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STATE OF SOUTH CAROLINA

MAY 28 2014

IN THE SUPREME COURT

S.C. Supreme Court

Appeal from York County

G. Edward Welmaker, Circuit Court Judge

DONNIE MACK HAGINS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002151

APPENDIX

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ATTORNEYS FOR RESPONDENT

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IN THE COURT OF GENERAL SESSIONS
YORK COUNTY, SOUTH CAROLINA

SOUTH CAROLINA

VERSUS

DONNIE MACK HAGINS, DEFENDANT

CASE NUMBER: 2007-GS-46-0464-465

HEARD ON MONDAY, APRIL 2, 2007.
BEFORE THE HONORABLE JOHN C. HAYES, III.

APPEARANCES:

E. B. SPRINGS, IV
YORK COUNTY SOLICITOR'S OFFICE
1675 YORK HIGHWAY
YORK, SC 29745
REPRESENTING THE STATE

MELISSA INZERILLO
PUBLIC DEFENDER OFFICE
POST OFFICE BOX 691
YORK, SC 29745
REPRESENTING MR. HAGINS

REPORTED BY: JANET M. RICH
CIRCUIT COURT REPORTER
1992 DOWNEY STREET
ROCK HILL, SC 29732

1 MR. SPRINGS: YOUR HONOR, THIS WAS TO BE
2 OUR TRIAL TO START AT THIS TIME. THIS IS THE STATE
3 VERSUS DONNIE MACK HAGINS, TWO CHARGES HERE,
4 DISTRIBUTION OF COCAINE BASE ALSO KNOWN AS CRACK
5 COCAINE ON 2007-GS-46-465. IT WILL BE A THIRD
6 OFFENSE. THE FIRST TWO ARE SIMPLE POSSESSION OF
7 MARIJUANA. ALONG WITH THAT CASE IS DISTRIBUTION OF
8 THAT SAME COCAINE BASE WITHIN PROXIMITY OF A PUBLIC
9 PARK AND THAT'S ON NUMBER 2007-GS-46-464. MR. HAGINS
10 STANDS NEXT TO HIS ATTORNEY MELISSA INZERILLO. HE IS
11 PLEADING GUILTY STRAIGHT UP WITH NO DEALS.

12 THE COURT: MR. HAGINS, HOW OLD ARE YOU?

13 MR. HAGINS: I'M 19, SIR.

14 THE COURT: YOU ARE REPRESENTED BY
15 MS. INZERILLO?

16 MR. HAGINS: YES, MA'AM. YES, SIR.

17 THE COURT: SATISFIED WITH HER SERVICES?

18 MR. HAGINS: YES, SIR.

19 THE COURT: YOU ARE CHARGED WITH
20 DISTRIBUTION OF CRACK COCAINE WITHIN ONE HALF MILE OF
21 A PARK OR SCHOOL. THIS CARRIES FROM 10 TO 15 YEARS
22 IN JAIL AND A FINE OF NOT LESS THAN \$10,000. IT IS A
23 FELONY AND IT IS A SERIOUS OFFENSE. A SERIOUS
24 OFFENSE IS THE TYPE OF OFFENSE WHICH IF YOUR LIFETIME
25 YOU RECEIVE THREE SERIOUS OR A COMBINATION OF THREE

1 SERIOUS AND MOST SERIOUS OFFENSES YOU'LL BE SUBJECT
2 TO BEING INCARCERATED FOR LIFE WITHOUT THE
3 POSSIBILITY OF EVER BEING PAROLED, THAT IS A TRUE
4 LIFE SENTENCE, DO YOU UNDERSTAND THAT?

5 MR. HAGINS: YES, SIR.

6 THE COURT: YOU ARE ALSO CHARGED WITH
7 DISTRIBUTION OF CRACK COCAINE AND THAT IS YOUR THIRD
8 DRUG OFFENSE. IT WOULD CARRY 15 TO 30 YEARS AND A
9 FINE OF NOT MORE THAN \$50,000. IT DOES NOT ALLOW FOR
10 ANY PROBATION OR SUSPENDED SENTENCE. IT IS A FELONY
11 AND IT IS A SERIOUS OFFENSE. YOU UNDERSTAND WHAT YOU
12 ARE CHARGED WITH -- I MEAN YOU UNDERSTAND THE
13 POTENTIAL PENALTY ON THAT?

14 MR. HAGINS: YES, SIR.

15 THE COURT: IT'S ALLEGED THAT IN THESE
16 INDICTMENTS THAT ON OR ABOUT OCTOBER 14, 2006, YOU
17 DID DISTRIBUTE --

18 MR. HAGINS: YES, SIR.

19 THE COURT: -- CRACK COCAINE IN VIOLATION
20 OF THE LAWS OF THIS STATE.

21 THE SECOND INDICTMENT ALLEGES THAT
22 THAT HAPPENED WITHIN ONE HALF MILE OF GALILEAN PARK
23 HERE IN YORK, BOTH OF THESE ARE ALLEGED IN YORK
24 COUNTY, AND BOTH ARE ALLEGED TO HAVE BEEN IN
25 VIOLATION OF THE LAWS OF THIS STATE. DO YOU

1 UNDERSTAND THOSE TWO CHARGES?

2 MR. HAGINS: YES, SIR.

3 THE COURT: HOW DO YOU PLEAD TO
4 DISTRIBUTION OF CRACK COCAINE?

5 MR. HAGINS: GUILTY.

6 THE COURT: HOW DO YOU PLEAD TO HAVING
7 DONE THAT WITHIN A HALF MILE OF GALILEAN PARK?

8 MR. HAGINS: GUILTY.

9 THE COURT: ANYBODY MAKE ANY PROMISE OR
10 THREATS TO CAUSE YOU TODAY TO ENTER YOUR PLEAS OF
11 GUILT TO THESE CHARGES?

12 MR. HAGINS: NO, SIR.

13 THE COURT: ARE YOU TODAY UNDER THE
14 INFLUENCE OF ANYTHING THAT WOULD CAUSE YOU TO BE
15 INTOXICATED?

16 MR. HAGINS: NO, SIR.

17 THE COURT: ARE YOU ENTERING YOUR PLEAS
18 TODAY TO THESE CHARGES, MR. HAGINS, FREELY AND
19 VOLUNTARILY?

20 MR. HAGINS: YES, SIR.

21 THE COURT: MR. HAGINS, YOU HAVE A RIGHT
22 TO A TRIAL BY JURY ON THESE CHARGES. YOU ARE
23 PRESUMED INNOCENT OF THESE CHARGES UNTIL SUCH TIME AS
24 THE STATE IS ABLE TO PROVE IF IT CAN YOUR GUILT
25 BEYOND A REASONABLE DOUBT. AS TO THE CHARGES YOU

1 HAVE A RIGHT TO REMAIN SILENT, THE RIGHT TO CONFRONT
2 THE WITNESSES AGAINST YOU, AND YOU HAVE THE RIGHT TO
3 HAVE YOUR WITNESSES MADE TO COME TO COURT TO TESTIFY
4 ON YOUR BEHALF FOR YOU. DO YOU UNDERSTAND YOU HAVE
5 THESE RIGHTS?

6 MR. HAGINS: YES, SIR.

7 THE COURT: DO YOU HAVE ANY QUESTIONS
8 ABOUT THEM?

9 MR. HAGINS: NO, SIR.

10 THE COURT: I ADVISE YOU THAT BY ENTERING
11 PLEAS OF GUILT TO THESE CHARGES THAT AS TO THESE
12 CHARGES YOU ARE GIVING UP THESE RIGHTS AND YOU ARE
13 ALSO GIVING UP ANY DEFENSE YOU MIGHT HAVE TO THE
14 CHARGES, DO YOU UNDERSTAND THAT?

15 MR. HAGINS: YES, SIR.

16 THE COURT: KNOWING ALL THOSE THINGS I ASK
17 AGAIN, HOW DO YOU PLEAD TO DISTRIBUTION OF CRACK
18 COCAINE?

19 MR. HAGINS: GUILTY.

20 THE COURT: HOW DO YOU PLEAD TO HAVING
21 DONE THAT WITHIN ONE HALF MILE OF GALILEAN PARK?

22 MR. HAGINS: GUILTY.

23 THE COURT: ALL RIGHT. I'M GOING TO ASK
24 YOU TO LISTEN WHILE I'M GIVEN YOUR RECORD AND THE
25 FACTS.

1 MR. SPRINGS: YES, YOUR HONOR. HIS PRIOR
2 RECORD IS A FAILURE TO STOP FOR A BLUE LIGHT OR SIREN
3 IN 2006. THIS HAPPENED SHORTLY AFTER HE GOT OUT OF
4 PRISON ON THAT CHARGE. HE GOT A SIMPLE POSSESSION OF
5 MARIJUANA IN 2005 AND WE GOT A SIMPLE POSSESSION OF
6 MARIJUANA IN 2006. I'VE ASKED OUR COURT REPORTER TO
7 MARK CERTIFIED COPIES OF THOSE AS COURT'S EXHIBITS
8 AND I'D LIKE TO MAKE THEM PART OF THE RECORD FOR THIS
9 REASON: THE FIRST ONE HE PLEAD GUILTY HE DID NOT
10 HAVE AN ATTORNEY AND HE PAID A FINE AND I'D LIKE FOR
11 THE CIRCUMSTANCES OF THAT NON-REPRESENTED GUILTY PLEA
12 TO BE SHOWN ON THE RECORD. AND ON THE SECOND ONE, HE
13 WAS HERE IN THE COURT OF GENERAL SESSIONS AND HE
14 PLEAD GUILTY TO TIME SERVED. HE DID NOT HAVE AN
15 ATTORNEY WITH HIM AND I WANTED THIS TO BE PART OF THE
16 RECORD AS WELL TO SHOW THE CIRCUMSTANCES OF THAT
17 NON-REPRESENTED PLEA. THE FACTS WOULD BE --

18 THE COURT: LET ME ASK, MS. INZERILLO, YOU
19 DON'T CHALLENGE THE ENHANCEMENT DO YOU OR DO YOU?

20 MS. INZERILLO: NO, YOUR HONOR. MY OFFICE
21 CONTACTED THE CITY COURT IN YORK TO VERIFY THE CHARGE
22 THAT WAS DONE THERE AND IT WAS OUR UNDERSTANDING THAT
23 HE PAID THE FINE AND NEVER WENT TO JAIL.

