

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County

J. Michael Baxley, Circuit Court Judge

RECEIVED

APR 5 2013

S.C. Supreme Court

JOSE M. MALDONADO,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-212869

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

KAREN RATIGAN
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE)	
The State,)	
	)	TRANSCRIPT OF RECORD
-vs-	)	2008-GS-47-06
)	
Jose Merced Maldonado,)	
	)	May 19, 2010
Defendant.	)	Greenville, South Carolina

B E F O R E:

HONORABLE ROBIN B. STILWELL, JUDGE

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

CURTIS A. PAULING III, ESQ.
Attorney for the State

JOHN P. ABDALLA, ESQ.
Attorney for the Defendant

Margaret A. Woods
Circuit Court Reporter

ORIGINAL

1 THE COURT: Okay. Alright. We're proceeding on the case
2 of the State of South Carolina vs. Jose Merced Maldonado,
3 Indictment No. 2008-GS-47-06, two counts under that
4 indictment; one for trafficking cocaine twenty-eight (28) to a
5 hundred (100) grams; the other one for distribution of
6 cocaine. Mr. Parks, if you would please swear the interpreter
7 and the defendant. Thank you.

8 (Whereupon, the interpreter was sworn.)

9 THE BAILIFF: Thank you. Mr. Maldonado, I'm gonna give
10 you the oath now, please raise your right now.

11 (Whereupon, the defendant was sworn.)

12 THE COURT: Alright. Mr. Abdalla, you represent
13 Mr. Maldonado in this matter?

14 MR. ABDALLA: I do, Your Honor.

15 THE COURT: You've had the opportunity to discuss with
16 him his important constitutional rights to include his right
17 to trial by jury and his right against self-incrimination?

18 MR. ABDALLA: I've discussed all of those rights with
19 him, yes.

20 THE COURT: All right, sir, and you've also discussed
21 with him the maximum possible penalty that he can receive
22 under the law for the offenses to which he's pleading guilty?

23 MR. ABDALLA: I have, Your Honor.

24 THE COURT: Is it your understanding that he understands
25 and appreciates all of his rights and ramifications of his

1 plea, wishes to waive his rights and proceed with a plea of
2 guilty this morning?

3 MR. ABDALLA: That is my understanding, Your Honor.

4 THE COURT: And do you agree with that decision, sir?

5 MR. ABDALLA: I do agree with it and he had the benefit
6 of the interpreter when I was going over his rights ---

7 THE COURT: Okay.

8 MR. ABDALLA: --- just so the Court knows that.

9 THE COURT: Thank you for saying that. Mr. Maldonado,
10 you realize that you have a right to a jury trial on these
11 charges.

12 THE DEFENDANT: Yes, sir.

13 THE INTERPRETER: Yes, sir.

14 THE COURT: And you understand that if you were to have a
15 jury trial that a panel of twelve of your peers would be
16 convened and in that proceeding the State would have the
17 burden of proving you guilty beyond a reasonable doubt.

18 THE INTERPRETER: Yes, sir.

19 THE COURT: And you understand that in that proceeding
20 you would not have to prove yourself innocent. You have a
21 constitutional right to remain silent, alright, against self-
22 incrimination which means that you wouldn't have to say, do,
23 or prove anything, you could remain silent throughout that
24 proceeding and require the State to meet its burden of proving
25 each and every element of the offense beyond a reasonable

1 doubt. Do you understand, sir?

2 THE INTERPRETER: Yes, sir.

3 THE COURT: Okay. And even though you have that right to
4 remain silent you could if you wanted to take the stand and
5 you could testify, you could tell the jury your side of the
6 story, you could present witnesses in your defense, you could
7 present other forms of evidence, you could present legal
8 defenses to the charges and you could also cross-examine any
9 of the state's witnesses. You understand, sir?

10 THE INTERPRETER: Yes, sir.

11 THE COURT: Alright. And knowing these rights, sir, do
12 you wish to waive them and proceed with a plea of guilty this
13 afternoon?

14 THE INTERPRETER: Yes, sir.

15 THE COURT: Okay. In Indictment 2008-06 you're charged
16 with a count of trafficking in cocaine and you recognize that
17 under the law you can receive between seven (7) and
18 twenty-five (25) years and a fine of \$50,000.

19 THE INTERPRETER: Yes, sir.

20 THE COURT: And how do you wish to plead to that offense,
21 sir?

22 THE INTERPRETER: Guilty.

23 THE COURT: In Indictment 2008-47-06 you're charged with
24 a count of distribution of cocaine and you recognize that you
25 can receive up to fifteen (15) years incarceration and/or a

1 fine of up to \$25,000. Do you understand that, sir?

2 THE INTERPRETER: Yes, sir.

3 THE COURT: And how do you wish to plead?

4 THE INTERPRETER: Guilty.

5 THE COURT: Has anyone forced, made, or threatened you in
6 any way to get to you plead guilty?

7 THE INTERPRETER: No, sir.

8 THE COURT: Has anyone promised you anything in exchange
9 for your plea?

10 THE INTERPRETER: No, sir.

11 THE COURT: Are you pleading guilty of your own free will
12 because you are guilty?

13 THE INTERPRETER: Yes, sir.

14 THE COURT: Are you under the influence of any drugs or
15 alcohol today that would affect your ability to make a
16 decision?

17 THE INTERPRETER: No, sir.

18 THE COURT: Do you suffer from any mental sickness that
19 would affect your ability to understand what's going on
20 today?

21 THE INTERPRETER: No, sir.

22 THE COURT: Have you had the opportunity to discuss this
23 matter with Mr. Abdalla as much as you need to?

24 THE INTERPRETER: Yes, sir.

25 THE COURT: Has he answered all your questions, done

1 everything you've asked him to do?

2 THE INTERPRETER: Yes, sir.

3 THE COURT: Are you satisfied with his services?

4 THE INTERPRETER: Yes, sir.

5 THE COURT: Have you understood all the questions that
6 I've asked you today?

7 THE INTERPRETER: Yes, sir.

8 THE COURT: Okay. Do you have any additional questions
9 that you would either like to ask me or Mr. Abdalla regarding
10 your rights or this proceeding before we move on?

11 THE INTERPRETER: No, sir.

12 THE COURT: Okay. Sir, you have ten days to appeal any
13 sentence that I may hand down, that must be filed in writing
14 with the State by the grand jury clerk of court.

15 THE INTERPRETER: Yes, sir.

16 THE COURT: Alright, Mr. Pauling, I'd be happy to hear
17 from you, sir.

18 MR. PAULING: Thank you, Your Honor, may it please the
19 Court. Your Honor, these charges stem from state grand jury
20 investigation, the Pretender, Your Honor. You're aware of
21 there was a trafficking conspiracy, cocaine conspiracy, out of
22 a a separate indictment. This investigation stemmed off of
23 information from one of the individuals involved in in that
24 particular case, Your Honor. Now law enforcement, Brad
25 Godfrey's lead agent on this part of the case, Your Honor, law

1 enforcement actually developed a confidential informant who
2 indicated to purchase drugs from the defendant Jose Maldonado.
3 Your Honor, these particular charges stem from March 10th
4 2008. Now this confidential informant had indicated that they
5 had actually purchased marijuana and cocaine from
6 Mr. Maldonado in the past. On this particular occasion the CI
7 was wired up, given audio and visual recording devices and
8 actually went to the location that being a [REDACTED] in
9 Greenville, Your Honor, and that's actually the defendant's
10 residence, Your Honor, was actually taken over there by
11 another agent, went in, prior to them actually going over
12 there it shot some calls over for the deal for a kilo of
13 cocaine. Upon arriving to the location, the CI met with
14 Mr. Maldonado, asked him if he had it, he indicated that he
15 did that it was in the garage. At that time the CI asked for
16 a portion of the, of the cocaine so he could provide it to who
17 he he told him was was a friend of his. He got that quantity
18 of cocaine from Mr. Maldonado and then took it back to law
19 enforcement, was turned over to law enforcement, Your Honor,
20 that is the the distribution charge. Now, based on that and
21 other information that law enforcement had related to
22 Mr. Maldonado they actually secured a search warrant for that
23 same day, went back to that location to execute the search
24 warrant; as well, Judge, and what we would have shown at at at
25 trial, Your Honor, when he actually, when the CI went into

