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STATE OF SOUTH CAROLINA

APR - 7 2014

IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Spartanburg County

J. Mark Hayes, II, Circuit Court Judge

JUANITO MARTINEZ-CASTENADA,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001791

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
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Columbia, SC 29211-1589

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P. O. Box 11549
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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA }
COUNTY OF SPARTANBURG } IN THE COURT OF GENERAL SESSIONS

The State, }
-vs- } TRANSCRIPT OF RECORD
Juanito Martinez Castenada, } 2010-GS-42-5661
Defendant. } December 16, 2011
Spartanburg, South Carolina

B E F O R E:
HONORABLE J. DERHAM COLE, JUDGE

A P P E A R A N C E S:
CHAD GRAHAM, ESQUIRE
Attorney for the State
ANDREW J. JOHNSTON, ESQUIRE
Attorney for the Defendant

Linda D. Moffitt
Circuit Court Reporter

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Guilty plea -- page 3.
No sworn testimony; no exhibits entered into evidence.

1 (Marie Bustamante interpreted for the defendant.)

2 MR. GRAHAM: I believe the defense has a motion in
3 this case, Your Honor.

4 MR. JOHNSTON: Your Honor, in speaking with senor
5 Juanito Castenada we were trying to negotiate a plea that
6 was scheduled for this morning.

7 In talking with him this morning he has told me that
8 he does not want to accept the plea, and further he tells
9 me that he wishes to appear before you and request that I
10 be relieved as counsel.

11 (Pause.)

12 THE COURT: You are Juanito Martinez Castenada?

13 THE INTERPRETER: Yes.

14 THE COURT: Mr. Johnston is your lawyer?

15 THE INTERPRETER: Yes.

16 THE COURT: Mr. Johnston has indicated to the Court
17 that you no longer wish to have him represent you.

18 THE INTERPRETER: No, because I've been in jail almost
19 a year, and I don't feel that he's done much on my case
20 until I've written letters to him and waiting for his
21 responses. Have not received response.

22 THE COURT: Has there been any plea offer in this
23 case?

24 MR. GRAHAM: There has been, Your Honor.

25 THE COURT: Is the -- this was scheduled for a guilty

1 plea today?

2 MR. GRAHAM: It was originally on the trial docket,
3 Your Honor. It was called as a plea on Monday morning, and
4 we set it up for -- to plead today to the negotiated deal
5 we'd agreed upon.

6 THE COURT: And has that offer now been withdrawn?

7 MR. GRAHAM: No, sir, Your Honor. That, the offer,
8 still stands.

9 THE COURT: Well, if he terminates Mr. Johnston's
10 representation are you going to leave the offer open?

11 MR. GRAHAM: Yes, sir.

12 THE INTERPRETER: How much time do I have to get
13 another lawyer?

14 THE COURT: Well, that just depends on what it takes
15 to get one, the efforts that need to be expended. I don't
16 know how long it will take you. I will give you a
17 reasonable amount of time. But this case is on the trial
18 docket for trial. So likely it'll be 30 days, and probably
19 not any more.

20 THE INTERPRETER: I would like the opportunity to get
21 another attorney because it has been a long time, and it's
22 not fair that I should get that amount of time considering
23 that I have an attorney that didn't do much in my case.
24 It's violating my rights.

25 THE COURT: Well, Mr. Castenada, one thing you need to

1 understand. Your lawyer doesn't get to decide how much
2 time you get if you are convicted of a crime. That's not
3 something that's within the control of your lawyer. He can
4 try to work out a plea agreement for you, but the Court
5 determines the sentence.

6 THE INTERPRETER: I would prefer that I get a
7 reasonable offer instead of going to trial.

8 THE COURT: Well, okay. Your lawyer doesn't control
9 that either. The solicitor controls whether or not he's
10 going to make an offer. Your lawyer can't -- can't make
11 him make an offer. I can't make him make an offer.

12 MR. GRAHAM: Your Honor, may I address?

13 THE COURT: Wait just a minute.

14 MR. GRAHAM: I'm sorry.

15 THE COURT: What?

16 MR. GRAHAM: You asked me earlier if the offer would
17 still remain if he terminated Mr. Johnston.

18 If he gets a new attorney the state's position would
19 be that we'd start negotiations with the new attorney. And
20 there may not be any negotiations.

21 I don't want to go on record saying that offer would
22 most definitely remain open if he were to get a new
23 attorney. It's been on the trial docket I believe twice
24 now. I don't know what sort of negotiations would go on if
25 he were to get a new attorney.

1 THE INTERPRETER: If he doesn't -- if I don't have the
2 time to obtain an attorney will one be -- will one be given
3 for me?

4 THE COURT: No, sir. You have a retained lawyer. And
5 if you want to retain another you're welcome to. But I'm
6 not going to let Mr. Johnston out if you're expecting to
7 get a court-appointed lawyer.

8 You are retained, Mr. Johnston?

9 MR. JOHNSTON: Yes, sir.

10 THE COURT: All right. What's the state's position on
11 any plea negotiations?

12 MR. GRAHAM: If he does not plea today, Your Honor,
13 there will be no negotiations.

14 THE COURT: All right. Mr. Castenada, here is what I
15 am going to do. I'm going to stand you aside and allow you
16 to talk to Mr. Johnston.

17 The solicitor has indicated that if you don't accept
18 the offer he's making that the offer is going to be
19 considered rejected.

20 There will be no further offers in your case, and you
21 will either have to just plead straight up and let the
22 Court decide the sentence or you'll have to go to trial.
23 And if convicted the court will determine the sentence.

24 THE INTERPRETER: I'm going to talk to my attorney.

25 THE COURT: You talk to Mr. Johnston. And after y'all

1 have talked I'll bring you back and we'll discuss it
2 further.

3 MR. JOHNSTON: Yes, sir.

4 (Whereupon, a recess was taken.)

5 MR. GRAHAM: Before you today is Juanito Martinez
6 Castenada on Indictment 2010-GS-42-5661 on a charge of
7 trafficking in cocaine over 200 grams. He'll be pleading
8 today to the lesser included trafficking in cocaine 28 to
9 100 grams with a negotiated 15-year sentence.

10 The state will be dismissing some other charges.
11 Count two on this same indictment for possession of a
12 weapon during the commission of a violent crime will be
13 dismissed if he completes his guilty plea, as well as
14 another trafficking cocaine 10-to-28-gram charge, Your
15 Honor.

16 May I approach?

17 THE COURT: You are Juanito Martinez Castenada.

18 THE INTERPRETER: Yes, sir.

19 THE COURT: Mr. Johnston is your lawyer?

20 THE INTERPRETER: Yes.

21 THE COURT: Have you had plenty of time to talk to him
22 about your case, as well as your decision to plead guilty?

23 THE INTERPRETER: Yes, I've had enough time.

24 THE COURT: This indictment charges you with
25 trafficking in cocaine. The state alleges that occurred on

1 March the 19th of 2010. They allege on that date that you
2 did have in your actual or constructive possession more
3 than 200 grams of cocaine.

4 If you're found guilty or if I accept your plea of
5 guilty you could receive a sentence of up to 25 years in
6 jail and a fine of \$50,000.

7 Did Mr. Johnston explain to you what would have to be
8 proven in court before you could be found guilty?

9 THE INTERPRETER: Yes, sir.

10 THE COURT: Did you tell him everything you know about
11 the facts?

12 THE INTERPRETER: Yes.

13 THE COURT: Did y'all determine whether or not you had
14 some reason why you ought to be found not guilty?

15 THE INTERPRETER: I'm guilty.

16 THE COURT: So you have no reason why you should be
17 found not guilty?

18 THE INTERPRETER: No.

19 THE COURT: Did Mr. Johnston explain to you each of
20 the rights that you have that you must give up in order to
21 plead guilty?

22 THE INTERPRETER: Yes.

23 THE COURT: Did he explain to you about your right to
24 remain silent?

25 THE INTERPRETER: Yes, he explained it to me and

1 everything.

2 THE COURT: Do you understand it?

3 THE INTERPRETER: Yes, sir.

4 THE COURT: Do you wish to give that right up?

5 THE INTERPRETER: I do not understand. That's fine.

6 I understand and I'm pleading guilty.

7 THE COURT: So, in other words, you do not want to
8 remain silent?

9 THE INTERPRETER: He said remain silent.

10 THE COURT: You would prefer to remain silent?

11 THE INTERPRETER: Yes.

12 THE COURT: Do you understand that if you remain
13 silent you would not, you could not plead guilty?

14 THE INTERPRETER: He misunderstood, yes. He will
15 speak.

16 THE COURT: All right. Do you wish to answer my
17 questions or not?

18 THE INTERPRETER: Yes.

19 THE COURT: Well, which is it? Do you wish to answer
20 them or you do not wish to answer them?

21 THE INTERPRETER: Yes. I would like to.

22 THE COURT: Did Mr. Johnston also explain to you that
23 you have a right to require the state to prove your guilt
24 in court --

25 THE INTERPRETER: Yes.

1 THE COURT: -- by bringing their witnesses to court
2 and having them testify in court in your presence under
3 oath?

4 THE INTERPRETER: He explained everything to me.

5 THE COURT: Do you wish to give that right up in order
6 to plead guilty?

7 THE INTERPRETER: I don't want to continue going to
8 trial.

9 THE COURT: Did he explain that you have a right to
10 have a jury trial and have 12 people make the decision as
11 to whether or not you're guilty?

