the PCR application.

Respectfully submitted,

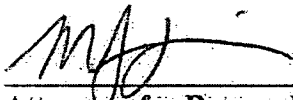
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By: 

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March 7, 2011

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» > ○ < «

There were no exhibits.

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1 THE COURT: All right, ma'am.

2 MS. RATIGAN: May it please the Court, Your
3 Honor. This is the case of Tobias Jones vs. The State of
4 South Carolina. The docket number is 2010-CP-23-9887.
5 Mr. Jones was indicted for trafficking cocaine in excess
6 of 400 grams. He was represented on that charge by
7 Mr. Breibart. On March 4th, 2010 he pled guilty before
8 Judge Miller and received a sentence of 10 years in prison
9 and he's not filed an appeal. Just for, Your Honor's,
10 information and just for the record in general,
11 Mr. Breibart is unavailable. It is my understanding from
12 talking Mr. Ashmore he actually pled guilty in Federal
13 Court this morning to a variety of charges.

14 THE COURT: I take judicial notice of The State
15 newspaper.

16 MS. RATIGAN: Yes. So, that is why he is not
17 here and we're prepared to go forward just based on the
18 record before the Court.

19 THE COURT: Okay, good enough.

20 All right, Mr. Ashmore, I'll be happy to hear
21 from you.

22 MR. ASHMORE: Thank you, Your Honor, may it
23 please the Court. Judge, I don't want to belabor that
24 point but, obviously, my client was represented by a
25 convicted felon. A man who made numerous

1 misrepresentations to a number of different clients. I
2 think that the Indictment in the newspaper indicated he
3 defrauded a number of clients out of at least a million
4 dollars. And he is suffering the consequences of that.
5 During the course of the case, it was a federal case, he
6 was sent to Buckner for a mental evaluation. Apparently
7 he was found competent to enter his plea this morning.
8 I'll get into that in a little bit more detail, Your
9 Honor. But we have very, very serious doubts. I mean,
10 there's no doubt in my mind that my client received
11 ineffective assistance of counsel through numerous
12 misrepresentations made to him by Mr. Breibart.

13 THE COURT: Okay, good enough. You may proceed,
14 sir.

15 MR. ASHMORE: Your Honor, we call Toby Jones to
16 the stand.

17 THE CLERK: Mr. Jones, please place your left
18 hand on the Bible, raise your right hand as best you can.

19 TOBIAS JONES, after being duly sworn, testified
20 as follows:

21 THE CLERK: Thank you, you may be seated.
22 Please state your full name for the record.

23 THE WITNESS: My name is Tobias Aaron Jones.

24 DIRECT EXAMINATION

25

1 BY MR. ASHMORE:

2 Q Mr. Jones, you go by Toby?

3 A Yes, sir.

4 Q Where are you currently incarcerated?

5 A Tyger River Correctional Institute.

6 Q You're doing a ten year sentence?

7 A Yes, sir.

8 Q Eighty-five percent?

9 A Yes, sir.

10 Q Were you represented at your plea by Richard
11 Breibart?

12 A Yes, sir.

13 Q And you heard us talk, it's no surprise to you, you
14 know that Mr. Breibart is suspended, soon to be
15 disbarred and is now a convicted felon?

16 A Yes, sir.

17 Q How did you get to Mr. Breibart?

18 A I was referred to him through a lawyer I had in
19 Maryland, a friend of mine I had in Maryland, he gave
20 me his website, Martin Dale Holleman, I believe. And
21 I looked him up and contacted him on the phone.

22 Q Okay. And you had conversations with Mr. Breibart?

23 A Yes, sir.

24 Q Did you meet him in person?

25 A Not when I hired him, I only spoke with him on the

1 phone.

2 Q Okay. How did that go? Why did you decide to hire
3 him?

4 A He sold himself as he was a big shot lawyer here in
5 South Carolina. He had a lot of connections in the
6 State House, you know, he was known throughout the
7 state and he could really help me with the case.

8 Q And did he represent to you that he was experienced
9 in the field of criminal drug charges?

10 A Absolutely. He told me he had 30 years experience
11 and he just, you know, told me about some cases he
12 had worked on.