1 that location, you can see Mr. Maldonado on the video, Your
2 Honor, but also you can hear in the background a child, I
3 believe it was a young boy, but you can hear in the background
4 because the CI actually speaks to the child. The child is
5 there as well as a lady is there who I believe may have been
6 his wife or the child's mother but there is a child present at
7 the location during this particular incident. At any rate,
8 Your Honor, when law enforcement comes back to actually do
9 the, to execute the search warrant, they have surveillance on
10 that location, Mr. Maldonado takes off. A foot chase ensues
11 and actually it was Lieutenant Frank O'Neal who actually
12 apprehended Mr. Maldonado, had to go through some three yards
13 jumpin' fences to catch up with him. Once he apprehended him
14 he did have what was wrapped in in cellophane a a large
15 quantity of cocaine was turned over to Agent Creswell, was
16 placed into evidence, Your Honor. That portion of cocaine for
17 the distribution charge, Your Honor, was tested, came back
18 positive as cocaine, was .59 grams of cocaine, Your Honor.
19 The the brick form that was actually located after (phonetic)
20 Mr. Maldonado was one 1,002 grams of cocaine, it was a kilo of
21 cocaine, Your Honor. Now, Your Honor, he was originally
22 facing twenty-five (25) to thirty (30). We actually offered a
23 r̄ec̄omm̄endation of twenty (20) years on the lesser included
24 offense, Your Honor, twenty-eight (28) to a hundred (100)
25 grams, he's lookin' at seven (7) to twenty-five (25) years. I

1 just wanna make the the Court aware, Your Honor, that that we
2 are asking Your Honor for the the recommendation of twenty
3 (20) years, Your Honor,---

4 THE COURT: Yes, sir.

5 MR. PAULING: --- for a variety of reasons, Your Honor,
6 one is at at the outset Mr. Maldonado did not cooperate with
7 law enforcement. He did give a statement simply indicating
8 that he had the kilo and he was intending to sell it for 24 to
9 \$26,000 I believe but did not provide any more information as
10 as as to that, Your Honor.

11 MR. ABDALLA: Bless you.

12 MR. PAULING: As his prior record, Your Honor, let's see,
13 is a DUI from 2001, Your Honor, driving under suspension. In
14 2003, I don't see it here, Your Honor, I thought he had
15 another DUI recently, just beg the Court's indulgence.

16 MR. ABDALLA: He pled to a DUI in 2009.

17 THE COURT: 2009 was that while ---

18 MR. ABDALLA: Yes.

19 THE COURT: --- he was out on ---

20 MR. ABDALLA: Yeah, it's ---

21 THE COURT: --- bond on this?

22 MR. ABDALLA: He was never out on bond, Judge.

23 THE COURT: Okay. Alright. When was he picked up?

24 MR. ABDALLA: It's around the same time, right before the
25 trafficking charge ---

1 THE COURT: Okay.

2 MR. ABDALLA: --- or right at -- it had to be before I
3 guess, they were kinda simultaneous and I apologize I said no
4 record and DUI I didn't think of ---

5 THE COURT: I'm I'm with ya. Two well he pled 2000 okay
6 so he was in jail and they transported him for purposes of
7 pleading to a DUI charge?

8 MR. ABDALLA: He's always been -- he was in jail on this.
9 They served the DUI warrant on him and he pled to it ---

10 MR. PAULING: Yeah, they're separate and apart from this,
11 Your Honor.

12 THE COURT: Okay.

13 MR. ABDALLA: But but he's never -- but he's been in jail
14 on this ever since, he's never gotten out ---

15 THE COURT: Okay.

16 MR. ABDALLA: --- and the DUI had nothing to do with it.
17 He just got time served on the DUI.

18 THE COURT: I understand. Alright.

19 MR. PAULING: Nothing further at this time, Your Honor.

20 THE COURT: Okay, thank you. Mr. Maldonado, you heard
21 those facts. Is that what happened, sir?

22 THE INTERPRETER: Yes, sir.

23 THE COURT: Okay. Alright. I do find that there is a
24 substantial factual basis for the plea, the same has been
25 entered freely and voluntarily with the advice of counsel with

1 whom Mr. Maldonado indicates that he is satisfied and I'll
2 accept the same.

3 MR. ABDALLA: Thank you.

4 THE COURT: Mr. Abdalla, I'd be happy to hear from you,
5 sir.

6 MR. ABDALLA: Thank you. My client, Jose, is
7 32-years-old, he's single. He has lived in the states for
8 about seven years or eight years, 2002. The last two plus
9 years he's been in the courtesy of the law enforcement center,
10 he's been there since I believe March of 2007 or 2008. Judge,
11 he has the equivalent of a high school education from Mexico.
12 He has, as I said, a child here, a boy, with a lady, Veronica,
13 who is in the home that they alluded to. His parents are in
14 Mexico, he has a sister in Spain, he doesn't have any
15 immediate family in the states. Your Honor, as had been
16 discussed private conversations Mr. Maldonado was a mule. He
17 has a brother who was in to some dealer and apparently as I
18 understand it Mr. Maldonado decided to take the cocaine to try
19 and relieve his brother's debt. From my conversation was with
20 the narcotics agents, that's not inconsistent with what's
21 happened. What I can tell the Court objectively is he's been
22 in jail for 27 months, he had a \$75,000 bond which any dealer
23 worth his salt would have gotten out on and he obviously
24 has -- he has no money. He's, although he's caught with the
25 drugs he admitted to them, as the prosecutor said, right off;

1 he's never denied it and I ask that you take into account the
2 fact that he has no record and I realize yes, he has the DUIs
3 but I'm talk -- he has no drug record, no record for any kind
4 of violence, no record for stealing. We have the statements
5 of a -- of Chris Willoughby who is himself somebody who's been
6 in trouble saying that my client had been selling in the past.
7 We're not here to refute that because it's a win the battle,
8 lose the war issue. I appreciate the charge the State is
9 allowing my client to plead to, the charges. Your Honor, as
10 you know he's looking at seven (7) to twenty-five (25) years.
11 I'm asking the Court to give him a sentence close to the
12 minimum of seven (7) years and I will also just for the record
13 say say that had this been a federal court my understanding of
14 my going over the guidelines he'd be looking at anywhere from
15 three (3) to four and a half (4 1/2) years and I realize that
16 doesn't carry weight here but I'd just like to have that
17 there, Judge.

18 THE COURT: I understand. Okay. Is there anything
19 Mr. Maldonado would like to tell me?

20 THE INTERPRETER: No, sir, thank you.

21 THE COURT: Okay. Alright. After careful consideration
22 taking into consideration the range in this case, taking in
23 consideration the charges which have been reduced certainly
24 and taking into consideration the prior record of the
25 defendant, the order of this court is that Mr. Maldonado be

1 committed to the State Department of Corrections for a period
2 of twelve (12) years and concurrent, credit time served since
3 March 10th 2010 and that is the same ---

4 MR. ABDALLA: March of 2000 -- I -- I'm sorry, ---

5 THE COURT: I -- I'm sorry, 2008. I wrote down 2008,
6 2008 and the same it's -- it is just the same on both counts
7 concurrent, credit for time served.

8 MR. ABDALLA: Thank you, Your Honor.

9 THE COURT: Alright.

10 MR. PAULING: Thank you, Your Honor.

11 THE COURT: Good luck. Thank you.

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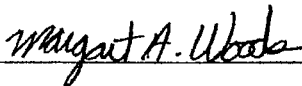
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CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on May 19, 2010 at the time and place heretofore set forth; and that the foregoing pages numbered from 2 through 13, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

February 15, 2011



Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

ORIGINAL

FORM 5

STATE OF SOUTH CAROLINA)
)
 County of Greenville CO.)
Jose Maldonado)
 Full name and prison number (if any) of Applicant)
 340872)

IN THE COURT OF COMMON PLEAS

2010-CP-23- 9814

v.

State of South Carolina)
)
)
)
)
)

APPLICATION FOR
 POST-CONVICTION RELIEF
 2010 DEC 1 P 2:19
 FILED IN THE COURT OF COMMON PLEAS
 GREENVILLE CO. S.C.
 WITH RECORDED

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 Greenville County Detention Center
MacDungall AL
2. Name and location of Court which imposed sentence Greenville County
Court General Session
3. Name(s) of co-defendant(s) (if any) Christopher Willoby
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) GS-47-06, 2008
 - (b) _____

(c) _____

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

(a) May 19, 2010 12 yrs

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

NO

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

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

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) Counsel failed to inform me that I could file appeal.

(b) _____

(c) _____

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

(a) Ineffective assistant of Counsel

(b) Did not receive Preliminary Hearing

(c) _____

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

(a) Counsel Failed to prepare for trial in adequate

(b) Counsel told me that I would receive the mandatory

(c) lawyer never once tried to see my side, minimum

12. Prior to this application have you filed with respect to this conviction: ^{OF. CASE,}

(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) First time filing (PCR)
- (b) _____
- (c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. John Abdalla from Public Defenders Office
Do not know address Greenville County
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Guilty Plea - General Session Court
GS-47-06, 2008
 - ii. _____
 - iii. _____

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

Repeal Mandatory Minimum for first time offender
Repeal Non-violent Sentence to be parole eligible
A Reduction in sentence terms / Expedite to Dept of

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

Immigrant for Deportation

NO

STATE OF SOUTH CAROLINA)
County of Greenville)

VERIFICATION

I, Jose MALDONADO, 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.