12 THE INTERPRETER: Yes.

13 THE COURT: Do you wish to have the jury trial?

14 THE INTERPRETER: No.

15 THE COURT: Has anybody promised you anything that
16 caused you to arrive at your decision?

17 THE INTERPRETER: No, no.

18 THE COURT: Has anybody threatened you in any way or
19 coerced you in any fashion that caused you to decide to
20 plead guilty?

21 THE DEFENDANT: No.

22 THE INTERPRETER: No.

23 THE COURT: Are you pleading guilty freely and
24 voluntarily?

25 THE INTERPRETER: Yes, sir.

1 THE COURT: Did you possess the cocaine?
2 THE INTERPRETER: Yes.
3 THE COURT: You're 28 years old?
4 THE DEFENDANT: Yeah.
5 THE INTERPRETER: Yes.
6 THE COURT: Where are you from?
7 THE DEFENDANT: Mexico.
8 THE INTERPRETER: Mexico.
9 THE COURT: How long have you been here?
10 THE INTERPRETER: Four years.
11 THE COURT: Are you here legally or illegally?
12 THE INTERPRETER: Illegally.
13 THE COURT: What education do you have?
14 THE INTERPRETER: None.
15 THE COURT: You've never been to school?
16 THE INTERPRETER: I started working at an early age in
17 the fields.
18 THE COURT: Well, do you understand what you're doing
19 here today?
20 THE INTERPRETER: Yes.
21 THE COURT: Have you understood all of my questions?
22 THE INTERPRETER: Yes.
23 THE COURT: Have you had any trouble understanding
24 your translator or interpreter?
25 THE INTERPRETER: No. I understand.

1 THE COURT: Are you married?

2 THE INTERPRETER: No. Common law.

3 THE COURT: Do you have children?

4 THE INTERPRETER: No.

5 THE COURT: What kind of work have you done?

6 THE INTERPRETER: Construction and farming.

7 THE COURT: All right. The solicitor is going to tell
8 me about the facts that relate to this case, what he
9 contends you did that makes you guilty. So listen to what
10 he tells me.

11 MR. GRAHAM: Thank you, Your Honor.

12 On March 19th of 2010 officers with the Spartanburg
13 County Sheriff's Office Narcotics Unit executed a search
14 warrant at 421-A William Buck Drive in Spartanburg County.

15 Upon arrival officers observed the defendant on the
16 front porch of this residence with a bag in his hand. The
17 bag contained 224.59 grams of cocaine. Also found in the
18 residence during the search were digital scales and \$3,300
19 in U.S. currency.

20 THE COURT: Did you understand what he told me?

21 THE INTERPRETER: Yes.

22 THE COURT: Do you agree with it?

23 THE INTERPRETER: Yes, sir.

24 THE COURT: Was the cocaine yours?

25 THE INTERPRETER: Yes.

1 THE COURT: And y'all have agreed to a 15-year
2 sentence?

3 THE INTERPRETER: Yes.

4 THE COURT: Is that what you want me to impose?

5 THE INTERPRETER: Yes.

6 THE COURT: All right. I'll accept your plea.

7 Do you want to tell me anything else if I give you the
8 15 years?

9 THE INTERPRETER: No.

10 THE COURT: Mr. Johnston, do you want to tell me
11 anything?

12 MR. JOHNSTON: Just very briefly, Your Honor.

13 Although he has no formal education and he's not able
14 to write his name very well, he is very verbal, at least in
15 Spanish. He speaks a little English. But with the aid of
16 an interpreter he and I communicate just fine.

17 He's told you that he's been here for about four years
18 from the suburbs of Mexico City. Unfortunately, he got
19 involved rather heavily in the illegal drug trade.

20 He is here illegally. I have informed him as an
21 illegal alien he is subject to deportation and that this
22 conviction will certainly make his deportation back to
23 Mexico more likely.

24 We would respectfully that you accept our negotiations
25 of 15 years in this case.

1 He has been in jail since his arrest on this charge
2 which was March the 19th of 2010.

3 THE COURT: Do you have anything you need to add,
4 Mr. Castenada?

5 THE DEFENDANT: No.

6 THE INTERPRETER: No.

7 THE COURT: All right. 2010-5661, sentence of the
8 court is 15 years.

9 END OF REQUESTED TRANSCRIPT OF RECORD

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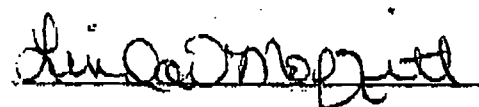
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 16th day of December 2011.

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

May 21, 2012



Linda D. Moffitt
Circuit Court Reporter

State of South Carolina }
County of _____ }

In The Court of
Common Pleas

2012-CP-42-652

(page 1 of 7)

Juanito Martinez - Custodial
SCDC # 349061

v.

State of South Carolina

FILED
CLERK OF COURT
2012 FEB - 8 PM 09
CLERK OF COURT

Application for Post-Conviction Relief

1. Place of Detention: Kirkland Reception and Evaluation Cent
4344 Broad River Road Columbia, South Carolina 29210
2. Name and location of Court which imposed sentence: _____
Spartanburg County General Sessions
180 Magnolia Street Spartanburg SC 29304
3. Name(s) of Co-defendant(s) (if any) NA
4. The indictment number or numbers (if known) upon which
and the offenses for which sentence was imposed: _____
2010031056
5. The date upon which sentence was imposed and the
terms of the Sentence: December 16th 2011
17 years SCDC
6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty Plead Guilty
 - (b) after a plea of Not Guilty _____
 - (c) after a plea of Nolo Contendere _____

- continued Next Page -

- P.C.R. continued -

page 2 of 7

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

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

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

Spartanburg County 180 Magnolia Street
Spartanburg, SC 29309

(b) The result in each such court to which you appealed:
still pending

(c) The date of each such result:

NA

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

NA

FILED
CLERK OF COURT
2012 FEB 18 PM 2:09
Spartanburg, SC
JAMES CALAKEY

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

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

Ineffective assistance of counsel

Involuntary plea

Erroneous Advice of counsel

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

counsel failed to do any pretrial investigation

counsel failed to discuss defenses available

counsel advised defendant to plea without investigation

- continued Next page -

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

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

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

- (a) the specific nature thereof: Direct Appeal
- (b) the name and location of the Court in which each was filed: Spartanburg County SC Court of Appeals
- (c) the disposition thereof: still pending
- (d) the date of each such disposition: NA
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition: NA

14. Has any ground set forth in (c) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

- P.C.R. continued -

page 4 of 7

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

(a) which grounds have been presented:

N.A.

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

N.A.

16. If any ground set forth in (a) 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:

N.A.

(a)
(b)

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

(a) your arraignment and plea? YES

(b) your trial, if any? N.A.

(c) your sentencing? YES

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

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

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

(a) the name and address of each attorney who represented you:

Andrew J. Johnston

184 North Daniel Morgan Avenue

Spartanburg, SC 29306

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

arraignment, plea, sentencing

- continued next page -

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--P.C.R. continued--

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19. State clearly the relief you seek in filing this application: vacate sentence and conviction

20. Are you now under sentence from any other court that you have not challenged? NO

<End of Application>

Certificate of Service

2012 FEB 28 PM 2:10
CLERK OF COURT
MARTINEZ BLANKLEY

I, Juanito Martinez Castaneda, do hereby certify that a true and correct copy of this application for Post-conviction Relief has been sent via U.S. mail to be filed with the clerk of the court at the following address: on this 1st Day of February 2012

Sent to:

clerk of the court
Spartanburg County
PO Box 3483
Spartanburg, SC 29304-3483

Juanito Martinez

- P.C.R. continued -

Page 6 of 7

State of South Carolina }
County of Richland }

Verification

I, Juanito Martinez-Castereda, 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 at this time 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 and correct to the best of my knowledge.

Juanito Martinez
Juanito Martinez-Castereda
349061
Kirkland Reception and Evaluation
4344 Broad River Road
Columbia, South Carolina 29921

Sworn to and Subscribed before me this
31st Day of January, 2013

[Signature] (Notary Public) (U.S.)

My Commission Expires: October 8, 2014

- P.C.R. Continued - page 7 of 7

Application to Proceed without Payment
of Costs and Affidavit
In Support Thereof

I, Juanito Martinez-Castaneda, 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 and correct to the best of my knowledge:

- (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 proceedings or give security therefor.