24 THE COURT: HOW ABOUT THE SECOND ONE?

25 MS. INZERILLO: NO, YOUR HONOR. IT

1 APPEARS FROM THE PAPERWORK THAT IT WAS DONE IN
2 CIRCUIT COURT AND WAS SIGNED PRO SE BY MR. HAGINS.

3 THE COURT: ALL RIGHT.

4 MR. SPRINGS: MAY IT PLEASE THE COURT. ON
5 OCTOBER 14 OF LAST YEAR, THAT'S A SATURDAY AFTERNOON,
6 THE NARCOTICS UNIT USED AN UNDERCOVER INFORMANT TO
7 SET UP A DRUG DEAL WITH MR. HAGINS. THEY SENT AN
8 INFORMANT TO MR. HAGINS' RESIDENCE AT 404 HICKORY
9 LANE, IN THE VALLEY NEIGHBORHOOD OF YORK, WHICH OF
10 COURSE IS IN YORK COUNTY. ABOUT MIDAFTERNOON, ABOUT
11 3:30, THE INFORMANT WENT OVER TO MR. HAGINS' HOUSE
12 AND MET WITH MR. HAGINS. THEY HAD CONVERSATION ABOUT
13 SOME OTHER OLD BUSINESS THEY HAD TOGETHER, TALKED
14 ABOUT FUTURE BUSINESS THEY WERE GOING TO BE DOING,
15 AND ABOUT HOW BIG THEIR BUSINESS WAS GOING TO GET.
16 THEY TALKED ABOUT GETTING PISTOLS FOR EACH OTHER AND
17 THEN THEY ACTUALLY DID A DRUG DEAL WHERE THE
18 INFORMANT GAVE MR. HAGINS \$130 IN POLICE MONEY AND
19 RECEIVED BACK CRACK COCAINE COCAINE BASE FROM HIM.

20 THEY TOOK IT BACK TO THE POLICE, IT
21 WAS TURNED IN AND ANALYZED BY A CHEMIST, AND FOUND IN
22 FACT TO BE 1.26 GRAMS OF COCAINE BASE OTHERWISE KNOWN
23 AS CRACK COCAINE.

24 MR. HAGINS' HOUSE THERE AT 404 HICKORY
25 LANE IS WITHIN ONE HALF MILE OF A PUBLIC PARK ON

1 GALILEAN ROAD. IT'S COMMONLY KNOWN AS GALILEAN PARK.
2 I BELIEVE IS THE OFFICIAL NAME IS WOODED VALLEY PARK
3 OR VICE VERSA?

4 THE OFFICER: YES, SIR.

5 MR. SPRINGS: THE OFFICIAL NAME IS WOODED
6 VALLEY PARK BUT IT'S COMMONLY KNOWN TO THE
7 NEIGHBORHOOD AS GALILEAN PARK. IT IS A PUBLIC PARK.

8 THE COURT: ALL RIGHT. WOODED VALLEY?

9 MR. SPRINGS: WOODED VALLEY.

10 THE COURT: DO YOU CONSENT TO ME ADDING
11 THAT TO THE INDICTMENT, MS. INZERILLO?

12 MS. INZERILLO: YES, YOUR HONOR.

13 THE COURT: WOODED VALLEY PARK ALSO KNOWN
14 AS GALILEAN PARK.

15 MR. SPRINGS: YES, SIR.

16 THE COURT: NOW, MS. INZERILLO, I'LL BE
17 GLAD TO HEAR FROM YOU AND THEN MR. HAGINS.

18 MS. INZERILLO: THANK YOU, YOUR HONOR.
19 MAY IT PLEASE THE COURT.

20 YOUR HONOR, AS MR. HAGINS INDICATED,
21 HE IS 19 YEARS OLD. IN SPEAKING WITH FAMILY MEMBERS
22 REGARDING THIS CASE HIS GRANDMOTHER TELLS ME THAT HE
23 WAS CONTINUING TO GO TO SCHOOL TO GET HIS DIPLOMA OR
24 HIS GED. HE, BY ALL ACCOUNTS, GENERALLY IS A VERY,
25 NOT ONLY GOOD YOUNG MAN, BUT GOOD FAMILY MEMBER

1 CAME HERE TODAY. THEY'VE BEEN IN CONTACT WITH ME.
2 HIS AUNT AND UNCLE STAND HERE BEFORE YOU AND THEN
3 SEVERAL FAMILY MEMBERS ARE IN THE GALLERY LOOKING ON
4 INCLUDING HIS GRANDMOTHER WHO HAS HAD CONTACT WITH
5 OUR OFFICE. I CAN HONESTLY TELL YOUR HONOR I HAVE
6 NOT SEEN A YOUNG MAN MORE IN TUNE AND IN CONTACT WITH
7 HIS FAMILY AS MR. HAGINS IS. HIS FAMILY CAME HERE
8 TODAY UNDERSTANDING THE IMPLICATIONS OF LOSING AT
9 TRIAL AS WELL AS PLEADING AND ASKED ME TO CONVEY TO
10 MR. HAGINS THEIR WISH THAT HE CONSIDER A PLEA IN THIS
11 CASE DUE TO HIS AGE, DUE TO THE FACTUAL
12 CIRCUMSTANCES, AND NOW THE WITNESSES PRESENTED BY THE
13 STATE.

14 MR. HAGINS GAVE IMMEDIATE DEFERENCE TO
15 HIS AUNT AND UNCLE, TO HIS GRANDMOTHER, IN A WAY THAT
16 I CAN TELL YOU FOR AS LONG AS I'VE DONE THIS, I HAVE
17 NEVER SEEN. IT IS MORE THAN APPARENT TO ME THAT THIS
18 IS A VERY STRONG, VERY CLOSE KNIT FAMILY. THIS IS A
19 FAMILY WHO CARES A GREAT DEAL ABOUT MR. HAGINS, WHO
20 IS NOT WILLING TO MAKE EXCUSES FOR HIM, WHO REQUIRE
21 HIM, I DO BELIEVE, TO STEP UP AND TAKE RESPONSIBILITY
22 WHEN HE'S DONE WRONG, BUT LOVE HIM ENOUGH TO HELP HIM
23 STAY STRONG IN LIGHT OF THE PUNISHMENT THAT HE WILL
24 RECEIVE IN THIS CASE.

25 YOUR HONOR, I'M ASKING, MR. HAGINS IS

1 ASKING, THAT HE RECEIVE THE MINIMUM SENTENCE IN THIS
2 CASE. I BELIEVE IN SPEAKING WITH THE FAMILY AND IN
3 MY OWN DEALINGS WITH MR. HAGINS THAT 15 YEARS WOULD
4 BE SUFFICIENT. HE IS A GOOD YOUNG MAN. HE'S HAD A
5 PROBLEM WITH DRUGS IN THE PAST, MAINLY THROUGH USING.
6 15 YEARS IN THE PRISON SYSTEM WILL GIVE HIM MEANS TO
7 TAKE CLASSES TO OVERCOME THAT ADDICTION. HE IS A
8 YOUNG MAN THAT IS REMARKABLY CLEAR SIGHTED
9 CONSIDERING HOW IT MAY APPEAR ON PAPER THROUGH HIS
10 RECORD AND HE HAS THE SUPPORT, STRONG SUPPORT OF A
11 FAMILY THE LIKES OF WHICH I HAVE NEVER SEEN.

12 YOUR HONOR, IN ADDITION TO MY REQUEST
13 THAT HE BE SHOWN MERCY AND GET 15 YEARS, HIS UNCLE
14 AND AUNT WISH TO ADDRESS THE COURT IF YOU WOULD
15 LIKE.

16 THE COURT: CERTAINLY BE GLAD TO, JUST
17 IDENTIFY YOURSELVES AND STEP FORWARD. YES, MA'AM.

18 MS. MCCLAIN: MY NAME IS EARLENE MCCLAIN
19 AND I AM THE ONE, I TEACH SCHOOL AT KINARD ELEMENTARY
20 AND I AM THE ONE THAT MADE SURE HE GOT TO SCHOOL,
21 BACK AND FORTH TO SCHOOL, AND I JUST, YOU KNOW, HE
22 WAS SO SENSITIVE WHEN I WAS TALKING TO HIM ABOUT
23 EVERYTHING AND HE WAS TRYING TO TAKE EVERYTHING INTO
24 CONSIDERATION, BUT WHAT I, WHAT HURT ME THE MOST IS
25 HIM AND HIS SISTERS AND BROTHERS WAS LEFT WHEN THEY

1 WAS BABIES AND I JUST THANK GOD FOR HIS GRANDMOTHER
2 TO TAKE THEM IN AND RAISE THEM. HE HAVE A TWIN
3 SISTER SITTING BACK THERE TOO AND I JUST FEEL LIKE HE
4 GOT INTO THE WRONG ENVIRONMENT. BUT RIGHT NOW IF YOU
5 WOULD TAKE MERCY ON HIM I FEEL LIKE I COULD MAKE A
6 DIFFERENCE IN HIS LIFE JUST, ALONG WITH HIS
7 GRANDMOTHER, BUT BECAUSE I HAVE BEEN COMMUNICATING
8 WITH HIM, TRYING TO GET HIM TO SCHOOL, TO GO ON,
9 BECAUSE HE IS AN A/B HONOR ROLL STUDENT. IT'S
10 NOTHING THAT HE FAILED TO REALIZE THAT HE'S DONE
11 WRONG, HE KNOW THIS, AND YOUR HONOR, I JUST FEEL LIKE
12 IF YOU WOULD GIVE HIM, YOU KNOW, SOMETIMES JAIL IS
13 NOT REALLY THE ISSUE, YOU KNOW. IT'S GETTING THESE
14 KIDS OFF THE STREET IN THE VALLEY COMMUNITY. I FEEL
15 LIKE IF YOU HAD SOMEWHERE TO PUT HIM TO HELP SO I
16 COULD HELP HIM. I KNOW I COULD. NO DOUBT ABOUT IT
17 AND I DEAL WITH HIM FOR 25 YEARS. YOU KNOW, I SEEN
18 HIM RAISED FROM A BABY AND LIKE I SAY, HE, HE JUST
19 GOT INTO THE WRONG ENVIRONMENT AND THE ONES WHO HE
20 THOUGHT WAS HIS FRIENDS, THEY WASN'T HIS FRIENDS
21 REALLY, THEY REALLY WASN'T, AND THOSE ARE SOME OF THE
22 THINGS THAT I WAS TRYING TO POINT OUT TO HIM BECAUSE
23 YOU SEE HOW, YOU SITTING ON THE INSIDE LOOKING OUT
24 YOU CAN SEE THESE THINGS HAPPENING BUT WHEN YOU GO IN
25 AND TELL THEM, YOU KNOW, A YOUNG PERSON IS NOT GOING

1 TO LISTEN. I'VE BEEN THERE BEFORE. BUT RIGHT NOW AS
2 I STAND HERE TODAY I'M ASKING YOU FOR YOUR MERCY TO
3 PLEASE SENTENCE HIM TO AT LEAST, AS LEAST AS YOU CAN,
4 AS LEAST AS YOU CAN GIVE HIM, AND I WILL LIKE I SAY,
5 I WANT TO SEE HIM MAKE SOMETHING OUT OF HIS SELF. I
6 REALLY DO. THANK YOU.