Jose Maldonado

SWORN to and subscribed before me this _____ day of _____.

Notary Public (L.S.)

My Commission Expires: _____

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

I, JOSE MALDONADO 340879, 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.

Jose Maldonado
Applicant

SWORN or affirmed to and subscribed before me this
23 day of Nov 2010.

[Signature]
Notary Public

My Commission Expires: My Commission Expires 1/21/2012

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
)	
COUNTY OF GREENVILLE	)	C/A# 2010-CP-23-9814
)	
Jose' Maldonado, #340872,)	
)	
Petitioner,)	
)	
vs.	)	CERTIFICATE OF SERVICE
)	
State of South Carolina,)	
)	
Respondent.)	
)	

I hereby certify that I have this date served upon the Respondent a true copy of Petitioner's AMENDED APPLICATION FOR POST CONVICTION RELIEF, by placing same into the United States Mail, first class postage affixed, and addressed as follows:

OFFICE OF THE ATTORNEY GENERAL
 Post Office Box 11549
 Columbia, SC 29211

Dated: 1/25-11
 Ridgeville, South Carolina

/s/ Jose Maldonado
 Jose' M. Maldonado
 Petitioner

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2010-CP-23-9814
COUNTY OF GREENVILLE)	
)	
Jose Merced Maldonado,)	
S.C.D.C. No. 340872,)	
)	
Applicant,)	
	)	RETURN
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

In response to the post-conviction relief application filed December 1, 2010, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections. The State Grand Jury indicted the Applicant at the April 2008 term for distribution of cocaine (2008-GS-47-0006, count 3) and trafficking cocaine, 400 or more grams (2008-GS-47-0006, count 4). John P. Abdalla, Esquire represented the Applicant.

On May 19, 2010, the Applicant pled guilty. The Honorable Robin B. Stilwell sentenced the Applicant to concurrent terms of twelve (12) years for distribution of cocaine and twelve (12) years for trafficking cocaine, 28-100 grams. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the State Grand Jury Clerk of Court regarding the subject convictions, 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 reasons:

1. Ineffective assistance of counsel:
 - a. Failed to prepare for trial.
 - b. Advised the Applicant he would receive the mandatory minimum.
 - c. "Never once tried to see my side, of the case."

The Applicant filed an "Amended Application for Post-Conviction Relief" on February 1, 2011. In this amendment, the Applicant makes the following allegations:

1. Involuntary guilty plea.
2. Ineffective assistance of counsel:
 - a. Only had one meeting with the Applicant.
 - b. Failed to use an interpreter.
 - c. Failed to respond to the Applicant's phone calls and letters.
 - d. Failed to discuss State's evidence or discovery materials.
 - e. Told the Applicant he would receive a seven (7) year sentence.
 - f. Failed to file a notice of appeal, as requested.
 - g. Told the Applicant he would be eligible for parole if he pled guilty.

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 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).

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).

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).

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 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). 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).

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).

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,

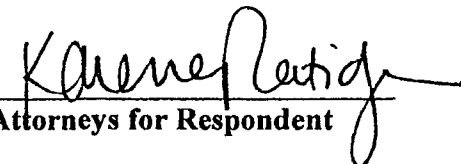
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General
P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

April 12, 2011

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
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 JOSE MERCED MALDONADO, 340872)
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 Applicant,)
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 vs)
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 STATE OF SOUTH CAROLINA,)
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 Respondent.)
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IN THE COURT OF COMMON PLEAS

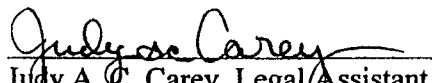
2010-CP-23-9814

AFFIDAVIT OF SERVICE BY MAIL

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:

Jose Merced Maldonado, 340872
MacDougall Correctional Institution
1516 Old Gilliard Road
Ridgeville SC 29472

DATED this 12th day of April, 2011.


 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMONS PLEAS	
	)	CASE NO: 2010-CP-23-9814	
COUNTY OF GREENVILLE)		
)		
Jose M. Maldonado, SCDC 340872,	)	AMENDMENTS TO	
Applicant,	)	POST CONVICTION	
	)	RELIEF APPLICATIONS	
vs.)		
)		
THE STATE OF SOUTH CAROLINA,)		
Respondent.)		
_____)		

2011 JUN 20 PM 4:15
 CLERK OF COURT
 GREENVILLE CO S.C.
 W/ K. H. HARRIS

The applicant hereby amends answers to number 9 and number 10 of his Application for Post-Conviction Relief to state the following:

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (A) The Applicant was denied effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and Article I, Section 14 of The South Carolina Constitution.

10. State concisely and in the same order the facts which support each of the grounds set out in (9):
 - (a) The applicant was provided with deficient representation by his attorney, in that the conduct of his attorney was objectively unreasonable under the circumstances. Strickland v. Washington, 466 U.S. 668 (1984). The outcome of the applicant's proceeding was prejudiced, and it is reasonable probable that the outcome would have been different had counsel's performance not been deficient. Strickland, 466 U.S. at 694. Defense counsel was ineffective based on one or more of the following:

1. My defense attorney failed to conscientiously discharge his professional responsibilities while he was handling my case.
2. My defense attorney failed to effectively challenge the arrest and seizure of Applicant.
3. My defense attorney failed to act as my diligent, conscientious advocate.
4. My defense attorney failed to give me his complete loyalty.
5. My defense attorney did not have my best interest in mind while he was supposed to be investigating and preparing my case.
6. My defense attorney failed to serve my cause in good faith.
7. My defense attorney neglected the necessary investigations and the preparation of my case.
8. My defense attorney did not do the necessary factual investigations on my behalf.
9. My defense attorney did not do the necessary legal research.
10. My defense attorney did not conscientiously gather any information to protect my rights.
11. My defense attorney did not try to have my case settled in a matter that would have been to my best advantage.
12. My defense attorney did not advise me of all my rights or take any of the actions that were necessary to protect preserve them; knowing that I was not versed in the law.
13. My defense attorney, knowing I was illiterate in the law, never properly ascertained whether or not I actually understood or comprehended all of the issues that were involved in my case.
14. My defense attorney never properly consulted with me or kept me informed with what was going on as far as my case was concerned.

15. My defense attorney never explained to me or discussed with me any of the elements of the crime charged.
16. My defense attorney never made any attempt to ascertain whether or not I actually knew what the elements fo the crime charged were or whether or not I understood exactly what the term "criminal" element" actually meant.
17. My defense attorney never explained to me or discussed with me how the elements of the crime charge and the evidence that the prosecution planned to introduce into evidence against me related to one another and did not discuss how the sentencing would be done especially as it related to the elements of the crime as in State V. Boyd.
18. My defense attorney never informed me of any of the defenses that were available to me.
19. My defense attorney never intended to offer any defense to the court on my behalf.
20. My defense attorney never explained to me or discussed with me any kind of defense strategy.
21. My defense attorney never explained to me or discussed with me any of the tactical choices that they either made or were planning to make.
22. My defense attorney dictated to me exactly how my case was going to be handled and offered no alternative options.
23. My defense attorney failed to properly acquaint themselves with the law and the facts surrounding my case and as a direct result of their intentional negligence, there was a very serious error in their assessment of both the law and the facts.
24. Because of my defense attorney's gross neglect and his many legal errors no defense at all was put in issue for me during the Court proceedings.
25. My defense attorney did not subject the prosecution's case to any adversarial testing.
26. My defense attorney failed to oppose the prosecution's case with

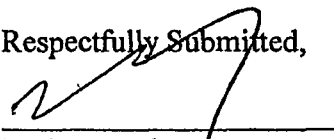
any adversarial litigation.

27. My defense attorney failed to function as the government's adversary in any sense of the word.
28. My defense attorney failed to pursue any of the legal recourse that were available to him.
29. The attorney that represented me on this charge in Court failed to function as the counsel that the Constitution's Sixth Amendment Guarantees.
30. My defense attorney failed to call alibi witnesses on my behalf which would have proven my innocence.
31. My defense attorney failed to appeal my case after I was convicted when I wanted to appeal.

His counsel's representation was not within the range and scope of competence demanded by Strickland and its progeny.

A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction requires that the defendant show first, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. Sosebee v. Leeke, S.C. 362, F. 2nd 221 (1987), citing Strickland v. Washington 46 S.E.2D. 813 (1984), See also Butler v. State 286 S.C. 441, 334 S.E. 2d 813 (1985), also, Hill v. Lockhart 474 U.S. 88 (1985).