Juanito Martinez-Castaneda
Juanito Martinez-Castaneda

Sworn or affirmed to and subscribed before me
this 31st day of January, 2012

[Signature] (L.S.)
(Notary Public)

My Commission Expires
October 8, 2014

my commission expires: _____

FILED
CLERK
2012 FEB 08 PM 2:11
COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
)	
Juanito Martinez-Casteneda, #349061,	)	2012-CP-42-0652
)	
Applicant,)	
)	
v.	)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed February 8, 2012,¹ would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the September 2010 term of the Spartanburg County Grand Jury for trafficking in cocaine over 200 grams and possession of firearm or knife during commission of or attempt to commit a violent crime (10-GS-42-5661, count 1 and 2). He was represented by Andrew J. Johnston, Esquire. On December 16, 2011, the Applicant pled guilty to the lesser included offense of trafficking in cocaine 28-100 grams.² He was sentenced by the Honorable J. Derham Cole, pursuant to a negotiated sentence, to confinement for a period of fifteen (15) years for that charge. The Applicant did not appeal his guilty plea or sentence.

¹ Applicant also forwarded a document captioned, "Notice upon Rule 407," which Respondent interprets as a request for discovery. Applicant filed this document while represented by counsel, so the Respondent intends to take no action unless instructed by the Court.

² Count 2 of the indictment was nolle prossed in accordance with the plea negotiations

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

II.

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

1. Ineffective assistance of counsel in that;
 - a. "Counsel failed to do any pretrial investigation."
 - b. "Counsel failed to discuss defenses available"
 - c. "Counsel advised defendant to plea without investigation."
2. Involuntary guilty plea

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

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

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was

induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

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

V.

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

VI.

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


Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

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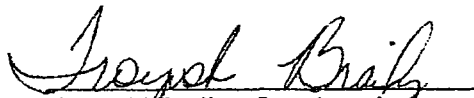
January 30, 2013.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	IN THE SEVENTH CIRCUIT
COUNTY OF SPARTANBURG)	
	)	2012-CP-42-0652
)	
Juanito Martinez-Castenada, # 349061)	
)	
Applicant,)	
)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent)	

1. I am an employee of the Respondent in the above-captioned action.
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DATED this 30th day of January, 2013


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For Respondent

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STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG,)	
Juanito Martinez-)	
Castenada,	)	TRANSCRIPT OF RECORD
	)	2012-CP-42-0652
Applicant,)	
-vs-)	
The State,)	
	)	April 1, 2013
Respondent.	)	Spartanburg, South Carolina

B E F O R E:

HONORABLE J. MARK HAYES, II, JUDGE

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

HOWARD R. KINARD, ESQUIRE
Attorney for the Applicant

SUZANNE H. WHITE, ESQUIRE
Attorney for the Respondent

ORIGINAL

Margaret A. Woods
Circuit Court Reporter

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MOTIONS AND MATTERS

1 MS. WHITE: And, Your Honor, we -- I think we're gonna go
2 ahead and start with a, uh, case that will be heard on the
3 merits. Mr. Hill's still in there talkin' with his client
4 right now so we're gonna start with Juanito-Martinez
5 Castenada.

6 MR. KINARD: And, Your Honor, this is, uh, gonna involve
7 an interpreter ---

8 THE COURT: Um-hum.

9 MR. KINARD: --- from Spanish to English and and I'll --
10 this is actually my first time doin' an interpreter court
11 hearing so, uh, might get a little slow but I hope, I hope
12 that's alright with the Court until I get a hang of it.

13 THE COURT: Generally they are slower.

14 (Whereupon, a discussion was held off the record.)

15 THE COURT: Alright, if I could have -- are we gonna have
16 two interpreters for the hearing ---

17 MR. KINARD: Uh, ---

18 THE COURT: --- or just one?

19 MR. KINARD: --- Your Honor, uh, we have called as a
20 witness the ---

21 THE COURT: Alright, does the ---

22 MR. KINARD: --- original ---

23 THE COURT: --- I ---

24 MR. KINARD: --- interpreter.

25 THE COURT: --- I have to swear the interpreter before we

MOTIONS AND MATTERS

1 get started, I just need to know if I'm gonna have one or two.

2 THE INTERPRETER: Oh.

3 MR. KINARD: Uh, it's gonna be one for ---

4 THE COURT: Okay.

5 MR. KINARD: --- the client, Your Honor.

6 THE COURT: Alright, madam interpreter if you will please
7 raise your hand.

8 (Whereupon, the interpreter was sworn.)

9 THE COURT: Thank you, ma'am, you may be seated right
10 there.

11 THE INTERPRETER: Thank you.

12 THE COURT: Yes, sir.

13 MR. KINARD: Uh, thank Your Honor. Yes, sir, and I was
14 just indicating that in original guilty plea there was an
15 interpreter, uh, and part of our, uh, presentation and
16 argument that would be that there mighta been some
17 miscommunication with that original interpreter so I just
18 wanna clarify for the Court there is another interpreter here
19 who was in the original guilty plea, Your Honor.

20 THE COURT: Um-hum.

21 MR. KINARD: Your Honor, at this time, uh, I'm sorry,
22 Howard Kinard on behalf of the, uh, PCR applicant, uh, and we
23 will call the applicant at this time Mr. Juanito, uh,
24 Castenada to the stand.

25 THE COURT: Alright. Ms. White, you wanna announce the

MOTIONS AND MATTERS

1 case ---

2 MR. KINARD: Oh, I'm ---

3 THE COURT: --- just briefly.

4 MR. KINARD: --- sorry.

5 MS. WHITE: No, that's fine.

6 MR. KINARD: Okay.

7 MS. WHITE: Uh, this is Case Number 2012-CP-42-0652

8 Mr. Juanito Martinez-Castenada vs. the State. He was
9 indicated September 2010 for trafficking in cocaine over 200
10 grams and possession of a weapon during the commission of a
11 violent crime. That charge was ultimately nol-prossed and
12 based on a negotiated sentence he was allowed to plead to the
13 lesser, uh, of trafficking cocaine 28 to 100 grams to a
14 15-year negotiated sentence, that was before Judge Cole on
15 December 16th 2011 and at that time he was represented by
16 Mr. Andy Johnston. He's alleged counsel failed to do pretrial
17 investigation, failed to discuss defenses and failed to advise
18 him to plea or excuse me that he did advise him to plea
19 without any investigation and he's also alleged involuntary
20 guilty plea so I will turn it over to Mr. Kinard at this
21 point.

22 THE COURT: Yes, sir.

23 MR. KINARD: Thank Your Honor, at this time we call the
24 applicant to the stand Mr. Juanito Castenada.

25 (Whereupon, the applicant came forward.)

JUANITO MARTINEZ-CASTENADA - DIRECT EXAMINATION BY MR. KINARD

1 THE COURT: Sir, if you will place your left hand on the
2 Bible, raise your right hand as best you can.

3 JUANITO MARTINEZ-CASTENADA, having
4 been first duly sworn, testified as follows:

5 THE COURT: Please have a seat in the red chair. Thank
6 you, sir, and if you would the lady next to you is a court
7 reporter, she's taking down everything that's said so when you
8 speak to the interpreter, be sure you speak up loud enough so
9 that everybody can hear you.

10 THE APPLICANT: Yes, that's fine.

11 MR. KINARD: Thank Your Honor.

12 DIRECT EXAMINATION BY MR. KINARD:

13 Q. Uh, Mr. Castenada, ---

14 A. Yes.

15 Q. --- where are you from originally?

16 A. I'm originally from Cuernavaca Juarez.

17 Q. Okay, is that in Mexico?

18 A. Yes, in Mexico.

19 Q. Okay. And how long have you been in United States?

20 A. Eight years.

21 Q. Okay. And is Spanish your native language?

22 A. Yes that's my mother tongue, yes.

23 Q. Do you speak any English or understand any English?

24 A. No, not not not at all. I didn't have any, uh, um-hum, I
25 didn't -- I don't -- I didn't have any, uh, formal schooling,

1 uh, since I was very young started working in the fields.

2 Q. And are you understanding your interpreter okay today?

3 A. Yeah, 'cuz I actually understand her.

4 Q. Okay. And do you recall who represented you on your
5 original charges which you pled guilty to?

6 A. Um-hum. I do remember it was a woman, uh, dark skin,
7 tall skin.

8 Q. Do you remember the attorney who represented you?

9 A. Yes, ---

10 Q. And ---

11 A. --- that -- yes, that's him.

12 Q. Mr., is it Mr. Johnston, correct?

13 A. Yes.

14 Q. Okay. And how long were you in jail before you went
15 before the Court for the guilty plea that we are here today
16 on?

17 A. I can't remember very well but approximately I will say
18 13 1/2 months.

19 Q. Okay. And during that time how many times did you meet
20 with your attorney regarding your charges?

21 A. Okay, well he, uh, came once to see me like probly after
22 two months I was incarcerated, uh, to read me the charges or
23 after they had read me the charges and then there was and then
24 there was a friend, uh, he had a friend and when I saw him
25 here in court but I couldn't understand his friend. I don't

1 understand at that time he showed me some papers in it where,
2 uh, it's stating the charge but I ---

3 Q. Okay, ---

4 A. --- can't understand very ---

5 Q. --- I'm I'm gonna rephrase the question for ya. Is --
6 give me -- tell me -- give me a how how many times, a number,
7 did Mr. Johnston visit you in the jail regarding this?