13 Q And did you talk to other lawyers?

14 A I spoke with a couple other lawyers, yes, sir.

15 Q Okay. Do you remember any of their names?

16 A I spoke with John Delgado and there was someone from
17 Greenville, I can't remember his name, though.

18 Q Would it have been a better idea to hire Mr. Delgado?

19 A Absolutely, yes, sir.

20 Q How much did you pay Mr. Breibart for his
21 representation?

22 A I paid Mr. Breibart \$20,000.

23 Q Twenty thousand?

24 A Yes, sir.

25 Q You paid him that in full?

- 1 A Yes, sir.
- 2 Q How many times did you meet with Mr. Breibart in
3 preparation for your case?
- 4 A I believe four times.
- 5 Q Okay. Was a preliminary hearing held in your case?
- 6 A Yes, sir.
- 7 Q Your case involved a drug stop on the Interstate,
8 correct?
- 9 A Yes, sir.
- 10 Q What happened at that preliminary hearing?
- 11 A My case was dismissed.
- 12 Q It was dismissed at the prelim?
- 13 A Yes, sir.
- 14 Q Did you talk to Mr. Breibart about that?
- 15 A Yes, sir.
- 16 Q And what did he tell you to expect from that point
17 forward?
- 18 A He told me he was going to make a motion for
19 supression. And that, you know -- he told me this
20 was the best case he'd seen in his 30 year career as
21 a lawyer in a preliminary hearing. And, you know,
22 that was really good from that discussion.
- 23 Q Okay. And to back up just a little bit, you were
24 indicted?
- 25 A Yes, sir.

1 Q Eventually?

2 A Yes, sir.

3 Q Even though it was dismissed at the prelim?

4 A Yes, sir.

5 Q And you're telling the Court that from that point
6 forward Mr. Breibart talked to you about a
7 suppression motion?

8 A Yes, sir.

9 Q Okay. Did Mr. Breibart, did he, in fact, file a
10 suppression motion?

11 A To my understanding he did. He told me that, yes,
12 sir.

13 Q He told you that?

14 A Yes, sir.

15 Q But would a review of the records indicate that no
16 suppression motion was ever filed?

17 A From what I found out, yes.

18 Q What did he tell you happened at your suppression
19 motion?

20 A He said that it was denied.

21 Q Okay. And when did you have that conversation with
22 him?

23 A That was shortly after the preliminary hearing. I
24 would say within a month's time of that. I'm not
25 sure exactly the date.

1 Q Okay. And you met with him again in his office, is
2 that correct?

3 A Yes, sir.

4 Q Okay. Concerning your case?

5 A Uh-huh.

6 Q And that is, again, where he represented to you that
7 the suppression motion had been denied?

8 A Yes, sir.

9 Q Was anyone with you at that meeting?

10 A Not at the meeting, no, sir.

11 Q Okay. Did it come a time when you met with him again
12 with your father?

13 A Yes, sir.

14 Q Tell Judge Stilwell about that particular meeting.

15 A Well, we had a meeting with him, this was right
16 before I took the plea for the 10 years. My father
17 had come down with me, we met with in his office.
18 And he told me, he said if I didn't take this plea
19 that I would be facing 25 years, you know, that's
20 what I would be expecting. My father, he was there,
21 he got emotional, he started crying. I see my father
22 cry twice in my life. Seeing that, that made me --
23 you know, I said, I'll take it just -- I just want
24 this to end right here, you know.

25 Q And you understood the recommendation from the State

1 was going to be 10 years?

2 A I did.

3 Q Okay. Did you talk with Mr. Breibart about that?

4 A Absolutely. He told me he had some friends that
5 there would be legislation passed where 85 percent
6 sentencing would no longer be in effect. And that,
7 in fact, I would probably -- SCDC would give me a
8 nonviolent sentence and that I could do as little as
9 five and a half years, I could possibly get paroled
10 or -- he really didn't give me a definite time, he
11 just kind of left it up in the air.

12 Q And did you, in fact, enter a plea of guilty?

13 A Yes, sir.

14 Q All right. Let me back up even further. Did you
15 ever talk to Mr. Breibart about cooperation?

16 A Yes, sir.

17 Q What did he tell you?

18 A Mr. Breibart told me do not do that. He told me that
19 the solicitor here in Greenville, Bob Ariail, was
20 under a federal investigation and that he would not
21 want to make -- he would have no dealings with the
22 federal authorities at all because of his
23 investigation.

24 Q Could you, in fact, have rendered some level of
25 cooperation?

1 A Absolutely. I have a friend of mine in Northern
2 Virginia, where I'm from, who had been in trouble
3 with a drug case, he had cooperated with the DA up
4 there. He had even gone as far as making a phone
5 call to the agent that he had worked with.

