

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

R. Lawton McIntosh, Circuit Court Judge

SAMUEL J. JETER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002619

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,
PLAINTIFF,
vs.
SAMUEL JETER,
DEFENDANT.

TRANSCRIPT
OF
RECORD

2011-GS-42-5604
2011-GS-42-2889

November 17th, 2011
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE J. MARK HAYES, II, Judge.

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

RYAN MCCARTY
ASSISTANT SOLICITOR
Attorney for the State

JAMES CHEEK
ESQ.
Attorney for the Defendant

PAMELA E. GREEN
Circuit Court Reporter
Seventh Judicial Circuit

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I N D E X O F W I T N E S S E S

(There were no exhibits marked during this hearing.)

P R O C E E D I N G S

1

2

3

THE COURT: All right. Good morning, gentlemen.

4

I am going to call your name. When I call your name,

5

I'm -- just raise your hand and let me eyeball where you

6

are.

7

We have Scott Bostic.

8

(Defendant raises hand.)

9

THE COURT: James Copeland.

10

(Defendant raises hand.)

11

THE COURT: John Duncan.

12

(Defendant raises hand.)

13

THE COURT: Jack Greenway.

14

(Defendant raises hand.)

15

THE COURT: Deandrea Hughes. Is there a Mr. Hughes

16

or---

17

DEFENDANT: Here.

18

THE COURT: Oh, I'm sorry.

19

MR. CHEEK: Deandrea Hughes.

20

THE COURT: Samuel Geter.

21

(Defendant raises hand.)

22

THE COURT: James Johnson.

23

(Defendant raises hand.)

24

THE COURT: Lenny Presnell.

25

(Defendant raises hand.)

1 THE COURT: Timothy Wilson.

2 (Defendant raises hand.)

3 THE COURT: Is there anybody whose name I did not call?

4 (No response.)

5 THE COURT: All right. Gentlemen, I have been told

6 that each one of you has one or more matters that are

7 presently pending in the Court of General Sessions. I've

8 also been told that each one of you has expressed a desire

9 or an intent to want to enter a plea to those matters.

10 I need to let you know that, as part of every plea that

11 is presented in front of me, we make a recording. The lady

12 that's sitting way down there, she's a court reporter. I

13 tell you that because if ever during this process now or

14 later in the day you, if you need to speak to me, I need you

15 to speak up loud enough so that both she and I can hear you.

16 If we can not -- if we can not hear you we can not accept

17 your plea.

18 Now, in just a few moments I'm gonna ask you a series

19 of questions, and I'm gonna ask you these questions as a

20 group. But simply because I'm asking you these questions as

21 a group I do not want you to think nor do I wish for you to

22 conclude that, for some reason, that these questions are not

23 important because these questions are very important. The

24 questions that I ask you and the answers that you give me

25 help me decide whether or not I can, in fact, accept your

1 plea.

2 So, I need you to listen to the questions. If you need
3 to respond to the questions, I'm gonna ask that you stand.
4 Just don't speak out, but stand and let me call on you one
5 at a time.

6 If ever, during this process, if you can not hear me at
7 anytime I need you to let me know immediately and I'll speak
8 up as well.

9 I'm now gonna call your names again. This time, when I
10 call your name, I need for you to stand and remain standing.
11 After everybody's name has been called, the court reporter
12 has your names down, the Clerk of Court, the lady that's
13 right in front of me, she's gonna swear you in. So, I need
14 for you to listen to her and respond out loud when she asks
15 you to do so.

16 Again, we have Timothy Wilson.

17 (Defendant stands.)

18 THE COURT: Lenny Presnell.

19 (Defendant stands.)

20 THE COURT: James Johnson.

21 (Defendant stands.)

22 THE COURT: Samuel Jeter.

23 (Defendant stands.)

24 THE COURT: Deandrea Hughes.

25 (Defendant stands.)

1 THE COURT: Jack Greenway.

2 (Defendant stands.)

3 THE COURT: John Duncan.

4 (Defendant stands.)

5 THE COURT: James Copeland.

6 (Defendant stands.)

7 THE COURT: Scott Bostic.

8 (Defendant stands.)

9 THE COURT: Please raise your right hand.

10 (WHEREUPON, all defendants were placed under oath at
11 this time.)

12 THE COURT: Thank you. You may be seated.

13 Now, here are the questions I need for you to please
14 listen to.

15 During the last 24-hours, have you consumed any type of
16 substance that is adversely or negatively affecting your
17 ability to understand what you're doing today?

18 If you have taken something, then I need for you to
19 please stand at this time.

20 (No response.)

21 THE COURT: If you ever received any type of substance
22 abuse treatment for drug or alcohol problem, I need for you
23 to please stand at this time.

24 (Defendants respond.)

25 THE COURT: All right. We'll start over here.

1 You're Mr. Bostic?

2 DEFENDANT: Yes, sir.

3 THE COURT: And, Mr. Bostic, did you receive treatment
4 for drugs, alcohol, or both?

5 DEFENDANT: Both.

6 THE COURT: And do you remember where you received that
7 last treatment?

8 DEFENDANT: SADAC.

9 THE COURT: About how long ago was that?

10 DEFENDANT: 2008.

11 THE COURT: Was it successful at the time?

12 DEFENDANT: Yes, sir.

13 THE COURT: Thank you, sir. You may be seated.
14 And you are?

15 DEFENDANT: Mr. Wilson.

16 THE COURT: And, Mr. Wilson, did you receive treatment
17 for drugs, alcohol, or both?

18 DEFENDANT: Both.

19 THE COURT: Do you remember where you received that
20 last treatment?

21 DEFENDANT: SADAC.

22 THE COURT: About how long ago was that approximately?

23 DEFENDANT: 2007.

24 THE COURT: And was it successful at the time?

25 DEFENDANT: Yes, sir.

1 THE COURT: Thank you, sir. You may be seated.

2 Yes, sir, your name?

3 DEFENDANT: Jack Greenway.

4 THE COURT: Mr. Greenway, did you receive treatment for
5 drugs, alcohol, or both?

6 DEFENDANT: Alcohol, sir.

7 THE COURT: And where did you receive that last
8 treatment?

9 DEFENDANT: It was Spartanburg Regional.

10 THE COURT: About how long ago was that?

11 DEFENDANT: About five or six months ago.

12 THE COURT: And was it successful at the time?

13 DEFENDANT: Yes, sir.

14 THE COURT: Thank you, sir. You may be seated.

15 If you are satisfied with the work that your lawyer has
16 done for you, I need for you to please stand at this time if
17 you're satisfied with the work that your lawyer has done.

18 (All defendants stand.)

19 THE COURT: Let the record reflect that everyone stood.
20 Thank you very much. You may be seated.

21 If anybody has come to you and threatened you in any
22 way or if they have made you any promises in order to get
23 you to make the decision to enter the plea, then I need for
24 you to please stand at this time if you have been threatened
25 in anyway or if you have been promised anything.

1 (No response.)

2 THE COURT: If the decision to enter the plea is a free
3 and voluntary decision by you, then I need for you to please
4 stand at this time if this is a free and voluntary decision.

5 (All defendants stood at this time with the exception
6 of one defendant.)

7 THE COURT: All right. Let the record reflect that
8 everyone but -- what's your name?

9 DEFENDANT: Deandrea Hughes.

10 THE COURT: That everyone except Mr. Hughes stood.
11 Thank you very much. You may be seated.

12 MR. CHEEK: Your Honor, may I have just a moment with
13 Mr. Hughes just a second.

14 THE COURT: Uh-huh. (Affirmative).

15 (Pause.)

16 DEFENDANT: Oh, yes, sir, I ain't -- I didn't
17 understand.

18 MR. CHEEK: He didn't understand.

19 THE COURT: All right. Well, Mr. Hughes, if you can't
20 understand my questions, we will just do you separately.
21 You just sit there and don't move. I have to be able to
22 decide that you can make an intellectual decision before I
23 can accept your plea.

24 So, if you can not understand my questions we will do
25 you separately.

1 Do you understand that, sir?

2 DEFENDANT: Yes, sir.

3 THE COURT: Okay. I need for you to understand that,
4 under the law, you are presumed innocent of any charge
5 that's presently against you, and you are entitled to have a
6 jury trial on any or all of the charges that are presently
7 against you. At any jury trial that would take place, it
8 would be the State that has the burden of proof, and the
9 State would have to convince all 12 members of a jury that
10 you are, in fact, guilty beyond a reasonable doubt.

11 Now, in order to enter a plea, however, you would have
12 to give up your right to that jury trial. But if you want
13 to have a jury trial on any of the charges against you, that
14 is fine. We will simply schedule a jury trial for you.

15 Now, if you wish to have a jury trial on any of the
16 charges that are presently against you, I need for you to
17 please stand at this time if you wish to have a jury trial.

18 (No response.)

19 THE COURT: In addition to giving up your right to a
20 jury trial, there are other very important Constitutional
21 rights that you are entitled to, but that you have to give
22 up in order to enter a plea.

23 You have to give up your right to confront and
24 cross-examine the state's witnesses. You also have to give
25 up your right to present evidence which you or your lawyer

1 may feel would establishes some type of defense to the
2 charge or charges against you, and you have to give up your
3 right of subpoena, and you have to give up your right to
4 remain silent.