8 A. Approximately three times.

9 Q. Okay. And during those three times was there interpreter
10 present during those meetings?

11 A. Yeah, uh-huh, brought a person, a a a white person that
12 was, uh, born here and he, that person couldn't understand me,
13 I mean, the communication wasn't flowing very well.

14 Q. Okay. Well okay did ---

15 A. There there was ---

16 Q. --- did he ---

17 A. --- a second interpreter he brought but I could not
18 communicate very well.

19 Q. Okay, does he -- did he have trouble understanding what
20 the the interpreter that Mr. Johnston brought to him to the
21 jail cell?

22 A. Um-hum. Yeah, 'cuz I I told the interpreter to tell
23 Mr. Johnston if it was possible that I knew somebody that, uh,
24 he was incarcerated but he was Hispanic but he was born here
25 in the United States he could, he could serve as my

1 interpreter 'cuz -- um-hum, yeah, and then, uh, the
2 interpreter asked, you know, he, uh, told me, uh, that that
3 person couldn't be my interpreter because he was, uh, you
4 know, detained or, uh, incarcerated as I was.

5 Q. Okay. Did ya have trouble communicating with the
6 original interpreter?

7 A. Yeah, the first interpreter couldn't understand me at
8 all, ---

9 Q. Okay.

10 A. --- the second interpreter.

11 Q. Okay. Do you feel that these meetings with your attorney
12 gave you an adeq -- adequate, uh, opportunity to discuss your
13 charges?

14 A. No, and I didn't even have an idea what the charges were
15 or anything.

16 Q. Okay. Did you and did you and your attorney discuss the
17 evidence that the State had against you at these meetings?

18 A. Yeah, the interpreter he would try to explain to me but I
19 couldn't understand what he was saying 'cuz he didn't speak my
20 language.

21 Q. Okay. Did did you and your attorney discuss p --
22 possible witnesses to the, to the, uh, to the State's
23 charges?

24 A. No, I don't understand. What do you mean by witnesses?

25 Q. Uh, people who could, uh, testify on your behalf at a

1 potential trial.

2 A. Uh, uh, what do you mean like a trial in my favor? Uh, I
3 don't know. There was a person there in those photographs,
4 uh, but I don't know. I mean, I wasn't just -- I I think they
5 were saying that it was me but I don't know where that person
6 is anymore.

7 Q. Okay. Do you recall the day of the guilty plea where you
8 pled guilty to these charges?

9 A. Yeah, no, I don't remember anything very well and it it's
10 painful for me to admit. I mean, I I'm a person with very
11 limited education, ---

12 Q. Okay, ---

13 A. --- I'm illiterate.

14 Q. --- but but you do remember the day that you, uh, you do
15 remember somewhat the facts surrounding the day that you pled
16 guilty in fronta the judge?

17 A. I do remember everything that happened that day yes.

18 Q. Okay, good. Uh, when was the first time an offer of
19 15 years was communicated to you

20 A. Uh, I remember that, uh, Mr., I can't, I can't remember
21 his last name, the attorney last name Johnston, ---

22 Q. Johnston.

23 A. --- he came to see me through the county about a week
24 before. Um-hum, yeah, I remember, uh, that he brought a, uh,
25 an interpreter with him but I couldn't understand him very

1 well again and that I do, uh, remember, uh, that, uh, I told
2 my lawyer through the interpreter that I wasn't gonna accept
3 that offer.

4 Q. Okay.

5 A. Um-hum, uh, okay, well and then what I couldn't
6 understand was, uh, that my attorney told the interpreter that
7 next week I was gonna be facing a really bad situation.

8 Q. Okay, his attorney said that to him?

9 A. Yes.

10 Q. Okay. And that was before the guilty plea or at the
11 guilty plea?

12 A. That was a week before that that I was transported
13 here.

14 Q. Okay. And at some point during the guilty plea did you
15 tell the Court -- did Mr. Johnston tell the Court that you did
16 not wanna accept the guilty plea?

17 A. Uh, I don't know if he communicate that to the judge
18 because I didn't see him until the day of that the Court date
19 that was here.

20 Q. Okay. Durin' the guilty plea did you ask ask the Court
21 to be relieve -- to to relieve Mr. Johnston as your
22 attorney?

23 A. Um-hum. Yeah, he told the judge that day that, uh, that
24 I didn't want Mr. Johnston as my attorney anymore because I
25 was, uh, communicating with Mr. Johnston two letters that

1 someone was helping me write in the jail.

2 Q. Why did he ask for the Court to, uh, relieve Mr. Johnston
3 as his attorney?

4 A. Because during all that time that he was my attorney I
5 don't think he did anything much for me. First it was
6 interpreter I I wanted to explain a lot of things and he
7 couldn't understand me. The second interpret -- interpreter
8 couldn't understand me either.

9 Q. Okay. Was there a, was there interpreter at the guilty
10 plea?

11 A. When I got sentenced?

12 Q. Yes, when at the sentencing hearing.

13 A. Yeah, there was a a woman, a young woman, uh, dark-
14 skinned, she realized I had trouble, uh, with the lawyer.

15 Q. Okay, is it Ms. Bustamonte is that, is that her?

16 A. Um-hum. Yeah, she looks different today. Back then she
17 used to have shorter hair. I couldn't -- I didn't even
18 recognize her today but yeah.

19 Q. And and during the guilty plea did you have some trouble
20 understanding the in -- the Court appointed interpreter at
21 that time?

22 A. Yes, because but I wanna say something today. The person
23 that is saying, uh, ri -- to me right now is different than
24 the person back then at that date. Even though she tried to
25 help me a lot, I didn't wanna plead guilty because I remember

1 as far as I could understand back then I was gonna get
2 17 years but but since I'm a person without a formal education
3 or educat -- that I remember that she told him and she said,
4 Wait, wait, how how is it that you're gonna plead guilty for
5 17? Um-hum. Yeah, and she's present here and she, uh, she
6 knows that, uh, I didn't wanna plead guilty and, uh, to that
7 and all all I want is to get a rope around my neck.

8 Q. Okay. Do do you recall when the Court took a a recess
9 during your sentencing hearing?

10 A. Okay. Well I do remember, uh, that the judge, uh, said
11 after I had said that, uh, I wanted a public defender that he
12 said I cannot give you one because you have hired a private
13 attorney but what I can do for you is I can give you thirty
14 minutes for you to talk to your attorney.

15 Q. Okay. Perfect, okay.

16 A. What ---

17 Q. What was said during that thirty minutes when you met
18 with your attorney?

19 A. Um-hum. I didn't really talk that much to my attorney, I
20 was nervous. I was still very nervous because I really didn't
21 understand what had just happened inside the courtroom because
22 in my mind I didn't wanna plead guilty and after that all I
23 know is that she talked to him ---

24 Q. Wait, who, I'm sorry, who talked to you? Who talked to
25 you now? Who talked to him?

1 A. My interpreter.

2 Q. Spoke with who?

3 A. Talked to the attorney and then he got -- he came out and
4 then he came back and all I can remember is 15 but I didn't
5 know.

6 Q. Okay. And ultimately he pled -- you pled guilty to
7 15 years, what what made you change your mind from the the
8 beginning of the hearing to to the eventual decision to plead
9 guilty at that sentencing hearing?

10 A. I didn't understand what was happening, I couldn't
11 understand anything that was going on. Um-hum. The only
12 thing that I can remember is that that I 'cuz I told him I'm
13 not gonna talk and the only thing that I remember the
14 interpreter told me if you don't, uh, talk, the only thing
15 that's gonna happen is the judge is gonna postpone the court
16 hearing, the court date. Um-hum. Yeah, and then what's gonna
17 happen 'cuz when the judge is talking and if you don't
18 respond, what's gonna happen that the judge is just gonna, uh,
19 suspend.

20 Q. Is that what the interpreter was telling him?

21 A. Yes, that's what the interpreter was tellin' me.

22 Q. Okay. Did you feel pressured to enter into that guilty
23 plea at that dri -- on that day?

24 A. I didn't wanna plead guilty, I wasn't gonna plead
25 guilty.

1 Q. Do you feel that your attorney adequately represented you
2 on your charges?

3 A. No. Oh, yeah, I even send a letter here to the
4 courthouse, uh, it stating that, uh, I didn't want that
5 attorney anymore, that I wanted a public defender, ---

6 Q. Okay, ---

7 A. --- someone ---

8 Q. --- and ---

9 A. --- was helping me.

10 Q. Okay, and are you asking the court today to vacate your
11 guilty plea that you entered?

12 A. Yes, of course.

13 Q. And you understand that if your request is granted all
14 your original charges will go back on.

15 A. Yes, I know that.

16 MR. KINARD: Okay, that's all I have, Your Honor.

17 CROSS-EXAMINATION BY MS. WHITE:

18 Q. Mr. Castenada, you were arrested on this charge after
19 being found on your porch holding over 200 grams of cocaine,
20 is that correct?

21 A. Um-hum, yeah, I really know as what what went down the
22 day I got arrested because I saw a van that drove by and then,
23 uh, next time, uh, I looked and there was so -- there was
24 some -- someone pointing at me and I was like in shock. I do
25 remember that someone came and had hit me, uh, from behind.

