

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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MAY 21 2014

Appeal from Greenville County

S.C. Supreme Court

D. Garrison Hill, Circuit Court Judge

MARION JAMES DODD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001866

APPENDIX

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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Greenville)
)
Marlon Jame Dodd # 236658)
)
 Full name and prison number (if any) of Applicant.)

IN THE COURT OF COMMON PLEAS

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 2011 AUG 17 11:03 AM

2011 AUG - 17 P 4: 03
 2011-CP-23-05107

v.)
)
 State of South Carolina)

APPLICATION FOR
 POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

ENTERED COMPUTER

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

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

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

1. Place of detention Waterlee River Correctional Institution
2. Name and location of Court which imposed sentence Greenville County court of General Sessions
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010 GS 2308008, Trafficking In Cocaine, 10-28 grams, - 2nd offense
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) May 24, 2011, 8 years (concurrent)
 - (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. NONE _____

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) Was not informed by attorney or the Court about a Direct Appeal

(b) _____

(c) _____

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

- (a) Ineffective Assistance of Counsel
- (b) _____
- (c) _____

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

- (a) Attorney failed to challenge The validity of the Arrest warrants
- (b) Applicant's residence entered illegally, without a search warrant
- (c) by The Greenville County Sheriff's office.

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

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

- (a) the specific nature thereof:
 - i. None [for all]
 - ii. None
 - iii. None
 - iv. None
- (b) the name and location of the Court in which each was filed:
 - i. None
 - ii. None
 - iii. None
 - iv. None
- (c) the disposition thereof:
 - i. None
 - ii. None
 - iii. None

- iv. None
- (d) the date of each such disposition:
 - i. NONE
 - ii. NONE
 - iii. NONE
 - iv. NONE

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

- i. NONE
- ii. NONE
- iii. NONE
- iv. NONE

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. NONE
- ii. NONE
- iii. NONE

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

- i. NONE
- ii. NONE
- iii. NONE

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) This is the first and only appeal filed.
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? -
- (c) your sentencing? yes
- (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. Larry Cook 210 West Stoneth Greenville S.C. 29601
- ii. _____
- iii. _____

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

- i. Plea hearing and Sentencing
- ii. _____
- iii. _____

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

Sentence to be corrected

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

No

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

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

Marion J Dodd #236658

SWORN to and subscribed before me this 27th
day of July, 2011.

Tom Salom (L.S.)
Notary Public

My Commission Expires: 3/15/2017

Photo ID SCOC #236658

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

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

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

Marion J Dodd 236658
Applicant

SWORN or affirmed to and subscribed before me this

24th day of July, 2011.

Len Salas
Notary Public

My Commission Expires: 3/15/2017

Scoc photo I O II 236658

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Marion James Dodd,)
 S.C.D.C. No. 236658,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2011-CP-23-5107

RETURN

ENTERED COMPUTER

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 2012 JAN 10 PM 2:01

In response to the post-conviction relief application filed August 1, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the October 2010 term of General Sessions for possession with intent to distribute (PWID) cocaine base (2010-GS-23-8007), trafficking cocaine (2010-GS-23-8008, count 1), and possession of a weapon during the commission of a violent crime (2010-GS-23-8008, count 2). Larry Cooke, Esquire represented the Applicant.

On May 24, 2011, the Applicant pled guilty to PWID cocaine base, second offense and trafficking cocaine (10-28 grams), second offense. The Honorable G. Edward Welmaker sentenced the Applicant to concurrent terms of eight (8) years on each charge. The Applicant did not appeal.

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

SCANNED

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

II.

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

1. Ineffective assistance of counsel:
 - a. Failed to challenge the validity of the arrest warrant.
 - b. "Applicant's residence entered illegally, without a search warrant by the Greenville County Sheriff's Office."

III.

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

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

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

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

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

IV.

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

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held 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

December 3, 2011

I N D E X

(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent's Witness

Page No.

(AW) MARION JAMES DODD:
Direct Examination by Ms. Horlbeck.....7

(RW) LARRY COOKE:
Direct Examination by Ms. Ratigan.....17
Cross-Examination by Ms. Horlbeck.....23

(RW) HOWARD STEINBERG:
Direct Examination by Ms. Ratigan.....28
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(RW) LARRY COOKE:
Direct Examination by Ms. Ratigan.....35
Cross-Examination by Ms. Horlbeck.....39

(AW) MARION JAMES DODD:
Direct Examination by Ms. Horlbeck.....41

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
(Applicant's Exhibits)			
A-1	Search Warrant.....	3.....	15
A-2	Arrest Warrant.....	3.....	15
A-3	Letter dated 7/8/10.....	9.....	16
(State's Exhibits)			
S-1	Letter dated 2/23/12.....	4.....	4

All Exhibits were retained by the Clerk of Court for Greenville County.

P R O C E E D I N G S

1
2 (WHEREUPON, Applicant's Exhibit Nos. 1 and 2 were
3 marked for identification only.)

4 THE COURT: Okay. This is Marion James Dodd v. the
5 State of South Carolina, 2011-CP-23-5107. Mr. Dodd is
6 present with his counsel, Ms. Horlbeck.

7 And, Ms. Ratigan, yes, ma'am.

8 MS. RATIGAN: Thank you, Your Honor.

9 May it please the Court.

10 This is the case of Dodd v. State. Mr. Dodd was
11 indicted for possession with intent to distribute cocaine
12 base, trafficking cocaine, and possession of a weapon
13 during the commission of a violent crime. He was
14 represented on these charges by Mr. Cooke.

15 On May 24th, 2011, he pled guilty to PWID cocaine
16 base second offense and trafficking cocaine 10 to 28 grams
17 second offense. Judge Welmaker sentenced him to
18 concurrent terms of eight years on each charge. He did
19 not file an appeal.

20 We've got a couple of little issues to take up on the
21 front end, Your Honor. I've shown this to Ms. Horlbeck
22 and I'll -- this is a letter from April Herron, who was
23 the court reporter in this case, dated February 23rd,
24 2012, explaining why there is no transcript in this case.

25 Do you want to have that marked as a Court's Exhibit

1 or a State's Exhibit, Your Honor? Does it really matter
2 to you?

3 THE COURT: It doesn't matter to me.

4 MS. RATIGAN: Okay. I'll have this marked --

5 THE COURT: I've read the letter.

6 MS. RATIGAN: Okay. I'll have this marked as
7 Respondent's Exhibit No. 1.

8 THE COURT REPORTER: State's Exhibit No. 1?

9 MS. RATIGAN: Yes, State's Exhibit No. 1.

10 (WHEREUPON, State's Exhibit No. 1 was marked for
11 identification and admitted into evidence:)

12 MS. RATIGAN: So, at this point, Judge, basically, I
13 think we have two things we need to do today. We've got
14 to try and reconstruct the record as best we can. I've
15 got Mr. Steinberg here and Mr. Cooke, obviously. And
16 then, also, to go into Mr. Dodd's actual PCR allegations.

17 I don't know if you have a preference in terms of how
18 we do this, if you want to do one before the other. You
19 know, we -- I think you and I have done reconstructions
20 before. There's no real rules on how to do it. The Court
21 usually just remands it back and tells us to reconstruct.

22 So I decided instead of waiting and having it
23 remanded back in two or three years, we should just maybe
24 try and create as much of a record now as we could. So
25 however Your Honor would like to proceed, whatever you

1 think would be easiest.

2 THE COURT: What's his theory on PCR?

3 MS. HORLBECK: Judge, he's got a -- basically, there
4 was a search warrant that was issued and signed by
5 Judge -- or Magistrate O'Brien on June the 9th, 2010. And
6 it was executed the very next day, June the 10th, 2010.
7 And as a result of that, there was a warrant issued.

8 The warrant issued was, actually -- part of it says
9 the warrant is against Larry Wilson. Well, my client's
10 name is Marion Dodd. But in two places the warrant that
11 he was arrested on, it was the wrong name. In the body of
12 the warrant, it does say Marion Dodd.

13 But, nevertheless, he was arrested and put in the law
14 enforcement center. He was represented by Mr. Cooke. And
15 he pled guilty to two counts, one of distribution of meth
16 second offense, and then trafficking cocaine 10 grams or
17 more second offense.

18 After his conviction, Judge, he wrote the magistrate
19 a letter. Because on the search warrant, the return was,
20 actually, signed on July the 8th, 2010. And my client --
21 he either got it as part of discovery or he wrote the
22 magistrate himself. I'm not sure. I need to kind of
23 clear that up during questioning.

24 But, at any rate, there is a letter from the
25 magistrate explaining the issue with the search warrant,

1 and the fact that for sometime they could not find the
2 original search warrant. They finally -- they,
3 eventually, discovered that the deputy kept a copy. And
4 the copy was, actually, signed at a later date.

5 Mr. Dodd feels that the search warrant is illegal.
6 Therefore, everything found as a result of the search
7 warrant was illegal and his arrest was illegal. These are
8 all things that Mr. Cooke did not catch. And my client
9 says Mr. Cooke should have caught those things. Now that
10 he -- now that he's convicted, he's found these things
11 out. And he has brought a post-conviction relief action.