5 Now, if you wish to give up all of those rights and go
6 forward with entering the plea at this time, then I need for
7 you to please stand.

8 (All defendants stand at this time.)

9 THE COURT: All right. Let the record reflect that
10 everyone stood.

11 Thank you very much. You may be seated.

12 Again, gentlemen, if ever, during this process today,
13 if any of you wish to speak to your lawyer, you just let me
14 know and I'll allow you to talk to your lawyer in private.

15 (WHEREUPON, other guilty pleas were taken up at this
16 time.)

17 SOLICITOR MCCARTY: Your Honor, before you is Samuel
18 Jeter. He's here on two separate charges. Your Honor, both
19 of which are true billed indictments.

20 Your Honor, the first Indictment is Indictment Number
21 2011-2889. He's indicted for domestic violence high and
22 aggravated. Your Honor, he's pleading to that as charged.
23 The only recommendation made by the State on either of these
24 charges is concurrent sentencing.

25 Second indictment, Your Honor, is 2011-5604. He's

1 charged with distribution of crack cocaine first offense.
2 He is pleading to both of these as charged, and, again, Your
3 Honor, the only recommendation by the State is concurrent
4 sentencing.

5 THE COURT: All right. You are Mr. Jeter?

6 DEFENDANT: Yes, sir.

7 THE COURT: Sir, I need to remind you that you remain
8 under oath.

9 Do you understand that?

10 DEFENDANT: Yes, sir.

11 THE COURT: And, sir, is it your intent to enter a plea
12 to the charges, to the two charges that were announced by
13 the solicitor?

14 DEFENDANT: Yes, sir.

15 THE COURT: How old are you?

16 DEFENDANT: Thirty-six.

17 THE COURT: How far did you go in school?

18 DEFENDANT: Tenth grade.

19 THE COURT: Did you ever obtain a GED?

20 DEFENDANT: No, sir.

21 THE COURT: Married, single, divorced?

22 DEFENDANT: Single.

23 THE COURT: Do you have children?

24 DEFENDANT: Yes. Two.

25 THE COURT: How old are they?

1 DEFENDANT: One 17 and one seven months.

2 THE COURT: Have a job outside of the home before you
3 got arrested?

4 DEFENDANT: Yeah, I was helping clean up the church and
5 moving people.

6 THE COURT: Were those odd jobs or did you work for
7 someone?

8 DEFENDANT: worked for someone.

9 THE COURT: who was that?

10 DEFENDANT: Beverly Jefferies.

11 THE COURT: Military?

12 DEFENDANT: No, sir.

13 THE COURT: On these charges, how long have you been in
14 jail?

15 DEFENDANT: Six months.

16 THE COURT: Please listen to the solicitor. He's gonna
17 provide us with the facts behind these cases.

18 Okay?

19 DEFENDANT: Yes, sir.

20 THE COURT: Thank you.

21 SOLICITOR McCARTY: Your Honor, if it pleases the
22 Court.

23 I'll start with the domestic violence. Your Honor, the
24 victim and the defendant got into an argument. The
25 defendant chased the victim into the kitchen. while in the

1 kitchen, the defendant grabbed an automatic handgun. The
2 defendant then attempted to strike the victim in the head
3 with it. The victim tried to deflect the gun and was able
4 to grab a hold of it. The defendant picked up a bat, told
5 her she needed to drop the gun or he was gonna hit her with
6 the bat. She did comply and she says that the defendant
7 then began to grab a gun, tried to fire, but the gun
8 malfunctioned. The defendant, the defendant then picked up
9 a bat again and began to strike the victim. He hit her in
10 the body. She says she also hit, was hit in the head.

11 There were children in the house in the back room when
12 this occurred. The defendant then called the children and
13 told the victim if she tries to leave he'll shoot her and
14 that she can't dodge bullets. That's related to the
15 domestic violence charge.

16 Your Honor, with -- relating to the drug charge, those
17 occurred on March 3rd of this year. He's charged
18 originally with distribution of crack cocaine, and
19 distribution of crack cocaine within a half mile.

20 Your Honor, these are City of Spartanburg Police
21 Department cases in which they used a confidential reliable
22 informant to meet with Mr. Jeter and purchase from him a
23 quantity of crack cocaine. I provided Mr. Cheek, in
24 discovery, a copy of the still shot from the video and from
25 the purchase.

1 The event was recorded. It recurred at 150 South Pine
2 Street in the City of Spartanburg. On the day the CI
3 exchanged a pre-recorded amount of U.S. Currency with the
4 defendant in exchange for a small quantity of crack cocaine,
5 Your Honor.

6 Your Honor, just to reflect for the purpose of the
7 record, Mr. Jeter, as I stated, was charged under Indictment
8 Number 2011-5603 with distribution of crack cocaine within a
9 half mile because of where this location occurred. It
10 occurred less than a half mile form Converse College here in
11 the City of Spartanburg.

12 Your Honor, as you well know, distribution within a
13 half mile is a strike in this situation. Based on
14 Mr. Jeter's prior record and convictions for armed robbery
15 and car jacking, the life, potentially could of been facing
16 life without parole if the State would of served him.
17 However, we're not going to prosecute that charge and we're
18 just going to prosecute the distribution charge as it
19 relates to this offense, Your Honor.

20 THE COURT: Were you able to hear the solicitor when he
21 told me the facts?

22 DEFENDANT: Yes, sir.

23 THE COURT: Do you believe that, as he stated the
24 facts, that he's substantially correct?

25 DEFENDANT: Yes, sir.

1 THE COURT: And, sir, do you understand that, on the
2 distribution of crack charge, that I could sentence you up
3 to 15 years today?

4 DEFENDANT: Yes, sir.

5 THE COURT: And do you also understand that I could
6 sentence you up to, I could sentence you up to ten years on
7 the criminal domestic violence of a high and aggravated
8 nature charge?

9 DEFENDANT: Yes, sir.

10 THE COURT: And do you understand that I'm required to
11 sentence you to at least a year on that charge?

12 DEFENDANT: Yes, sir.

13 THE COURT: Understanding the possible sentences I
14 could impose, you still wish to enter these pleas?

15 DEFENDANT: Yes, sir.

16 THE COURT: Are you, in fact, guilty of this charge of
17 distribution of crack charge?

18 DEFENDANT: Yes, sir.

19 THE COURT: Are you also guilty of the criminal
20 domestic violence of a high and aggravated nature charge?

21 DEFENDANT: Yes, sir.

22 THE COURT: Have you been able to hear all of my
23 questions?

24 DEFENDANT: Yes, sir.

25 THE COURT: Have all of your answers been truthful and

1 honest?

2 DEFENDANT: Yes, sir.

3 THE COURT: Discovery's been shared with the defense?

4 SOLICITOR MCCARTY: It has, Your Honor.

5 THE COURT: Prior record.

6 SOLICITOR MCCARTY: If you'll give me one, one moment,
7 Your Honor.

8 (Pause.)

9 SOLICITOR MCCARTY: Your Honor, if I can just amend my
10 comments briefly on the factual situation. I want to put
11 the exact weight in. It's .46 grams of crack cocaine.

12 Your Honor, the record, as I have it, Mr. Jeter was
13 convicted of attempted burglary in 1991.

14 He had a conspiracy to sell cocaine charge from 1992.

15 In 1994 he was charged with underage possession of
16 alcohol.

17 1995, false police, false information to police.

18 1997, Your Honor, is the armed robbery with a deadly
19 weapon and car jacking charge.

20 In 2007, Your Honor, he had a simple assault and
21 battery, and a parole revocation at the time, Your Honor.

22 THE COURT: Anything from the victim in the CDV case?

23 SOLICITOR MCCARTY: Your Honor, I know that, in the
24 notes that Mrs. Gilmer has here, we tried to contact the
25 victim. She is not gonna be present for it. I have handed

1 to the clerk, I think it was attached to the indictment, a
2 copy of the VIS. It was unreturned to us, Your Honor. But,
3 Your Honor, I mean there was photographs taken at the time
4 of the incident that corroborate her story. If the Court
5 would like to see them, I'd be happy to pass them up. If
6 not, I would like them---

7 THE COURT: That's your decision.

8 SOLICITOR MCCARTY: I don't think I need to hand them
9 up, Your Honor.

10 THE COURT: All right. Anything else from the State?

11 SOLICITOR MCCARTY: No, Your Honor. Thank you.

12 MR. CHEEK: Your Honor, the State has presented this,
13 these charges against Mr. Jeter. Mr. Jeter is asking the
14 Court to consider concurrent sentencing in these matters.

15 He and I have known each other all of his life. His
16 mother, Mamie Jeter, and I were classmates from first grade
17 through high school, and I know there's been a struggle
18 mainly with limited in many ways with her intellectual
19 abilities, and samuel has had some of that though not to the
20 extent that Mamie has.

21 So, Your Honor, we ask the Court to consider that he
22 started off with a rough situation in life, and he's been
23 able to prevail to some extent and overcome a lot of things
24 in life. But, Your Honor, he also understands and
25 appreciates that were he to be convicted of these charges

1 that he could be looking at life without the possibility of
2 parole.