7 THE COURT: YES, MA'AM. THANK YOU. YES,
8 SIR, YOUR NAME

9 MR. MCCLAIN: YES, SIR. MY NAME IS
10 REVEREND MCCLAIN, WILLIAM MCCLAIN. I CONTINUOUSLY
11 COMES AND DEAL WITH DONNIE. I'M A VOLUNTEER MINISTER
12 OF THE MOSS JUSTICE. I VOLUNTEER MINISTER TO THE
13 NURSING HOMES. I GO OUT INTO THE OLD MCCLAIN'S
14 BARBER SHOP, MAINLY MOSTLY DEALING WITH THE BARBER
15 SHOP IS NOT CUTTING HAIR, IT'S DEALING WITH PEOPLE
16 THAT HAS BEEN LOST OUT INTO THE WORLD OF SIN BUT THEY
17 CAN BE SAVED BY THE GRACE OF GOD. DONNIE IS A STRONG
18 MAN OF THE CLOTH AND IT'S TO THE POINT TO WHERE A LOT
19 OF TIMES WE GET INVOLVED IN SITUATIONS TO WHERE WE
20 NEGLECT THE WHAT SAYTH THE LORD, AND THERE ARE TIMES
21 WHERE YOU GET INTO THIS ENVIRONMENT YOU DON'T SEE
22 BECAUSE YOU ARE IN BUT AS A CHRISTIAN OR ANOTHER TYPE
23 PERSON STANDS OUT, LOOKS IN, THOSE ARE THE ONES THAT
24 REALLY NEED HELP. YES, DONNIE IS A STRONG MINDED
25 MAN. DONNIE IS STRONG INTO THE WORD OF GOD. DONNIE

1 CAN DO BETTER. IT'S JUST THAT HE WAS AT THE WRONG
2 PLACE AT THE WRONG TIME. THERE ARE SO MANY TIMES
3 THAT HE HAS BEEN SHOULD I SAY LEAD BY THE WRONG
4 PEOPLE, WANT TO BE SOMEBODY WHO HE'S REALLY NOT, IF
5 YOU WOULD JUST ONLY TAKE CONSIDERATION AND GIVE HIM
6 THE LEAST THEN IT WOULD MAKE A DIFFERENCE NOT ONLY IN
7 HIS LIFE BUT HIS SISTERS AND BROTHER'S LIFE. SO I
8 SAY IF YOU WOULD JUST GIVE HIM THE LEAST.

9 THE COURT: THANK YOU, SIR.

10 MR. MCCLAIN: THANK YOU.

11 THE COURT: MR. HAGINS, ANYTHING YOU WANT
12 TO SAY?

13 MR. HAGINS: LIKE MY FAMILY SAY, I WAS
14 TRYING TO BE SOMEBODY THAT I WASN'T. I PLAYED FOR
15 YORK COMPREHENSIVE HIGH SCHOOL. I PLAYED BALL ALL MY
16 LIFE AND I WAS A/B HONOR ROLL STUDENT AND I WAS
17 TRYING TO BE SOMEBODY THAT I WASN'T AND I WAS IN THE
18 WRONG PLACE AT THE WRONG TIME AND I GOT CAUGHT UP IN
19 SOME OF THINGS THAT I WASN'T SUPPOSED TO BE A PART OF
20 AND I LET THE, I LET OTHERS INFLUENCE MY MIND THAT
21 WERE WRONG WHEN I WAS KNOWING IT WAS WRONG. BUT I
22 JUST ASK YOU THAT YOU HAVE MERCY ON ME THIS MORNING.

23 THE COURT: ALL RIGHT. THE SENTENCE ON
24 THE DISTRIBUTION IS FOR 15 YEARS, THAT'S THE MINIMUM
25 YOU CAN GET, AND THE PROXIMITY IS 10 YEARS AND THAT'S

1 TO RUN CONCURRENT. SO IT'S 10 YEARS AND A FINE OF
2 \$10,000, I'M SUSPENDING THAT JUST TO 10 YEARS SO YOU
3 DON'T HAVE TO PAY THE FINE. YOU UNDERSTAND ALL THAT?

4 MR. HAGINS: 15 YEARS?

5 THE COURT: YES, SIR. THANK YOU.

6 MS. INZERILLO: THANK YOU, YOUR HONOR.

7 MR. SPRINGS: THANK YOU, YOUR HONOR.

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I, JANET RICH, OFFICIAL COURT REPORTER FOR THE SIXTEENTH CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FORGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR YORK COUNTY, SOUTH CAROLINA, ON THE 2 DAY OF APRIL 2007.

I DO FURTHER CERTIFY THAT I AM NEITHER KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

Janet M. Rich
JANET M. RICH

STATE OF SOUTH CAROLINA)

County of York)

IN THE COURT OF COMMON PLEAS

Donnie Mack Higgins #315916)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION REVIEW

FILED - RECEIVED
2008 JAN 30 AM 9:11
DAVID HAMILTON
C.C.C.P. CLERK
YORK COUNTY, SC

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution
Bishopville, S.C.
2. Name and location of Court which imposed sentence Court of General
Sessions, York County
3. Name(s) of co-defendant(s) (if any) Demetria Evette Dockery
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2007-GS-46-00464

(b) 2007-GO-410-004105
(c) _____

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

(a) April 2, 2006
(b) 15 years
(c) 10 ran concurrent

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 Ayes@ to (7), list:

(a) the name of each Court to which you appealed:
i. _____
ii. _____
iii. _____
(b) the result in each such Court to which you appealed:
i. _____
ii. _____
iii. _____
(c) the date of each such result:
i. _____
ii. _____
iii. _____
(d) if known, citations of any written opinion or orders entered pursuant to such results:
i. _____
ii. _____
iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) my Attorney told me she was but never did

- (b) _____
- (c) _____

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

- (a) SEE Attached SHEET - INEFFECTIVE
- (b) ASSISTANCE OF COUNSEL; SUBJECT MATTER
- (c) JURISDICTION

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

- (a) SEE Attached SHEET
- (b) _____
- (c) _____

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

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

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

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

- (a) Non Applicable
- (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 Ayes@ to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Melissa Inzarella, Esquire York County Public Def. office P.O. Box 691 York, S.C. 29745
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. 17. (a); (c)
 - ii. _____
 - iii. _____

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

SEE Attached SHEET

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of York)

VERIFICATION

I, Donnie Mack Hagins # 315916, 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.

Donnie Hagins

SWORN to and subscribed before me this 29 day of Jan, 2008.

[Signature] (L.S.)
Notary Public

My Commission Expires: 5/16/10

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

I, Donnie Mack Hagins # 315916, 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.

Donnie Hagins
Applicant

SWORN or affirmed to and subscribed before me this

29 day of Jan, 2008.

A. L. Smith
Notary Public

My Commission Expires: 5/16/17

STATE OF SOUTH CAROLINA / IN THE COURT OF COMMON PLEAS
 COUNTY OF YORK SIXTEENTH JUDICIAL CIRCUIT

Attached sheet From 10.(a), 11.(a) page 3; 19. page 6.

Donnie Mack Hagins #315916

Applicant, ~~PRO SE~~

-vs-

STATE of SOUTH CAROLINA

Respondent

Application

For

post conviction Relief

§ 17-27-10

The Applicant herein was Arrested, plead guilty upon Indictments for Distribute Crack Cocaine 3rd and Distribute near school. He was represented by Attorney as Indicated. Attorney Applicant submit/contends provided Ineffective Assistance In contravention/degradation of Applicant's Rights, protections; Guarantees Pursuant to the Sixth Amendment to The United States Constitution, South Carolina Constitution Art. 1, § 14; South Carolina codes 17-23-60; Strickland -vs- Washington, 466 U.S. 668, 688, 104 S. Ct. 2052, 2065, 80 L. Ed. 2d 674 (1984).

Counsel's Representation Fell below an Objective standard of Reasonableness and but for Counsel's unprofessional Errors a reasonable probability exist that the result of The proceeding would have been different.

There is a reasonable probability that Applicant would have insisted on proceeding to trial on the matter instead of pleading guilty if not for counsel's erroneous advice.

STATE OF SOUTH CAROLINA _____ COUNTY OF YORK

page Two

WhereFore, Applicant justly demand The Reversal of
His Convictions

x Donnie Hagans
Applicant pro, se

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Donnie Mack Hagins, #315916,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE 16TH JUDICIAL CIRCUIT
 Case No.: 2008-CP-46-0373

RETURN

RECEIVED
 2008 MAY 27 AM 9:58
 DAVID HAMILTON
 C.C.P. & GS
 YORK COUNTY, SC

Respondent, making its Return to the application for post conviction relief (PCR) filed January 30, 2008, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the March 2007, term of the York County Grand Jury for Distribution of Crack Within Proximity of a Public Park or Playground (2007-GS-46-0464) and Distribution of Crack Cocaine (2007-GS-46-0465). Melissa A. Inzerillo, Esquire, represented the Applicant. On April 2, 2007, Applicant pled guilty as indicted. The Honorable John C. Hayes, III, concurrently sentenced him to ten (10) years for Distribution of Crack Within Proximity of a Public Park or Playground and fifteen (15) years for Distribution of Crack Cocaine. The Applicant did not appeal his conviction or sentence.

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

II.

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

1. Ineffective assistance of counsel; and
2. Subject Matter Jurisdiction.

III.

In a PCR proceeding, the applicant bears the burden of establishing that he is entitled to relief. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). First, a PCR applicant must show that his counsel's performance was deficient such that it falls below an objective standard of reasonableness. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 693 (1984); Alexander v. State, 303 S.C. 539, 541, 402 S.E.2d 484, 485 (1991). Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry v. State, 300 S.C. 115 at 117, 386 S.E.2d 624 at 625 (1989), *citing Strickland*.

Second, an applicant must show there is a reasonable probability, but for counsel's unprofessional errors, the result of the proceeding would have been different. Strickland, 466 U.S. at 687, 104 S.Ct. at 2064, 80 L.Ed.2d at 693; Alexander, 303 S.C. at 541-42, 402 S.E.2d at 485. The Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, *Id.* Applicant must overcome this presumption in order to receive relief. Cherry, *Id.*

Where there has been a guilty plea, the applicant must prove prejudice by showing that, but for counsel's errors, there is a reasonable probability he would not have pleaded guilty and instead would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370, 88 L.Ed.2d 203, 210 (1985); Jordan v. State, 297 S.C. 52, 54, 374 S.E.2d

683, 684 (1988). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984).

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

IV.

The Applicant has claimed that the trial court lacked subject matter jurisdiction. Subject matter jurisdiction is the power of a court to hear a particular class of cases. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part by Gentry, supra*. However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, supra, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction. This allegation should be denied.

V.