Respectfully Submitted,



Rodney Richey
Richey and Richey, P.A.
Post Office Box 10916
Greenville, South Carolina 29603
Attorney for the Applicant

June 15, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Jose M. Maldonado, SCDC 340872,)
)
vs.)
)
THE STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMONS PLEAS
CASE NO: 2010-CP-23-9814

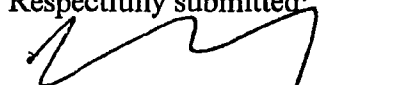
AFFIDAVIT OF SERVICE

FILED-CLERK OF COURT
GREENVILLE CO S.C.
JUN 15 2011

2011 JUN 20 P 4: 15

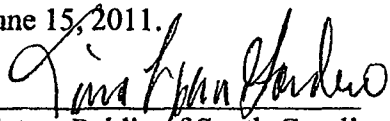
I certify that I have served the PCR Application on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on June 15, 2011, addressed to their attorney of record, Karen Ratigan, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Respectfully submitted:



Rodney Richey
Richey and Richey, P.A.
Post Office Box 10916
Greenville, South Carolina 29603
Attorney for the Applicant

Sworn to before me on
June 15, 2011.


Notary Public of South Carolina
My Commission Expires: 12-2-11

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JOSE M. MALDONADO,)
)
 APPLICANT,)
)
 -VS-)
)
 STATE OF SOUTH CAROLINA,)
)
 RESPONDENT.)
 _____)

2010-CP-23-09814

TRANSCRIPT OF RECORD

JULY 30, 2012
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE J. MICHAEL BAXLEY

APPEARANCES:

ATTORNEY FOR APPLICANT:

RODNEY W. RICHEY, ESQUIRE

ATTORNEY FOR RESPONDENT:

KAREN C. RATIGAN
ASSISTANT ATTORNEY GENERAL

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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Court Reporter's Note: (Martin Pollock is the Spanish interpreter for Mr. Maldonado).

EXHIBITS

NO DESCRIPTION ID EVIDENCE

(No Exhibits Were Presented During This Hearing)

1 (Whereupon Roberto Santiago, Javaris Coleman,
2 Christopher Wilson and Jose Maldonado were brought before
3 the Court)

4 **THE COURT:** All right. Good morning, gentlemen.

5 **MS. RATIGAN:** Judge, if I may.

6 **THE COURT:** Why don't we let everybody sit in the jury
7 box for a moment, ---

8 **MS. RATIGAN:** Okay.

9 **THE COURT:** --- 'cause it's going to take me a moment
10 to speak with them. Please be seated.

11 **MS. RATIGAN:** And, Judge, just for the record, two of
12 these defendants, Mr. Santiago and Mr. Maldonado, don't
13 speak English.

14 **THE COURT:** All right.

15 **MS. RATIGAN:** So Mr. Pollock is here to translate for
16 both of them. So he may need things to be a little bit slow
17 so he can translate for them.

18 **THE COURT:** Very good.

19 **MS. RATIGAN:** And he'll have to be sworn, of course.

20 **THE COURT:** Right. All right. Good morning. Buenos
21 dias.

22 **MR. WILSON:** Good morning.

23 **MR. COLEMAN:** Good morning.

24 **MR. SANTIAGO:** Buenos dias.

25 **MR. MALDONADO:** Buenos dias.

1 **THE COURT:** My name is Judge Baxley.

2 (Whereupon the Court introduced himself in Spanish)

3 **THE COURT:** And I'm going to speak slowly so that
4 everyone can understand. Let me say to everyone in the
5 courtroom, not only our four applicants who are here, but
6 those also in the audience, welcome to this term of Post
7 Conviction Relief Court for Pickens and Greenville Counties.

8 I asked that all four of you be brought out before we
9 start so we could talk a little bit about PCR. And when I
10 say PCR, I'm referring to Post Conviction Relief. And I
11 wanted us all to have an understanding of how Post
12 Conviction Relief works.

13 When you file a PCR claim you are alleging that your
14 lawyer, who represented you below, was ineffective and that
15 you were prejudiced by that. The applicant bears the burden
16 of proof, so that's you, to prove two things. As I just
17 said, number one, that your lawyer below was -- that his
18 performance was defective.

19 What that means is that you must prove that his or her
20 representation failed below the standards required of
21 lawyers practicing criminal law in South Carolina. And, not
22 or, but, and you must prove that you were prejudiced by that
23 deficient performance. And our Supreme Court has ruled that
24 prejudice in a PCR context means that because of your
25 lawyer's poor performance the outcome of the trial was

1 different than it should have been.

2 Now, when we are at PCR Court there's many things or
3 some things that this Court does not have the authority to
4 look into. One is I can't change anything about your
5 conditions of confinement, or where you're housed, what your
6 security classification is, what your max-out date is
7 because the Legislature has set the rules for PCR. And all
8 they let me decide is whether or not your lawyer was
9 deficient and you were prejudiced.

10 Now, if you win your case today, I want us also to
11 understand what will happen from there. You don't walk out
12 the door to the street and go free. You go right back to
13 square one as if the trial below or the plea below had never
14 happened. And the solicitor starts the prosecution all over
15 again.

16 If you had several charges, for example, that were
17 dismissed and then you pled to one of them as part of a plea
18 deal, all that comes off the table, and you go back and
19 start over with all those charges pending again. Now,
20 please understand, I don't say this as a threat, but I want
21 us all to be aware that there are risks involved in PCR just
22 like there are benefits.

23 Because a benefit is if you win, then you get another
24 opportunity for your guilt or innocence to be determined.
25 But when you win, all those charges come back on the table

1 again, which means that you could come out with a worse
2 result after winning PCR than you had before you ever
3 started.

4 So I would suggest to you that before we call your
5 individual case you talk with your lawyer about whether it's
6 in your best interest right here and now to go forward with
7 the PCR and have the Court make a determination. And please
8 understand, I'm not on the side of the State, not on the
9 side of the defense, I'm not trying to give you legal
10 advice. I just simply want us all to understand together
11 how PCR works and what are the risks and the benefits.

12 Now, having said this, is there any member of our group
13 here, of our four, who wants to talk with their lawyer again
14 before your case is called? If so, please raise your hand.

15 (Whereupon one applicant raised his hand)

16 **THE COURT:** Please tell me your name, sir.

17 **MR. WILSON:** Christopher Wilson.

18 **THE COURT:** Mr. Wilson. All right. We'll give you
19 that chance. Anyone else?

20 **MR. POLLOCK:** I do. But I really don't want anything.
21 I'm okay.

22 **THE COURT:** All right. Well, we'll let you discuss
23 that with your lawyer before your case is called just to
24 make sure we all understand one another. All right.

25 Gentlemen, I'm going to return you to the back. And good

1 luck today.

2 (Whereupon all the applicants exited the courtroom)

3 **THE COURT:** We're going to begin this proceeding in Mr.
4 Maldonado's presence by placing our interpreter under oath.
5 Please follow our clerk's instructions, sir.

6 **MR. POLLOCK:** Yes, Your Honor.

7 **MADAME CLERK:** Mr. Pollock, you do solemnly promise and
8 swear that you shall interpret the questions and
9 instructions by the Judge fully and accurately so help you
10 God?

11 **MR. POLLOCK:** I do.

12 **MADAME CLERK:** Thank you.

13 **THE COURT:** All right.

14 (Whereupon the Court spoke to the Defendant in Spanish)

15 **THE COURT:** Then let's let the record reflect I
16 introduced myself and asked Mr. Maldonado his name, and
17 asked him if he understood English. He said, a little bit.
18 And, thus, for his benefit we will proceed with an
19 interpreter. And, Mr. Maldonado, can you understand Mr.
20 Pollock's Spanish?

21 **MR. POLLOCK:** Yes, sir.

22 **THE COURT:** Very good. Then let's begin this
23 proceeding by placing Mr. Maldonado under oath also.

24 **MADAME CLERK:** Mr. Maldonado, you do solemnly swear or
25 affirm that the testimony you're about to give in this case

1 will be the truth, the whole truth and nothing but the truth
2 so help you God?

3 MR. POLLOCK: Yes.

4 THE COURT: And, Mr. Maldonado, the answers you've just
5 given me before we placed you under oath, were they true,
6 sir?

7 MR. POLLOCK: Yes, sir.

8 THE COURT: All right. Well, please be seated. And
9 we're going to start by allowing the Attorney General to
10 give us a history of your case. And then we will proceed
11 with your presentation. Go ahead, Ms. Ratigan.

12 MS. RATIGAN: Thank you, Your Honor. May it please the
13 Court. This is the case of Jose Maldonado versus the State.
14 Docket number is 2010-CP-23-9814.

15 Mr. Maldonado was indicted by the State Grand Jury for
16 distribution of cocaine and trafficking cocaine, four
17 hundred or more grams. He was represented on that charge by
18 Mr. Abdalla.

19 On May 19th of 2010 he pled guilty. The State offered
20 a recommendation of twenty years and to reduce the
21 trafficking charge to twenty-eight to a hundred grams. On
22 that date Judge Stilwell sentenced him to twelve years. And
23 Mr. Maldonado did not appeal. And the State's ready to
24 proceed.