3 I'm asking the Court to consider that he is looked over
4 the still photos regarding the drug transaction and also the
5 new information and pictures regarding the assault. While
6 he, at trial, would have denied some of these comments and
7 allegations made by the victim in this case on the CDV
8 charge, that he understands it's still a very real strong
9 possibility, with the nature of the injuries, that he would
10 still be convicted of that charge, Your Honor.

11 We're just asking the Court to consider concurrent
12 sentencing for him among these two charges. Although
13 they're unrelated, they all arise out of the same period of
14 time. We're just asking the Court to consider concurrent
15 sentencing. Ask the Court to show mercy and leniency on Mr.
16 Jeter given that he decided to go ahead and resolve this
17 matter short of trial, Your Honor.

18 The victim in the CDV case, according to Mr. Jeter, and
19 I have not substantiated that, but in this matter he tells
20 me that she did at least once, at the jail, and when I spoke
21 earlier this morning, he was under the impression that she
22 would actually be here. So, I don't know if she's in the
23 courtroom or not. I don't know if she's in another
24 courtroom. We moved from that location.

25 Your Honor, we just ask the Court to consider

1 concurrent sentencing in the matter understanding he
2 appreciates there's a minimum mandatory sentence he's got to
3 serve on the CDV charges, and that the State is dismissing
4 the charges that would put a strike on his record associated
5 with the drug transaction, Your Honor.

6 THE COURT: Do you agree with what your lawyer just
7 stated?

8 DEFENDANT: Yes, sir.

9 THE COURT: Mr. Bailiff, will you call the name of --
10 what's the victim's name?

11 SOLICITOR McCARTY: One moment, Your Honor.

12 (Pause.)

13 SOLICITOR McCARTY: It's Juanita Denise Miller.

14 THE COURT: Juanita Miller.

15 MR. CHEEK: Thank you, Your Honor.

16 THE COURT: Sir, is there anything that you would like
17 to say or want me to know or consider?

18 DEFENDANT: Yes, I had the -- I had done got my life
19 right with God, and I had been trained in -- during that
20 time right there when I had a CDV I was drinking in which I
21 don't do, you know, at the time. I was just mad and because
22 I had done been, I had done got ganged or whatever at the
23 time.

24 THE COURT: Got what?

25 I'm sorry.

1 DEFENDANT: I had got ganged or whatever at the time
2 with me and Juanita was together and I took it out on her
3 because I felt like she set me up, you know. Again, but at
4 the same time, she -- her and her sister were beefing,
5 which, you know, they were arguing or whatever or not, and I
6 kind of like, you know what I'm saying, started drinking and
7 just took out on her when it weren't really her fault, you
8 know. It was my fault cause I was drinking. I don't even
9 drink.

10 So, that way I tried to drink my problems away, and you
11 what I'm know saying, but it did help. But since I had been
12 locked up I had got my life back with God, and, you know,
13 and I was trying, you know, I talked to my lawyer like
14 Mr. Cheek like that if they anyway I can get probation. But
15 he say it carried a year. And, so, I was, I was hoping that
16 I could get home detention or something so I would be home
17 with my family for Thanksgiving.

18 I got a seven month old son, and I got a 17 year old
19 son, and, you know, just be my first time me missing
20 Thanksgiving, Christmas with my little seven month old son,
21 you know. My other son, he 17. So, he old enough. But my
22 seven month old son, he ain't old enough to, you know, know
23 what's going on, you know.

24 And I apologize for what I did. And, you know, I was
25 wrong, you know, and if I had another chance, I'll do it

1 over, you know what I'm saying. I wouldn't even be here if
2 I had another chance. If I had God, you know, cause I had
3 got God on my side. So, I come from a Christian family.
4 You know, I'm not a bad person, you know. But, you know, my
5 record look like I'm a bad person, but I'm not really no bad
6 person. I tried to be the best I can. You know, everybody
7 make mistakes. You know, I apologize.

8 THE COURT: Thank you.

9 BAILIFF: No response, sir.

10 THE COURT: Thank you, sir.

11 You said that she had ganged you?

12 DEFENDANT: No, her sister -- her daddy ganged me.

13 THE COURT: what, what is gang?

14 DEFENDANT: You know, like lynching. Like three people
15 beat me up at one time.

16 THE COURT: Okay.

17 DEFENDANT: Like lynching. They hit me in the face
18 with a pistol and everything.

19 THE COURT: I find that there's a substantial factual
20 basis for the plea and that the defendant's decision to
21 enter the plea has been made freely, voluntarily, knowingly,
22 and intellectually by him. Therefore, I will accept the
23 plea.

24 These will be concurrent sentences, a like sentence
25 under each.

1 Sentence of the Court is that the defendant will be
2 confined to the State Department of Corrections for a period
3 of seven and one-half years. They'll be concurrent with
4 each other and will receive credit for six years. I've
5 indicated on the sentencing sheet he's to receive the ATU
6 while he's in the Department of Corrections and also he's to
7 receive the batters treatment.

8 MR. CHEEK: By way of clarification, Your Honor, did
9 the Court say credit for six months or credit for six years
10 you said?

11 THE COURT: Credit for six months. I'm sorry.

12 SOLICITOR McCARTY: Thank you, Your Honor.

13 THE COURT: Good luck to you, sir.

14

15 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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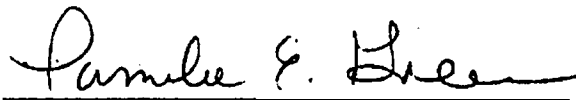
C E R T I F I C A T E

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I, Pamela E. Green, 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 evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 17th day of November, 2011.

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

April 10th, 2012



PAMELA E. GREEN; Court Reporter

75W

FORM 5

STATE OF SOUTH CAROLINA)

County of Spartanburg)

Samuel J. Jeter)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2012-CP-42-0057

APPLICATION FOR
POST-CONVICTION RELIEF

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 JAN -6 AM 9:46
M. HOPE BRACKLEY

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 South Carolina Dept. of Corrections
Kirkland C.I. 4344 Broad River Rd Columbia S.C. 29210
2. Name and location of Court which imposed sentence Court of General Sessions Spartanburg Co.
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Criminal Domestic Violence High and aggravated nature.
 - (b) Distribution / to selling drugs such as cocaine base.

(c) _____

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

(a) November 17, 2011 - 7 1/2 years.

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty yes

(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: N/A

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result: N/A

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) Pled Guilty

(b) _____

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(c) _____

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

- (a) Ineffective Assistance of counsel for
- (b) failure to properly investigate case and
- (c) make me plea to maximum.

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

- (a) Will Fully Explain to lawyer that the
- (b) Court will assign to represent me
- (c) on P.C.R. in court.

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

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-conviction relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

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

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

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(c) the disposition thereof: N/A

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

(d) the date of each such disposition: N/A

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

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

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

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

- _____

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

(a) which grounds have been presented:

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

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

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

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

- (a) This is my first time challenging
- (b) my case. I have this right by
- (c) law on P.C.R.

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? N/A
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NO

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. James Cheeks / Beverly D. Jones
 - Public Defender's Office suite 308
 - ii. 366 N. Church St. Spartanburg SC
 - 29303
 - iii. /
- (b) the proceedings at which each such attorney represented you:
 - i. Plea
 - ii. Sentencing
 - iii. /

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19. State clearly the relief you seek in filing this application:
To come to court for an evidentiary hearing
To get a sentence reconsideration of
2 years or lesser sentence.
20. Are you now under sentence from any other court that you have not challenged?
NO

STATE OF SOUTH CAROLINA)
)
 County of Spartanburg)

VERIFICATION

I, Samuel J. Jeter #00242979, 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.

Samuel Jeter

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SWORN to and subscribed before me this 3rd
 day of January, 2014

[Signature] (L.S.)
 Notary Public
 My Commission Expires
 My Commission Expires: October 8, 2014

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

I, Samuel J. Jeter #00242979, 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.

Samuel Jeter
Applicant

SWORN or affirmed to and subscribed before me this
3rd day of January, 2014.

[Signature]
Notary Public My Commission Expires
October 8, 2014

My Commission Expires: _____

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PLR

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	IN THE SEVENTH CIRCUIT
COUNTY OF SPARTANBURG)	
)	2012-CP-42-0057
Samuel J. Jeter, #242979,)	
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	

In response to the post-conviction relief application filed on January 6, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Spartanburg County Clerk of Court's orders of commitment. The Spartanburg County Grand Jury indicted the Applicant at the June 2011 and September 2011 terms of General Sessions for criminal domestic violence of a high and aggravated nature (CDVIHAN) (11-GS-42-2889), distribution of methamphetamine or crack cocaine (11-GS-42-5604), and distribution of crack cocaine within one-half mile of school (11-GS-42-5603). The Applicant was represented by James A. Check, Esquire. As a result of a plea agreement, the charge of distribution of crack cocaine within one-half mile of school (11-GS-42-5603) was *nolle prossed* and the Applicant pled guilty to the other charges on November 17, 2011. The Honorable J. Mark Hayes II sentenced the Applicant to confinement for a period of seven and one-half (7.5) years for each charge, concurrent. The Applicant did not appeal his guilty plea or sentence.