The State therefore requests that this Court convene an evidentiary hearing solely

on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. §17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

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

VII.

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

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

ASHLEY A. McMAHAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

May 22nd, 2008.



FILED RECEIVED
2008 MAY 27 AM 9:58
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

HENRY McMASTER
ATTORNEY GENERAL

May 22, 2008

The Honorable David Hamilton
Clerk of Court, York County
Post Office Box 649
York SC 29745

Re: Donnie Mack Hagins v. State of South Carolina
2008-CP-46-0373

Dear Mr. Hamilton:

Enclosed please find the original Return of the Respondent, in the above-captioned case, Donnie Mack Hagins v. State, for filing in your office. We are also sending you copies of the following documents to accompany our Return:

- 1) PCR application
- 2) SCDC records
- 3) Clerk Records (York)
- 4) Guilty plea transcript

Sincerely,

Ashley A. McMahan
Assistant Attorney General

AAM:cey
Enclosures

cc: Marvin A. Hyatt, Jr., Esquire

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

Donnie Mack Hagins, #315916

Plaintiff

CASE NO.
2008-CP-46-0373

FILED RECEIVED
2008 MAY 27 AM 9:58

v.

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

State Of South Carolina

Defendant.

DAVID W. HAMILTON
C.C.P. & GS
YORK COUNTY, SC

Plaintiff's Attorney: Marvin A. Hyatt, Jr., Bar No. Address: 1401 Ebenezer Rd. Rock Hill, SC 29732 phone: 803-328-1851 fax: 803-328-1356 e-mail: hyattlawfirm@comporium.net other:	Defendant's Attorney: Ashley A. McMahan, Bar No. 71676 Address: PO Box 11549 Columbia, SC 29211-1549 phone: 803-734-3737 fax: 803-734-4113 e-mail: amcmahan@ag.state.sc.us other:
---	--


- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

- Written motion attached
 - Form Motion/Order
- I hereby move for relief or action by the court as set forth in the attached proposed order.


May 22, 2008
 Signature of Attorney for Plaintiff / Defendant

SECTION III: Motion Fee

- PAID - AMOUNT:
- EXEMPT:
 - Rule to Show Cause in Child or Spousal Support (check reason)
 - Domestic Abuse or Abuse and Neglect
 - Indigent Status State Agency v. Indigent Party
 - Sexually Violent Predator Act Post-Conviction Relief
 - Motion for Stay in Bankruptcy
 - Motion for Publication Motion for Execution (Rule 69, SCRCP)
 - Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
- Name of Court Reporter: Other:

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
- Other:

JUDGE
CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

- MOTION FEE COLLECTED: _____
- CONTESTED - AMOUNT DUE: _____

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF COMMON PLEAS

3

4 DONNIE MACK HAGINS)
5 APPLICANT,) TRANSCRIPT OF RECORD
6) 2008-CP-46-00373

7 -vs-)
8) FEBRUARY 4, 2009
9) YORK, SOUTH CAROLINA
10)

11 RESPONDENT.

12

13

14

B E F O R E:

15

THE HONORABLE LEE S. ALFORD

16

17

18

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

19

MATTHEW R. NIEMIEC, ESQUIRE
ATTORNEY FOR THE APPLICANT

20

21

ASHLEY A. MCMAHAN, ASSISTANT ATTORNEY GENERAL
ATTORNEY FOR THE RESPONDENT

22

23

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

24

25

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NO. DESCRIPTION ID. EV.

(NO EXHIBITS MARKED)

1 (PROCEEDINGS, FEBRUARY 4, 2009)

2 THE COURT: Yes, ma'am, when you are ready.

3 MS. MCMAHAN: Your Honor, this is Donnie Mack
4 Hagins, case number 2008-CP-46-0373.

5 I'll turn it over to Mr. Niemiec.

6 THE COURT: Yes, sir.

7 MR. NIEMIEC: Thank you, Your Honor.

8 May it please the court, the petitioner calls
9 Donnie Hagins.

10 DONNIE MACK HAGINS, having been first duly sworn,
11 testified as follows:

12 DIRECT EXAMINATION BY MR. NIEMIEC:

13 Q. Mr. Hagins, will you please state your full name for
14 the record?

15 A. Donnie Mack Hagins.

16 Q. And are you presently incarcerated with the State of
17 South Carolina?

18 A. Yes, sir.

19 Q. And are you incarcerated because of a distribution of
20 crack cocaine third and a distribution of crack cocaine
21 within proximity of a park?

22 A. Yes, sir.

23 Q. And what was your sentence on the distribution of crack
24 cocaine third, sir?

25 A. Fifteen years.

1 Q. And what was your sentence on the distribution within
2 proximity?

3 A. Ten, ran concurrent.

4 Q. And those run concurrent?

5 A. Yes, sir.

6 Q. Now, you filed a PCR or a post-conviction relief
7 application, is that correct?

8 A. Yes, sir.

9 Q. And what was your basis for that post-conviction
10 relief? What are your grounds, sir?

11 A. My grounds, I felt as though my lawyer was inefficient
12 because she never did prepare the proper defense.

13 Q. So you are claiming ineffective assistance of counsel?

14 A. Yes, sir.

15 Q. And who was your attorney?

16 A. Ms. Inzerillo.

17 Q. And did you hire her?

18 A. The State appointed her to me.

19 Q. And did you ultimately go to trial, or did you end up
20 pleading guilty?

21 A. I ended up pleading guilty.

22 Q. And did you do that on April 2nd, 2006?

23 A. Yes, sir.

24 Q. Prior to pleading guilty, were you out on bond, or were
25 you still incarcerated at the Moss Justice Center?

1 A. I was still incarcerated.

2 Q. At the Moss Justice Center?

3 A. Yes, sir.

4 Q. Did you have a chance to meet with your attorney
5 leading up to April 2nd, 2006?

6 A. I met with her several times.

7 Q. Do you know how many times?

8 A. I can recount three or four times.

9 Q. Did you feel that those times that you met with her was
10 an adequate amount of time to talk about your case?

11 A. No, sir.

12 Q. Did she talk to you about any plea negotiations that
13 were ongoing during that time?

14 A. She talked -- she told me I had a five year plea -- the
15 solicitor was offering me a six year plea and that the
16 lowest he would go was five.

17 Q. Did she talk to you at all about other programs, drug
18 court, or anything similar to that?

19 A. Yes, sir.

20 Q. Did you ultimately get into the drug court program?

21 A. I was denied.

22 Q. And so the offer was six years?

23 A. Yes, sir.

24 Q. I'm confused. You pled guilty on April 2nd, 2006. You
25 had a six year offer. Why do you have fifteen and ten

1 concurrent?

2 A. I have fifteen because at the time I had told her that
3 I really wanted to take my case to trial, and she told me up
4 and to that point that if I -- if I backed out of trial,
5 that I had to plead guilty to fifteen instead of six.

6 Q. So, in other words, the offer of six was -- once you
7 decided to go to trial, that the State was no longer
8 offering you that six, is that your testimony?

9 A. Yes, sir.

10 Q. And you were going to go to trial on April 2nd, 2006,
11 is that correct?

12 A. Yes, sir.

13 Q. Had you been preparing with your attorney for trial?

14 A. I talked to her a couple of times about the audiotape
15 and the photo lineup, but she never did prepare the proper
16 defense for me.

17 Q. So you don't feel she prepared a proper defense.
18 Specifically what defense might you be talking about, sir?

19 A. The misidentification.

20 Q. And what would be the grounds of that defense or the
21 basis of that defense?

22 A. Basically she -- I let her know that the informant
23 called out my father's name on the audiotape and pointed me
24 out on the photo lineup and I told her that it was a
25 misidentification and she never did bring it in front of the

1 judge's attention.

2 Q. Okay. Why did you end up pleading, if you were going
3 to go to trial with that defense?

4 A. Because she -- she told me basically that there were
5 certain things that she didn't have to bring up in front of
6 the judge, and I had told her I would like for her to bring
7 it to the judge's attention. She never did bring it to the
8 judge's attention, so I ended up pleading guilty, because
9 she never did give me the proper defense.

10 Q. So you didn't feel she was adequately prepared to go
11 forward with your defense?

12 A. I felt as though she wasn't prepared.

13 Q. Now, I think your answer indicated she refused to bring
14 certain things to the court's attention, is that your
15 testimony?

16 A. Yes, sir.

17 Q. What things did she refuse to bring to the court's
18 attention?

19 A. She -- she never did bring to the court's attention
20 that there was evidence that was tampered with, that they
21 had my father's name on the crack cocaine and later put my
22 name on it.

23 Q. And she refused to take that to the court's attention?

24 A. She refused.

25 THE COURT: Say that again. Let me be sure I

1 understood that. What was that? Say that again, sir.

2 THE WITNESS: They had my father's name on the
3 crack cocaine and later put my name on it.

4 THE COURT: All right.

5 THE WITNESS: And she never did bring it up to the
6 judge's attention.

7 THE COURT: Thank you.

8 MR. NIEMIEC: May I approach the witness, Your
9 Honor?

10 THE COURT: Yes, sir.

11 BY MR. NIEMIEC:

12 Q. Now, you have done your own pro-se motion for
13 discovery, is that correct?

14 A. Yes, sir.

15 Q. And is this something that you received as part of your
16 motion for discovery?

17 A. Yes, sir.

18 MR. NIEMIEC: If I could just identify this, Your
19 Honor. This is York County sheriff's office evidence or
20 inventory sheet.

21 BY MR. NIEMIEC:

22 Q. Is this the document that you were referring to?

23 A. Yes, sir.

24 Q. And on this document it has?

25 A. Donald McClain.

1 Q. And that is your father's name?

2 A. Yes, sir.

3 Q. And that's the evidence or inventory sheet on your
4 case?

5 A. Yes, sir.

6 Q. And you brought this to your attorney's attention?

7 A. I never had -- I never -- I never knew about it until I
8 was incarcerated and went down the road.

9 Q. But you did tell her it was your father, not you, who
10 was guilty of these crimes?

11 A. Yes, sir.

12 Q. Is that all you are complaining of today?

13 A. Yes, sir.

14 Q. Is there anything you want to add to the court while
15 you have a chance?

16 A. That's it.

17 MR. NIEMIEC: That's all the questions that I
18 have, Your Honor.

19 CROSS EXAMINATION BY MS. MCMAHAN:

20 Q. If Ms. Inzerillo refused to do all these thing that you
21 said you did, why didn't you ask for her to be relieved as
22 your attorney?

23 A. Because I felt as though -- I mean, I pled guilty --
24 even though I pled guilty, really I had no knowledge of the
25 law at the time and I never knew that I could relieve my

1 lawyer at that time.