12 So that's it in a nutshell.

13 THE COURT: Okay. Do you want to call your first
14 witness?

15 MS. HORLBECK: Sure, Judge.

16 Mr. Dodd.

17 THE CLERK: Mr. Dodd, please, place your left hand on
18 the Bible and raise your right hand.

19 WHEREUPON,

20 MARION JAMES DODD,

21 after first having been duly sworn, testified as follows:

22 THE CLERK: Thank you.

23 Please state your full name for the record.

24 THE WITNESS: Marion James Dodd.

25 THE CLERK: Thank you.

1 You may be seated.

2 DIRECT EXAMINATION

3 BY MS. HORLBECK:

4 Q Mr. Dodd, did you plead to distribution of
5 methamphetamine second offense and, also, a trafficking
6 cocaine charge?

7 A Yes, I did.

8 Q Who represented you on those charges?

9 A Larry Cooke.

10 Q All right. And, as a result of his representation,
11 did you file this action for post-conviction relief today?

12 A Yes, sir -- yes, ma'am.

13 Q Okay. I'm going to hand you -- Mr. Dodd, I'm handing
14 you a copy of Applicant's Exhibit No. 1. And I ask you to
15 take a look at that and identify it.

16 A Yeah.

17 Q Okay. Tell me what that is.

18 A Well, I have a search warrant.

19 Q Okay. And did you get -- is that a copy of the
20 search warrant that you got as a result of discovery that
21 your attorney sent you?

22 A Yes, ma'am.

23 Q Okay. And what day was the actual warrant signed?
24 Was it signed on June the 9th, 2010, by Judge O'Brien?

25 A Yes, ma'am.

1 Q All right. And was the search warrant executed on
2 you at your apartment on June the 10th, 2010?

3 A Yes, ma'am.

4 Q Okay. Now, you say that you did not receive an
5 actual copy of that search warrant; is that correct?

6 A Yes, ma'am.

7 Q Okay. And did you discuss that aspect of things with
8 Mr. Cooke?

9 A No, ma'am.

10 Q Okay. Take a look at that search warrant again, that
11 exhibit that I gave you, Applicant's Exhibit No. 1. Tell
12 me what day the return was, actually, signed.

13 A 3/16/11. It says "16."

14 Q No. On -- I'm talking about the return. On Page 4
15 of Applicant's Exhibit No. 1, tell me what date Judge
16 O'Brien signed that.

17 A 7/18.

18 Q And is that the name -- tell me the name of the
19 person that signed that. Is it Judge O'Brien? Does it
20 look like that to you?

21 A Yeah. Yes, ma'am.

22 Q All right. And, as a result of the search
23 warrant that was executed on your apartment, were you
24 arrested?

25 A Yes, ma'am.

1 Q I hand you a copy of Applicant's Exhibit No. 2. I
2 ask you to take a look at that and identify it for me,
3 please.

4 A This is the warrant.

5 Q Okay. Tell me -- are there any -- whose name is on
6 that warrant in the left-hand corner?

7 A It's Larry Wilson.

8 Q Okay. And, at the top of the warrant in the middle,
9 whose name is on that warrant?

10 A Marion Dodd is in the middle.

11 Q Okay. At the --

12 A And Marion Dodd is in the return.

13 Q Okay. Now, at the very top in the middle underneath
14 "Affidavit," whose name is there?

15 A Larry Wilson.

16 Q Okay. But your name is in the actual body of the
17 warrant. Is that what you're saying?

18 A Yes, ma'am.

19 Q All right. And is that the warrant you were,
20 actually, served with when you were arrested?

21 A Yes, ma'am.

22 Q Okay. And after your conviction --

23 MS. HORLBECK: I would like to have this marked.

24 (WHEREUPON, Applicant's Exhibit No. 3 was marked for
25 identification only.)

1 BY MS. HORLBECK:

2 Q Mr. Dodd, I'm handing you Applicant's Exhibit No. 3.
3 I ask you to take a look at that and identify it.

4 A Okay.

5 Q What is that?

6 A It's the magistrate judge.

7 Q It's a letter from whom?

8 A Michael O'Brien.

9 Q Okay. How did you get a copy of that letter?

10 A He wrote this letter to me in my motion of discovery
11 when I sought for it.

12 Q Okay. Is that -- was that letter included in your
13 discovery materials?

14 A Yes, ma'am.

15 Q Okay. And have you had a chance to review the
16 letter?

17 A I can -- I know that I understand what he's saying
18 when he said that -- you know, I could just about tell you
19 because I've done read it so much.

20 Q Okay.

21 A I just know that I understand that he said that it
22 never was a search warrant.

23 Q Okay. Well, let's talk about that. In June -- in
24 the letter, does Judge O'Brien say that on June the 9th,
25 he signed the warrant?

1 A Yes.

2 Q Okay. And then on June the 10th, the warrant was,
3 actually, executed on your apartment. Is that what the
4 letter says?

5 A Yes, ma'am.

6 Q All right. And then it says on June the 10th, Deputy
7 Azzaro returned the search warrant to Judge Gibson?

8 A Yes, ma'am.

9 Q And then Judge Gibson swore in Mr. Azzaro and
10 documented the return in the search warrant log book?

11 A Yes, ma'am.

12 Q All right. And then do you know if the search
13 warrant was ever placed into property and evidence?

14 A No, ma'am.

15 Q And in his letter to you -- or to whoever wrote this,
16 did the -- was the original search warrant ever received
17 back by Judge O'Brien?

18 A No, ma'am. It [sic] never did receive.

19 Q Okay. And so what did Judge O'Brien do?

20 A Judge O'Brien, he asked --

21 Q According to this letter.

22 A According to the letter?

23 Q Uh-huh.

24 A Well, he -- he said he was asked for the search
25 warrant.

1 Q Okay. Who asked him for it?

2 A I don't know who asked him for it, but.

3 Q All right. Could they find the search warrant?

4 A I know that I had sent a letter to the Clerk of Court
5 and I asked him for the warrant.

6 Q Okay. Did Judge O'Brien find a copy of the search
7 warrant with the deputy?

8 A No, ma'am. He didn't find it. He said that it was
9 missing. He never could receive it.

10 Q All right. The -- look at the fourth paragraph.
11 What is -- you need to read that to yourself, and I've got
12 some questions.

13 A He said after he discussed the issue with Deputy
14 Azzaro -- I can't hardly say that name.

15 Q Azzaro?

16 A Azzaro, I discovered that he kept a copy of the
17 return for his use.

18 Q All right.

19 A The information in this return is considered with the
20 arrest warrant that charged the Defendant with
21 members [phonetic] of drug charges. Now, however, this is
22 not a signed copy from Judge Gibson, which that -- it's
23 this one right here that ain't signed.

24 Q So Judge O'Brien signed it. He just signed it in
25 July, on July the 8th; is that correct?

1 A Yes, ma'am.

2 Q Okay. And your argument today is that that -- the
3 signing of the return by a different judge at a later date
4 makes the search warrant illegal?

5 A Uh-huh.

6 Q All right. And is it your position and argument
7 today that everything -- all the evidence collected as a
8 result of that search warrant that that is illegal?

9 A Yes, ma'am.

10 Q And that, therefore, your arrest is illegal; is that
11 correct?

12 A Yes, ma'am.

13 Q Okay. Did you and Mr. Crane -- I mean Mr. Cooke ever
14 discuss these issues?

15 A No, ma'am.

16 Q All right. And did Mr. Cooke catch any of these
17 issues while he was representing you?

18 A No, ma'am.

19 Q When did you discover these issues? Was it before or
20 after your conviction?

21 A After my conviction.

22 Q Okay.

23 A After I studied.

24 Q All right. And after -- now, if you had known these
25 things, would you have still pled guilty?

1 A No, ma'am.

2 Q What would you have done differently?

3 A If I -- I asked [sic] him four times that it wasn't
4 me. He just kept telling me that they changed it. And
5 after I started reading and read up and I found out that
6 he was right, they can change it, but it's limited.

7 Q Okay. And did they, eventually, issue an arrest
8 warrant with the correct name on it, with your name on it?

9 A Yeah, two months later.

10 Q Okay.

11 A After I had got out of jail.

12 Q Okay. And, once again, would you still have pled
13 guilty knowing these things? What would you have done
14 then?

15 A I would have pled not guilty.

16 Q Okay. And you would have had a trial; is that
17 correct?

18 A Yes, ma'am.

19 Q Now, this is your one bite at the apple. Are there
20 any other issues that you want to raise today against
21 Mr. Cooke?

22 A No. I just wanted him to just recognize that I just
23 got locked up under someone else's name.

24 Q Okay. And you understand that if the Judge grants
25 your petition today that you face re-prosecution all over

1 again on these charges?

2 A Yes, ma'am.

3 Q Okay. And you understand that if the Judge denies
4 your petition today, then you will continue to serve out
5 your sentence until it's done; correct?

6 A Yes, ma'am.

7 MS. HORLBECK: Judge, at this point, I would move
8 Applicant's Exhibit Nos. 1, 2, and 3 into evidence.

9 MS. RATIGAN: Your Honor, I don't have an objection
10 to Applicant's Exhibit Nos. 1 or 2. I do have an
11 objection to Applicant's Exhibit No. 3, just that it
12 hasn't been authenticated.

13 (WHEREUPON, Applicant's Exhibit Nos. 1 and 2 were
14 admitted into evidence.)

15 THE COURT: What is Applicant's Exhibit No. 3 again?

16 MS. HORLBECK: Applicant's Exhibit No. 3 is the
17 letter from Judge O'Brien. If you'd -- I don't know if
18 you'd like to see it.