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Attached herewith and incorporated herein are the Spartanburg County Clerk of Court records, the South Carolina Department of Corrections' records, and the guilty plea transcript. The

48

49

Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

- 1. Ineffective assistance of counsel; in that,
 - a. Counsel failed to investigate the case,
 - b. Counsel made "me plea to the maximum."

III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonable professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable

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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). Further, Respondent submits that "[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998).

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

IV.

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

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

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M. HOPE BLACKLEY

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By: 
Attorneys for the Respondents

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Telephone: (803) 734-3737

Sept. 25, 2012

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M. HOPE BLACKLEY

1 STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 2 COUNTY OF SPARTANBURG)
 3
 4 Samuel J. Jeter,)
) TRANSCRIPT OF RECORD
 Applicant,) 2012-CP-42-0057
 5 -vs-)
)
 6 The State,)
)
 7 Respondent.) June 26, 2013
) Spartanburg, South Carolina

11 B E F O R E:

12 HONORABLE R. LAWTON MCINTOSH, JUDGE

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

16 HOWARD R. KINARD, ESQUIRE
 Attorney for the Applicant

17 SUZANNE H. WHITE, ESQUIRE
 Attorney for the Respondent

23 Margaret A. Woods
 Circuit Court Reporter

24 ORIGINAL

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
A-1	Spartanburg Public Safety Department Operation Plan	15	15
A-2	Voluntary statement	15	15

SAMUEL JEREMIAH JETER - DIRECT EXAMINATION BY MR. KINDARD

1 MS. WHITE: Thank Your Honor. This is the case of Samuel
2 Jeter vs. the State, it's Case No. 2012-CP-42-0057.
3 Mr. Jeter's represented today by Howard Kinard. He was
4 indicted in June and September of 2011 on charges of CDV high
5 and aggravated nature, distribution of crack and the proximity
6 charge, that charge was ultimately nol prossed and he pled
7 guilty November 17th 2011 to the other two charges and
8 received a sentence of 7 1/2 years. He's alleged that counsel
9 failed to investigate and counsel made me plead to the maximum
10 and I will turn it over to Mr. Kinard at this time.

11 THE COURT: Mr. Kinard.

12 MR. KINARD: Uh, thank, Your Honor, this time I will call
13 the applicant to the stand Mr. Samuel Jeter.

14 (Whereupon, the applicant came forward.)

15 THE BAILIFF: Right this way, please, sir.

16 SAMUEL JEREMIAH JETER, having
17 been first duly sworn, testified as follows:

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

19 DIRECT EXAMINATION BY MR. KINARD:

20 Q. Mr. Jeter, can you please state your full name for the
21 record, please.

22 A. Samuel Jeremiah Jeter.

23 Q. Okay, and we're here today on some charges you pled
24 guilty to, is is that ---

25 A. Yes, sir.

1 Q. --- is that your account, okay. And would your -- you're
2 originally charged with criminal domestic violence high and
3 aggravated, is that one of your charges?

4 A. Yes, sir.

5 Q. And also distribution of of crack cocaine, is that
6 another charge?

7 A. Yes, sir.

8 Q. And then distribution within a half mile of a school, is
9 that correct?

10 A. Yes, sir.

11 Q. Okay. And who represented you, uh, during the plea
12 hearing that occurred in November 2011?

13 A. Jame Cheek.

14 Q. Okay, and did another attorney represent you before
15 Mr. Cheek?

16 A. Beverly Jones.

17 Q. Okay, and they're they're both with the Public Defender's
18 Office, correct?

19 A. Yes, sir.

20 Q. Okay. And how long were you, uh, how long well is the
21 time between when you pled and when you were appointed
22 Ms. Jones as your attorney?

23 A. Just before I had really pled.

24 Q. Okay. Well was there a time in between when you were
25 appointed the attorney and when you went to guilty plea?

SAMUEL JEREMIAH JETER - DIRECT EXAMINATION BY MR. KINDARD

1 A. Yes, sir.

2 Q. Okay. Do you, do you, you know how much time was in
3 between those two times?

4 A. No, sir.

5 Q. Okay. How many times did you meet with Ms. Beverly Jones
6 regarding your charges before your guilty plea hearing?

7 A. Uh, two time, one time at the preliminary hearin' and the
8 time I fixin' ready go before Couch.

9 Q. Okay, and when did you first meet meet with, uh,
10 Mr. Cheek?

11 A. I met him, uh, when I fix ready to plea.

12 Q. Okay, so the first day you talked to Mr. Cheek about your
13 charges was 0 -- in November 2011 the day a the plea, is that
14 correct?

15 A. Far as I know, yeah, yes, ---

16 Q. Okay.

17 A. --- sir.

18 Q. Okay. And prior to the plea hearing what -- do you
19 remember the day a the plea hearing?

20 A. Plea hearin'?

21 Q. Where you pled, where you pled guilty to these charges,
22 do you remember that day when you were in front of Judge Hayes
23 for the plea?

24 A. Oh, November 17?

25 Q. Yes, sir, you remember that day?

1 A. Yes, sir.

2 Q. Okay, and did you have a meeting with Mr. Cheek that day
3 before the plea hearing?

4 A. Yeah, the day before, ---

5 Q. Okay.

6 A. --- yes, sir.

7 Q. Discuss for the Court what was, tell the Court what was
8 discussed during those meetings with Mr. Cheek regarding your
9 plea.

10 A. Well he, that we had discussed that, uh, well he said he
11 went to school with my mom and he he like I knowed you since
12 you been a little boy and all this but at the same time really
13 I wasn't even focused on that right then, I was, you know,
14 tryin' to see can you, you know, give me a good deal, you know
15 what I mean, so he was like, Well I'll see what I can do, then
16 I had asked him can 'cause I was fixin' to go in fronta Couch
17 and I told him can he get me in fronta Hayes which that what
18 he did, he got me in fronta Hayes, you know what I'm sayin',
19 so when I did, when he did get me in fronta Hayes and he
20 finally came with the little sentencin' sheet, him and, uh,
21 McCarthy, Ryan McCarthy, ---

22 Q. Okay, so let let me stop you there so the solicitor
23 Mr. McCarthy and Mr. Cheek ---

24 A. Yeah, ---

25 Q. --- came ---

SAMUEL JEREMIAH JETER - DIRECT EXAMINATION BY MR. KINDARD

- 1 A. --- came with a ---
- 2 Q. --- to you ---
- 3 A. --- piece ---
- 4 Q. --- before ---
- 5 A. --- a paper.
- 6 Q. --- the plea hearing.
- 7 A. Yes, sir.
- 8 Q. Was it the day a the plea hearing or the day before
- 9 the ---
- 10 A. No, ---
- 11 Q. --- plea hearing?
- 12 A. --- we was right there in the courtroom, ---
- 13 Q. Okay, ---
- 14 A. --- you know what I'm sayin', ---
- 15 Q. --- and this is before you went in front of Judge Hayes
- 16 when when Jud -- Judge Hayes asked you, asked ---
- 17 A. Yes, sir.
- 18 Q. --- you questions.
- 19 A. Yes, sir.
- 20 Q. Okay. Do you remember what was on that sheet that they
- 21 presented you?
- 22 A. He had a year ran concurrent with my distribution and
- 23 CDV.
- 24 Q. Okay, so it was your understanding that you were signing
- 25 a paper that would have a plea agreement for 1 year for for

1 the, uh, ---

2 A. Yeah, that ---

3 Q. --- CDV charge and ---

4 A. Yes, sir.

5 Q. --- and and what other charge?

6 A. And a distribution.

7 Q. Okay.

8 A. Uh, they woul -- they had threw the, uh, school zone out.

9 Q. Okay, so your understanding that you were going to plead
10 to 1 year on two charges, that correct?

11 A. Yeah, because I was already locked up for 6 months and he
12 said I had to do 6 more months, you know, on it 'cause it's a
13 mandatory year on the CDV and I already did 6 months in the
14 county jail.

15 Q. Okay, and is it your recollection that you signed
16 something with Mr. Cheek before the plea hearing?

17 A. Him and, uh, solicitor, yes, sir.

18 Q. Okay, uh, and pursuant to these PCR hearings have you
19 asked me to look for the, look at the PD file, look at the
20 solicitor file for something you signed?

21 A. Yes, sir.

22 Q. Okay, and, uh, have you, have I been able to produce to
23 you anything that you signed?

24 A. No, sir.

25 Q. Okay. Uh, you recall if Mr. McCarty also signed that

SAMUEL JEREMIAH JETER - DIRECT EXAMINATION BY MR. KINDARD

1 document?

2 A. Well they came over there with a paper, I don't, I don't
3 know if they signed anything.

4 Q. Okay, you didn't see them sign it?

5 A. No, they just ---

6 Q. You didn't see ---

7 A. --- brought a ---

8 Q. Did you see ---

9 A. --- piece a pa ---

10 Q. --- Mr. Cheek sign it?

11 A. No.

12 Q. Okay, so only you, testimony is that you you're the only
13 person that signed that ---

14 (Cross-talk.)