JUANITO MARTINEZ-CASTENADA - CROSS-EXAMINATION BY MS. WHITE

1 The door wasn't even locked, it was a partially open and but
2 they even came with, uh, like a lever and force the door open.
3 Inside there were two girls, one girl 'bout 2-years-old and
4 the other one about 6-years-old and inside then there there
5 were two people, two persons with them, a a woman. I tried
6 to, I tried to tell them do not, do not go in that way because
7 that that that there are kids in there, there are little girls
8 in there.

9 Q. Okay. When the judge read to you and the s -- the
10 prosecutor read to you the facts of the case at the plea about
11 a search warrant at William Buck Drive, you were found with a
12 bag of cocaine in your hand, \$3,000 in the home and digital
13 scales, the Court asked you if you understood and agreed with
14 that and you said yes, sir.

15 A. I didn't understand any of that. Um-hum. Now I do, now
16 I do, I ain't understand anything back then but, uh, uh, but
17 now you're explainin' it to me and then the then you're
18 saying, mentioning the days that I had a bag with me and I
19 didn't have a a a bag with me, um-hum, they took some checks
20 but they were work checks that were in there. The check was
21 so that the person that I brought who was living with and the
22 cash from the person that were living there with me.

23 Q. So when the Court asked you if the cocaine that was found
24 was yours and you said yes, you didn't understand that?

25 A. Um, I didn't understa -- I didn't understand anything

1 that happened in court that day and now that you're explaining
2 to me I do understand.

3 Q. Okay. When the interpreter asked you and talked with you
4 about what kind of work you had done, you were able to
5 understand her and tell her construction and farming, were you
6 not?

7 A. Um, yeah, it was kind of like a second interpreter that
8 he brought over that I was able to understand parts of it and
9 then the other parts were explained to me.

10 Q. Okay, I'm referrin' to the day of your plea. You were
11 able to tell the Court that you not had any education, you had
12 been working at an early age in the fields which is the same
13 thing you've told us today, so are you understanding what she
14 said only part of the time, is that what you're saying, at the
15 plea?

16 A. Um-hum. Yeah, there were parts of it, uh, that, uh,
17 um-hum, there were parts, um-hum, yeah, there were parts, uh,
18 that I could understand that they, uh, well that the only
19 person I wasn't able to understand who I remember is that was
20 trying to use, uh, like hand gestures to communicate and ---

21 Q. So your testimony today is you did not wanna plead
22 guilty, did you wanna go to trial on these charges?

23 A. Um-hum, yeah, and what I wanted is that I didn't wanna
24 plead guilty and I also I didn't want that lawyer. I wanted,
25 uh, an attorney that did, uh, his or her job. Um-hum, I even

1 send a letter to Columbia explaining that I didn't know
2 anything about my lawyer and Columbia wrote me back and asked
3 me what do you wanna, what do you wanna do about your attorney
4 and I wrote him back. I, if I wanted to complain about my
5 attorney and the person that was translating to -- for me,
6 that was writing for me, um-hum, um-hum, yeah, I told him that
7 I didn't wanna fight with him, uh, what I wanted was someone
8 to work on my case, I want him to, uh, help me, uh, and then
9 on the letter they they ask me would you like us to hire an
10 attorney, yeah, and I to -- I wrote him back and said that all
11 I want is for him to help me, ---

12 Q. Okay, so ---

13 A. --- that's when they, Mr. Attorney, uh, came to see me at
14 the county.

15 Q. So I was asking if you didn't wanna plead guilty and you
16 didn't want your attorney, was it because you wanted to go to
17 trial on these charges?

18 A. Yes, I wanted a a attorney that will do his job well.

19 Q. So when you were telling the Court that you wanted just a
20 better deal, a reasonable offer, instead of going to trial, is
21 that not accurate?

22 A. How? I don't understand how.

23 Q. When you were telling the Court that you wanted a new
24 attorney, at one point you said you would prefer to get a
25 reasonable offer instead of going to trial.

MARIE BUSTAMONTE - DIRECT EXAMINATION BY MR. KINARD

1 A. Yeah, he -- I told, uh, my attorney, uh, through the
2 interpreter that if you could, uh, get me an offer for
3 5 years, you know, I I told him I'd sign, I'd sign right away
4 and he, my attorney even told that to my significant other
5 that he was gonna be, well he was gonna be able to get me that
6 kind of deal,

7 Q. Okay. Thank you, that's all I have.

8 THE COURT: Any redirect limited to what she went into?

9 MR. KINARD: No redirect, Your Honor.

10 THE COURT: Thank you, sir, you may step down.

11 (Whereupon, the applicant left the stand.)

12 MR. KINARD: Your Honor, the petitioner will call
13 Ms. Marie Bustamonte to the stand.

14 THE COURT: Ma'am, come right up here and let the --
15 place your left hand on the Bible, raise your right hand.

16 (Whereupon, the witness came forward.)

17 MARIE BUSTAMONTE, having been
18 first duly sworn, testified as follows:

19 THE COURT: Thank you, ma'am, just have a seat in the red
20 chair and pull the red chair up to the microphone.

21 DIRECT EXAMINATION BY MR. KINARD:

22 Q. Good morning, Ms. Bustamonte. How are you?

23 A. Good morning, I'm good.

24 Q. Thank you for appearing today, I appreciate that, driving
25 over here today. And do you recall the guilty plea that we've

1 been talking so far in this matter?

2 A. Yes.

3 Q. Okay. And just to back up a little bit can you give me
4 your background, uh, professionally in regard to
5 interpretation at court hearings.

6 A. Okay. Um, I'm originally from Haiti and I came to the
7 State's when I was very young. I studied, um, English of
8 course and, um, also, uh, studied interpreting, I took a class
9 in court interpretation, I'm on the second level, there's
10 three levels where you can become certified, I'm a qualified
11 interpreter. Um, I've also lived in Colombia South America
12 for a year and a half.

13 Q. Okay. And on this particular, uh, day of Mr. Castenada's
14 guilty plea, uh, were you brought in by the Court to do the
15 interpet -- interpretation?

16 A. Yes.

17 Q. Okay, and have you, had you met previously Mr. Castenada
18 at all?

19 A. No.

20 Q. Okay. Did you have a chance to speak with him before the
21 hearing?

22 A. Yes, with Mr. Johnston.

23 Q. Okay. Uh, can you briefly, uh, go over what was said
24 that meeting before the guilty plea hearing.

25 A. Well I know I was brought in, uh, by the Court and

MARIE BUSTAMONTE - DIRECT EXAMINATION BY MR. KINARD

1 Mr. Johnston went into the jail room, uh, to speak with his
2 client to explain to him what was bein' done today he was
3 pleading guilty and what offer was offered and if he was gonna
4 accept the offer and I know he had some, uh, discrepancies
5 with Mr. Johnston as far as he indicated to me that he did
6 not, uh, want Mr. Johnston to, uh, in -- represent him
7 anymore.

8 Q. Okay. So he he told you, he told you that or he told
9 Mr. Johnston that durin' the hearing and you interpreted that
10 to Mr. Johnston.

11 A. Right, it was before the hearing like in the jail room
12 when we was talkin' to him, explaining to him what would go on
13 when we brought him over to the Court.

14 Q. Was there a discussion regarding the 15-year offer that
15 was on the table?

16 A. I'm tryin' to remember. I I don't remember like exactly
17 if it was, uh, 15 but I know he mentioned to me to inform him
18 of if he was pleadin' guilty what was bein' offered.

19 Q. Okay. Uh, do you know if he had any reservations about
20 the 15-year offer that was on the table? Did you recall him
21 telling his attorney that he didn't wanna accept that or he
22 wasn't happy with that at all?

23 A. He was not happy with that because there's a lot of a a
24 long time, 15 years is a long time, uh, but I know he did
25 mention, uh, he was really adamant about, you know, not

MARIE BUSTAMONTE - DIRECT EXAMINATION BY MR. KINARD

1 wanting Mr. Johnston being his attorney 'cuz he said that he's
2 not done his job and he, uh, no longer wanted him to represent
3 him.

4 Q. Okay. And do -- did you have any trouble understanding
5 him during previous meetings before the guilty plea and during
6 the guilty plea hearing at all?

7 A. No.

8 Q. Okay. Did -- wha -- at -- did he have any different
9 dialects or nuances to his Spanish that you weren't aware of
10 or weren't familiar with?

11 A. Just slightly but, I mean, I've found ways to like say it
12 in a different way so, uh, that so he can better understand.

13 Q. Okay. And in your experience as an interpreter have you
14 found that, uh, individuals from Mexico do have different
15 dialects and use of the Spanish language?