6 And the agent said, Absolutely I can help him
7 out.

8 I said, Hold on, I want to talk to my lawyer
9 first.

10 I called Breibart and that's when he told me
11 this. Hold on, don't do anything like that. Don't
12 have any further conversation with these people, just
13 don't. That's not going to work, that won't work.

14 Q Okay. So you were unable to cooperate?

15 A Yes, sir.

16 Q He told you you were looking at 25 years?

17 A Yes, sir.

18 Q And it was your decision to go ahead and enter a plea
19 of guilty to the 10 year recommendation?

20 A Yes, sir.

21 Q Did Mr. Breibart ask for less than the 10 years at
22 your plea and sentencing?

23 A No. Breibart, when he, at the sentencing itself, it
24 seemed like he was fumbling over his words. He
25 showed up maybe five minutes before I went in front

1 of the Judge. The only thing that he told me was to
2 make no statements to the Judge. Don't make any
3 statements to him. You know, my only recourse would
4 be a PCR. And that no court in South Carolina would
5 ever find, you know, any fault with what he had done
6 because he's such a reparable attorney.

7 Q Did you plead guilty on March 4th, 2010?

8 A Yes, sir.

9 Q Would you publish, would you read for the benefit of
10 the Judge the one page where Mr. Breibart addressed
11 Judge miller?

12 A Yes, sir.

13 This is Breibart. Your Honor, I'm Richard
14 Breibart, I've done this for 30 years. And to be
15 very candid with you, this is one of the most
16 difficult cases I've had. Except for the disorderly
17 conduct he has no prior record. He has a mom and dad
18 in the courtroom, he has a wife, he has lived an
19 exemplary life. This case was dismissed at the
20 Magistrate's level at a preliminary hearing. He was
21 straight indicted. The whole case turned around on
22 the search and seizure question. We looked into it,
23 the legislation made the law. I met with Mr. Jones
24 on the telephone and in person 14 to 15 times. We
25 have full and complete discovery and it's 25 without

1 parole if you didn't see it -- if you didn't see it
2 that way. And when I say you, whoever the Judge may
3 be or he walks out and he's one of these -- and it's
4 one of these days that I wish I had followed Judge
5 Harrison's advice and become a plumber 20 years ago.

6 All I can say is it's a recommended plea and
7 Mr. Jones is sorry. He has not whined about it and
8 he knows he's got to take it -- not take it. He's
9 been completely advised and I hope we have gone over
10 everything.

11 Q Okay. And Judge Miller asked you some questions?

12 A Yes, sir.

13 Q All right. How -- describe the interaction with
14 Judge Miller that you had. How did you respond to
15 his questions?

16 A Just, you know, I just very matter factly. Whatever
17 he asked -- what I was told was just answer whatever
18 he asked. Very little, you know, whatever he asked,
19 just answer it.

20 Q You were told that by whom?

21 A Mr. Breibart. That's right before this, right before
22 I walked into the courtroom he told me that. He
23 said, just answer everything that he says yes or no
24 and don't make any statements.

25 Q Okay. Were your parents with you?

1 A Yes, sir.

2 Q Did they address the Court?

3 A No. My parents wanted to address the Court. My
4 father and mother asked Mr. Breibart, Would it be
5 okay for us to address the Court? Mr. Breibart told
6 them the only thing that would do is help get your
7 son 25 years in prison. So, you know, they were
8 scared to death, they didn't want to say a word.
9 They were there, sitting there. They wanted to, you
10 know.

11 Q And to be clear your range was seven to 25 years?

12 A Yes, sir.

13 Q And you ended up with the 10 years?

14 A Yes, sir.

15 Q Okay. Did he advise you that you had the right to
16 appeal?

17 A He never, ever told me anything about an appeal. The
18 only thing he ever told me about was a PCR. A PCR.

19 Q Did he ever indicate to you that he had any mental or
20 physical difficulties?

21 A No. He -- at one time I had a meeting with him. He
22 had told me he was in the hospital for back -- some
23 sort of back pain. He was taking Lorcet for, he was
24 taking Lorcet for his back pain. And that he had
25 taken Xanax for some sort of stress problems.

1 Q Okay. Is there anything else you want to tell Judge
2 Stilwell? Today's your day, okay? It's your only
3 day. So, have I missed anything? Is there anything
4 else that you want to inform the Court?