19 MS. RATIGAN: It's not on letterhead. It's not any
20 kind of a certified copy. The others are, obviously,
21 court documents and, obviously, discovery materials.
22 But -- so I don't have objections to Applicant's Exhibit
23 Nos. 1 or 2. I do object to Applicant's Exhibit No. 3.

24 THE COURT: This says, Certified true copy,
25 Greenville County bond court, whatever that is.

1 MS. RATIGAN: And, again, it's something that
2 Ms. Horlbeck did not obtain herself. She got it from her
3 client. Therefore, we'd say it's a little more suspect
4 since it came from Mr. Dodd.

5 MR. MARION DODD: I have it where he signed it in my
6 motion of discovery, you know. I didn't just make things
7 up like that, you know.

8 MS. HORLBECK: Yes.

9 Judge, he's saying that he got this from the
10 discovery packet that Mr. Cooke sent him.

11 MR. MARION DODD: All of this stuff is certified by
12 the Judge. Everything was certified by Judge O'Brien.

13 THE COURT: All right. Well, I'll overrule the
14 objection.

15 MS. HORLBECK: Thank you, Judge.

16 THE COURT: It's in evidence.

17 (WHEREUPON, Applicant's Exhibit No. 3 was admitted into
18 evidence.)

19 MS. HORLBECK: Mr. Dodd, please, answer any questions
20 that Ms. Ratigan may have for you.

21 MS. RATIGAN: I don't have any questions for
22 Mr. Dodd, Your Honor.

23 THE COURT: Mr. Dodd, you can step down.

24 Thank you, sir.

25 Ms. Horlbeck, you may call your next witness.

1 MS. HORLBECK: Judge, that's all we have.

2 THE COURT: Ms. Ratigan.

3 MS. RATIGAN: Your Honor, we'd call Mr. Cooke.

4 THE CLERK: Mr. Cooke, please, raise your right hand
5 and place your left hand on the Bible.

6 WHEREUPON,

7 LARRY COOKE,

8 after first having been duly sworn, testified as follows:

9 THE CLERK: Thank you.

10 Please state your name for the record.

11 THE WITNESS: Larry Cooke.

12 THE CLERK: Thank you.

13 DIRECT EXAMINATION

14 BY MR. RATIGAN:

15 Q Mr. Cooke, I'll ask a couple of general questions and
16 then I'll circle back around to the main issue today.

17 Were you appointed in this case, or were you
18 retained?

19 A Appointed.

20 Q And did you file the usual Brady-Rule 5 motions?

21 A Yes.

22 Q Did you receive discovery materials from the State?

23 A Yes.

24 Q In your opinion, did you receive everything that you
25 had asked for?

1 A As far as I know, yes. Let me -- I sent my
2 discovery -- Marion wanted a copy after he got sentenced
3 to prison. And I sent him my -- all of my stuff. I
4 didn't make copies. So I don't have anything in my file
5 now. He got it all. So I don't know what all is in
6 there, to be honest with you.

7 Q Okay. And after you received those discovery
8 materials from the State, at some point, did you meet with
9 Mr. Dodd and go through them?

10 A A number of times.

11 Q And when you would meet with Mr. Dodd, did he tell
12 you kind of his version of events?

13 A He did point out the fact that his name -- I do
14 remember this. Now, this is -- I represented him on a
15 number of charges. Somehow, Dan Farnsworth -- either
16 senior or junior -- had been hired by Mr. Dodd on some
17 pending drug charges. Then I got involved because he got
18 re-arrested.

19 And he was tried on some trafficking and possession
20 with intent charges resulting from a traffic stop, I
21 believe it was. He did not appear in court. And he was
22 tried in his absence and convicted of possession only.
23 There was a sealed sentence.

24 They, finally, picked him up. I think Marion called
25 me. And I told him to turn himself in because he had been

1 convicted. And I said, You need to turn yourself in. I
2 can't remember whether he turned himself in or whether
3 they picked him up.

4 But they opened the sentence. And Judge Welmaker
5 gave him five years concurrent on all charges. As I say,
6 he was only convicted of the possession charge. He had
7 old charges -- he had other charges pending because he had
8 been picked up after the traffic stop on a search warrant
9 that was issued at his apartment, I guess. I think he was
10 living in an apartment at that time.

11 Q These are the charges at issue in this case that
12 we're talking about?

13 A Right, this particular case. This brings us
14 up-to-date. I did the preliminary hearing on that case.
15 Marion did not attend. And that hearing was on 8/26 of
16 '10. And he was out of jail. But, anyhow, I waived his
17 appearance, because he wasn't there. And we went ahead
18 and did the preliminary hearing.

19 And based on that hearing, the officer had told the
20 Court that he had previously arrested Marion, and that he
21 had gotten a tip from someone that he was dealing out of
22 the Grand Eagle Apartments. And they went toward the
23 apartments. And they saw some vehicles pull in and out of
24 the apartment area.

25 So they stopped one of the vehicles and talked to the

1 driver. And the driver admitted he had just bought some
2 drugs inside. So when the driver of that car admitted
3 that, they got a search warrant. They took the search
4 warrant to the Defendant's apartment and said that he was
5 standing in the living room.

6 And the officer said as soon as they walked in or
7 they knocked on the door and they walked in, he told them
8 that the stuff was in a box, gun and drugs were in a box,
9 that there was 29.9 grams of white powder coke, 2.8 grams
10 of crack, rock coke, 15 plus 76 plus seven pills, however
11 many that adds up to. Plus, various other drugs.

12 And, anyhow, that's how they ended up at the
13 apartment. It was from a tip. And then they arrested a
14 guy who said he had just purchased them from him at that
15 apartment.

16 Q And you had discussed all of this with Mr. Dodd --

17 A Yeah. Marion and I had -- listen, we had a number of
18 conversations about this case. And Marion, he -- you
19 know, he kept refusing the deal that Howard was offering.
20 And, of course, knowing Howard, he very seldom offers
21 anything good.

22 But, in this case, if convicted on the charges of a
23 third drug offense, Marion faced 25 to 30 years, mandatory
24 25 to 30 years. I showed him that letter laying out
25 exactly what he was facing if he decided to go to trial.

1 And he still refused to plead guilty until he got put in
2 jail for being tried in his absence. I talked to him
3 again. Howard said, Well, I'll tell you what I'll do,
4 I'll recommend 12. I, finally, talked him down to eight.

5 So I told Marion, I said, Look -- I mean, I'm sure I
6 told him this. I said, This is a heck of a deal. I would
7 take it because you're not really picking up a lot more
8 time. You're already doing five, you pick up eight, run
9 it concurrent, I think is the way it did. And that's
10 where we ended up.

11 He says I never told him about an appeal. I probably
12 didn't. But, I mean, he understood what he was pleading
13 guilty to. And he knew what the situation was.

14 MS. RATIGAN: May I approach, Your Honor?

15 THE COURT: Sure.

16 BY MS. RATIGAN:

17 Q I'm going to hand you Applicant's Exhibit Nos. 1
18 and 2. I know you said you gave all your discovery to
19 Mr. Dodd.

20 A Yeah.

21 Q But do these look familiar?

22 A Yeah. The name Larry Wilson on this warrant, I have
23 a copy of that in my file. And there's no question it
24 has -- I don't know how they got that name in there. And
25 in the affidavit, the officer said it was Larry Wilson.

1 But in the body, it says, the Defendant, Marion Dodd, was
2 found to be in possession. And then down here, the return
3 was that they gave a copy of it to Marion Dodd.

4 He was later -- I guess it was just an error. I
5 don't know who did it. But he was indicted, and
6 everything was done in his name. And I advised him that
7 it was probably just a secretary's mistake, which it
8 turned out to be.

9 Q So you were on notice at the time that there were
10 these issues about Larry Wilson's name being on there?

11 A He pointed -- Marion pointed it out to me. Because
12 I -- he saw the warrants before I did. I get the warrants
13 two or three months later through discovery. But Marion
14 pointed that out to me. But it was all later corrected.

15 Q And the issue about the return, were you present for
16 Mr. Dodd's testimony a couple minutes ago?

17 A Yeah.

18 Q Can you address his issue about the delay and the
19 return being signed?

20 A Not really. That was never really a question to me.
21 Because had he been at the preliminary hearing, he would
22 have found out exactly what they found in the apartment.
23 And he could have told me at that time that he didn't -- I
24 don't know if I saw a return, not saw a -- I don't know.

25 There just never was a question from Mr. Dodd as far

1 as I know. This just came up. I think he testified that
2 I didn't know anything about his...

3 MS. RATIGAN: I beg the Court's indulgence.

4 (Pause.)

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

6 CROSS-EXAMINATION

7 BY MS. HORLBECK:

8 Q Mr. Cooke, just briefly. You testified a minute ago
9 you don't recall if you saw the return in this case?

10 A I really don't.

11 Q Okay. And do you -- you don't recall whether or not
12 you discussed the date on the return, that issue with
13 Mr. Dodd?

14 A No. I mean, to me, there was just never really a
15 question about the search warrant and what was found in
16 his apartment. In fact, he told them where it was. There
17 was never a question raised about that. So I didn't
18 really pay any attention to the return.

19 Q Okay. So there was never a question in your mind,
20 and you said you never really paid attention to it, and
21 probably did not discuss that aspect of it with Mr. Dodd?

22 A Yeah. And, as I say, I mean, obviously, I didn't
23 have it in my discovery as he just testified that it was
24 only found or signed off on later on.