25 THE COURT: And, Mr. Richey, is the history just given

JOSE MALDONADO - DIRECT EXAMINATION BY MR. RICHEY

10

1 correct?

2 MR. RICHEY: Yes, sir.

3 THE COURT: Are you ready to proceed?

4 MR. RICHEY: Yes, sir, we are. We'd call Mr. Jose
5 Maldonado.

6 THE COURT: Please come forward, sir.

7 Jose Maldonado, having
8 already been sworn, testified as follows:

9 Direct Examination by Mr. Richey:

10 Q. Sir, would you state your name, please.

11 A. Jose Maldonado.

12 Q. And, Mr. Maldonado, are you incarcerated right now?

13 A. Yes, sir.

14 Q. And where are you incarcerated?

15 A. MacDougall Correctional Institution.

16 Q. And were you convicted in Greenville County?

17 A. Yes, sir.

18 Q. And was -- and were you sentenced in Greenville County?

19 A. Yes, sir.

20 Q. And what were you sentenced for?

21 A. Trafficking, distribution of cocaine.

22 Q. And who represented you in those cases?

23 A. Mr. Abdalla.

24 Q. And you filed an application of post conviction relief,

25 PCR, correct?

JOSE MALDONADO - DIRECT EXAMINATION BY MR. RICHEY

1 A. Yes, sir.

2 Q. And you believe that Mr. Abdalla did not effectively
3 represent you?

4 A. Yes, sir.

5 Q. And you believe -- did you have a trial or plead
6 guilty?

7 A. I pled guilty.

8 Q. Okay. And at the time of the guilty plea what sentence
9 did you think you were going to get?

10 A. Seven years. There's a minimum time for a first
11 offense.

12 Q. And why did you believe you were going to get seven
13 years?

14 A. 'Cause that's what Mr. Abdalla said that I would
15 receive.

16 Q. Okay. And at your guilty plea do you recall the State
17 saying they were recommending twenty years?

18 A. Yes, sir.

19 Q. And upon hearing that can you tell me why you did not
20 object to the plea going forward at that time?

21 A. 'Cause Mr. Abdalla told me that when I go before the
22 judge I shouldn't say anything because he had already pled a
23 lot for me.

24 Q. What was the last thing he said?

25 A. He had already pled a lot for me.

JOSE MALDONADO - DIRECT EXAMINATION BY MR. RICHEY

12

1 Q. I didn't understand the last thing you said. He had
2 what -- already ---

3 A. Already pled. He had already made his case before me.

4 Q. Okay. Okay. And did you have any opportunity to talk
5 with Mr. Abdalla after the plea?

6 A. No. I never saw him again.

7 Q. And one of the issues raised in the term -- in the time
8 you talked with Mr. Abdalla, did you have a translator?

9 A. Just the day that they brought me to court.

10 Q. Okay. And were you able to understand what he was
11 saying to you? Mr. Abdalla?

12 A. Yes, with the interpreter that was there.

13 Q. So your issue in terms of the facts of the case --
14 you're not disputing the facts, is that correct?

15 A. No, because the State never was willing to accept my
16 declaration saying that I was not the drug trafficker that
17 they thought that I was.

18 Q. You were not -- your whole issue here today is that you
19 believe Mr. Abdalla should have got you a better sentence,
20 correct?

21 A. Yes, because, of course, the facts show that I was not
22 the drug trafficker that they thought -- that they thought
23 that I was.

24 Q. Okay. And so if you had gotten the seven years you
25 wouldn't be here today, correct?

JOSE MALDONADO - DIRECT EXAMINATION BY MR. RICHEY

13

1 A. No, of course not. I would have accepted my sentence.

2 Q. And in this transcript you do -- in the transcript you
3 do recall there was a foot chase between you and law
4 enforcement, correct?

5 A. Yes.

6 Q. And -- but your position is that you were a -- you were
7 not the big trafficker that they were trying to make you out
8 to be, correct?

9 A. No. The drugs belonged to the informant that handed
10 the drugs over to me because he was trying to reduce his
11 sentence 'cause he was already in trouble.

12 Q. And you do understand that you were sentenced to less
13 than the maximum that you were charged to, less than half of
14 it? You understand that? That you were sentenced
15 ultimately to less than half of what the maximum sentence
16 was for your charge?

17 A. Yes.

18 Q.. And do you believe that if you went back on a new trial
19 that you would get less time than that?

20 A. I think that I would receive less time because my co-
21 defendant, who was as guilty as I, received a very generous
22 sentence, much less than I.

23 Q. Okay. Thank you. Answer any questions Ms. Ratigan
24 would have for you.

25 **THE COURT:** Cross examination.

JOSE MALDONADO - CROSS EXAMINATION BY MS. RATIGAN

14

1 MS. RATIGAN: Thank you, Your Honor. I apologize.

2 Cross Examination by Ms. Ratigan:

3 Q. How many meetings did you have with Mr. Abdalla?

4 A. I saw Mr. Abdalla the first time, April 8th, 2010.

5 Q. So you only -- you saw him for the first time one month
6 before you pled guilty?

7 A. Yes.

8 Q. Did you have any other meetings with him before you
9 pled guilty?

10 A. He represented me in a DUI case. And I asked him at
11 one point if he could represent me in a drug case. And he
12 said, no, because he couldn't do the two charges.

13 Q. Okay. Well, after you had that April 2010 meeting did
14 you talk with him again about these drug charges before you
15 pled guilty?

16 A. No. He never went to see me again at the jail -- at
17 the County jail. He never went with an interpreter.

18 Q. So the next time you saw him about these drug charges
19 was the day you pled guilty?

20 A. Yes. I didn't even know I had court that day.

21 Q. Did you talk about your case with Mr. Abdalla?

22 A. About a half an hour. There wasn't time to really talk
23 about anything or discuss anything.

24 Q. Did you talk to him about the charges the State had
25 against you?

JOSE MALDONADO - CROSS EXAMINATION BY MS. RATIGAN

15

1 A. I asked him if he would talk to the opposing attorney
2 and tell him that I was just a mule. I was just the one who
3 was carrying the drugs.

4 Q. So when you were brought to the courthouse that day
5 you're saying Mr. Abdalla told you you would get a seven
6 year sentence?

7 A. Yes.

8 Q. Did he promise you you would get a seven year sentence,
9 or did he tell you you could get a seven year sentence?

10 A. That was part of the deal, that I would plead guilty to
11 all of the charges whether they were true or false, that I
12 would plead guilty to all of them to get that deal.

13 Q. And your testimony is that you did not know the State
14 was making an offer for twenty years?

15 A. No, I did not know. They never offered me that in the
16 plea deal.

17 Q. So you went forward with the plea simply so you could
18 get that seven year sentence?

19 A. Yes, that's what I thought I was going to get.

20 Q. And you didn't object when the State mentioned a twenty
21 year recommendation because Mr. Abdalla told you not to?

22 A. No, because I thought that was part of the deal, the
23 time that I would get, was that I was not supposed to say
24 anything in front of the judge in order to get that time.

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

JOHN ABDALLA - DIRECT EXAMINATION BY MR. RICHEY

16

1 THE COURT: And is there redirect?

2 MR. RICHEY: No, sir.

3 THE COURT: All right. Then you may return to your
4 seat. Please call your next witness.

5 MR. RICHEY: We'll call Mr. John Abdalla.

6 THE COURT: Please come forward to take the oath of a
7 witness.

8 John Abdalla, being duly
9 sworn testified as follows:

10 MADAME CLERK: Thank you. Please state your full name
11 for the record.

12 MR. ABDALLA: John Paul Abdalla.

13 THE COURT: Good morning.

14 MR. ABDALLA: Good morning, Judge. How are you?

15 THE COURT: I'm fine. Thank you.

16 Direct Examination by Mr. Richey:

17 Q. Mr. Abdalla, where are you employed?

18 A. Now? I work for myself.

19 Q. And during the -- do you recall representing Mr. Jose
20 Maldonado?

21 A. I do.

22 Q. And did you represent him for a criminal charge in
23 Greenville County?

24 A. I did.

25 Q. And do you realize that we are here today because Mr.

JOHN ABDALLA - DIRECT EXAMINATION BY MR. RICHEY

17

1 Maldonado filed an application for Post Conviction Relief?

2 A. I am.

3 Q. And I'm going to get to the heart of the issues here.

4 Mr. Maldonado did plead guilty, correct?

5 A. Correct.

6 Q. And you've heard the testimony here today by Mr.

7 Maldonado that he believed, based on your representation,

8 that he was going to get a seven year sentence.

9 A. I heard that just now for the first time, yes.

10 Q. And ---

11 **THE COURT:** Counselor, just one moment.

12 **MR. RICHEY:** Okay. I'm sorry.

13 **THE COURT:** Remember, we have -- as we talk, we have

14 ---

15 A. I'm sorry.

16 **THE COURT:** --- an interpreter. Thank you.