16 A. Yes.

17 Q. Okay. And, uh, Ms. Bustamonte, do you recall any, uh,
18 the recesses taken durin' the guilty plea hearing?

19 A. Yes.

20 Q. Okay. Can you just, uh, give me a brief summary of what
21 was discu -- were you present during that meeting?

22 A. Yes.

23 Q. Okay. And also present was Mr. Castenada and his
24 attorney, is that correct?

25 A. Yes.

MARIE BUSTAMONTE - DIRECT EXAMINATION BY MR. KINARD

1 Q. Okay. And can you briefly, uh, tell me what was, uh,
2 said during that meeting between, uh, the three a ya'll.

3 A. Uh, that just he, I know that Mr. Johnston stepped out
4 because he talked to the, uh, the the the attorney that was on
5 the other side for the State, uh, to inform him what offer
6 would they take 'cuz I know at one point in time, uh,
7 Mr. Castenada wanted a lower, uh, time frame and so he said
8 that he's pretty sure that they're not gonna accept to that
9 because that's what is offered and due to the amount of drugs
10 and that was involved and they had already nol-prossed the
11 other, uh, charges.

12 Q. Okay. And during that, uh, recess did Mr. Castenada
13 reiterate his desire to hire another attorney or get another
14 attorney?

15 A. Um, I believe so.

16 Q. Okay. Durin' that meeting did he indicate that he did
17 not want to take the 15-year offer that was being presented at
18 that time?

19 A. He didn't mention that he did wanna take it but we was
20 explaining to him that that was the offer on the table and
21 that the judge would, you know, mention that he already had an
22 appointed, well he already had a hired attorney.

23 Q. Alright, okay. Uh, did Mr. Castenada appear upset or or
24 uncomfortable durin' that that meeting, that recess meeting?

25 A. Not really. I think he was just probly frustrated, uh,

MARIE BUSTAMONTE - DIRECT EXAMINATION BY MR. KINARD

1 about what was going on and the fact that, you know, he
2 thought maybe he would get, uh, his counsel relieved ---

3 Q. Okay.

4 A. --- that same day.

5 Q. Do you feel that he was adequately understanding all the
6 proceedings that were being conducted at that time?

7 A. I believe so.

8 Q. Okay.

9 MR. KINARD: That's all I have of this witness, Your
10 Honor.

11 MS. WHITE: And, Your Honor, uh, the State has no
12 questions.

13 THE COURT: Thank you, ma'am, you may step down.

14 (Whereupon, the witness left the stand.)

15 THE COURT: Applicant ready to call their next witness?

16 MR. KINARD: Uh, that would be the petitioner's, uh,
17 argument, Your Honor.

18 MS. WHITE: Your Honor, the State would call, uh, Andrew
19 Johnston to the stand.

20 THE COURT: Sir, please come around and place your left
21 hand on the Bible, raise your right hand.

22 ANDREW JOHNSTON, having been first
23 duly sworn, testified as follows:

24 THE COURT: Thank you, sir. Please have a seat in the
25 red chair and pull the red chair up to the microphone.

ANDREW JOHNSTON - DIRECT EXAMINATION BY MS. WHITE

1 DIRECT EXAMINATION BY MS. WHITE:

2 Q. If you could state your name for the record, please.

3 A. Andrew Johnston.

4 Q. And, Mr. Johnston, can you tell us how you, uh, came to
5 be involved in the applicant's case.

6 A. Uh, we were con -- I was contacted by either he or
7 someone acting on his behalf for an appointment on his first
8 case, uh, and he came in, met with me and he retained me on
9 that charge with those charges. Uh, he had a trafficking in
10 cocaine more than 200 grams, possession of a weapon during the
11 commission of a violent crime and possession with intent to
12 distribute marijuana, uh, those were the initial charges. He
13 later while he was out on bond for that charge, uh, got
14 charged again with trafficking in cocaine, I believe that one
15 was more than 10, less than 28 ---

16 Q. Okay. And at that ---

17 A. --- and at that time he he -- his bond was revoked, he
18 couldn't get out of jail.

19 Q. Okay, so at that time he had four separate charges
20 pending.

21 A. Yeah, he also had a driving under the influence charge,
22 uh, really not that significant in the overall circumstances
23 but I also handled that for him.

24 Q. So you were retained to handle all of those charges.

25 A. Yes.

ANDREW JOHNSTON - DIRECT EXAMINATION BY MS. WHITE.

1 Q. And do you recall how long of a time period that you
2 represented him prior to this plea?

3 A. I was retained on 4/2 of '10, uh, the plea was December
4 16 of '11.

5 Q. So a little over a year and a half at least.

6 A. Yes.

7 Q. Okay. During that time did you have a chance to meet
8 with him with the use of an interpreter or without and talk
9 with him about these cases?

10 A. Yes. I don't recall whether or not he had an interpreter
11 at the initial meeting or not, it could have been that he
12 spoke just enough English to convey, uh, what was happening at
13 that time. I did note that he was not literate in either
14 English or Spanish and I wrote in my notes that he spoke
15 little English is is how I characterized it. Uh, when he was
16 in jail, I went, uh, I retained the services of Mr. John
17 Morton and got Mr. Morton to accompany me to, uh, the the
18 jail, he and I went there on two occasions.

19 Q. And during those two occasions did you feel that, did you
20 or did the applicant ever indicate that he was not
21 understanding your conversations or Mr. Morton's, uh,
22 interpretation of what you or he were saying?

23 A. No.

24 Q. In discussing the cases with the applicant, did you talk
25 about the potential of going to trial on these, was it always

1 a plea, what was the, what was the discussion?

2 A. Well, I mean, a -- the case is never always a plea, I
3 mean, one explores any possible defenses that one might have.
4 The problem here in this case was twofold, uh, there wasn't
5 much factual or legal room for a defense based on the way the
6 case had been made and no viable alternative was offered by
7 him, uh, for a defense at trial. The the other aspect or
8 problem is he faced a mandatory minimum 25 years, uh, no
9 parole so, uh, those were two very difficult circumstances to
10 work with in this situation.

11 Q. And did you have a chance, did you feel like he
12 understood I guess with your conversations that he did face
13 this 25 mandatory minimum?

14 A. Well, I mean, I guess he understood it but he -- I had a
15 hard time getting him to grasp what it actually was but that
16 was from an intellectual standpoint as opposed to a language
17 standpoint and when I say an "intellectual standpoint", it's
18 not because he's deficient in his mentality or anything like
19 that, I think he's perfectly a a normal intelligence, uh, he
20 just didn't seem to grasp the concept or he had very great
21 difficulty grasping the concept that he had no defense, no
22 viable defense at trial and that if he went to trial and got
23 convicted he was gonna get 25 years.

24 Q. In the discussions with him prior to the plea, obviously,
25 uh, you've told the Court that he had indicated he wanted to

ANDREW JOHNSTON - DIRECT EXAMINATION BY MS. WHITE

1 relieve you.

2 A. The -- this is what what I think happened in this
3 situation: I went with, uh, Mr. Morton in December, uh, I
4 believe December the 9th, the plea's on December the 16th, I
5 go with Mr. Morton for the second time that day and it's my
6 recollection that after understanding the whole circumstances
7 Mr. Castenada decided to enter a guilty plea. Uh, at our roll
8 call meeting on Monday, uh, I called the case out as a, as a
9 plea, uh, that's really a requirement that we have here in
10 this circuit, uh, that on Monday morning the cases should be
11 announced as a plea or a trial or continuance sought or
12 whatever, so my recollection is that on Monday morning I
13 called it out as a plea because I believed it was a plea, uh,
14 then sometime later that week, uh, Mr. Castenada was brought
15 over from the jail and he basically told me he wasn't gonna
16 plea and he wanted to fire me so, uh, I told the solicitor and
17 we went, uh, spoke to the judge about it, told the judge what
18 was happening and, uh, then went on record about it.

19 Q. And obviously the Court informed him that since he did
20 have means to retain an attorney he could not get a court-
21 appointed attorney and there was some discussions about
22 whether or not the 15-year negotiated plea would be honored if
23 there were additional negotiations and you had that recess
24 afterwards.

25 A. Well the judge made it very clear that he did not want to

1 see that that if, uh, I were relieved as counsel that he
2 didn't want to see the offer left open and 'cuz basically the
3 process started, the prosecutor said on the record that if he
4 discharged me as counsel the the offer would be kept open, uh,
5 then after further discussion with it the prosecutor says, uh,
6 Well, no we're not gonna do that, if he gets new -- he -- we
7 don't have a problem with him gettin' new counsel but if he
8 gets new counsel the deal's off the table. The judge explains
9 this to Mr. Castenada, uh, You can have a new lawyer if you
10 want one but the deal's off the table and the only thing he
11 could do then is, uh, plead straight up to the original charge
12 or go to trial both of which would have resulted in a
13 substantially higher pen -- penalty for Mr. Castenada.
14 Mr. Castenada at that point, uh, did what I considered to be
15 the rational thing which was to accept the offer and plead
16 guilty.

17 Q. And the negotiated offer for 15 years for the reduced
18 charge of trafficking they dismissed at least ---

19 A. They dismissed a number of ---

20 Q. --- one ---

21 A. --- other charges. They dismissed the whole second
22 incident which was a trafficking charge, they dismissed the
23 marijuana charge, they dismissed the, from the first incident
24 they dismissed the possession of a weapon with in in -- with
25 possession of a weapon during the commission of a violent

ANDREW JOHNSTON - DIRECT EXAMINATION BY MS. WHITE

1 crime and recommen -- and lowered the drug weight from, uh,
2 more than 200 grams to, uh, 10 to 28, uh, with a negotiated
3 sentence of 15 which while certainly a harsh sentence is
4 nowhere near what he faced.