2 Q. You certainly could have brought that issue up before
3 the judge at your guilty plea, couldn't you?

4 A. At the time I didn't know, though.

5 Q. Do you remember your guilty plea?

6 A. Yes, ma'am.

7 Q. Do you remember telling the judge that you were
8 satisfied with Ms. Inzerillo's services?

9 A. Yes, ma'am.

10 Q. Do you also remember telling the judge that you were
11 pleading freely and voluntarily?

12 A. Yes, ma'am.

13 Q. Do you also remember telling the judge that no one had
14 promised or threatened you to plead guilty?

15 A. Yes, ma'am.

16 MS. MCMAHAN: No further questions.

17 MR. NIEMIEC: No redirect, Your Honor.

18 THE COURT: Wait just a minute. I'm going to ask
19 some questions.

20 I'm reading from page nine of the plea transcript.

21 Mr. Hagins, I'm going to ask you --

22 The transcript reading, starting at line nine, it
23 says that --

24 Ms. Inzerillo is talking to the court and said on
25 line nine, it says "Mr. Hagins decision to take this to

1 trial was based primarily on the evidence as we had it
2 presented to us by the State. There were some serious
3 questions as to the identity of the person who sold the
4 crack initially. The confidential informant during the deal
5 and on the scene actually identified Mr. Hagins father, who
6 also resided at the residence, as the person who sold the
7 crack. We found out through Mr. Springs last week that a
8 third person was going to be brought in by the State to
9 positively identify Mr. Hagins as the person who sold the
10 crack. All of this weighed heavily on Mr. Hagins mind and
11 influenced his decision to plead before Your Honor today
12 without any benefit of negotiations or recommendations.

13 "I would say even more of an influence on Mr.
14 Hagins, Your Honor, has been his family. They came here
15 today. They have been in contact with me. His aunt and
16 uncle stand here before you, and then several family members
17 are in the gallery looking on, including his grandmother who
18 has contact with our office. I can honestly tell you, Your
19 Honor, I have not -- or he's in contact with his family.
20 His family came here today understanding the implications of
21 losing at trial, as well as pleading, and asking me to
22 convey to Mr. Hagins their wishes that he consider a plea in
23 this case due to his age, due to the factual circumstances
24 and how the witnesses presented by the State."

25 Was all that -- was all that brought to the

1 attention of the judge at the time that you plead guilty?

2 THE WITNESS: I didn't recall. I couldn't
3 remember bringing it to the judge's attention.

4 THE COURT: Well, I just read from the transcript.
5 Do you want to read it here for yourself?

6 You claim you didn't know anything about this
7 until you got incarcerated.

8 Here, let me hand that up to him.

9 There it is. Start with "Mr. Hagins" there, the
10 first full paragraph.

11 (Witness reviewing transcript).

12 THE COURT: That's what was said, wasn't it,
13 before the judge at the time that you pled guilty?

14 THE WITNESS: Yes, sir.

15 THE COURT: By Ms. Inzerillo.

16 Okay. Any other questions for this witness?

17 MR. NIEMIEC: I have got one, Your Honor.

18 THE COURT: Okay.

19 REDIRECT EXAMINATION BY MR. NIEMIEC:

20 Q. Because you were identifying a potential -- because you
21 were identifying your father as a potential person who sold
22 this crack, did you feel threatened or coerced by your other
23 family members to plead guilty?

24 A. No, sir.

25 MR. NIEMIEC: That's all I have, Your Honor.

1 MS. MCMAHAN: Nothing further, Your Honor.

2 THE COURT: Thank you, sir. You may stand down,
3 sir.

4 MR. NIEMIEC: The petitioner calls Melissa
5 Inzerillo.

6 MELISSA INZERILLO, ATTORNEY AT LAW, having been
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. NIEMIEC:

9 Q. Would you please state your full name for the record?

10 A. Melissa Inzerillo.

11 Q. And you are an attorney in York County?

12 A. Yes, sir.

13 Q. Do you work with the Public Defender's office?

14 A. Yes, sir.

15 Q. Did you represent Donnie Hagins?

16 A. I did.

17 Q. Were you present when he testified this morning?

18 A. Yes, sir.

19 Q. Did you hear his testimony?

20 A. Yes, sir.

21 Q. Do you understand his testimony?

22 A. Yes, sir.

23 Q. He has alleged ineffective assistance of counsel and
24 specifically says that you did not prepare a defense of
25 mistaken identity. Were you aware that there was a defense

1 of mistaken identity prior to my client's trial date?

2 A. Yes.

3 Q. And had you prepared for that?

4 A. Yes.

5 Q. Did you prepare for it and speak to my client about
6 that?

7 A. Yes, sir, several times.

8 Q. Okay. And my understanding is April 2nd, 2006, was his
9 actual trial date, is that correct?

10 A. Yes, sir.

11 Q. And you felt prepared to go forward on April 2nd, 2006?

12 A. Yes, sir.

13 Q. Was that your primary defense, mistaken identity?

14 A. Yes, sir.

15 Q. Can you expound a little bit about what that defense
16 might have entailed, what kind of evidence you might have
17 been prepared to present that week?

18 A. Yes, sir, essentially Mr. Hagins charge involved a
19 distribution of crack to a confidential informant.

20 In reviewing the evidence, as well -- not only the
21 physical evidence that he described, which was the bag that
22 the crack was in, but also the CI tapes and all that, it
23 became clear to us that the confidential informant on the
24 tape during the actual transaction talking to a person as
25 Donnie McClain. At one point says Donnie Mack and then it

1 appeared from my notes he corrected himself and he said
2 Donnie McClain.

3 When we then looked at the evidence, on the evidence
4 bag originally the DEU officer wrote subject's name was
5 Donnie McClain, and then it appeared at a later point had
6 scratched it out and written in Donnie Hagins.

7 Q. I'm sorry to interrupt you.

8 Is that the evidence sheet that I showed my client, or
9 was that reflected on the evidence and inventory sheet?

10 A. I don't know. I didn't see what you showed him.

11 THE COURT: Why don't you show her so she can know
12 what you are talking about.

13 A. My recollection, Mr. Niemiec, is that we actually
14 viewed the evidence, the evidence bag itself, and that
15 was -- it was reflected on the evidence bag and it appears
16 that it's also -- the name Donald McClain is also reflected
17 on the evidence sheet.

18 BY MR. NIEMIEC:

19 Q. So you were prepared? That was not a surprise to you?

20 A. No, I mean, in fact, we had spent a lot -- several
21 hours preparing that defense.

22 Q. And my client in his direct testimony mentioned
23 something about a photo lineup. Was the father part of that
24 photo lineup?

25 A. I don't believe he was. I believe in reviewing the

1 file, it looks like on scene the confidential informant
2 identifies Donnie McClain where there were no officers
3 present. And then once he went to meet with officers and
4 they showed him a photo lineup, I believe only Mr. Hagins'
5 picture was in the lineup. He identified Mr. Hagins, and
6 then about two weeks later they figured out Mr. Hagins is
7 his actual name.

8 Q. And were you prepared for that eventuality at trial?

9 A. Yes, we had extensive questions for the police on that,
10 not only in pretrial, but also in the body of the trial as
11 well.

12 Q. My client was charged with distribution of crack third?

13 A. Yes.

14 Q. What was his prior record?

15 A. Two -- two simple possession of marijuanas.

16 Q. And were either of those -- or did you look into the
17 history of those simple possession of marijuanas?

18 A. I did. It appears that there was one where he pled
19 guilty through City of York Municipal Court. It was unclear
20 to us what had exactly happened. It looked like he pled
21 guilty through a bench trial, and we did understand what
22 that meant. So we had -- I had an attorney in our office
23 that is assigned to that court call them to clarify and that
24 person indicated that he got a fine. A commitment was
25 issued but was never served, because Mr. Hagins ultimately

1 just came in and paid the fine.

2 Q. So he ultimately pled guilty and paid a fine in that
3 court, is that correct?

4 A. Yes, sir.

5 Q. And that was not your understanding as a bond
6 forfeiture, is it?

7 A. That is correct.

8 Q. And there was another simple possession of marijuana?

9 A. There was. It looks like he did plead pro-se in front
10 of Judge Gregory in General Sessions Court in 2006, but he
11 was only given a time-served sentence.

12 Q. Did you consider the issue of those two simple
13 possessions and their effect on the enhancement as you were
14 preparing for trial?

15 A. Yes, sir, I researched it and in my view those would
16 have been enhanceable offenses.

17 Q. And that was your opinion leading up to trial?

18 A. Yes, sir, and I did explain that to Mr. Hagins as well.

19 Q. And you did explain to him what the consequences of
20 those two charges being on his prior record meant?

21 A. Yes, sir.

22 Q. Did you explain to him about mandatory minimums?

23 A. Yes, sir.

24 Q. And what were your plea negotiations with E.B. --

25 I'm sorry, the solicitor in this case was E.B. Springs,

1 is that right?

2 A. Yes, sir.

3 Q. What were your plea negotiations leading up to April
4 2nd?

5 A. The original offer we got was for Mr. Hagins to plead
6 to a distribution of crack second for an offer of six.

7 As your aware, Mr. Niemiec, that -- the range on that
8 is five years to thirty years, which is why I explained to
9 Mr. Hagins he could not go below five, nor could a judge go
10 below five.

11 After speaking to Mr. Hagins, Mr. Hagins and I thought
12 that he would be a good candidate for drug court, and so I
13 went back to Mr. Springs, explained that to Mr. Springs and
14 got a commitment from Mr. Springs that should Mr. Hagins not
15 be accepted into drug court, he would leave that six year
16 offer on the table, because it was my recollection at the
17 time Mr. Springs was opposed to Mr. Hagins getting into drug
18 court. Mr. Springs committed to that.

19 We applied Mr. Hagins to drug court. Unfortunately he
20 was not accepted and Mr. Springs stood by his commitment.
21 He re-offered the six years to Mr. Hagins.

22 Mr. Hagins wanted a trial. And I explained to Mr.
23 Hagins if he wants a trial, that means the offer comes off
24 the table, which means he would looking at the mandatory
25 minimum of fifteen years under a third offense. He

1 understood that, and so we notified Mr. Springs and begin
2 preparations for trial.

3 Q. How shortly after you notified Mr. Springs were you
4 informed that you were going to trial?

5 A. Mr. Springs generally works pretty quickly, so probably
6 about two or three weeks.

7 Q. On the day in question, April 2nd, you were actually
8 preparing for trial?

9 A. It was -- it was the day of trial, so we were -- I had
10 asked an investigator, Mr. O'Kelly in my office, to work
11 with me on this, since we did have the identification
12 defense. And so he and I were here present in court ready
13 for trial.

14 Q. And do you believe that you had adequate time to
15 prepare with your client?

16 A. Yes, sir.

17 Q. On the morning that trial was to begin, the court just
18 read into the transcript, or today's hearing, what you had
19 mentioned to the court about his family?