17 Q. Mr. Maldonado, as you recall, believed that he was

18 going to get seven years.

19 A. And I don't know where that came from, but I heard him

20 testify to that.

21 Q. During the time that -- prior to him pleading guilty

22 did y'all have a discussion about what his potential

23 sentence would be?

24 A. We had -- I'm sorry. We had several discussions. We

25 have a different recollection of how many visits we had. I

JOHN ABDALLA - DIRECT EXAMINATION BY MR. RICHEY

18

1 know I saw him at least five times. But at any rate, he was
2 looking at a mandatory minimum twenty-five, maximum thirty
3 years.

4 I was negotiating with the Attorney General. The best
5 they would offer was twenty years. I had meetings with SLED
6 agents with my client included. And I had meetings with
7 SLED agents without my client, meetings with the Attorney
8 General. The agents were in favor of helping him more than
9 the Attorney General was, but they never came down off the
10 twenty year offer.

11 The day they called the case for trial, we were
12 fortunate enough to have a conversation with the judge, and
13 went back and spoke to Judge Stilwell. You want me to go
14 into all this now? Do you want me to go into this about the
15 sentencing?

16 Q. Well, -- well, just -- my question was did you all
17 discuss his potential sentence. And I think you've answered
18 that.

19 A. Yeah, it was twenty-five to thirty years. There was no
20 seven to twenty-five at that point.

21 Q. And you were able to get -- in some form you were able
22 to get it down to seven to twenty-five, correct? That he
23 was eligible to get seven to ---

24 A. He was pleading under that with the recommendation of
25 twenty years, that's correct.

JOHN ABDALLA - DIRECT EXAMINATION BY MR. RICHEY

19

1 Q. At any point did you tell him not to say anything in
2 the plea ---

3 A. I don't -- I don't recall saying that. The only thing
4 I can -- I might have said -- I don't know what my phrasing
5 would have been. It certainly wouldn't have been to shut
6 him up. It may have been don't worry about what they're
7 saying 'cause the judge has already given me an idea of what
8 he's going to give you. So I'm not sure what I could have
9 said.

10 Q. Okay. When you said the judge has given you an idea,
11 what does that mean?

12 A. Well, we went back in chambers and we had a bit of an
13 argument in front of the judge about the sentencing. And he
14 seemed to agree with my assessment of the case more than the
15 Attorney General's. And he said he would probably sentence
16 him between ten and fifteen years.

17 Q. Did you tell Mr. Maldonado that?

18 A. Of course I did.

19 Q. And what was his reaction to that?

20 A. His reaction as my -- as I recall was that he was happy
21 for that because I thought it was an incredibly good deal.
22 And I may have told him don't argue about that point because
23 we're going -- the judge isn't going to go back on his word.
24 We'll get between ten and fifteen -- but I couldn't really
25 acknowledge the conversation with the judge.

JOHN ABDALLA - DIRECT EXAMINATION BY MR. RICHEY

20

1 And that's probably, now that I'm talking my way
2 through it, where that came in because I can't tell a client
3 that the judge is going to give a sentence for certain. But
4 the judge gave me the indication that that was the area he
5 was going to sentence with him.

6 Q. And you said you had about five meetings as you can
7 recall?

8 A. Right. Oh, yeah.

9 Q. During those meetings did you have a translator there
10 or do you recall?

11 A. Sometimes I did, sometimes I didn't, I guess. I
12 honestly don't remember.

13 Q. Were you able to communicate with him without the use
14 of a translator?

15 A. If I went without a translator, I assure you, as I
16 understood it, I was able to communicate with him.

17 Q. On the date of the plea or at some point you sat down
18 with him and told him this is what you're pleading to, this
19 is the number of years and all that. At that particular
20 point did you have the use of a translator?

21 A. I don't remember. Sorry.

22 Q. Okay. The day he pled guilty at the courthouse did you
23 have a translator?

24 A. I don't recall.

25 Q. If the transcript reflects that there was a translator

JOHN ABDALLA - DIRECT EXAMINATION BY MR. RICHEY

21

1 present do you -- would you have any reason to dispute that?

2 A. No. I said -- I honestly said I don't recall. I know
3 it was a couple of years ago, but I don't remember. I
4 remember the plea very well. I don't remember the -- those
5 kinds of details 'cause I remember thinking he got a really
6 -- a really good sentence given the facts of the case.

7 Q. Was there anything that was involuntary about this
8 plea? Did Mr. Maldonado ever tell you, hey, I don't want to
9 plead guilty unless I'm going to get seven years?

10 A. No.

11 Q. You heard testimony about the co-defendants getting
12 less time than him. Do you have any knowledge why they
13 would get less time than him?

14 A. I don't.

15 Q. Did Mr. Maldonado do any cooperation with the
16 Government?

17 A. He offered to. And they didn't want to reduce his
18 sentence any more. There was talk -- I had the -- I talked
19 with the agents about letting him out of jail 'cause he
20 wanted to get out and work for the Government before he
21 pled, but the State wouldn't go for it.

22 Q. And you've heard testimony about Mr. Maldonado,
23 basically he had a limited role in this conspiracy?

24 A. Well, I described -- I'm sorry. I described him, what
25 I think was accurately to the court, as a mule. I said he's

JOHN ABDALLA - CROSS EXAMINATION BY MS. RATIGAN

22

1 gotten an appointed attorney. Obviously, he's not a
2 trafficker. He doesn't make a lot of money.

3 He had a kilo of cocaine on his person. There was no
4 defense that I could see. And as I understood it, my client
5 was willing to go forward because he didn't deny he was
6 totally guilty, but in the role of a mule. He was doing it
7 for someone else.

8 But no matter how you cut it, as I saw the facts of the
9 case, he had a kilo of cocaine, twenty-five to thirty years,
10 that's the -- that's it. Open and shut.

11 Q. So, I guess, a combination of you and Mr. Maldonado's
12 testimony, there was no issue about the guilt in this case?

13 A. None.

14 Q. The issue was the sentence?

15 A. Now I understand it is. It wasn't an issue that day,
16 not to my understanding. I didn't understand that was an
17 issue. I thought he was happy to get that sentence, but I
18 might have misunderstood.

19 MR. RICHEY: One moment, Your Honor, please.

20 (Pause)

21 MR. RICHEY: No other questions. Thank you, Your
22 Honor.

23 THE COURT: Cross examination.

24 Cross examination by Ms. Ratigan:

25 Q. This was a State Grand Jury case?

JOHN ABDALLA - CROSS EXAMINATION BY MS. RATIGAN

1 A. Yes, Your Honor. Yes, ma'am.

2 Q. And you filed the usual discovery motions?

3 A. Yes. And this case actually was inherited. Chase
4 Harbin had represented him previously, and it was conflicted
5 out. And I got assigned the case.

6 Q. Okay. But you had received discovery from the State?

7 A. Yes, I had discovery.

8 Q. And did you review that with Mr. Maldonado?

9 A. I did.

10 Q. Did you discuss with him his version of the facts?

11 A. I did.

12 Q. And that's when he described to you his role as a mule?

13 A. Yeah. Of course, that wasn't his word, but that's
14 exactly right.

15 Q. Did you explain to Mr. Maldonado that the State offered
16 to reduce the charge into the seven to twenty-five year
17 range?

18 A. I did, with the recommendation of twenty years. So it
19 was never as a straight-up plea. It was a recommended time
20 of twenty years. And that's how we went forward.

21 Q. And you explained all that to him?

22 A. And I explained to him to the -- I recall telling him
23 he'll probably get between ten and fifteen years, and that I
24 think that's a good deal within that range. And I was
25 pretty emphatic about that. And that's exactly what

JOHN ABDALLA - CROSS EXAMINATION BY MS. RATIGAN

24

1 happened. He got twelve.

2 Q. Did you ever promise him he would receive a seven year
3 sentence?

4 A. No. The only thing I could think of is maybe we
5 discussed the fact that it was a seven to twenty-five year
6 range, and he thought that, but that was never promised. I
7 try -- I always try to get the lowest sentence I can for my
8 client, but I would never promise somebody seven years on a
9 twenty-five year charge, especially when the recommendation
10 is twenty years.

11 Q. Do you recall Mr. Maldonado ever wavering during the
12 plea?

13 A. No. I don't recall that if it happened.

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

15 THE COURT: Redirect?

16 MR. RICHEY: No questions.

17 THE COURT: All right, sir, you may step down.

18 A. Thank you.

19 THE COURT: Are there further witnesses?

20 MR. RICHEY: That's our case, Your Honor. Thank you.

21 THE COURT: Are there witnesses now for the State?

22 MS. RATIGAN: Your Honor, we'd rest on the testimony
23 and the record before the Court.

24 THE COURT: All right. And anyone wish to be heard as
25 -- in a closing statement or comment, from either side?

1 MS. RATIGAN: The State would waive any kind of
2 closing, Your Honor.

3 MR. RICHEY: None, Your Honor.

4 THE COURT: All right. One moment, please.

5 (Pause)

6 THE COURT: I do want to ask Mr. Abdalla a question
7 just where you are, sir. Do you have access to your public
8 defender files?