5 Q. And in your conversations with him and from the way the
6 plea proceeded, what was your impression of his either dislike
7 of the proceedings or, uh, problems with you?

8 A. The only problem he and I ever had as far as I know was
9 that I didn't bring him the offer he wanted and when I didn't
10 bring him the offer he wanted, uh, then it was I wasn't doing
11 my job, I wasn't spending enough time with him, uh, whatever.
12 Uh, now I did work on getting the offer down. Uh, at one
13 point the offer was 18 years, I did get it down to 15 but that
14 again did not suit Mr. Castenada, he wanted 5 or 7 which the
15 only basis for that is it was less time for him so he
16 preferred it.

17 Q. And at that point, uh, did you feel comfortable that he
18 had made the decision to plea based upon knowing his options
19 and knowing what he faced if he did not choose to plea that
20 day?

21 A. Yes, well and and it was stated on record exactly what
22 his alternatives were and we took a recess and I explained it
23 to him in no uncertain terms what the deal was: He could fire
24 me but they were gonna pull the deal and he was basically
25 going to come out a lot worse and so again, he agreed to make

ANDREW JOHNSTON - CROSS-EXAMINATION BY MR. KINARD

1 what I consider to be the rational decision, uh, and took the
2 offer.

3 Q. And one final final question: Did he ever indicate to you
4 that he had trouble understanding the plea proceedings or the
5 interpretation?

6 A. No, I never heard any issues about the communication with
7 either of the interpreters, either Mr. Morton or Ms.
8 Bustamonte, I never heard any complaints about that, uh,
9 Mr. Morton is a certified at like Ms. Bustamonte, uh,
10 Mr. Morton is a certified interpreter, uh, very, uh, often
11 used in these courts.

12 Q. Thank you.

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

14 MR. KINARD: Uh, thank Your Honor.

15 CROSS-EXAMINATION BY MR. KINARD:

16 Q. Uh, Mr. Johnston, ju -- just to clarify for the record
17 how many times did you meet with, uh, Mr. Castenada before the
18 guilty plea?

19 A. Before he was in jail or after he was in jail?

20 Q. Well while while he was in jail awaiting his eventual
21 plea.

22 A. There only three times that I can remember.

23 Q. And was Mr. Morton the interpreter present at all
24 those ---

25 A. No, ---

ANDREW JOHNSTON - CROSS-EXAMINATION BY MR. KINARD

1 Q. --- meetings?

2 A. --- he was present at two. On the other occasion Mr.,
3 uh, Castenada and I talked to the ability that we could in
4 English and I believe that he had a friend in jail who also
5 spoke good English, spoke good Spanish and that fellow helped
6 us out some on that occasion but I really felt like it wasn't
7 appropriate to use an inmate for that, uh, to to get into the
8 great details of the things so that's why I made sure that I
9 had Mr. Morton come on those other two occasions with me.

10 Q. And during those meetings, uh, did ya'll discuss -- what
11 was discussed during those meetings?

12 A. Uh, the evidence against Mr. Castenada, uh, the the
13 offers, the offer that was being made to him, what the
14 potential consequences of taking the offer would be, what the
15 potential consequences would be of, uh, going to trial, uh, we
16 discussed, I mean, I gave him every opportunity to give me a
17 defense. He never could give me a defense, a viable defense.
18 Uh, we of course discussed his rights, his right to a jury
19 trial, the presumption of innocence, his right to testify or
20 not testify and if he didn't testify the judge would tell the
21 jury not to hold it against him, all of those things.

22 Q. And do you believe that those three meetings gave you
23 adequate, uh, information on his case to to advise him
24 appropriately?

25 A. Absolutely..

1 Q. And the 15-year sentence when was that first proposed by
2 the State?

3 A. I can't tell ya that with precision, I can tell you that
4 I have an email saying that, uh, they were offering him 18
5 years back in October so all I can tell you is that sometime
6 between October and December the number became 15.

7 Q. Okay. And would it be safe to say that up until the
8 guilty plea ---

9 A. I have, I have the, uh, I I have the email. October
10 22nd, uh, of 2011 they were offering 18.

11 Q. Okay. And would it be safe to say up until the guilty
12 plea hearing Mr. Castenada did not wanna accept the
13 15-year ---

14 A. Yes, that is safe to say.

15 Q. Okay. What in your opinion do you think changed between
16 up until that guilty plea and he eventually going on the
17 record and accepting that guilty plea?

18 A. Alright, I did not understand your question, please
19 rephrase it.

20 Q. At the beginning of the, uh, guilty plea or the
21 transcript the through the interpreter he indicates he does
22 not wanna accept the 15 years.

23 A. Okay. Alright, I understand, what changed between that
24 point and the time that he took it. Uh, because, uh, the
25 prosecutor said, uh, if he gets a new lawyer, if he fires me,

ANDREW JOHNSTON - CROSS-EXAMINATION BY MR. KINARD

1 if he were to fire me and get a new lawyer, they would not
2 negotiate with him, they would yank the deal.

3 Q. Okay.

4 A. I mean, I think that's that's the only thing it could
5 possibly have been.

6 Q. Okay. You think Mr. Castenada felt pressured at all to
7 accept that plea based on circumstances?

8 A. Oh, yes, I'm sure he did but but again it was the
9 rational thing to do. I mean, there's always pressure when
10 when one takes a plea because one is thinking about what will
11 happen if one doesn't take it. In this particular situation
12 the pressure became focused and it became very time-sensitive
13 because he didn't give him any time or didn't give him much
14 time think about which was unfortunate but it was outta my
15 control.

16 Q. And during the the recess, during the guilty plea ---

17 A. Yes.

18 Q. --- do you recall that occurring?

19 A. I, I mean, I don't, uh, recall anything particular about
20 it other than to say I'm very confident that I told him, Okay,
21 I want you to understand what's happening here, uh, if you
22 don't take -- if you fire me, you can do that but they're
23 gonna yank the deal and they're not gonna negotiate with you
24 again so you may wanna go ahead and take that deal, ---

25 Q. Okay, ---

ANDREW JOHNSTON - CROSS-EXAMINATION BY MR. KINARD

1 A. --- uh, ---

2 Q. --- so so you did make a recommendation to him to take
3 15 ---

4 A. Absolutely be -- because my theory about this case was
5 that it wasn't that there was no defense to it factually or
6 legally and that his guilt would be easily proven due to the
7 fact of the strength of the State's case and because of the
8 mandatory minimum it would be an irrational act to go to trial
9 in my opinion.

10 Q. And Mr. Morton, uh, you briefly touched on this, he was
11 the interpreter you brought with you to the ---

12 A. Yes.

13 Q. --- to jail interviews.

14 A. Correct, on two occasions.

15 Q. Okay. Ca -- do you -- what are his qualifications again?
16 I know you briefly mentioned those. . Is he a ---

17 A. Uh, ---

18 Q. --- certified ---

19 A. --- I don't ---

20 Q. --- court interpreter?

21 A. --- I I know that he is a certified interpreter because
22 he is used here in these courts by all of the judges and I've
23 seen him appear as interpreter many many times. As to what
24 specifically his qualifications, his schooling and all of
25 that ---

ANDREW JOHNSTON - CROSS-EXAMINATION BY MR. KINARD

1 Q. Sure.

2 A. --- I could not begin to tell ya but I know he's used
3 here regularly.

4 Q. Okay. And in investigating the case, uh, against, uh,
5 Mr. Castenada, did you interview any potential witnesses?

6 A. No, he never told me of any potential witnesses and
7 nothing in the discovery materials would lead me to believe
8 there were any other witnesses.

9 Q. Okay, thank you, Mr. Johnston.

10 MR. KINARD: That's all I have, Your Honor.

11 THE COURT: Any redirect?

12 MS. WHITE: Nothing further, Your Honor.

13 THE COURT: Thank you, sir, you may step down.

14 (Whereupon, the witness left the stand.)

15 MS. WHITE: The State has no other witnesses, Your Honor.

16 THE COURT: Any witnesses in reply?

17 MR. KINARD: Nothin' from the defense, no, Your Honor.

18 THE COURT: Alright, I will let you know.

19 MS. WHITE: Thank you.

20

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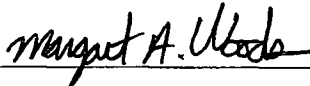
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1
2 CERTIFICATE OF REPORTER

3
4 I, Margaret A. Woods, Court Reporter in and for the State
5 of South Carolina at Large, hereby certify that I reported the
6 preceding case on April 1, 2013 at the time and place
7 heretofore set forth; and that the foregoing pages numbered
8 from 3 through 36, inclusive, constitute a true and accurate
9 transcription of my stenographic notes of the said proceeding.