5 A You know, I just want to say how really sorry I am
6 about all this. I ruined not only my life, I
7 ruined -- you know, I was married, I lost my marriage
8 with my wife, I lost my home. My wife was pregnant,
9 she had a mischarge. My family is, they're in their
10 late 60's. My grandmother is 97 years old. She's in
11 the hospital. My uncle has brain cancer, he's
12 getting ready to pass away and I can't be there to
13 help them. And I just feel so horrible, you know,
14 what I've done. I made a stupidest decision in my
15 life was to do what I did. And, you know, I just
16 want a chance to repair that, you know. And I wish
17 that somebody -- I wish I would have had the advice
18 to make a clear decision about this. That somebody
19 could have looked at this, you know, and advise me
20 what to have done. That's really it.

21 Q And are you asking this Judge to grant you a new
22 trial?

23 A I would like that, yes, sir.

24 MR. ASHMORE: May I have just a moment, Your
25 Honor?

1 THE COURT: Sure.

2 MR. ASHMORE: Your Honor, that's all I have.

3 Thank you.

4 MS. RATIGAN: Thank you, Your Honor, it should
5 be quick questions.

6 THE COURT: Yes, ma'am.

7 CROSS-EXAMINATION

8 BY MS. RATIGAN:

9 Q So, Mr. Jones, you had four total meetings with
10 Mr. Breibart?

11 A Yes, ma'am.

12 Q Did y'all go over the State's evidence against you?

13 A No, ma'am.

14 Q Okay. What did you talk about in these meetings?

15 A We talked about, I guess, the progression of the
16 case.

17 Q I'm sorry, the what?

18 A The progression of the case. The dates, when things
19 were happening.

20 Q Did you tell Mr. Breibart your version of what had
21 happened during that traffic stop?

22 A Yes, ma'am.

23 Q So -- and he had told you you were facing up to 25
24 years?

25 A He told me that was the mandatory minimum of what I

1 was facing, yes, ma'am.

2 Q So, why did you at the end of the day decide to plead
3 guilty? Was it because of that meeting where your
4 father got so emotional?

5 A Yes, ma'am. And not only that but, I mean, the
6 belief that I wasn't going to do 10 years. You know,
7 I would have a chance at parole, I would have a
8 chance.

9 Q But Judge Miller asked you if anyone had made you any
10 kind of promises and you said no?

11 A That's correct.

12 Q So, in your mind Mr. Breibart didn't promise you
13 you'd get out in less time, he just said that could
14 happen?

15 A Well, he did not promise me, he told me -- he led me
16 to believe that that would -- he just said you're
17 going to get out on this date. But yeah, that's what
18 he told me.

19 Q And on the date you pled guilty you told Judge Miller
20 you were satisfied with Mr. Breibart?

21 A Yes, ma'am.

22 Q So, you were satisfied with him that day?

23 A No, ma'am, this is just -- he had just advised me
24 just to answer yes to all of his questions concerning
25 all of these things.

1 Q So, you were unhappy with Mr. Breibart even the day
2 you pled guilty?

3 A I thought he was doing a great job, you know. I
4 trusted the man. I thought he was doing 100 percent
5 job. That's why I listened to exactly what told me
6 to say.

7 Q Well then, I'm confused. So, you were or you were
8 not satisfied with him that day?

9 A That day, yeah, I was satisfied with him.

10 Q You were satisfied?

11 A Uh-huh.

12 Q You were satisfied. And since then you changed your
13 opinion of how he handled your case?

14 A Yes, ma'am.

15 Q All right. What led you to change your mind about
16 your feelings about his representation?

17 A Learning things about Mr. Breibart, learning things
18 about the criminal justice system. I've never been
19 in trouble before in my life. I have a disorderly
20 conduct charge. I have no experience at all in a
21 courtroom court setting. And I listened to
22 everything that this man told me to do. And when I
23 got into prison I started talking to other people,
24 there's a law library in the prison system. I
25 started looking at things, opening my own eyes to

1 them.

2 Q Okay. And you knew that day after speaking with him
3 that the State was going to recommend that ten years?

4 A Yes.

5 Q Okay. And he never even mentioned an appeal to you
6 at all?

7 A No, ma'am, he never mentioned an appeal to me.

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

9 THE COURT: Anything further?

10 MR. ASHMORE: Just briefly.

11 REDIRECT EXAMINATION

12 BY MR. ASHMORE:

13 Q The day that you pled guilty, Toby, did you know that
14 Mr. Breibart was crazy?

15 A No, sir, I had no idea that he was crazy.

16 MR. ASHMORE: That's all I have, Your Honor.

17 THE COURT: Mr. Jones, you can step down.

18 MR. ASHMORE: I don't have any other witnesses,
19 Your Honor.

20 THE COURT: Anything from the State?

21 MS. RATIGAN: We rest on the record, Your Honor.

22 THE COURT: Okay, good enough.

23 EXAMINATION

24 BY THE COURT:

25 Q Mr. Jones, let me ask you questions. You realize

1 that if I grant your post relief application, then
2 what that would mean is you go back to court and you
3 start over from scratch.