15 A. Yeah, 'cause he told me to sign the sentence sheet,
16 yeah.

17 Q. Okay. And then do you recall the actual, uh, plea
18 agreement you had with Judge Hayes?

19 A. No.

20 Q. Okay.

21 MR. KINARD: There's, uh, already part a the record, Your
22 Honor, the, uh, transcript.

23 THE COURT: I've got it.

24 BY MR. KINARD:

25 Q. Okay. Uh, Mr. Jeter, I'm gonna hand you a copy of the

1 transcript, this is a word-for-word, uh, rendition of the
2 guilty plea that day, okay, and as you recall do you remember
3 Mr. Cheek saying anything at the plea hearing regarding your
4 understanding that you're pleading to 1 year concurrent on all
5 the charges?

6 A. When he brought me that piece a paper?

7 Q. No, this is during during the actual plea ---

8 A. No, ---

9 Q. --- agreement.

10 A. --- he didn't say it then.

11 Q. Okay, uh, did that surprise you ---

12 A. Yeah, surprise ---

13 Q. --- that he didn't mention anything about the document
14 you signed?

15 A. Yeah, he ain't mention none a that..

16 Q. Okay. Was it your understanding when you went in front
17 of Judge Hayes that you were pleading to 1 year?

18 A. That what I thought, that what I expectin' ---

19 Q. Okay.

20 A. --- I was pleading to 1 year.

21 Q. Okay. Uh, Mr. Jeter, I'm gonna, uh, direct your
22 attention to Page 21 of that transcript I just handed to you,
23 uh, also direct you to Line 10 on Page 21, if you can begin
24 reading at Line 10 and read through Line 10 through 17,
25 please.

1 A. Okay.

2 Q. And and just for, and just for the record is this this is
3 you speaking to the judge.

4 A. Okay. "So that way I tried to drink my problems away and
5 you well I'm no sayin' but you did help but since I had been
6 locked up I had got my life back with God and, you know, and I
7 was tryin', you know, I talked to my lawyer like Mr. Cheek
8 like that if they anyway I can get probation but he said he
9 carry a year and so I was ho -- I was hopin' that I could get
10 home detention or sumtin' so I would be home my family for
11 Thanksgivin'."

12 Q. Okay, in that sect you just read, you stated, uh, to the
13 judge but he s -- he say it carried a year, uh, what were you
14 referring to in that sentence when you were tellin' that to
15 the judge?

16 A. That that what I was lookin' at a year.

17 Q. Okay. When you refer to "he", were you referring to
18 Mr. Cheek?

19 A. Well, yeah, ---

20 Q. Okay.

21 A. --- at the same time.

22 Q. Had you known that you were not going to receive a 1 year
23 concurrent sentence would you still have gone forward with
24 this plea?

25 A. I mean, I mean, I ha -- I mean, paper I signed had it on

1 there ---

2 Q. Okay.

3 A. ---- so that's the reason why I even plead 'cause he he
4 had show, he had gave me a piece a paper with a year on it ran
5 concurrent with the charges I was locked up for, uh, he said I
6 had to do a mandatory year because CDV, uh, HAN, you know what
7 I mean, so that's the reason I even signed the paper.

8 Q. Okay, and and just to be clear, uh, the paper that you
9 signed, I I've shown you a sentencing sheet ---

10 A. Yeah.

11 Q. --- and and that is not the paper you signed, is ---

12 A. No, ---

13 Q. --- that correct?

14 A. --- that ain't the paper I signed.

15 Q. Okay, and I've shown you that sentencing sheet and asked
16 you about that, correct?

17 A. Yeah.

18 Q. Okay. During your meetings with, uh, Ms. Jones and
19 Mr. Cheek, did you ever, uh, discuss any of the evidence the
20 State had against you?

21 A. Well I I just seen the, uh, a audio, that's all I've seen
22 a audio and he said see, what they call it, the informant, all
23 that, but I I don't know who the informant was, ---

24 Q. Okay.

25 A. --- all I seen was a audio.

SAMUEL JEREMIAH JETER - DIRECT EXAMINATION BY MR. KINDARD

1 Q. Did -- during during your conversation before your plea,
2 did ya'll have any discussions regarding, uh, discrepancies in
3 the police report at all?

4 A. No.

5 Q. Okay. And, uh, Mr. Jeter, I'm gonna hand you, uh, two
6 documents and you've -- can you identify those documents that
7 I've, uh, presented to you before, uh, that are produced by my
8 office pursuant to your PCR application.

9 A. Talkin' 'bout their name?

10 Q. Yeah, well just the actual documents. I've shown you
11 these documents before, haven't ---

12 A. Yeah, ---

13 Q. --- I?

14 A. --- yeah, you ---

15 Q. Okay.

16 A. --- show me. He aint ---

17 Q. Okay.

18 A. --- never show ---

19 Q. Alright.

20 A. --- me that.

21 MR. KINARD: Uh, Your Honor, we would move at this time
22 to introduce, uh, Applicant's 1 and 2, one's an operations
23 plan from the Spartanburg Public Safety Department and
24 Plaintiff's 2, a voluntary statement, these were part a the
25 Public Defender's file.

SAMUEL JEREMIAH JETER - DIRECT EXAMINATION BY MR. KINDARD

1 MS. WHITE: Your Honor, I think it would, if that's gonna
2 be entered more appropriate through Mr. Cheek as the applicant
3 says he's never even seen those and isn't aware of anything in
4 them.

5 THE COURT: Well if you don't object you don't object
6 but, I mean, if you'd rather Mr. ---

7 MS. WHITE: Well ---

8 THE COURT: --- Cheek ---

9 MS. WHITE: --- I I was, if I can have a moment, I'm
10 gonna let Mr. ---

11 THE COURT: Sure.

12 MS. WHITE: --- Cheek look over 'em. Okay, that's fine,
13 Your Honor, no objection.

14 THE COURT: Thank you, ma'am, admitted without objection.

15 BY MR. KINARD:

16 Q. And, Mr. Jeter, uh, let me mark these real quick.

17 (Spartanburg Public Safety Department Operation Plan
18 marked Applicant's Exhibit No. 1 and Voluntary Statement
19 marked Applicant's Exhibit No. 2 and admitted into evidence.)

20 Q. Mr. Jeter, I'm gonna show you what's been marked as
21 Applicant's 1 and if you could on this can you state, uh, what
22 what the title of this, what this document is.

23 A. Spartanburg Public Safety Department Operation Plan.

24 Q. Okay, say it to to court can hear, please.

25 A. Spartanburg Public Safety Department Operation Plan.

SAMUEL JEREMIAH JETER - DIRECT EXAMINATION BY MR. KINDARD

1 Q. Okay, and on in this Applicant's Exhibit, uh,
2 Applicant's 1, it states that, uh, the suspect's name, uh, on
3 this Operations Agreement it mentions suspect's name of Tywan,
4 T-Y-W-A-N, uh, do you ever go by the name Tywan?

5 A. No, sir.

6 Q. Do you know who that is?

7 A. No, sir.

8 Q. Okay, and is your understanding that this document was
9 produced, uh, in accordance with the the drug arrest that you
10 were charged with at the ho -- at the motel?

11 A. Yes, sir.

12 Q. Okay. Uh, do you understand that it's your understanding
13 that there was a con -- confidential informant involved, uh,
14 in your arrest that provided an affidavit, uh, pursuant to
15 your arrest?

16 A. Yes, sir.

17 Q. Okay. I'm also showing you to, uh, look at Applicant's
18 2, can you read what's on Applicant's 2 which is a voluntary
19 statement.

20 A. I bought this -- bought, right?

21 Q. Yeah, it it's misspelled, if you could just ---

22 A. Yeah.

23 Q. --- read it as it as it's stated and stuff.

24 A. I bought \$50 from Tyrell crack cocaine at 113 Economy
25 Inn.

SAMUEL JEREMIAH JETER - DIRECT EXAMINATION BY MR. KINDARD

1 Q. Okay, and that that document states, uh, reference to
2 Tyrell, okay, have you ever been known as Tyrell?

3 A. No, sir.

4 Q. You know who Tyrell is?

5 A. No, sir.

6 Q. Okay. Uh, and also you -- and Tywan, the previous one,
7 do you ever go by that name?

8 A. No, sir.

9 Q. Okay, prior to, uh, when I showed you those documents
10 pursuant to our investigation of this case, have you ever seen
11 those documents?

12 A. No, sir.

13 Q. Uh, did Mr. Cheek or Ms. Jones ever provide you with
14 those documents and ---

15 A. No, sir.

16 Q. --- ask you 'bout those?

17 A. No, sir.

18 Q. Okay, they ever ask you who Tywan was or Tyrell was?

19 A. No, sir.

20 Q. Okay. If you had been presented with those documents
21 prior to your plea, would that have changed your, uh, decision
22 to to to plead guilty to these charges?

23 A. Most definitely.

24 Q. Okay. And o -- one a your charges, Mr. Jeter, was, uh,
25 the distribution charge, uh, were ya ever shown a a video of

SAMUEL JEREMIAH JETER - DIRECT EXAMINATION BY MR. KINDARD

1 of what the, uh, solicitor's office had or what the State had
2 as evidence against you in that -- on that charge?