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

14 October 28, 2013

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16 

17 Margaret A. Woods, Court Reporter

18 in and for the State of South Carolina at Large.
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STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
Juanito Martinez-Castenada, #349061,)
)
Applicant,)
)
v.)
)
-----)
State of South Carolina,)
)
Respondent.)
)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

RECEIVED

2012-CP-42-0652

AUG 23 2013

ORDER OF DISMISSAL, SUPREME COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 8, 2012. The Respondent made its Return on or about January 30, 2013. An evidentiary hearing into the matter was convened on April 1, 2013, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Howard R.

Kinard, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf using the assistance of a sworn interpreter. Marie Bustamante, interpreter for Applicant's plea, also testified. Andrew J. Johnston, Esquire, testified on behalf of Respondent. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

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SPARTANBURG COUNTY
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MARGARET BRADLEY

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the September 2010 term of the Spartanburg County Grand Jury for trafficking in

SCANNED

cocaine over 200 grams and possession of firearm or knife during commission of or attempt to commit a violent crime (10-GS-42-5661, count 1 and 2). He was represented by Andrew J. Johnston, Esquire. On December 16, 2011, the Applicant pled guilty to the lesser included offense of trafficking in cocaine 28-100 grams.¹ He was sentenced by the Honorable J. Derham Cole, pursuant to a negotiated sentence, to confinement for a period of fifteen (15) years for that charge. The Applicant did not appeal his guilty plea or sentence.

ALLEGATIONS

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

1. Ineffective assistance of counsel in that;
 - a. "Counsel failed to do any pretrial investigation."
 - b. "Counsel failed to discuss defenses available"
 - c. "Counsel advised defendant to plea without investigation."
2. Involuntary guilty plea

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Ineffective Assistance of Counsel

The Applicant alleges 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) (citing Rule 71.1(e),

¹ Count 2 of the indictment was nolle prossed in accordance with the plea negotiations.

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SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 486 S.E.2d 733, 735 (1997) (citing Strickland).

Applicant testified that he retained Counsel, but only met with Counsel three times during the thirteen and a half months he was in jail before the plea. Applicant testified that he did not know what charges he was facing when he went to court and that he did not believe that Counsel did much to assist him. Applicant also testified that on the day he was arrested, he was hit from behind and then the police busted in the door. Applicant testified that he wanted a new attorney

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and tried to relieve Counsel, but during the recess following the discussions, Counsel approached him with a fifteen year plea offer. However, Applicant testified that he wanted to go to trial.

Counsel testified that he did meet with the Applicant three times on these charges, but also represented him on several other charges. Counsel testified that he had an interpreter with him at two of the three meetings. Counsel also testified that based upon his review of the facts and discussions with the Applicant; there was not a factual or legal defense to the charges. Counsel testified that the Applicant never provided any information to him to assist in his defense.

This Court finds that the Applicant failed to meet his burden of proof as to the allegation that Counsel was ineffective. This Court also finds Applicant's testimony to not be credible. Although the Applicant indicated in his testimony that he only met with Counsel briefly, the "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). The Applicant failed to point to any specific matters Counsel failed to discover or any defenses that could have been pursued had Counsel spent more time with the Applicant or conducted additional investigation. to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State 329 S.C. 329, 496 S.E.2d 415 (1998).

This Court also finds that the Applicant's allegation of ineffective assistance of counsel lacks merit. This Court finds that the Applicant has failed to meet his burden of proof as to this claim. It is clear from the record and testimony that the Applicant was fully aware of the charge and of the negotiated sentence to a reduced charge; even though he wanted Counsel to obtain an offer for less time. Therefore, this claim is denied and dismissed.

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MORRIS B. CCKLEY

Involuntary Guilty Plea

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

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

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

Applicant testified that Counsel brought two different interpreters with him to meet with Applicant; but Applicant could not understand them. However, Applicant acknowledged that he understood Counsel was presenting a plea offer at one meeting, to which Applicant insisted that he would not accept. When asked as to why he acknowledged the facts of the case were correct,

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MICHELLE BLACKEY

Applicant testified that he did not understand any of the words that were used on the day of the plea. Applicant also testified that he also had trouble understanding Ms. Bustamante at the plea. Applicant testified that he wanted a five year offer and he would have signed that immediately had Counsel been able to obtain that offer for him.

Marie Bustamante testified that she recalled Applicant's plea and she was the interpreter. Ms. Bustamante testified that she has been qualified as a court interpreter and was brought in for Applicant by the court. She testified that she met with Applicant and Counsel prior to the hearing and during the court recess. Ms. Bustamante testified that Applicant did indicate that he wished to relieve Counsel. She also testified that she never had difficulty understanding the Applicant during the meetings or plea. Ms. Bustamante testified that Applicant indicated that he wanted less time, but never said that he did not want to accept the fifteen year negotiated sentence.

Counsel testified that he was retained to represent the Applicant on these charges, but also on another trafficking charge, a possession with intent to distribute marijuana, and a driving under the influence charge. Counsel testified that John Morton, qualified interpreter was present at two of their three meetings. Counsel testified that he never received any indication that the Applicant could not understand the conversations. Counsel testified that he discussed all the facts with the Applicant and was able to obtain an initial offer of eighteen years. Counsel also testified that the Applicant did not provide a defense to him and faced a mandatory minimum twenty-five years based on the charge. Counsel testified that Applicant decided to plead guilty, but then indicated that he no longer wanted to plead and wanted to fire Counsel. However, ultimately, the State was willing to offer fifteen years, reduce the charge, and dismiss the remaining charges. Counsel testified that he believed that the Applicant, although not given the

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five to seven year deal he desired, pled guilty freely and voluntarily based upon his knowledge of all of his options.

This Court finds Counsel's testimony and the testimony of Ms. Bustamante to be far more credible than the Applicant's testimony. This Court also finds this allegation conclusively refuted by the record. There was no indication in the record that the Applicant had difficulty understanding the interpretation or the proceedings in general. This Court finds that Applicant has failed to carry his burden of proving that his guilty plea was not freely and voluntarily entered. The overwhelming evidence in the record and presented through the testimony of the witnesses at the hearing reflects that the plea was knowingly and voluntarily entered. Boykin v. Alabama, 395 U.S. 238 (1969); Vickery v. State, 258 S.C. 33, 186 S.E.2d 827 (1972). Therefore, this Court finds that Applicant's guilty plea was freely and voluntarily entered.

Summary

This Court finds in regards to the allegations of ineffective assistance of counsel and involuntary guilty plea, the Applicant failed to meet his burden of proof. Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

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

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CONCLUSION

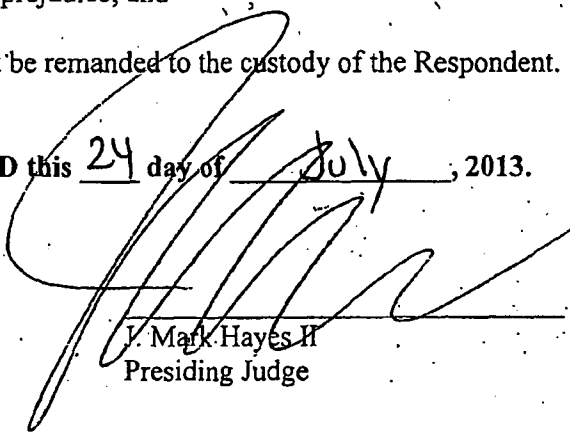
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 24 day of July, 2013.



J. Mark Hayes II
Presiding Judge

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 KENNEDY BLACKLEY

WITNESSES

ATTORNEY USE

SPRING CREEK SHERIFFS OFFICE

WARD PULLED

INDEXED BY T. K. Williams

INDEXED BY

CHECKED SIGNATURE

ASSESSMENT NUMBER

TRAFFIC VIOLATION COPY

M422242 + D1

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

5061(A)

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

NOV 1 2010

TERM

THE STATE

vs.

JUANITO MARTINEZ CASTENADA

Nº Count 2 Weapon per plea agreement.

Chad Graham

12/16/11

Indictment for

TRAFFICKING IN COCAINE;
POSSESSION OF FIREARM DURING
THE COMMISSION OF A VIOLENT
CRIME

SC Code: 44-53-370; 16-23-490

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M. HOPE BLACKLEY

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SPARTANBURG COUNTY
2010 OCT -4 PM 2:09
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on SEP-30 2016 the
 Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE- TRAFFICKING IN COCAINE

That Juanito Martinez Castenada did in Spartanburg County on or about March 19, 2010, knowingly sell, manufacture, cultivate, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this State, or did knowingly actually or constructively possess or did knowingly attempt to become in actual or constructive possession of more than (200) two hundred grams of Cocaine, a schedule II controlled substance, in violation of §44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

**COUNT TWO - POSSESSION OF FIREARM OR KNIFE DURING
 COMMISSION OF OR ATTEMPT TO COMMIT A VIOLENT CRIME**

That Juanito Martinez Castenada did in Spartanburg County on or about April 19, 2010, possess or visibly display a firearm or visibly display a knife during the commission or attempted commission of a violent crime, to-wit: TRAFFICKING IN COCAINE, in violation of Code §16-23-490, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


 ASSISTANT SOLICITOR