25 Q Okay. And did you recall having a copy of

1 Applicant's Exhibit No. 3 in your discovery? Does that
2 look --

3 A Yeah. This is the one I think -- is this the one?
4 No. I have a -- I do have a copy of this in my file, yes.

5 Q Okay. Did you discuss that with Mr. Dodd?

6 A No. I mean, I don't even -- I don't even know how
7 this all started. I mean, I'm just trying to figure out
8 how he would have -- if I was representing him, why would
9 he have been -- he got convicted on 4/7/11.

10 So I don't really understand why he was doing this
11 prior to being convicted. He should have talked to me
12 about it. I don't know anything about the letter. But
13 I've got a copy of it.

14 Q All right. And not knowing anything about it, you
15 did not discuss it with Mr. Dodd?

16 A Never.

17 Q And your advice to him was to take the eight years?

18 A Yeah. I thought it was a no brainer, to be honest
19 with you. I just --

20 MS. HORLBECK: Okay. I beg the Court's indulgence.

21 (Pause.)

22 MS. HORLBECK: That's all we have.

23 Thank you.

24 THE WITNESS: Thank you.

25 THE COURT: Redirect?

1 MS. RATIGAN: No further questions, Your Honor.

2 THE COURT: Thank you, Mr. Cooke.

3 THE WITNESS: Thank you, Judge.

4 THE COURT: You can call your next witness.

5 MS. RATIGAN: The State has no further witnesses to
6 call.

7 At this point, I don't know if you want to try and
8 reconstruct or -- because my only concern is any time a
9 case goes up on appeal -- and I assume no matter what Your
10 Honor's ruling is, the losing party will appeal it. The
11 first thing appellate defense does is file a motion to
12 remand for reconstruction.

13 So my thought was if we try and maybe get as much of
14 that on the record now, the Court might -- there might be
15 enough of a record such that they don't have to remand.
16 Because that would be probably another year and a half or
17 two years that we'll have to all come back. But,
18 obviously, that's in Your Honor's discretion if you want
19 to go down that path today, or just kind of take a wait
20 and see.

21 THE COURT: What would there be relevant in the plea
22 transcript that would have probative value for the issues
23 in this PCR?

24 MS. RATIGAN: That's the problem is there's really --
25 just for the determination of the PCR, there isn't

1 anything relevant. But just the normal course of
2 appellate practice is any time there's no transcript,
3 it -- I'd say 90 percent of the time, the Court remands it
4 back just to try and get as full of a record as possible.

5 But, again, we don't have an order remanding. So I
6 just thought while we were here, we could maybe knock it
7 out. But if it's something you don't think is anything we
8 need to entertain at this time, that's fine as well.

9 THE COURT: What do you think, Ms. Horlbeck?

10 MS. HORLBECK: Judge, just after a brief consultation
11 with my client, I say if we need to go ahead and
12 reconstruct the record, let's just go ahead and do it. I
13 don't have any objection to it. If Your Honor is inclined
14 to let that happen, I, certainly, don't object at this
15 point.

16 THE COURT: How do you propose to reconstruct it?

17 MS. HORLBECK: I've never done one.

18 MS. RATIGAN: Each one is little bit different. I
19 mean, generally, when I've done plea reconstructions
20 before -- it's why I have the Solicitor here. Usually, I
21 call the Solicitor, and then I call the defense attorney,
22 and then the Applicant. And, basically, it's a theater,
23 basically, you know, how many times have you pled in front
24 of this Judge? Does he usually ask the following
25 questions? Do you recall whether he asked the questions

1 that day, or he did not? Do you remember anything odd
2 happening at the hearing?

3 And if the Solicitor has their fact sheet, I'll ask
4 them to read the fact sheet as they would have read at the
5 plea, you know. Were there mitigation witnesses called?
6 What did they say? Did you say anything to the Judge?
7 You know, just kind of -- I guess it's kind of a legal
8 theater. But it's something that the Court lately has
9 been wanting. Since so many of these cases now are going
10 to federal habeas, the Court lately has been very
11 concerned about trying to get as full of a record as
12 possible.

13 Like I said, I leave that in your discretion. It's,
14 obviously, not probative to the PCR hearing, because the
15 issue is so contained. So, again, if that's something
16 Your Honor wishes to do today, that's fine. If not,
17 that's, also, fine.

18 THE COURT: Mr. Cooke.

19 MR. LARRY COOKE: May I approach the Attorney
20 General, Judge?

21 THE COURT: Yes.

22 (Pause.)

23 THE COURT: Okay. We can go ahead and try to
24 reconstruct.

25 MS. RATIGAN: Okay. I don't anticipate it taking

1 very long, Your Honor.

2 THE COURT: So pre-emptive reconstruction?

3 MS. RATIGAN: Yes. That was kind of my thought.

4 Because they -- I mean, I think you and I have had to do
5 them before a couple of times because they're very fussy
6 about how these things are done.

7 So, yes, if we're going to do that, let me just -- I
8 guess I will call Mr. Steinberg.

9 THE CLERK: Mr. Steinberg, please, place your left
10 hand on the Bible --

11 MR. HOWARD STEINBERG: I'll affirm.

12 WHEREUPON,

13 HOWARD STEINBERG,

14 after first having been duly affirmed, testified as follows:

15 THE CLERK: Thank you.

16 Please state your full name for the record.

17 THE WITNESS: Howard Steinberg.

18 DIRECT EXAMINATION

19 BY MS. RATIGAN:

20 Q Mr. Steinberg, how are you involved in this -- the
21 Marion Dodd case?

22 A I was the prosecutor on Mr. Dodd's -- he had a
23 Greenville City charge and a Greenville County traffic
24 stop charge, which was a trial, and a Greenville County
25 search warrant charge, which was a guilty plea.

1 Q Okay. And were you present at the plea hearing on
2 May 24th 2011, before Judge Welmaker?

3 A Yes, I was. I handled the plea myself.

4 Q Okay. And would it be fair to say you've had
5 numerous plea hearings before Judge Welmaker?

6 A Yes.

7 Q Does he tend to follow the same pattern? Does he ask
8 the same types of questions in your experience?

9 A Judge Welmaker is a particularly thorough judge. I
10 don't mean this in a negative way, but he's a very slow
11 judge, a very deliberate judge, perhaps, the most lengthy
12 guilty pleas as we'll have.

13 Q Okay. And before we get into the actual questions,
14 is there anything that jumps out in your mind about
15 anything that he may have deviated from in his usual plea
16 colloquy in Mr. Dodd's case? Do you have any notes in
17 your file or any recollection?

18 A I have my notes of the guilty plea summary. I don't
19 see anything unusual. I see that Mr. Crane did get me --
20 pardon me, Mr. Cooke did get me down from 12 years down to
21 eight years. I scratched through it, which means I
22 probably did it relatively close to the guilty plea.

23 Q Now, does Judge Welmaker usually ask questions at the
24 beginning of the plea, just the usual questions about age,
25 children, jobs, education? Is that something that usually

1 happens?

2 A He did ask questions. And, in fact, I believe
3 Mr. Dodd said he went to Eastside High School.

4 Q Okay. Now, does Judge Welmaker usually ask questions
5 in terms of any kind of psychiatric, medical, mental,
6 drug, or alcohol history? Is that usually part of his
7 colloquy?

8 A I think he does, but I cannot recall in this case.

9 Q Okay. As part of his usual plea colloquy, does Judge
10 Welmaker go through the indictments with the Applicant?

11 A Yes. He's very thorough.

12 Q Okay. Does -- as part of his colloquy, you give the
13 facts to the Court?

14 A Yes.

15 Q And do you have a copy of your plea sheet with you
16 today?

17 A I do.

18 Q And is this what you would have read to Judge
19 Welmaker that day?

20 A Yes. The first part was dealing with the -- we
21 thought he was going to plead guilty at one time to the
22 traffic stop. He did not. We went to trial. I have that
23 in here. I did not read that.

24 But I'll read what I did read to the Judge on that
25 day, "On June 10th, 2010, deputies executed a search

1 warrant based on witness statements of drug dealing by the
2 suspect. During the search, Mr. Dodd pointed out where
3 the illegal drugs were and said that he was a small-time
4 dealer. Deputies found 26 grams of cocaine, two grams of
5 crack, a pistol, and \$1,545. And this incident happened
6 in Greenville County."

7 I, also, would have read his record, which I have,
8 and read the recommendation, which I have here.

9 Q Okay. And what was the recommendation you read to
10 Judge Welmaker?

11 A Dismissing additional charges, which were some
12 smaller charges in this case, and probably his Greenville
13 city charges, and, also, recommending eight years
14 concurrent to his existing sentence that was read out to
15 him in the courtroom.

16 Q And you, also, would have, at some point, read his
17 prior record?

18 A I do have his record here, yes.

19 Q Could you read that into the record?

20 A Yes. 1987, arson second degree; 1991, probation
21 violation; 1993, DUS; 1994, assault and battery, drunk and
22 disorderly, trespassing; 1996, DUS, CDV second; 1997,
23 disorderly conduct, resisting arrest; 1998, DUI; 2000,
24 pointing and presenting a firearm, CDV two counts;
25 2003, possession of a controlled substance.

1 Q Okay. Now, as part of Judge Welmaker's usual plea
2 colloquy process, does he, generally, after you've recited
3 the facts ask the Defendant if they agree with those
4 facts?