9 MR. ABDALLA: Yes.

10 THE COURT: And did you bring your file today?

11 MR. ABDALLA: Yes, Your Honor.

12 THE COURT: And can you confirm in your file that you
13 met five or more times?

14 MR. ABDALLA: I can't. I can confirm that I met a
15 couple of times in March and a couple of -- well, I don't
16 have it written down, the other time in May. But I know I
17 met with him several times because I met with him a couple
18 of times about the DUI. And I admit to the Court that I'm
19 bad -- I'm not good about making notes every time I talk to
20 somebody. So it's either my word or it's not. And I know I
21 met at least five times, Judge. But that's the best I can
22 do.

23 THE COURT: And do you know ---

24 MR. ABDALLA: But I -- but just for the -- but I have
25 notes from -- that I met him twice in March and once in May,

1 but I know there were other meetings.

2 **THE COURT:** And do you know how many times you may have
3 met with a SLED agent or prosecution agent without your
4 client?

5 **MR. ABDALLA:** I remember they came over to my office at
6 least one time. And I know I had a lot of discussions with
7 the Attorney General.

8 **THE COURT:** Okay.

9 **MR. ABDALLA:** And some of them were telephone. But
10 with the SLED agent, that was in person. As to the Attorney
11 General, that was probably always on the telephone.

12 **THE COURT:** All right. Thank you. Now, are there
13 follow-up questions from either side for Mr. Abdalla based
14 on my questions? From Mr. Richey?

15 (Pause)

16 **MR. RICHEY:** None, Your Honor. Thank you.

17 **THE COURT:** And from Ms. Ratigan?

18 **MS. RATIGAN:** None, Your Honor.

19 **THE COURT:** All right. Just a moment, please.

20 (Pause)

21 **THE COURT:** All right. Mr. Maldonado, the Court has
22 made a decision in the case. And I'm going to tell you what
23 that decision is now.

24 As we discussed earlier this morning, at Post
25 Conviction Relief you have to prove two things. The first

1 thing is that your lawyer's representation below was
2 deficient, meaning that it fell below the standard for
3 lawyers practicing criminal law in South Carolina.

4 And, number two, you must prove that you were
5 prejudiced by that. And in the case of a guilty plea, which
6 is what you entered, our Supreme Court has ruled that
7 prejudice means that but for your lawyer's poor performance
8 you would not have pled guilty in the first place and would
9 have gone to trial.

10 And I find that you have failed to meet either prong of
11 proof required to obtain PCR. And these are my reasons;
12 first of all, you had a significant charge, charges, against
13 you, that possession of a kilo of cocaine carries a minimum
14 twenty-five years in prison.

15 Your lawyer was able to, through working with SLED and
16 working with the judge to obtain a substantial reduction for
17 you and that based upon that it was in your best interest to
18 plead guilty because of the crystal clear nature of the
19 proof against you at trial. And so you made a decision at
20 that time to enter a plea that was in your benefit.

21 The Court finds no deficient performance. And I do not
22 find that you've been prejudiced. For all these reasons I'm
23 going to deny your Post Conviction Relief.

24 Now, please understand, you can appeal this decision.
25 And this is how it works. I'm going to ask Ms. Ratigan, the

1 lawyer for the State, to prepare an order within thirty days
2 of today's date denying your PCR. She'll send me that
3 order, I'll sign it, send it back to her, and she will file
4 it and serve it on your lawyer.

5 You have thirty days from the date that that document's
6 served on your lawyer to appeal. So not from today, but
7 from that future date. Do you understand that, Senior
8 Maldonado?

9 MR. POLLOCK: Yes, sir.

10 THE COURT: All right. Then I'm going to return you to
11 the detention center. And good luck to you, sir.

12 (Hearing Ended at 11:14 AM)

13 (End of Requested Transcript of Record)

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CERTIFICATE OF REPORTER

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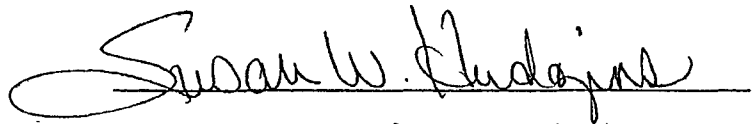
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I, The undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 30th day of July 2012.

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

October 31, 2012

A handwritten signature in cursive script that reads "Susan W. Hudgins". The signature is written in black ink and is positioned above a horizontal line.

CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
)
 Jose Merced Maldonado,)
 S.C.D.C. No. 340872,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE THIRTEENTH JUDICIAL CIRCUIT
 C.A. No. 2010-CP-23-9814

FILED
 GREENVILLE COUNTY
 APR 23 PM 3:48

**ORDER DENYING
 POST-CONVICTION RELIEF**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 1, 2010. Respondent made its return on April 12, 2011. An evidentiary hearing into the matter was convened on July 30, 2012, at the Greenville County Courthouse. Applicant was present at the hearing and represented by Rodney W. Richey, Esquire. Karen C. Ratigan, Esquire, of the South Carolina Attorney General's office represented Respondent.¹

JMB

Applicant testified on his own behalf at the PCR hearing. Also testifying was Applicant's plea counsel, John P. Abdalla, Esquire. The Court had before it the transcript of the guilty plea hearing, records of the State Grand Jury Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and Respondent's return.

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections, having been indicted at the April 2008 term of the State Grand Jury for distribution of cocaine (2008-GS-47-

0006, count 3) and trafficking cocaine, 400 or more grams (2008-GS-47-0006, count 4).

Applicant was represented by John P. Abdalla, Esquire.

On May 19, 2010, Applicant pled guilty. The Honorable Robin B. Stilwell sentenced Applicant to concurrent terms of twelve (12) years for distribution of cocaine and twelve (12) years for trafficking cocaine, 28-100 grams. Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. Failed to prepare for trial.
 - b. Advised Applicant he would receive the mandatory minimum.
 - c. "Never once tried to see my side of the case."

Applicant filed an "Amended Application for Post-Conviction Relief" on February 1, 2011. In this amendment, Applicant makes the following allegations:

1. Involuntary guilty plea.
2. Ineffective assistance of counsel:
 - a. Only had one meeting with Applicant.
 - b. Failed to use an interpreter.
 - c. Failed to respond to Applicant's phone calls and letters.
 - d. Failed to discuss State's evidence or discovery materials.
 - e. Told Applicant he would receive a seven (7) year sentence.
 - f. Failed to file a notice of appeal, as requested.
 - g. Told Applicant he would be eligible for parole if he pled guilty.

*Sub
2*

Applicant, through counsel, submitted an amendment to his application dated June 15, 2011, in which he alleged the following:

1. Ineffective assistance of counsel:
 - a. Failed to conscientiously discharge professional responsibilities.
 - b. Failed to effectively challenge search and seizure.
 - c. Failed to act as a diligent and conscientious advocate.

¹ A Spanish language interpreter, Mr. Martin Pollock, was present and participated throughout the hearing on behalf of Respondent. Applicant advised the Court that he fully understood the interpreter

- d. Failed to give complete loyalty.
- e. Did not have Applicant's best interest in mind.
- f. Failed to serve the cause in good faith.
- g. Neglected necessary investigations and preparation.
- h. Did not do necessary factual investigations.
- i. Did not do necessary legal research.
- j. Did not conscientiously gather information to protect rights.
- k. Did not try to have the case settled in a manner that would have been to Applicant's best advantage.
- l. Did not advise Applicant of all rights or take any of the actions that were necessary to protect and preserve them.
- m. Never properly ascertained whether or not Applicant actually understood or comprehended all of the issues involved in the case.
- n. Never properly consulted with Applicant or kept Applicant informed.
- o. Never explained to Applicant or discussed with Applicant any of the elements.
- p. Never made any attempt to ascertain whether or not Applicant actually knew the elements of the crime charge or whether or not I understood exactly what "criminal element" meant.
- q. Never explained or discussed with Applicant how the elements of the crime charged and the evidence that the prosecution planned to introduce into evidence against Applicant related to one another and did not discuss how the sentencing would be done especially as it related to the elements of the crime as in State v. Boyd.
- r. Never informed Applicant of any of the defenses that were available to Applicant.
- s. Never intended to offer any defense to the court on Applicant's behalf.
- t. Never explained to Applicant or discussed with Applicant any kind of defense strategy.
- u. Never explained to Applicant or discussed with Applicant any of the tactical choices that were made or planned to be made.
- v. Dictated to Applicant exactly how Applicant's case was going to be handled and offered no alternative options.
- w. Failed to properly acquaint himself with the law and facts surrounding Applicant's case and, as a result, there was a very serious error in the assessment of both the law and the facts.
- x. No defense at all was put in issue for Applicant during the Court proceedings.
- y. Did not subject the prosecution's case to any adversarial testing.
- z. Failed to oppose the prosecution's case with any adversarial litigation.
- aa. Failed to function as the government's adversary in any sense of the word.