3 A. I, uh, I seen a audio.

4 Q. Okay, you li -- you listened to an audio?

5 A. I ain't listen to, I just seen a picture.

6 Q. Oh, seen a, okay, so you saw, you saw a still picture, is
7 that ---

8 A. Yeah, ---

9 Q. --- correct?

10 A. --- yes, sir.

11 Q. Did you ever listen to any audio from ---

12 A. No, sir, ---

13 Q. ---- what the State had?

14 A. No, sir.

15 Q. And you lev -- do you ever look at any live video from
16 what the State had?

17 A. No, sir.

18 Q. Okay. And is there anything else you wanna tell the
19 Court today about your PCR application that we ha -- have not
20 covered?

21 A. No, sir.

22 Q. Okay.

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

24 THE COURT: Alright, so if I understand basis of your
25 argument is ineffective assistance in that there was a plea

SAMUEL JEREMIAH JETER - CROSS-EXAMINATION BY MS. WHITE

1 agreement that was not honored that was supposedly signed and
2 that ---

3 MR. KINARD: That there's some discrepancies in the
4 police report.

5 THE COURT: Insufficient investigation I guess.

6 MR. KINARD: Yes, Your Honor, insufficient, uh, review of
7 the police documents and that were not pointed out to
8 Mr. Jeter he could make a a a knowing decision on his plea.

9 THE COURT: Have you explained to Mr. Jeter that if PCR
10 is granted that he potentially faces life without the, uh,
11 possibility of ---

12 MR. KINARD: I ---

13 THE COURT: --- parole?

14 MR. KINARD: --- we -- I have discussed with him at
15 length the the charges that a -- were originally against him,
16 I've explained to him that they will all go back on, the judge
17 has no, uh, uh, authority to reduce your sentence here, all
18 the charges go back on, they get sent the to the solicitor's
19 office and we start from scratch, I've explained that to him,
20 Your Honor.

21 THE COURT: Alright, thank you very much.

22 Cross-examination, Ms. White?

23 MS. WHITE: Thank Your Honor.

24 CROSS-EXAMINATION BY MS. WHITE:

25 Q. Mr. Jeter, just a couple quick questions. You said that

SAMUEL JEREMIAH JETER - CROSS-EXAMINATION BY MS. WHITE

1 at the time you went into plead guilty you thought you were
2 pleading to 1 year ---

3 A. Yes, ma'am.

4 Q. --- but you also said that you were aware that 1 year was
5 the minimum for the CDVHAN charge.

6 A. Yes, ma'am.

7 Q. So when the judge went over with you your constitutional
8 rights and told you that you would have to give up the chance
9 to present any kind of defense to any a these charges and and
10 you said that was fine, you stood up and said that you were
11 willing to do that to proceed with the plea, was that correct
12 at the time?

13 A. Yes, ma'am.

14 Q. Okay. And when they read the charges to you and said
15 that there was no recommendation other than concurrent
16 sentencing and they still asked you if you wanted to plead to
17 the charges and you said yes ---

18 A. Yes, ma'am.

19 Q. Okay. And then the judge also went over with you the
20 maximum sentences he could give you and he said he could
21 actually sentence you up to 15 years on the distribution and
22 up to 10 on the CDVHAN with at least a year as a minimum ---

23 A. Yes, ma'am.

24 Q. --- and you said, understanding that did you wanna enter
25 the plea, you said yes, sir.

1 A. Yes, ma'am.

2 Q. And you also acknowledge you were guilty of both charges.

3 A. Yes, ma'am.

4 Q. Okay, so today though your testimony is that you were not
5 aware of any a the evidence against you in the distribution
6 charge and would not have pled guilty if you knew there was
7 some different names in that paperwork?

8 A. Yes, ma'am.

9 Q. You would have gone to trial on that charge and rest the
10 15?

11 A. Yes, ma'am.

12 Q. And in regards to the 1-year plea deal, you have a record
13 that had at least two armed robberies and a carjacking and
14 another distribution but you were under the impression you
15 were gonna get 1 year on all those charges?

16 A. Yes, ma'am.

17 Q. Okay.

18 MS. WHITE: Thank Your Honor, that's all I have.

19 MR. KINARD: No, no redirect.

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

21 (Whereupon, the applicant left the stand.)

22 MR. KINARD: That's all the witnesses the applicant has,
23 Your Honor.

24 THE COURT: Okay.

25 MS. WHITE: We briefly call Mr. Cheek, Your Honor.

JAMES CHEEK - DIRECT EXAMINATION BY MS. WHITE

1 THE COURT: Okay.

2 (Whereupon, the witness came forward.)

3 JAMES A. CHEEK, having been
4 first duly sworn, testified as follows:

5 THE BAILIFF: Have a seat, please.

6 DIRECT EXAMINATION BY MS. WHITE:

7 Q. Mr. Cheek, were you appointed to represent Mr. Jeter? I
8 I'm sorry, strike that question. Did you begin representing
9 Mr. Jeter because of an indication that he wished to plead
10 guilty?

11 A. I did. I work for the Public Defender's Office, the case
12 was actually assigned to Beverly Jones. In the event the case
13 went to trial, uh, it would have been rep -- representation by
14 Ms. Jones, uh, I think Ms. Jones actually, uh, handled the
15 preliminary hearing and then once it was indicated to me by,
16 uh, Mr. Jeter that he was interested in entering a guilty plea
17 I took over the preparation, um, of the plea presentation.

18 Q. First question do you -- did you first meet with him on
19 the day of or the day before his plea?

20 A. I met with him 'bout two days before his plea. I met
21 with him twice before the plea and the day of the plea.

22 Q. And the reason you were involved is 'cause you had
23 already received indication he wished to plead and not proceed
24 to trial, is that right?

25 A. That's correct.

1 Q. And in regards to investigation, he has testified that he
2 never saw any video, never listened to any audio or knew of
3 any then, uh, evidence against him in the distribution, is
4 that what you recall?

5 A. I think he heard a portion of the audio, uh, just a
6 portion of it to establish that it was his voice on there.
7 Uh, he did see the still photos from the actual, uh, drug
8 transaction and acknowledged that that was he on the picture.

9 Q. And in regards to a 1-year plea deal, did you ever tell
10 him that you were gonna get him or present him with a paper
11 that indicated he was pleading to 1-year concurrent on both
12 charges?

13 A. No, in fact, I've been present to hear, uh, Mr. Jeter's
14 testimony today, uh, and, uh, Mr. McCarty would not have been
15 involved in the, uh, sentencing agreement, uh, if there had
16 been any on the criminal domestic violence of a high and
17 aggravated nature; in fact, Mr. McCarty was there for the drug
18 charge, uh, Ms. Meghan Gilmer I believe was the attorney on
19 the CDV so Mr. Mr. McCarty had absolutely nothing to do with
20 the, uh, CDV case.

21 Q. And did you share with him the range of sentencing that
22 he could face?

23 Yeah, uh, the CDV high and aggravated nature carried a minimum
24 mandatory 1-year sentence up to 10 years at the Department a
25 Corrections. Uh, Mr., uh, Jeter wanted a year, uh, on the

JAMES CHEEK - DIRECT EXAMINATION BY MS. WHITE

1 drug charge. When he heard that the minimum mandatory was
2 1 year, he was advocating, uh, for an agreement of 1 year on
3 all these charges. Uh, Ms. Gilmer was not available at that
4 moment right before we went into the courtroom and I told him
5 that that was not going to happen, he didn't believe it, he
6 wanted to talk to the solicitor himself, I said, Okay, I'll
7 arrange for you to ask the solicitor yourself. I brought
8 Mr. McCarty in, I said, Here he is, he will verify with you
9 there is no offer of 1 year on your case, there's not gonna be
10 one on the drug charges, uh, with your record that's not going
11 to happen, I said, Mr. McCarty, is that true, Mr. McCarty
12 said, It's not gonna happen, Mr. Jeter, I'm not recommending
13 1 year for you on your drug charges and, uh, we exit the room
14 and then we prepared to bring him in for the plea.

15 Q. And did Mr. McCarty not say, um, on the record that with
16 his prior, uh, history that they had actually considered
17 potentially looking at, uh, multiple strikes for perhaps a
18 life sentence?

19 A. He was looking at trial, he'd have been served prior to
20 trial with a notice of life, uh, without possibility of parole
21 had he been convicted in these charges.

22 Q. And in regards to, uh, the paperwork that they've got
23 here, is that anything that had concerned you or that you
24 thought would be a defense to these charges if ya'll had gone
25 to trial?

JAMES CHEEK - CROSS-EXAMINATION BY MR. KINARD

1 A. No, I had no concern about that, that's Tyrell sitting
2 right over there. Uh, nobody selling drugs goes down the
3 street use their own name, they use a street name or somebody
4 else's name. You would not approach anybody using your own
5 name out there on the street, that's ridiculous.

6 Q. And you did say that you shared with him the audio and
7 the pictures and he acknowledged that was him?

8 A. I did.

9 Q. Thank you, that's all I have.

10 THE COURT: Redirect?

11 MR. KINARD: Thank Your Honor.

12 THE COURT: Excuse me, cross, sorry.

13 CROSS-EXAMINATION BY MR. KINARD:

14 Q. Mr. Cheek, could you, uh, just briefly go over your
15 conversations you had with Mr. Jeter before the day of the
16 plea hearing in in the courtroom whether it was any
17 conversation between you and Mr. Jeter.