20 A. Right.

21 Q. Can you expound on that a little bit?

22 A. I can. Mr. Hagins was in a holding cell. We -- of
23 course, as typical on trial days, we are going back and
24 forth with him to make sure he was aware of everything that
25 was going on, make sure he was dressed, that sort of thing.

1 During the course of that morning prior to the judge
2 taking the bench his family came. I believe it was a -- I
3 know it was his uncle. I can't remember who else, but the
4 family came, and his uncle approached me and said "tell
5 Donnie to plead." And I said "okay."

6 Mr. O'Kelly and I went back and we talked to Mr. Hagins
7 about several of the court things, and, you know, reminding
8 him how to act in the courtroom and that sort of thing. And
9 I said to him, "oh, by way, Donnie, your uncle is out there
10 and he wanted me to tell you to plead." Immediately after
11 that Mr. Hagins said "okay," and it was almost the most
12 bizarre thing I have ever seen, because you have a young man
13 here looking at fifteen to thirty, to the point that Mr.
14 O'Kelly and I were like "well, do you understand what we
15 said? We said he wants you to plead."

16 And he said "I understand that."

17 And so we iterated with him again, "you are not
18 pleading to the six years. If you walk in there right now
19 you are looking at a mandatory minimum of fifteen years.
20 You might as well to take it to trial, because you are not
21 going lose or gain anything, but you are still in the same
22 range." He understood that.

23 I believe he had said, well, he was aware of the
24 girlfriend that they had subpoenaed to come. When we went
25 back to talk to him we weren't sure if the girlfriend was

1. going to come, so I did verify with him. The CI was there
2 to testify and the girlfriend was there to testify. And he
3 said "well, you know, if my girlfriend is going to identify
4 me, then" --

5 But, I mean, I would say, Mr. Niemiec, it was almost
6 Zen-like after that. He just calmly walked into court and
7 just pled. And I think my recollection is that I was still
8 a little stunned when I was explaining to the judge what
9 happened, that he just walked in and agreed to plead as
10 charged.

11 Q. So could I infer from your testimony then that he was
12 ready for trial that morning? You passed the message from
13 his uncle and he decided to plead guilty?

14 A. Yes.

15 Q. Was there any -- did you take, as an attorney, as your
16 client's attorney, was there any sort of threats or --

17 A. No.

18 Q. -- coercion in the uncle's message?

19 A. No, sir, the uncle just sort of said "tell him he
20 should plead."

21 When we conveyed the message, my recollection is that
22 Mr. O'Kelly and I must have spent about ten or fifteen
23 minutes talking with Donnie about "don't do this. Let's
24 just go to trial. We are ready to go. Let's -- you know,
25 everybody is here. Let's do this and present this defense"

1 and see if the jury sees it our way."

2 And he was like, I say, very calm, very quiet, but very
3 adamant, "no, I'm going to plead."

4 Q. Did you inquire as to this particular -- into whether
5 or not this particular uncle was, in fact, his father's
6 brother?

7 A. You know, I don't remember. I knew we had talked to
8 several members of the family. We had kept them sort of in
9 the loop in our discussions. And to be honest, I can't
10 remember if that -- if we asked him about that or not.

11 Q. Was his father one of those family members that was
12 kept in the loop, so to speak?

13 A. I don't think so. I think there was a grandmother, an
14 aunt and an uncle. And then I think the day of trial I
15 think there was some other family members that came that we
16 had not met before.

17 Q. And one final question. Once your client decided to
18 plead, did you go ask E.B. to re-open those negotiations in
19 an attempt to get something better than the minimum?

20 A. That's usually what I do. I mean, even on the day of
21 trial when a client changes their mind to plead, I at least
22 ask for something better than -- especially for Mr. Hagins
23 what he was going to get in front of a judge, and Mr.
24 Springs would not budge at all on this, on the offer.

25 Q. Do you specifically recall asking him for those six

1 years?

2 A. I believe I did. I know I asked him for something less
3 than a third, to let -- to take him out from underneath the
4 mandatory minimum of fifteen.

5 MR. NIEMIEC: That's all the questions that I
6 have.

7 MS. MCMAHAN: No questions, Your Honor.

8 THE COURT: All right. Let me ask. I just want
9 to clear this up. I know you said that his uncle told you
10 that he was out here on the day of trial, and you were ready
11 for trial, and you were against pleading, is that correct?
12 You advised him to go to trial and not plead?

13 THE WITNESS: Yes, sir.

14 THE COURT: So he pled against your advice?

15 THE WITNESS: Yes, sir.

16 THE COURT: Is that correct?

17 THE WITNESS: Yes.

18 THE COURT: Okay. And you said his uncle told you
19 to tell him to plead and you told him that, but he also was
20 aware in those discussions that the confidential informant
21 was in court and was going to testify, and also that they
22 had subpoenaed his girlfriend to come in and to testify
23 concerning the identification. So he was aware of that as
24 well when he decided to plead guilty, is that correct?

25 THE WITNESS: Yes, sir. I made sure to make him

1 aware of that, because in a couple of conversations he had
2 with us prior to that court date he was expressing some
3 doubts that either one them would come.

4 It was our understanding from Mr. Springs that the
5 confidential informant is an addict who worked for the
6 police, not necessarily someone who was working off their
7 charges, and so there were some concern on Mr. Hagins part
8 that they may not show up. So we wanted to make sure that
9 he knew that they had shown up.

10 Also, in regards to the uncle, we have family
11 members tell us all the time on the day of trial, you know,
12 tell them to plead, see if you can get the offer back, that
13 sort of thing. So when the uncle told us that, it didn't
14 raise any red flags. The only time that it raised some red
15 flags was when Mr. Hagins abruptly changed course in --

16 THE COURT: I understand, but he also was aware
17 that these two witnesses were here prepared to testify on
18 behalf of the State?

19 THE WITNESS: Yes, sir.

20 THE COURT: He took that into consideration in
21 pleading as well?

22 THE WITNESS: Yes, sir.

23 THE COURT: And there were other family members
24 here, according to what you were telling the court. There
25 were several of them here in the courtroom at the time, not

1 just the uncle, is that correct?

2 THE WITNESS: That's correct, Your Honor.

3 THE COURT: Including his grandmother?

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: Okay. Any other questions related the
6 questions that I asked?

7 MR. NIEMIEC: I have one question.

8 BY MR. NIEMIEC:

9 Q. Once it became obvious that the confidential informant
10 and the other witness under subpoena was present, did you
11 tell my client that you didn't think he could win this case?

12 A. No, usually what I tell my clients is we have a
13 defense. This is the defense. Either it's a strong
14 defense, because we can question the officers and people
15 with regards to this, or it's a weak defense for these
16 reasons.

17 In his case he was concerned about whether they would
18 show up. When they came, I reiterated to him I still feel a
19 bit confident in this defense, based on what he had told us
20 about his father being at the house that day, that sort of
21 thing; what was written on the physical evidence, which we
22 don't normally see that; as well as what was on the tape.
23 So I felt, still felt, fairly confident in going forward.

24 I did tell him "now, with your girlfriend here, she is
25 going to take the stand and she's going to identify you as

1 the person who was there selling the drugs. You have to
2 remember that."

3 So I don't think at any point we told him we think you
4 are going to lose or anything like that. We were just
5 making sure that he understood objectively this is what the
6 evidence was.

7 MR. NIEMIEC: That's all I have. Thank you, Your
8 Honor.

9 THE COURT: Anything else?

10 MS. MCMAHAN: Nothing, Your Honor.

11 THE COURT: Thank you, ma'am. You may stand down.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: All right, anything further?

14 MR. NIEMIEC: Your Honor, the petitioner rests.

15 THE COURT: Anything from the State?

16 MS. MCMAHAN: Nothing from the State, Your Honor.

17 THE COURT: All right. I'll take the matter under
18 advisement and rule as soon as I have had a chance to look
19 at it. Thank you.

20 MR. NIEMIEC: Thank you, Your Honor.

21 (END OF REQUESTED TRANSCRIPT OF RECORD)

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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for YORK County, South Carolina, on the 4TH day of FEBRUARY, 2009.

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

DECEMBER 21, 2013

Michael R. Watts

Michael R. Watts
Circuit Court Reporter

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE 16TH JUDICIAL CIRCUIT
COUNTY OF YORK)	Case No.: 2008-CP-46-0373

Donnie Mack Hagins, #315916,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

ORDER OF DISMISSAL

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 CLERK OF COURT
 YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 30, 2008. The Respondent made its Return on or about May 22, 2008. An evidentiary hearing into the matter was convened on February 4, 2009, at the Moss Justice Center in York, SC. Matthew R. Niemiec, Esquire, represented the Applicant. Ashley A. McMahan, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Also testifying was Melissa A. Inzerillo, Esquire. This Court also had before it a copy of the transcript of the Applicant's guilty plea, the records of the York County Clerk of Court, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the March 2007, term of the York County Grand Jury for Distribution of Crack Within Proximity of a Public Park or Playground (2007-GS-46-0464) and Distribution of

Crack Cocaine (2007-GS-46-0465). Melissa A. Inzerillo, Esquire, represented the Applicant. On April 2, 2007, Applicant pled guilty as indicted. The Honorable John C. Hayes, III, concurrently sentenced him to ten (10) years for Distribution of Crack Within Proximity of a Public Park or Playground and fifteen (15) years for Distribution of Crack Cocaine. The Applicant did not appeal his conviction or sentence.

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

1. Ineffective assistance of counsel; and
2. Subject Matter Jurisdiction.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80

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L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Failure to Bring Up Tampering of Evidence and Mistaken ID

Applicant alleges that trial counsel was ineffective because she did not bring to the Court's attention at the guilty plea issues relating to tampering of evidence and mistaken identity.

Trial counsel testified that she discussed and prepped for the defense of mistaken identity and that it was the primary defense. Trial counsel also noted that she discussed with the Applicant the chain of evidence. At one point the name Donnie McLean was scratched out on the evidence bag and that Applicant's name was written in. Trial counsel

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stated that the Applicant's family wanted him to plead guilty and that she did not force him to plead guilty. Trial counsel noted that the Applicant was adamant about pleading guilty after hearing from his family.

Trial counsel was not ineffective. Trial counsel noted that mistaken identity was the main defense along with the issues relating to the name being scratched out on the bag of evidence. Applicant is suffering from nothing more than pleader's remorse. Further, the Applicant waived his right to a jury trial. This Court finds that the Applicant knowingly and voluntarily pled guilty, therefore the plea waives any non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence. See Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981); Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975). Based on the foregoing, this allegation is denied.