4 A Yes, sir.

5 Q Do you understand that means you're looking at 25
6 years in prison?

7 A Yes, sir.

8 Q And if you were to try, if you were to argue the
9 suppression hearing, when your case is called to
10 trial and you were to lose that suppression hearing,
11 that the sentence that you would be given by the
12 Court may be substantially more than 10 years?

13 A Yes, sir.

14 Q Do you understand that?

15 A Yes, sir.

16 Q You feel that confident about your search and seizure
17 motion, your suppression hearing?

18 A I do.

19 Q Have you had the opportunity to talk to an attorney
20 about that?

21 A I have.

22 Q With whom have you spoken about that?

23 A Mr. Ashmore.

24 Q And you feel comfortable about it?

25 A I do.

1 Q All right, I'm going to take it under advisement. I
2 will tell you that I'm troubled if there was a
3 misrepresentation by your attorney. The record is
4 clear that you had waived your Constitution rights at
5 that hearing. But the question is that if you were
6 under the impression that there had already been a
7 hearing, then that's problematic. That's
8 problematic. But I will tell you this, that based on
9 what I've read, if, if you were unsuccessful in
10 arguing your suppression hearing, that the ultimate
11 outcome in this case was not egregious. And was in
12 keeping with what I see pursuant to plea for these
13 types of offenses. Particularly when you have a
14 mandatory minimum of seven years. So, you know,
15 again, I'm going to take it under advisement but what
16 I want to make sure of is that you recognize that the
17 ramifications of having a successful application are
18 not always positive. Sometimes it can visit upon you
19 negatively. And I want you to know that and have
20 your eyes wide opened.

21 A Yes, sir.

22 Q You got it?

23 A Yes, sir.

24 THE COURT: All right, good enough. Good luck
25 to you, sir.

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MR. JONES: Thank you.

MR. ASHMORE: Thank you, Your Honor.

MS. RATIGAN: Thank you, Your Honor.

(WHEREUPON, the proceedings were concluded.)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Tobias Aaron Jones,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

Case No. 2010-CP-23-09887

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENS/EE

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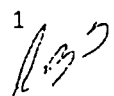
ORDER

This matter comes before the Court by way of an Application for Post-Conviction Relief filed on December 3, 2010. The Respondent filed its Return on or about March 7, 2011. On August 28, 2013, the Court held an evidentiary hearing. The Applicant was present at the hearing and was represented by Beattie B. Ashmore. The Respondent was represented by Assistant Attorney General Karen C. Ratigan.

The Applicant testified at the hearing. No other testimony was taken at the hearing, and the Applicant's testimony was therefore uncontroverted. The Court carefully observed the Applicant and listened to his testimony and finds that the Applicant was credible and his testimony was truthful. The Court took judicial notice that on the day of the Post-Conviction Relief hearing, the Applicant's trial counsel, Richard Breibart, pled guilty in Federal Court. Breibart was charged with offenses involving the defrauding of numerous clients with losses well in excess of one million dollars, evidencing a pattern of lies and deceit in dealing with his clients. See United States v. Richard Breibart, 3:12-cr-00723 (D.S.C.). Breibart's Federal criminal case was delayed in order for a competency examination to be conducted by the Bureau of Prisons. This Court also reviewed the Applicant's Post-Conviction Relief Application as well as the entire record to include the plea and sentencing transcript.

PROCEDURAL HISTORY

The Applicant was indicted on April 14, 2009, for knowingly selling, manufacturing, delivering or bringing into the State, or knowingly providing financial assistance or otherwise aiding, abetting,

1


attempting, or conspiring to sell, manufacture, deliver or bring into the State, or knowingly being in actual or constructive possession of more than 400 grams of Cocaine, in violation of S.C. Code Ann. § 44-53-370. The Applicant was stopped on the Interstate, and cocaine was found in his automobile during a search. The Applicant testified that he found Attorney Richard Breibart on the Internet and that Breibart represented that he had "connections" to law enforcement, prosecutors and the South Carolina legislature. A preliminary hearing was conducted and the case was dismissed. It was then indicted through direct presentment. The case hinged upon the illegality of the traffic stop as Breibart indicated when he told the Judge at sentencing that "[t]he whole case turned around the search and seizure question." (Sentencing transcript at 11).