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3

- bb. Failed to pursue any of the legal recourse that was available.
- cc. Failed to function as the counsel that the Constitution's Sixth Amendment guarantees.
- dd. Failed to call alibi witnesses on Applicant's behalf.
- ee. Failed to appeal Applicant's case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court further had the opportunity to observe each witness who testified at the hearing, to closely pass upon their credibility, and to weigh 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).

Ineffective Assistance of Counsel/Involuntary Guilty Plea

Applicant alleges his guilty plea was involuntary and that he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, 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 Applicant would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 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 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)).

At the hearing, Applicant testified he did not have adequate meetings with plea counsel to discuss the case, seeing him only twice—the first time about one month prior to the plea, and the second time at the courthouse immediately prior to the plea. Applicant stated plea counsel did not bring an interpreter when they had meetings prior to the plea hearing. Applicant stated plea counsel said he would receive a seven (7) year sentence if he pled guilty. Applicant stated he did not know the State made a twenty (20) year recommendation and he did not object to this recommendation at the plea hearing because counsel told him not to say anything. Applicant stated he pled guilty to receive a seven (7) year sentence and that he was sentenced too harshly because he was only a “drug mule.”

Plea counsel testified he had at least five meetings with Applicant. Plea counsel testified he filed discovery motions, received those materials, reviewed the discovery materials with Applicant, and discussed his version of events and potential sentence ranges. Applicant had been arrested with a kilogram of cocaine in his possession. Plea counsel testified he did not recall if he always had an interpreter when he met with Applicant, but he would not have needed an interpreter if he could communicate with Applicant. He also had meetings on this case with SLED agents outside of Applicant’s presence. Plea counsel testified that the best plea offer the

State would recommend was twenty (20) years due to the amount of drugs in question. Plea counsel testified he explained to Applicant that the State reduced the charge and recommended a twenty (20) year sentence, but the sentence range was 7-25 years. Plea counsel testified he never promised a seven (7) year sentence, and is does not know from where Applicant got that idea. Rather, plea counsel testified that he and the State met with the plea judge before the hearing, who indicated he would sentence less than twenty (20) years. Plea counsel testified that he told Applicant he would likely receive a 10-15 year sentence. Plea counsel testified that Applicant did not waver during the plea hearing and was happy with his sentence.

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

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An interpreter was present at Applicant's guilty plea hearing. (Plea transcript, p.2). Applicant told the plea judge he wanted to plead guilty to these charges and that the facts recited by the State were true. (Plea transcript, pp.4-5; p.10). Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.3-6).

This Court finds Applicant failed to meet his burden of proving plea counsel did not adequately meet with him to discuss his case. Plea counsel testified he had at least five meetings with Applicant in order to review evidence, charges, and plea offers. Plea counsel testified that if he did not have an interpreter at some of these meetings, it was because he could communicate with Applicant. This Court finds plea counsel to be more credible than Applicant on this point.

This Court notes Applicant had an interpreter at the guilty plea hearing but never registered any complaint against plea counsel's representation. To the contrary, Applicant told the plea judge he wanted to plead guilty and was satisfied with plea counsel. (Plea transcript, pp.4-6).

This Court finds Applicant failed to meet his burden of proving plea counsel misadvised him about his potential sentence. Plea counsel testified the State made a twenty (20) year plea offer, which he relayed to Applicant. Plea counsel also testified that the plea judge indicated he would likely sentence Applicant to something in the range of 10-15 years and plea counsel relayed this to Applicant. Plea counsel testified he never promised Applicant he would receive a seven (7) year sentence. This Court finds plea counsel to be more credible than Applicant on this point as well. The plea judge advised Applicant of the potential sentences he faced and Applicant stated he understood. (Plea transcript, p.p.4-5). Applicant also acknowledged the State's plea offer was for twenty (20) years. (Plea transcript, p.8). This Court finds plea counsel fulfilled his responsibilities in conveying and discussing the plea offer. Cf. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (holding counsel's failure to convey the State's plea offer to defendant constituted deficient performance). This Court finds Applicant pled guilty in exchange for a substantial reduction in the potential sentence and that it was in his best interests to do so. While Applicant may have hoped he would receive the mandatory minimum sentence of seven (7) years on the reduced charges, this Court finds he was well aware of the potential sentences he was facing. See Holden v. State, 713 S.E.2d 611, 617, 393 S.C. 565, 575-76 (2011) (citing Roddy v. State, 339 S.C. 29, 36, 528 S.E.2d 418, 422 (2000)) ("Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made").

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test -- that plea counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland -- that he was prejudiced by plea counsel's performance.

This Court concludes that Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes that Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

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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 that Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet his burden of proof regarding them; therefore, they are hereby denied and dismissed.

CONCLUSION

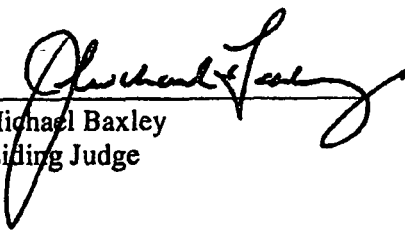
Based on the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and Applicant was not prejudiced by counsel's representation. Furthermore, Applicant's guilty plea was entered knowingly and voluntarily within the mandates of Boykin; therefore, this PCR application must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed, with prejudice; and
2. That Applicant must remain in the custody of Respondent for the completion of his sentence.

IT IS SO ORDERED this 9th day of August, 2012.



J. Michael Baxley
Presiding Judge

Greenville, South Carolina.

STATE GRAND JURY OF SOUTH CAROLINA

APR 15 2008

JAMES R. PARKS
CLERK, STATE GRAND JURY

STATE OF SOUTH CAROLINA	)	CASE NO. 2008GS 47 06
)	
VS.)	
)	
CHRISTOPHER D. WILLOUGHBY,	)	INDICTMENT FOR
JOSE MERCED MALDONADO,	)	UNLAWFUL DRUGS
)	
	)	Trafficking Cocaine
	)	S.C. Code Ann. § 44-53-370(e)(2)(a)(1)
DEFENDANTS.	)	(2 counts)
)	
	)	Distribution of Cocaine
	)	S.C. Code Ann. § 44-53-370(b)(1)
)	
	)	Trafficking Cocaine
	)	S.C. Code Ann. § 44-53-370(e)(2)(e)

At a session of the State Grand Jury of South Carolina, convened in Columbia, South Carolina, on April 16, 2008, the State Grand Jurors present upon their oath:

COUNT ONE
TRAFFICKING COCAINE
S.C. Code Ann. § 44-53-370 (e)(2)(a)(1)

That CHRISTOPHER D. WILLOUGHBY did in Greenville County, South Carolina, on or about December 13, 2007, knowingly sell, manufacture, cultivate, deliver, purchase, or provide financial assistance or otherwise aid, abet, attempt or conspire to sell, manufacture, cultivate, deliver or purchase or possess (actually or constructively), or bring into this State ten (10) grams or more but less than twenty-eight (28) grams of cocaine, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than

one county in this State

COUNT TWO
TRAFFICKING COCAINE
S.C. Code Ann. § 44-53-370 (e)(2)(a)(1)

That CHRISTOPHER D. WILLOUGHBY did in Greenville County, South Carolina, on or about February 7, 2008, knowingly sell, manufacture, cultivate, deliver, purchase, or provide financial assistance or otherwise aid, abet, attempt or conspire to sell, manufacture, cultivate, deliver or purchase or possess (actually or constructively), or bring into this State ten (10) grams or more but less than twenty-eight (28) grams of cocaine, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county in this State.

COUNT THREE
DISTRIBUTION OF COCAINE
S.C. Code Ann. § 44-53-370(b)(1)

That JOSE MERCED MALDONADO, did in Greenville County, South Carolina, on or about March 10, 2008, knowingly, manufacture, distribute, dispense, deliver, purchase, or aid, abet, or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver a quantity of cocaine, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having

significance in more than one county of this State.

COUNT FOUR
TRAFFICKING COCAINE
 S.C. Code Ann. § 44-53-370(e)(2)(e)

That JOSE MERCED MALDONADO, did in Greenville County, South Carolina, on or about March 10, 2008, knowingly sell, manufacture, cultivate, deliver, purchase, or provide financial assistance or otherwise aid, abet, attempt or conspire to sell, manufacture, cultivate, deliver or purchase or possess (actually or constructively), or bring into this State four hundred (400) grams or more of cocaine, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county in this State.

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

A TRUE Bill

Amanda L. Halcy
 FOREMAN

Henry McMaster
 HENRY McMASTER (cap)
 ATTORNEY GENERAL