5 A Yes.

6 Q Do you remember whether or not he did so in this
7 case?

8 A I cannot -- I can't imagine he would not. But I
9 don't remember specifically.

10 Q As part of his usual plea colloquy process, does
11 Judge Welmaker advise the Defendant of the various trial
12 rights he'd be waiving if he pled guilty?

13 A Yes.

14 Q And, again, do you recall, specifically, in this case
15 whether he did so --

16 A I think he did say something because he had already
17 had a trial on different -- I think he made a comment
18 like, Well, you're familiar with the process. Because he
19 had a TIA.

20 Q And does Judge Welmaker, as part of his process,
21 usually ask a question having to do with, you know, have
22 you been -- has anyone put any pressure or coercion --
23 does he usually ask a question along those lines?

24 A That's a question normally asked. But, frankly, I
25 can't remember if he did in this case.

1 Q And as part of his usual process, does he, generally,
2 ask whether the Defendant is satisfied with their
3 attorney's representation in the case?

4 A Yes, he does.

5 Q And, again, is that something --

6 A I can't remember.

7 Q Okay. Does Judge Welmaker, as part of his usual
8 colloquy, ask at the very end whether the Defendant has
9 understood the questioning and given truthful answers?

10 A Yes.

11 Q And, again, is that something you recall --

12 A I can't recall.

13 Q Do you recall whether or not -- well, let me back
14 that up. Did you call any other supplemental folks to
15 testify, or did you just give the case?

16 A I just testified to the case.

17 Q Okay. And do you recall whether or not Mr. Cooke put
18 up anyone in mitigation?

19 A I don't believe he did.

20 Q And do you remember whether or not Mr. Cooke gave a
21 brief statement in mitigation at the end of the plea?

22 A I think he did. I think it was more along the lines
23 of he's turned himself in. He's -- he didn't cooperate to
24 show up for trial, but he's cooperating now, something
25 along those lines.

1 Q And do you recall whether or not Mr. Dodd gave any
2 kind of statement to the Judge prior to sentencing?

3 A I don't believe he did.

4 Q And, again, obviously, this was back in May of 2011,
5 but is there anything that stands out in your mind as
6 unusual or in any way unexpected that occurred during the
7 plea?

8 A I gave a lower than average plea offer.

9 Q Okay. But the actual proceeding itself, nothing
10 stands out as being odd in any way?

11 A No.

12 MS. RATIGAN: That's all I have.

13 THE COURT: Cross-examination.

14 MS. HORLBECK: Just briefly.

15 CROSS-EXAMINATION

16 BY MS. HORLBECK:

17 Q Now, you testified that you can't recall
18 specifically, but you just thought Judge Welmaker asked
19 Mr. Dodd if he had any psychiatric issues, or competency
20 issues, or drug treatment; is that correct?

21 A I can't recall if that question was asked. But
22 that's a typical question the Judge would ask.

23 Q All right. And you, also, can't recall,
24 specifically, whether or not Judge Welmaker asked Mr. Dodd
25 if he agreed with the facts?

1 A I can't recall.

2 Q Okay. And I think you testified that Judge Welmaker
3 usually asks the Defendant if they are coerced, or forced,
4 or pressured into pleading guilty, but you can't recall,
5 specifically, whether or not Judge Welmaker asked Mr. Dodd
6 that question?

7 A I'm afraid I can't recall.

8 MS. HORLBECK: That's all I have.

9 Thank you.

10 MS. RATIGAN: That's all I've got, Judge.

11 THE COURT: Thank you, Mr. Steinberg.

12 THE WITNESS: Thank you, Judge.

13 MS. RATIGAN: And we would recall Mr. Cooke.

14 THE COURT: Okay. He's been sworn.

15 So, yes, sir, Mr. Cooke.

16 DIRECT EXAMINATION

17 BY MR. RATIGAN:

18 Q Mr. Cooke, I'm just going to ask you -- it's going to
19 be a chore, but I'm going to, basically, ask you all the
20 same questions I just asked Mr. Steinberg.

21 How many -- it would be fair to say you've had
22 numerous guilty plea hearings before Judge Welmaker?

23 A Yes, I have.

24 Q In your opinion, does he ask the same kind of
25 standard questions in each plea?

1 A Yes.

2 Q Okay. And before we get into the actual questions,
3 do you recall any kind of deviation from that, anything
4 unusual that happened during this plea with Mr. Dodd?

5 A No.

6 Q It just seemed to be kind of the usual standard --

7 A Standard.

8 Q -- plea with Judge Welmaker?

9 A Right.

10 Q Does Judge Welmaker, as part of his usual colloquy,
11 ask questions about the Defendant's age, whether he has
12 children, job history, education, things of that nature?

13 A He normally would, yes.

14 Q But do you recall him, specifically, asking --

15 A No. I don't recall anything that he said, period.

16 Q Okay. Does Judge Welmaker as part of his usual
17 colloquy usually ask a Defendant, you know, about
18 psychiatric history, history of mental illness, alcohol or
19 drug issues?

20 A Yes.

21 Q As part of his usual colloquy, does he usually go
22 through the indictments with the Defendant?

23 A Yes.

24 Q At that point, doesn't the State usually provide a
25 recitation of the facts?

1 A Yes.

2 Q And you heard Mr. Steinberg's recitation of the
3 facts. Does that seem to be about what would have been
4 presented at the plea that day?

5 A Yes. As a matter of fact, that's pretty much what
6 was said at the preliminary hearing.

7 Q Okay. And the State would have, also, put forth the
8 recommendation and the Defendant's prior record?

9 A Well, they always do. I don't remember. I'm sure
10 they did.

11 Q As part of his usual practice, does Judge Welmaker
12 usually ask the Defendant if they agree with the facts as
13 recited by the State?

14 A Most of the time, yeah. I would say all the time.
15 I've never heard him not.

16 Q As part of his usual guilty plea practice, does Judge
17 Welmaker then go through the various rights that are
18 waived by pleading, instead of going to trial?

19 A Yes.

20 Q And, again, as part of his usual practice, does Judge
21 Welmaker ask the Defendant if they have been pressured or
22 coerced in any way by any party?

23 A Yes.

24 Q And does he usually ask the Defendant whether or not
25 they are satisfied with their counsel's representation?

1 A Yes.

2 Q And just as an aside, do you recall Mr. Dodd, at that
3 point, saying he was unsatisfied with the way that you had
4 represented him?

5 A He didn't indicate he was dissatisfied. But I'm sure
6 he was unhappy that he was having to do it.

7 Q And does Judge Welmaker usually ask the Defendant
8 kind of towards the end of the plea, you know, have you
9 understood my questions and have you given truthful
10 answers? Does he usually ask something like that?

11 A Yes.

12 Q Okay. Did you give any kind of a mitigating
13 statement from Mr. Dodd? Do you recall?

14 A Yes.

15 Q Do you recall the substance of what you would have
16 told the Judge?

17 A And I do. I think I probably did tell Judge -- Judge
18 Welmaker was the trial judge in the first case I tried in
19 his absence. And I did tell him, in mitigation, that I
20 had advised him to turn himself in, and he did, and give
21 him credit, you know, for that. And I'm sure I did do
22 that.

23 Q Did you have any witnesses you presented on his
24 behalf just in terms of mitigation? Do you recall?

25 A Not that I'm aware of.

1 Q And do you recall whether or not Mr. Dodd gave any
2 kind of statement on his behalf prior to sentencing?

3 A I don't remember.

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

5 CROSS-EXAMINATION

6 BY MS. HORLBECK:

7 Q Mr. Cooke, I know you testified that Judge Welmaker
8 usually asks all the questions that the -- Ms. Ratigan
9 went through. Do you have any notes just, specifically,
10 going through each and every question that Judge Welmaker
11 asked that day?

12 A No.

13 Q Okay. And do you have -- I know it happened -- I
14 think the plea was in 2011. Do you independently recall
15 that Judge Welmaker definitely asked all these questions
16 that day?

17 A No. But I've been before him so many times, I've
18 never known him not to do that sort of thing. But, no, I
19 don't remember.

20 Q Okay. And, again, you don't have any notes about
21 what was, specifically, asked that day by the Judge?

22 A No, I don't.

23 MS. HORLBECK: Okay. Thank you.

24 That's all I have.

25 THE WITNESS: Thank you.

1 THE COURT: Does he have one of these bothersome
2 three-page acknowledgement of rights forms that's made a
3 part of the record?

4 THE WITNESS: Fortunately, he does not -- or
5 unfortunately in this case.

6 THE COURT: Thank you, sir.

7 THE WITNESS: Thank you.

8 MS. RATIGAN: I have nothing further. And I would
9 ask that Mr. Cooke be released.

10 THE COURT: Thank you for being here, sir.

11 THE WITNESS: I might want to point out. You were
12 talking about that form. I was reading an appeal out of
13 another state, and that exact thing came up. And they had
14 required the defendant to do all the same questions.

15 THE COURT: To do -- to --

16 THE WITNESS: To answer it, yeah. I mean, that was
17 part of the appeal. Did he realize what he was answering
18 in the information sheet. But it was exactly the same
19 questions as you. So other people do it.

20 THE COURT: There are other kooks out there.

21 THE WITNESS: Thank you.

22 MS. HORLBECK: Judge, I'm going to recall Mr. Dodd.

23 MS. RATIGAN: Just in terms of making sure I don't
24 cross any lines, Ms. Horlbeck is going to question
25 Mr. Dodd, basically, on the same questions.