The Applicant testified that Breibart informed him that a Suppression Motion had been filed and denied by the Court. In fact, Breibart never filed a Suppression Motion, and no such Motion had been ruled upon by the Court. Based on the representation that a critical component of his defense had failed as well as other material misrepresentations, on March 4, 2010, the Applicant pled guilty to Trafficking in Cocaine, more than 28 grams. He was sentenced to ten years imprisonment. The Applicant timely filed his Application for Post-Conviction Relief alleging ineffective assistance of counsel. The Applicant is presently confined in the South Carolina Department of Corrections.

This Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the Post-Conviction Relief hearing. This Court has further had the opportunity to observe the Applicant who testified at the hearing and to closely pass upon his credibility. This Court has weighed his 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.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

"The Sixth Amendment, applicable to the States by the terms of the Fourteenth Amendment, provides that the accused shall have the assistance of counsel in all criminal prosecutions. The right to counsel is the right to effective assistance of counsel." Missouri v. Frye, -- U.S. --, 132 S.Ct. 1399, 1404,

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182 L.Ed.2d 379 (2012) (citing Strickland v. Washington, 466 U.S. 668, 686, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)).

The two-prong test for determining effective assistance of counsel has been set forth by the United States Supreme Court in Strickland v. Washington. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624 (1989). First, the applicant must show that counsel's performance was deficient. Cherry, 300 S.C. at 117. "Under this prong, 'the proper measure of attorney performance remains simply reasonableness under prevailing professional norms.'" Cherry, 300 S.C. at 117 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. at 2065). "The second prong of the Strickland test requires a showing that the deficient performance prejudiced the defendant to the extent 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 (internal quotations omitted). "The defendant is required to overcome the presumption that counsel was effective in order to receive relief." Cherry, 300 S.C. at 118. "The burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(c), SCRPC).

This Court took judicial notice that on the same day as the Applicant's Post-Conviction Relief hearing, Breibart pled guilty in Federal Court to defrauding his clients and he is now a convicted felon. See United States v. Richard Breibart, 3:12-cr-00723 (D.S.C.). The only testimony presented at the Post-Conviction Relief hearing was from the Applicant, and this Court finds the Applicant's testimony credible. This Court further finds that the Applicant has met his burden of proof in demonstrating that his trial counsel was deficient and the deficient performance prejudiced the Applicant.

Specifically, the evidence shows that Breibart made a representation to the Applicant that a Suppression Motion had been filed and ruled upon by the Court. Based on the false representation that a critical component of his defense had failed, the Applicant elected to plead guilty. The Applicant's plea was therefore not knowingly and intelligently made, and the Applicant's testimony is clear that he would not have pled guilty but for the presumed negative ruling on his Suppression Motion in addition to other

material misrepresentations. The evidence shows that a Suppression Motion was meritorious, in part because the case was dismissed at a preliminary hearing.

The Court further finds that Breibart misrepresented to the Applicant that he would serve no more than five years of the ten-year recommendation. Breibart told the Applicant that although the statute provided that a Defendant must serve 85% of his sentence, the legislature was in the process of changing the statute by eliminating this provision, and he would not actually be subject to the 85% rule.

Further, the Applicant was in a position to cooperate with law enforcement officials. He testified that he spoke with an agent from the DEA who was willing to utilize him in an undercover capacity. However, Breibart told the Applicant that then Solicitor Bob Ariail was under Federal investigation and therefore Ariail would not allow the Applicant to cooperate with Federal officials in an effort to achieve a reduced sentence. Therefore, the Applicant abandoned his plans to render cooperation to the DEA in order to obtain a reduced sentence.

At the guilty plea, Breibart directed the Applicant not to address the Court with any concerns, or else he would face the full twenty-five year sentence. Lastly, although the Applicant's parents were present on the day of sentencing, Breibart discouraged them from speaking with the same threat of having the maximum sentence imposed.

Breibart's actions, statements to the Applicant, statements to the Court and eventual guilty plea in Federal Court to lying to clients in order to steal their money completely undermine the integrity of the criminal justice system and leave this Court with no confidence that the Applicant received adequate representation. The record is clear that Breibart made material misrepresentations to the Applicant. Based on those misrepresentations, the Applicant pled guilty and received a considerable sentence.