18 A. In the courtroom?

19 Q. Yes, sir.

20 A. Uh, we probly approached this to verify that though there
21 won't be a offer, I mean, is that what he's -- what you have
22 reference ---

23 Q. Di -- did ---

24 A. --- to?

25 Q. --- you communicate to him that, uh, there was not gonna

JAMES CHEEK - CROSS-EXAMINATION BY MR. KINARD

1 be a 1-year offer from the solicitor's office?

2 A. Absolutely, ---

3 Q. Okay.

4 A. --- as well did the solicitor.

5 Q. Okay. What what was his response to that?

6 A. Okay.

7 Q. Okay. Uh, there's been some testimony about a document
8 that was signed, do you ha -- do you have any recollection of
9 any document that was signed before the plea hearing?

10 A. Let me answer the questions differently. There was no
11 document, there was no presentation of a document, there was
12 no suggestion of a document. Mr. McCarty could not have
13 agreed to that because it was not his case, he was not the
14 prosecutor on the criminal domestic violence of a high and
15 aggravated nature, he woulda had no authority to make any
16 offer on that case and it was not done, there was no document,
17 no document presented, it could not have happened as Mr. Jeter
18 had suggested it happened 'cause it is not done, ---

19 Q. Okay.

20 A. --- didn't happen.

21 Q. Okay. Does -- has -- does that ever happen any -- in any
22 plea ar -- plea arrangements when something is a a plea is
23 presented to the defendant and sumtin' is signed before the
24 plea agreement is on record?

25 A. I'm not tryin' to be difficult, I want you to think about

JAMES CHEEK - CROSS-EXAMINATION BY MR. KINARD

1 what you just asked me, is it ever done. You need to be more
2 specific in your presentation 'cause 'cause I will tell
3 you ---

4 (Cross-talk.)

5 Q. Well in in your experience have you ever presented a, one
6 of your clients with a document to sign before the plea
7 agreement that says what the plea agreement is?

8 MS. WHITE: Your Honor, I would just ---

9 A. What I have presented to my clients and I I'll address it
10 this way, madam, uh, ---

11 THE COURT: You have an objection?

12 MS. WHITE: I was gonna object to irrelevant, uh, ---

13 THE COURT: I sustain ---

14 MS. WHITE: --- since he's already ---

15 THE COURT: --- the objection.

16 MS. WHITE: --- stated it wasn't.

17 BY MR. KINARD:

18 Q. Was there ever any discussion prior to the plea agreement
19 about Mr. Jeter, uh, pleading to 1 year?

20 A. Possibly with his pod inmates or his attorney over there
21 who's an inmate with him in the jail but not with anybody who
22 is an attorney, no, ---

23 Q. Okay.

24 A. --- sir.

25 Q. Okay. And as far as the, uh, documents that have been

JAMES CHEEK - CROSS-EXAMINATION BY MR. KINARD

1 produced, the statements, uh, did you point those out to
2 Mr. Mr. Jeter?

3 A. You mean the sentencin' sheets or the ---

4 Q. Well no the, uh, Applicant's 1 and 2, uh, I'll get those
5 and show those to you. These are documents from the -- from
6 your file, uh, produced by the Office of Public Safety, uh,
7 did ya ever show these documents to Mr. Jeter before the plea
8 agreement?

9 A. No.

10 Q. Okay.

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

12 MS. WHITE: Nothing further, Your Honor.

13 THE COURT: Alright, thank you. May this witness be
14 excused?

15 MR. KINARD: Yes, Your Honor.

16 MS. WHITE: Yes, Your Honor.

17 THE COURT: Thank you, sir.

18 (Whereupon, the witness left the stand.)

19 THE COURT: Anything further?

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

21 THE COURT: Anything in reply?

22 MR. KINARD: Not from applicant.

23 THE COURT: Alright, I'm denying the application, uh, and
24 as both the attorneys well know you got a two prong analysis
25 whether it's ineffective assistance and there's prejudicial

1 effect, uh; number one, in making my determination defendant's
2 or the applicant's testimony was just totally not credible,
3 uh, went through the the plea colloquy that, uh, Mr. Jeter
4 engaged in with, uh, Judge Hayes, Judge Hayes covers all the
5 necessary, uh, elements and and issues in the the plea
6 colloquy, uh, which would include that is the they haven't
7 been threatened or promised anything, they're pleadin' freely
8 and voluntarily, they will be presumed innocent and have a
9 right to a jury trial, explained the burden of proof, you got
10 a waiver of a jury trial and waiver of your constitutional
11 rights including confrontation, cross-examination,
12 presentation of evidence, puttin' up any defenses, subpoena
13 witnesses and the right to remain silent, he was given a
14 chance to speak with his attorney, uh, it was pointed out
15 twice in the record that, uh, there was only gonna be a
16 recommendation of concurrent sentencing, the facts recited by
17 the solicitor the defendant admitted committing those acts,
18 furthermore and and then the Court explained the time on both
19 charges and minimum time you get on the a CDVHAN, also, uh,
20 Mr. Cheek got up and went through the, uh, the information
21 with the Court which would include the evidence in the case to
22 the defendant or the applicant admitted to as being correct
23 and, uh, he argued for some leniency himself based on his
24 prior drug, uh, dealings when all said and done there's no
25 evidence whatsoever of ineffec, uh, ineffective assistance a

1 counsel, failure to investigate, uh, the the applicant's
2 failed to meet his burden of proof. If you'll prepare me an
3 order and I will, uh, and have it sent to Mr. Henson --
4 Henderson -- Kinard or Kinard, I'm ---

5 MR. KINARD: Yeah, ---

6 THE COURT: --- sorry.

7 MR. KINARD: --- Kinard.

8 THE COURT: I'm get -- I'm getting all ---

9 MR. KINARD: That's it.

10 MS. WHITE: Yeah.

11 THE COURT: --- over the place now, I apologize, and
12 forward same to me.

13 MS. WHITE: Thank Your Honor.

14 MR. KINARD: Okay.

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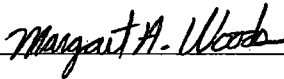
25

CERTIFICATE OF REPORTER

1
2
3 I, Margaret A. Woods, Court Reporter in and for the State
4 of South Carolina at Large, hereby certify that I reported the
5 preceding case on June 26, 2013 at the time and place
6 heretofore set forth; and that the foregoing pages numbered
7 from 4 through 30, inclusive, constitute a true and accurate
8 transcription of my stenographic notes of the said proceeding.

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

13 February 16, 2014

14
15 

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

VOLUNTARY STATEMENT

PAGE _____ OF _____

CASE NUMBER

NAME: _____

T [REDACTED] Bolt \$50 from Tyrell
Coke Cocain At 113 Economy Inn

[REDACTED]

Applicant's
6-26-13 @

WITNESS: _____

WITNESS: _____

Signature of person giving voluntary statement

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
)	2012-CP-42-0057
Samuel J. Jeter, #242979,)	
)	
Applicant,)	
)	
v.)	ORDER OF DISMISSAL
)	
State of South Carolina,)	
)	
Respondent.)	

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 6, 2012. The Respondent made its Return on or about September 25, 2012. An evidentiary hearing into the matter was convened on June 26, 2013, at the Spartanburg County Courthouse. The Applicant was present and represented by Howard J. Kinard, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. James A. Cheek, Esquire, testified on Respondent's behalf. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Correction pursuant to the Spartanburg County Clerk of Court's orders of commitment. The Spartanburg County Grand Jury indicted the Applicant at the June 2011 and September 2011 terms General Sessions for criminal domestic violence of a high and aggravated nature (CDVHAN) (11-GS-42-2889), distribution of methamphetamine or crack cocaine (11-GS-42-5604), and distribution of crack cocaine within one-half mile of school (11-GS-42-5603). The Applicant

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 SPARTANBURG COUNTY
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 H. HOWARD BLECKNEY

was represented by James A. Cheek, Esquire. As a result of a plea agreement, the charge of distribution of crack cocaine within one-half mile of school (11-GS-42-5603) was *nolle prossed* and the Applicant pled guilty as indicted to the other charges on November 17, 2011. The Honorable J. Mark Hayes II sentenced the Applicant to confinement for a period of seven and one-half (7.5) years for each charge, to run concurrent. The Applicant did not appeal his guilty plea or sentence.

ALLEGATIONS

In the current application, the Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel; in that,
 - a. Counsel failed to investigate the case,
 - b. Counsel made "me plea to the maximum."

At the hearing, the Applicant indicated that he wished to proceed on the claims of ineffective assistance of counsel and involuntary guilty plea based upon the fact that his plea agreement was not honored and there was an insufficient investigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the

evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

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).

Involuntary Guilty Plea

In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Applicant testified that he was represented by James Cheek at his plea, but originally met with Beverly Jones at his preliminary hearing and second appearances. Applicant testified that his first time meeting with Cheek was the day before the plea. Applicant testified that he thought he was pleading guilty for a sentence of one year on both charges, but Cheek never mentioned the one year deal at the plea. Applicant testified that he never saw discovery materials and would not have pled guilty if he had seen the police operations plan, Applicant's #1. Applicant testified that he saw a still photo from the video, but never listened to the audio of the video.