1 THE COURT: Okay.

2 DIRECT EXAMINATION

3 BY MS. HORLBECK:

4 Q Mr. Dodd, do you recall pleading guilty in front of
5 Judge Welmaker?

6 A No.

7 Q You don't recall that at all, or did I mishear you?

8 A I recall pleading guilty, but -- yeah.

9 Q You do recall that guilty plea in front of Judge
10 Welmaker?

11 A Yeah.

12 Q Okay. Did Judge Welmaker review with you your age,
13 and just education history, whether or not you were
14 married and had children? Do you remember him asking
15 those questions of you?

16 A No.

17 Q Okay. Did Judge Welmaker ask you whether or not you
18 had been treated for drug addiction or drug abuse?

19 A Yes.

20 Q Okay. And what was -- do you recall what your answer
21 was?

22 A I don't do drugs.

23 Q Okay.

24 A At the time -- I haven't done any in about 20
25 something years.

1 Q So was your answer that you had not been treated for
2 any drug addiction or drug abuse?

3 A No.

4 Q Okay. Did Judge Welmaker ask you whether or not you
5 were under the influence of any alcohol, or drugs, or
6 anything that would impair your judgment that day?

7 A Yes. I remember.

8 Q You remember him asking you that question?

9 A Uh-huh.

10 Q Okay. What was your answer? Do you remember that?

11 A No.

12 Q You don't remember your answer?

13 A I just -- I just question everything that he had said
14 that day. It's just -- it's been so long. It's just been
15 a while.

16 Q It's been so long that you don't remember,
17 specifically, what the Judge asked and what the Judge
18 didn't ask?

19 A No.

20 Q Okay. Well, that's all right. If you don't
21 remember, just say you don't remember.

22 Do you recall whether or not you were under the
23 influence of -- were you incarcerated at the time? Let me
24 ask you that.

25 A Yes, ma'am.

1 Q Okay. You were at the detention center?

2 A (Witness nodded.)

3 Q You've got to answer out loud.

4 A Yes, ma'am.

5 Q And while you were at the detention center, were you
6 taking any prescription drugs?

7 A No, ma'am.

8 Q Were you under the influence of anything that day
9 that would have impaired your ability to understand what
10 you were doing?

11 A No, ma'am.

12 Q Do you recall the Judge reading the indictments?

13 A Yes, ma'am.

14 Q Okay. Do you recall the Solicitor reviewing the
15 facts of the case?

16 A My memory -- I mean, it just ain't really too good.
17 But all I know -- could I just speak and say what I feel?

18 THE COURT: Yes, sir. I mean, you're under oath.
19 You can say --

20 THE WITNESS: Could I just -- I'm just going to say
21 what I feel, rather than -- you know, I just know that
22 there's some wrongdoing in my case. And I -- and, to me,
23 I feel like that I'm not guilty.

24 Because I graduated high school, but I'm a little
25 different. I was raised up in the country. And maybe

1 y'all probably see that I'm different because I act like I
2 feel, nervous and -- I mean, I haven't got high in over 23
3 years. And people still think today I get high, I guess,
4 because of the way I look and act.

5 But I wasn't locked up with no -- anything in my
6 name -- with the warrant in my name or a search warrant.
7 I wasn't served with them. And I didn't get -- I just got
8 locked up wrong. And I just wanted to just -- whatever
9 y'all's decision is y'all have to do what y'all got to do.
10 But right is right. And I just want to be treated fairly.
11 That's all. I really do.

12 BY MS. HORLBECK:

13 Q Just a couple more questions. Do you remember the
14 Judge asking you whether or not anybody had put any
15 pressure on you to get you to plead guilty?

16 A Yes, ma'am. I remember.

17 Q And do you remember what your answer was?

18 A I told him no.

19 Q Okay. Did you testify as to whether or not you were
20 satisfied with Mr. Cooke's representation?

21 A (There was no response.)

22 Q Do you remember the Judge asking you that question?

23 A Yes.

24 Q Okay. He did. Do you remember what your answer was?

25 A I told him yeah.

1 Q Okay.

2 A Before I found out all this other stuff.

3 Q All right. And did he ask you if everything that
4 you -- did Judge Welmaker ask you whether or not you were
5 telling the truth when you answered his questions the day
6 you pled guilty?

7 A Yes.

8 Q Okay. And did Mr. Cooke say anything in mitigation
9 or did he -- let me phrase it another way. Did he say
10 anything on your behalf to the Judge?

11 A All I know is just -- I just plead to what he said, I
12 mean, you know.

13 Q Okay.

14 A I don't recall him saying too much --

15 Q Okay.

16 A -- to the judge.

17 Q Did you say anything to the Judge?

18 A No, ma'am.

19 MS. HORLBECK: That's all I have.

20 MS. RATIGAN: I have nothing for Mr. Dodd, Your
21 Honor.

22 THE COURT: Thank you, Mr. Dodd.

23 MS. RATIGAN: And that would do it, Judge. I mean,
24 all that I'll do is once the case does get appealed, once
25 appellate defense questions me about it, I'll just say

1 that the reconstruction is part of the overall record.
2 And that should be the end of it.

3 THE COURT: What evidence is there that the
4 Applicant, Mr. Dodd, would have known that the plea would
5 have waived his right to challenge any search or arrest?

6 MS. RATIGAN: Your Honor, just the usual questions
7 asked by Judge Welmaker involve the waiver of the various
8 rights associated with trial. I asked both Mr. Steinberg
9 and Mr. Cooke if that was something that he always asks,
10 and they said it's something that he always asks.

11 And there's been no testimony today that -- it was
12 not asked of Mr. Cooke during the -- I guess we'll call it
13 the PCR portion of the hearing whether or not that was
14 something that was addressed. It wasn't really brought up
15 as an issue.

16 But I would argue that Mr. Cooke stated he discussed
17 these issues and the discovery with Mr. Dodd numerous
18 times, including the search warrant issue. And I think it
19 can be inferred that especially since Mr. Dodd had
20 numerous prior convictions that he is familiar with the
21 criminal justice process and would know that by pleading
22 guilty, you're admitting your guilt and that would be the
23 end of it.

24 THE COURT: Ms. Horlbeck.

25 MS. HORLBECK: Well, Judge, I don't know that there's

1 any specific evidence. I don't know that my client -- it
2 just seemed like the more questions I asked, the more it
3 became apparent he just didn't recall the questions asked
4 by the Judge. It was, at this point, about two years ago
5 that it happened.

6 It's just difficult to remember. I mean, you know,
7 even someone who may or may not be familiar with the
8 criminal justice system, it's just very difficult to go
9 back in time and remember what someone is asking you on
10 such -- a day when you're nervous and you know you're
11 about to be sentenced.

12 So I don't know that there's any specific evidence at
13 this point of that.

14 THE COURT: But he did not discover the search
15 warrant issue until when -- or the arrest warrant issue,
16 or both of them?

17 MS. HORLBECK: Judge, he did not discover that until
18 after his conviction. He really -- he did not realize --
19 I don't believe he got a copy of his discovery until after
20 his conviction. And Mr. Cooke testified that that was
21 when the discovery request was made to him. And Mr. Cooke
22 sent Mr. Dodd his only package -- his only copy of
23 discovery to the prison after the conviction.

24 MS. RATIGAN: I, actually, note, Your Honor,
25 Mr. Cooke stated that the issue about the warrant -- about

1 the wrong name being on the warrant, he said that
2 Mr. Dodd, actually, pointed that out to him.

3 MS. HORLBECK: He did point that out to him. I
4 thought Your Honor was asking about the search warrant
5 issue and the letter from the magistrate.

6 THE COURT: Okay. Thank you for your arguments.

7 I'm going to study this in light of the testimony
8 I've heard. And I'll let you know my decision, hopefully,
9 in the next 10 days.

10 *****END OF TRANSCRIPT OF RECORD*****

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, 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 the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 18th day of June, 2013.

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

December 11, 2013



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

*April P. Herron
Circuit Court Reporter
P.O. Box 17675
Greenville, SC 29606*

February 23, 2012

Ms. Judy A. C. Carey
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

JUDGE: G. Edward Welmaker
DATE TAKEN: May 24, 2011
LOCATION: Greenville
CASE: State v. Marion Dodd
2010-GS-23-8007; 8008

RE: Equipment Malfunction – Unable to Produce Transcript

Dear Ms. Carey:

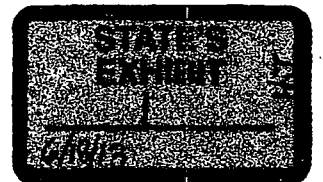
This letter is a follow-up to an email I sent you on December 8, 2011 regarding the above-entitled case and equipment malfunction that occurred during the proceedings. In that letter I explained that I could not recover the file, thinking that I had a corrupt disk. I have since then discovered that at some point last year that my hard drive failed on my steno machine, which is my primary back-up. I discovered this after trying to recover files from the diskettes and I could not. I then had to rely upon my secondary back-up system to transcribe the proceedings. When playing the tapes there's some interference on the back-up and all I hear is static. Therefore, I am unable to produce the record. Normally this would not affect the transcript because I have my primary back-up. Which at that time I did not know wasn't working properly.

I apologize for any problems this has caused. I have exhausted all means of trying to recover these files and have been unsuccessful in doing so.