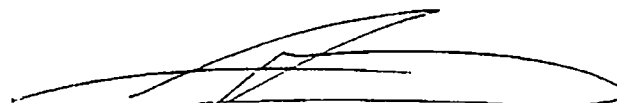
This Court specifically finds that counsel's deficient performance prejudiced the Applicant such that there is a reasonable probability that but for these unprofessional errors, the result of the proceeding would have been different. Even further, a knowing misrepresentation by an officer of the court certainly undermines confidence in the outcome of legal proceedings. See Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

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CONCLUSION

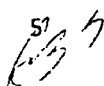
Based on the foregoing, the Applicant's Application for Post-Conviction Relief is GRANTED. The Applicant's guilty plea and sentence is hereby vacated, and the original charge against the Applicant is restored.

IT IS SO ORDERED.



Robin B. Stilwell

September , 2013
Greenville, South Carolina

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2010CP2309887

2013 SEP 24 PM 4: 28
FILED CLERK OF COURT
GREENVILLE CO S.C.
PAUL B. WICKENSIMER

Tobias Arron Jones vs. South Carolina State Of

CHECK ONE:

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC (Vol. Nonsuit);
 - Rule 43(k), SCRPC (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order: Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this 24th day of September, 2013.

Court Reporter:

PRESIDING JUDGE - Robin B Stilwell

This judgment was entered on the 24th day of September, 2013, and a copy mailed first class this 24th day of September, 2013. to attorneys of record or to parties (when appearing pro se) as follows:

Beattie B. Ashmore 650 E. Washington Street
Greenville, SC 296012931

Karen Ratigan Attorney General Office

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA)
 COUNTY OF Greenville)
 STATE VS.)
Tobias Aaron Jones)
 AKA: _____)
 Race: W Sex: M Age: 30)
 DOB: 10-18-1979 SS#: [REDACTED])
 Address: _____)
 City, State, Zip: _____)
 DL#: A66141998 SID#: _____)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS2303198A
 A/W#: 2009GS2303198A
 Date of Offense: 1/27/2009
 S.C. Code § : 44-53-0370(EX)2X
 CDR Code #: 0281

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Drugs / Trafficking in cocaine > 28 grams

CONVICTED OF or PLEADS

in violation of § 44-53-0370 of the S.C. Code of Laws, bearing CDR Code # 2359
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Joyce K. Monts 65331 Tobias Jones [Signature] #867
 Monts, Joyce K. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 10 ~~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. 1 DAY
 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 PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____	\$
*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§ 56-5-2995 (DUI Assessment)	\$12 \$
§ 56-1-286 (DUI Breath Test)	\$25 \$
§ 17-12 (Public Def/Prob)	\$500 \$
§ 14-1-212 (Law Enforce. Funding)	\$25 \$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$100 \$ <u>100</u>
§ 50-21-114(BUI Breath Test Fee)	\$50 \$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
§ 90.7 (SCCJA Surcharge)	\$5 \$ <u>5</u>
3% to County (if paid in installments)	\$

TOTAL \$ _____
 Clerk of Court/ Deputy Clerk Paul B. Wiseman
 Court Reporter: Hiskell
 SCCA/217 (11/2009)-

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

Presiding Judge [Signature]
 Judge Code: 2130
 Sentence Date: 3-4-10

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
TRAFFICKING COCAINE

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

That TOBIAS AARON JONES did in Greenville County, on or about the 27th day of January 2009, knowingly
sell, manufacture, deliver or bring into the State of South Carolina, or did knowingly provide financial assistance
or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver or bring into the State or was knowingly
in actual or constructive possession of more than 400 grams of Cocaine. This is in violation of §44-53-370 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.

Joyce Monte
SOLICITOR

DLN
WITNESSES
B. Dowis
S. C. Highway Patrol
1/27/2009
ARREST WARRANT NUMBER
DIRECT PRESENTMENT
DOB: 10-18-79 W/M SSN: 081-72-9724

DOCKET NO. 2009-GS-23-
JLK 009199

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April TERM 2009

THE STATE

vs.

TOBIAS AARON JONES

Defendant

ACTION OF GRAND JURY
TRUE BILL

Micki Cummings
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

2359
0284

Indictment for

TRAFFICKING COCAINE

VIOLATION § 44-53-0370

Foreperson of Petit Jury

Date:

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 01/24/11
 OMCOMITA RELEASE DATE SCREEN C040481
 SCDC# > 339627 LOC: TYGER RIVER
 JONES, TOBIAS AARON SCDC CLASSIFICATION...: VIOLENT
 OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: N
 SEXUAL PREDATOR...: NOT APP
 DNA STATUS...: COMPLETED
 GPS REQUIREMENT...: N
 PREA DECISION...:
 CURRENT SENTENCE: 010-00-000 CONSECUTIVE SENTENCE ...: N
 010-00-000 CURRENT SENT START DATE: 03/03/2010
 PROJECTED COMPLETION DATES
 MAXOUT DATE: 08/30/2018 CURRENT EWC ..: 2 F 5
 YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC
 INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
 TOTAL EARNED WORK CREDITS ...: 000114 LABOR CREW DISQ REASON:
 TOTAL EDUCATION CREDITS: 000000 CATEGORY 4 OR 5 OFFENSE
 TOTAL EXTRA EARNED CREDITS ..: 000
 TOTAL SERVICE TIME EARNED ...: 000321

PFKEYS: 5: HISTORY OF DATE CHANGES
 4-Ⓢ 2 Sess-2 167.7.50.33 SCDC1517 3/11

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 01/24/11

C0404

JONES, TORIAS AARON FBI # 322614AC8 SID# SC01864633 SCDC # 339627

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION .: TYGER RIVER CORR INST

DORM.....: U100110X

SECURITY/CUST.: 2 MINIMUM IN

RACE....:W SEX...:M

CURR INCARC SENT...: 10 YRS 0 MOS 0 DYS

PROJ MAXOUT DATE: 08/30/2018

CENTRAL MONITORING.: NO

PROJ PAROLE DATE: 00/00/0000

SOCIAL SECURITY #...: [REDACTED]

EWC JOB...: WARDKEEPER

EDUC PGM.: NO CURR EDUC PROGRAM

CURRENT PROGRAM...: NO CURRENT PROGRAM

EWC LEVEL: 2F5 EEC LEVEL:

AGE...: 31 DATE OF BIRTH...:10/18/79

ASSIGNMENT...: WARD HELPER WARD #1

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE			COUNTY	SENTENCE		
	YRS	MOS	DYS		START	U/NU	CATEGORY
TRAFFICKING IN COCAINE	10	0	0	GREENVILLE	3/ 3/2010	U	4

PRIOR COMMITMENTS OVER 90 DAYS:

MISSING PRIORS DATA

DETAINERS (HOLD,WANTED,NOTIFY):

NO DETAINERS

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES WHILE IN CUSTODY

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

10/ 7/10 STEALING

OTHER

HISTORY OF MOVEMENTS:

DATE	LOCATION	STATUS	REASON
5/ 4/10	TYGER RIVER	INCARCERATED	ADMINISTRATIVE
3/ 9/10	KIRKLAND	INCARCERATED	R&E PROCESSING
3/ 9/10	PERRY	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
WARDKEEPER	09/03/10	0/ 0/ 0		2F5
WARDKEEPER	08/26/10	9/ 2/10	HI ELIGIBLE FOR LEVEL 2	3F5
CANTEEN OPERATOR	05/06/10	8/16/10	LATERAL TRANSFER	3F5

HISTORY OF EARNED EDUCATION CREDITS:

FEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON

NO SCHOOL ASSIGNMENTS

***** END OF REPORT *****

STATE OF SOUTH CAROLINA)
 COUNTY OF Greenville)
 STATE VS.)
Tobias Aaron Jones)
 AKA:)
 Race: W Sex: M Age: 30)
 DOB: 10-18-1979 SS#: [REDACTED])
 Address:)
 City, State, Zip:)
 DL#: A66141998 SID#: 0)
 *CDL Yes No CMV Yes No Hazmat Yes No)
 In disposition of the said indictment comes now the Defendant who was)
 TO: Drugs / Trafficking in cocaine > 28 grams)

IN THE COL. OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS2303198A
 A/W#: 2009GS2303198A
 Date of Offense: 1/27/2009
 S.C. Code § : 44-53-0370(EX2X)
 CDR Code #: 0281

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 44-53-0370 of the S.C. Code of Laws, bearing CDR Code # 2359
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

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

ATTEST: Joyce K. Monts 65331 Tobias Jones [Signature] #867
 Monts, Joyce K. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 10 ~~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.

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SPECIAL CONDITIONS:

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

Recipient: _____	
*Fine: _____	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ <u>100</u>
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§ 90.7 (SCCJA Surcharge)	\$5 \$ <u>5</u>
3% to County (if paid in installments)	\$

TOTAL

Clerk of Court/ Deputy Clerk Paul A. Wislenski
 Court Reporter: Hiskell
 SCCA/217 (11/2009)---

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

Presiding Judge [Signature]
 Judge Code: 2130
 Sentence Date: 3-4-10