Failure to Object to Enhancement of Sentence

Applicant claims that trial counsel was ineffective for not objecting to the enhancement of his sentence. Applicant had two prior drug charges: one from Magistrate's Court and one from General Sessions court. Trial Counsel testified that she researched issues related to enhancement of the charges that the charges were enhanceable and that she discussed this with the Applicant. Trial counsel also told the Applicant what the possible sentences were that he was facing. Applicant failed to present any evidence that the Magistrate level prior conviction was not a conviction that could be used to enhance the convictions challenged herein. This Court finds that the Applicant has failed to show that the convictions were improperly enhanced. Therefore this allegation is denied.

Failure to Discuss an Appeal

The Applicant alleges that Counsel was ineffective for failing to consult with him

about an appeal. Counsel has a constitutionally imposed duty to consult with the defendant about an appeal only when there is reason to think either: (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal); or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 120 S.Ct. 1029 (2000). Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal, for example, because there are nonfrivolous grounds for appeal, or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Turner v. State, 380 S.C. 223, 670 S.E.2d 373, (2008). There is nothing in the record to indicate that the Applicant reasonably demonstrated to Counsel that he was interested in appealing, that there were extraordinary circumstances, or nonfrivolous grounds for appeal. Therefore the allegation is totally without merit and is dismissed.

Summary

This Court finds in regards to the allegations of ineffective assistance of counsel and involuntary guilty plea, the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in their representation, and that trial counsel's conduct does not fall below the objective standard of reasonableness. Further, this Court also finds that the record in this case fully demonstrates that the Applicant understood the nature of his plea, and that his plea was made freely and voluntarily.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the

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Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial 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 trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

Subject Matter Jurisdiction

The Applicant has claimed in his application that the trial court lacked subject matter jurisdiction. Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part by Gentry, supra*. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, supra, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction. Therefore this allegation is denied.

CONCLUSION

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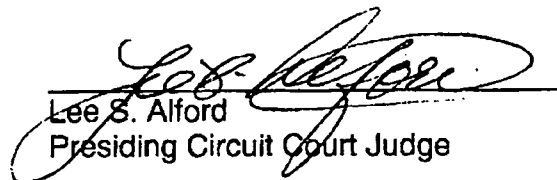
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED!


 Lee S. Alford
 Presiding Circuit Court Judge

February 13, 2009

York, South Carolina

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 2/13/09

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF YORK

CASE NO: 2008CP4600373

IN THE COURT OF COMMON PLEAS

Donnie Mack Hagins vs. South Carolina State Of**CHECK ONE:**

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

IT IS ORDERED AND ADJUDGED:

 See attached order; Statement of Judgment by the Court:**ORDER OF DISMISSAL**

Dated at York, South Carolina, this 13th day of February, 2009.

Court Reporter:

S/LEE S. ALFORD**PRESIDING JUDGE - LEE S. ALFORD**

This judgment was entered on the 16th day of February, 2009, and a copy mailed first class this 16th day of February, 2009, to attorneys of record or to parties (when appearing pro se) as follows:

Matthew Niemiec Halford & Niemiec 238
Rockmont Drive Fort Mill, SC 29708

Ashley Anne McMahan Office Of The Attorney
General P.O. Box 11549 Columbia, SC
292111549

ATTORNEY(S) FOR THE PLAINTIFF(S)**ATTORNEY(S) FOR THE DEFENDANT(S)****David Hamilton**

SCRCPP APP-24/FORM 4

David Hamilton - Clerk of Court

2012CP4604146

STATE OF SOUTH CAROLINA)
)
 County of York)
)
Dannie Mack Hagins #315916)
 Full name and prison number (if any) of Applicant)
)
 v.)
)
 State of South Carolina)
)
)
)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION RELIEF

DAVID HAMILTON
 C.C.P. & G.S.
 YORK COUNTY, S.C.

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INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Tyger River Correctional Institution
200 Prison Road, Enoree, S.C. 29335
2. Name and location of Court which imposed sentence Court of General Sessions, York County, 16th Judicial Circuit
3. Name(s) of co-defendant(s) (if any) Demetria Evette Dabery
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007-GS-46-00464
 - (b) 2007-GS-46-00465

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April 2, 2007
 - (b) 15 years ATU
 - (c) 10 years running concurrent and \$10,000.⁰⁰

- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty ✓
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
No

- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____

- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) PCB attorney Matthew Niemiec failed to file after I informed him to file appeal on PCB case
 - (b) I had no knowledge of my right to direct appeal.

(c) _____

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

(a) Fraudulent Indictments

(b) Failure of PCB Counsel to file Notice of Appeal.

(c) _____

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

(a) Proper procedures were not followed to obtain indictments.

(b) _____

(c) _____

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

(a) any petition in a State Court under South Carolina Law? ~~no~~ yes

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? yes

(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. PCB (denied)

ii. Belated Appeal pursuant Austin v. State (dismissed without prejudice)

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. York County Court of Common Pleas

ii. South Carolina Supreme Court

iii. _____

iv. _____

(c) the disposition thereof:

- i. denied
- ii. dismissed without prejudice
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. February 13, 2009
- ii. June 11, 2012
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

No

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Because issues pertaining to the jurisdiction of the court can be raised at anytime.
- (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? _____
- (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?
yes
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. Atty. Melissa Inzarellu York County Public Def. Office
P.O. Box 1041
- ii. York, SC 29745
- iii. Matthew Nieniec, 238 Rockmont Dr., Fortmill, SC
29708
- (b) the proceedings at which each such attorney represented you:
- i. plea
- ii. PCB
- iii. _____

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

I, Dannie Hagins, 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.

Dannie Hagins
Applicant

SWORN or affirmed to and subscribed before me this
28th day of November, 2012.

Herbert Johns
Notary Public of SC

My Commission Expires: 1-14-2019

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS)
SIXTEENTH JUDICIAL CIRCUIT)

Donnie Mack Hagins, #164744,)
Applicant,)

2012-CP-46-4146

v.)

RETURN AND MOTION TO)
DISMISS ALL CLAIMS EXCEPT)
AUSTIN REVIEW)

State of South Carolina,)
Respondent.)

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

FILED-RECEIVED
2013 FEB 25 AM 9:25

The Respondent, making its Return and Motion to Dismiss the current application for post-conviction relief filed December 3, 2012, respectfully submits the following:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. The Applicant was indicted at the March 2007 term of the York County Grand Jury for Distribution of Crack Within Proximity of a Public Park or Playground (2007-GS-46-0464) and Distribution of Crack Cocaine (2007-GS-46-0465). Melissa A. Inzerillo, Esquire, represented the Applicant. On April 2, 2007, the Applicant pled guilty as indicted. The Honorable John C. Hayes, III, concurrently sentenced him to ten (10) years for Distribution of Crack Within Proximity of a Public Park or Playground and fifteen (15) years for Distribution of Crack Cocaine. The Applicant did not appeal his conviction or sentence.

2008-CP-46-0373

The Applicant filed his first application for Post-Conviction Relief (PCR) on January 30, 2008. The Respondent made its Return on May 22, 2008. An evidentiary hearing was subsequently convened at the Moss Justice Center in York County, South Carolina on February 4, 2009. The Applicant was present and was represented by Matthew R. Niemiec, Esquire. Ashley A. McMahan, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

In his first PCR application, he alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
2. Subject Matter Jurisdiction

The Honorable Lee S. Alford denied and dismissed the Applicant's application by written Order on February 13, 2009.

II.

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Fraudulent Indictments"
 - a. "Proper procedures were not followed to obtain indictments"
2. "Failure PCR Counsel to file Notice of Appeal"

For the purpose of this Return, the Respondent incorporates the Clerk of Court's records for the Applicant's convictions, the records from the South Carolina Department of Corrections, the application and the prior PCR Order of Dismissal. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Except for Applicant's claim that he was denied an appeal from his first PCR application, the Court should summarily dismiss the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

IV.

Except for Applicant's claim that he was denied an appeal from the denial of his first PCR application, the Respondent submits that this Application for Post-Conviction Relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this application on April 7, 2007. The Applicant was therefore required to file his application before April 8, 2008. This application was filed on December 3, 2012, well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post

conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

V.

There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under '17-27-90.'" Aice, 305 S.C. at 451, 409 S.E.2d at 394.

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. Id. Austin "is limited to its particular factual situation" Aice, 305 S.C. at 452, 409 S.E.2d at 394. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. Respondent requests an evidentiary hearing solely on the matter of the Applicant's entitlement to an Austin Review.

VI.

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

VII.

WHEREFORE, with the exception of Applicant's allegation that he is entitled to belated review of his first PCR application, Respondent moves to summarily dismiss the application because it is successive to the Applicant's prior PCR action and was filed after the statute of limitations had expired. Respondent requests an evidentiary hearing solely on the matter of the Applicant's entitlement to an Austin Review.

Respectfully submitted,

ALAN WILSON
Attorney General

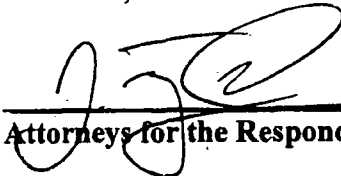
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Senior Assistant Deputy
Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

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

By:


Attorneys for the Respondents

Columbia, South Carolina

February 21, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)

IN THE COURT OF COMMON PLEAS

2012-CP-46-4146

DONNIE M. HAGINS, 164744)
)
Applicant,)
)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)
)
Respondent.)
)
_____)

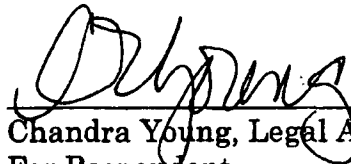
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

FILED-RECEIVED
2013 FEB 25 AM 9:25

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Motion to Dismiss All Claims Except Austin Review in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Mitchell Payne, Esquire
P.O. Box 10352
Rock Hill, SC 29731

DATED this 21st day of February, 2013.



Chandra Young, Legal Assistant
For Respondent



ALAN WILSON
ATTORNEY GENERAL

February 21, 2013

The Honorable David Hamilton
Clerk of Court, York County
Post Office Box 649
York SC 29745

FILED-RECEIVED
2013 FEB 25 AM 9:25
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

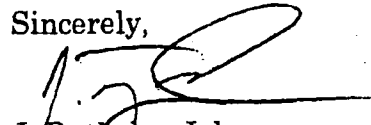
Re: Donnie M. Hagins v. State of South Carolina
2012-CP-46-4146

Dear Mr. Hamilton:

Enclosed please find the original Return and Motion to Dismiss All Claims Except Austin Review of the Respondent, in the above-captioned case, Donnie Hagins v. State, for filing in your office. We are also sending you copies of the following documents to accompany our Return:

- 1) PCR application
- 2) Clerk Records (York)
- 3) SCDC records

Sincerely,


J. Rutledge Johnson
Assistant Attorney General

JRJ:cey
Enclosures

cc: Mitchell Payne, Esquire

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	
County of York)	2012-CP-46-04146
)	
Donnie Mack Hagins,)	
)	
Applicant,)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
State of South Carolina,)	
)	
Respondent.)	
)	

August 16th, 2013
York, South Carolina

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE.