Sincerely,

April P. Herron
Circuit Court Reporter

Cc: Desiree Allen, Office of Court Administration



STATE OF SOUTH CAROLINA

ORIGINAL
1800

County of

Greenville

elc

10-089807

COPY

SEARCH WARRANT

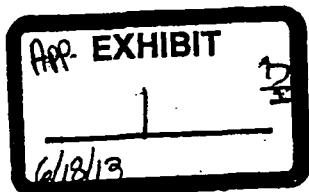
Date 06/10/2010

Officer K.J. Azzara A22

CERTIFIED TRUE COPY

Greenville County Bond Court

EMO
Magistrate
3/16/11



STATE OF SOUTH CAROLINA

COUNTY OF Greenville



SEARCH WARRANT

Form Approved by
S.C. Attorney General
Section 17-13-160
March 16, 1918

ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF Greenville County SC

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

Grand Eagle Apartment Complex Apartment Number 27. Located at 50 Glenwood Rd will be the last set of apartment buildings on the right coming in from E. North St. Apartment 27 is located in the last door, up the stairs and the last door on the right. Also to be searched are all persons found inside the apartment at the time of warrant service. The search will also include vehicles on location registered to Marion James Dodd DOB: 5/12/1963 and any other person found to be inside Apt. 27 when this warrant is served.

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

Cocaine to include Crack Cocaine, Schedule III Narcotics to include Hydrocodone, Lortab, Xanax, any items used in the manufacture, packaging or distribution of cocaine. Papers and effects found inside the apartment that would assist in determining residency of the occupants.

COPY

CERTIFIED TRUE COPY
Greenville County Bond Court

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Greenville, S.C.
June 9, 2010

EMOB (L.S.)
Signature of Judge

STATE OF SOUTH CAROLINA

COUNTY OF Greenville

AFFIDAVIT

COPY

Personally appeared before me, one K.J. Azzara A22 who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Cocaine to include Crack Cocaine, Schedule III Narcotics to include Hydrocodone, Lortab, Xanax, any items used in the manufacture, packaging or distribution of cocaine. Papers and effects found inside the apartment that would assist in determining residency of the occupants.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE SEARCHED

Grand Eagle Apartment Complex Apartment Number 27. Located at 50 Glenwood Rd will be the last set of apartment buildings on the right coming in from E. North St. Apartment 27 is located in the last door, up the stairs and the last door on the right. Also to be searched are all persons found inside the apartment at the time of warrant service. The search will also include vehicles on location registered to Marion James Dodd DOB: 5/12/1963 and any other person found to be inside Apt. 27 when this warrant is served.

REASON FOR AFFIANT'S BELIEF THAT THE PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

CERTIFIED TRUE COPY

Greenville County Bond Court

The Affiant, a Deputy Sheriff, has prior knowledge of Marion Dodd having previously arrested Mr. Dodd subsequent to a motor vehicle stop. At that time Dodd was found to be in possession of over 10 grams of Crack Cocaine, 3 grams of powder Cocaine, 24 Hydrocodone Pills as well as an illegally carried .22 caliber revolver. After receiving information that Dodd continued to deal in narcotics once he was released on bond the Affiant opened an investigation. The Affiant conducted several motor vehicle stops after observing vehicles pull up to the area of Dodd's apartment, enter the hallway that leads to his apartment, and leave after only a few moments. One such stop yielded a charge of Possession of Cocaine Base after the driver of the vehicle stated he was just in the area to visit his friend Marion. That driver gave an audio recorded statement saying that he purchased the crack rock from Marion Dodd. A second stop of a vehicle led to an admission by the driver that he had purchased Lortab pills from Marion Dodd. That driver provided a signed, written statement to the effect.

Sworn to and Subscribed before me
this 9th day of June, 2010
EM O'Brien (L.S.)
Signature of Judge

[Signature] *1189 A22
Affiant
Address 4 McGee St
Greenville, SC 29601
Phone 864-271-5210

COPY

RETURN

I received the attached Search Warrant June 10, 19 2010, and have executed it as follows:

On June 10, 19 2010 at 0715 o'clock A. M, I searched

(the person) described in the warrant and (the premises)

I left a copy of the warrant with Marion James Dodel
Name of person searched or "at the place of search" with.
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

- P.L. 1 Clear plastic baggie containing blue pills marked PM - Found Room A - Azzara
- P.L. 2 1 Box of clear value sandwich bags, containing numerous clear plastic bags - Found Room A - Azzara
- P.L. 3 1 pill bottle labeled 118 (napril) for the name Tommy Dodel, containing blue pills - Room A - Azzara
- P.L. 4 1 money clip containing 9 five dollar Bills '95 and 15 one dollar Bills '95 - Room A - Azzara
- P.L. 5 1 pocket knife w/ wood handle and steel blade - Found Room A - Azzara
- P.L. 6 1 square mirror - Found Room B - Azzara
- P.L. 7 1 blue cooler bag - Found Room B - Azzara
- P.L. 8 1 black scale, B10 brand - Found w/in blue cooler bag - Room B - Azzara
- P.L. 9 2 clear plastic baggie containing pink pills marked 3600 - Found w/in blue cooler bag - Azzara
- P.L. 10 1 clear plastic baggie containing a blue pill - Room B - Azzara bag - Room A - Azzara
- P.L. 10 1 clear plastic baggie containing pink pills labeled 3600 - Room B - Azzara
- P.L. 11 1 clear plastic baggie containing white powder substance - Found Room B w/in blue cooler bag - Azzara
- P.L. 12 1 clear plastic baggie containing green leafy substance - Found Room B w/in blue cooler bag - Azzara
- P.L. 13 1 prescription pill bottle containing white pills labeled "P 272" - Found in Room B w/in blue cooler bag
- P.L. 14 1 blue pill bottle containing white rock like substance - Found in Room B w/in blue cooler - Azzara

This inventory was made in the presence of _____

AND _____

CERTIFIED TRUE COPY

I swear that this Inventory is a true and detailed account of all the property taken by me on the above Court

SWORN to before me this _____
day of _____, 19 _____

Signature of Judge (I.S.)

R. Davine #1246 A30
(Signature of Officer Executing Warrant)

E. M. O'Brien, Judge
7/8/10

COPY

- R.L.15 1 pill bottle containing small white pill labeled A3 — Found in blue cooler bag
Win Room B — Azzara
- R.L.16 3 clear plastic baggies containing white ^{R.L.16:}~~plastic~~ powder — Found in Room C — Moore
- R.L.17 1 box of Remington 32 auto ammo containing 49 rounds — Found in ^{R.L.}~~Room~~ Hallway
Closet — Moore
- R.L.18 1 box of Winchester 32-20 Ammo containing 37 rounds — Found in Hallway
Closet — Moore
- R.L.19 1 Bersa model 383, serial # 140732 w/ silver magazine — Found in blue cooler bag
in Room B — ~~Moore~~ Azzara
- R.L.20 1 Clear plastic bag containing 4 smaller plastic bags containing various pills
and a white rock like substance — Found in blue cooler bag
in Room B — Azzara
- R.L.21 US currency \$15.85, various denominations Found in Room C — Azzara

CERTIFIED TRUE COPY

Greenville County Bond Court

E. M. O'Brien
Judge

7/8/10

R. Harvey 6/17/11

ARREST WARRANT

I-480513

STATE OF SOUTH CAROLINA
 County
 Municipality of

THE STATE 10-0989807
against

Larry Wilson
Address 219 DONALDSON RD
GREENVILLE, SC 29605-

Phone: SSN:
Sex: M Race: B Height: 5 10 Weight: 197
DL State: SC DL #: 008420132
DOB: 12/4/1957 Agency ORI #: SC0230010

Prosecuting Agency: Greenville County Sheriff's Office
Prosecuting Officer: K.J. Azzara - 1181
Offense: Drugs / Trafficking in cocaine, 10 g or more, but less than 28 g - 1st offense

Clerk Code: 0278
Case No: 44-53-0370(e)(2)
This warrant is RETURNED FOR SERVICE in the County of Municipality of
is to be arrested and brought before the court to be dealt with according to the law. (L.S.)

Signature of Judge

RETURN

A copy of this arrest warrant was delivered to defendant Marion Dodd
on 06/10/2010
P.A. Curiale (Signature)
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Greenville General Sessions
305 E. North Street
Greenville County Courthouse
Greenville, SC 29601-2120

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

STATE OF SOUTH CAROLINA
 County
 Municipality of

AFFIDAVIT

DEFENDANT COPY

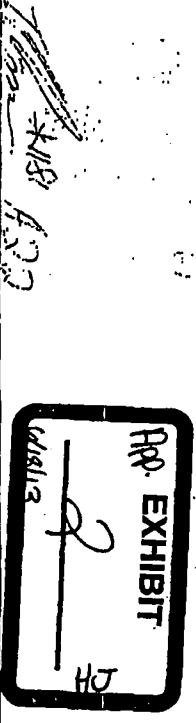
Form 10-700 Rev. 04
S.C. Admin. Code:
April 21, 2003
ECR 518

Personally appeared before me, the affiant K.J. Azzara
being duly sworn deposes and says that defendant Larry Wilson
did within this county and state on or about 06/10/2010
State of South Carolina (or other state of County Municipality of Greenville)
violate the criminal laws of the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in cocaine, 10 g or more, but less than 28 g - 1st offense

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

The Defendant, Marion Dodd, was found to be in possession of over 10 grams of cocaine subsequent to a search warrant being served on his residence at 50 Cedarwood Rd Apt 27. This offense occurred in Greenville County, SC.