Cheek testified that he met with the Applicant twice before the plea. Cheek testified that he reviewed a portion of the audio with Applicant and showed him the still photos, at which time

Applicant acknowledged that it was him. Cheek testified that he reviewed with Applicant the range of sentences, including the fact that CDV was a minimum of one to maximum of ten years. Cheek testified that Applicant wanted a concurrent sentence of one year since that was the minimum for CDVHAN, but even the Solicitor informed Applicant that there was no offer for one year.

This Court finds that the testimony of the Applicant is not credible. The plea colloquy fully covered all of the Applicant's constitutional rights and any issues he may have with any possible defenses. Further, the Assistant Solicitor pointed out twice that the only recommendation was for concurrent sentences and Cheek requested concurrent sentencing. Additionally, the Applicant admitted that the facts as read by the Solicitor were correct. The Applicant was informed of possible sentences and chose to plead guilty. To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). The Applicant offered no testimony or evidence to support his claim that Counsel failed to sufficiently investigate the charges. Therefore, this claim is denied and dismissed.

Summary

This Court finds that Counsel is an experienced attorney who was prepared for and effectively represented Applicant at his plea. This Court finds Counsel adequately conferred with the Applicant, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in their representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel’s performance. There is no evidence that the outcome of the proceedings would have changed based upon any of the allegations of deficiency. 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.

CONCLUSION

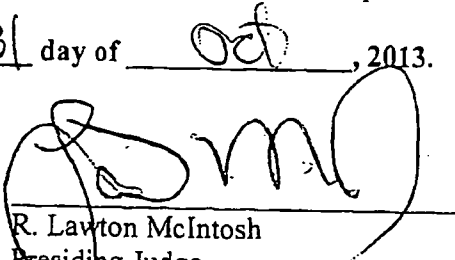
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 31 day of Oct, 2013.



R. Lawton McIntosh
Presiding Judge
Seventh Judicial Circuit

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 NOV - 7 AM 10: 27
M. HOPE BLACKLEY

WITNESSES

Spartanburg County Sheriff's Office
Comptroller

[Signature]
Date: _____

ARREST WARRANT NUMBER

R1-753943

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury
Date: _____

VERDICT

Foreperson of Petit Jury
Date: _____

JUN 21 2011

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

TERM

THE STATE
VS.

Samuel Jeremiah Jeter

Indictment for
CRIMINAL DOMESTIC VIOLENCE OF A
HIGH AND AGGRAVATED NATURE

SC Code: 16-25-65
CDR Code: 2988
Class FELUNC

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 JUN 21 PM 4:44
M. HURF BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JUN 11 2011 the Grand Jurors of Spartanburg County present upon their oath:

**CRIMINAL DOMESTIC VIOLENCE OF A
HIGH AND AGGRAVATED NATURE**

That Samuel Jeremiah Jeter did in Spartanburg County about May 14, 2011, intentionally cause harm to one, Juanita Miller, a household member or former household member, to wit: by threatening her with a gun and/or striking her repeatedly about the same and/or body with a baseball bat and/or causing her to fear for her safety, the act being aggravated in that it resulted in serious bodily injury, and/or involved the use of a deadly weapon which would reasonably cause a person to fear imminent serious bodily injury or death, all in violation of Section 16-25-65, THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)
 STATE VS)
 Samuel Jeremiah Jeter)
 AKA:)
 Race: BLACK Sex: M Age: 36)
 DOB: [REDACTED] SS#: [REDACTED])
 Address: [REDACTED])
 City/State/Zip: Spartanburg, SC 29306)
 ID#: [REDACTED]

IN THE COURT OF GENERAL SESSIONS
 INDICTMENT CASE# 2011CS420880
 A.W.# M753943
 Date of Offense 5/14/2011
 SC Code § 16-25-0065
 ICR Code # 2988

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was
 [] CONVICTED OF or [X] PLEADS
 [] Domestic/Criminal domestic violence of a high and aggravated nature (mandatory minimum 1 year - 10 years)
 in violation of § 16-25-0065 of the S.C. Code of Laws, bearing ICR Code # 2988
 [] NON-VIOLENT [X] VIOLENT [] SERIOUS [] MOST SERIOUS [Mandatory GPS(CSC) § 16-25-15 w/minor 1st or 2nd Act]

The charge is [X] As Indicted [] Lesser Included Offense [] Defendant Waives Presentment to Grand Jury (Defendant's rights)
 The plea is [] Without Negotiations or Recommendation, [] Negotiated Sentence [X] Recommendation by the State.
 A FLEET § 81157 Samuel Jeter
 GILMER, MEGHAN SC Bar# [REDACTED] Defendant Attorney for Defendant SC Bar# [REDACTED]

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [] County Detention Center
 for a determinate term of 7 1/2 days/months/years or [] under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$ [REDACTED]; provided that upon the service of days/months/years and/or payment
 of \$ [REDACTED]; plus costs and assessments as applicable; the balance is suspended with probation for
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference

[X] CONCURRENT or [] CONSECUTIVE to sentence on
 [X] The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. Credit: 3 months
 [] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

[] RESTITUTION: [] Deferred [] Def. Waives Hearing [] Ordered
 Total: \$ [REDACTED] plus 20% fee: \$ [REDACTED]
 Payment Terms:
 [] Set by SCOPPPS

PTUP [REDACTED] days/hours Public Service Employment
 Obtain GED []
 Attend Voc. Rehab. or Job Corp. [REDACTED]
 May serve W/E. beginning [REDACTED]
 Substance Abuse Counseling []
 Random Drug/Alcohol testing []
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ [REDACTED] beginning [REDACTED]
 \$ [REDACTED] paid to Public Defender Fund
 Other: [REDACTED]

Recipient: [REDACTED]

*Fine:	\$
§ 14-1-206 (Assessments 107.5%)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47-9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 56-21-114 (DUI Breath Test Fee)	\$30
§ 56-5-294(2)(j) (Vehicle Assessment)	\$400
Proviso 90-3 (SC CJA Surcharge)	\$5
5% to county (if paid in installments)	\$
TOTAL	\$ 133.90

ATC [REDACTED]
 [REDACTED]

[] Appointed PD or appointed other counsel.
 § 47-12 requires \$500 be paid to Clerk during probation.

Clerk of Court Deputy Clerk A. Brady
 Court Reporter P. [REDACTED]
 S.C. A-217 (03/2011)

Presiding Judge [REDACTED]
 Judge Code 2135
 Sentence Date 11-17-11

WITNESSES

STATE OF SOUTH CAROLINA
SHERIFFS DEPARTMENT
S-176 OFFICE PUBLIC SAFETY
Computer

ARREST WARRANT NUMBER

M125705

ACTION OF GRAND JURY

For person of Grand Jury
Date: *[Signature]*

VERDICT

For person of Petit Jury
Date:

5604

The State of South Carolina
County of Spartanburg

Barry J. Barrette, Solicitor

COURT OF GENERAL SESSIONS

TERM

THE STATE
VS.

SAMUEL JEREMIAH JETER

Indictment for

DISTRIBUTION OF METHAMPHETAMINE OR
COCAINE BASE
SC Code: 44-53-375

1852 10 PM 4:42
W. HOPE BLACKLEY

.C.F.O.
COUNTY
STATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on SEP 15 2011 the
Grand Jurors of Spartanburg County present upon their oath:

DISTRIBUTION OF METHAMPHETAMINE OR COCAINE BASE

That Samuel Jeremiah Jeter did in Spartanburg County on or about March 3, 2011, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Methamphetamine or Cocaine Base, a schedule II controlled substance under provisions of § 44-53-375, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.*

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



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)
 STATE VS.)
 Samuel Jeremiah Jeter)
 AKA.)
 Race: BLACK Sex: M Age: 36)
 DOB: [REDACTED] SS# [REDACTED])
 Address: [REDACTED])
 City, State, Zip: Spartanburg, SC 29306)
 DL#: [REDACTED] SID# [REDACTED])

IN THE COURT OF GENERAL SESSIONS
 INDICTMENT/CASE#: 2011GS4205604
 A/W#: M125705
 Date of Offense: 3/3/2011
 SC Code §: 44-53-0375
 CDR Code #: 3014

SENTENCE SHEET

in disposition of the said indictment comes now the Defendant who was
 TO: Distribution of Crack Cocaine 1st Offense (0-15 years &/or \$0-25,000)

CONVICTED OF or PLEADS

in violation of § 44-53-0375 of the S.C. Code of Laws, bearing CDR Code # 3014
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC § 17-25-45 w/minor 1st or Lowd Act)

The charge is: As Indictor, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
 ATTEST: [Signature] MCCARTY, RYAN P. SC Bar# 7418 Samuel Jeter Defendant [Signature] Attorney for Defendant SC Bar# 1107

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 7 1/2 days/monthly years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*, the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Months
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

PTUP: _____ days/hours Public Service Employment

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments) (07.5%)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§ 56-21-114 (DUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% in County (if paid in installments)		\$ 8.40
TOTAL:		\$ 288.40

Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund.

Other: A.T.C. while in D.C.
[Signature]

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

Clerk of Court/ Deputy Clerk: P. A. Brady
 Court Reporter: [Signature]
 SCCA/217 (03/2011)

Presiding Judge: [Signature]
 Judge Code: 2130
 Sentence Date: 11-17-11