APPEARANCES:

LEAH B. MOODY, ESQ.
Attorney for the Applicant

J. RUTLEDGE JOHNSON, ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

AMINAH R. HARDY, RPR, CVR-CM
Official Court Reporter

EXHIBITS

No.	Description	Page
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(No exhibits were marked.)

PROCEEDINGS

1
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MR. JOHNSON: May it please the court, Your Honor. This is the case of Donnie Mack Hagins versus the State of South Carolina. It's case number 2012-CP-46-4146. Mr. Hagin was indicted the March 2007 term of the York County grand jury for distribution of crack cocaine within proximity of a park or playground, and distribution of crack cocaine. On April 2nd, 2007, he pled guilty as indicted before the Honorable John C. Hayes, III, who concurrently sentence him to ten years for the distribution within proximity and 15 years for the distribution of crack cocaine. He did not appeal his sentence.

He filed a PCR application. That's case number 2008-CP-46-0373 on January 30th, 2008. State made its return on May 22nd, 2008. An evidentiary hearing was held here at the Moss Justice Center in York County on February 4, 2009. He was present and represented by Matt Niemiec. In his first application, he alleged ineffective assistance of counsel and subject matter jurisdiction. The Honorable Lee S. Alford denied and dismissed his application by written order on February 13, 2009.

He has since filed an application on December 3rd, 2012. The State filed its return and motion to dismiss

1 all claims except for an Alston v. State review on
2 February 21, 2013. His only allegation is that PCR
3 counsel Mr. Niemiec failed to file a notice of appeal on
4 his behalf. I spoke to Mr. Niemiec, and he say has no
5 proof he ever filed a timely notice of appeal. I've
6 spoken to Ms. Moody, his present counsel, and said that
7 Mr. Hagin's -- and I think she'll introduce these
8 documents -- that he did write Mr. Niemiec asking for an
9 PCR appeal. Therefore the State is going to consent to an
10 Alston v. State review.

11 THE COURT: Any other issues we have?

12 MS. MOODY: No, sir, Your Honor. The only issues are
13 that PCR appeal. The documents that Mr. Johnson speaks of
14 is where my client went forward trying to get the
15 information as to whether his appeal was filed with the
16 Clerk of the Court, through the Supreme Court, even
17 through Office of Disciplinary Counsel. He wrote Judge
18 Alford regarding the status of his case, which he did not
19 know whether the final order had been submitted to the
20 Court and filed. And then from there, he wrote to the
21 Supreme Court. The Supreme Court told him he needed to
22 file a post-conviction relief, so that's why we're here
23 today.

24 Based on that, we went through his case and I
25 did have -- if I may approach -- documents that show that

1 he took steps to try and find out what happened with his
2 case, and whether there was an appeal notice filed on his
3 behalf, and the end result was there was no notice of
4 appeal filed on his behalf. Your Honor, he understands
5 that the only issue that would have been heard today by
6 the Court and decided upon by the Court is whether or not
7 he requested an appeal of his PCR application. With that
8 understanding he was prepared to go forward, but since the
9 State is going to consent, we'll happily take that consent
10 and go forward if the Court should allow it.

11 THE COURT: Go forward with --

12 MS. MOODY: Filing an appeal for the PCR.

13 THE COURT: Yeah.

14 MS. MOODY: I'm sorry.

15 THE COURT: I've reviewed it, and seems like under
16 the law, Alston, Odom, and the other cases afterwards, he
17 would be entitled to an appeal. Clearly not only from
18 what his attorney was not able to substantiate, but all
19 the paperwork he had. He's entitled to an appeal.

20 MS. MOODY: Thank you, Your Honor.

21 THE COURT: Prepare me an order, Mr. Johnson.

22 MR. JOHNSON: Yes, sir.

23 THE COURT: You want these filed with the clerk?

24 MS. MOODY: Yes, sir.

25 (Whereupon, the proceedings were concluded.)

STATE OF SOUTH CAROLINA
COUNTY OF YORK

FILED-RECEIVED
IN THE COURT OF COMMON PLEAS
2013 SEP -6 SIXTEENTH JUDICIAL CIRCUIT
SEP 9 25

Donnie Mack Hagins, #164744,

DAVID HAMILTON
C.C.C.P. & G.S. 2012-CP-46-4146
YORK COUNTY, SC

Applicant,

v.

**ORDER GRANTING BELATED
PCR APPEAL PURSUANT TO
AUSTIN V. STATE**

State of South Carolina,

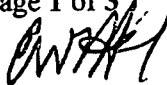
Respondent.

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed December 3, 2012.

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. The Applicant was indicted at the March 2007 term of the York County Grand Jury for Distribution of Crack Within Proximity of a Public Park or Playground (2007-GS-46-0464) and Distribution of Crack Cocaine (2007-GS-46-0465). Melissa A. Inzerillo, Esquire, represented the Applicant. On April 2, 2007, the Applicant pled guilty as indicted. The Honorable John C. Hayes, III, concurrently sentenced him to ten (10) years for Distribution of Crack Within Proximity of a Public Park or Playground and fifteen (15) years for Distribution of Crack Cocaine. The Applicant did not appeal his conviction or sentence.

2008-CP-46-0373



The Applicant filed his first application for Post-Conviction Relief (PCR) on January 30, 2008. The Respondent made its Return on May 22, 2008. An evidentiary hearing was subsequently convened at the Moss Justice Center in York County, South Carolina on February 4, 2009. The Applicant was present and was represented by Matthew R. Niemiec, Esquire. Ashley A. McMahan, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

In his first PCR application, he alleged that he was being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
2. "Subject Matter Jurisdiction"

The Honorable Lee S. Alford denied and dismissed the Applicant's application by written Order on February 13, 2009.

II.

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

1. "Fraudulent Indictments"
 - a. "Proper procedures were not followed to obtain indictments"
2. "Failure PCR Counsel to file Notice of Appeal"

III.

It appearing that counsel for both parties consent¹ to the denial of all claims in his Application for Post-Conviction Relief with the only exception being the granting of a belated

¹ Counsel for Respondent spoke to prior PCR Counsel before the hearing who informed Counsel for Respondent that he had no proof that he ever served Applicant with a copy of the original Order of Dismissal. Therefore, at the hearing, Counsel for Respondent conceded Applicant was entitled to a belated PCR appeal pursuant to Austin.



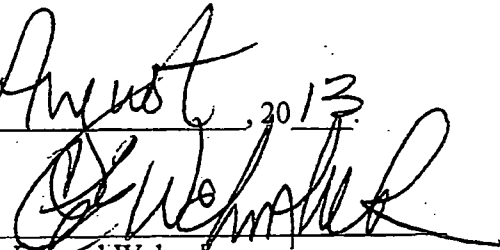
PCR appeal pursuant to Austin v. State², this Application for post conviction Relief is granted only as to Applicant's right to seek a belated appeal of his previous Application for Post Conviction Relief and is denied and dismissed as to all other claims for relief.

IT IS THEREFORE ORDERED:

1. This Application for Post-Conviction Relief is **DENIED WITH THE EXCEPTION OF GRANTING A BELATED AUSTIN APPEAL**. Within thirty (30) days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of the Applicant's first post-conviction relief action, captioned 2010-CP-02-1873. Counsel and the Applicant are directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and Rule 243, SCACR, for the appropriate procedure for a belated appeal; and

2. The Applicant is remanded to the custody of the Respondent for the completion of his sentence.

AND IT IS SO ORDERED this 25 day of August, 2013.


G. Edward Welmaker
Presiding Judge
Sixteenth Judicial Circuit

_____, South Carolina.

² 305 S.C. 453, 409 S.E.2d 395 (1991)



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2013 SEP -6 AM 9:25
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

ALAN WILSON
ATTORNEY GENERAL

September 3, 2013

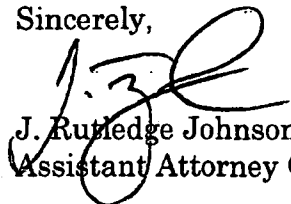
The Honorable David Hamilton
Clerk of Court, York County
Post Office Box 649
York SC 29745

Re: Donnie Hagins v. State of South Carolina
2012-CP-46-4146

Dear Mr. Hamilton:

Enclosed please find an original and a copy of an Order Granting Belated PCR Appeal Pursuant to Austin v. State in connection with the above referenced case. Please file the original and return a certified copy to me in the self-addressed envelope provided for your convenience.

Sincerely,



J. Rutledge Johnson
Assistant Attorney General

JRJ:cey
Enclosures

cc: Leah B. Moody, Esquire

91-
WITNESSES

DEUSCHETTER

DOCKET NO. 2007-GS-46-00464

The State of South Carolina
County of York

After being fully advised as to my legal rights, I hereby waive presentation to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

March 15, Term 2007

COURT OF GENERAL SESSIONS

THE STATE

vs.

DONNIE MACK HAGINS

X Donnie Hagins
Defendant

Witness:
Stephanie Cook, AFM
C.D.C. PLS. AND G.S. Supervisor

ACTION OF GRAND JURY

TRUE BILL

OB. Kempf
Foreperson of Grand Jury
3/4-07

VERDICT

Indictment for

DISTRIBUTION OF COCAINE BASE (CRACK)
WITHIN PROXIMITY OF A PUBLIC PARK OR
PLAYGROUND

SC Code: § 44-53-445
CDR Code: 108

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on March 15, 2007, the Grand Jurors of York County present upon their oath:

DISTRIBUTION OF COCAINE BASE (CRACK) WITHIN PROXIMITY OF A PUBLIC PARK OR PLAYGROUND

That on or about October 14, 2006, in York County, South Carolina, the Defendant, Donnie Mack Hagins, did distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute cocaine base (crack), a controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976) as amended, within a one-half mile radius of the grounds of Galilean Park, a public park or playground located in York, South Carolina, such not having been authorized by law, all in violation of Section 44-53-445, Code of Laws of South Carolina (1976), as amended.

Woodchuck Valley Park Area

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

E. B. Springer

 ASSISTANT SOLICITOR

WITNESSES

DEUSchettler

DOCKET NO. 2007-GS-46-00465

The State of South Carolina

County of York

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

March 15, Term 2007

COURT OF GENERAL SESSIONS

X *Donnie Haggins*
Defendant

THE STATE

Witness
Stephanie Beck, Clerk
C.C.C. PLS. AND G.S. *Supervisor*

DONNIE MACK HAGGINS

ACTION OF GRAND JURY

TRUE BILL

Al. Haggins
Foreperson of Grand Jury
3-15-07

VERDICT

Indictment for

DISTRIBUTION OF COCAINE BASE (CRACK)

Foreperson of Petit Jury
Date:

SC Code: § 44-53-375
CDR Code: 3039