Signature of Affiant
STATE OF SOUTH CAROLINA
 County
 Municipality of

Affiant's Address: 4 MIEGERS GREENVILLE, SC 29601
Affiant's Telephone: _____

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CRIMINAL JUSTICE AGENCY OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 6/10/2010 defendant Larry Wilson
did violate the criminal laws of the State of South Carolina (or ordinance of Greenville) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in cocaine, 10 g or more, but less than 28 g - 1st offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.
Sworn to and subscribed before me on 06/10/2010

Judge's Address: 20 McGehee St Greenville, SC 29601

Signature of Issuing Judge
Gaybriell Gibson
Judge Code: 5032

Judge's Telephone: _____
Issuing Court: Magistrate Municipal Circuit

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

E. Michael O'Brien, Judge
 Greenville County Magistrate
 20 McGee Street
 Greenville, SC 29601
 (864) 467-2402

July 8, 2010

On June 9, 2010, at 1805 hours, Deputy Kevin Azzara came to me with a Search Warrant for 50 Glenwood Rd., Apt. 27, Greenville, SC. I signed same warrant and Deputy Azzara served that warrant some time that night or the next morning.

On June 10, 2010, at 0930 hours, Deputy Azzara returned this same Search Warrant to Judge Gibson. Judge Gibson swore in Mr. Azzara and documented the return in the Search Warrant Log Book. A certified copy of the log is attached.

I was asked for a copy of the Search Warrant on or about June 24, 2010, for the purposes of placing a copy into Property and Evidence with the evidence gathered from the warrant. It was at this time I discovered I never received the original warrant back after Judge Gibson signed it. At this time, I still have not received the original warrant. A search for this Search Warrant has proved fruitless at this point.

After discussing this issue with Deputy Azzara, I discovered he kept a copy of the return for his use. The information in this return is consistent with the Arrest Warrants that charge the defendant with numerous drug charges. However, it is not a signed copy from Judge Gibson.

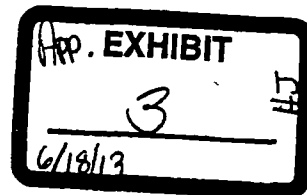
It is my belief that Deputy Azzara's copy is true and correct based on the information and evidence given me. Therefore, after consultation with the Solicitor's office, I had Deputy Azzara swear and affirm that his copy was correct and true and I am certifying this copy as a true copy.

E. Michael O'Brien

E. Michael O'Brien, Judge

CERTIFIED TRUE COPY

Greenville County Bond Court



STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Marion James Dodd,)
 S.C.D.C. No. 236658,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2011-CP-23-5107

RECEIVED
 2013 AUG - 3 2013
 FILED
 CLERK OF COURT
 GREENVILLE, S.C.
 PAUL R. WILSON
 S.C. SUPREME COURT
 PM 3:37

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 1, 2011. The Respondent made its return on December 30, 2011. An evidentiary hearing into the matter was convened on June 18, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horibeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Larry Cooke, Esquire. The Court had before it the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, and the Applicant's Exhibits 1-3.¹

¹ This Court notes the Respondent produced a letter from the court reporter at the guilty plea hearing, which stated the plea transcript was unavailable because of an equipment malfunction. At the conclusion of the PCR hearing, the parties reconstructed the record with testimony from assistant solicitor Howard Steinberg, the Applicant's plea counsel, and the Applicant.

1
 HLT

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the October 2010 term of the Greenville County Grand Jury for possession with intent to distribute (PWID) cocaine base (2010-GS-23-8007), trafficking cocaine (2010-GS-23-8008, count 1), and possession of a weapon during the commission of a violent crime (2010-GS-23-8008, count 2). He was represented by Larry Cooke, Esquire.

On May 24, 2011, the Applicant pled guilty to PWID cocaine base, second offense and trafficking cocaine (10-28 grams), second offense. The Honorable G. Edward Weimaker sentenced the Applicant to concurrent terms of eight (8) years on each charge. The Applicant did not file an appeal.

ALLEGATIONS

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

- 1. Ineffective assistance of counsel:
 - a. Failed to challenge the validity of the arrest warrant.
 - b. "Applicant's residence entered illegally, without a search warrant by the Greenville County Sheriff's Office."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record 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).

2
M/H

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).

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, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The Applicant stated he told plea counsel the wrong name was on the search warrant. The Applicant stated plea counsel said it would be fixed and that a new warrant with his name was issued. The Applicant stated the warrant was signed on June 9, 2010 and executed on June 10, 2010, but the return was not signed until July 8, 2010. The Applicant stated he never discussed this timeline with plea counsel and that, if they had discussed it, he would have gone to trial because neither the search warrant nor the arrest were legal.

Plea counsel testified he filed discovery motions after he was appointed to represent the Applicant. Plea counsel testified he received discovery materials and reviewed them several times with the Applicant. Plea counsel testified he discussed the facts of the case with the Applicant – that police obtained a search warrant after receiving a tip that he was dealing drugs

and that the Applicant told them there were drugs and a gun in a box. Plea counsel testified he was aware the search warrant had the name "Larry Wilson" at the top, but confirmed the Applicant's name was listed in both the body of the warrant and on the return. Plea counsel testified there were no serious issues with either the warrant or the return.

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

This Court finds the Applicant failed to meet his burden of proving plea counsel was ineffective. Plea counsel testified he filed discovery motions, received those materials, and reviewed them several times with the Applicant. This Court finds plea counsel's testimony is credible. Plea counsel testified he was aware the search warrant correctly named the Applicant in the body of the warrant and the return but mistakenly listed "Larry Wilson" at the top. Plea counsel testified, however, this did not create a serious issue in the case. This Court agrees. The scrivener's error did not invalidate the search warrant and this Court notes a corrected copy of the warrant was later prepared. See State v. Herring, 387 S.C. 201, 213, 692 S.E.2d 490, 496 (2009) (finding a typographical error did not affect the validity of a search warrant) (citation omitted). This Court also finds that, contrary to the Applicant's contention, the date of the return on the warrant did not serve to invalidate it because the Applicant failed to produce any evidence of resulting prejudice. See State v. Weaver, 374 S.C. 313, 323, 649 S.E.2d 479, 483-84 (2007) (citing State v. Wise, 272 S.C. 384, 252 S.E.2d 294 (1979)).

Accordingly, this Court finds the 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. The Applicant failed to present specific and compelling evidence that plea 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 plea counsel’s performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel’s representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of 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 the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 1st day of August, 2013.

Man 1-

D. Garrison Hill
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

WITNESSES

K.J. Azzara

Greenville County Sheriff's Office

6/10/2010

DOCKET NO. 2010-GS-23-
HLS

008007

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

October TERM 2010

THE STATE

VS.

MARION JAMES DODD

ARREST WARRANT NUMBER
1480520

ACTION OF GRAND JURY

TRUIE BILL
Wm J. Federoff

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

3014

Indictment for

POSSESSION OF COCAINE BASE (CRACK
COCAINE) WITH INTENT TO DISTRIBUTE

VIOLATION § 44-53-0375

Foreperson of Petit Jury

Date:

SUBSISTENDS

and Clerk receive driver's license?
YES _____ NO _____
no, explain _____

Want

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF COCAINE BASE (CRACK COCAINE) WITH
INTENT TO DISTRIBUTE

At a Court of General Sessions, convened on **OCT 19 2010** the Grand Jurors of Greenville
County present upon their oath:

That MARION JAMES DODD did in Greenville County, on or about the 10th day of June, 2010, possess with
intent to distribute or aid, abet, or conspire to possess with the intent to distribute a quantity of Cocaine Base
(Crack Cocaine), a controlled substance, such possession not having been authorized by law. This is in violation
of §44-53-375 of the South Carolina Code of Laws (1976) as amended.

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

[Handwritten Signature]
SOLICITOR

WITNESSES

K.J. Azzara

Greenville County Sheriff's Office

6/10/2010

TMT

DOCKET NO. 2010-GS-23-

HLS

008008

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

October TERM 2010

THE STATE

vs.

MARION JAMES DODD

ARREST WARRANT NUMBER
1480513 and 1480526

ACTION OF GRAND JURY

TRUE BILL
Wm. Federick

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

2359 and 0549

Indictment for

TRAFFICKING COCAINE and POSSESSION OF
A WEAPON DURING THE COMMISSION OF A
VIOLENT CRIME

Foreperson of Petit Jury

Date:

VIOLATION § 44-53-0370 and § 16-23-0490

RECEIVED

Did Clerk receive [] of's license?

YES

If no, explain

Defendant

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
TRAFFICKING COCAINE and POSSESSION OF A WEAPON
DURING THE COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on **OCT 19 2010** the Grand Jurors of Greenville
County present upon their oath:

Count I - TRAFFICKING COCAINE

That MARION JAMES DODD did in Greenville County, on or about the 10th day of June, 2010, knowingly sell, manufacture, deliver or bring into the State of South Carolina, or did knowingly provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive possession of more than 28 grams of Cocaine. This is in violation of §44-53-370 of the South Carolina Code of Laws (1976) as amended.

COUNT II - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That MARION JAMES DODD did in Greenville County, on or about the 10th day of June, 2010, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: TRAFFICKING COCAINE. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

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

ALS
ALS
SOLICITOR